NEEDED: A RATIONAL AMERICAN MARITIME POLICY FOR TRADE AND FOR DEFENSE

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Abstract

The U.S. maritime system can promote American growth if it supplements strong international trade practices. What is needed first is a clearly delineated national maritime policy. This paper reviews current maritime policy, and proposes a specific approach that might satisfy both business and national security objectives.

Introduction

In this, the latter part of the twentieth century, most Americans are only vaguely aware of the existence of the United States merchant marine. Indeed, a majority of American business and academic researchers are not familiar with the essential role and function that the merchant marine plays, not only in the U.S. domestic economy, but in its international commerce. When considering its technology, management, and promotional expertise, as well as its role in world markets, the U.S. should be the world leader in international waterborne commerce. But, the U.S. merchant marine lacks policy cohesiveness due, at least in part, to a lack of support by the nation's business and academic communities for a uniform maritime policy.

Distribution Strategy

No macromarketing approach to trade between nations can be complete without consideration of distribution, which in turn demands that attention be paid to the vital role played by a nation's merchant marine.

The United States merchant marine has declined relative to the merchant fleets of other countries and clearly the time has arrived for a national maritime policy which addresses such problems in the American business interest.

On an international basis, the U.S. merchant marine has provided the nation with a military shield serving commercial interests in peacetime and providing logistical support to its armed forces in time of war. Yet, competitive disadvantages exist in the maritime industry because the Federal Maritime Commission does not have the authority to require foreign carriers to comply with United States laws. Further, there is a move in Washington that would place U.S. carriers at a further disadvantage by prohibiting their participation in carrier conferences prelevent in other parts of the world (Kanuk 1980A). This movement is compounded by the administration's attempts to apply U.S. antitrust laws to foreign flag carriers.

To evade various federal regulations, many ships owned by American firms are registered in such countries as Liberia, Panama, and Honduras - the so-called "flags of convenience". For example, the flag of convenience permits a vessel under the control of an American company to be built in a Japanese shipyard, at fifty percent of the construction cost of an American shipyard, be registered in Liberia, and be manned by foreign seamen at only one-third the annual payroll of a United States crew. A basic problem facing owners of U.S. - flag fleets is that the construction and operating costs of American and foreign flag vessels is approximately equal (Rosenberg and Davis 1977).

Since the end of World War II, when it was the leader in terms of tonnage, the U.S. has experienced a steadily-eroding market share, until today the U.S. ships transport only about 5% of U.S. foreign trade, to say nothing of a fractional share of its international cargo (Kanuk 1980B).

In 1916, twenty-six years after the Sherman Antitrust Act was passed, Congress enacted the Shipping Act, which exempted ocean carriers from the antitrust law, allowing them to join with foreign carriers in "rate conferences", or cartels for fixing rates and terms for a particular trade. At the same time, Congress established the Federal Maritime Commission, to protect the public interest through its supervision of the concerted activities of these conferences. The Commission's regulatory role is not confined to policing antitrust exempt activities alone, but through other sections of the Act, provides for the enforcement of fair and equal treatment between carriers and shippers.

The Jones Act

By 1920, the Congress was ready to act to meet the needs of the U.S. shipping industry. The legislative vehicle of congress was the Merchant Marine Act of 1920. In the Senate, the act was amended to include a strong cabotage law that has become known by the name of its sponsor, Senator Wesley Jones. The Act stated that the maritime policy of the United States was to provide for a merchant marine fleet ". . . sufficient to carry the greater portion of its commerce and serve as a naval or military auxiliary in time of war or national emergency" (Seafarers International Union 1975).

By amending the 1920 Act, Senator Jones was able to achieve his goals which among other things provided that:

(1) A vessel must be owned by citizens of the United States.

(2) The vessel must be manned by U.S. officers and seamen.

(3) Ships must be built in U.S. shipyards (Merchant Marine Act of 1920 1972).

The bill was not exposed to much debate in the Senate and passed with a record vote (Congressional Record 1920).

The Merchant Marine Act of 1936

The Merchant Marine Act of 1936 authorized subsidies to assist American shipping to compete with the lower costs of foreign built and operated vessels. In 1936 the cost to construct a vessel in an American shipyard was estimated to be about 205% that of foreign shipyards and the wages of United States seamen were approximately fifty percent greater than those of the principle European maritime nations (McDowell and Gibbs 1954). The cost of building restriction is estimated to be in the neighborhood of $150 million annually (Jantscher 1973). The Maritime Act of 1936 was considered by Congress for fifteen months and thirty-five

drafts were prepared prior to its enactment (Lawrence 1966).

The magnitude of the difference between U.S. and foreign crew costs can be demonstrated by the example of a recent application to the Maritime Administration for an 89,700 dead weight ton tanker to be used in the foreign commerce of the United States. The wages for 26 American seamen were estimated at $827,500 per year. Wage costs for foreign crew on the same ship would be approximately $352,000 per year (Moyer and Henderson 1974).

Post World War II Developments, 1946-1969

From 1946 until 1969 the Merchant Marine Act of 1936 remained the cornerstone of the nation's maritime policy, the basic trust of the Statute remaining unchanged. In 1965, Secretary of Commerce John T. Connor disturbed the maritime industry when he reversed a subsidy and admonished the industry for its passive acceptance of large wage increases. During that same year, Nicholas Johnson, of the U.S. Maritime Administration commenting on wages said, "Only 28¢ per hour keeps 50,000 seamen from being civil servants" (Monthly Labor Review 1965).

The U.S. Merchant Marine Act of 1970

On October 21, 1970, President Richard M. Nixon signed into law the Merchant Marine Act of 1970 (Maritime Commission Annual Report 1971). It extended the granting of construction and operation subsidies to bulk carriers and tankers, ineligible under the 1936 Act. Further, it provided for the computation of an improved index to be used in determining the operational differential (Bowman 1971). Wage costs represented the largest portion of the operating subsidy, comprising approximately 83 percent of the total (U.S. Maritime Administration 1971).

In a Brookings Institution study, Gerald R. Jantscher examined assistance pumped into the American merchant marine and shipbuilding industries. He concluded that the only valid argument for it is based on national security (Jantscher 1975).

It is true that the evidence for subsidies is less than encouraging. In 1936, more than 35% of all U.S. foreign commerce was carried in American ships. In 1980, forty-four years after passage of the 1936 act, and after an expenditure of some $8 billion in subsidies, American ships are carrying less than 5% of total U.S. ocean-borne freight trade, though U.S. foreign commerce has increased fivefold since 1950 (Whitehurst 1980).

No examination of shipping subsidies is complete without consideration of the impact of earned freight rates on a nation's balance of payments and supply of hard foreign currencies. Norway, a nation with few natural resources (prior to the discovery of North Sea oil and gas), supported and protected its merchant marine in a variety of ways. As a result, it developed a large and healthy merchant fleet engaged both in its own trade and largely in third-country trading. The "hidden exports), represented by earned freight rates, more than offset what would otherwise have been a balance of payments deficit (Williams 1978). It has been suggested that a principle reason for Soviet maritime development has been to earn hard currencies (Ackley 1976).

Effective United States Control

Since a major reason this country supports a merchant marine is its potential importance as a military auxiliary, why has there not been concern about the dependability of ships serving under "flags of convenience"? The primary reason is that such ships operate under an Effective United States Control (EUSC) Program. The program identifies vessels owend by American interests, but registered under the flags of Panama, Liberia or Honduras which are under contract to the United States in the event of a national emergency. At the end of 1976, there was a total of 677 foreign flag ships owned by American companies (Kilgour 1977).

The EUSC program assumes that the foreign registered ships of American companies are under their control, and that those companies are prepared to exercise that control in the interests of the United States. However, on at least several occasions during recent years these assumptions have been suspect.

At one point during the 1973 Arab-Israel war, in response to Soviet threats, President Nixon declared a military alert. King Faisal, of Saudia Arabia, responded with a demand that the American owned company, ARAMCO, that had numerous ships flying foreign flags, not supply United States military forces in Europe with Saudi oil. The American companies complied with the King's wishes, though supplying American military needs from other sources. At the same time, the liberian president issued an executive order which prohibited all vessels of Liberian register from delivering war supplies to the Middle East. The indicents raise important questions about the dependability of the Effective United States Control Program (Kilgour 1977). The program has its defenders, however; see, for example Church (1980). In any event, for the carriage of military equipment and supplies, the question is really moot, since almost all of the EUSC ships are large bulk carriers or tankers (Chase 1976).

The necessity of an adequate merchant marine for purposes of defense becomes clear when one reflects that the United States, its NATO allies, and Japan are all maritime countries, utterly dependent on oceanborne trade, as well as requiring ships for purely military purposes. Chase (1976) noted that, during the Vietnam war, more than 95 percent of all war material was shipped by water. During the seven day Yom Kippur War of 1973, more than 75 percent of U.S.-supplied war material went by sea. Chase also identifies five distinct roles or missions which must be played by the U.S. merchant marine during wartime. Military sealift; carriage of strategic material; direct support of military operations; auxiliary combatants (conversion of merchant ships to limited-role warships); and support of foreign policy. No one professes that the present U.S. merchant marine is adequate in size or composition for the performance of these missions. Nor has anyone suggested a solution to this problem which is either more effective or more economical (in terms of public outlays) than subsidization.

The Conference System

Most U.S. carriers belong to shipping conferences that operate under supervised antitrust immunity to set rates and sailing schedules and to pool cargoes. Such conferences are not creations of the 1916 act, but are an outgrowth of the fierce rate competition resulting from expansion in available steamship tonnage during the half-century 1850-1900 (Marx 1953). The first of these cartels was formed in August of 1875 by British lines engaged in the Great Britain--Calcutta trade (Ferguson et al 1961).

In 1976, the Justice Department began to examine the conference system. The Antitrust Division began to question whether the conference system is necessary to prevent abuse of monopoly power or whether competition

governed by antitrust laws could give the same protection. Under the study was the question of whether conferences are responsible for stable rates and services, or for higher rates and over-capacity. Antitrust specialists are concerned that increasing antitrust regulation might prejudice the position of U.S. flag lines in relation to their foreign competitors because of difficulties of enforcing antitrust laws against overseas firms (Farrell 1977).

In 1978, Richard J. Daschback, Chairman of the Federal Maritime Commission, indicated there is an urgent need for revisions in U.S. shipping laws to deal with the changing dynamics of world trade (Daschbach 1978). The conference system has provided a dual rate contract system which offers shippers up to a 15 percent discount from listed rates when they agree to ship exclusively via conference carriers on a specific trade route. Additionally, on every trade route there are non-conference carriers that offer lower rates in order to attract cargo. Further, several years ago carriers of Eastern Bloc nations, which are government controlled vessels, entered foreign trade and began to undercut both conference lines and independents. Some U.S. shippers began to give much of their business to these third-flag carriers.

The recent penetration of state-controlled carriers, particularly Soviet, is threatening to U.S. ocean commerce. Their potential growth is awesome with such advantages as heavy government subsidization, low operating costs, and the ability to set rates without market restraints. This trend, coupled with political rather than commercial motivation, is an example of how political considerations have gained importance in the world marketplace (Daschbach, 1978).

To fill their empty cargo space, a number of conference carriers offer illegal rebates to shippers. While the Federal Maritime Commission has regulatory power over foreign lines calling at U.S. ports, due to blocking statutes of foreign governments, it has been able to enforce violations of conference agreements only against U.S. carriers. Thus, the conference carriers that suffer under the restraint of U.S. shipping laws have been American, contributing further to a weakened U.S. Merchant Marine.

U.S. Maritime Confusion Concerns Trade Partners

The rest of the World is ready to launch a new maritime policy advocated by the United Nations Conference on Trade and Development. The terms advocated include a cargo sharing system based on a forty percent share of shipping for the host country, forty percent for the trading partner and twenty percent for third-flag carriers.

The major European shipping companies are anxious to see the United States achieve a positive maritime policy. One executive of a Norwegian steamship company commented on the unfortunate rivalry between the U.S. Department of Justice and the Federal Maritime Commission. He strongly approved of the Administration's authorization of U.S. shipper councils, but warned that they would be unable to accomplish their tasks without freedom from burdensome regulatory procedures (Handling and Shipping Management 1980).

Omnibus Maritime Regulatory Reform, Revitalization and Reorganization Act

In July, 1979, the Carter Administration's policy statement was issued. It proposed specific amendments to the Shipping Act of 1916 which would reestablish the primacy of the Federal Maritime Commission in regulating ocean shipping; redefine the limits of the antitrust immunity available to the conferences under Section 15 of the Act; and authorize antitrust exemption for Shippers Councils.

Representative John Murphy (New York) introduced an "omnibus" maritime bill to legalize closed carrier ratemaking conferences and permit shippers conferences, and to establish a goal of 40 percent of U.S. foreign trade in American flag vessels. On the other side of the Capitol, Senator Daniel K. Inouye (Hawaii) introduced eight maritime bills.

In January, 1980, the Transportation Association of America urged maritime regulatory reform. The TAA told the Merchant Marine subcommittee of the House of Representatives that the primary causes of the decline of the U.S. flag liner fleet are the many American laws, regulations, and policies that discriminate against U.S. flag carriers. While Congress has intended to provide exemptions to the antitrust laws by enactment of Section 15 of the Shipping Act of 1916, the protection has been eroded by attacks by the Anti-Trust Division of the Department of Justice (Distribution 1980).

On February 28, 1980, James T. Crowley, Senior Vice President, Moore-McCormick Lines, said that the goal of regulatory reform should be the reduction of governmental barriers. He stated that the reform must reaffirm the supremacy of the Shipping Act of 1916 over antitrust laws. Mr. Crowley added that until the Administration and the Congress, together with the Federal bureaucracies, are governed by a national policy which recognizes that the privately owned U.S. Flag merchant marine has a purpose, value, and status within the whole of the nation's perceptions of strength in peacetime trades and wartime needs, there is little hope that the American shipping industry can survive as a stable industry (Crowley 1980).

The latest verison of the Omnibus Maritime Reform Bill has provisions that are under attack by the U.S. shipbuilding unions and the National Maritime Council (NMC). The shipbuilders and unions are complaining about provisions in the bill that would allow ships built in foreign countries, for U.S. lines, to receive a U.S. subsidy. On the other hand, the council objects to provisions that allow for terminating or reducing construction subsidies, and to new definitions of wage costs that would change the amount a company would get in operating subsidies (Distribution 1980).

Is Unregulated Competition the Answer?

Ironically, the Antitrust Division now proposes that the shipping industry be deregulated and the Conference System abolished. It does not appear to recognize that foreign government controlled lines have the ability to reduce prices below cost and to maintain such prices until competition is forced out of the trade. Once in control of foreign trade, it seems likely that third-flag carriers would increase their prices dramatically, as OPEC nations have increased the price of oil.

In 1978, Richard J. Daschbach noted that the Congress is aware of the unique economic structure of overseas shipping. It realized that a time when America faces the growing threat of State-controlled fleets in its foreign commerce and a widening trade deficit in its foreign markets, application of U.S. antitrust laws to the maritime industry would be disastrous. Chairman Daschbach added that fragmentation of national policy has been evident in America's dealings with foreign governments, as well as with technological developments in the nation's ocean commerce (Daschbach 1978). Thomas F. Moakley, Vice Chairman, U.S. Maritime Commission,

states that the United States must develop policies that ensure that American flag carriers are not deprived of their fair share of markets (Barnberger 1978).

The philosophy of free competition has long been considered the optimal model for the United States economy. Yet, conditions that currently prevail in U.S. ocean commerce do not appear favorable to a climate of unregulated competition. Foreign carriers not only predominate on the major trade routes of American commerce, but often appear to be motivated by political rather than economic factors. International trade requires an interface with a wide variety of economic, cultural, and political systems which to not subscribe to American notions of value of free competition.

The current trend by the maritime policy makers in other nations seems to indicate a strengthening of conference system. While there are people in government who advocate the deregulation of ocean transportation, the United States does not appear to be in a position to disregard these realities.

Conclusion

A review of the maritime policy of the United States reveals that a firm policy has failed to evolve. Basically, there is agreement that the nation, in its efforts to preserve peace, must guard against its vulnerability in time of war. The U.S. merchant marine provides logistical support to America's armed forces during military conflicts.

However, there are numerous differing views. Shipbuilders and ship building unions want vessels to be constructed in U.S. shipyards. Unions want the vessels to be manned by American seamen. The managements of ocean shipping firms request subsidies, to meet lower cost foreign competition. The federal government is under pressure to increase subsidies, while striving to maintain control of the national budget.

American shippers and importers of merchandise and commodities, to be competitive, attempt to obtain the lowest possible shipping rates. They utilize the services of American and foreign ships that are members of shipping conferences, and those of independent ocean carriers. Increasingly, they are shipping by third-flag carriers controlled by Eastern Bloc nations, disregarding possible economic consequences.

It is recommended that Congress develop a maritime policy based on recognition of existing conditions:

(1) The U.S. Maritime fleet is a part of the national defense fleet of the nation.

(2) Flag of convenience vessels have proven to be of questionable support in the event of a national emergency.

(3) It is a general practice in international shipping for foreign carriers to fix rates, set sailing schedules and pool cargoes.

(4) Other countries, including the Soviet Bloc, are subsidizing the operations of their fleets.

(5) Many U.S. shippers, in order to meet competition, will book shipments on vessels with the lowest freight rates.

American policy makers might take the following action:

(1) Subsidize the construction of vessels built in American shipyards; subsidize the pay of American seamen.

(2) Prohibit the registration by American companies of their vessels under flags of convenience.

(3) Permit American shipping companies to participate, in nonregulated fashion, in international shipping conferences.

(4) Require American manufacturing and distribution firms to ship and receive at least forty percent of their international tonnage by vessels of American registry.

The United States maritime policy requires cohesive development and unification. American agricultural, commodity, and manufacturing firms must be given the opportunity to use an economical, competitive, national maritime fleet. And, the maritime industry must be enabled to support the international transportation and defense needs of the nation.

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