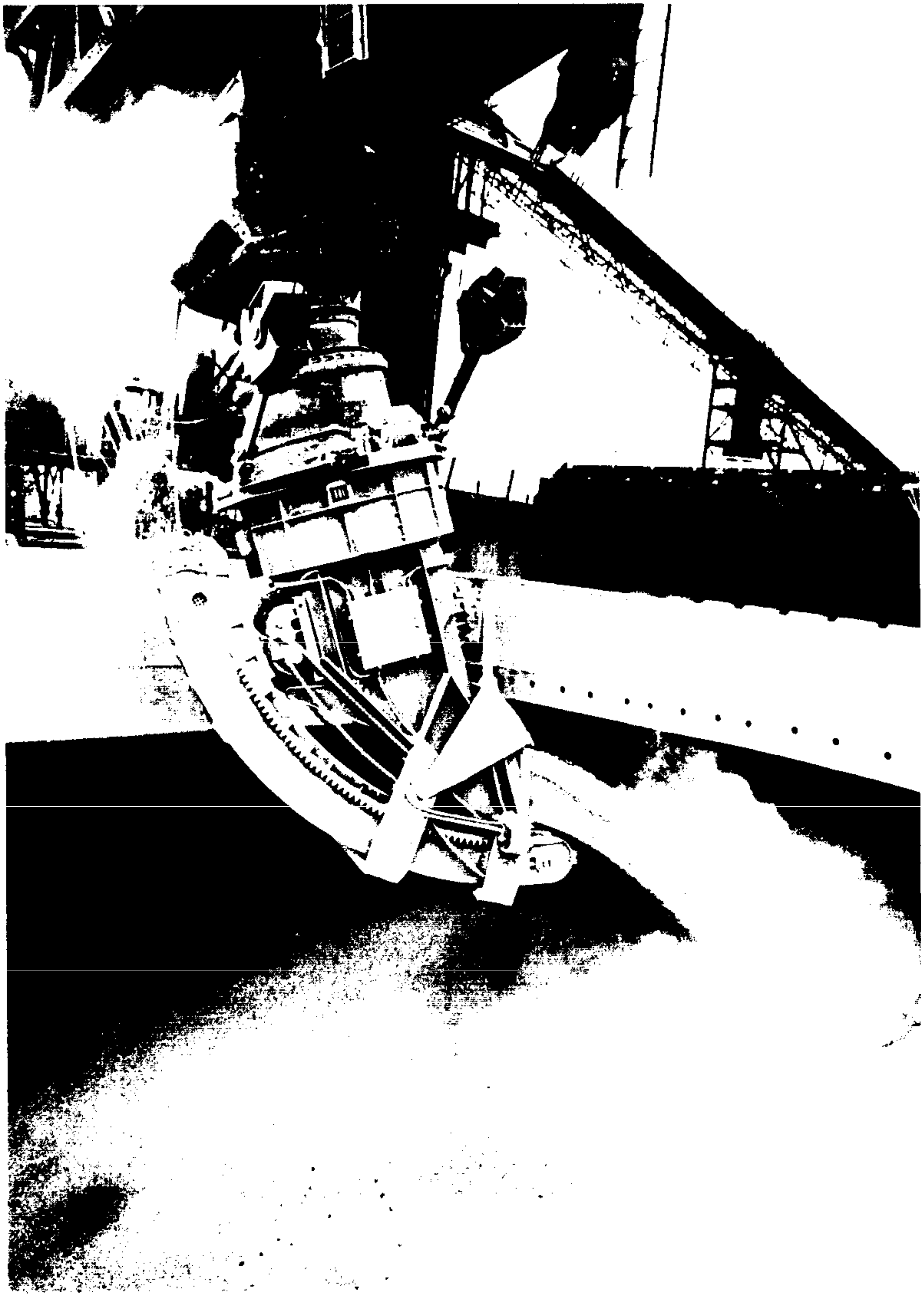

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Chapter 7

International Trade and Cargo Policies

OVERVIEW

Trade and cargo policies related to international shipping are often considered separately, both within U.S. Federal agencies and among international organizations. However, general trade rules affect the level and nature of world trade which in turn influences the prospects for the shipping industry. This chapter discusses the status and trends of those policies that may have an impact on future international trade and the participation of the U.S. shipping industry in that trade.

Common perceptions often overlook the fact that shipping is a derived demand and an integral component of international trade. When the volume of world commerce goes up, the demand for shipping services increases and the need for efficient, high-volume shipping increases. Unfortunately, many people in the industry regard shipping as an end in itself rather than a means to an end.

International shipping financiers Paul Slater (Chairman, Pelican Finance Corp.) and John Clarke (Citibank N. A.) are quoted, respectively, in the March 1983 *Seatrade.* Paul Slater observed:

> The shipping industry has lost sight of the realities of its own existence—it exists to serve world trade. . . . In the future, owners would have to look at trades, not just ships.

John Clarke of Citibank echoed this:

> The key to success is cargoes, rather than ships. There must be more emphasis on putting deals together with shippers, and the packages must be more creative.

It is, therefore, highly relevant to examine maritime issues within the framework of trade and cargo policies in both the national and international forums.

The international organization most concerned with trade policies among major trading countries is known as the General Agreements on Trade and Tariffs (GATT). The United States was one of the world leaders in the development of GATT through the endorsement of free and open trade principles. The U.S. Congress has, at the same time, introduced trade laws that are intended to guard against unfair trading practices of other nations. The status of GATT and the U.S. policies toward GATT are discussed in this chapter.

The principal organization that has concerned itself with multilateral agreements on maritime cargo policies is the United Nations Conference on Trade and Development (UNCTAD). In response to initiatives of the developing countries, UNCTAD promulgated a multilateral "Code of Conduct for Liner Conferences" which is a cargo-sharing agreement. This code has been ratified by the requisite number of countries to enable it to go into effect in October 1983. The United States has, however, refused to ratify the UNCTAD Code. Like many other nations, the United States does have cargo reservation policies encompassing Government-financed and Government-impelled cargoes. It also has several bilateral cargo treaties in force—specifically with the Peoples Republic of China (P. R.C.), Brazil, and Argentina—which were negotiated following unilateral actions by the other nations.

The current debate between those advocating completely free trade or free access to cargoes and those advocating degrees of government intervention to protect domestic industries undoubtedly will continue. For example, the national value of a domestic industry can sometimes convince governments to provide certain levels of protection. Even though industries and governments publicly state their opposition toward protectionism, they often do not apply those principles to themselves. In addition, reaction to other governments' policies often will bring restrictions on trade. The growing involvement of governments and international organizations in trade and shipping policies and growing protectionism worldwide requires the United States to develop clear trade policies that serve the national interest and can remain consistent over the long term (10 years or more) that many international issues require for resolution.

TRADE POLICIES

International Trade Policy, 1945-75

The importance of international trade for the U.S. economy has increased markedly in the past two decades. Although the U.S. ratio of exports to gross national product (GNP) is still below that of other industrial countries,[1] it stood in 1980 at 8.5 percent, almost double that of 1970. Imports also doubled between 1970 and 1980, rising to 9.5 percent of GNP.

The increased interdependence of the U.S. economy with the international economy is graphically reflected in the fact that over 5 million workers are dependent on foreign trade for their livelihood, and that 80 percent of all new manufacturing jobs created in the late-1970's were linked to exports. In addition, 1 out of every 3 acres planted by American farmers produces crops for exports.[2] This interdependence is expected to continue to grow, with some estimates putting U.S. exports at 15 percent of GNP in 1990.

For the industrialized countries of the Organization for Economic Cooperation and Development (OECD) as a whole, exports accounted for 16 percent of GNP in 1980, up from 9 percent in 1962. The developing countries, especially the newly industrializing countries,[3] also increased their participation in international trade in the past 10 years, with their share of the value of free world exports increasing from 20 to 30 percent between 1970 and 1980. South Korea, for example, increased its exports of goods and services from 3 percent of GNP in 1960 to 34 percent in 1977, while Taiwan went from 11 to 59 percent in the same period.[4]

Much of the economic growth in the postwar period has been the result of international trade. Recent studies have demonstrated that when economies of OECD countries grow by more than 1.5 to 2 percent per year—the situation during the postwar period until recently —nonoil imports tended to grow three times as fast.[5] The same studies show a similar negative relationship, with zero growth in OECD economic activity resulting in a 5 percent drop in nonoil imports.[6]

The present constriction of economic activity and international trade is especially significant because it may very well represent a watershed for the international trading system. The commitment of the industrialized countries, and especially the United States, to free and open trade, is being brought into question as economic activity stagnates and unemployment continues at historically high rates. This is a departure from the 25-year period between 1950 and 19.75 during which the industrialized countries experienced historically high average economic growth rates of over 4 percent and average annual growth rates of over 8 percent in merchandise trade.

Much of the post-World War 11 growth rate has been attributed to the progressive reduction of trade barriers in successive rounds of trade negotiations since 1948 under GATT'. The first five rounds were concerned solely with tariff reductions, while the last two have sought to reduce both tariff and nontariff barriers to trade. After the seventh and latest round of Multilateral Trade Negotiations (MTN), the Tokyo Round (1974-79), average tariff rates are only 4.4 percent in the United States, 4.7 percent in the European Economic Community (EEC) and 2.8 percent in Japan.[7] The Tokyo Round also resulted in the establishment of codes of behavior for such nontariff barriers as customs valuation and subsidies.

I In 1980, for example, Japan exported 12.2 percent of its GNP, while West Germany's export share was 21.8 percent. U.S. Trade Representative, ***Twenty-Sixth Annual Report of the President of the United States on the Trade Agreements Program, 1981-82*** (Washington, D. C.: Office of U.S. Trade Representative, 1983), p. 2.

'Ibid., p. 1.

³In 1979, OECD included Brazil, Greece, Hong Kong, South Korea, Mexico, Portugal, Singapore, Spain, Taiwan, and Yugoslavia in its seminal analysis on the subject. ***The Impact of the Newly Industrializing Countries on Production and Trade in Manufactures: Report by the Secretary General*** (Paris: Office of U.S. Trade Representative, 1979).

⁴Figures cited in U.S. Trade Representative, ***Twenty-Sixth Report,*** op. cit., pp. 2-3.

⁵C. Fred Bergsten and William R. Cline, ***Trade Policy in the 1980's*** (Washington, D. C.: Institute for International Economics, 1983), p. 14.

⁶Ibid.

⁷***The Tokyo Round of Multi lateral Trade Negotiations: 11 Supplementary Report*** (Geneva: General Agreements on Trade and Tariffs, 1980), p. 33, cited in Bergsten and Cline, ***Trade Policy in the 1980's,*** op. cit., p. 15.

Although the United States was the main force behind these trade liberalization efforts, in 1946 the U.S. Congress refused to agree to the establishment of a much stronger multilateral body, the International Trade Organization (ITO). ITO, which was armed with strong enforcement powers and slated by some to become the economic arm of the United Nations, had an ambitious charter that was intended to prevent trade wars similar to those of the 1930's, which many believe worsened the depression and created the economic conditions that helped bring about World War II. ITO was considered to be overly ambitious and tco ' 'entangling" by Congress. The industrialized countries, however, agreed to the establishment of GATT, which provides rules of conduct for international trade and relies on negotiation and international cooperation, rather than supranational enforcement, to effect the reciprocal reduction of trade barriers, and ensure respect for international trade rules with respect to trade in goods.

GATT is thus a loosely structured international organization which serves as the principal forum in which countries can discuss trade problems and cooperate to reduce trade barriers. * Its body of rules is based on the most-favored-nation principle that governs U.S. conduct in international trade.

Throughout the 1950's and 1960's, one political objective of U.S. foreign policy was the economic reconstruction of Europe and Japan. The benefits of Marshall Plan assistance were accelerated through the progressive dismantling of international trade barriers and capital controls. By the late 1960's and early 1970's, the economic reconstruction of Europe and Japan was completed, and these countries were in position to begin to share with the United States responsibility for the management of the international economic system. Tensions arose in part, however, over the unwillingness of Japan and Europe to assume fully the shared responsibility that their new economic strength warranted. Persistent requests by succeeding American administrations to lower trade barriers further and improve capital flows went unheeded. To improve the political climate and economic coordination among the seven leading industrial countries (the United States, West Germany, France, the United Kingdom, Italy, Canada, and Japan) annual economic summits at the heads of state level were instituted in 1975. The major factors that have led to a changed attitude toward free trade that carries through to today were the economic events of the mid- 1970's—resulting principally from the oil price increases of 1973-74.

Present International Trade Policy

Some analysts call the present phenomenon "New Protectionism, while others call it ' 'managed trade. With tariffs no longer providing any effective protection, countries have begun to influence the direction and volume of their trade through the use of voluntary export restraints and orderly marketing agreements to limit exports, and through the subsidization of exports and other forms of governmental intervention designed to capture export markets unfairly. While the initial trade response to the inflation of 1973 was trade liberalization, exemplified by the elimination of U. S. quotas on steel, oil, meat, and sugar imports, by 1977 protectionism was once again on the rise.

Although each successive year has brought new protectionist measures in all the industrialized countries, these measures have not resulted in any further reduction in world trade beyond that which most attribute to the world economic recession. These protectionist tendencies, which have sought to avoid the painful restructuring of uncompetitive industry or agriculture by insulating the domestic

"As of September 1982, GATT consisted of 87 member countries ("Contracting Parties") and 30 other countries, to whose territories GATT had been applied and which, as independent states, maintain a de facto application of GATT rules. These countries represent four-fifths of the world's trade. Of the Eastern bloc countries, only Czechoslovakia, Poland, Romania, and Yugoslavia belong. In addition to being the forum for periodic multilateral trade negotiations, GATT has, as part of its normal business, annual sessions of the Contracting Parties to establish overall objectives and guidelines for the organization's work program, and periodic meetings of the Council, to which all Contracting Parties belong, to discuss and try to settle trade concerns and disputes. The GATT Secretariat, which is headquartered in Geneva, Switzerland, consists of 200 personnel headed by a Director General and prepares documentation requested by the members. ***International Trade, 1981/82*** (Geneva: General Agreements on Trade and Tariffs, 1982) and U.S. Senate Committee on Finance, ***Report to Accompany H.R. 4537, Trade Agreements Act of 1979,*** Report No. 96-249, 96th Cong. 1st sess., 1979, p. 2.

[8]Bergsten and Cline, ***Trade Policy in the 1980 's,*** op. cit. , p. 15.

"'The Drift to Managed Trade, " ***Financial Times,*** Feb. 15, 1983, p. 12.

economy from international competition, generally have been balanced by counter pressures, such as inflationary concerns, the growing importance of exports to all countries, and the need to mute trade disputes for foreign policy reasons, all of which favor free trade.

The United States and its major trading partners, faced with the same economic conditions of high unemployment, economic slowdown, and growing export dependency, are caught up in similar balancing acts between these protectionist and liberalizing tendencies. Recently, for example, the trade officials of Japan, Europe, the United States, and Canada reiterated, upon completing the third quadrilateral meeting of high-level trade officials, their determination to fight jointly against rising protectionism.[10] At the same time, each of these countries has continued to "manage" its trade. For example, the Europeans recently forced the Japanese to agree to limit their exports of videotape recorders to Europe in 1983, after the French required that all such recorders pass customs in the small town of Poitiers. Europe's Common Agricultural Policy, aimed at protecting the politically important farmers, has set domestic prices on the basis of the costs of the least efllcient producer, and the resultant excess production is exported with subsidies. As a result, although EEC had been a net importer of grains, sugar, dairy products, and beef in the early 1970's, it is now a net exporter.

The opening of Japan's domestic market to foreign agricultural products such as citrus and beef, and high-technology items such as computers, automobiles, and telecommunications equipment, which Japan exports, has been the main agenda item for U.S. and European trade negotiators. Japan has a network of nontariff barriers such as administrative guidance and burdensome customs evaluation procedures (which the French sought to emulate at Poitiers). Trade liberalization in Japan has evolved so slowly that only the January 1983 visit of the Japanese Prime Minister to the United States persuaded U.S. policymakers to delay any new import restraints. One analyst, however, argues that the current undervaluation of the Japanese yen resulting from exchange rate misalinements "is a more potent cause of trade friction than overt and covert protection in Japan."[11]

The United States is not immune from criticism about its protectionist measures. Steel, automobiles, and textiles all enter the United States under some form of voluntary restraint arrangement. On the whole, however, these arrangements are not as restrictive as the European program, although one observer wryly noted that it was the United States that, in fact, originated many of the restrictive practices it finds fault with in its trading partners. It was the United States that first insisted on a GATT' waiver for protection of certain agricultural products—which set a precedent for similar European requests—and it was the United States which pushed in the early 1960's for the first international textile arrangement. The developing countries have also implemented protectionist policies. Many of these nations, as they attempted to improve their international trading posture, found it difficult to break into markets that historically had been dominated by developed countries. Their inability to be competitive has lead to a number of direct and indirect protectionist schemes.

U.S. Trade Policy

Since 1976, the merchandise trade balance has been in deficit, and the economic rebound in the United States is expected to lead to a record 1983 trade deficit. Although the current account, which includes trade in services and investment remittances as well as trade in goods, may be a better measure of U.S. competitiveness, the trade deficits—due to a large degree to imports of autos, steel, and textiles—have provided the fuel for inward-looking trade policies. Nevertheless, the United States continues to exert strong leadership within and without GATT in favor of free trade. It continues to use GATT as its principal forum for the resolution of trade disputes. GATT, as a body, does not have any enforcement mechanism, and major trading countries have ignored unfavorable rulings of GATT panels of experts. GATT's utility in the resolution of trade disputes is therefore dependent

[10] "IndustriaJ Powers Agree to Fight Protectionism," *Journal of Commerce,* Feb. 14, 1983.

[11] Gary R. Saxonhouse, "The Micro and Macroeconomics of Foreign Sales to Japan, cited in Bergsten and Cline, *Trade Policy in the 1980's,* op. cit., p. 28.

on either the willingness of its members to acquiesce to its jurisdiction, or on political deals made outside the institution.

The rise in the number of interest groups seeking import protection is attributable to the increased interdependence between the U.S. and world economies, and to the inability of certain industries to compete favorably with foreign industries. The resultant high unemployment in labor-intensive industries such as autos, textiles, and steel, together with a growing frustration with what appears to be the slow pace of trade liberalization in Europe and Japan, have punched large holes in the broad postwar consensus in support of free trade. This breakdown is particularly manifested in the recent introduction of new legislative proposals addressing trade policies. These proposals share certain common characteristics: they are designed to increase employment in the United States either by placing restrictions on foreign imports or by improving the ability of U. S. exports to compete in foreign markets. They all involve some form of governmental intervention, which would result in increased budgetary costs and market inefficiencies.

During the 97th Congress, several bills calling for trade reciprocity were introduced. These bills sought to give the President retaliatory powers to deny access to the U.S. market of products from countries that did not grant similar U.S. products "substantially equivalent' access to their markets. Although the conventional usage in trade policy of the term "reciprocity' has connoted for the last 60 years unconditional most-favored-nation treatment, the present usage implies a willingness to discriminate among suppliers by providing import protection against a single country. Furthermore, while ' 'reciprocity' traditionally involved a balancing of benefits and access across the total trade spectrum, with the direction of trade based on the laws of comparative advantage, the new usage would judge whether trade in individual product sectors was balanced.

Other proposals have sought to increase U.S. employment by curbing imports and would require foreign automobile manufacturers to incorporate prescribed amounts of U.S. labor and U.S.-manufactured components into cars sold in the United States. The "local content" bill had its most recent origin in 1980 as layoffs in the auto industry started to mount in the face of increased Japanese automobile imports.

President Reagan opposed this bill, saying that it would destroy more jobs than it would save and that it would invite retaliation. He did not mention that such "local content' regulations are one of the main nontariff barriers that U.S. exporters face in other countries, especially in the developing countries. As a possible reaction to congressional concerns, the Japanese recently have agreed to continue for another year their ' 'voluntary export curbs, which limit their auto exports to the United States and thus enable U.S. automakers to increase their market share.

Improving the competitiveness of U.S. exports is the rationale behind certain proposals before Congress this year to renew the charter of the Export-Import Bank. The Eximbank, as it is known, aids in financing exports of U.S. goods and services through the provision of direct loans, loan guarantees, and insurance. While the Bank must base its rate structure on its average cost of money, it also must meet the policy mandate that its financing be provided at rates and on terms that are competitive with financing provided by the United States' principal foreign competition. In recent years, however, high interest rates and the increasing tendency of foreign governments to subsidize export financing heavily have placed U.S. exporters at a competitive disadvantage. This has put pressure on Eximbank to provide subsidized financing to counter the export financing subsidies of the other countries.

While the administration would prefer to have Congress renew Eximbank's charter without any changes, Senator John Heinz is sponsoring a bill to establish a special fund, "a war chest, that would give Eximbank increased authority to provide subsidized loans to U.S. exporters to counter ' 'predatory' export credit practices of other nations. However, the recent drop in interest rates may remove the need for heavily subsidized export credits[12] and thus make the debate over a ' 'war chest academic.

[12] One observer dates the first subsidized Eximbank loan to as recently as June 1979, when Eximbank's funding costs moved above the average interest rate charged on its loans. Patricia E. Barrett, "Eximbank Must Be Seen in Global Perspective, '*Journal of Commerce,* Jan. 26, 1983.

Export Trading Companies

As world trade has become more important to the American economy, both business and government have looked for ways to boost U.S. exports. One frequently noted fact is that only a very small percentage of all U.S. companies are even involved in foreign trade. Studies by the Department of Commerce and others estimate that more than 20,000 small- to medium-sized U.S. firms make products that would be highly competitive overseas. 13 But their small size, low amounts of capital, and lack of foreign experience have left them either unable or unwilling to take on the risks and costs involved in operating abroad. The Export Trading Company Act of 1982 (ETCA) is designed to help deal with this problem.

Trading companies have long existed in the United States and elsewhere. But prior to the new law, most American trading companies fell into two categories—companies set up by major corporations for the purpose of handling their own export trade or narrowly focused companies engaged primarily in arranging export services. 14

But the 1982 law envisions something more—knowledgeable and well-financed companies that can provide a wide range of services to U.S. firms. This model, as in so many other cases, has been the Japanese. Their very successful trading companies—the *Sogoshoshas*— link goods to foreign markets. Possessing both a large overseas commercial network and special financing by banks that belong to the same *Kiretsu*, or business combine, as the trading company itself, this type of organization can provide a wide range of services to a company that wants to export. These services include the development of foreign markets, market intelligence and research, financing, transportation services, and generally handling a variety of the uncertainties and risks associated with exporting.

ETCA was passed to encourage the formation of this kind of broad, multiservice company. It does so by changing the law in two areas: banking and antitrust.

[13] See for instance, Senate Report 92-27, May 18, 1981, pp. 2-3.

[14] Betty Jo Christian, "Export Trading Companies: New Vehicle for Growth for American Business," *How to Use Export Trading Companies to Penetrate Foreign Markets*, a symposium presented by the Baruch College of the City University of New York, Dec. 9, 1982, p. 8.

The act allows banks, within certain limitations, to buy into existing trading companies or to establish their own trading company subsidiaries. It is believed that this new provision will help create the kind of unique relationship that exists between Japanese banks and trading companies and will, in particular, bring in the capital needed to finance exports. Banks are also seen as having the necessary knowledge, expertise, and overseas network to provide comprehensive export services.

Another provision of the new legislation clarified the Webb-Pomerence Act of 1918. That law exempts U.S. exporters, under certain conditions, from U.S. antitrust laws. The 1982 act does not, in fact, change any U.S. antitrust law. Instead, it establishes a ' 'certification system' by which firms seeking to form an export trading company can get a formal Government opinion on whether their action does or does not violate existing antitrust policy. The system thus provides preclearance and a guarantee against possible antitrust actions by the Government. Given that present uncertainties about antitrust policy seem to deter many American businessmen, the act's authors hope that the certification process will lead to more cooperation among firms.

Under the new act, just about anybody can form an export trading company, Banks can, as noted above. Large corporations that already have experience overseas can offer their services to other American firms, Transportation companies and even port authorities and State development boards can start them.

Ship operators in particular may want to consider forming export trading subsidiaries. Given their great experience in foreign trade and their extensive overseas networks, many ship operators are in an ideal position to offer expanded services to U.S. exporters. Some observers also hope that the 1982 law will provide more antitrust immunity than the 1916 Shipping Act, although changes in the 1916 law might further the process. In particular, allowing service contracts between a shipper and an ocean common carrier or conference might help create longer term, more flexible cargo arrangements. 15

[15] William J. Coffey, "Export Trading Companies and Ocean Carriers," *How to Use Export Trading Companies*, symposium, Dec. 9, 1982, p. 31.

Since ETCA is so new, it is too early to assess its impact. Much will depend on how Federal antitrust officials implement the new legislation, and in particular how broadly and quickly they grant antitrust certificates. Much also depends on the attitudes of American banks; they historically have been very risk-averse and may not wish to get into the export trading business. Yet in any event, the 1982 law is a major change in American public policy towards exports and the role of American companies, including American shipping companies, in the export business.

Reorganization of Federal Trade Agencies

In addition to substantive legislation, there has been continuing interest in reorganizing the various Federal trade agencies. Proposals range from establishing a Department of Trade, which would bring together the Off Ice of U.S. Trade Representative (OUSTR), Eximbank, and other agencies under a new Cabinet-level department, to more modest proposals that would fold either OUSTR into the Commerce Department or merge the International Trade Administration (ITA) of Commerce into OUSTR. Although these sweeping proposals deal with the management of trade policy, they are principally motivated by concern for the continued deterioration of the U.S. trade position, the loss of both American and foreign markets to foreign competition, and the perceived unwillingness of our trading partners to open their markets to our exports. As Senator Roth recently said in support of his reorganization bill, "[1] would assign the new Secretary of Trade the responsibility of retaliating against 'illegal' quotas or other unfair practices used by trading partners. "1[6]

At the end of April 1983, the Reagan administration presented a trade reorganization plan of its own— a proposal to create a new Department of International Trade and Industry (DITI). The current administration, like others, claims that trade responsibilities within the Government should be met by one voice on this increasingly important issue.

It is true that Federal trade programs are spread out over a wide range of departments and agencies. They include:

- U.S. Trade Representative (USTR), a Cabinet-level official in the White House who represents the United States in both GATT and bilateral trade negotiations;
- Department of State, which has fewer trade responsibilities than it once did but which still is involved in trade negotiations;
- Department of Commerce, which administers export controls and assists American exporters through its Foreign Commercial Service and other programs;
- International Trade Commission (ITC), an independent Federal agency that investigates charges that other governments have engaged in such unfair trade practices as dumping and improper subsidies;
- Department of Agriculture (USDA), which maintains the Foreign Agricultural Service (FAS) and has the main responsibility for agricultural trade policy;
- Department of the Treasury, which helps set international economic and monetary policy;
- National Security Council (NSC) and Department of Defense (DOD), both of which play an active role in export control policies;
- Maritime Administration (MarAd) and Federal Maritime Commission (FMC), both of which are concerned with the international role of the U.S. shipping and shipbuilding industries; and
- other agencies that provide assistance to exporters: including the Eximbank, the Small Business Administration (SBA), the Overseas Private Investment Corporation (OPIC), and USDA's Commodity Credit Corporation (ccc).

The DITI proposal would combine some but not all of these programs into the new department. Under the proposal, the Department of Commerce would be abolished. Many of its present parts would be included in the new department—ITA; the eco-

16' 'Trade Bill Praised by Commerce Official, " *Journal of Commerce*, Feb. 2, 1983.

17For details see Raymond Ahearn and David Driscoll, ***Executive Branch Organization to Formulate and Implement U.S. Foreign Trade and Investment Policy***, Congressional Research Service Report No. 81-143 E, Aug. 25, 1981.

nomic affairs programs (Bureau of Economic Analysis, Bureau of Industrial Economics, and technology policy, but not the Census Bureau); the Patent and Trademark Office; the Travel and Tourism Administration; and the National Telecommunications and Information Administration. Other parts of Commerce would either be made independent or integrated into other agencies. 18

Also included in DITI would be OUSTR, the Eximbank, and OPIC. A new Cabinet-level council, headed by the President, would be established in the White House to coordinate overall Government trade policy. The council would have a small White House staff and be similar to NSC.[19]

The main argument for the new department is that the executive branch too often simply reacts to events—either in Congress or abroad—and fails to plan ahead or speak with one voice. In particular, the administration says, the separation of OUSTR and the Commerce Department splits policymaking from policy implementation and confuses everyone; no one knows whether the Trade Representative or the Secretary of Commerce speaks for the United States. In the words of the administration, DITI would ' 'bring together the analysis, negotiation, regulation, and implementation aspects of trade policy. ''20 Commerce Secretary Baldrige, the plan's main proponent, says that such consolidation is important as trade becomes increasingly necessary to the U.S. economy.

The DITI proposal does not lack critics, however. The Senate Finance Committee and House Ways and Means Committee are worried about losing jurisdiction over OUSTR. Other critics specify three main objectives. First, this proposal will not actually solve the fragmentation problem. It will combine OUSTR and Commerce, but USDA will still handle agricultural trade, and State and Defense will continue their roles. If fragmentation is the problem, DITI is not a full solution. Second, DITI may in fact add to fragmentation. Today, OUSTR serves not only as our negotiator but also as interagency coordinator. However, DITI, like the present Commerce Department, is likely to be more an advocate of U.S. business interests than an impartial balancer of competing trade views. Thus, the interagency function will fall to the new White House trade council, a group likely to lack the expertise and stature of OUSTR. In fact, an earlier trade reorganization debate in 1979 led to strengthening OUSTR, because of problems of interagency coordination, and a perceived need to improve our competence in negotiations. Third, critics ask what is the ' 'real' purpose of the reorganization. They are afraid that the new reorganization will weaken the efficiency and independence of OUSTR and shift policymaking power to the more protectionist-minded Commerce Department. Secretary Baldrige disagrees, saying that the new DITI could be pro-free trade or pro-protection, depending on who is put in charge. But the critics note that the Commerce Department's main constituency are the very businesses that now seek relief from imports.[2]1

As with other reorganization plans, political power is a factor. Questions arise as to who will benefit and lose politically if the reorganization proposal is adopted. In the case of DITI, business interests that seek further protection probably would gain in policymaking influence. Consumers who benefit from the free importation of low-price foreign goods might lose. Service industries, like shipping, might not be affected because the Commerce Department has always been more oriented toward manufacturers than service industries.

President Reagan would like to see Congress adopt the DITI proposal this year. At the present, its prospects are unclear. In the final analysis, though, the debate over DITI is best seen as part of the larger U.S. debate over trade policy in general. With many American industries facing increasingly stiff foreign competition, the United States now faces two key questions. First, what is our goal-genuinely freer trade, including more open foreign markets; more protection for ailing U.S. industries; or freer trade plus some concerted U.S. industrial policy to make American companies more competitive? And, second, if our goal is freer

[18]'Statement by the President, June 1, 1983. See also: "Department of International Trade and Industry: Joint Statement by Ambassador Brock, Secretary Baldrige, and Senator Roth, " and "Department of International Trade and Industry: Factsheet.

[19]Ibid.

[20]Ibid.

[21]For a summary of the criticisms of the administration proposal see "Trade," *The Economist*, Apr. 30-May 6, 1983, pp. 28-33.

trade, what tactics should we use in seeking it—continued patience in negotiations or retaliation against those whose markets are more closed than ours? Until we know what kind of trade policy we advocate, debates over trade organization are likely to remain intense and frequent.

These reorganization proposals are not new; the same arguments were used in 1979-80 when a similar debate culminated in a compromise reorganization of the trade agencies and functions. The compromise gave OUSTR, who is the President's trade adviser and chief international negotiator, wider trade policy leadership, while the Commerce Department was given the day-to-day operational responsibility for the Government trade functions. However, this reorganization did little to improve the weak trade promotion activities of the U.S. Government, which involve a host of other considerations.

The Enforcement of Fair Trade Laws

While changes in U.S. trade laws may provide a long-run approach to improving the enforcement of U.S. trade rights, the administration also enforces its rights by permitting aggrieved U.S. parties to seek relief on a case-by-case basis under the U.S. Fair Trade Laws. The Countervailing and Anti-Dumping Statutes protect U.S. manufacturers from foreign subsidies and sales at less-than-fair-value in the U.S. market. Cases involving items such as steel, bicycles, metal castings, certain chemicals, and textile products have been processed in 1982 by the Commerce Department; and the United States has concluded an agreement with EEC within the past year in response to findings of export subsidies under the U.S. countervailing duty law, setting limits on exports Of major Steel products to the U.S. market.

The United States also has decided to use U.S. export subsidies as a trade weapon for the first time. As a challenge to EEC agricultural policies that have turned Europe from a net wheat importer, through heavy subsidization, to a net exporter, USDA has subsidized the sale of 1 million metric tons (tonnes) of wheat flour to Egypt, which previously had been supplied principally by the French. There are also indications that U.S. exports of butter and poultry products maybe similarly subsidized.

The most sweeping powers to retaliate against the unfair trade practices of foreign governments are found in section 301 of the Trade Act of 1974, as amended. Under section 301, the President can take "all appropriate and feasible action' within his power—including quotas, or any other trade restrictions—to obtain the elimination of any acts, policies, or practices deemed to be unjustifiable, unreasonable, or discriminatory and which burden or restrict U.S. commerce. This provision of law, although on the books since 1974, was hardly used during the Tokyo Round of Trade Negotiations and only since its completion has OUSTR undertaken a significant number of investigations. During fiscal year 1982, OUSTR initiated 10 section 301 investigations, which constituted nearly one-third of the total investigations initiated under the provisions of the section since 1975.[22]

Four section 301 cases concern European agricultural subsidies, one concerns Argentina's export restrictions on cattlehides, and five concern domestic subsidy practices of five countries producing specialty steel. In this context, OUSTR has been actively utilizing the international dispute settlement procedures of GATT and the Subsidies Code. U.S. Government officials have expressed some disappointment, however, at the fact that with deadlines missed and one consultation request even refused, these procedures have not always worked to U.S. satisfaction. Nevertheless, OUSTR is continuing this approach and has not yet sought other forms of retaliatory relief.[23] The U.S. Government subsidization of the wheat sale to Egypt has escalated tensions with EEC and may have actually overshadowed the significance of the 301 proceedings in GATT. Nevertheless, since EEC has also brought the U.S. subsidy case to GATT, some resolution within the terms of the Subsidies Code is expected to occur, a fact which, in its own right, has precedential significance for GATT.

[22] Office of U.S. Trade Representative, ***Report of the OUSTR to the Congress on the Status of Section 301 Cases,*** unpublished, July 29, 1982.

[23] 1 bid., p. 2.

The present administration appears to be following the approach of exhausting the international dispute settlement procedures before considering any retaliation. This is a very delicate maneuver. The international settlement approach has not yet served to eliminate any foreign unfair trade practices and will not be continued ad infinitum without some successful resolution of cases. The complaining industries and Congress are closely watching the administration's enforcement of these section 301 cases. The administration will need to receive concessions from U.S. trading partners to avoid the necessity of actually retaliating under section 301. There is already some question in Congress about the need for changes in section 301 "to expand the scope of this law, authorize the use of a broader range of retaliatory devices, such as countersubsidy programs or regulatory action, and revise administrative procedures, including time limits. "[24]

[24] "The Honorable Sam M. Gibbons (D-Fla.), Chairman, Subcommittee on Trade, Committee on Ways and Means, U.S. House of Representatives, Announces Hearings on Trade Remedy Laws, " House Ways and Means Subcommittee on Trade, Feb. 15, 1983, p. 2.

MARITIME CARGO POLICY

Introduction

Shipping policies tend to mirror trade policies. As might be expected, increasing protectionism in trade has spawned a variety of restrictive and protectionist policies in the maritime area—unilateral, bilateral, and multilateral.

Historically, all maritime nations have protected their national maritime interests through the implementation of some forms of cargo policy, generally by reserving some or all of the carriage of certain commodities for their own national carriers. In the case of established maritime countries, this is sometimes achieved through closed conferences, which are able to assure national lines of full or "fair" participation in their trade. In the case of lesser developed countries, more overt government intervention is usually involved.

The practice of cargo preference can be direct or indirect. In some cases, a country mandates that a certain percentage of its imports or exports must be carried on its national-flag vessels. Provision may be made for bilateral or multilateral cargo-sharing, often on a 50/50 or 40/40/20 basis, with the larger shares reserved for the national flag lines of the trading partners. (These agreements will be discussed later in this paper.) Indirect cargo preference can be accomplished by a government mandate requiring imports to be purchased on an f.o b.-basis and exports on a c. if. -basis. In addition, various tax deductions and other fiscal incentives are frequently granted to importers and exporters that utilize their national-flag carriers.

Cargo Preference in the United States

The United States has enacted several cargo preference laws which concern the movement of Government-impelled and Government-financed cargoes. These are the Cargo Preference Act of 1954, Public Resolution (Public Res.) 17 and the Military Transport Act of 1904. An economically significant U.S. cargo policy is cabotage, which is provided for in the Merchant Marine Act of 1920, commonly called the Jones Act. Although not usually categorized as cargo preference, this act requires that all domestic waterborne trade be carried on U.S.-built, U.S.-flag vessels. Chapter 6 explores the Jones Act and its impacts.

The Cargo Preference Act of 1954 mandates that at least 50 percent of any U.S. Government-impelled cargoes must be carried on privately owned U.S.-flag vessels. It applies to Government cargoes shipped for U.S. Government account (e.g., military support cargoes) and to any cargoes shipped under Government grant or subsidized loan such as cargoes shipped by the U.S. Agency for International Development (AID).

Public Res. 17 requires that 100 percent of any cargoes financed by loans made by the U.S. Government to foster exports must be carried on U. S.-flag ships. This primarily concerns commodities backed by Eximbank loans. There is provision for waiver of the law by MarAd so that up to 50 percent of such shipments may be carried on the flag vessels of the recipient nation.

The Military Transport Act of 1904 requires that all supplies shipped for use of the U.S. Armed Forces must move on U.S.-flag ships, This law interacts with the Cargo Preference Act with the result that one-half of all such military shipments must move on privately owned U.S. vessels. This means that the Military Sealift Command (MSC), the primary vessel charterer for the military, can ship only 50 percent or less of its cargoes on Government-owned or controlled vessels.

Currently, only Government-impelled cargoes are covered by cargo preference laws. A bill, H.R. 2692, introduced by Congressman Walter B. Jones in April 1983, seeks to clarify and consolidate the existing U.S. cargo preference laws. Over the past decade, a number of other bills have been introduced in Congress proposing extension of cargo reservation to certain commercial cargoes, notably bulk commodities. Among such legislative initiatives were measures that called for cargo preference on 50 percent of all U.S. oil imports (1972), 30 percent of U.S. oil imports (1974), 9.5 percent of U.S. oil imports (1977), 40 percent of dry-bulk imports (1981, 1982), and 20 percent of dry-bulk exports and imports (1982, 1983). Only one—the 1977 oil cargo preference bill—passed both Houses of Congress. It was pocket-vetoed by President Ford. A bill calling for 20 percent of dry-bulk exports and imports to be carried on U.S.-built, U.S.-flag vessels by 1998, was introduced by Congresswoman Lindy Boggs in February 1983 and is pending. Related bills have been introduced in the Senate. The reason for these attempts is not difficult to discern. As discussed in chapter 3, the U.S.-flag foreign trade liquid- and dry-bulk fleets are very small. Less than 3 percent of U.S. oil imports is carried on U.S.-flag ships, and less than 1 percent of U.S. dry-bulk trade.

There also have been attempts to limit or reduce the impact of current cargo preference legislation. A bill was introduced in the 97th Congress that would have exempted dry-bulk cargoes from the provisions of the Cargo Preference Act of 1954 and Public Res. 17; another bill called for preference cargoes to be shipped only on vessels delivering cargo at the lowest landed cost; a third bill dealing with interest rate "buy downs' on loans for agricultural purchases by foreigners stated that the cargo preference laws would not apply. In the current Congress, Senator Boshwitz has introduced legislation that would exempt from cargo preference agricultural commodities shipped under the blended credit program. Congresswoman Virginia Smith introduced another bill in the current session that would exempt shipments of agricultural products from the cargo preference laws.

The debate about cargo preference has continued over the past decade. Opponents argue that significant economic cost and inefficiency result from cargo preference requirements. In general, U. S.-flag ships—especially bulk ships—cost substantially more to build and operate than equivalent foreign-flag ships (see ch. 3). In addition, since the U. S.-flag bulk fleet is small and has limited capabilities, a number of preference cargoes (especially under the Food for Peace Program) must move on U.S. liner ships which are even more expensive than foreign-flag bulk carriers. Since agricultural commodities are sold on the basis of landed cost, usually at world spot prices, higher transportation costs would either reduce income to the U.S. farmers or, where AID pays the bill, reduce the amount of the product that is exported. Thus, in effect, income is diverted from the U.S. agricultural sector to the shipping industry. 7.5 Other criticisms of cargo preference are that overtonnaging in a given trade can result, and that direct cost to the Government occurs when an agency must pay higher U.S. rates. Less export cargo can then be shipped for a given budgetary allotment.

Proponents of cargo preference hold that while U.S.-flag bulk rates are higher than foreign rates, this is not true in the liner industry, where rates are set by conferences and are the same for all flag carriers. Of course, agreed upon rates don't apply when rates are ''open' as may often be the case for agricultural commodities. Virtually all Eximbank cargoes are liner shipments moving at conference rates. The primary and compelling argument for cargo preference is that it is one of the prices paid to assure that the United States has a national-flag merchant fleet. The fleet is needed for strategic military reasons and must be supported either directly or indirectly by the Government

[25] See ' 'Cargo Preference Requirements Add to Costs of Title 11 Food For Peace Programs, GAO Report-GAO/PAD-82-3 1, August 1982,

because it is unable to compete on a purely commercial basis. Proponents further argue that one should not calculate the cost of cargo preference itself, only that cost as compared to the cost of other promotional schemes that would have to be instituted in its absence. They also claim that cargo preference requires no direct Government outlays. (This is not entirely true, however, in cases where Federal agencies' budgets must bear the cost of U.S.-flag shipping.)

The importance of cargo preference to the U.S. maritime industry is significant. In 1980, revenue from the carriage of preference cargoes totaled $1.1 billion for all U.S. operators. Liner operators received 16 percent of all revenues under the programs. However, the overall figures do not reflect the impact of preference carriage on individual operators. For some liner operators, it amounts to 30 to 40 percent of total revenue. About $536 million in revenue was generated from shipments of bulk preference cargoes in 1980, about 10 percent of total revenue. The U.S. dry-bulk fleet-though very small—is particularly dependent on preference carriage and might cease to exist in foreign trades without it. However, preference laws to date have not resulted in improvements in the quality or size of this fleet, largely because of the uncertainty associated with cargo preference trades. U.S. ship operators will not make long-term investments in modern, efficient vessels without a more consistent and coordinated approach toward cargo preference policies by all Federal agencies involved.

A number of studies have been conducted to measure the costs of various cargo preference measures. A recent analysis of the cost of existing cargo preference laws was prepared by MarAd on April 11, 1983. MarAd used cost estimates generated by AID, (Because Eximbank cargoes are 95 to 98 percent liner and move at conference rates, no differential for these cargoes was calculated.) For AID cargoes, the total 1982 differential was $138 million. The program which consistently had significant volumes of cargo moving at differential rates was the Food for Peace (Public Law 480, Title I) program. U.S.-flag vessels had a 50. l-percent share of carriage at a rate differential per ton averaging $52.57, The total cost of moving these cargoes on U.S.-flag ships instead of on foreign-flag ships was $97.7 million.

Various estimates of the costs of cargo preference proposals have been generated during debate on the proposals. However, it is difficult to measure the potential impact of the proposals because the cost estimates vary widely, depending on the source. For example, estimates of the cost of preference under the 1977 oil preference legislation, which called for 9.5 percent of U.S. imports to be carried on U.S.-flag, ranged from O. 1 cent per gallon at the pump to 1 cent. General Accounting Office (GAO) estimates were 0.15 cent to 0.23 cent,[26] or from 3.7 to 6.2 percent in the landed price of Saudi oil.[27] Critics claimed that the impact was understated because GAO assumed only a 10 percent rate premium for U.S.-flag carriage.

In congressional testimony on H.R. 4627 (dry-bulk preference bill), a proponent of the legislation claimed that 20 percent U.S.-flag carriage of U.S. coal exports would raise its cost by only 40 cents per ton or 0.6 percent. An opponent testified that 40 percent carriage of U.S. dry-bulk trade would cost $28 to $45 per ton more (depending on the commodity), an increase of 70 percent over foreign carriage.

In the final analysis, there really is no argument about whether the present U.S.-flag bulk service costs are higher than foreign-flag or that, without subsidies, many of the U.S.-flag liner operators have higher costs compared with their foreign counterparts. The question is whether national priorities require the existence of a merchant fleet which cannot compete in a free market under present conditions. * If so, it must be determined whether cargo preference is the most desirable way to provide a needed subsidy.

While most maritime nations practice cargo preference, the terms of their laws and regulations vary widely. In some cases, only government impelled cargoes are covered—as is the case with

[26] "Costs of Cargo Preference, " GAO, Report of the Comptroller General of the United States, Sept. 9, 1977.

[27] Reuben Kyle III and Laurence Phillips, "Maritime protectionism: A New Call for Cargo Preference, Department of Transportation, undated.

* See chapter 6 for a discussion of possible approaches to making the U.S. fleet competitive. The approaches include allowing foreign purchase of ships, utilizing tax incentives more freely, reducing crew size, allowing foreign nationals in crews, and other practices to equalize U. S.- v. foreign-flag rules of conduct.

the United States. In others, 100 percent of all cargoes are included. However, such stringent reservation is usually practiced only in theory. A number of countries have in place bilateral maritime agreements with trading partners. These are usually directed toward the liner trades only. These typically divide cargo on a 50/50 or 40/40/20 basis, and the United States is a party to several bilateral cargo-sharing agreements (most notably with Brazil and Argentina).

Appendix B summarizes the cargo preference practices of many foreign nations. The list was compiled by MarAd in early 1982, and revised by OTA in early 1983. Table 43 summarizes some cargo preference practices of the leading U.S. trading partners. It can be seen from both table 43 and appendix B that those countries that trade most actively with the United States have a wide range of cargo-reservation approaches. Some are comparatively unrestrictive in reserving cargo for their national fleets while others are most restrictive. It should be noted that most of these nations are either signatories of the UNCTAD Liner Code or have indicated that they intend to sign it in the near future. The variety of international trade philosophies thus represented requires careful analysis and a flexible response from U.S. policy makers.

Bilateral Cargo-Sharing

A number of bilateral cargo-sharing agreements have been negotiated between countries that are substantial world traders. These countries regard such agreements as a mechanism to achieve greater participation in the carriage of their own trade. For example, in 1981, developing countries accounted for 12.5 percent of world shipping tonnage, while they generated over 40 percent of waterborne cargoes traded (exports and imports together). In trades between less developed countries (LDCS) and the United States, the United States currently carries about a 30-percent share on average (although in some trades the total is over 40 percent), while the LDCS' average share is 21 percent. It should be noted that while the primary impetus for negotiation of bilateral agreements has come from developing countries, the developed countries of the West have found this mechanism useful in regulating their trades with Communist countries. Communist nations frequently use their merchant fleets as

Table 43.—Cargo-Preference Policies of 15 Largest U.S. Trading Partners

	Bilateral with United States	Members of GATT	Signatories of UNCTAD Code (April 1983)	National cargo preference laws
Japan	No	Yes	No	Government/industry cooperation in all shipping
United Kingdom	No	Yes	No	Minimal—except military cargo
Saudi Arabia	No	No	No	5 percent oil exports reserved for Saudi flag; other preferences in effect
West Germany	No	Yes	Yes	Minimal—except for bilateral
France	No	Yes	No	Substantial cargo reservation for energy imports and bilateral
Venezuela	No	No	Yes	Legislation for 50-percent reservation to Venezuela flag
Nigeria	No	Yes	Yes	Bilateral under negotiation
Netherlands	No	Yes	Yes	Minimal
Italy	No	Yes	No	Minimal—some bilateral
South Korea	No	Yes	Yes	Substantial reservation laws
Brazil	Yes	Yes	No	Substantial reservation laws
Hong Kong	No	—	—	(U.K. Territo~)
Belguim	No	Yes	No	Minimal
Australia	No	Yes	No	Minimal
Indonesia	No	Yes	Yes	Substantial Government rules favoring Indonesian flag

NOTE Countries are listed in order of the value of their trade (from 1982 International Monetary Fund Yearbook) with the United States. Canada and Mexico are excluded because their trade is mostly nonmaritime. See app. B for country detail.

SOURCE Off Ice of Technology Assessment

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political tools rather than as commercial entities, making it difficult or impossible for private operators to compete with them on a commercial basis. Thus, a bilateral agreement maybe the best or only way a Western country can protect its privately owned fleet in trading with an Eastern bloc country.

Table 44 shows the U.S. share of bilateral liner cargoes carried by country. To date, the U.S. policy on bilateral cargo agreements has been to negotiate only where necessary to protect our interests (e. g., where a country has already taken unilateral action to reserve cargoes for its own ships, and U. S.-flag ships could be excluded from the trade if no action were taken). The agreements now existing between the United States and other countries were negotiated on a government-to-government basis. In some cases the carriers in the trade have been empowered to negotiate specific pooling arrangements following general conditions in the government agreements.

Currently, the United States has bilateral agreements with three of its trading partners: the P. R. C., Argentina, and Brazil. A bilateral agreement with the U.S.S.R. expired in 1981 and has not been renewed.

Both the expired L^T. S.-U. S.S. R. agreement (signed in 1975) and the accord with the P.R.C. (signed in 1980) gave each country's merchant ships access to the other's major ports and the opportuni-

Table 44.–U.S. Waterborne Foreign Trade Liner Service, Origin/Destination Country, Calendar Year 1981

	Total		U, S.-flag share			
Country	Tonnage	$ value (million)	Tonnage	Percent	$ value (million)	Percent
Japan	8,321,052	$28,804	1,803,050	22	$7,376	26
Taiwan	3,605,829	10,255	869,257	24	3,544	34
West Germany	3,258,880	9,088	742,466	23	1,916	21
South Korea	2,655,178	6,725	681,646	26	2,161	32
United Kingdom	2,337,773	6,881	826,127	35	1,970	29
Italy	2,142,515	4,035	562,374	26	1,172	29
Brazil	1,936,655	4,220	884,833	46	1,864	44
Netherlands	1,807,944	3,293	496,243	27	1,077	33
France	1,764,379	5,188	549,673	31	1,408	27
Australia	1,737,599	4,464	464,665	27	1,041	23
Hong Kong	1,568,489	5,938	508,447	32	3,212	54
Saudi Arabia	1,476,931	4,289	108,870	7	337	8
Belgium	1,234,514	3,182	350,170	28	1,020	32
Venezuela	1,214,544	3,056	344,185	28	880	29
South Africa	1,193,400	2,276	224,246	19	512	22
Indonesia	1,161,050	1,666	446,045	38	485	29
India	1,003,018	1,323	616,410	62	800	60
Nigeria	1,001,449	966	34,759	4	87	9
Philippines	944,816	1,744	276,141	29	556	32
Spain	923,238	1,884	328,746	36	811	43
Egypt	830,145	882	450,770	54	452	51
People' sRepublic of China	814,835	1,940	182,473	22	513	26
Singapore	668,740	2,618	154,427	23	528	20
Argentina	668,411	1,630	298,814	45	694	42
Ecuador	586,823	798	175,067	30	301	38
Chile	571,663	1,239	157,808	28	333	27
Peru	557,563	1,053	196,843	35	417	40
Thailand	555,060	1,154	124,703	22	198	17
Israel	534,354	902	253,010	48	368	41
Sweden	524,778	1,830	95,941	18	245	13
New Zealand	501,914	1,140	134,383	27	272	24
Malaysia	496,979	1,063	145,960	29	242	23
Colombia	496,163	1,099	167,573	34	361	33
Guatemala	395,778	551	71,733	18	165	30
Canada (Total)	392,953	347	120,400	31	75	22
(Translates)	183,941	124	72,391	39	49	39
Dominican Republic	351,213	524	126,093	36	193	37
Denmark	337,929	820	63,987	19	199	24

Table 44.—U.S. Waterborne Foreign Trade Liner Service, Origin/Destination Country, Calendar Year 1981 (Continued)

Country	Total		U.S.-flag share			
	Tonnage	$ value (million)	Tonnage	Percent	$ value (million)	Percent
Poland	330,337	426	38,145	12	93	22
Switzerland	309,315	1,414	82,436	27	402	28
Turkey	294,775	509	52,246	18	136	27
Yugoslavia	292,404	483	17,057	6	65	13
Honduras	286,603	361	32,635	11	64	18
Panama	272,417	598	115,246		380	64
Surinam	256,154	128	267	; ;	1	1
Norway	234,987	555	49,806		105	19
Pakistan	234,263	315	105,956	45	198	63
Portugal	229,419	351	49,602	22	94	27
Mexico	227,933	768	21,511	9	49	6
Jamaica	213,419	309	76,391	36	135	44
Ivory Coast	211,727	371	66,787	32	132	36
Finland	206,249	551	44,624	22	115	21
U.S.S.R	204,335	164	24,628	12	47	29
United Arab Emirates	202,193	771	20,286	10	80	10
Trinidad/Tobago	195,835	351	7,045	4	16	4
Costa Rica	172,597	281	69,158	40	134	48
Bangladesh	170,271	144	68,669	40	61	42
Netherland Antilles	169,653	351	6,658	4	18	5
Kuwait	164,859	638	3,802	2	18	3
Greece	154,255	382	56,850	37	114	30
Morocco	149,794	140	75,247	50	49	35
El Salvador	146,091	260	42,563	29	54	21
Romania	144,091	283	108,465	75	222	78
Ireland. ...,...	136,305	523	48,518	36	158	30
Iraq	128,847	574	20,543	16	76	
Bahamas	118,930	615	546	1	1	; ;
Sri Lanka	118,367	166	95,705	81	139	84
Labia	115,913	620	2,226	2	4	1
Sudan	108,901	188	89,635	82	123	65
Haiti	103,540	236	46,127	45	96	41
Austria	102,140	321	12,635			
Iceland	96,861	216	74	; ;	; ?	; ;
Zaire	96,843	193	35,180	36	79	41
Kenya	92,025	102	79,419	86	78	76
Bolivia.	91,231	269	25,054	28	66	24
Nicaragua	86,467	156	11,018	13	17	11
Zambia	79,826	134	34,147	43	38	28
Algeria	79,540	263	16,747	21	40	15
Ghana	77,703	119	21,697	28	24	20
Lebanon	73,421	159	1,361	2	3	2
Rhodesia	72,362	83	9,846		18	22
Somalia	71,650	29	68,330	; :	24	83
Cameroon.	67,899	103	16,740	25	21	6
Virgin Islands (British)	67,466	101	10,275	15	14	14
Bermuda	66,339	116	1,118	2	1	1
Uruguay	65,420	144	32,860	50	86	60
East Germany	62,278	53	3,742	6	8	15
Uganda	60,936	104	45,846	86	78	75
Liberia	59,268	95	36,753	62	46	48
French Pacific Islands	58,836	69	6,297	11	4	6
Tunisia	54,247	79	5,554	10	16	20
Bahrain	54,996	129	597	1	2	2
Jordan	53,367	150	13,243	25	65	43
Hungary	53,153	142	11.370	21	34	24

[a]Less than 0.5 percent.

[b]Less than $500.

NOTE: &additional countries have trade with the United Statesof less than 50,000 tonnes each.

SOURCE: U.S. Maritime Administration, Officeof Policy and Plans.

ty to carry at least a third of the bilateral ocean trade between the two nations. Although generally similar, the two agreements differ on several points. In the agreement with the U. S. S. R., certain ports (40 U.S. and 20 U. S. S. R.) of each are open on a 4-day advance notice basis. Access to other ports requires 14 days notice. Implementation of the cargo-sharing agreement was spelled out in great detail because it was felt that the Soviet ability to control its own cargoes required specific commitments on their part to guarantee U.S.-flag vessel participation in the trade.

In the U. S.-P. R.C. pact, the United States has allowed 55 U.S. ports to be open to P. R. C.-flag ships on 4 days notice, while the Chinese have opened 20 of their ports to U.S. ships on a 7-day notification. The United States retains the right to close any port for national security reasons. The agreement is generally more flexible than the Soviet's agreement was. This agreement also specifically recognizes the right of either party to implement legislation to regulate the activities of cross-traders in their own foreign trades. The Chinese agreement expires in September 1983, and its renewal is currently under negotiation. It appears from the U.S. standpoint that more specific terms (similar to the expired U.S.S.R. agreement) would be preferable in any future U. S.-P. R.C. pact and U.S. negotiators are making efforts toward that end.

The U.S. bilateral agreements with the governments of Argentina and Brazil are also similar in that they set very general terms for cargo-sharing and then specify that the two sets of national-flag carriers implement the pact and negotiate specific shares of total cargo which lines serving the trades are entitled to carry.

The 1978 agreement with Argentina consists merely of an exchange of letters implementing a memorandum of understanding between the governments. It provides that the national-flag carriers of each country carry a 40-percent share of the bilateral trade with the balance of 20 percent available to cross traders. Actual shares are to be arrived at by commercial negotiations among all the lines serving the trade, with arrangements subject to approval by the two governments. In implementing such agreements, the governments have agreed to grant equal access to carriers of the other party to government-impelled cargoes. In effect, the specifics of the agreement are contained in pooling arrangements among the carriers of United States and Argentina. They are up for renewal at the end of 1983.

The 1970 agreement with Brazil (a memorandum of consultation between the governments and subsequent exchange of letters since) provides that through the mechanism of commercially negotiated revenue pools, the national-flag carriers of each of the parties are granted equal access to the government-controlled cargoes of the other. The United States has agreed to a blanket waiver to the requirements of Public Res. 17. This waiver permits Brazilian-flag carriers to carry up to 50 percent of all export-import cargo moving in the trade. Brazilian-flag carriers are also entitled, under the agreement, to participate in the carriage of reserved liner cargo moving under the Cargo Preference Act of 1954.

The Brazilian Government has granted a blanket waiver in favor of U. S. -flag carriers for participation in the carriage of all Brazilian Government-controlled cargo. The result is that the carriers of each country are entitled to carry up to 50 percent of the government-controlled cargo of the other. Equal access to government-controlled cargo is granted only where pooling agreements exist. Non-government controlled cargoes are not covered by the agreement, but are subject to allocation by commercial negotiation, subject to the approval of government authorities. The Brazilian agreement is also up for renewal at the end of 1983.

One result of both the Brazil and Argentina cargo-allocation practices (i.e., a 40/40/20 split in cargo shares) is that Brazilian and Argentinean carriers have insisted in specifying the carriers who are allocated the 20 percent "cross-trades' share. In effect, half of that 20 percent has thus been allocated to Brazil for Argentina trades and to Argentina for Brazil trades. This has worked toward the disadvantage of U.S. carriers, In addition, many U.S. shippers claim that poor service and high rates are prevalent in these trades and are a result of the inefficiencies promoted by the pooling agreements.

Up to 25 countries have indicated interest in negotiating bilateral agreements with the United

States—including South Korea, Bangladesh, Guatemala, Ecuador, Dominican Republic, Algeria, Mexico, Philippines, Ivory Coast, Nigeria, Ghana, Taiwan, India, Pakistan, Indonesia, Sri Lanka, Turkey, Spain, Australia, New Zealand, Venezuela, Colombia, Peru, Chile, and South Africa.

Table 45 shows the potential gain or loss in carriage that U.S. liner operators would incur under bilateral agreements with the above countries, assuming cargo allocation on a 40/40/20 basis (based on 1981 trade data).

The State Department stated that as of July 1983 the Philippines and Venezuela are most actively urging the United States to negotiate bilateral.

Discussions between the United States and Venezuela were held in 1983, and the U.S. Government made a proposal similar to that offered to the Philippines. These talks were suspended in mid-1983 and, because of Venezuela's economic problems, there does not appear to be much urgency to resume negotiations.

A Philippine Government order in July 1982 mandated that a pooling agreement be negotiated by Philippine- and U.S.-flag carriers within 30 days, Without such agreement, the Philippine decree stated that Philippine carriers are entitled to carry 40 percent of the cargoes in the Philippine-U.S. trades, while the vessels of all other nations, including the United States, may compete for the other 60 percent. In August 1982, the Philippine Government agreed to delay implementation. The U.S. Government has begun negotiations with the Philippines and has made a counter offer of a limited cargo-sharing agreement covering government cargoes. As of mid- 1983, the direction or outcome of these negotiations was unclear.

The Government of Indonesia, through a decree—Presidential Instruction 18-82, April 12, 1982—reserves all export and import government-owned cargoes for national-flag vessels. The decree affects over 60 percent of Indonesia's foreign trade, including 40 percent of westbound and 50 percent of eastbound U.S.-Indonesia trade.

A second decree provides that the shipment of nonoil and nongas exports will be primarily through four Indonesian ports and that the freight rates for international shipping must be equal to or lower than the rates prevailing for the nearest foreign port (i.e., Singapore, whose rates are very low), Its pur-

Table 45.—Potential U.S. Liner Trade Gain Under Bilateral Agreement (based on 1981 trade data)

Country	Total trade (tonnes)	U.S. share (tonnes)	Current U.S.-flag share ("/0)	Gain (loss) at 40°/0 share (tonnes)
Korea	2,655,178	681,646	25.7	380,425
Taiwan	3,605,829	869,257	24.1	573,075
Philippines	944,816	276,141	29,2	101,785
Indonesia	1,161,050	446,045	38.4	18,375
Australia	1,737,599	464,665	26.7	230,375
New Zealand	501,914	134,383	26.8	66,383
Bangladesh	170,271	68,669	40.3	(561)
India	1,003,018	616,410	61.5	(215,203)
Pakistan	234,263	105,956	45.2	(12,251)
Sri Lanka	118,367	95,705	80.9	(48,358)
Mexico	227,933	21,511	9.4	69,662
Guatemala	395,778	71,733	18.1	86,578
Ecuador	586,823	175,067	29.8	59,662
Dominican Republic	351,213	126,093	35.9	14,392
Venezuela	1,214,544	344,185	28.3	141,633
Colombia	496,163	167,573	33.8	30,892
Chile	571,663	157,808	27.6	70,857
Peru	557,563	196,843	35.3	26,182
South Africa	1,193,400	224,246	18.8	253,114
Ivory Coast	211,727	66,787	31.5	17,904
Nigeria	1,001,449	34,759	3.5	365,821
Ghana	77,703	21,697	27.9	9,384
Algeria	79,540	16,747	21.1	15,069
Turkey	294,775	52,246	17.7	65,664
SDain	923,238	328.746	35.6	40,549

SOURCE: Office of Technology Assessment

pose is to facilitate the export of Indonesian products. These decrees have not been fully implemented, but the Indonesian Government has indicated its intent that they will be. At issue currently is a shipment of U.S. products financed with Eximbank loans. MarAd is currently weighing whether to grant a waiver to Public Res. 17. Such a waiver is opposed by the Eximbank on the grounds that Indonesian shipping practices are discriminatory. Actual negotiations for a bilateral agreement have not taken place, but the State Department believes that Indonesia wants a 40/40/20 cargo split in its U.S. trades.

South Korea has in the past tried to negotiate a bilateral agreement with the United States. In 1979, South Korea unilaterally declared that Korean-flag vessels would have the first right of refusal for all cargoes in their trade except where a foreign carrier obtained a special waiver. The waiver provision involves two steps—first, an application is made to the Korean Shipping Association and second, to the government. This unilateral cargo-reservation scheme raised protests, especially from the U.S. State Department, and was later modified so that all countries (including the United States) with most-favored-nation status could obtain automatic waivers. Many believe these moves on the part of South Korea are a preamble to more pressure for a U.S. bilateral agreement. South Korea has signed an UNCTAD-Code-type of cargo-sharing agreement with Taiwan and has pressured some European countries to sign similar cargo-sharing agreements.

In addition, some U.S. carriers reportedly have not been permitted to bid for carriage of some bulk cargoes —notably rice—purchased by the Government. An increasingly protectionist posture by South Korea is causing concern both in the United States and in Europe that their vessels will be largely excluded from the South Korean trades.

Nigeria was one of the first countries to sign the UNCTAD Liner Code and has indicated its desire that all shipping lines trading with Nigeria enter into bilateral 40/40/20 cargo-sharing agreements. Nigeria has presented this point of view to the governments of France, Germany, Austria, Denmark, Canada, and the United States. To date, no action with any of the countries listed has taken place.

Recent statements by U.S. Government spokesmen indicate that the present administration will continue to disapprove bilateral treaties in general. Ambassador Brock recently reiterated the administration's policy of free trade unfettered by protectionism. There are instances, however, where this policy has been modified to accommodate certain industries. Federal Maritime Commission (FMC) Chairman Alan Green has said:

> No matter what laudable social and political objectives are pursued in establishing an arrangement that reduces competition in a trade, the bottom line is that U.S. foreign commerce can be harmed. Put simply, these situations can reduce U.S. foreign trade. . . . Furthermore, by sheltering the trade from the constructive forces of competition, we risk promoting inefficiency and unresponsiveness in the face of a dynamic and evolving trade environment.

The Bilateral Debate

Bilateral shipping agreements have been claimed by some as preferable alternatives to such multilateral arrangements as the UNCTAD Liner Code, particularly in the case where the U.S. Government has the opportunity to negotiate with another government on equal terms and with an equal voice. Whether some kind of bilateral can be beneficial and to whom has been the subject of considerable international debate. The United States has clearly stated its opposition to the UNCTAD Code, but has not established conditions under which bilateral agreements would be acceptable or unacceptable.

Several studies have attempted to evaluate the net effects of existing bilateral agreements between the United States and some trading partners. A 1977 study by Manalytics, Inc. for MarAd investigated the impacts of the 1970 U.S.-Brazil bilateral (through analyses and a shipper survey) and drew conclusions about ' 'bilateralism " in general from this case analysis. The conclusions were that bilateral agreements had not adversely affected trade flow, costs, or service, but had benefited U.S. carriers and would be a viable option for the United States in the future. Z[8]

Critics of this view (including shippers in the trade) have claimed that the trades reviewed have

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[2*] Manalytics, Inc. , "The Impact of Bilateral Shipping Agreements in the U.S. Liner Trades, prepared for the Maritime Administration, U.S. Department of Commerce, May 1979.

suffered from lack of competition and, in fact, are characterized by high prices and poor service. A 1983 study by Kearney Management Consultants for an association of Danish, British, Norwegian, and Swedish shipowners compared U.S.-Brazil trades with conventional conference trades and, not surprisingly, concluded the reverse of the 1977 Manalytics study, citing that shipping rates were often much higher in the U.S.-Brazil trade than in other U.S. trades and that shippers surveyed considered the service to be worse than other trades.[29] One problem with analyses of the U.S.-Brazil trades is that this one case may or may not be typical of future bilateral arrangements. The question of bilateral has been raised by other OECD countries who have acceded to the multilateral UNCTAD Code but with reservations that are intended to keep a portion of the cargo flow open to international shipping competition. The claim against Brazil-type bilateral is that they would allow no outside access (thus competition) to cargoes covered; however, an opposing view is that bilateral could specifically include cross-carriage, encourage independents, and provide mechanisms to reward improved service.

The United States can attempt to influence many of these international decisions about cargo reservation but probably cannot stop the trend toward more intergovernmental agreements by countries concerned with how their trading operates. With so many countries (including South Korea, the Philippines, and Venezuela) seeking bilateral cargo-sharing agreements with the United States, it would seem advisable for the United States to establish very specific guidelines for negotiating bilateral treaties, including a minimum degree of competitive access to cargo in the trade, limits on government intervention, cross-trader access, standards of service and price, and reciprocity whenever foreign shipping practices put U.S. operators or shippers under unfair conditions.

Countertrade

"Countertrade, also known as barter, has recently developed into a common practice which sometimes could be considered a form of bilateral trade arrangement. Countertrade includes a range of commercial and financial practices in which the exporter is required to buy some product in return from the purchaser. It is an increasingly used practice and one that does restrict U.S. access to world markets. 30 31

While countertrade occasionally occurs just between companies, almost all of it involves governments. For instance, the importing country's government may require a product manufacturer to buy certain goods or commodities in return. Even more common are state-to-state agreements, in which the governments arrange a direct exchange of goods between them. Communist countries almost always use this approach, and increasingly so do other countries, especially LDCS. LDCS have sought to improve their economies through rapid industrialization planned and implemented by the central government. Since many of the developing sectors need imports, central governments have become very involved in international trade. Moreover, Communist and LDC governments also use countertrade arrangements for a financial reason: often capital-poor, countertrade permits these countries to trade without using scarce capital. Goods are simply exchanged for other goods.

The two most common forms of countertrade are compensation arrangements and counterpurchase arrangements. The former-the most rapidly growing type of countertrade—requires exporters of high-technology machinery, industrial facilities, and technical know-how to accept payment in the form of the goods produced with their equipment or technical expertise. Such arrangements are also known as buy-back agreements, or industrial cooperation agreements. (The latter term is used to describe trade deals between Communist and Western countries.) Compensation agreements are most common among nonmarket economies and are of growing importance in trade with Communist countries .32

[29] Kearney Management Consultants, ' 'The Impact of Bilateral Shipping Agreements: An Analysis of Service, Rates and Shipper Responses, " January 1983.

[30] U.S. International Trade Commission, ***Analysis of Recent Trends in U.S. Countertrade*** (Washington, D. C.: USITC, March 1982), p. 1.

[31] R. Michael Gadbaw, ***The Implications of Countertrade Under the General Agreement on Tariffs and Trade,*** unpublished paper prepared for the Interface IV Conference, Philadelphia, Pa., Oct. 15-16, 1982, p. 3.

[32] U.S. Department of Labor, Office of Foreign Economic Research, ***Report of the President on U.S. Competitiveness,*** September 1980, pp. v-43 to v-45.

One of the biggest compensation arrangements is Occidental Petroleum Corp. $20 billion countertrade package with the U.S.S.R. Under one contract, Occidental is buying Soviet ammonia from plants it helped to set up in that country. Under a parallel agreement, it is shipping phosphate fertilizers to the Soviets from the United States .33

An older form of countertrade is the counterpurchase agreement. This requires exporters of machinery, expertise, and advanced manufactures to accept payment in unrelated products. While counterpurchases are nominally cash transactions, the two parties in effect exchange goods of equivalent value. CounterPurchase agreements are also known as countersales, offset trading, parallel trading, reciprocal trading, or counterdeliveries. 34 Recently, an Italian shipyard has become involved in this form of countertrade. Iraq is buying frigates worth $1.5 billion from Italy's state-owned Italcantieri. In payment, Italy's state oil company is taking Iraqi crude. 35

Economic conditions over the past 10 years have given strong impetus to the growth of countertrade. The sharp rise of oil prices after 1973 came at a time when many developing countries were in the midst of ambitious economic development plans, and the price rise worsened the already tight foreign exchange requirements involved in purchasing Western technology and manufactured products. Furthermore, these Western products became more expensive as inflation in the industrialized countries increased significantly during the latter half of the 1970's. The external debt of these countries, based on the loans that had financed many of these purchases, also contributed to a "cash crunch' in the developing countries. The external debt of the LDCS more than tripled between 1974 and 1980—from $142 billion to an estimated $416 billion.[3G]

All of these factors led "cash-short" developing countries to resort more and more to countertrade as a way to finance new purchases. In fact, there is some evidence that they were pushed in that direction by Western banks, which began to advise their clients to use countertrade as a way of increasing the prospects for the eventual repayment of some loans.

While there is much anecdotal information about countertrade, there is relatively little hard data on the actual value of trade affected by countertrade. One Commerce official believes that it may equal 20 percent of world trade.[37] 38 In its recent study, the International Trade Commission (ITC) estimated that total U.S. imports resulting from countertrading arrangements were approximately $279 million in 1980, which represented more than a threefold increase over the 1974 estimate of $98 million. (It should be noted, however, that most of these imports were the product of trade with Communist countries.) Because many respondents to the ITC survey viewed such information as proprietary information, ITC believes that the above trade data understates the full dollar importance of U.S. countertrade. Despite this increase, it appears that, among the developed nations, the United States has the smallest percentage of countertrade, almost all of which involves private companies that find countertrade the only way to do business in certain places.

Although precise data are not available on the use of countertrade by other countries, it is used extensively. Western Europe has increased its countertrade with the LDCS, and even some 10 percent of trade among Western countries is thought to be countertrade. Moreover, roughly one-half of all Eastern European trade with developing countries is now through countertrade .39

While it assures supplies of scarce goods, market access to producers, and generally provides predictability to those involved, countertrade discriminates against outside actors. Exporters unwilling or unable to enter into countertrade may be excluded from some markets. Countertrade is, in effect, a "closed deal' between two parties—third parties

[33] *Business Week*, July 19, 1982, p. 118.

[34] U.S. Department of Labor, Office of Foreign Economic Research, ***Report of the President on U.S. Competitiveness***, September 1980, pp. V-43 to V-45.

[35] *Business Week*, July 19, 1982, pp. 118-123.

[36] U S. International Trade Commission, ***Analysis of Recent Trends in U.S. Countertrade*** (Washington, D. C.: USITC, March 1982), pp. 13-14.

[37] 1bid.

[38] This would put the value of Countertrade at about $400 billion. John W. Dizard, "The Explosion of International Barter, " ***Fortune***, Feb. 7, 1983, p. 89.

[39] Department of Labor, op. cit., p. V-44. Also see "Bartering, ***Industry Week***, Mar. 28, 1977.

are excluded from these markets. As a result of countertrading arrangements, many American companies do not even have a chance to bid for projects and open new markets for their goods or services.

Aside from being often economically inefficient, countertrade poses major problems for an American Government that still wants to adhere to open trade. It also directly affects large segments of U.S. industry, including ship operators who compete internationally. However, no direct analyses have been done on how the growing use of countertrade affects the U.S. shipbuilding and operating industries. The effect on shipbuilding is probably small since the United States does not export major merchant ships. It may, however, affect yards that build offshore oil equipment, tugs, supply boats, and small warships where some export market exists or may exist in the future. Countertrade may eventually have a significant impact on U.S. ship operators to the extent that countertrade deals include shipping provisions and therefore further close access to foreign trade cargo. Again though, no quantitative estimates of these effects are presently available. Future policy development would benefit from more data and analysis on countertrade trends and effects.

UNCTAD Liner Code

Not only is cargo reservation a unilateral and increasingly a bilateral phenomenon, but, by October 1983, it became a multilateral phenomenon when the UNCTAD Code of Conduct for Liner Operations came into force.

UNCTAD was established as a permanent organ of the U. N. General Assembly on December 30, 1964. One of its principal purposes is to promote international trade, particularly with a view to speeding the economic development of developing nations. It includes all members of the U.N. as well as eight other countries. UNCTAD is comprised of six main committees which deal with specific areas of trade and development. Included is a Committee on Shipping.

In 1974, UNCTAD voted to accept a liner code as the standard for conference liner shipping worldwide. The adoption of the code was the result of several years of efforts on the part of LDCs—originally known as the Group of 77—to exert control over significant shares of their own nation's maritime cargo. The major complaints against the existing liner conference system were the refusal by conferences to admit shipping lines from LDCS as members, the inability of governments and shippers from LDCS to obtain information on the process of freight rate determination or to participate in this process, inequitable levels and changes in rates, inadequacy of service and a lack of a generally accepted dispute settlement mechanism.

The need for reform was first considered within the Committee on Shipping. At its third session in 1972, UNCTAD requested the General Assembly to convene a conference of plenipotentiaries to adopt a code of conduct for liner conferences. The code was adopted in Geneva in April 1974. The code would not come into force, however, until ratified by at least 24 nations controlling 25 percent of the world's tonnage. This was accomplished in early 1983. * The code, therefore, came into force in October 1983.

The code calls for closed conferences open to and controlled by the carriers of trading partners (with third-party carriers admitted to the conferences only with trading-partner member consent), formation of shippers' councils, mandatory time intervals between general rate increases, and prescribed dispute settlement arrangements to resolve differences between shippers' councils, conferences, and carriers. One of its most significant provisions is its cargo allocation principle, which ,guarantees any national shipping line the right to participate in any conference that serves its country and that reserves an equal share of the total trade between two signatories to the national-flag lines of each trading partner with "a significant share, say 20 percent' made available to third-flag vessels, agreed to by the national shipping lines. Therefore, while the code regulates only conference behavior, in effect, all LDC liner trades would likely be covered.

The reaction of the major shipping nations was originally opposition to the code. The liner trades among these countries are established and member-

● By April 1983, 58 countries representing 28.6 percent of the world's liner tonnage (measured in 1973) had accepted the UNCTAD Code.

ship in conferences (except in U.S. trades) is closed. In addition, vessels of some of the major shipping nations operate extensively as cross-traders (notably the Scandinavian, British, Dutch, and Greek fleets), whose business could be adversely affected under the UNCTAD scheme.

The U.S. Government has opposed the code since it was proposed, and the present administration boycotted the recent UNCTAD meetings (late 1982) concerning a bulk code. Many U.S.-flag liner operators and U.S. owners of the "effective controlled fleet" have strongly supported the administration in its opposition to the UNCTAD Liner Code. These operators believe that when the code is adopted, it will effectively restrict U.S. access to liner cargoes. They also claim that it will promote shipping inefficiencies due to extensive government intervention, as appears to be the case with some bilateral agreements now in effect. It is urged, however, that the United States must actively pursue an alternative shipping policy framework with our major trading partners to keep liner shipping markets open and competitive.[40]

Some of the opponents who have studied the UNCTAD Liner Code have argued that its adoption will lead to much more ominous consequences than a quick reading of the intent and major provisions would indicate.[41] For example, the code was first proposed partly because developing nations felt that the closed European and Japanese conferences victimized them with unreasonable rates. However, the code supports provisions such as closed conferences and anticompetitive activities which lead to similar results of unreasonably high rates and poor service. The UNCTAD Code is vague, which could lead to ambiguous definitions and applications of its provisions. Many believe that conferences operating under the code will evolve into closed trades without the benefit of independent carriers (which are not given any status) to competitively force efficiency. In addition, the code provision to allow cross-traders "if any' to carry a share of 'say 20 percent' appears to be designed to eliminate cross-traders whenever possible. Finally, the code is criticized for not having any provisions or rewards for carrier efficiency, and if closed trade with revenue pooling is practiced as indicated, inefficiency will produce the greatest reward to carriers.

Some have argued that U.S. accession to the UNCTAD Liner Code may be—on balance-beneficial to U.S. interests. At a December 1982 Seatrade Seminar, it was suggested that "traditional competition in our maritime liner trades no longer exists' and that "our (liner) cargoes are being carried increasingly by foreign-flag vessels of state-owned, Soviet-bloc fleets. '[42] It was further concluded that a combination of passage of Shipping Act amendments, U.S. access to cargo through the liner code, and the use of U.S. financial incentives could lead to encouraging foreign (and U. S.) investment in liner shipping. The Seafarers International Union (SIU) also has voiced strong support for U.S. participation in the UNCTAD Code. The union's support is based on a conviction that the cargo allocation schemes in the code will come into effect among all other major trading countries while the United States continues to lose access to cargo, and, at the same time, a viable shipping industry .[43]

The EEC Council eventually responded by authorizing its members to ratify the code with reservation. This response appears to be an attempt to limit the potential damage of the code while coming to grips with the need to recognize the legitimacy of the rights of their LDC trading partners. The EEC reservation (or Brussels package), as it is called, exempts from the provisions of the code all intra-OECD trade. It also opens to all members of OECD that portion of the bilateral trade of a member and an LDC other than the LDC share under the code. (In other words, 60 percent of any liner trade between an OECD country and an LDC is available to all OECD nations.) The effect of the reservation would be to substantially reduce the impact of the code on world trade. It also would eliminate the cargo-reservation benefits that some proponents of the code seek. In 1979, the value of all

[40] See Proceedings, ' 'The UNCTAD Code of Conduct for Liner Conferences, U.S. Maritime Resource Center, May 1982.

[41] See: Leslie Kanuk, "The UNCTAD Code: Impending Disaster for World Commerce, proceedings of a seminar, ' 'The UNCTAD Code of Conduct for Liner Conferences, U.S. Maritime Resource Center, Kings Point, N. Y., May 5, 1982, pp. 14-18.

[42] H, Clayton Cook, "Seatrade Seminar Financing Ships in a Difficult Market, " *Foreign Owernship Under the U.S. Flag,* Dec. 1, 1982.

[43] See !jIU-Dec, 1982 Press Release—' 'Drozak and SIU go 100% for 40/40/20. "

international trade between developing countries accounted for 6.1 percent of total trade worldwide. Thus, the EEC reservation, if all developed countries accepted it, would exempt a large portion of world liner trade from the code.

The United States has held a number of discussions with European and Japanese trading partners in 1982 and 1983 regarding implementation of the UNCTAD Liner Code. Some U.S. experts believe that the EEC reservation to the code could have the effect of forcing U.S. carriers out of some trades. Based on this concern, U.S. negotiators, in a December 1982 meeting, stated that unless there is genuine reciprocity between the United States and its European allies in the form of legally binding commitments to keep European liner trades open to U.S.-flag carriers as cross-traders, the United States could not keep U.S. liner trades open to European cross-traders.

During March 1983, additional meetings on UNCTAD matters were held among Europe, the United States, and Japan. At that time, Japan announced its intention to ratify the code without the EEC reservations. If it does so, the EEC reservation fails to address U.S. participation in the trade between OECD nations when both the Europeans and the Japanese are code signatories. The final outcome of all these negotiations is not clear.

Unfortunately, while it appears that the United States and its major trading allies of Europe and Japan share similar goals in the area of shipping policy, no mutually acceptable strategy has been developed. The U.S. response to the UNCTAD Liner Code has been to deal on a bilateral basis with those countries that threaten to close their trades to the United States without such agreements. U.S. carriers also have indicated a fear that Europe will shut them out of their trades with LDCS. This seems to be based on their belief that other governments, including those of our trading partners, are more supportive of their carriers than is the United States. Because of this, some carriers fear that even though 60 percent of the trades may be theoretically open to lines from all OECD nations, in fact U.S. operators would not be allowed to participate. interestingly, our trading partners have expressed similar fears with regard to U.S. policies in regard to bilateral. In actual effect, some bilateral agreements the United States has negotiated are generally more restrictive than the UNCTAD Code would be with the EEC reservation. Bilateral can cover all trade, not just liner conference trades. 1t should be noted, however, that UNCTAD has begun discussions on the adoption of a code for bulk trades,

The potential loss of cross-trading opportunities by U.S.-flag carriers under the code is a major threat to some carriers. Sea-Land Service, Inc., Delta Lines, American President Lines, and U.S. Lines receive significant percentages of their revenues from cross-trading on itineraries involving the carriage of U.S. foreign commerce. These U. S.-flag carriers would incur almost all of the costs they now incur even if they did not carry foreign-to-foreign cargoes. The result would be either increased rates or reductions in the profits of the U.S.-carriers.

Other UNCTAD Initiatives

The nonliner trades have grown faster than the liner trades since World War 11. Much of the growth has been in basic commodities such as oil, grain, coal, and ores. Some of the growth, however, has come at the expense of the liner trades in such "neobulk' commodities as forest products, steel, and vehicles.

The distinction between liner and nor-diner operations is becoming blurred more quickly in the non-U.S. than in the U.S. trades. The major difference between the two types of service relates almost entirely to the common carrier nature of the liner service: a willingness to carry any cargo offered by any shipper between stated berths on a scheduled service with published rates. The same ship can offer liner and nonliner capacity on the same voyage. That is happening already in the U.S. trade (e. g., Blue Star Line, Ltd. carries nonliner forest products outbound and containerized products inbound, and ABC Containerline N,V. carries nonliner ore and containerized products inbound on the same leg of its round-the-world service).

Bulk Cargo Shipping Code

The UNCTAD Shipping Secretariat is investigating a bulk cargo-sharing code structured along

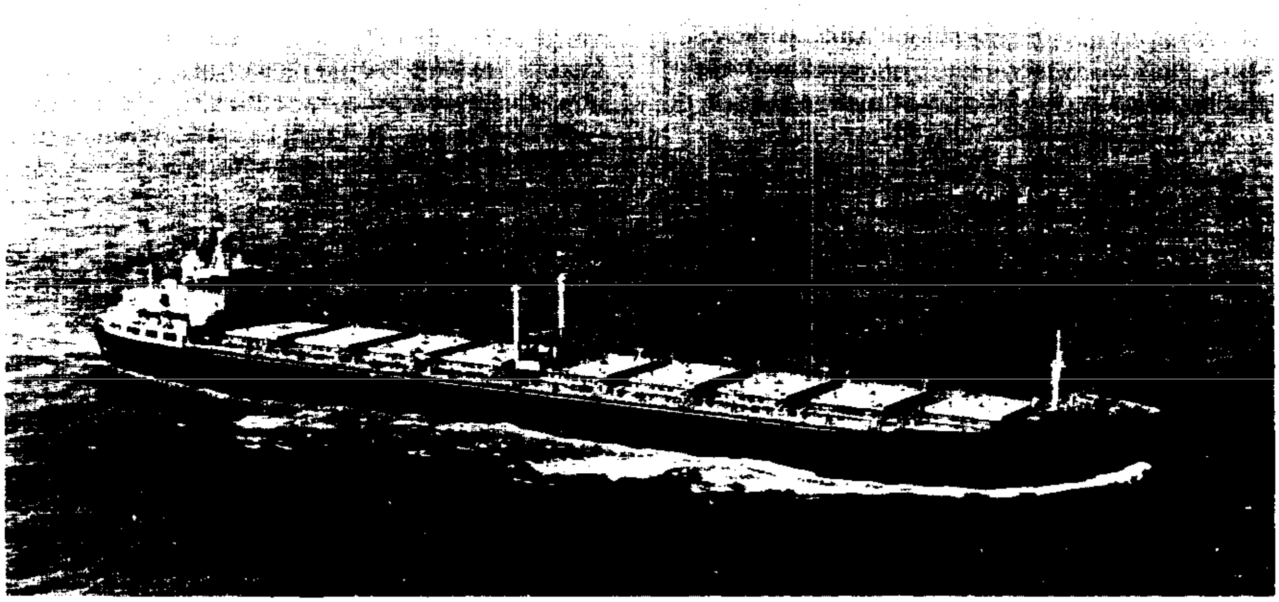

Photo credit: Navios Corp.

Both of these bulk carriers are Liberian flag, foreign built, and U.S. owners the lines of the liner code. The initial focus has been on iron ore, bauxite, alumina, and phosphates; other ores and grains probably will follow. However, with united OECD opposition and with the Secretariat structuring what it considers an extreme position for the LDCS, it is unlikely that a document embodying such a position will be available for ratification in the near future.

In 1980, UNCTAD requested a group of experts to study any problems faced by developing countries in the carriage of bulk cargoes. In 1981, that group conducted a survey of major importers and exporters of iron ore, phosphate, bauxite, and alumina. The survey did not uncover any obviously discriminatory or unfair practices which would prevent developing countries from putting their national fleets into those trades. Forces of competition, experience, and economics seemed to be governing.[44]

In addition, there is a critical difference between the organization of the liner and the nonliner trades. The liner trades, except for the U.S. trades, are organized into strong, and often closed, conferences, access to which has been extremely difficult for the LDC carriers. There was also a feeling among LDCS that substantial profits were being earned by the conference carriers. The liner code reflected the LDCS' desires to overcome these noneconomic barriers to entry and a sense of 'fairness' has been a major factor underlying developed country support of the liner code. In the nonliner trades, however, no such noneconomic entry barriers seem to exist, and there is no presumption of high profit margins; consequently, there is practically no arW-ment on "fairness" to support a bulk code. 1n addition, the export of nonliner commodities is critical to LDCS economic survival, and the movement of these commodities is very sensitive to changes in freight rates. Increases in shipping rates could have serious economic consequences for individual LDCS.

Open Registry

1n November 1982, UNCTAD held the Second Intergovernmental Preparatory Group (IPG) meeting on ship registration. The delegates failed to agree on the UNCTAD Shipping Secretariat's plan to phase out open registry. The United States had attempted to persuade the other OECD countries not to attend the first IPG meeting in April 1982 on the grounds that the "recovery" of open registry ships is a domestic, not international issue. While the United States received some support for its principle, it received no support for its boycott. Only Liberia and Panama joined in declining to participate in the IPG.

Even though there were sharp divisions at both meetings— and an almost complete lack of consensus on any of the critical issues—the second meeting ended with a recommendation that a Conference of Plenipotentiaries be convened to consider the 8-page draft of a set of basic principles proposed by the IPG. The draft attempts to link the nationality of crews, equity owners, and ship managers to the registries of merchant ships.

There is some support for the draft proposal among developed countries as well as LDCS, despite different views on what would happen to the open registry ships after open registry is phased out. Some developed countries believe that the ships would be recaptured to the national flags of the beneficial owners (largely themselves); the LDCS (and the Secretariat) believe that the ships would (or should) largely be captured by the LDCS. There is broader support for the wider application of the safety, social, and environmental standards that are now embodied in the international Maritime Organization's (IMO) and the International Labor Organization's (ILO) conventions. The widely differing views in the proposed draft on how to achieve those goals were evident after the second IPG meeting. Despite the basic differences, it is likely that there will be a Plenipotentiary Conference within 2 or 3 years and a document on file for ratification approximately 3 or 4 years thereafter. How quickly it will be ratified will depend on how far the convention goes beyond the questions of ship operation and into the questions of forced re-flagging. Since the LDCS have powerful weapons (e. g., sanctions barring open registry ships from their ports), and since the major international maritime unions support some restraint on open registration, an open registry convention is possible sometime in the future. However, there is no consensus at pres-

[44] See "Shipping Practices of Major Importers and Exporters in the Bulk Trades, prepared by Arthur D. Little, Inc., November 1981 for Mr. Charles Kiskaddon, President, Alcoa S. S. Co.

ent for the strong solution contained in the Secretariat's draft for what many consider a mild problem.

Convention on Multimodal Transport

The Multimodal Convention, adopted by UNCTAD in May 1980, would regulate the carriage of goods between countries when more than one mode of transport is used. Once in force, it would be mandated if either an origin or a destination country had ratified.

The convention calls for the creation of Multimodal Transport Operators (MTOS), which would be licensed and regulated by contracting governments under the provisions of the convention. They would act as shippers' agents and would handle all phases of a multimodal cargo movement. The convention would regulate documentation, liability, claims, and certain customs matters.

The convention was opposed by the United States, which has indicated its unwillingness to ratify. Strong support has been voiced by the developing countries, the Soviet Union, and other Eastern bloc countries as well as Scandinavia. However, as of January 1983, only six countries had signed the convention, and just two had ratified. It does not appear that the convention is likely to come into force in the near future.

The Sixth General Conference of UNCTAD was held in June 1983. Its shipping activities agenda included further consideration and implementation of past initiatives. The main objectives of the LDCS included entry into force of the Code of Conduct on Liner Conferences, further research into the role of transnational corporations in shipping, efforts to abolish flags of convenience, and studies of investment and support policies. The background paper for this conference prepared by the UNCTAD Secretariat included a listing of six areas of current concern and review of recent activities as follows:

Major Areas of Concern

- Orderly development of liner and multimodal transport service.
- An equitable basis for participation by developing countries in bulk cargo transport.
- A regime to facilitate funding of shipbuilding and buying by developing countries.
- An equitable compilation of maritime laws.
- Adequate port facilities.
- Fostering management and technological expertise in shipping and port development in developing countries.

Review of UNCTAD Shipping Activities Since 1964

To demonstrate what it calls "the change in the pattern of the forces that manipulate market and operational structures, UNCTAD cites the following actions that have been taken under its auspices:

- in the liner trades, adoption of the Code of Conduct for Liner Conferences;
- in multimodal transport, adoption of the Multimodal Convention;
- in the revision of law on carriage of goods by sea, adoption of the Hamburg Rules;
- in the bulk trades, investigations of market practices and procedures, particularly as regards the role of translational corporations;
- in *phasing out* flags of convenience, negotiations on conditions for registration of ships and the convening of a plenipotentiary conference to adopt a set of principles on registration; and
- in maritime legislation, preparation of model laws.

Inclusion of Service Industries Within GATT

GATT deals only with issues relating to trade in goods and does not apply to trade in services. With the increased importance of service transactions in both the overall economy and current account, Ambassador Brock announced in April 1981 the administration's intent to make trade issues relating to service a high priority in the administration's overall trade program. This was the administration's opening attempt at getting its major trading partners to recognize the need to develop a multilateral approach to dealing with trade in services. Presently, the bilateral approach is the only track available on a case-by-case basis to resolve disputes over services.

At the time of the announcement, OUSTR recognized that progress would be slow in developing a multilateral regime and that the reduction of service-sector trade barriers could not be achieved before 1990. This prognosis was confirmed at the GATT Ministerial Conference in November 1982 when the administration won a minor concession from the other GATT members to exchange information on their countries' service sectors and review whether any multilateral action was appropriate. These national work programs are proceeding at differing paces, with the U.S. analysis now expected to be finished by late 1983. The other national work programs are not expected to be completed before the next GATT Ministerial in the spring of 1984.

The status of services under GATT is of importance here because the maritime industry is included. Thus far, services have been excluded from GATT. Covered commodities are "bound," which means that a country can set a tariff rate for that good which cannot be raised in the future, although it can be lowered. This approach probably would not be feasible as a trade rule in shipping. Britain, Norway, Japan, and West Germany have indicated to a greater or lesser degree interest in extending GATT to shipping. France and virtually all LDCS have registered opposition.

An interesting question would arise were services to be covered. Under the most-favored-nation concept in GATT, each signatory must grant equal status in trade agreements to all other signatories. Nontariff trade barriers are discouraged. The UNCTAD Code, by its nature, erects such barriers (cargo-sharing). How the code would interact with GATT should services be covered is questionable. However, the likelihood that GATT will act in this area in the near future does not seem to be great, so the question probably will not arise soon.

Financing International Trade

One aspect of trade and cargo policy that does not appear to be incorporated in any multilateral or bilateral framework at present are the methods used or made available to finance international trade. These methods form an integral part of trade and cargo policy today because an increasing number of countries are getting involved in trade financing as a matter of government policy. While most industrialized nations historically have provided some instruments for foreign trade financing, such as use of export/import credits, many countries and organizations have moved far from these basic approaches. Among recent developments in international trade financing are:

Government Financing Assistance

- Foreign exchange rate insurance. Here a government guarantees the currency conversion rate.
- Barter or inkind payment for import or export goods with governments involved in supplying or purchasing and storing as well as stockpiling imported goods (discussed under countertrade).
- Foreign trade risk insurance, where governments assume the risk of providing coverage of the risk incurred in the trade.
- Cofinancing-with-foreign-aid exports, where the government's foreign aid or development agency pays part of the cost as a foreign-aid grant to the recipient country. This makes the export extremely competitive.
- Provision of technical aid grants (in support of exports), which are used for training of local staff, expatriate professional staff, installation, and other technical assistance as part of the trade at no cost to the exporter. This is often an appreciable component of the value of the export deal and may affect choice of procurement.
- Foreign trade import financing through use of excess foreign currency earned by governments from government-to-government trade. This often includes sale of such currency at below normal exchange rates.
- Low-cost export/import financing through government export/import bank.
- Import/export loan guarantees provided by government agency against small fee.

Commercial Financing Assistance

- Joint venture financing using multiple placements to minimize risk.

- Cofinancing by private banks or other financial institutions with domestic government agencies, foreign banks, or international financing institutions, such as the World Bank, Inter American Development Bank, and Asian Development Bank. Cofinancing is often also done with foreign government agencies for the local currency costs of the trade such as transport, insurance, installation, and training.
- Export financing through delivery or supply of finished goods produced by export. This type of financing scheme is usually combined with an advance sale of the goods to be delivered in the future. As an example, coal mining equipment export is paid for by future coal deliveries sold as an advance sale to an electric powerplant, etc.
- Trading company export/import financing. Here a trading company, which is usually also a commercial bank, finances foreign trade exports and uses proceeds to buy other goods for import or sale to a third country or party. It may also simply sell its proceeds to a third party. Because trading companies deal in a large number of goods and are represented world~'ide, they have the contacts and means to consummate the most complex chains of trading deals.

The above are just a few examples of foreign trade financing schemes used in recent years. Many foreign countries have Ministries of Trade (Commerce) anci Industry that combine development of trade and industrial policy. In the United States, these functions are dispersed among various agencies. There appears to be no overall strategy of U.S. trade financing policy that would serve to maintain a competitive U.S. position in world trade and trading industries.

SUMMARY

All trading nations have a self-interest in expanding their exports and controlling their imports. As trading complexities increase, governments have attempted to exercise rational management over their flow of imports and exports. The analysis in this chapter has illustrated that the economics and management of trade are closely linked to the economics and management of shipping.

As nations increasingly try to manage trade policy to their best economic advantage, they tend to increase governmental involvement in shipping. Most countries have some unilateral cargo reservation. In addition, many nations, particularly the LDCS that are attempting both to capture more export trade and to bolster their national-flag fleets, are pushing for the establishment of bilateral and multilateral cargo-sharing agreements. The latter attempts have achieved international recognition in the form of the UNCTAD Code of Conduct for Liner Operations. This calls for an even division of liner conference cargoes between trading partners, with some percentage reserved for third-flag vessels, if agreed to by the national-flag liner engaged in the trade. The United States is not a signatory to the code, although there are fears that U.S. carriers and possibly U.S. trade will be negatively affected once it is implemented.

The United States faces a significant disadvantage in dealing with countries where industry and government have established close ties and where national and corporate goals are meshed. Japan is an example of how successful such a nation can be in the international trade arena. The United States tends to disavow governmental interference in international trade and shipping and Government pronouncements historically have been in favor of free and open trade. Many U.S. shipping companies find it increasingly difficult to compete in international markets that are protectionist or where other governments more heavily subsidize their industries. Many foreign governments tend to intervene on behalf of their national carriers, while the U.S. Government has not intervened.

There have been attempts by the United States and some of its industrialized trading partners to work within international organizations such as GATT for tariff barrier reduction and freer trade. However, the reality is that trade is becoming more, not less, managed, Thus far, the United States has not developed a national response that would be effective in protecting our economic position and at the same time remain consistent with our historical national philosophy of free and open trade.