MARITIME POLICY: WILL THE SEAS BE FREE OR CONTAINERIZED?

BY JACK PEARCE*

Introduction

The dislocations containerization has engendered could result in more free and efficient ocean transport markets, or in increasingly rigid collective carrier controls. This article submits that the first course is better and suggests methods for moving in that direction.

At the same time containerization has disarranged the tableware on Atlantic trades, some of the less developed countries have been attempting to use bilateral agreements and other devices to assure their carriers larger slices of the shipping pie in the commerce between them and their more affluent partners. The American reaction to this compartmentalizing development has been a reluctant, partial acquiescence. This article suggests an approach to meeting some of the aspirations of the less advantaged group while keeping growth-fostering flexibility and efficiency in the worldwide ocean shipping complex.

I. Conferences, Regulation, and Containerization: What's New About the Market?

Since the days of the *Alexander Report*,[1] conference-permitting U.S. laws have been propped up by the propositions that open, competitive ocean markets would constantly have unworkable overcapacity, that U.S. carriers could not compete as independents against foreign cartels, that collective agreements secured regularity and dependability of service not otherwise likely, and that the conference-FMC system would prevent "discriminations" between shippers, ports, etc. The suggestion to companies with freight to move that none would get ahead of the other in the competitive race on account of ocean carriage has done much to secure acceptance of these propositions.

The momentum of affairs (a general and inoffensive phrase covering a multitude of phenomena, including zealous defense of the system by those principally involved) has prevented any wide-spread public rethinking of

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1. U.S. Congress, House Committee on the Merchant Marine and Fisheries, Proceedings . . . In the Investigation of Shipping Combinations . . . . 1913, 1914, 4v.

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these assertions to date. For those who are enamoured with the regulated maritime order, this may seem fortunate. In the author's opinion, none of these views would survive the first gentle swells of critical awareness engendered by modern understandings of market mechanics.

If the great American body politic has not troubled the water unduly, the ungovernable passions of men in commerce to do a job and get rich thereby has. The mischievous container has changed the composition of ocean fleets, altered the number and disposition of market participants, changed trade patterns, and disarranged with gusts of competition the sedately hanging veils within the great tent of the conference structure.

Few have dared to think the commotion would bring down the tent. If the reader is so foolhardy as to follow, he will now embark on a brief synopsis of why an observer might conclude that the old canvas could now be struck, and new accommodations installed on the fairground.

A. Something New: Market Structure and Entry Conditions.

Some of the first obvious effects of the containerized shipping technique were to reduce the total number of ships involved in moving liner cargo, increase the capital costs of getting into shipping containerizable cargo, and engender consortia of firms using this technique.

According to one study, the total number of U.S. subsidized ships plying liner trades dropped from approximately 311 in 1965 to 247 in 1970.[2] Some of the new containerized vessels can handle about as much tonnage in a year as four C-4 ships; ships of above-average size in precontainerized days. The typical vessel cost is now in the $25 million to $30 million range (including three sets of containers).

In market structure terms the total number of market participants seems likely to be less than when the price of admission was lower; their average size larger.

1. Overcapacity and the Future

Economists now treat as elementary the observation that a combination of high capital requirements for entry and relatively few market incumbents will substantially limit competition. When capital barriers to entry are high and rivalry is limited, the effect is a tendency toward undercapacity, underproduction, high prices, and high profits.

The tendency has its limits, as do all. At some level of price enhance-

2. The Impact of Maritime Containerization on the United States Transportation System, 1972. Study Com-72 10406 (Department of ommerce). Vol. 2, p. 272.

ment, additional resources will enter. The higher the entry barrier, or the tighter any entry control, the higher the available returns, other things equal. The easier entry, the more nearly returns will approximate the general opportunity costs of capital.

The effect of the container technique is, then, to undercut the atomistic competition premise for allowing conference agreements. Given the capital costs of containerized shipping, and absent price fixing, the private market would in the future be unlikely to err on the side of overcapacity, *over time*.

The argument of inevitable overcapacity absent carrier control probably was never apposite, except in conditions of attempted price enhancement by collective price fixing, and except to the extent governments directly subsidized the trade.

Modern economists of respectable credentials known to the author would rather uniformly assert that relatively easy entry conditions, relatively small unit size, and numerous sellers tend toward close capacity-demand coordination, rather than chronic excess capacity.

This pleasant symmetry can be spoiled by holding prices above competitive levels. Excessively high prices encourage the entry of excess capacity, absent effective entry restrictions. If entry restrictions are effective the above-competitive prices achieve the intended result of above-competitive returns to capital and/or labor.

If one wished illustration of the economists' tenets concerning the efficiency of atomistic markets, absent price fixing, one could hardly do better than to examine the modern tramp market. The lady, maligned by description, is a remarkable institution.

The understanding of economists and experience with the tramps suggests that a large part of the problem reviewed by the *Alexander Report* lay in the fact that would-be price fixers were always getting their price enhancement arrangements messed up by unwelcome entrants and unfaithful partners.

Does the author deny the existence of any "overcapacity", ever? No.

First, the miscalculate-adjust cycle presumes occasional miscalculation. People developing a new, rich market like containerized shipping may let their reach exceed their grasp, until a few empty handed trips to the board room reawaken their natural caution, or enlist the caution of more prudent successors.[3] In nine-tenths of the American economy, the

3. Recent justifications for container pool agreements seem to rely less on the hoary past than on a combination of projections of capacity in the upcoming few years, as compared with projections of demand, and horrified exclamations about "overcapacity" induced "rate wars". The projected increases in capacity are seen as inevitable, absent collective restraint.

management of this rolling adjustment under competitive conditions is thought to be a requirement of adequate management. The failure to do so has been cause for foregoing the company limousine and forfeiting the opportunity to write the President's letter in the Annual Report.

Second, we can easily induce more capacity than is needed by holding prices well above cost levels,[4] as observed before.

Then, if prices do fall off the elevated plateau, we will see a picture of low utilization ratios and low prices, until price drops attract sufficient demands and individual sellers retire enough capacity to allow a group of efficient sellers to make a profit.

A conference, or cartel, arrangement which specifies capacities and services for its members, by a consensus arrangement, is likely to slow, if not peristently to distort, adjustments of capacity to demand. An individual ship line can decide to add or subtract increments of capacity more quickly than the consensual body.[5]

In sum, basic business sense and modern economic understandings both point out that in atomistic and concentrated markets we should encounter temporary but not endemic overcapacity, absent collective price enhancement. Cartel arrangements tend to create problems of overcapacity, and slow ajdustment of capacity to demand.

In other words, if we do not as yet understand history and basic economics, we will now have a splendid opportunity to repeat the procedure of agreeing to permit carriers to limit capacity and hold prices above that price level which would regulate capacity without either carrier collective intervention or government intervention. If this were done, the result would be excessively high prices, and either unnecessarily high capacity

We are asked to assume that each company, left to its own devices, will insist upon a market share which will bankrupt it and/or all others, making no fleet allocation and purchasing adjustments to prevent this happening.

In the midst of a snowstorm, one may grope about for clear and prominent landmarks. Let us sieze upon one of the most basic within the purview of what the author will describe as our colloquy (if this word is not too dignified for the content of our communication), to wit: businessmen, whether individually or in groups, do not prefer to lose money. Another landmark: individual companies can and do attempt to adjust capacity acquisition plans to anticipated demand, over time, in order to avoid losing money. A third point of reference: whether the available prices in a market will cover the costs of additional capacity furnishes an excellent and widely used decision rule for an individual company considering whether to add capacity or not.

4. A good deal of work in the airline industry has pointed out the persistence, and high costs, of this phenomenon in that market. See, for example, Jordan, *Airline Regulation in America*, Johns Hopkins Univ. Press, 1970.

5. See, for example, Bennathan and Walters, Shipping Conferences: An Economic Analysis, Journal of Maritime Law and Commerce, Vol. 4, No. 1; pp. 93, 96-100, 108.

levels or monopolistic returns to capital and/or labor. If this does not sound entirely cogent, it is because foolish activity rarely, in retrospect, does. Staying at an elementary level, let us ponder the wisdom in childhood's chant "Fool me once, shame on you. Fool me twice, shame on me."

2. *Fewer People But More Competition?*

An harassed participant might query why, if we are moving toward a market with less competitiveness in its natural state, everyone in the market is getting rattled around so much. Ah, one might reply, let us consider the situation in which we started, and then consider how the new shipping techniques changed competitive potentials.

Industry participants and United States regulators have striven manfully, even when the gender of some participants happened to be the opposite, to contain competitive forces within conferences and between conferences.

The container has shaken things up in several ways. First, by lowering costs and otherwise facilitating transport it has widened the market scope of each entity seeking to move or receive freight. Because of containers, inland freight could move out of more port locales, through different port locales, to more destinations.

This market widening effect is large enough to escape the attention of involved observers but so simple, basic, and significant as to justify notice of its outlines. The effect is familiar when put in historical context. People in New York could more easily, amply, and flexibly interchange with people in California after the railroads than before; and then even more after the completion of the basic high speed intercity highway network.

One of the desirable results of the phenomenon is that the scope of choices between goods and services (and thus the scope of competition) is increased.

To revert to our own quaint past, the merchant in San Francisco might find his teeth on edge at seeing New York goods appear on rivals' shelves by strange and unexpected means. Notwithstanding, all now agree that the larger and richer markets are worth the costs, including some bankruptcies. That institution, like other more pleasant ones, is always with us.

An ingenuous observer might be struck by the thought that this market widening and intensifying effect is what transportation is all about.

Second among major trade effects, the concentration of freight into fewer vessels and the use of larger port facilities necessarily caused some adjustments in trade patterns.

In this market and traffic shifting process, ports have vied to get into the new mainstreams. The port disequilibrium has been a prominent feature of the whole adjustment process. Trade, no longer confined to old tributaries, has cut some channels deeper, shifted others.

Third, there has obviously been a good deal of carrier jockeying to get good field position in a rich new pastureland. Such rivalry can settle down into stable patterns, without disappearing, under non-collusive conditions.

As a concomitant of all this, North Atlantic and South Atlantic ports, North European and Mediterranean ports, and all Atlantic conferences have found themselves suddenly eyeball to eyeball, instead of at arms length. The waltz has been replaced by a variety of more active and intimate—some more sedate partygoers with less wind and ambition might say chaotic—forms of frolic.

From the standpoint of expanding our international trade and domestic output, this is all to the good, the author suggests. The process should be encouraged, not constrained. If the process were to continue, much of the trade limiting effects of conferences would be dissipated. The economies and capacities of containership operation would broaden and amplify pan-Atlantic and pan-Pacific trade by a significant measure. If the process is constrained, all the involved trading nations, and their citizenries, will benefit to some extent, but much less, from the evolution of the containership technique.

B. Implications of Current Economic Conditions and Understandings for Conference Rationales.

Let us quickly note that containerships must operate on regular, relatively high-frequency schedules to make a buck, given their capital costs. This incentive is unbelievably potent in assuring the company or individual who wants his goods moved that ships will show up regularly to move them: conference or no conference.

Indeed, we need not have feared a lack of regularity of service from break-bulk ships, for those shippers who are willing to pay for regular service, absent conferences. One of the cardinal characteristics of an unrestrained market is its tendency to give buyers what they are willing to pay for.[6]

6. Rather than tarry over suggested qualifications to this assertion—an exercise long on myth, tradition, and elements of protectionism—let us focus on the current situation, and current understandings. Standing around in the Museum of Past Eccentricities and Logomachy, doing obeisance to yesterday's icons, may qualify us as a curator of that institution.

A similar observation can be made concerning the ability of unconstrained markets to provide price stability. Modern economists are quick to note devices other than cartel arrangements which are widely used to provide price stability when a buyer is willing to pay for it.[7] These devices include long-term contracts between individual shippers and carriers, and futures markets.

Can Americans compete against foreign cartels? Many of our major ship lines are owned by large conglomerates. We are, after all, not pygmies. Europeans are always complaining about the size of our feet. Further, a flexible, independent, well financed company may often do very well against larger or coordinated rivals whose attention is divided between the customer and each other. One is led to salt the suggestion that we can't compete against "foreign cartels" so heavily as to give rise to a strong disinclination to swallow it.

One can also observe that the foreign cartel argument works beautifully for all shipping companies as long as each presses it with its own government. If the governments ever start chit-chatting with each other about a more efficient, competitive regime, as the author will shortly suggest, our carefully nourished fear of those foreign devils may suddenly subside.

II. What's Up at the (Government) Office

A. Contain Containerization, or Look for New Wineskins?

So the world overtook us. The new ships came down the ways, the goods went into boxes, and the markets shifted. After a few initial attempts to escape conference strictures, the ocean carriers have proposed that the U.S. Government sanction new conference arrangements to protect prices and profits from risks arising from the competition inherent in the new methods of operation.

The first suggestion was the so-called "superconference" proposal filed in October 1969.[8] The principal aim was to create a framework for agreement on prices, shipment schedules, and trade flows across the Atlantic trade zone. The nature of price and service agreements to be reached was left open, because the diversity of carrier positions and strategies at the time limited the degree of concord. In effect, the proposal was to let out

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We would guard for our children a rich, antique heritage of impedimenta to trade. The children would prefer, I think, to run tomorrow's ships.

7. See, for example, Bennathan and Walters, Shipping Conferences: An Economic Analysis. Journal of Maritime Law and Commerce, Vol. 4, No. 1; pp. 93, 100.

8. FMC Agreement No. 9813.

the seams in the conference cloak, thin the fabric, and throw it over a broader geographic scope. As all interested parties know, this got nowhere, and was dropped officially in August 1971.

While this was going on carriers were establishing themselves in the container market, trying to keep prices at or above break-bulk rates for a product with much lower unit costs, and seeing lost of new tonnage plunge into their newly enriched waters.

The next carrier move has been more draconian—a push for a strict revenue sharing pool, with allocated sailings and capacity limitations.[9]

Interested observers found the staging professionally done. The Journal of Commerce began reporting numerous public statements about "rate wars". The Chairman of the Federal Maritime Commission embarked on a hurried scamper about the Atlantic to palpate the chests and hear the moans of dyspeptic carrier officials and their allies. Executive Branch agencies were beseeched to find a solution.

Then the industry modestly appeared before the Federal Maritime Commission bearing the cure to our ills. The classic solution. All will be well if we let the vendors of the service eliminte competition among themselves, deciding among themselves who will serve, when to serve, and how much; and thus remove risks of loss of profits.

We are such a gullible people. So scrupulous. So fair. Thousands of us are born every minute. No matter that we decided in 1890 that this sort of thing generally restricts productive activity so much as to justify criminal prosecution. We made an exception in 1916.

The FMC is giving the proposal extended consideration.[10] The Department of Justice involves itself, making ominous noises. A few ports seek to protect their relative positions in whatever eventuates. Independent carriers seek hedges against predation. Some of the people who have freight to move eye events. Some shippers may be apprehensive and distressed. If so, their voices are not heard. The great American public attends to other affairs: the push and pull of daily existence; war and peace.

We are, thus, at a point at which a relatively straight-forward government decision—denial of proposed pooling arrangements—can move us into a substantially more competitive and efficient ocean transport market. We would then be in a position to reassess the over-all regulatory scheme, and modify or dismantle it at a relatively unhurried pace.

9. FMC Agreement No. 10,000.

10. While considering, the FMC has approved discussions in other trades intended to lead to the proposal of additional pools. See, e.g., FMC agreement No. 10,022, approved in December of 1972. Some people in the trade say rates have "stabilized" in recent months. If so, this effect of the authorized carrier discussions should not be surprising.

Conversely, approval of such pooling agreements, if not reversed by judicial or legislative action, would allow our 20th century ocean trade cartel scheme to encompass, limit, control, and extract for carrier purses most of the benefit of, the major new potentials of the containerized shipping development.

B. "Developing" Countries: Greedy Like Us, and Wanting to Force the Pace.

Thus far we have ben looking at a glitsch in the floating crap game run by the Americans, Europeans, and Japanese. Let us not arrogantly assume that we have a corner on constructive endeavor, folly, or global significance.

Let us briefly frame a perspective for viewing the remainder of the world. The maritime industry makes this task more interesting than one might assume. One might think it difficult to write, and rare to encounter, both platitude and heresy in the same words, sentences, and paragraphs. Our maritime traditions are such as to make this almost inevitable.

Since dugout canoe days, it seems, almost everybody with a shoreline has put something in the big salt lake. The author's limited view of economic history suggests that a relatively few countries usually seem to dominate the major trade flows. There has always been pushing and shoving over who gets to carry the freight. Somehow Greece has managed to hang in there reasonably well over two or three millenia. But Greece and every other country have seen fortunes wax and wane as time goes on.

The moral of this is also platitude and heresy. Over the long run the world ocean is *not* our lake.

Let's advance the proposition a step or several. Americans have a stake in making the freedom of the seas concept mean flexible movement of freight by whatever routes and bottoms may most efficiently do the job—not just American bottoms.

Why this radical suggestion—that any little or big country get the freight on which it provides the most useful service, according to competitive market criteria?

First, we need efficient transport markets to build international trade volumes both now and in the long run.

Second, of less importance but much interest, if the bottom under the freight is determined less by the ownership of the goods than by how well that particular bottom does the job, Americans may be able to make out on the ocean as long as we care to compete. For as long as we are the largest exporting and importing country, our carriers will have homecourt advantages on the world's largest trade flows. Afterward, we are at least still in the ballgame.

As anyone having a passing acquaintance with maritime affairs knows, the simple, obvious common sense in these statements encounters wholehearted endorsement by perhaps 30% of the relevant population, possibly 30% of the time. A good portion of the remainder of the time seems to be spent vigorously pursuing projects which seem to unperceptive observers such as the author to create inefficiency and sacrifice freedom of the seas.[11]

We see now in this country numerous initiatives to continue and expand the tradition of reserving for domestic shipbuilders and ship operators specified portions of trade coming to and from our shores, on which we thus have some leverage. Proposals to rope off a portion of the oil imports have floated about congress,[12] and if enacted owuld add to Jones Act[13] requirements that domestic coastwise commerce move on American bottoms, requirements directed toward assuring that about half our foreign assistance shipments be carried by our natives to the grateful beneficiaries' port, and the public welfare program administered through shipbuilding and vessel operating subsidies.

Some of the less developed countries have recently tried to become even more pushy. For example, Brazil initiated a series of actions culminating in a bilateral arrangement guaranteeing Brazilian bottoms 40% or more of all liner trade between her country and the U.S.[14]

The Brazilians assert as a major justification for these actions a need to build infant industry carrier capacities, the better to enable her to compete with the affluent countries. (Brazilian ship lines have incentive to seek revenue guaranties without this extra added element. It does give the rip-off an appealing, and many think legitimate, cover.)

Finding it somewhat easier to perceive Brazil's folly than our own, U.S.

11. This might be corrected by greater public scrutiny. Eternal vigilance, our forefathers counseled, is the price of liberty. This inquiry must probably come from outside the maritime industry rather than inside it. The aforenamed honorable vigilance, like competition, is really welcome only when visited on everyone else.

12. See Section III of H.R. 13324, 92nd Congress, as cleared by the Senate Commerce Committee. See also S. 3404, 92nd Congress. 46 USC § 883.

13. FMC Agreement No. 6810.

14. Such a shipping system would undoubtedly tend to foster a more closely linked international community. Such a shipping market would, we might expect, increase the aggregate wealth of the international community and decrease the differentials in wealth in that community faster than would otherwise occur. As the nation currently richest in the world, we might find this process first tolerable, if it did not proceed so rapidly as to decrease our growth rate below, say, 2.5-3.0% a year; and then enjoyable, as we found the world an altogether richer place.

Executive Branch agencies were somewhat reserved about Brazil's venture. In the end they, and the FMC, acquiesced in this conduct.

What attitude should we take in the future concerning enterprises such as this? In a dark-hued pot and kettle community, one can take the position that everyone is entitled to his smudges, and an additional blemish or two matters only if somehow it disarranges a composition of light and dark we had had in mind for our neighborhood. Or, one could join the clean-up forces.

If one does the latter, one must deal with the desire of the "developing" nations to build their capacities, and, in addition, to have some measure of control over some of the tendrils which link them to other parts of the globe.

The author suggests we should try to focus the attention of all nations on developing a relatively dense web of ocean transport responding efficiently and primarily to market imperatives rather than national imperatives, presenting each would-be buyer and seller with a close-packed variety of easily-made choices, undisturbed by major armed conflicts affecting the trade web. He here notes in the margin, and will later expand on, some benefits of this for the entire economic community.[15]

III. What To Do, What To Do?

If we wish to create the kind of international shipping situation described, what must we combine with the reshaping effects of containerization, and what alterations should we make in our current approaches to our "less developed" trading partners, to help the process along?

A. Using Extra, Added Ingredients: Transport Users and Market-Minded Government Agencies.

At least two groups could have some effect in bringing the general community around to changing the regulatory rules of the game in international shipping. These are users of transport services, and those elements of American and other governments which understand and are inclined to foster efficient market systems.

15. Lest this be thought to mean that this group has an interest in getting something for nothing, we can observe that those who have freight to move must expect to pay for that service a value equal to the returns the involved capital and labor could command in other employment—their "opportunity cost".

1. Transport Users: The Public's Freight Paying Agents: Permissive, Passive, or Progressive?

The situation described presents to the major and minor corporations who have goods to move internationally a ready-made white jersey. The general community's money and goods flow into the ocean transport system through the companies and persons who contract to have freight moved—the shippers. These people have a direct interest in maximizing the difference between the value of transport arrangements and the costs of providing them.[16]

If organized to do so, this group could tug the fabric of trade policies significantly toward liberalization. The shippers have a legitimate, basic interest. They are much more numerous than the carriers. They include large and small business enterprises. Why has this white jersey been seen so infrequently around the Federal Maritime Commission and Congress to date?

First, some shippers have valued arrangements which purport to give them some assurance that their competitors will not get ahead of them in the transport market. This short-run interest has tended to obscure the longer-range interest in a larger, more diverse, richer market.

Second, for many companies freight costs are a relatively small proportion of total costs, and seem to engage top management attention and initiative a correspondingly small proportion of the time.

Third, some shippers may have felt powerless to change the situation. Some of the author's experience would suggest that the group mobilizes its thinking only when presented with suggestion of an opportunity to make a change, and direct stimulus (from inside or outside the group) to wade through the conceptual underbrush and do the necessary.

Fourth, preoccupation with the day-to-day business of living in today's rules may tend to create an unevaluated, at least provisional acceptance of current frames of reference. Again, in the author's experience, until issues are focused, one seems to encounter widespread acceptance of prevailing carrier-oriented economic myths among the shipper com-

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16. The author and others have often been loath to criticize the agency personnel themselves for this situation. One can assign as one cause the thought-stifling effects of the heavily compromised, conceptually fuzzy, and often restriction-oriented legislation which governs the regulatory bodies. Also the cultural isolation resultant from specializing in one or a few industries from the producer side is widely known and understood.
The problem is not entirely a lack of talent. Any one working with the agencies will frequently see that entrapped in these swaddles are many perceptive minds with acute understandings of some aspects of industry experience.
Whether one criticizes, explains, or excuses the individuals is irrelevant. What matters is the result.

munity. In at least one situation in the author's experience, a number of individuals demonstrating a good grasp of economic phenomena have come forward when specific proposals for change were made and the shipper community began to focus intensively on coping with or furthering the possible changes.

The issues raised by containerization are now several years old. We still seem to be in the first, inarticulate, business-as-usual stage, insofar as shippers are concerned.

A change in this shipper business-as-usual approach is needed.

If interested in doing so, shippers could do the following. First, a few people respected in the shipper subculture, who are interested in decartelizing maritime trade and its regulation to the maximum extent feasible, could identify themselves as a group, and begin to act coherently.

Second, this group could define what they would like to see happen, and define some proposals for action which are consistent in thrust while flexible in detail.

Third, such a group could see and begin to work with government agencies interested in a competitive, efficient world shipping regime. The Justice Department and the Council of Economic Advisors are strongly oriented in these directions. The Department of Transportation and the State Department contain men who can understand the viewpoint.

Fourth, such shippers could appear before and work with the FMC and the relevant congressional committees, in formal proceedings and in such informal discussions as are not inappropriate.

The program is simple. A word of caution is, however, in order. Such a body of shippers should expect a somewhat confused and at times hostile first reaction from some of the people in the regulatory agencies and in Congress.

Our hypothetical light-bearers should expect to be suspected of having at the center of their cleverly hidden motives an implacable desire to drive into bankruptcy the carriers who haul their freight. They must expect to be assigned responsibility for inevitable, total chaos in our international trade. And they must reckon that many good people whom they address will have to overcome the assault on objectivity which comes from the prospect of admitting that one's most assiduous endeavors have been either unimportant or harmful to the community.

If the standard bearers were to have significant success, the fruits would come only over time—in some cases after the acting parties are retired or involved elsewhere—and would accrue to many who never lifted a finger.

The twelve apostles had a scarcely more agreeable task. And, as it turned out, the twelve had a considerably better chance of being remembered favorably for having made the effort.

Why undertake such a task? If shippers are to make a substantial constructive contribution to our maritime policies, something like this would seem to be a means of doing so.

2. The Governments—Bringing Out the Best In A Mixed Lot.

When the author began to cut his teeth on problems which involved several government agencies, he found that each of the agencies he encountered approached any given problem with its own distinctive world-view.

Justice, the Council of Economic Advisors, and (some elements of) OMB have long thought in terms of creating efficient, competitive markets. The Commerce Department has consistently argued for promoting American commerce. Sometimes Commerce's view has, unfortunately, seemed so limited as to mean promoting whatever a dominant firm or group of firms seemed to want at the moment. Sometimes the understanding of what would promote trade has been much more sophisticated.

The State Department has evidenced considerable sensitivity and educability as to market economics and trade promotion. Its attitudes are heavily influenced by inclinations toward government-negotiated administration of trade relationships.

The Department of Transportation has yet to take on a clearly defined personality in this area. On domestic surface transportation legislation, working with a group of agencies, it has opted for revising older forms of regulation to move for more efficient, competitive markets. One can hope that the department will move in this direction in international surface transport.

The independent regulatory agencies are a special case. Though the observation seems too pejorative and glib, it is literally accurate, insofar as the author's own experience is concerned, to say that in their formal positions on regulatory matters independent regulatory bodies only rarely have evidenced either an understanding of market economics, in terms widely used by professional economists and widely understood by articulate businessmen, or an understanding of effective means of trade promotion.[17]

The author has had much less direct experience with foreign governments. However, to the slightly sensitized eye, familiar features fre-

17. The Department of Transportation could initiate this effort, if it were to formulate a clear sense of direction and then to proceed, or even if it were to wish to act as catalyst. Other agencies need not await DOT, if that agency does not act. Indeed, at least one piece of folk wisdom would counsel not waiting: all that is needed to extinguish liberty is that good men do nothing to preserve it.

quently appear. The German High Cartel Authority increasingly evidences orientations and judgments similar to the U.S. Justice Department's Antitrust Division. Economists in the EEC have much the same intellectual inheritance as Anglo-American economists. Common Market agricultural policies are excruciatingly similar to ours in some respects.

Nothing, assuredly, is quite the same on the two sides of the Atlantic. The fact of diverse government viewpoints, and much of the content of some of the discernible viewpoints, are the same.

What should those interested in efficient, productive market systems do in this situation? The answer seems obvious. Foster common cause with and among the government groups who are inclined to work for such markets.

One would think it advisable for the Antitrust Division and the German High Cartel authority to think in terms of adding the one and one of their respective contributions in hopes of getting 2½. CEA economists might do well to discuss these matters with EEC and Japanese economists. Economists and others within the State Department who are interested in an expanded, competitive international trade regime might find or create a role in fostering and participating in such discussions. So also might relevant persons in the Department of Transportation.

Would there be some competition over roles among the U.S. government agencies? Yes. This is not necessarily bad, if the superior approaches are selected out, and then implemented.

Would we get too many cooks in the stew? This depends in part upon whether their activities are well coordinated or not.

In sum, the author suggests the following. Those agencies in the United States Government interested in creating the sort of ocean shipping market discussed in this paper could initiate contacts with counterpart or sympathetic foreign government groups on ocean shipping pool questions. They could also initiate efforts to create a coordinated, agreed program across the U.S. Executive Branch.[18]

Past formulations of international air transport policies would seem to

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18. Bennathan and Walters, at p. 113. If experience in other regulated areas is a guide, the increase may be substantial. Recent studies of domestic airlines and motor carriers indicate regulation-sanctioned imperfect cartels may raise costs on the order of 30% or more in the case of airlines and 10-30% in the case of trucks. See Keeler, *Airline Reguaation and Market Performance.* The Bell Journal of Economics and Management Science. Autumn, 1972. pp. 399-424; Jordan, *Airline Regulation in America,* Johns Hopkins Univ. Press. 1970; Caves, *Air Transport and its Regulators,* Harvard Univ. Press, 1962; Moore, *Freight Transportation Regulation*; American Enterprise Institute Evaluative Study No. 3, November, 1972.

provide both precedent and a prototype mechanism for coordinating the various agencies within the United States Government, and their contacts with foreign government agencies.

B. The Catch-Up Nations—Negotiate Allocations or Try the Open Field (With, Of Course, a Fair Advantage).

What can a poor nation do? Even with two fingers on each hand tangled up in red tape the "developed" nations busily lob containers back and forth across their Atlantic sea, weaving ever-thicker webs, until from the outside the whole thing may look like a cocoon, with numerous rich men's clubs comfortably nestled within.

First, of course, one is led to observe that if a nation builds and operates ships well the web is likely sooner or later, in some grudging and partial manner, to accommodate this fact. (Were it not for the Japanese example, the author would fear a lack of credibility in this observation. With that example, he only fears lack of adaptability in our own economy.)

This does not entirely resolve questions of market organization, and questions of how soon or late, how partial or complete, how grudging or responsive the international system makes its accommodations. The nations playing catch-up ball have displayed noticeable interest in these matters.

Let's look at it from the viewpoint of a country in the less-dense trade flows, tributary and/or marginal to the more developed markets. The author will suggest that a "developing" nation has a choice between investing efforts in negotiating allocations of traffic, using such leverage as can be found, or investing in efforts to open up the shipping system in a way which gives the local group a decent shot at the business.

The first choice is, in effect, an attempt to get a bigger slice out of a pie smaller than it might otherwise be. The second choice is, in effect, to take a chance of getting some return from a bigger pie.

If a major trading country wished to maximize the size of the international pie, it would seem well advised to move toward opening up opportunities in a way yielding a surplus for all concerned, with those now benefitting least from international trade arrangements getting at least a small net gain in relative position in the process.

Americans, of all the world's people, should know it is easier to share a large larder than a small one; easier to equalize the milk in the glasses by pouring more for all than by robbing Joseph to reward Janet.

Addressing, then, those at least momentarily intrigued with fostering a more open, efficient, productive, and in the process competitive, international shipping system, let's look at what we have to offer our less wealthy brethren and trading partners in exchange for their participation in such a system.

1. What's In It For the Third (And Most Populous) World?

Increased efficiency in trade and increased volumes of trade are the first inducement for the nation interested in building its wealth more rapidly. Lower cost and more facile international shipping increases the total volume of imports, exports, and over-all economic activity. A recent article indicates that the increase in efficiency resulting from lack of conference restrictions is of sufficient size to be observed.[19]

Freedom from administered discrimination in shipping markets is a second significant inducement. If carriers do not administer prices and sailings, and sellers must bid for freight, and take what they can profitably carry, then no one nation or a group of nations, and no one carrier or group of carriers, could discriminate against others except by means external to the shipping market, such as tax devices or specific government directives. The field for discrimination against small countries would thus be reduced.

This easily stated point carries implications many may find novel. Carriers and shippers accustomed to attempting to administer freight relationships often lose sight of the fact that a thoroughly competitive market thoroughly prevents discrimination, by keeping all prices relatively close to minimum necessary costs plus a reasonable profit. Nations concerned with access to international markets may not have focused on the fact that an open, competitive market would provide a rather thorough check against one major source of market limitation and discrimination. Nor may they be aware that cartel-imposed price enhancement is quite likely to bear heavily on those with fewer market alternatives—the less developed countries.[20]

Carriers interested in perpetuating conference systems and market allocations might suggest that these benefit developing countries. Our less wealthy but possibly more ambitious brethren might consider, when ap-

19. See for suggestions, though not conclusive evidence, on this point, Bennathan and Walters, pp. 110-114. There may be two tendencies at work—the tendency to enhance prices more on high-valued merchandise and the tendency to enhance prices more when buyer alternatives are fewer. The first effect would seem to bear heavily on developed countries having more processed merchandise, and also to bear on the processed-goods sectors of less-developed countries (the sector these countries are typically trying to develop). The second tendency would seem likely generally to affect less developed countries more than developed countries.

proached by domestic or foreign interests advocating restrictive shipping policies, that these persons have little or nothing to give which is not subtracted from someone else (often someone in the same local economy), and from the international community as a whole. If the proponents of conference or allocation arrangements consist largely of carriers in richer trades saying price and service restrictions in developed and less developed markets will benefit less developed markets, the basis for the generosity would seem more than a little implausible.

All this said (and the reader, like the writer, may feel relieved that the saying of it is past), a third inducement to developing countries may be required. Put bluntly, more developed countries might give their competitors a little more assurance of somewhat greater success to international shipping markets, by investing a little technical and financial assistance in them.

This is so counter to much of our tradition as to be almost unspeakable. Let us hasten, then, to qualify it. The author does not suggest deeding to others free of charge our newest shipbuilding facilities, and our most modern vessels. Neither, for different reasons, does he suggest endowing eager aliens with our old facilities, unless the foreign countries voluntarily, on *good* information, find real value in the facilities, and, generally, are willing to pay something for them.

Indeed the proposal is selfish, in the sense that it is designed to build wealth in which Americans would share, in the long run. (The run may seem so long that many may be inclined to think it approaching infinity, and therefore irrelevant. The author is of a different view, obviously)

From the other side of the transaction, the author would counsel the putative beneficiaries of this enlightened United States self interest against massive escalations of their immediate market penetration plans, and expectations of immediate, enormous gains in commercial success.

There is very good reason to believe that in more fully competitive markets, entities now relatively disadvantaged would do relatively better, over time. The discipline of open, competitive markets is such that such entities would do better in large measure by evolving capacities out of what they now can do with some proficiency. A fair market is necessarily a hard market as to some transactions for some of the parties some of the time.[21]

A program of removing restrictions on less developed countries' shipping interests at a somewhat more rapid rate than the removel of restrictions on developed country shipping interests is not inconsistent with the

21. Developing nations rightfully feel, on the other hand, that a hard market is not necessarily always a fair market.

general approach outlined in this paper. Indeed, such a policy might do more than technical and financial assistance to achieve desired development results.

2. Who's a Patsy?

If the foregoing is generally correct, then we should rarely, if ever, indulge ourselves, our carriers, foreign governments, and foreign carriers in restrictive bilateral allocations of traffic.

If we allow such restrictions to multiply, and use deck-stacking techniques to attempt to secure what we consider to be our fair share in international shipping, we limit our trade, multiply inefficiencies, warp our tax laws, and otherwise burden our taxpayers.

If we allow such restrictions to multiply while we are seeking by other means to secure a more open regime, we are busily cluttering the floor with debris we shall later have to clean up.

One could consider whether temporary arrangements building up the capacities of foreign countries might not stand them in good stead when arrangements then become more competitive. The risks and costs of this course are substantial. First, the "temporary" restrictions are apt to be costly. Second, judging from the history of subsidies, grants of monopoly and similar regulatory largess, making the arrangements temporary rather than permanent is very difficult. Possibly there should be some incidence of casts to help heal broken bones. We would be overdoctoring if we were to hobble most who run. Healthy exercise has more to recommend it.

The United States government is not entirely without ability to resist restrictive bilateral agreements. The State Department may have limited tools, but is not entirely lacking in ability marginally to influence trading partners. The FMC can disapprove submitted agreements. In extremis, it can invoke Section 19 of the Shipping Act of 1920, to discourage an overenthusiastic or shortsighted trading partner's use of muscle.[22]

Attempts to resist restrictions could be unbalanced were we often to indulge in restrictions seemingly advantageous to a particular U.S. interest while never indulting a restriction which has a short run advantage to a foreign interest.

The way to avoid this unbalance, of course, is to improve our market rather than to further cripple it on the behest of additional claimants, whether domestic or foreign. The author has always been puzzled by

22. 46 USC § 876.

suggestions to the effect that the way to cope with a circulatory constriction in the left leg is to draw tight a tournequet on the right leg.

If we were to opt for liberalization, we would not find the course easy. We should have to resist contrary impulses from portions of our own body politic, and from other nations. Indeed, "liberalization" is the rigorous, demanding course: protectionism the pursuit of indulgence.

IV. Addendum: Who Are the Villains?

The author has treated with great disrespect propositions fervently espoused by generations of ocean carrier owners, managers, and lawyers. He has casually invoked rigorous competition and substantial risk for the people who acquire ships, help organize ports, and carry the freight. Does he now proceed to paint his chosen pincushions a deep black?

Perhaps in the latter half of the twentieth century we might expect businessmen to be less assiduous in the antisocial conduct of creating and furthering cartels.

The author is much more inclined to be impatient with legislators and the personnel of various government agencies who have some influence over whether we have conferences, what form they take, and whether we foster a restrictive international regime or a regime conducive to growth.

This impatience proceeds from premises some might think naive. Taxpayer-funded government agencies should serve the interests of the entire body politic. Whatever the constituency pressure, sooner or later legislation is going to be judged on whether it serves or disserves the entire community. Just as individual states have more to gain from an efficient national system than from autarky, so over the long run do nations have more to gain from an efficient international system than from autarky, or mercantilism.

Government officials who adopt and further policies which cost the economy large losses, whose impulses tend to balkanize rather than build international intercourse, have as much utility to the general taxpaying public as barnacles to a ship.

Carriers who hold up prices and restrict services make less of a contribution than they could. Government officials who employ tax funds for these purposes simply subtract from the national welfare. Carrier managements may be guilty of shortsightedness in pushing for restrictive trade regimes. Government decisionmakers to whom welfare economics is as familiar as mandarin chinese, and who cannot distinguish private from public goals, are blind to public duties.

Shipper managements deserve, in the author's opinion, at least a few flicks of the whip. Can it be said that a management is meeting its responsibilities to its shareholders and the general body politic, in transportation purchasing, when it passively tolerates a selling cartel? In the author's opinion, no. What can be said of the adequacy of a manager's knowledge if he does not know what a cartel is, or what its effects are? In the author's opinion his knowledge is inadequate to his task. What use to his company is adequate knowledge, if the manager is unwilling to do what is needed to break the cartel's grip? In the author's opinion, little or none.

Conclusion

In this article the author has suggested that the containerization-caused period of disruption in settled conference arrangements be used to modify American regulation of conferences so as to curtail or eliminate their major price fixing and output-limiting functions. He suggests that major transport users, interested government agencies, and other interested elements in the community combine efforts to this end. In addition, he has suggested that a deliberate and determined effort be made to channel the development urges of nations toward the creation of an efficient, productive, competitive, non-discriminatory ocean transport system, unhampered by the private cartels now extant.

The author does not expect these views to receive immediate wide acclaim in maritime circles. These suggestions differ widely from the traditions of American maritime regulation, the content of current subsidy programs, the apparent tendency of the FMC on both containership pools and bilateral agreements with less developed countries, the expressed points of view of most ocean carriers, and the apparent inclinations of many shippers of freight who choose to suffer the extant regulatory system, or to attempt to circumvent it, rather than to challenge it.

If the views expressed here are substantially correct, we would as a national and international community be better off if we changed our ways as suggested. If one has either inclination to consider or responsibility to bring about this sort of improvement, then espousing these approaches, so foreign to so many, may not be a great social burden.