unloading, causing a longer layoff time for a vessel, its cargo revenue earning capacity is naturally curtailed. The surcharge should be expressed in actual costs and should not permit the carrier, as it often does, to earn additional profit. The carriers' revenue is obviously compensatory to them when they set their base rate which should be reasonable and competitive and such rates are on file with the FMC. Surcharges should only cover the costs and/or pro rata losses due to the circumstances causing a surcharge. If we take as an example a situation whereby a surcharge is set due to the slow unloading of cargo, we can readily see that a 25% surcharge based on the base rate applied for a particular cargo, works in detriment to the higher rated cargo. In the chemical industry it is not uncommon that standardized drums are used. The stowage factor of such drums is the same, and so the labor costs involved. When we talk about such cargo, we base our comparison on the fact that no inflammable or dangerous cargo is involved, which may require special handling. Based on existing rate structures the rates for various chemicals packed in identical drums (if rated by measurement ton the measurements are identical), vary considerably. To assess a uniform 25% surcharge or whatever percentage level has been set, is unrealistic and unreasonable and in our opinion discriminatory. Fact Finding Investigation #6, in which OFC participated, devoted a special chapter to surcharges, starting with page 69 to and including page 71. OFC has at times objected to certain surcharge levels and notified the FMC, since we feel that this is definitely detrimental to the interest of U.S. commerce.

With the increase of containerization and the further developments and trend of through rates, it will become more and more important to educate and protect small and medium sized firms needing government help to keep rates down. They also need legislation to protect them from loopholes within existing laws.

The Shipping Act of 1916 was amended in 1961 to include Section 18(b)(3) which was very important to the American shipping public. It has, however, also worked to the detriment of the public as pointed out before.

To illustrate how important the oceanfreight and its correct application is, we should look at Docket 65/5. The FMC after our organization officially complained, has instituted proceedings to abolish an artificially-set time limit for filing of overcharge claims against the carriers which presently has to be done within six months. The Shipping Act of 1916 clearly spelled out two years time for reparation, but could not be enforced without going into a lengthy, costly Section 22 Proceeding. This the carriers were and still are able to do by having inserted into their tariffs, filed with the FMC, a rule which is more or less uniformly followed by conferences and carriers.

A typical example reads:

Overcharges: Claims for adjustment of freight charges, if based on alleged errors in weight and/or measurement, will not be considered unless presented to the carrier in writing before the shipment involved leaves the custody of the carrier. Any expenses incurred by the carrier in connection with its investigation of the claim shall be borne by the party responsible for the error, or, if no error be found by the claimant. *All other claims for adjustment of freight charges must be presented to the carrier in writing within six (6) months after date of shipment.* (Italic ours.)

The above self-serving clause in violation of Section 18(b)(3) may have caused millions of dollars in overcharges denied to U.S. shippers, mostly by foreign flag carriers simply as a result of including this rule in their tariffs.

RECOMMENDATIONS

A. To further strengthen the FMC in its control over rates and illegal application of rules rather than its present function of accepting filed tariffs. A general increase should have to be supported by sufficient evidence why the percentage of increase should be authorized. Increases should work in such a way that all shippers should be treated fairly.

B. To further strengthen the control by the FMC over the surcharges in its percentage level. The treatment of surcharges by some conferences assessing a dollar cost per freight ton is much more realistic than a percentage level, for it should represent the *additional cost only* without added profit potential.

C. The time has come where the small and medium sized companies must be stimulated to become export minded. It is the reluctancy of the unknown which prevents them from entering into it. Many of these firms do not have a traffic