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APPLICATION

*for*

REMISSION OR MITIGATION OF FORFEITURES OR  
PENALTIES WITH RESPECT TO  
T2 TANKERS

*Meacham*

*Antelope Hills*

*Kettleman Hills*

*St. Christopher*

*Destiny*

AND

*New London*

*and*

SUPPORTING MEMORANDUM

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## APPLICATION

for

REMISSION OR MITIGATION OF FORFEITURES OR  
PENALTIES WITH RESPECT TO THE T2 TANKERS  
*Meacham, Antelope Hills, Kettleman Hills, St. Christopher,  
Destiny and New London.*

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DEPARTMENT OF JUSTICE,  
WASHINGTON, D. C.

Sirs:

This application is filed pursuant to the provisions of Section 7 of Title 46 of the United States Code for remission or mitigation of forfeitures or penalties provided for in laws relating to vessels with respect to the T2 tankers *Meacham, Antelope Hills, Kettleman Hills, St. Christopher, Destiny and New London* on behalf of Meacham Corporation, United Tanker Corporation ("United"), National Tanker Corporation ("National"), Trans-World Maritime Corporation ("Trans-World"), Oceanic Maritime Corporation ("Oceanic") and Arctic Tankers, Inc. ("Arctic"), of which corporations I am President, and American Viking Corporation ("Viking"), of which I am Chairman of the Board. The occasion for the filing of this application is the libel filed by the United States against the *Meacham* in the United States District Court for the Eastern District of Virginia seeking the forfeiture of the vessel *Meacham* for alleged violations, on grounds of lack of citizenship, of the

provisions of Section 9 of the Shipping Act of 1916, as amended, and of certain provisions of the registry laws. No forfeitures or penalties have been asserted against the other vessels referred to above. However, because the factual situation of the *Meacham* is in some respects similar to that of the other vessels referred to above, this application seeks remission or mitigation of forfeitures or penalties which might be asserted against the other vessels, as well as those which have been asserted against the *Meacham*.

The facts set forth herein are based in part upon my own personal knowledge and in part on records of the corporations referred to herein, which I have reviewed, and information given me by other officers and employees of the corporations referred to herein. All of the facts set forth herein are true to the best of my knowledge, information and belief.

The grounds upon which this application is made are that the corporations referred to above have complied with the applicable provisions of the shipping laws in accordance with the construction placed upon such laws by representatives of the United States Maritime Commission (succeeded on May 24, 1950 by the Department of Commerce, Maritime Administrator, and herein called the "Commission") and believed by the applicants herein to be correct, and that if there have been any acts which would constitute violations of such laws, such acts have been taken in good faith without intent to violate any laws. I believe that the following review of the present status and past activities of the corporations and vessels involved will demonstrate that there have been no violations of law, or, if there have been any unknowing violations, that it is appropriate to remit any forfeitures or penalties incurred.

1.

**Brief Description of the Corporations and Vessels  
Referred to in this Application.**

United and Meacham Corporation are subsidiaries of The China International Foundation, Inc. (the "Foundation"), a non-profit membership corporation organized for charitable purposes under the laws of Delaware. All of the members and trustees of the Foundation are United States citizens. United owns all of the stock of National, Trans-World, Oceanic, Arctic and Viking. A private Chinese corporation, China Trading & Industrial Development Corporation ("China Trading") originally provided substantially all the equity capital for United, but was never in a position of control, either voting or otherwise. Prior to June 18, 1948, 75%, and thereafter 100%, of the voting stock of United was owned by U. S. citizens. Chinese Petroleum Corporation ("Chinese Petroleum"), a subsidiary of the National Resources Commission of China, an agency of the Nationalist Government of China, is a substantial unsecured creditor of Meacham Corporation. The asserted forfeiture of the *Meacham* is apparently based on the past or present alleged financial interest in the vessel of China Trading and Chinese Petroleum.

**(a) Meacham Corporation.**

Meacham Corporation was organized under the laws of Delaware on October 17, 1949. It owns (i) 11,750 shares of preferred stock, \$100 par value, of United Tanker Corporation and (ii) a claim to \$1,950,000 deposited in the Registry of the United States District Court for the Eastern District of Virginia in connection with the release of the

vessel *Meacham*. Meacham Corporation has outstanding \$1,595,000 face amount of unsecured notes held by Chinese Petroleum, an agency of the Nationalist Government of China. All of the capital stock of Meacham Corporation is owned by the Foundation. The directors and officers of Meacham Corporation are as follows:

Harold C. Lenfest.....	Director and President
Walter H. Sicling.....	Director, Vice-President and Secretary
Arthur M. Tode.....	Director
C. D. Shiah.....	Treasurer
C. R. Hartzell.....	Assistant Secretary and Assistant Treasurer

All of the above persons are citizens of the United States except C. D. Shiah, who is a Chinese citizen and who is the United States representative of Chinese Petroleum.

**(b) United Tanker Corporation.**

United was organized under the laws of Delaware on December 10, 1947. It owns all of the outstanding capital stock of National, Trans-World, Viking and Arctic. It also was the sole stockholder of Oceanic, recently dissolved. United has outstanding 85,000 shares of common stock, 10¢ par value, all owned by the Foundation, and 15,300 shares of non-voting preferred stock, \$100 par value, of which 11,750 shares are owned by Meacham Corporation, referred to above, and 3,550 shares are owned by United Securities Corporation, a Liberian corporation. I am informed that the stock of the latter corporation, formerly held by D. N. Tjian, is now held by China Trading & Industrial Development Corporation (Hongkong) Ltd. (a Hongkong corporation organized to take over the foreign assets and liabilities of China Trading after its officers left China

because of the Communist occupation). The directors and officers of United are as follows:

Arthur M. Tode.....	Chairman of the Board of Directors
Harold C. Lenfest.....	Director, President and Treasurer
Walter H. Sieling.....	Director, Vice-President and Secretary
C. R. Hartzell.....	Assistant Secretary and Assistant Treasurer

All of the above persons are citizens of the United States.

**(c) National Tanker Corporation.**

National was organized under the laws of Delaware on January 23, 1948. It is now inactive, having been liquidated in December, 1949. It purchased the *Kettleman Hills* from the Commission on April 29, 1948, and the *Meacham* from the Commission on May 14, 1948. It transferred the *Kettleman Hills* to Oceanic, a wholly owned subsidiary, on June 15, 1948, and transferred the *Meacham* to Meacham Corporation on November 7, 1949. All of the stock of National is owned by United. The directors and officers of National are as follows:

Harold C. Lenfest.....	Director, President and Treasurer
Walter H. Sieling.....	Director, Vice-President and Secretary
Arthur M. Tode.....	Director
C. R. Hartzell.....	Assistant Secretary and Assistant Treasurer

All of the above persons are citizens of the United States.

**(d) Trans-World Maritime Corporation.**

Trans-World was organized under the laws of Delaware on July 31, 1948. On January 12, 1949, it purchased the *Antelope Hills* from the Commission, which holds a mortgage on the vessel now outstanding in the amount of \$991,900. All of the outstanding capital stock of Trans-World is held by United, and the directors and officers of Trans-World are the same as those of United.

**(e) Arctic Tankers, Inc.**

Arctic was organized under the laws of New York on February 6, 1948. On July 9, 1948, Arctic purchased the *New London* from the Commission, which holds a mortgage on the vessel now outstanding in the amount of \$904,090. All of the capital stock of Arctic is owned by United, and the directors and officers of Arctic are the same as those of United.

**(f) American Viking Corporation.**

Viking was organized under the laws of Delaware on December 1, 1944. Viking purchased the *St. Christopher* on March 16, 1948, and the *Destiny* on October 21, 1948, from the Commission, which holds mortgages on the two vessels now outstanding in the aggregate amount of \$1,986,225. All of the capital stock of Viking is owned by United. The directors and officers of Viking are as follows:

Harold C. Lenfest.....	Chairman of the Board and Treasurer
Olga Konow.....	Director and President
Walter H. Sieling.....	Director, Vice-President and Secretary
Arthur M. Tode.....	Director
C. R. Hartzell.....	Assistant Secretary and Assistant Treasurer

All of the above persons are citizens of the United States.



**(g) Oceanic Maritime Corporation.**

Oceanic was organized under the laws of Delaware on June 11, 1948. It acquired the *Kettleman Hills* from its parent company, National, on July 15, 1948, and sold the *Kettleman Hills* to Colonial Steamship Corporation, a non-affiliated corporation, on February 21, 1951. All of the stock of Oceanic was held by United at the time of the dissolution of Oceanic on December 17, 1951, and the directors and officers of Oceanic at the time of such dissolution were the same as those of United.

**(h) The China International Foundation, Inc.**

The Foundation was organized as a charitable membership corporation under the laws of Delaware on June 4, 1948. The Foundation has no capital stock, and under its certificate of incorporation no part of its net income shall enure to the benefit of any member, officer, trustee or employee. The trustees and officers of the Foundation are as follows:

Newbold Morris.....	President and Trustee
Magnus Gregersen.....	Trustee
Edward H. Hume.....	Trustee
Arthur M. Tode.....	Trustee
Houston H. Wasson....	Secretary and Treasurer

The members of the Foundation consist of Newbold Morris, Magnus Gregersen, Edward H. Hume, Harold C. Lenfest and Houston H. Wasson. All members, trustees and officers are citizens of the United States.

The purposes for which the Foundation was organized are to further educational, medical and scientific enterprises, both in the United States and China, by grants in aid to educational institutions for purposes of general education, by creating scholarships for the education of Chinese stu-

dents, by establishing hospitals and public health centers, by encouraging medical and scientific research and by disseminating scientific and technical knowledge. Attached hereto as Exhibit A is an affidavit executed by the Secretary of the Foundation describing its organization and activities.

**(i) Personnel of United.**

A brief biographical sketch of the officers and directors of United is as follows:

*Harold C. Lenfest* graduated from Webb Institute of Naval Architecture and Engineering in 1918. Mr. Lenfest subsequently became associated with Bath Iron Works, and later held positions as follows with the following firms:

Naval Architect for Fabricated Ship Corporation;  
Southeastern Manager for De La Vergne Machine Company, 1925-1931;

Eastern District Manager, Diesel Engine Division, American Locomotive Co., 1931-1945;

While associated with American Locomotive Co., Mr. Lenfest also acted as Consultant for National Defense Research Committee on Mechanical Engineering and Naval Architecture, 1942-1944.

In 1945 Mr. Lenfest became Vice-President in charge of Enterprise Engine Company's New York City offices, and in 1946 Mr. Lenfest left that company to devote his full time to Continental Engineering Corporation and Continental Equipment Corporation of which he was President. Mr. Lenfest has had actual experience at sea and holds the United States Department of Commerce license as chief engineer of either steam or Diesel ships of unlimited tonnage. Continental Engineering Corporation and Continental Equipment Corporation acted as licensees and agents for J. Stone & Company, Limited, of London, England, and for a number of other firms in the sale of marine and railway equipment. Mr. Lenfest is a member of the American Society of Mechanical Engineers, the

Society of Naval Architects and Marine Engineers, the Institute of Marine Engineers (London) and the Engineers Club of New York. Mr. Lenfest formerly devoted over one-half of his time, and since November 1, 1951 has been devoting his full time, to the affairs of United.

*Walter H. Sieling* has been active in the shipping business since 1905 when he was first employed by the Metropolitan Steamship Company. He remained with this company and its successor, Eastern Steamship Lines, Inc., until 1918 when he was called to Washington to become Freight Claim Agent of the Shipping Board. In 1919 Mr. Sieling returned to New York and was employed for a short period by the Cosmopolitan Line until he left to become Manager of Walker & Daly, operators of 28 tankers for the Shipping Board. When these tankers were laid up in 1922, Mr. Sieling started his own business as a tanker broker, which he continued during the period 1924 to 1935 as a member of the firm of Sieling & Warden, and since 1937 as a member of the firm of Sieling & Jarvis. In 1942, Mr. Sieling was called to the War Shipping Administration in Washington for a brief period to assist in the charter arrangement of all requisitioned American tankers. The firm of Sieling & Jarvis became General Agents and Time Charter Agents for the War Shipping Administration in 1943 operating 20 American tankers under G. A. A. and all French and some Panamanian tankers under T. C. A. After the war Mr. Sieling engaged in the normal chartering and management of vessels through Sieling & Jarvis Corporation, from which he retired on February 1, 1951 to devote his full time to the affairs of United.

*Arthur M. Tode* is a consulting engineer and is Honorary President of The Propeller Club of the United States. He is the founder of the American Merchant Marine Conference held each year under the auspices of the Propeller Club. Mr. Tode graduated from the New York State Maritime Academy in 1912 and has had practical training at sea, holding an

unlimited license as Chief Engineer for both steam and Diesel propelled vessels, in both the maritime service and with the United States Navy. He is Lieutenant Commander, U. S. N. R., Ret. From 1924 to 1931 he served as Technical Superintendent of the Marine Department of the Texas Company, and in this capacity had charge of the oil tanker operations of that company. Mr. Tode is a graduate engineer of the United States Navy Turbine Engineering School, the General Electric Marine Engineering School, the Sperry Gyro Compass School, and of the United States Navy Fuel Oil School. He has had special training in the plants and laboratories of the Babcock & Wilcox Co., the Texas Co., McIntosh and Seymour, Combustion Utilities Corporation, and with the Society of Naval Architects and Marine Engineers, the Maritime Association of the Port of New York, the United States Naval Institute, the American Society of Naval Engineers, the American Society of Military Engineers, and the American Society of Mechanical Engineers. He is also a member of the Executive Committee of the American Merchant Marine Library Association and the Executive Committee of the United States Coast Guard Merchant Marine Council. He is a graduate of the Navy Orientation Course for Naval Reserve Officers, Columbia University, and a graduate of the Civilian Orientation Course of the Department of Defense. In 1949 he received the Distinguished Public Service Award of the United States Navy in recognition of his efforts on behalf of merchant shipping and the United States Navy. Mr. Tode attends weekly staff meetings and monthly board meetings of United and is available at all times for consultation.

*C. R. Hartzell* was associated with Price Waterhouse & Company as an accountant prior to becoming associated with United. He is a Certified Public Accountant (N. Y.) and a member of the American Institute of Accountants.

The following young Chinese engineers who were associated with China Trading prior to the organization of

United in 1947, have since that time devoted all or a portion of their time to the affairs of United.

C. Y. Chen—Graduated from Chiao-Tung University, Shanghai, China with degree of B. S. in mechanical engineering in 1941. Received Ph. D. in mechanical engineering from Purdue University in 1943. Was associated with Babcock & Wilcox as a research engineer in London prior to becoming associated with China Trading in 1946.

C. C. Wei—Graduated from Chiao-Tung University in 1937 with degree of B. S. in electrical engineering. Was associated from 1937 to 1947 as an engineer with the National Resources Commission of China, a branch of the Nationalist Government (coming to the United States in 1942 as a government official) prior to becoming associated with China Trading. Mr. Wei resigned as an officer of China Trading in 1949.

Two other young Chinese engineers, who have been active in the affairs of United since its organization, are:

P. T. Chin—Graduated from Chiao-Tung University in 1939 with degree of B. S. in electrical engineering. Received M. S. in engineering from Purdue University in 1940. Was associated as an engineer with General Electric Company, The International Electronics Laboratory and York Research Corporation, and was treasurer of China Motor Corporation prior to his employment by United.

Darfoon Du—Graduated from Chiao-Tung University in 1941 with degree of B. S. in mechanical engineering. Received M. S. in mechanical engineering from Purdue University in 1942. Was associated with Foster Wheeler Corporation and with China Motor Corporation as an engineer prior to his employment by United.

**(j) Operators of Vessels.**

The four tankers now owned by subsidiaries of United are all operated by Sieling & Jarvis Corporation, 50

Broadway, New York, N. Y., with which Mr. Sieling was formerly associated. The officers and crews of all tankers are United States citizens. Two of the tankers are under consecutive voyage charters to Gulf Oil Corporation and the other two tankers are being chartered out on a voyage to voyage basis, the charterer for the next voyages being Standard Oil Company of New Jersey, or one of its subsidiaries.

**2.**

**Organization and Capital Structure of United Tanker Corporation, and Subsequent Changes Therein.**

**(a) Organization of United.**

In the latter part of November 1947 Houston H. Wasson, a member of the firm of Post, Morris & Lovejoy, who had acted as my attorneys since June 1946, told me that he had been consulted by representatives of China Trading who desired to charter tankers and were willing to invest the necessary funds for the purchase of one or more tankers in a domestic corporation to be managed and controlled by experienced United States shipping people. Mr. Wasson asked me if I would be interested, or, if not, if I could recommend people who would be interested, in organizing and operating such a corporation. I was interested in the idea and discussed it with Mr. Walter H. Sieling and Mr. Arthur M. Tode, whom I had known for many years and who had had a long background in shipping activities. I introduced them to Mr. Wasson, and was introduced by him to the representatives of China Trading.

At this time there was a world shortage of tanker transportation. The representatives of China Trading told me that Chinese Petroleum had contracts for the purchase of about 500,000 tons of oil at the Persian Gulf, that it had available only one 3,000 ton tanker to transport this oil to China, and had been unable to charter in any tankers.

I was informed that China Trading wished to finance the purchase of tankers in order to make them available to Chinese Petroleum. Attached hereto as Exhibit B is a copy of a letter dated December 9, 1947 from the National Resources Commission of China to China Trading with respect to China's oil requirements.

United was organized on December 10, 1947, and Mr. Sieling, Mr. Tode and I were elected by the incorporators to serve as the first Board of Directors. The first meeting of the Board was held on the afternoon of December 10th, at which I was elected President, Mr. Sieling, Vice-President, and Mr. C. C. Wei, Secretary and Treasurer. The Board authorized the sale of five shares of Class B Stock each to Mr. Sieling, Mr. Tode and myself at 20 cents per share, and ten shares of Class A Stock to China Trading at \$200 per share. At a subsequent meeting on January 19, 1948, the issue and sale of additional shares of stock was authorized and Mr. Sieling, Mr. Tode and I each purchased five additional shares of Class B Stock, making a total of ten shares each. I understood that China Trading would provide, or arrange for, the necessary financing for United and that Mr. Sieling, Mr. Tode and I would contribute our experience and knowledge of shipping. At the first meeting of the Board of Directors the filing of an application to the Commission for the purchase of two T2 type tankers or, in the alternative, three Liberty-type tankers, was authorized.

**(b) Original Capitalization of United.**

The certificate of incorporation of United authorized two classes of stock, a Class A Stock and a Class B Stock. The Class A Stock was in substance entitled to receive 90% of the earnings of United and, on liquidation, after receiving the amount initially paid in on original issue, the Class A Stock was entitled to 90% of the remaining assets of

United. The Class B Stock was entitled to 10% of the earnings and, on liquidation, after the preferential payment to the Class A Stock, was entitled to receive 10% of the remaining assets of United. Each holder of Class A Stock and each holder of Class B Stock was entitled to one vote per share, but no shares of Class A Stock could be issued unless, after giving effect to such issue, there would be outstanding a greater number of shares of Class B Stock than the number of outstanding shares of Class A Stock. Shares of Class B Stock under the provisions of the certificate of incorporation could only be held by citizens of the United States. These provisions were designed to insure the control of United by United States citizens. The certificate of incorporation of United was filed as Exhibit 1 to its application to the Commission for the purchase of tankers.

**(c) Reclassification of stock of United on Organization of the Foundation.**

On June 18, 1948, the certificate of incorporation of United was amended to increase the total authorized number of shares of Class B Stock to 75,000 shares and to authorize a new class of 25,000 shares of preferred stock, \$100 par value. At a directors' meeting of United held on June 17, 1948, authorizing this amendment, authority was given to sell the shares of preferred stock authorized to China Trading and to sell the additional shares of Class B Stock authorized to the newly created Foundation. The shares so authorized were subsequently issued, the Class B Stock being sold for 10¢ per share and the preferred stock being issued for \$100 per share to China Trading in cancellation of cash advances previously made by it to United, and invested by United in tanker owning companies.

Some time prior to the June 17, 1948 meeting of the Board of Directors of United, I had discussed with our attorneys and with C. Y. Chen and C. C. Wei plans for the



establishment of the Foundation. At this time I was told that China Trading had devoted a substantial portion of its profits in China to the establishment of scholarships and the undertaking of other projects designed to contribute to the welfare of the Chinese people. I was informed that China Trading wished any profits which it derived from its investment in the Class A Stock of United to be applied to philanthropic purposes, with particular reference to China, and that it wished to donate its 10 shares of Class A Stock to form the initial asset of a new foundation to be controlled and administered by persons in the United States interested in philanthropic work in China. I was asked if I and the other directors would be interested in selling our shares of Class B Stock of United to such a foundation.

The Foundation was organized on June 4, 1948 and I was elected a member at the initial meeting of the incorporators. I agreed to sell my shares of Class B Stock to the Foundation for \$10,000, the funds for such purchase by the Foundation to be provided by China Trading, and this sale was later effected. At this time we also discussed the purchase by the Foundation, with funds provided by China Trading, of the shares of Class B Stock held by Mr. Tode and Mr. Sieling. This matter was deferred from time to time, and subsequently Mr. Sieling and Mr. Tode, who were then receiving compensation from United, decided to contribute their shares to the Foundation as a donation.

The effect of the foregoing transactions was to transfer to the Foundation all of the Class A and Class B Stock (later reclassified into Common Stock) of United.

**(d) Subordination of Preferred Dividends to Common Dividends.**

On August 18, 1949 the certificate of incorporation of United was amended to reclassify the 10 shares of Class A Stock and 75,000 shares of Class B Stock outstanding into

an aggregate of 85,000 shares of common stock. The certificate of amendment also eliminated one year's accumulated and unpaid dividends on the preferred stock and provided for the creation of a special prior dividend at the rate of \$2 per share for the common stock, payable in priority to the dividends on the preferred stock. This had the result, at the time, of subordinating the preferred dividend payment of \$150,000 per year to which China Trading was entitled, to the payment of approximately \$170,000 per year to the Foundation as the holder of substantially all of the common stock. These concessions on the part of China Trading were in part occasioned by the difficulties arising from the cancellation of the charters to Chinese Petroleum, which will be referred to below.

**(e) Elimination of Requirement for Certain Consents of Preferred Stockholders.**

On November 4, 1949 the certificate of incorporation of United was amended to eliminate the requirement for the consent of the preferred stockholders for the mortgaging of the property of United or its subsidiaries, the sale of all or substantially all of its assets or the issuance of long-term debt. While the preferred stock of United was a non-voting preferred stock, these consent requirements had been included as a part of the normal protective provisions to which I believed preferred stockholders were entitled. Our Washington counsel, Messrs. Radner, Zito & Donoghue, informed us that the General Counsel for the Commission, in reviewing the status of United and its subsidiaries, had suggested the elimination of these provisions to avoid any question as to compliance with the citizenship requirements of the shipping laws. Accordingly, the certificate of incorporation was amended, as requested.

**(f) Subsequent Changes in Stockholders of United.**

On November 7, 1949, 11,750 shares of preferred stock of United were transferred by China Trading to Meacham Corporation and 3,450 shares of preferred stock of United were surrendered by China Trading to United for retirement. These changes were made at the time of the transfer of the *Meacham* to Meacham Corporation, referred to below.

The remaining 9,800 shares of preferred stock held by China Trading were subsequently assigned to China Trading & Industrial Development Corporation (Hong Kong), Ltd. and by it to United Securities Corporation. During 1951 an aggregate of 6,250 shares of preferred stock held by United Securities Corporation was purchased by United Tanker Corporation for retirement at an aggregate price of \$550,000.

**3.**

**Application dated December 10, 1947 by United  
Tanker Corporation to United States  
Maritime Commission.**

On December 10, 1947 I executed on behalf of United an application to the Commission for the purchase of two T2 tankers or, in the alternative, three Liberty tankers. A copy of this application is attached hereto as Exhibit C. The application pointed out that all of the Class A Stock of United was held by China Trading which would provide substantially all of the equity money, and that the remainder of any funds required would be advanced either by China Trading or by the National Resources Commission of the Chinese government or, in part, by the negotiation of commercial bank loans. It was also stated that it was the intention of United to charter any tanker obtained to the National Resources Commission or one of its controlled

corporations to carry oil from Persian Gulf ports to Shanghai and other Chinese ports. The application describes the background in the shipping field of Mr. Sieling, Mr. Tode and myself, describes the background of Mr. C. C. Wei, then Secretary and Treasurer of United, and states the intention to employ Sieling & Jarvis as managing agents of the vessels. A copy of the certificate of incorporation of United showing the relative rights of the Class A Stock and Class B Stock was included as Exhibit 1 to the application.

I am informed that China Trading filed an application to purchase tankers from the Commission under Chinese flag at the same time that United filed its application. I am also informed that the Chinese Embassy requested the Department of State to certify to the Commission the necessity of the procurement of two T2 tankers for the National Resources Commission through China Trading, and that the Department of State requested the Commission to give favorable consideration to China Trading's application.

The Commission did not allocate any tankers either to United on its application or to China Trading. I was informed that the application of United had been filed too late, after allocations had already been made or recommended on the basis of earlier applications by others. At no time did representatives of the Commission indicate that the application of United was looked upon with disfavor because of any citizenship question. On the contrary, the representatives of United were assured that, if additional tankers should become available, its application would be given the most serious consideration.

On February 3, 1948 the then Assistant General Counsel of the Commission rendered an opinion, after reviewing United's application, that United complied with the necessary requirements of a citizen of the United States within

the meaning of Section 2 of the Shipping Act of 1916. A copy of this opinion is attached hereto as Exhibit D.

When it became apparent that it was unlikely that United would obtain a direct tanker allocation from the Commission, United became interested in the possibility of chartering vessels from companies which had been successful in obtaining tanker allocations or in purchasing a stock interest in such companies.

4.

**Arrangements for Chartering of Tankers or Purchase of Stock Interest in Companies Acquiring Tankers.**

United entered into arrangements with Viking, National and Arctic to assist in the financing of six tankers purchased from the Commission during the period March 16, 1948 to January 12, 1949. The funds required to finance the purchase, repair and putting in operation of these vessels, and premiums and commissions paid in connection with the acquisition of stock of the tanker-owning companies, approximated \$11,100,000. These funds were provided approximately as follows:

(a) From the U. S. Maritime Commission..	\$4,800,000
(b) From China Trading (including monies from Chinese Petroleum).....	\$2,170,000
(c) From Chemical Bank.....	\$1,900,000
(d) From Bankers Commercial Corporation .....	\$1,350,000
(e) From American Business Credit Corporation .....	\$ 500,000
(f) From earnings of United and Viking....	\$ 380,000

Monies provided by China Trading for this purpose thus represented less than 20% of the total monies required.

**(a) Investment in American Viking Corporation.**

Viking is a Delaware corporation which was organized on December 1, 1944. In December, 1947, when representatives of United commenced negotiations with Viking, the directors of that corporation were Olga Konow, President, Eugene L. Mullancy and Eugene S. Shapiro. Representatives of United were informed that Viking had applied to the Commission for tankers in April, 1947 and had been allocated the tanker *St. Christopher* (ex *Skullbar*).

On January 12, 1948, Viking entered into an agreement with United under which United agreed to advance up to \$600,000 to Viking to assist in the financing and placing in operation of the *St. Christopher*. It was expected that the balance of the funds required would be borrowed from a commercial bank on the security of a first preferred mortgage on the vessel. Under the agreement United was to receive a second preferred mortgage on the vessel to secure its loan, with interest at three per cent. per annum, and in addition was to receive half the net earnings derived from the operation of the vessel over a ten year period.

On January 12, 1948 Viking executed a contract of sale with the Commission for the purchase of the *St. Christopher* and made the necessary deposit of \$202,650, with funds advanced by United. The balance of the funds committed by United were advanced during January and February. Negotiations then proceeded with Commercial National Bank & Trust Company for a loan of \$1,200,000 to complete the funds necessary for the purchase of the vessel. In the course of these negotiations the Bank requested evidence of the approval by the Commission of the United States citizenship of United. It was in connection with this request that counsel for United obtained the opinion from the Assistant General Counsel of the Commission dated February 3, 1948 referred to above (Exhibit D).

On March 9, 1948 Viking, United and Olga Konow entered into a new agreement reciting that Viking now  
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proposed to finance the purchase of the *St. Christopher* by a purchase money mortgage from the Commission of approximately \$1,200,000 instead of through a loan from the Commercial National Bank & Trust Company. The agreement provided that the \$600,000 already advanced by United under the agreement of January 12, 1948 would be applied to the purchase of 6,000 shares of preferred stock of Viking. Mrs. Konow agreed to subscribe for 2,000 shares of preferred stock and pay therefor by a note for \$200,000. United agreed to subscribe for 15,190 shares of common stock at \$1 per share, and Mrs. Konow agreed to subscribe at the same price for such additional shares of common stock as would bring her total holdings to 15,810 shares.

On March 12, 1948 an addendum was executed to the purchase contract with the Commission covering the *St. Christopher*, providing for the purchase of the vessel on mortgage terms rather than on cash terms, and Viking took title to the *St. Christopher* on March 16, 1948.

While the negotiations with respect to the *St. Christopher* were proceeding, the Commission allocated to Viking another vessel, the *Destiny* (ex *Dominguez Hills*). On March 22, 1948 United advanced to Viking the \$202,650 required as a deposit on this vessel, the advance being repaid by Viking on July 7, 1948.

On April 9, 1948 Viking entered into an agreement to purchase the *Destiny* from the Commission on mortgage terms. On April 15, 1948 Julius J. Rosenberg, counsel for Viking, wrote to a member of the legal staff of the Commission enclosing a copy of the last Certificate of Amendment to the Certificate of Incorporation of Viking, and advising that 2,000 shares of preferred stock and 15,810 shares of common stock were then held by Olga Konow, and 6,000 shares of preferred stock and 15,190 shares of common stock were then held by United. Mr. Rosenberg also

referred to the opinion of the Assistant General Counsel of the Commission dated February 3, 1948, with respect to the citizenship of United. A copy of Mr. Rosenberg's letter of April 15, 1948 is attached hereto as Exhibit E.

Viking completed the purchase of the *Destiny* from the Commission on October 21, 1948. In connection with the purchase United and Wonok Corporation each bought an additional \$100,000 par value of preferred stock of Viking by delivering to Viking promissory notes in payment therefor. Wonok Corporation, which I understand was wholly owned by Mrs. Konow, had previously assumed the \$200,000 note given by her to Viking at the time of the purchase of the *St. Christopher*. In January, 1949 United paid its note to Viking and also, by paying the \$100,000 note of Wonok Corporation, acquired an additional 1,000 shares of preferred stock of Viking, bringing its total holdings to 8,000 shares.

Mrs. Konow's ownership of a majority of the common stock of Viking continued until December, 1949. At that time, after arm's length negotiations, United purchased from Mrs. Konow all of her holdings of common stock in Viking and all of the stock of Wonok Corporation for \$300,000, payable in five annual installments and secured by the assignment to Mrs. Konow of the second mortgage then held by United on the *Kettleman Hills*. Wonok Corporation was then liquidated. When the *Kettleman Hills* was sold in February, 1951, the second mortgage, and the balance due Mrs. Konow, were paid.

The acquisition by United of Mrs. Konow's interest in Viking was reported to representatives of the Commission shortly thereafter in the course of the conferences with respect to the *Antelope Hills* referred to under 5(f) below. The acquisition was of course reflected in the regular report filed by Viking with the Commission showing its stockholders as at December 31, 1949.



**(b) Investment in National Tanker Corporation.**

(1) Arrangements between United and National.

About the middle of January, 1948 United was informed by Mrs. Konow that she was acquainted with a group which had been allocated three T-2 tankers by the Commission and had not yet made the necessary arrangements to finance the purchase of the tankers. United was interested in acquiring the use of additional tankers by purchase or charter, and, at a meeting held on January 19, 1948, the Board of Directors of United authorized the officers to continue negotiations both to acquire tankers from the Commission and to effect the purchase or charter of additional tankers from private concerns. Later in the day on January 19th representatives of United were introduced by Mrs. Konow to representatives of American Overseas Tanker Corporation, the company to which Mrs. Konow had referred.

After negotiations an agreement was entered into on January 24, 1948 between United and National for the financing and chartering by United of the three vessels—*Meacham*, *Kettleman Hills* and *Antelope Hills*. National had been organized on January 23, 1948 with, I was told, substantially the same officers, directors and stockholders as American Overseas Tanker Corporation. The initial directors of National were Joseph E. Casey, Julius C. Holmes and E. Stanley Klein, who also constituted the stockholders of record of the 1,000 shares of capital stock of National. Mr. Casey was President, Mr. Klein and Mr. Holmes, Vice-Presidents, and Mr. James G. Mackey, Secretary and Treasurer of National.

On January 22, 1948 American Overseas Tanker Corporation filed an amendment to its original application to the Commission (filed August 27, 1947) referring to the allocation to it on December 7, 1947 of the *Meacham*, the

*Kettleman Hills* and the *Antelope Hills* and requesting permission to take title to these three tankers in the name of National. On January 26, 1948 the contract of sale with the Commission was executed by American Overseas Tanker Corporation for the purchase of the three vessels, providing that title should be taken by National, and the required deposit of \$607,950 was made with funds advanced by United.

By the agreement dated January 24, 1948 United agreed to lend to National the entire cost of purchase of each of the three tankers. National agreed to charter each tanker for a term of ten years under a bareboat charter to United at the rate of \$1.20 per dead weight ton per month plus such additional amount as might be necessary to enable National to complete the payment of corporate taxes and interest and expenses. (The final bareboat charter rate, computed in accordance with the agreement, was at \$1.40 per dead weight ton per month.) An additional agreement was entered into on the same day by which the stockholders of National gave United an option, exercisable between September 15, 1948 and October 15, 1948, to purchase all of the stock of National for a price equal to \$150,000 multiplied by the number of tankers acquired by National. Copies of the two agreements of January 24, 1948 are attached hereto as Exhibit F. In both agreements it was represented to United that the subject-matter of the agreement had been discussed with members of the Commission, which had no objections to the carrying out of the agreement. The correctness of these representations is indicated by the testimony given by Admiral Smith, then Chairman of the Commission, at hearings held on February 13, 1948 before the House Committee on Merchant Marine and Fisheries. Attached hereto as Exhibit G is an excerpt of Admiral Smith's testimony at these hearings.

Following the January 24, 1948 agreements with National and its stockholders, arrangements were made with Mrs. Konow and Wonok Corporation as follows:

- (i) By letter dated February 3, 1948, United agreed to pay Mrs. Konow \$30,000 per year for five years for consulting and brokerage services in connection with the operation and chartering of the *Antelope Hills*, the *Kettleman Hills* and the *Meacham* and such other tankers as United might acquire.
- (ii) By letter dated February 18, 1948, China Trading agreed to pay Wonok Corporation \$50,000 with respect to each of the three tankers for its services in securing possession of the tankers, payable one-third on delivery of each vessel, one-third six months later and one-third one year later. The obligation of China Trading under this agreement was later assumed by United.

(2) *Purchase of Kettleman Hills.*

On April 29, 1948 the *Kettleman Hills* was purchased by National from the Commission for cash. The *Kettleman Hills* had been chartered by National to United under a ten year bareboat charter, as referred to above, and in turn chartered by United to China Trading under a time charter party for a period of twelve months, and chartered by the latter to Chinese Petroleum under a voyage charter party for eight consecutive voyages for the carriage of oil from Persian Gulf ports to Shanghai. By application dated March 18, 1948 United had requested the approval of the Commission under Section 9 of the Shipping Act of 1916 for the charters to China Trading and to Chinese Petroleum Corporation, specifying the rates of charter hire and furnishing copies of the three charter parties concerned. The approval of the Commission was granted by Order No. CH-1133, dated April 26, 1948. By Order No. CH-1594, dated March 29, 1949, the Commission subsequently granted approval to the extension of the time charter of the *Kettle-*

*man Hills* for thirteen months and the consecutive voyage charter for six additional voyages.

The purchase of the *Kettleman Hills* by National was financed by loans from Bankers Commercial Corporation (a New York bank) and United. Bankers Commercial Corporation loaned National \$1,350,000, charging a 10% premium and 6% interest on the loan. The loan was secured by a first preferred mortgage on the *Kettleman Hills*, by the assignment of the proceeds from the charters of the vessel, and by the assignment of three letters of credit, each in the amount of \$200,000, issued by the Bank of China, New York Agency, and confirmed by Irving Trust Company, which could be drawn against for payment of charter hire due from Chinese Petroleum. United and China Trading guaranteed payment by National of the loan. United loaned National \$365,000 secured by a second preferred mortgage on the *Kettleman Hills*. Both mortgages were recorded in the Office of the Collector of Customs at Wilmington at the time of the delivery of the bill of sale to National by the Commission.

On June 15, 1948 the *Kettleman Hills* was transferred by National to Oceanic, newly organized as a wholly owned subsidiary of National. It was thought advisable at this time to separate the ownership of the *Meacham* and the *Kettleman Hills* to permit more flexibility in any future financing affecting the vessels. The initial officers and directors of Oceanic were the same as those of National. Oceanic assumed the first and second mortgages on the *Kettleman Hills*. By Order No. C-3157, dated June 15, 1948, the Commission approved the surrender of the document of the *Kettleman Hills* in connection with this transfer on condition that the vessel should be redocumented and that all endorsements necessary should be made on the new document to preserve the preferred status of the first mortgage in favor of Bankers Commercial Corporation and the second mortgage in favor of United.

(3) Purchase of *Meacham*.

The purchase of the *Meacham* by National from the Commission on May 14, 1948 followed generally the same pattern as the *Kettleman Hills*. There was a similar bare-boat charter to United, a time charter to China Trading and a consecutive voyage charter to Chinese Petroleum, the two foreign charters being approved by the Commission by Order No. CH-1143, dated April 28, 1948, and extensions thereof being approved by the Commission by Order No. CH-1595, dated March 29, 1949. The *Meacham* was financed by a bank loan from Chemical Bank & Trust Company, a New York bank, in the amount of \$1,900,000, secured by a preferred mortgage on the *Meacham*. National, United and China Trading were joint obligors on the note. The loan was further secured by the assignment to the Chemical Bank of a letter of credit issued by the Bank of China, New York Agency, dated May 4, 1948 and expiring August 15, 1949, in the amount of \$2,700,000, which could be drawn against for amounts due from Chinese Petroleum under its charter, and by the pledge by United of 2,000 shares of preferred stock of Viking. Chemical Bank granted to the Bank of China a 49% participation in its loan, reserving to itself, however, all rights with respect to the administration and handling of the loan, as follows:

“It is understood in connection with your participation in this Loan that, although we may from time to time communicate with you with respect thereto, we shall be under no obligation to keep you informed and that you will be satisfied with such action or inaction and with such degree of diligence and attention on our part as may, from time to time, attend our own interests in the situation, including the recording or filing or non-recording or non-filing of any of the various loan papers or documents, as

we may see fit, our only responsibility in connection with the subject matter of this letter being not to act in bad faith, and to turn over to you your proportionate share of the net amounts received or applied by us on account of principal of or interest on the Loan.

\* \* \* \* \*

We may make other loans, continue or extend any existing loans, or otherwise extend credit to or deal with National Tanker Corporation and United Tanker Corporation and China Trading & Industrial Development Corporation, or any of them, and may grant participation in the present loan to others, all in the same manner and as freely as though no participation had been granted to you."

A copy of the letter dated May 14, 1948, by which Chemical Bank granted the 49% participation to the Bank of China, is attached hereto as Exhibit II.

(4) Purchase of *Antelope Hills*.

United encountered difficulties in arranging for the financing of the third vessel, the *Antelope Hills*, covered by its agreement dated January 24, 1948 with National. Trans-World was organized on July 31, 1948 as a wholly owned subsidiary of National, and on August 17, 1948 American Overseas Tanker Corporation filed an amendment to its application to the Commission requesting that the *Antelope Hills* be sold on a mortgage basis to Trans-World rather than on a cash basis to National. After considerable delays, Trans-World purchased the vessel on mortgage terms from the Commission on January 12, 1949. In order to meet the requirements for purchasing a vessel on mortgage terms from the Commission, Trans-World raised \$815,000 by the sale of its common and preferred stock to National, the funds being provided by United.

(5) Exercise of Option.

United's option to purchase the stock of National was exercisable between September 15 and October 15, 1948. United was not in a position to exercise the option at the prescribed time, and negotiated with the stockholders of National to effect an extension of the option. By agreement with the stockholders dated October 11, 1948, United elected to exercise its option at such time as title to the *Antelope Hills* had been taken by Trans-World, but not later than January 31, 1949. United agreed to fix the option price at \$450,000, to pay \$100,000 immediately, and to pay the balance in installments, the last installment being payable January 31, 1949. As security for its payment of the option price, it pledged all of the stock of Arctic and assigned the consecutive voyage charter of the *New London* which had been made with Standard Oil Company (New Jersey). George D. Hawthorne and James G. Mackey, as escrow agents, were instructed to deliver to United the stock of National at such time as United had made full payment of the option price. Payment by United was finally completed and the stock of National acquired in January, 1949.

(c) Investment in Arctic Tankers, Inc.

Mathiasen's Tanker Industries, Inc., a Delaware corporation, controlled by Captain M. A. Mathiasen, had been allocated one or more tankers by the Commission. In February, 1948 representatives of United were approached by Alexis J. Anderson, a ship broker, who, together with his associate Leon F. Bergere, had been in contact with Mathiasen. After negotiations, on February 19, 1948 United entered into agreements providing for the financing by United of the purchase of the *New London* by Mathiasen's Tanker Industries, Inc., the transfer of the *New London* to Arctic, a New York corporation which had been

incorporated on February 6, 1948, and the purchase by United of the stock of Arctic by payment of \$30,600 to Bergere and \$29,400 to Mathiasen. In addition, a brokerage commission of \$40,000 was to be paid by United to Anderson. Mathiasen's Tanker Industries, Inc. warranted in the February 19, 1948 agreement "that the carrying out of this agreement is consistent with any representations made by Mathiasen to the Commission". Pursuant to these agreements, United made an initial advance of \$202,650 to Mathiasen's Tanker Industries, Inc. for deposit with the Commission. On February 20th, a contract for the sale of the *New London* was executed by the Commission and Mathiasen's Tanker Industries, Inc.

Subsequently United encountered difficulties in financing the *New London* and requested Mathiasen's Tanker Industries, Inc. to convert the purchase from one on a cash basis to one on a mortgage basis. New agreements were entered into on May 24, 1948, by which Mathiasen's Tanker Industries, Inc. agreed to request the Commission to sell the *New London* directly to Arctic on a mortgage basis. United agreed to subscribe to 7,750 shares of preferred stock of Arctic at \$100 per share (with \$200,000 payable by note) and 198 shares of common stock at \$10 per share (representing forty-nine per cent. of the common stock), the balance of 200 shares being held by Mathiasen. Captain Mathiasen gave United an option to purchase the 200 shares of stock of Arctic held by him for \$29,400. (Bergere had previously transferred his stock in Arctic to Mathiasen in consideration of \$30,600 paid by United.) The new arrangements were carried out, Arctic taking title to the *New London* on July 9, 1948, and United exercising its option to purchase the balance of the Arctic common stock on July 23, 1948.

On July 9, 1948 Arctic requested the approval of the Commission, as mortgagee, of a bareboat charter of the



*New London* to United for a period of five years at the rate of \$2.40 per dead weight ton per month. This approval was required under the terms of the preferred mortgage held by the Commission. By letter dated September 2, 1948, A. J. Williams, Secretary of the Commission, consented to such bareboat charter to "United Tanker Corporation, a citizen of the United States within the meaning of Section 2 of the Shipping Act 1916, as amended."

5.

**Financial Difficulties Encountered by  
United Tanker Corporation.**

**(a) Depressed State of Charter Market 1948-1950.**

During the summer of 1948 the charter market suffered a severe decline. The decline is illustrated by the history of the *St. Christopher*, one of the vessels owned by Viking. The initial voyage of the *St. Christopher*, which commenced March 20, 1948, was under a four-consecutive voyage charter to a French charterer at USMC rates, plus 225%. The next charter of the *St. Christopher* for a voyage commencing August 31, 1948 was to an Argentine charterer at USMC rates, less 20%. The initial charter of the *Destiny*, acquired by Viking on October 21, 1948, was to the same charterer at the same low rate.

I had hoped that the charter rate would rise again in the winter of 1948-1949, but little improvement occurred, and in the summer of 1949 the rate declined even further. The first voyage undertaken by the *Meacham*, after termination of the Chinese Petroleum charter, was to a Swedish charterer at USMC rates, less 55%. This voyage was from the Persian Gulf to Sweden and commenced August 6, 1949. At this time over 100 American flag tankers were laid up for lack of business, and there

was no substantial improvement in the charter market until the summer of 1950.

As a result of the decline in the charter market in the summer of 1948, United found itself in constant difficulties for lack of funds. It had anticipated the early return out of earnings of a portion of the cash invested in Viking, but the decline in earnings of the *St. Christopher* and the low earnings of the *Destiny* made this impossible. Also the imposition of additional restrictions by the Chinese government on acquisition of dollar exchange by Chinese companies made it difficult for United to obtain any help in the way of additional funds from China Trading. From the summer of 1948 on, United was forced to rely primarily upon earnings and upon short-term loans for financial support (except to the extent that China Trading's profits under the Chinese Petroleum charters were automatically converted into advances to United).

**(b) Financing of Purchase of National Tanker Corporation Stock.**

United had been fortunate in concluding a tanker voyage charter party dated May 5, 1948 with Standard Oil Company (New Jersey) for eighteen months consecutive voyages at USMC rates, plus 50%. Upon acquisition by Arctic of the *New London*, United chartered the *New London* from Arctic and placed it under sub-charter to Standard Oil. In October 1948 United pledged this Standard Oil charter of the *New London* to the stockholders of National in order to obtain an extension of time to pay the option price, amounting to \$450,000, on the National stock.

**(c) Financing of Antelope Hills.**

The consecutive voyage charter to Standard Oil of the *New London* was again used by United in January 1949 to aid in the financing of the *Antelope Hills*. As set forth

above, the *Antelope Hills* was acquired by Trans-World from the Commission on January 12, 1949, the Commission taking back a purchase money mortgage on the vessel in the amount of \$1,220,800. In order to qualify for a mortgage loan from the Commission, Trans-World had to show net worth in the amount of \$815,000 prior to its purchase of the vessel. These funds were raised by Trans-World by the sale of its common and preferred stock to National, the funds being advanced to National by United. In turn, United borrowed \$500,000 from American Business Credit Corporation, a financing company having offices at 50 Church Street, New York, N. Y. This loan was made under an agreement dated January 5, 1949, was repayable in monthly installment of \$50,000 and was secured by the pledge of the Standard Oil consecutive voyage charter of the *New London* and by the pledge of all of the stock of Arctic. In connection with this loan, China Trading agreed to subordinate the amounts owed it by United to the loan from American Business Credit Corporation.

**(d) Difficulties in Connection with Charters to Chinese Petroleum Corporation.**

The *Meacham* and the *Kettleman Hills* had each been chartered by National to United under bareboat charter, by United to China Trading under twelve-months time charter, and by China Trading to Chinese Petroleum under consecutive voyage charter. The charters had been concluded prior to the decline in the charter market in the summer of 1948 and the voyage charters were at rates equivalent to USMC rates, plus 52%. Upon the strength

of the charter parties loans had been made by Chemical Bank & Trust Company in the case of the *Meacham* and Bankers Commercial Corporation in the case of the *Kettleman Hills*, both loans providing for heavy amortization

In the winter of 1948-1949 the representatives of China Trading in New York became increasingly concerned over the developments in China and the serious difficulties encountered by the Nationalist government. There was an obvious danger that a new administration in China, at a time of low charter rates, might criticize the high rate of charter hire being paid by a Chinese government agency to China Trading, a Chinese corporation, and forget that the rate had been a very reasonable rate at the time the charter party was made in the light of the then prevailing market conditions. If a communist regime came into power there was the added danger that China Trading itself might be seized and the charters repudiated. Accordingly, after discussion, China Trading and United entered into an agreement to be effective as of January 2, 1949 by which China Trading assigned its Chinese Petroleum voyage charters to United. This had the effect of eliminating the time charter to China Trading and making United a direct charterer to Chinese Petroleum.

United agreed to pay China Trading for the assignment of the two charters the amount of \$870,000, payable in installments over a period of twelve months. This amount was estimated at the time to represent about three-fourths of the gross profits which China Trading would have made if the rearrangement had not been effected. United reserved the right to pay China Trading in shares of its preferred stock at par if its working capital position did not permit payment in cash. China Trading guaranteed the payment by Chinese Petroleum under the consecutive voyage charter parties.

The agreement between United and China Trading referred to above, was subject to the prior extension, with Commission approval, of both the time charters to China Trading and the consecutive voyage charters to Chinese Petroleum. *Application for the approval by the Commis-*

sion of the extension of such charters was made, and by orders CH-1594 and CH-1595, dated March 29, 1949, such approval was granted to the extension of the time charters for a period of about thirteen months and the sub-charters to Chinese Petroleum of the *Kettleman Hills* for six additional consecutive voyages and of the *Meacham* for seven additional consecutive voyages.

Under these new arrangements a number of additional voyages were made by both the *Meacham* and the *Kettleman Hills*. In the spring and summer of 1949, however, United was advised that Chinese Petroleum was no longer able to obtain dollar exchange with which to purchase oil or pay charter hire as a result of the cutting off of ECA funds for this purpose by the United States. The *Kettleman Hills* had completed its ninth voyage on June 6, 1949 under the Chinese Petroleum charter and was approaching Ras Tanura in the Persian Gulf to load for its tenth voyage when United was advised that no further payments by Chinese Petroleum could be made. The *Meacham* completed its eleventh voyage on August 6, 1949, and was approaching the Persian Gulf for its next loading, when United was advised that no further payments by Chinese Petroleum could be made.

The termination of operations under the Chinese Petroleum charters came at a peculiarly unfortunate time because of the extremely depressed state of the charter market. United and China Trading were forced to negotiate with the banks which had financed the two vessels for a reduction in amortization payments and an extension of time for repayment. There also followed protracted negotiations with Chinese Petroleum in an effort to settle the various claims between United and China Trading and Chinese Petroleum. It was in connection with this settlement that National transferred the *Meacham* to Meacham Corporation on November 7, 1949 as will be described below.

**(e) Transfer of Meacham to Meacham Corporation and Settlement of Chinese Petroleum Corporation's Claims.**

The default by Chinese Petroleum under the tanker voyage charter parties on the *Kettleman Hills* and the *Meacham* presented a difficult problem both to United and, I am informed, to China Trading. The latter had received advances from Chinese Petroleum, which at this time remained unpaid, in an amount of over \$1,500,000. China Trading was in default in the payment to Chinese Petroleum of both principal and interest on its indebtedness. At this time I am informed that the officers of China Trading had left Shanghai, as a result of the Communist successes in China, and had been forced to abandon the assets of China Trading inside China. China Trading had a large investment in United, but had been unable to obtain the return of the funds invested because United in turn had its funds tied up in investments in tanker-owning companies. These companies, because of the depressed charter market, did not have earnings sufficient to pay dividends. United and its subsidiary companies were very much in need of additional cash. At this time the market value of a United States flag T2 tanker appeared to be about \$1,000,000, and was later to reach even a lower level.

Consideration was given to the possibility of taking legal action against Chinese Petroleum for breach of charter. We were reluctant to institute such action, as we had had extremely profitable relations with Chinese Petroleum and were hopeful that at some future time it would again be in a position to charter vessels from United on a profitable basis. In addition, I was informed that any action against Chinese Petroleum might involve considerable delays and the assertion of defenses, such as sovereign immunity and impossibility of performance. I understand that Chinese Petroleum also took the position that since

China Trading was itself in default in the repayment of advances received, Chinese Petroleum was justified in cancelling the charter parties as against China Trading. In addition, I was informed that neither Chinese Petroleum nor China Trading at this time had any substantial U. S. dollar assets.

It seemed sound business judgment to attempt to settle the various inter-company claims without resort to litigation and on a basis which would provide some immediate cash relief for United. The overall settlement worked out during the summer of 1949 and finally completed on November 7, 1949, involved the following transactions:

(1) On August 11, 1949, China Trading agreed to an amendment to the Certificate of Incorporation of United which cut off one year's accumulated dividends on the \$2,500,000 par value of six per cent. preferred stock held by it, and subordinated the current dividend on the preferred stock to the payment of a prior dividend of \$170,000 per year on the common stock (substantially all of which was held by the Foundation).

(2) On August 26, 1949 United requested Chemical Bank & Trust Company to accept a payment of \$50,000 on September 15, 1949, instead of the \$80,000 amount due, and to extend the balance of the loan in the amount of \$580,000 over a period of twenty-nine months, with monthly installments of \$20,000. Chemical Bank agreed to this extension on September 27, 1949 after the Bank of China, New York agency, by instrument dated September 27, 1949, had guaranteed against any deficiency from the proceeds of sale of the *Meacham* in the event of foreclosure of the mortgage. A copy of the instrument of guaranty is annexed hereto as Exhibit I.

(3) In consideration of the payment of a premium of \$14,400, Bankers Commercial Corporation agreed on October 14, 1949 to permit payment of the balance due under the *Kettleman Hills* mortgage, then in the amount of \$230,000, to be made in monthly installments over an extended period of twenty-four months.

(4) A new company, Meacham Corporation, was organized in Delaware as a subsidiary of the Foundation. This corporation issued \$1,595,000 principal amount unsecured promissory notes to obtain two assets, (a) the vessel *Meacham* and (b) 11,750 shares of preferred stock of United.

(a) The *Meacham* was acquired by issuing \$420,000 unsecured notes to National, acknowledging a \$20,000 indebtedness on open account, and assuming the mortgage on the *Meacham* then outstanding in the amount of \$560,000. National then transferred the notes and indebtedness of *Meacham* to United in cancellation of \$440,000 of its indebtedness to United. United transferred the \$420,000 note of Meacham Corporation to China Trading in cancellation of (i) \$75,000 open account indebtedness and (ii) 3,450 shares of preferred stock of United.

(b) Meacham Corporation acquired the 11,750 shares of preferred stock of United by issuing its unsecured note in the amount of \$1,175,000 therefor to China Trading.

China Trading then assigned both notes in the aggregate amount of \$1,595,000 to Chinese Petroleum in cancellation of its indebtedness.

(5) United then funded \$250,000 of its open account indebtedness to China Trading by delivering its 3% note payable in five annual installments. The note provided that if at any time United was not able to pay any annual install-



ment in cash it had the option to deliver an equivalent par value of preferred stock in lieu of cash.

(6) Chinese Petroleum and China Trading by letters dated November 10, 1949 each agreed to advance up to \$40,000 to Meacham Corporation to enable it to meet its amortization payments to Chemical Bank. Also, Chinese Petroleum agreed to advance, if required, the further sum of \$70,000 to Meacham Corporation.

Title to the *Meacham* was transferred to Meacham Corporation on November 7, 1949. The bill of sale was not recorded in the Office of the Collector of Customs at Wilmington at that time, because the *Meacham* was trading in foreign waters. I was informed that Chemical Bank & Trust Company would not give its required consent to the surrender of the document of the *Meacham* and the redocumentation of the *Meacham* in the name of Meacham Corporation until the vessel should be in a continental United States port so that an appropriate endorsement could be made on the new document of the vessel with respect to the assumption of the Chemical Bank mortgage by Meacham Corporation. The *Meacham* did not return to the United States until it arrived at Newport News for repairs on November 1, 1951 preliminary to its sale to Chas. Kurz & Co., Inc.

The bareboat charter of the *Meacham* which had been originally made by National to United was replaced on November 7, 1949 by a new bareboat charter from Meacham Corporation to United. The new bareboat charter was for a period of seven years commencing as of September 19, 1949, at a rate of \$2.40 per dead weight ton per month, or the net income from the operation of the vessel over the entire seven year period, whichever is less.

The notes of Meacham Corporation in the aggregate amount of \$1,595,000, which had been assigned to Chinese Petroleum, were surrendered and replaced by one non-negotiable note to Chinese Petroleum in the amount of \$1,595,000. The note provided that Meacham Corporation would not, without the consent of the noteholder, dispose of its assets or engage in any business other than that of owning, chartering or operating the *Meacham* or incur indebtedness except in connection with such business.

The note of Meacham Corporation bore interest from September 19, 1949 at the rate of four per cent. for the first year and three per cent. per annum thereafter. It was contemplated that this note to Chinese Petroleum would be paid, after payment in full of the Chemical Bank mortgage, out of any available net income of Meacham Corporation. Before applying its net income to the payment of any installment due on the note, Meacham Corporation was entitled to pay any operating expenses, overhead expenses not in excess of \$15,000, taxes and \$25,000 per year for charitable purposes. If the payment of these items left income insufficient for payment of any installment due on the note, such installment was automatically postponed. The note thus permitted extension of payment of installments until the final maturity of the note on February 15, 1957 "and thereafter for two additional years if necessary, and thereafter on mutually agreeable terms, until the Corporation has accumulated sufficient net income" to enable it to pay the installments. These provisions for the extension of the time of payment of the note prevented Chinese Petroleum from being in a position to exercise any financial pressure on Meacham Corporation. Attached hereto as Exhibit J is a copy of an affidavit executed on November 14, 1951 by C. D. Shiah, Representative of

Chinese Petroleum, setting forth its position with respect to the note.

As a result of the transactions described above, United, while hurt by the cancellation of the Chinese Petroleum charters at a time of depressed charter rates, was nevertheless able to survive. It obtained a cancellation of approximately \$90,000 of back dividends on its preferred stock. It obtained a priority for its common stockholder, the Foundation, of \$170,000 per year over the preferred stock dividends. It cancelled \$75,000 of indebtedness to China Trading and 3,450 shares of its preferred stock. It funded \$250,000 of open account indebtedness to China Trading by the issuance of an installment note maturing over six years, with an option on its part to pay any installment by issuing its own preferred stock. The Foundation, through Meacham Corporation, retained its equity in the Meacham and the opportunity for profit in the event of a rise in value of the vessel. China Trading and Chinese Petroleum agreed to contribute an aggregate of \$150,000 to support the Meacham Corporation during the period of a depressed charter market. While the Meacham Corporation had issued its unsecured note in the amount of \$1,595,000, it could defer payment of the note until February 15, 1959 and, perhaps, longer, and in the meantime it was entitled to pay \$25,000 per year to the Foundation.

**(f) Default Under Antelope Hills Mortgage.**

Trans-World purchased the *Antelope Hills* from the Commission on January 12, 1949. The vessel required extensive repairs, the commencement of which were deferred until some advantageous charter could be concluded. There seemed to be no point in repairing the *Antelope Hills* if, upon the repairs being completed, the vessel would have to be laid up for lack of business. Unfor-

tunately, the charter market continued to deteriorate and on August 18, 1949 Trans-World defaulted on the first payment of amortization on the mortgage held by the Commission. Previously, on August 9, 1949, Trans-World had requested the Commission either to take back the *Antelope Hills* or permit it to be sold to a foreign purchaser. The Commission rejected these alternative requests on August 25, 1949.

As a result of the default on the *Antelope Hills* I made a number of proposals to the Commission, seeking a solution for our difficulties. I had numerous conferences with representatives of the Commission, at which the general corporate and financial picture of United and its other subsidiaries was discussed, as well as the problems of Trans-World. On September 9, 1949, in response to a request from Mr. James L. Pimper of the Commission, our Washington counsel, Messrs. Radner, Zito & Donoghue, submitted a statement as to the stock ownership of Trans-World, as to United's ownership, through wholly-owned subsidiaries, of the *Kettleman Hills*, the *Meacham* and the *New London*, and as to its holdings of 49% of the common stock and 8,000 shares of preferred stock of Viking. The statement also referred to the ownership by the Foundation of the common stock of United, and the ownership by China Trading of 25,000 shares of preferred stock of United.

Repeated proposals were made to transfer the *Antelope Hills* to the Commission at an agreed valuation, to transfer the vessel to the Commission in cancellation of the mortgage and to forfeit the deposit previously made, and even to transfer the vessel to the Commission in cancellation of the mortgage and to make an additional payment to the Commission either in cash or by the addition of one or more mortgage notes to the existing preferred mortgages on the *Destiny* and the *St. Christopher*. All of these offers were

rejected by the Commission and on June 21, 1950 the *Antelope Hills* was libeled in New Orleans in a suit in the United States District Court for the Eastern District of Louisiana to foreclose the mortgage held by the Commission. Following the institution of the libel action I had a number of conferences with representatives of the Commission, in which I proposed a two year partial moratorium on payments due under the *Antelope Hills* mortgage. This suggestion was based upon the availability of a two year charter to Anglo-Iranian Oil Company to assure the payment over the two year period of the postponed indebtedness. This proposal too was rejected.

Fortunately, the charter market began to improve in the late summer of 1950. On August 7, 1950 United was able to provide funds for the payment to the Commission of the amount of the principal and interest then due on the *Antelope Hills* mortgage. The foreclosure proceedings instituted by the United States were dismissed by order dated August 10, 1950 on motion of the Assistant United States Attorney. On August 17, 1950 United was able to borrow an additional \$160,000 from Bankers Commercial Corporation by an extension of the existing first preferred mortgage on the *Kettleman Hills*. United was then able to provide funds with which Trans-World paid the second installment of principal on its mortgage on August 18, 1950, and arranged for the repair of the *Antelope Hills* (partly on credit from the shipyard) and the placing of the *Antelope Hills* in operation. The *Antelope Hills* was time chartered by Trans-World to United which, in turn, consecutive voyage chartered the vessel to Gulf Oil Corporation.

6.

**Sale of Vessels.**

**(a) *Kettleman Hills.***

The charter market rose rapidly during the early winter of 1950-1951. Before the winter was over United had made some single voyage charters at USMC, plus 200%. As the charter market rose the market price of tankers also improved. In November and December 1950 the directors of United had many discussions as to the advisability of selling a tanker in order to pay off some of the obligations of United and strengthen its financial position. After considering several proposals we finally accepted an offer made in January 1951 by Colonial Steamship Corporation, a non-affiliated corporation, for the *Kettleman Hills*. Title to the *Kettleman Hills* was transferred on February 21, 1951.

**(b) *Meacham.***

In the spring of 1951 we also had numerous discussions of the advisability of selling the *Meacham*. Meacham Corporation was indebted to Chinese Petroleum in the amount of \$1,595,000, plus interest. Meacham Corporation owned the vessel *Meacham*, subject to a small residual mortgage to Chemical Bank & Trust Company, and 11,750 shares of preferred stock of United. We felt that it would be desirable to sell the *Meacham* at a price which would permit the discharge of all of the obligations of Meacham Corporation, and leave it holding the preferred stock of United. If this could be accomplished the rearrangement in November 1949 would prove to have been most advantageous to the Foundation as it would end up as the owner, through Meacham

Corporation, of 11,750 shares of preferred stock of United free of all indebtedness.

Chinese Petroleum had advised us that it was very much in need of cash and that, to induce Meacham Corporation to sell the *Meacham* and prepay its unsecured note, Chinese Petroleum would accept \$1,500,000 in full settlement of the \$1,595,000 face amount of note and approximately \$100,000 of accrued interest.

On June 12, 1951 Meacham Corporation entered into a contract with Chas. Kurz & Co., Inc. to sell the *Meacham* for a price of \$1,950,000 for delivery before October 20, 1951 (subsequently extended) at a United States Gulf or Atlantic coast port. The *Meacham* arrived at Newport News on November 1, 1951 for drydock and the completion of any repairs required to be performed before delivery under the contract. The repairs had just been completed and the vessel was ready for delivery to Chas. Kurz & Co., Inc. when the United States libeled the *Meacham* in the pending action.

7.

**Operation of Vessels.**

**(a) Management.**

The vessels owned by subsidiaries of United have at all times been under the management and control of experienced United States citizen operators. The *Meacham*, the *Kettleman Hills* and the *Antelope Hills* have been operated by Sieling & Jarvis Corporation from acquisition. This corporation operated tankers for the War Shipping Administration during World War II and was specifically approved as operator by the Commission in its capacity as mortgagee of the *Antelope Hills*. Prior to United's

acquisition of control of Viking, that corporation operated its own vessels with the specific approval of the Commission as mortgagee. After United acquired control of Viking in December 1949 it employed Sieling & Jarvis Corporation as the operator of the *St. Christopher* and the *Destiny*. Mathiasen's Tanker Industries, Inc. operated the *New London* until November 10, 1949, when it was replaced by Sieling & Jarvis Corporation. Both operators had been specifically approved by the Commission in its capacity as mortgagee of the *New London*. The hiring of the crew and the direction of each vessel was, of course, in the hands of the operator. Mr. Sieling, Vice-President and a director of United, was also Vice-President of Sieling & Jarvis Corporation until his resignation in January 1951 to devote his full time to United. He has at all times been in close touch with the operations of the vessels.

**(b) Chartering.**

The chartering of the vessels owned by subsidiaries of United has been effected mostly through Sieling & Jarvis Corporation and to some extent through other United States firms of charter brokers. All long-term charters have been fixed only after discussions among the directors of United. Single voyage charters have usually been fixed by Sieling & Jarvis Corporation or other brokers in consultation with one or more representatives of United.

I believe that the chartering of the tankers owned by subsidiaries of United has at all times been consistent with the policies of the United States government. The initial charters of the *Meacham* and the *Kettleman Hills* to China Trading, and the sub-charters to Chinese Petroleum, were specifically approved by the Commission. I understand that during the period of these charters the policy of the



United States was further indicated by the action of the Economic Cooperation Administration in reimbursing Chinese Petroleum under the provisions of the Foreign Assistance Act of 1948 for charter hire paid by it. I am informed that out of the total of \$4,450,000 of charter hire on the two vessels paid by Chinese Petroleum approximately \$3,450,000 was reimbursed or paid by the Economic Cooperation Administration. In addition, the Economic Cooperation Administration, I am informed, reimbursed Chinese Petroleum for the purchase of a substantial portion of the oil carried on our tankers.

During a part of the period covered by this application the Commission gave general approval, under its General Order No. 59, as amended, to any charter to a foreign charterer of less than twelve months. All foreign charters by United or its subsidiaries not coming within this general approval have been submitted to the Commission for specific approval.

United has received criticisms in the press for charters made in 1949 to Russian governmental agencies for the carriage of oil products between Roumania and North China. These charters were made only after we had been informed that our State Department had no objections.

In judging the decisions which we reached in the summer of 1949, it is important to recall our reported governmental policy at the time. It was on August 5, 1949 that the State Department released its "China White Paper". On September 8, 1949 Roger D. Lapham, Chief of the ECA Mission to China during the period May 5, 1948 to June 30, 1949, made the following recommendations in an address before the Commonwealth Club of California which received considerable publicity:

"I do not believe that economic blockade is the right approach. Such a policy would give notice to

the world that we had, on our own initiative, abandoned our Chinese friends. It would give Moscow a free field in which to operate, and to justify the oft-repeated statement that American imperialism is selfish and cares nothing for the welfare of the Chinese people as a whole. For these reasons I am opposed to an economic blockade.

\* \* \* \* \*

“For the present my recommendations are as follows:

1. Continue American private business with the Chinese, as far as it may be possible, in such a way as not to enhance to any dangerous degree the very limited war potential of the country.”

In June 1949 the London brokerage firm of Stevinson, Hardy & Co., Ltd. advised our brokers, Messrs. Sieling & Jarvis, that the Russian Oil Bureau wished to charter a tanker to carry benzine and/or oil from Constanza to Shanghai, Tsingtao or Taku Bar.. At this time the *Kettleman Hills* was on its way to the Persian Gulf to report for loading under the Chinese Petroleum charter, and we had just been informed that Chinese Petroleum was unable to obtain funds from the Economic Cooperation Administration or other sources and would not be able to provide cargo. About 100 T2 tankers were already laid up for lack of business, including the *Destiny* and the *St. Christopher* owned by Viking. United was facing severe financial difficulties, and the Russian charter seemed to be the only profitable business then available. We realized, of course, that to take the charter might prove embarrassing to China Trading, the holder of the preferred stock of United, and to Chinese Petroleum, an agency of the Nationalist government. On the other hand, I felt that we had an obligation to our American creditors to attempt to keep our vessels in oper-

ation. After considerable discussion, we asked Messrs. Sieling & Jarvis to submit the matter to the State Department, and authorized them, if the State Department approved, to accept the charter for the *Kettleman Hills*. By letter dated June 20, 1949 Sieling & Jarvis advised us that the State Department had indicated the absence of any objections to the charter and that Sieling & Jarvis had thereupon concluded the charter. Subsequently, United time-chartered the *St. Christopher* from Viking for three months to fill one Russian charter and made two additional charters for the *Kettleman Hills*. In April 1950 representatives of United again discussed the matter with the Department of State which at this time questioned the advisability of further charters. I thereupon advised the Department of State by letter dated April 27, 1950 that we would make no further such charters without further discussion with the State Department. No further Russian charters were made. Attached hereto as Exhibit K is a copy of my letter dated April 27, 1950 to the State Department and the attachments therein referred to.

Attached hereto as Exhibit L is a schedule of all voyages made by each of the vessels covered by this application.

**(c) Crews.**

All of the vessels owned by subsidiaries of United were originally manned by United States citizen crews. After the *Kettleman Hills* and the *Meacham* had been operating for a year in the Persian Gulf to Shanghai and Formosa trade the original articles expired and the United States crews demanded to be repatriated. It was necessary in the case of the *Meacham* to sign on a Philippine crew before a United States Consul at Manila on May 14, 1949 and repatriate the United States crew. The Philippine crew continued on the vessel until April 1950 when the members

requested repatriation while the vessel was at Bremerhaven. Accordingly, the Philippine crew was repatriated and a German crew was signed on before the United States Consul. This crew continued until January 2, 1951 when a United States crew was flown over to Capetown, South Africa to replace the German crew.

A similar situation obtained in the case of the *Kettleman Hills* where the original United States crew, after the year's articles had expired, had to be repatriated from Singapore and replaced by a Singapore Chinese crew, which in turn was replaced by a German crew. On December 19, 1951 a United States crew was flown over to Sweden to replace the German crew.

The *Destiny* was laid up in Italy in May of 1949 by Viking for lack of business. After United acquired control of Viking the vessel was placed in operation in January 1950 with an Italian crew. On January 2, 1951 the Italian crew was replaced by a United States citizen crew while the vessel was at Durban, South Africa.

The United States citizen crew of the *St. Christopher* had been signed on for three months (the duration of the United time charter) when the *St. Christopher* was taken out of lay-up in New York in July 1949. At that time Viking intended to lay-up the vessel in Italy on conclusion of the time charter. The vessel encountered unexpected delays and on October 7, 1949, when the articles terminated, the vessel was approaching Singapore for bunkers on its way to the Persian Gulf. The crew of the vessel demanded to be paid off and repatriated at Singapore. A Chinese crew was signed on in Singapore to take the vessel to the Persian Gulf for loading of a cargo for discharge at Italy. On November 9, 1949 the vessel arrived at Bari, Italy and the Chinese crew was repatriated. In the meantime, Viking changed its plans for lay-up when it found it

could fix the *St. Christopher* for three consecutive voyages to an Argentine charterer. It accordingly signed on an Italian crew in Italy in November 1949. The vessel operated with foreign crew until January 2, 1951 when the entire crew was replaced with a United States crew at Le Havre.

If United had been in a better financial condition it might have been able to fly over United States crews to replace the original United States crews when their articles expired and they demanded repatriation. Unfortunately, this coincided with the depressed state of the charter market during 1949 and 1950, and United could not afford to do so. Sieling & Jarvis Corporation advised me that the State Department had confirmed that only the master of a United States vessel was required to be a United States citizen when articles were signed in a foreign port. We at all times had a United States citizen master and supervising chief engineer on board each of the four vessels affected. The alternative at the time to the use of foreign crews would have been to lay-up the vessels, as at this time United States flag tankers were unable to meet operating expenses with United States crews at the prevailing low charter rates. I regarded the use of foreign crews as a necessary, but temporary, expedient to keep the vessels in operation and to keep United solvent during an extremely difficult period. As soon as the charter market improved in the fall of 1950 I began to make plans for the replacement of the foreign crews with United States citizen crews and this was done in the case of each of the four vessels in December 1950 or early January 1951.

The *New London* and the *Antelope Hills* have always operated with United States citizen crews.

**8.**

**United States Citizen Control of Meacham Corporation,  
United Tanker Corporation, and its Subsidiaries.**

I have been the President and a director of United and of Meacham Corporation from their respective commencements of operations. I am one of the original members of the Foundation. Prior to the organization of the Foundation, I was one of the controlling stockholders of United. Prior to the organization of United I was informed that China Trading was willing to provide the necessary equity money for United so that it might receive a return upon its investment and a profit from the sub-chartering of vessels to Chinese Petroleum, but that it was not experienced in the shipping business and was content to remain in the role of an investor, leaving to more experienced United States shipping people the management and control of United and any vessels which United might acquire. There was no suggestion of any kind that I or the other directors of United would be expected to act as a "front" for foreign shipping interests. Neither Mr. Tode nor Mr. Sieling nor I would have been interested in any such arrangement.

When the Foundation was organized in June 1949 I was willing to sell my stock, which had a potential but undeterminable value, for a profit of \$10,000 so that the Foundation might own 100% of the common stock equity in United, and I was proud to become a member of the Foundation. The establishment of the Foundation did not alter the United States citizen control of United.

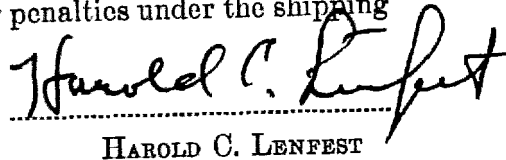
I have felt it to be my duty as President and a director of United, and subsequently of its subsidiaries and of

Meacham Corporation, to see that its affairs were managed in the best interests of the respective companies and their stockholder, the Foundation, consistent with the policies of the United States. I believe that, after going through some very difficult financial times, we have succeeded in building up an equity of several million dollars for the Foundation and have acted in conformity with the policy and the laws of the United States.

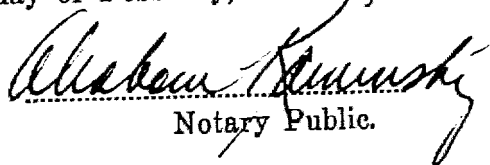
I have been grateful for the financial assistance of China Trading and, through China Trading, of Chinese Petroleum, an agency of the Nationalist government of China. As set forth in United's original application to the Commission in December, 1947, we expected the necessary equity funds for the acquisition of tankers to be provided by China Trading or Chinese Petroleum. Representatives of China Trading were active in arranging the initial financing of the *Kettleman Hills* and the *Meacham*, which depended upon the charters to China Trading and to Chinese Petroleum. United has employed several able Chinese engineers, two of whom had formerly been associated with China Trading. I have admired the industry and intelligence which they have displayed in learning the shipping business, and have used their services to the greatest extent possible. I understand that it does not infringe the law for a United States shipping company to employ Chinese personnel, and I cannot believe that it is in any respect inconsistent with the policy of the United States for a shipping company to employ and train young Chinese engineers who are graduates of American universities and have made this country their home. I am satisfied, however, that all matters of policy affecting United and its subsidiaries or Meacham Corporation have been determined by their respective boards of directors, and that there has been no understanding, expressed or implied, by which

control of these companies has been conferred upon or permitted to be exercised by any person not a citizen of the United States.

I swear that the foregoing statements are true to the best of my knowledge, information and belief. This application is filed without prejudice to the position of the respective companies that no forfeitures have been incurred. Since no claims have been asserted against any vessels other than the *Meacham*, the Department of Justice is respectfully requested to refer this application to any other departments of the Government which should be appropriately consulted in connection with the mitigation or remission of any forfeitures or penalties under the shipping laws.

  
.....  
HAROLD C. LENFEST

Sworn to before me this }  
*15th* day of February, 1952. }

  
.....  
Notary Public.

APPROVED AND FORWARDED:  
.....  
Notary Public  
N. Y. Co. No. ....  
.....



STATE OF NEW YORK, }  
COUNTY OF NEW YORK, } SS.:

The undersigned, ARTHUR M. TODE and WALTER H. SIELING, being duly sworn depose and say that they have read the foregoing application executed by Harold C. Lenfest and that the statements therein are true to the best of their knowledge, information and belief.

*Arthur M. Tode*  
-----  
*Walter H. Sieling*  
-----

Sworn to before me this *15th*  
day of February, 1952.

*Abraham Kaminsky*  
-----

ABRAHAM KAMINSKY  
NOTARY PUBLIC, STATE OF NEW YORK  
No. 24-71-3600  
Qual. in Kings Co. filed with  
N. Y. Co. Clerk, Kings and N. Y. Co. Registers  
Term expires March 30, 1952

**EXHIBIT A.**

**Affidavit of Houston H. Wasson.**

STATE OF NEW YORK, }  
COUNTY OF NEW YORK, } ss.:

HOUSTON H. WASSON, being duly sworn, deposes and says:

1. I am the Secretary and Treasurer of The China International Foundation, Inc., a non-profit membership corporation, incorporated under the laws of the State of Delaware on June 4, 1948. Attached hereto as Exhibit A-1 is a true and correct copy of the certificate of incorporation of the Foundation.

2. The Members, Trustees and President of the Foundation have been at all times since its organization, and are now, citizens of the United States. The present Members, Trustees and Officers of the Foundation are as follows:

- Magnus Gregersen.....Trustee and Member
- Edward H. Hume.....Trustee and Member
- Harold C. Lenfest.....Member
- Newbold Morris.....President, Trustee and Member
- Arthur M. Tode.....Trustee
- Houston H. Wasson.....Secretary, Treasurer and Member

Attached hereto as Exhibit A-2 are copies of the biographical data appearing in "Who's Who in America" 1950-1951 with respect to Dr. Gregersen, Dr. Hume and Mr. Morris.

3. The initial assets of the Foundation, which were received as gifts from China Trading & Industrial Development Corporation, a Chinese corporation, consisted in 10 shares of Class A Stock of United Tanker Corporation,

\$3,500 in cash, and the purchase price for 74,960 shares of Class B Stock of United Tanker Corporation (amounting to \$17,496). Attached hereto as Exhibit A-3 is a copy of a letter dated November 30, 1949 addressed to the Foundation by China Trading & Industrial Development Corporation confirming statements previously made to the effect that such donations were intended as absolute gifts and not as gifts in trust. The Foundation has subsequently received gifts and dividends from Meacham Corporation and United Tanker Corporation amounting to an aggregate of about \$280,000.

4. The principal assets of the Foundation at present are as follows:

All of the common stock of United Tanker Corporation.

(The Class A Stock and the Class B Stock of United Tanker Corporation were reclassified into common stock.)

All of the capital stock of Meacham Corporation.

Approximately \$160,000 in cash.

\$50,000 in United States bonds.

5. Since its organization the Foundation has made the following expenditures for charitable purposes:

(a) The Foundation has expended \$15,800, and committed an additional \$6,650, to support fellowships for Chinese graduate students in American universities conducting research in the fields of nutrition and insect pest control. Five fellowships were awarded for the academic year 1951-1952, by a committee consisting of Dr. Hume, Dr. Gregersen and Mr. Morris, and Dr. Chih Meng, Director of China Institute in America. The fellowships are administered by China Institute in America, which is an organization incorporated under the University of the State of New York, of which Henry R. Luce is Chairman and Edwin N. Clark, President.

(b) The Foundation has expended \$8,250 to support medical fellowships for the academic year 1951-1952 for Chinese in the public health field recommended to receive further training at American medical schools. The awards have been based on recommendations by the American Bureau for Medical Aid to China, which administers the fellowships.

(c) The Foundation has expended \$12,000, and is committed to expend an additional \$6,000, to support fifteen fellowships for American students majoring in Chinese studies during the academic year 1951-1952. The awards were based upon the recommendations of a committee consisting of Dr. Hu Shih, Dr. Chih Meng and Mr. H. C. Weng.

(d) The Foundation has expended approximately \$13,800 to finance a vocational survey, conducted by China Institute in America, of the approximately 5,000 Chinese students, professors, former officials and professional men now in the United States.

(e) The Foundation has expended \$8,646 to defray a part of the expenses of the teacher training courses for the academic year 1951-1952 for New York City school teachers, conducted under the joint auspices of the Board of Education of New York City and China Institute in America.

(f) The Foundation has expended approximately \$3,500 to obtain and ship to Formosa back numbers of Western periodicals as a donation to National Taiwan University, to fill the gaps in its periodical library. The New York Public Library donated spare copies from its files of a great many periodicals for this purpose, and also approximately 5,000 books. The cost of the handling and shipping of the periodicals and books was paid by the Foundation, which also obtained from various publishers back numbers of periodicals of which extra copies were not available at the New York Public Library.

(g) The Foundation donated \$5,000 to China Institute in America to defray a part of its ordinary expenses, and donated \$1,000 to The Christian Medical Council for Overseas Work, a Representative Committee of the Foreign Mission Conference of North America.

*Houston H. Wasson*

.....  
Houston H. Wasson

Sworn to before me this  
*15th* day of February, 1952.

*Abraham Kaminsky*  
.....  
Notary Public.

ABRAHAM KAMINSKY  
NOTARY PUBLIC, STATE OF NEW YORK  
No. 24-7146800  
Qual. in Kings Co., Certs. filed with  
N. Y. Co. Clerk, Kings, and N. Y. Co. Registers  
Term expires March 30, 1952

**EXHIBIT A-1.**

**CERTIFICATE OF INCORPORATION**

of

**THE CHINA INTERNATIONAL FOUNDATION, INC.**

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**FIRST:** The name of the Corporation is  
**THE CHINA INTERNATIONAL FOUNDATION, INC.**

**SECOND:** Its principal office in the State of Delaware is to be located at 317-325 South State Street, in the City of Dover, County of Kent, Delaware. The name and address of its resident agent is The Prentice-Hall Corporation System, Inc., 317-325 South State Street, Dover, Delaware.

**THIRD:** The objects and purposes of the Corporation are:

To promote, foster, encourage and further non-profit, non-sectarian and non-political educational, medical, philanthropic, humanitarian, scientific and literary enterprises of all kinds in the State of Delaware, the Republic of China, and in any other part of the world, including, but not being limited to:

(a) making grants-in-aid to schools, colleges, universities, and other similar institutions, formed and to be formed, to be used for educational purposes, designed to make general education available and to provide knowledge and scientific training to the peoples of the Republic of China in order to improve their condition both culturally and economically;

(b) creating and maintaining scholarships for the further education of qualified Chinese candidates and causing qualified Chinese candidates to be brought to the United States or any other part of the world for

additional educational training of any type, character or description;

(c) establishing and maintaining hospitals and public health centers and improving the conditions of health, sanitation and hygiene of the peoples of the Republic of China and/or any other part of the world;

(d) encouraging, promoting and fostering medical and scientific research and development and making the results of such research and development available to the peoples of the Republic of China and/or any other part of the world;

(e) creating and maintaining publications and adopting other methods for the diffusion and communication of educational material and scientific, medical and technical knowledge among the peoples of the Republic of China and/or any other part of the world.

In furtherance and not in limitation of the general powers conferred by the laws of the State of Delaware, and of the objects and purposes herein set forth, it is expressly provided that the Corporation shall also have the following powers:

To receive, maintain and administer, directly or indirectly, a fund or funds, and to apply the income and principal thereof to the promotion of the purposes herein set forth.

To found or create new institutions, foundations, trusts or other appropriate instrumentalities for purposes within the scope of the Corporation, either under the management of the Corporation, or in conjunction, collaboration or cooperation with other corporations, individuals, memorials, trusts, foundations, or other entities organized for similar purposes, and to convey the property and assets of the Corporation, or such part thereof as the Trustees deem desirable, to such institutions, foundations, trusts, or other instrumentalities organized for similar purposes.

To acquire, receive, purchase, hold, invest and reinvest in, use and enjoy, and to take by gift, grant, devise or bequest, real estate, personal property and mixed property of any kind or description, whether within or without the State of Delaware, and rights in action, and to grant, bargain and sell, give, exchange, demise, let, lease, sublease, charter, assign, mortgage, pledge, transfer, and set over the same at pleasure, and generally to deal therewith as fully and amply as individual persons can do with their own property.

In the event that the Corporation shall receive by gift, grant, devise or bequest any property or funds for which the donor or testator shall prescribe in his will or instrument of gift a particular purpose within the objects and purposes above specified, the principal and income thereof shall be used and applied to such designated purpose.

To borrow money of any person, firm or corporation and to issue notes or obligations of the Corporation from time to time, for any of the objects or purposes of the Corporation, and to secure the same by lawful means.

To have one or more offices and to carry on all or any of its operations and business in any of the states, districts, territories or colonies of the United States, and in any and all foreign countries, subject to the laws of such state, district, territory, colony or country.

In general to carry on any other lawful operations within the scope of the purposes hereinbefore set forth, and to have and to exercise all the powers conferred by the Laws of Delaware upon corporations formed under the Act hereinafter referred to, and to do any or all of the things hereinbefore set forth to the same extent as natural persons might or could do, provided that no part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation.

**FOURTH:** The Corporation is not for profit and shall have no capital stock. The conditions of membership of the Corporation shall be stated in the By-Laws.



FIFTH: The names and places of residence of the incorporators are as follows:

Name	Residence
Winslow M. Lovejoy.....	North Branch, New Jersey.
Houston H. Wasson.....	59 Greenacres Avenue, Scarsdale, New York.
Winfield A. Huppuch, II	260 High Street, Peekskill, New York.

SIXTH: The Corporation is to have perpetual existence.

SEVENTH: The private property of the incorporators, members and trustees shall not be subject to the payment of corporate debts.

EIGHTH: The activities and affairs of the Corporation shall be managed by a Board of Trustees. The number of trustees which shall constitute the whole board shall be such as from time to time shall be fixed by, or in the manner provided in, the By-Laws, but in no case shall the number be less than three. No person shall be eligible for election as a trustee who is not a citizen of the United States. The Board of Trustees originally shall be elected by the incorporators and thereafter shall be elected by the members at the annual meeting of the Corporation to be held on such date as the By-Laws may provide, and shall hold office until their respective successors are elected and qualified. The By-Laws shall specify the number of trustees necessary to constitute a quorum. The Board of Trustees may, by resolution or resolutions, passed by a majority of the whole board, designate one or more committees which, to the extent provided in said resolution or resolutions or in the By-Laws of the Corporation, shall have and may exercise the powers of the Board of Trustees in the management of the activities and affairs of the Corporation and may have power to authorize the seal of the Corporation to be affixed to all papers which may require it; and such committee or committees shall have such name or names as may be stated in the By-Laws of the Corporation

or as may be determined from time to time by resolutions adopted by the Board of Trustees. The Corporation may elect such officers as the By-Laws may specify, who shall, subject to the provisions of the statute, have such titles and exercise such duties as the By-Laws may provide.

The Corporation may in its By-Laws confer powers upon its Board of Trustees in addition to the foregoing, and in addition to the powers and authorities expressly conferred upon them by statute, provided that the Board of Trustees shall not exercise any power or authority conferred herein or by statute exclusively upon the members.

No part of the net income of the Corporation shall inure to the benefit of any member, officer, trustee or employee of the Corporation; nor shall any such member, officer, trustee or employee receive or be lawfully entitled to receive any pecuniary profit from the operations thereof, except reasonable compensation for services rendered in carrying out one or more of its purposes. However, the By-Laws may provide for reasonable compensation to officers and trustees for attendance at meetings.

**NINTH:** Meetings of members may be held without the State of Delaware, if the By-Laws so provide. The books of the Corporation may be kept (subject to any provision contained in the statutes) outside of the State of Delaware at such place or places as may be from time to time designated by the Board of Trustees.

**TENTH:** The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon members herein are granted subject to this reservation.

**WE, THE UNDERSIGNED,** being each of the incorporators hereinbefore named for the purpose of forming a corporation not for profit and without capital stock, to do business and carry on its operations both within and without the State of Delaware, and in pursuance to the General Corpo-

ration Law of the State of Delaware, being Chapter 65 of the Revised Code of Delaware, and the acts amendatory thereof and supplemental thereto, do make and file this Certificate, hereby declaring and certifying that the facts herein stated are true and accordingly have hereunto set our hands and seals the 3rd day of June, 1948.

s/ WINSLOW M. LOVEJOY (L.S.)

s/ HOUSTON H. WASSON (L.S.)

s/ WINFIELD A. HUPPUGH 2D (L.S.)

Sworn to before me this  
3rd day of June, 1948.

s/ GLADYS R. NUTTING.

STATE OF NEW YORK, }  
COUNTY OF NEW YORK, } ss.:

BE IT REMEMBERED that on this 3rd day of June, A. D. 1948, personally came before me, a notary public for the State of New York, Winslow M. Lovejoy, Houston H. Wasson and Winfield A. Huppuch, 2nd, all of the parties to the foregoing Certificate of Incorporation, known to me personally to be such, and severally acknowledged the said Certificate to be the act and deed of the signers respectively and that the facts therein stated are truly set forth.

Given under my hand and seal of office the day and year aforesaid.

GLADYS R. NUTTING.

**EXHIBIT A-2.****WHO'S WHO IN AMERICA**

1950-1951

GREGERSEN, Magnus Ingstrup, prof. of physiology; b. Kimballton, Ia., Jan. 27, 1903; s. Rev. Jens Moller and Sofie (Madsen) G.; A. B., Stanford U., 1923, A. M., 1924; student Mass. Inst. Tech., 1925-26; Ph. D., Harvard, 1930; m. Charlotte Kennedy, May 30, 1931; children—Kirsten, Sona, Carlotta. Austin teaching fellow in physiology, Harvard Med. Sch., 1925-27; instr. in physiology, 1927-35; prof. of physiology, U. of Md. Med. Sch., 1935-37; prof. of physiology and exec. officer of dept., Coll. of Physicians and Surgeons, Columbia, since 1937; consultant in physiology, Presbyn. Hosp; president, Am. Bur. Medical Aid to China, 1944; Dalton prof. physiology, 1945. Mem. subcom. on Shock, Div. Med. Sciences of the Nat. Research Council. Fellow N. Y. Acad. of Sciences, 1941; asso. fellow New York Acad. Med., 1946; mem. Am. Physiological Society, A. A. A. S., Soc. Exptl. Biology and Medicine, Harvey Soc., Phi Beta Kappa. Clubs: Hamilton Street (Baltimore), Wilton Riding. contbr. to Macleod's Physiology in Modern Medicine, 1938 and 1941, Contbr. to Am. Jour. Physiology. Home: 25 Claremont Av. Office: College of Physicians and Surgeons, New York, N. Y.

HUME, Edward Hicks, educator; b. of American parents, Ahmednagar, India, May 13, 1876; s. Edward Sackett and Charlotte Elizabeth (Chandler) H.; B. A., Yale, 1897, hon. M. A., 1912; M. D., Johns Hopkins, 1901; grad. work, U. of Liverpool, 1901-02; LL. D., Jefferson Med. Coll., 1923, U. of Hongkong, 1925; m. Lotta Carswell, Sept. 24, 1903; children—Theodore Carswell (dec.) Charlotte Elizabeth Margery (dec.), Edward Welch (dec.), Kathrina Joy. Acting asst. surgeon U. S. P. H. S., Bombay, India, 1903-05; sr. physician Yale Hosp., Changsha, China, 1906-23; dean Hunan-Yale Med. College, 1914-27, prof. medicine, 1916-23, clin. prof. medicine, 1923-27; pres. Colleges of Yale-

in-China, 1923-27; exec. v. p. and trustee N. Y. Post Grad. Med. Sch. and Hosp., 1928-33, dir., 1931-33. Founder and organizer Hosp. and Med. Coll. of Yale-in-China, Changsha. Chmn. Council Med. Edn. of China Med. Assn. 5 Yrs., asst. editor China Med. Jour. 9 yrs.; trustee Yale-in-China Assn.; trustee Cheeloo U., Lingnan U., Hua Chung College. Lecturer on Chinese medical history Johns Hopkins U. Spl. mem. Nat. Health Adminstrn. of China; special mem. Council on Med. Missions, China; sec. emeritus Christian med. council for Overseas Work; mem. program com. United China Relief; mem. Bd. Dir. American Bureau for Medical Aid to China, Assoc. Bds. for Christian Colleges in China; mem. Bd. Mgrs. Am. Bible Soc. Fellow N. Y. Acad. Medicine; mem. Am. Oriental Soc., A. M. A., Chinese Med. Assn., Am. Soc. Tropical Medicine, N. Y. Soc. Tropical Medicine, Am. Assn. of the History of Medicine, N. Y. Soc. for Medical History, N. China Br. Royal Asiatic Soc., Phi Beta Kappa, Psi Upsilon, Sigma Xi. Decorated by Chinese Govt. Order of Flourishing Grain, 3d class, 1926. Order of The Blue Jade 1941. Presbyterian. Clubs: Quill, Century (New York); Elihu (Yale). Author: The Chinese Way in Medicine 1940. Doctors East, Doctors West, 1946. Home: 464 Riverside Dr., New York 27, N. Y.

MORRIS, Newbold, lawyer; b. New York, N. Y., Feb. 2, 1902; s. Newbold and Helen Schermerhorn (Kingsland) M.; grad. Groton Sch., 1921; B. A., Yale U., 1925; LL. B., 1928; m. Margaret Conley Thaw, Sept. 1925 (divorced); children—Peter, Newbold; m. 2d, Constance Hand Jordan, 1942; children—Lewis Hand, Frances Learned. Fellow, Branford College, Yale University; practice of law associated with Morris & McVeigh, N. Y. City, 1929-33; asst. corp. counsel and mem. Bd. of Aldermen, City of N. Y. 1934-37; pres. Council of City of N. Y., 1938-46; now mem. law firm Post, Morris & Lovejoy. New York City rep. regional office Civilian Defense; chmn. N. Y. City of War Council; N. Y. City Police Athletic League; dir. Met. Defense Transport Com.; ex-officio N. Y. Pub. Library, Museum City of N. Y. Trustee Hampton Institute (Hampton, Va.), Spence Sch.,

Buckley Sch., Home for Incurables (Bronx, N. Y.) Memorial Hosp. for Treatment of Cancer (N. Y. City); pres. & dir. Children's Welfare Fedn., N. Y. City; pres. Henry Street Settlement, New York City Visiting Nurses Assn. Youth-builders, Inc. Recipient award of merit, nat. assn. Composers and Conductors, 1943-44. Official representative New York City W. P. A. Music Project; chmn. board directors N. Y. City Centre of Music and Drama; chmn. President's Emergency Famine Com., N. Y. City, 1946-47; mem. N. Y. City Planning Comm. Trustees Soc. for Relief of Destitute Blind, World Trade Foundn., Inc. Hon. pres. Nat. St. George Assn. of Govt. Employeecs, Bd. dirs. N. Y. Tuberculosis and Health Assn., Inc. mem. Alpha Delta Phi, Phi Delta Phi, Scroll and Key. Decorated by General deGualle with the Order of Officier, French Legion of Honor, August 1945. Republican. Episcopalian (vestryman Trinity Church, Lenox, Mass.) Mason, Elk, K. P. Clubs: Nat. Golf Links of America (Southampton, L. I.); Yale, City, National Republican (N. Y. City). Home: 340 East 72d St. Office: 52 Wall St., New York, N. Y.

**EXHIBIT A-3.**

(Letterhead of China Trading & Industrial  
Development Corporation)

November 30, 1949

The China International Foundation, Inc.,  
317-325 South State Street,  
Dover, Delaware.

Dear Sirs:

You have requested us to confirm in writing the oral statements made to your representatives at the times of our donation to you of certain cash and securities.

We have from time to time contributed to you ten shares of Class A Stock of United Tanker Corporation, a Delaware corporation, and \$3,500.00 in cash. We have also paid the consideration for shares of Class B Stock of United Tanker Corporation issued to you. These donations were made for the purpose of assisting in the creation of a fund to be applied to the purposes enumerated in your certificate of incorporation or any amendment thereto. All of our donations have been intended as absolute gifts and not as gifts in trust, and in no event are such donations or their proceeds to revert to China Trading & Industrial Development Corporation, its successors or assigns.

We understand that in the event of the dissolution of your Foundation, your Trustees would file a bill for instructions with the appropriate court so that the funds represented by or resulting from our donations would be devoted to the objects most nearly akin to the general charitable purposes expressed in your certificate of incorporation.

Very truly yours,

CHINA TRADING & INDUSTRIAL  
DEVELOPMENT CORPORATION

C. Y. CHEN

**EXHIBIT B.**

THE NATIONAL RESOURCES COMMISSION OF CHINA

OFFICE IN U. S. A.

Ref. No. 05925      December 9, 1947      111 Broadway  
New York 6, N. Y.      Rector 2-7893

China Trading & Industrial Development Corporation  
52 Wall Street  
New York 5, N. Y.

Dear Sirs:

In answer to your inquiry as to the current requirements of China for oil of all types, we wish to advise you as follows:

In order to enable China to meet its minimum industrial and war requirements, it is necessary for China to make arrangements to obtain approximately 1,000,000 tons of oil per year. At present China has contracts from sources in the Arabian Gulf for approximately 500,000 tons of oil per year. However, China has been able to obtain only one 3,000 ton tanker to transport this oil from the Arabian Gulf to Chinese ports. China has also made every effort to obtain approximately 500,000 tons of oil in the United States, but, so far, as a result of the short supply of oil and the oil tanker shortage in the United States, it has been unable to obtain any assured source of supply.

It is in view of this extremely urgent situation that the National Resources Commission is anxious to cooperate with you in every way to facilitate your acquisition from the United States Maritime Commission of tankers which



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we understand you will make available to us on terms which we have discussed with you for the transport of oil from the Arabian Gulf to Chinese ports.

Very truly yours,

NATIONAL RESOURCES COMMISSION OF CHINA

/s/ C. D. Shiah

C. D. Shiah, Chief  
Technical Department

CDS:lml

**EXHIBIT C.**

**APPLICATION TO PURCHASE**

**War-built Vessels**

**Filed by**

**UNITED TANKER CORPORATION**

**a citizen of United States of America**

The undersigned hereby offers to purchase the war-built vessels hereinafter described (herein called the "war-built vessels") at the statutory sales price, in accordance with the provisions of the Merchant Ship Sales Act of 1946, Public Law 321, 79th Congress, 2nd Session, approved March 8, 1946 (herein called the "Act"), and the rules and regulations prescribed by the United States Maritime Commission (herein called the "Commission"), sections 299.1 to 299.91, inclusive, of General Order 60, published in the Federal Register (herein called the "regulations"), which the applicant agrees shall be binding in all transactions in connection with this application. Applicant also agrees that any amendment or modification of the rules and regulations shall be binding in all transactions approved by the Commission after the date of publication of such amendment or modification in the Federal Register.

In order to induce the Commission to act favorably on this application, the applicant submits in support thereof the following information:

*A. As to the applicant: Its citizenship and affiliations.*

1. **Exact name.**

**UNITED TANKER CORPORATION.**

2. **Form or type of organization.**

**Corporation.**

3. State or other sovereign power under the laws of which organized.

Delaware.

4. Address of principal executive offices and of important branch offices, if any.

317-325 South State Street, Dover, Delaware.

5. A brief description of (a) the shipping business of the applicant; and (b) any other business activities of the applicant during the preceding eight years. If within such period the applicant has acquired the business of another person or has been reorganized, there should be included a brief description of such acquisition or reorganization.

Applicant was incorporated in December, 1947, and has engaged in no business activities except for the filing of this application. The President and the directors of applicant are United States citizens who have had long experience in the shipping business and allied fields, as set forth in answer to item 9. A majority of the stock of applicant is, and will at all times be, held by United States citizens. Substantially all of the capital of the applicant will be contributed by China Trading & Industrial Development Corporation, a Chinese corporation engaged in the export import business as set forth in answer to item 6. It is the intention of the applicant, if this application is granted, to charter the tankers obtained to the National Resources Commission of the Chinese Government or one of its controlled corporations to carry oil from Persian Gulf ports to Shanghai and other Chinese ports, and arrangements have been made with the National Resources Commission to this effect.

6. A list of (a) all subsidiaries, (b) parent company, and (c) all other affiliated interests of the applicant, together with an indication of the nature and extent of the business transacted for the past eight years by each. This

information may be furnished in the form of a chart, indicating clearly the relationships between the persons named, and the nature and extent of control.

Applicant has no subsidiaries. All of the Class A Stock of the applicant is held by China Trading & Industrial Development Corporation which will provide substantially all of the capital of the corporation.

China Trading & Industrial Development Corporation is a limited liability company incorporated in China with its head office at 131 Museum Road, Shanghai, China, and with branch offices in New York, London, Bombay and Canton. It was organized in 1944, and has capital of \$1,000,000,000 Chinese currency (pre-war value). It is engaged generally in exporting and importing oil products, steel products, industrial chemicals, and other commodities and raw materials. It acts as the agent for the Paragon Oil Company in shipping oil to China. During 1946 the total volume of business of China Trading & Industrial Development Corporation amounted to approximately \$8,000,000 (U. S. currency). China Trading & Industrial Development Corporation has a subsidiary, Hung-Shin Dyestuff & Chemical Company which owns and operates a dye factory in China.

China Trading & Industrial Development Corporation is affiliated with Chung-Yuan Steamship Company of China, which is one of the leading private Chinese steamship companies with a capital of approximately \$1,200,000 (U. S. currency), and now operating five steamships.

China Trading & Industrial Development Corporation is also affiliated with the Chung-Yuan Paper Manufactory in China, which has capital of approximately \$3,000,000 (U. S. currency) and during the last eight years has had gross revenues aggregating approximately \$40,000,000 (U. S. currency).

7. The following information with respect to each officer and director of the applicant:

Name and Address	Office	Nationality	Capital shares owned
Harold C. Lenfest, 30 Church Street, New York, N. Y.	President and Director	United States citizen	5 shares Class B stock
Walter H. Sieling, 74 Trinity Place, New York, N. Y.	Vice-President and Director	United States citizen	5 shares Class B stock
Arthur M. Tode, 17 Battery Place, New York, N. Y.	Director	United States citizen	5 shares Class B stock
Chung-Ching Wei, 52 Wall Street, New York, N. Y.	Secretary and Treasurer	Chinese citizen	None

8. Applicant represents that he is a citizen of the United States.

B. *As to the management of the applicant.*

9. A brief description of the principal business activities during the past eight years of each director and each principal executive officer of the applicant, if requested.

Harold C. Lenfest, Director and President, graduated from Webb Institute of Naval Architecture and Engineering in 1918. Mr. Lenfest subsequently became associated with Bath Iron Works, and later held positions as follows with the following firms:

Naval Architect for Fabricated Ship Corporation;

Southeastern Manager for De La Vergne Machine Company, 1925-1931;

Eastern District Manager, Diesel Engine Division, American Locomotive Co., 1931-1945;

While associated with American Locomotive Co., Mr. Lenfest also acted as Consultant for National Defense Research Committee on Mechanical Engineering and Naval Architecture, 1942-1944.

In 1945 Mr. Lenfest became Vice-President in charge of Enterprice Engine Company's New York City offices, and in 1946 Mr. Lenfest left that company to devote his full time to Continental Engineering Corporation and Continental Equipment Corporation, of which he is President. Mr. Lenfest has had actual experience at sea and holds the United States Department of Commerce license as chief engineer of either steam or Diesel ships of unlimited tonnage. Continental Engineering Corporation and Continental Equipment Corporation act as licensees and agents for J. Stone & Company, Limited, of London, England, and for a number of other firms in the sale of marine and railway equipment. Mr. Lenfest is a member of the American Society of Mechanical Engineers, the Society of Naval Architects and Marine Engineers, the Institute of Marine Engineers (London), and the Engineers Club of New York.

Walter H. Sieling, Director and Vice-President, is a member of the firm of Sieling & Jarvis which was organized in March, 1937. As a member of the firm of Sieling & Jarvis, and of predecessor firms, Mr. Sieling since 1922 has been active in the shipping business as ship brokers, managers and agents. During the war the firm of Sieling & Jarvis managed up to twenty-two tankers, and at present manages seven tankers, for the Maritime Commission. Sieling & Jarvis have also managed ships for private companies.

Arthur M. Tode, Director, is a consulting engineer, and is Honorary President of the Propeller Club of the United States. In this capacity he has been closely connected with the annual American Merchant Marine Conferences held each year under the auspices of the Propeller Club. Mr. Tode graduated from the New York State Maritime Academy in 1912 and has had practical training at sea, holding an unlimited license as Chief Engineer for both steam and Diesel propelled vessels. From 1922 to 1929 he served as Technical Superintendent of the Marine Department of the Texas Company, and in this capacity had charge of the oil tanker operations of that company.

Mr. Tode is a graduate engineer of the United States Navy Turbine Engineering School, the General Electric Marine Engineering School, the Sperry-Gyro-Compass School and of the United States Navy Fuel Oil School. He has had special training in the plants and laboratories of the Babcock & Wilcox Company, the Texas Company, McIntosh & Seymour, Combustion Utilities Corporation, and with the United States Shipping Board.

Mr. Tode is a member of the Society of Naval Architects and Marine Engineers, the Maritime Association of the Port of New York, the United States Naval Institute, the American Society of Naval Engineers, the American Society of Military Engineers, and the American Society of Mechanical Engineers. He is also a member of the Executive Committee of the International Committee for Safety of Life at Sea, the Executive Committee of the American Merchant Marine Library Association, and the Executive Committee of the United States Coast Guard Merchant Marine Council.

Chung-Ching Wei, Secretary and Treasurer, for the last year has acted as Vice-President of China Trading & Industrial Development Corporation, serving in its New York office. Mr. Wei graduated from Chiao-Tung University in 1937, with the degree of B. S. in electrical engineering and was in the employ of the National Resources Commission of China prior to his becoming Vice-President of China Trading & Industrial Development Corporation.

10. The name and address of each other organization engaged in shipping activities with which any person named in answer to the preceding item has any present substantial business connection, the name of such person and, briefly, the nature of such connection, if requested.

None, except as stated in answer to item 9.

11. The name and address of any person who is now acting or within the past eight years has acted as managing or operating agent of the applicant or in any similar

capacity and, briefly, the general terms of any agreement with reference thereto, if requested.

Applicant intends to employ Messrs. Sicling & Jarvis, 74 Trinity Place, New York 6, N. Y., as managing agents of the vessels for which application is herein made, upon their usual terms. No form of agreement has been entered into.

C. *As to the war-built vessels.*

12. Applicant offers to purchase, at the statutory sales prices, as determined by the Commission, the war-built vessels designated in items 13 and 14, or the alternative vessels designated in item 15.

13. If specific vessels are applied for, as distinguished from any one or more of a given type, the names of the vessels must be given under this item.

No specific vessels applied for.

14. If applicant is willing to accept any one or more vessels of a given type or designation, as distinguished from particular vessels, the type or designation of the vessels desired should be set forth as follows:

Applicant applies for two tankers of type T2, Commission's designation T2-SE-A1.

If no T2 tankers are available applicant applies for three tankers of type EC2, Commission's designation Z-ET1-S-C3.

15. If more than one vessel is applied for, state whether applicant will buy any one or more if all are not available for sale to him by placing an "X" or the appropriate number, as the case may be, in the proper space below. In the absence of any indication, it will be assumed that the applicant is willing to accept all or any of the vessels.

(a) All only ( ).

(b) All or any (x).

(c) Any but not less than .....



*D. Terms and conditions of sales.*

16. If the application is approved by the Commission, the applicant agrees to execute a contract of sale in form prescribed by the Commission. State what portion of the purchase price (not less than 25 percent of the statutory sales price) applicant agrees to pay not later than upon delivery of the vessels.

Applicant agrees to pay 100% of the statutory sales price not later than upon delivery of the vessels applied for.

17. Furnish full details as to the manner in which the applicant proposed to obtain the amount needed to defray the purchase price of the vessels (that is, at least 25 percent of the purchase price). The applicant should also furnish full details of any proposed security issue, including names of underwriters.

China Trading & Industrial Development Corporation will pay applicant for shares of its Class A stock an amount at least equal to 25% of the statutory sales price of the vessels applied for plus sufficient working capital to cover pre-operating and operating expenses of the vessels for a period of at least sixty days. The remainder of the funds required by applicant will be advanced to it either by China Trading & Industrial Development Corporation, or by the National Resources Commission of the Chinese Government, or, in part, by the negotiation of a commercial bank loan.

18. If this application is approved by the Commission, state whether or not applicant intends to apply to the Commission, pursuant to Section 9 or Section 37 of the Shipping Act of 1916, for approval to transfer or place under foreign registry or flag the vessels referred to above after applicant has purchased them. If applicant intends to apply for such approval, state to what foreign registry or flag.

Applicant intends to operate the vessels applied for under American registry, and has no intention of applying for approval to transfer such vessels to any foreign registry.

19. Does applicant propose to trade in old vessels for an allowance of credit on the purchase price of a war-built vessel? If so, is application contingent thereon? State date of application for determination for allowance of credit if filed.

Not applicable.

*E. Preference.*

20. A statement showing the extent to which losses and requisitions of the applicant's prewar tonnage have been overcome and other information in support of request for preference.

Not applicable.

*F. Supplemental information.*

21. A brief description of the general character and location of the principal property of the applicant, other than vessels, employed in its business.

No other property.

22. (a) A list of vessels owned by the applicant, including (1) name; (2) gross tonnage; (3) net tonnage; (4) dead-weight tonnage; (5) bale capacities; (6) year built; (7) type; (8) speed; (9) registry; and (10) identification of route or service on which operated.

(b) Information similar to that specified in (2) as to any vessels chartered to and operated by the applicant.

None.

23. Briefly, the general terms of each charter for operation (a) of vessels owned by the applicant and chartered by it to other persons, and (b) of vessels chartered by the applicant from other persons.

Not applicable.

24. Full details concerning the services, routes, or lines on which vessels owned or chartered by the applicant are now operated, including ports of call, terminal and dock facilities at all such ports, frequency of sailings per year, description of services and voyages, and names of vessels segregated according to services, routes, or lines.

Not applicable.

25. Type and kind of cargo now carried in the trade served as stated in the answer to item 24, information as to how the service or line may be developed for carrying additional types and kinds of cargo, and any factors influencing cargo expectations for the future. If the war-built vessel is to be a combination passenger and freight vessel, state also, by classes, the passenger accommodations and the number of passengers carried and any factors influencing traffic expectations for the future.

Not applicable.

26. Information similar to that called for by the two preceding items with respect to any new service, route, or line which the applicant proposes presently to establish.

Applicant proposes to use the tankers applied for to carry oil from Persian Gulf ports to Chinese ports for the Chinese Government.

27. Identification of the service, route, or line described in answer to item 24 or item 26, on which the applicant proposes to operate the war-built vessel, brief description of passenger accommodations, and statement of type and kind of cargo to be carried by the war-built vessel. Any special requirements of such service, route, or line and the manner in which they may be met by the use of the war-built vessel should be discussed briefly. Any changes in existing service, routes, or lines which the applicant proposes to make in connection with the use of the war-built vessel should also be indicated.

See answer to item 26.

28. A statement as to whether or not the war-built vessel is to be used to replace a vessel now operated by the applicant and, if so, the name of such vessel and the proposed disposition to be made of it by the applicant.

Not applicable.

G. *As to exhibits furnished.*

29. A list of exhibits, properly identified, which shall include at the time of original filing, the following:

*Exhibit I*—A copy of the Certificate of Incorporation of the applicant or other organization papers, including all amendments thereto presently in effect.

Filed herewith.

*Exhibit II*—A copy of the by-laws or other governing instruments of the applicant, including all amendments thereto presently in effect.

Filed herewith.

*Exhibit III*—A copy of (1) a balance sheet as of a date within six months of the date of filing the application with the Commission, (2) a brief statement of the nature of any substantial changes in the financial condition of the applicant or the results of its operations since the date of the balance sheet required hereunder, and (3) profit and loss statements for the three fiscal years preceding the date of such balance sheet and the three fiscal years ending in 1939, 1940 and 1941. If during the period covered by such profit and loss statements, the applicant succeeded to the business and assets of another person, the statements furnished should reflect the operations of such predecessor or predecessors for that part of such period preceding the date of acquisition.

Not applicable.

*Exhibit IV*—A copy (specimen if available) of each form of bonds or notes included in the funded debt of the applicant and a copy of each indenture or other instrument

under which such securities were issued, including all amendments thereto presently in effect.

Not applicable.

UNITED TANKER CORPORATION  
(Name of applicant)

By HAROLD C. LENFEST

ATTEST:

C. C. WEL.

December 10, 1947.

(Date)

STATE OF NEW YORK }  
COUNTY OF NEW YORK }

I, HAROLD C. LENFEST, being duly sworn, depose and say that I am the President of UNITED TANKER CORPORATION, the applicant on whose behalf I have executed the foregoing application; that the applicant is a citizen of the United States within the meaning of section 2 of the Shipping Act, 1916, as amended (U. S. C. Title 46, sec. 802), and section 905 (c) of the Merchant Marine Act, 1936, as amended (U. S. C. Title 46, sec. 1244); that this application is made for the purpose of inducing the United States Maritime Commission to take the action requested herein, pursuant to the provisions of the Merchant Ship Sales Act of 1946, and particularly to section 4 thereof; that I have carefully examined the application and all documents submitted in connection therewith and, to the best of my knowledge, information and belief, the statements and representations contained in said application and related documents are full, complete, accurate and true.

HAROLD C. LENFEST

Subscribed and sworn to before me, a Notary Public in and for the State and County above named, this 10th day of December, 1947.

-----  
My commission expires

**EXHIBIT D.**

UNITED STATES MARITIME COMMISSION  
WASHINGTON

February 3, 1948.

Messrs. Post, Morris & Lovejoy  
52 Wall Street  
New York 5, N. Y.

Dear Sirs:

In reply to your telegram of February 2, 1948, advising that a question has been raised as to the citizenship of your client, United Tanker Corporation, and requesting our opinion in the matter, I wish to advise that in my opinion the United Tanker Corporation is a citizen of the United States within the meaning of Section 2 of the Shipping Act of 1916, as amended.

I have examined the application to purchase as filed by the United Tanker Corporation, the Certificate of Incorporation and the By-Laws thereof, and find from the evidence submitted therein that the United Tanker Corporation is a citizen of the United States within the meaning of Section 2 of the Shipping Act.

The application to purchase of the United Tanker Corporation, advises:

"The President and the Directors of applicant are United States citizens who have had long experience in the shipping business in allied fields. \* \* \* The majority of the stock of applicant is, and will at all times be, held by United States citizens.

"All of the Class A stock is held by China Trading and Industrial Development Corporation which provides substantially all of the capital of the corporation.

"The President and Managing Directors are citizens of the United States.

“Applicant has filed a deposition signed by its President that it is a citizen within the meaning of Section 2 of the Shipping Act of 1916, as amended, and that statements made in the application to purchase were made for the purpose of inducing United States Maritime Commission to sell to it warbuilt vessels.”

An examination of the Certificate of Incorporation of the United Tanker Corporation as submitted by the firm of Post, Morris & Lovejoy, 52 Wall Street, New York, N. Y., discloses that the Corporation was incorporated under the laws of the State of Delaware on the 9th day of December, 1947. Article 4 of said Certificate of Incorporation provides:

“The total number of shares of all classes of stock which the Corporation shall be authorized to issue is 2,000 shares, of which 1,000 shares will be Class A stock, par value \$100 per share, and 1,000 shares shall be Class B stock, without par value.”

Paragraph (e) of Article 4 provides:

“No shares of Class A stock may be issued or sold by the Corporation unless, after giving effect to such issuance and sale, there shall be outstanding a greater number of shares of Class B stock than the number of outstanding shares of Class A stock.”

Paragraph (f) provides:

“All shares of Class B stock of the Corporation are to be held by each stockholder upon condition that he will not sell, transfer or otherwise dispose of any of such shares except to a citizen of the United States within the meaning of Section 2 of the United States Shipping Act of 1916, as amended.”

In other words, the Certificate of Incorporation provides that the majority of the outstanding stock shall at all times be held by citizens of the United States and that there

shall be no sale of the Class B stock to anyone who is not a citizen of the United States.

The Corporation, itself, is prohibited from selling Class B stock to aliens and from placing itself in a position wherein an alien may acquire the majority of the outstanding stock.

An examination of the By-Laws of the Corporation reveals that in Article II thereof, there is recited the statement "no person shall be eligible for election as a director who is not a citizen of the United States", and to the effect that the President must be a director.

Thus, in my opinion, the necessary requirements of a citizen of the United States within the meaning of Section 2 of the Shipping Act of 1916, as amended, are complied with by the United Tanker Corporation, and the corporation must be considered as one within the meaning of the Act.

Very truly yours,

FRANCIS B. GOERTNER,  
Assistant General Counsel.



**EXHIBIT E.**

April 15, 1948

Arthur Tarantino, Esq.  
United States Maritime Commission  
Department of Commerce Building  
Washington 25, D. C.

Dear Mr. Tarantino:

In accordance with your request there is enclosed herewith a copy of Certificate of Amendment of American Viking Corporation certified by the Secretary of State of the State of Delaware filed in that office March 11, 1948.

Pursuant to said certificate there have been issued the following shares:

2,000 shares of 6% Preferred Stock, par value \$100.00 per share, having no voting rights, issued to Olga Konow, an American citizen;

6,000 shares of 6% Preferred Stock, par value \$100.00 per share, having no voting rights, issued to United Tanker Corporation, a citizen of the United States within the meaning of Section 2 of the Shipping Act of 1916, as amended;

15,810 shares of Common Stock, par value \$1.00 per share, having voting rights, issued to Olga Konow, an American citizen;

15,190 shares of Common Stock, par value \$1.00 per share, having voting rights, issued to United Tanker Corporation, a citizen of the United States within the meaning of Section 2 of the Shipping Act of 1916, as amended.

With respect to United Tanker Corporation, may I respectfully refer you to letter of Mr. Francis B. Goertner, Assistant General Counsel, to Messrs. Post, Morris & Lovejoy, attorneys for United Tanker Corporation, dated February 3, 1948.

Very truly yours,

Signed by JULIUS J. ROSENBERG

Enclosure  
cc: Mrs. Olga Konow

**EXHIBIT F.**

NATIONAL TANKER CORPORATION  
521 Fifth Avenue (Room 1111)  
New York 17, N. Y.

January 24, 1948.

United Tanker Corporation  
317-325 South State Street  
Dover, Delaware

Dear Sirs:

We wish to confirm the agreement between us as follows:

1. National Tanker Corporation (hereinafter called "National") represents as follows:

(a) National was organized on January 22, 1948 under the laws of the State of Delaware, and proposes to take title from the United States Maritime Commission to three T-2 tankers, namely, the S.S. *Meacham*, the S.S. *Kettleman Hills* and the S.S. *Antelope Hills* (hereinafter called the "Tankers"). National has outstanding one thousand (1,000) shares of capital stock registered in the names of the stockholders listed on Schedule A hereto. National has no assets except the sum of \$1,000 paid in on its capital stock, and National has no liabilities. National proposes to execute or cause to be executed contracts with the Maritime Commission for the purchase of the Tankers on or about January 26, 1948.

(b) Representatives of National have discussed informally with three members of the Maritime Commission the subject matter of this agreement and have been advised informally that the Maritime Commission has no objections to the carrying out of this agreement.

2. United agrees to lend to National the entire cost of purchase by National of each of the three tankers, estimated to be approximately \$2,000,000 per tanker. The cost of purchase is understood to include all expenses which necessarily will be incurred in the acquisition of each tanker, and also in the conditioning, outfitting and furnishing of each tanker, but shall not include any commissions or attorneys' fees payable by National or any expenses of any kind incurred by National prior to the date hereof. Of the amount to be advanced to National by United, \$202,650 will be advanced with respect to each tanker simultaneously with the execution of the contract of sale of such tanker and the remainder of the cost of purchase of each tanker will be advanced as required by the Maritime Commission.

3. All advances made by United to National shall be evidenced by notes or bonds of National payable to United or its assigns and to be secured by a Preferred Ship Mortgage or Mortgages on the tanker with respect to which the advance or advances are made, and by an assignment of all monies to become due under the bareboat charter referred to below, except for such monies as must be retained by National to pay necessary corporate taxes and expenses. At the option of United the Preferred Ship Mortgage or Mortgages shall be either directly to United or to a United States bank or trust company or other United States citizen. The notes or bonds will bear such interest rate or rates and have such maturities (not exceeding ten years) and such other terms and conditions as United may approve. The Preferred Ship Mortgage or Mortgages shall be delivered to United by National promptly upon the registration of each tanker in the name of National and shall be in form and substance satisfactory to United.

4. National agrees to charter each tanker for a term of ten years under a bareboat charter to United in usual form at the rate of \$1.20 per deadweight ton per month, plus such additional amount as may be necessary to enable National to complete the payment of corporate taxes and interest

and expenses. To secure the performance of the obligations and commitments by United under this bareboat charter contract, such contract shall contain the provision that United agrees to deposit, simultaneously with the delivery of tankers to National, an amount equivalent to \$150,000 multiplied by the number of tankers acquired by National pursuant to the provisions of this agreement. Such deposit as provided for herein shall be made with and to an escrow agent satisfactory to United, or at United's election, shall be in the form of an irrevocable Letter of Credit, or a bank guarantee, in favor of the escrow agent in such aforesaid amount. Such security is to be maintained by United for a period of one (1) year from the date of delivery of the tankers, or until such earlier time as National shall give its consent in writing to the termination of such security.

5. At the request of United, National agrees to arrange to have each tanker moved to a shipyard or elsewhere for drydocking and/or inspection, and representatives of United shall be entitled to inspect such tanker and either to accept or reject each such tanker at the time of such inspection. If any tanker is rejected by United, National shall return to United any advances theretofore made by United with respect to such tanker, less all amounts, if any, owing by National to the Commission for such drydocking and inspection and the movement of such vessel to drydock or for inspection and returning it to its previous location, and all other necessary expenses in connection therewith.

6. National agrees that, without the written consent of United, which shall not be unreasonably withheld, it will not during the period from the date of this agreement until the expiration of the period of the bareboat charter or charters and until all monies due United under this agreement have been paid:

(a) Engage in any business whatsoever other than that of chartering the Tankers to United.

(b) Voluntarily create, incur, assume or suffer to exist any mortgage, pledge or other encumbrances upon any of its properties or assets whether now owned or hereafter acquired, except mortgages, pledges or encumbrances to United.

(c) Voluntarily create, incur or assume any liability for borrowed money except to United.

(d) Assume, guaranty, endorse or otherwise become liable in connection with the obligation of any person, firm or corporation.

(e) Enter into any merger or consolidation, or sell, assign, transfer, mortgage, pledge or hypothecate its interest in this contract.

(f) Use any of the funds of National for purpose of paying compensation, or enter into contracts of any kind.

(g) Issue or sell additional shares of stock, declare any dividends, or make any payments of any kind.

7. National agrees that, during the period from the date of this agreement until the expiration of the period of the bareboat charter or charters and until all monies due United under this agreement have been paid, the Assistant Treasurer of National shall be a person satisfactory to United, and all checks drawn by National shall bear the counter-signature of such Assistant Treasurer.

8. Simultaneously with the delivery to National by the Maritime Commission of the bill of sale for each tanker, and the bareboat charter of such tanker to United by National, United agrees to pay to a payee to be designated by National the sum of \$8,333.33 as reimbursement for expenses incurred with respect to each such tanker.

9. United represents that it is a corporation duly organized under the laws of the State of Delaware, that its president and directors are United States citizens, that the holders of the majority of its stock are United States citizens and that this representation will continue to be true and correct during the life of this contract. United further represents that the statements made as to its citizenship and as to its officers, directors and stockholders in the application dated December 10, 1947, filed by United with the Maritime Commission, a copy of which has been furnished to National, are true and correct as of the date hereof.

10. This contract may be terminated by United at its option by written notice delivered to National at its office at 521 Fifth Avenue, New York (Room 1111) if within 20 days from the date hereof a contract of purchase for the Tankers duly executed by the Maritime Commission has not been received. Upon such termination National will, at the request of United, promptly notify the Maritime Commission of its rejection of the tankers and thereafter diligently take all necessary steps to obtain the refund of all sums therefore advanced by United, and repay such sums, upon receipt thereof, to United, less expenses, if any, incurred with the consent of United.

11. Neither United nor National shall be under any liability to the other for failure to carry out the provisions of this agreement, if performance of this agreement is rendered impossible by action of the Maritime Commission or the United States Government or by events beyond the control of either party; provided, however, that if performance of this contract is rendered impossible National will, at the request of United, promptly take all necessary steps to enforce any rights which it may have for damages or compensation or recovery of amounts paid to the Maritime Commission or expenses incurred, and, upon receipt thereof, repay United for any advances theretofore made to National

by United, less expenses, if any, incurred with the consent of United.

12. It is understood that under the present requirements of the United States Maritime Commission any tankers chartered to United under the provisions of this agreement must be operated in the coastwise or nearby foreign trade until May 1, 1948, as per the attached letter marked "Exhibit B".

Will you kindly confirm that the foregoing correctly sets forth the agreement between us by signing and returning the enclosed copy of this letter.

Very truly yours,

NATIONAL TANKER CORPORATION

By E. STANLEY KLEIN  
Vice Pres.

Confirmed: January 24, 1948.

UNITED TANKER CORPORATION

By HAROLD C. LIENFEST  
Pres.

SCHEDULE A.

Stockholders of National Tanker Corporation	Number of Shares
Joseph E. Casey.....	300
Julius C. Holmes.....	300
E. Stanley Klein.....	400

NATIONAL TANKER CORPORATION  
521 Fifth Avenue (Room 1111)  
New York 17, N. Y.

January 24, 1948

United Tanker Corporation  
317-325 South State Street  
Dover, Delaware

Dear Sirs:

We wish to confirm the agreement between us as follows:

1. The undersigned represent that they are the holders of all of the outstanding shares of stock of National Tanker Corporation (hereinafter called "National"), and that said stockholders ratify and approve the attached agreement between National and United Tanker Corporation (hereinafter called "United"), which is attached hereto as Exhibit A. The undersigned stockholders further represent that their representatives have discussed informally with members of the Maritime Commission the subject matter of this agreement and have been advised informally that the Maritime Commission has no objections to the carrying out of this agreement.

2. In consideration of your execution of the attached agreement between United and National, simultaneously with the execution of this agreement, the undersigned hereby grant to United an irrevocable option to purchase all of the stock of National at any time after September 15, 1948, but not later than October 15, 1948, for a price equal to \$150,000 multiplied by the number of tankers acquired by National pursuant to the provisions of the attached agreement.

3. To facilitate the exercise of such option by you, the undersigned agree to deposit all of the shares of stock of National in escrow in transferable form with an Escrow



Agent satisfactory to you, such deposit to be made immediately upon the execution of this agreement. The Escrow Agent is hereby irrevocably instructed to deliver said stock to you upon your payment to the Escrow Agent at any time after September 15, 1948, but not later than October 15, 1948, of the option price by certified check.

Will you kindly confirm that the foregoing correctly sets forth the agreement between us by signing and returning the enclosed copy of this letter.

Very truly yours,

E. STANLEY KLEIN

JOSEPH E. CASEY

JULIUS C. HOLMES

By JAMES G. MACKAY  
As Attorney in Fact.

Confirmed: January 24, 1948.

UNITED TANKER CORPORATION

By HAROLD C. LENFEST  
Pres.

**EXHIBIT G.**

**Excerpts of hearings held on Friday, February 13, 1948, before the House Committee on Merchant Marine and Fisheries in connection with House Resolution No. 36.**

"Mr. Bradley. Now, with relation to the general sale of tankers to Americans, some little time ago I reported to the Commission the fact that I understood that certain tankers which were bought by American firms were being disposed of surreptitiously to Chinese citizens. Do you know anything about that? I do not want you to bring out anything which is confidential, but I merely want you to state what you know about it.

Admiral Smith. One company, under the American flag, called the American Overseas Tankers, previously bought five tankers under the Panama flag and recently three under the American flag, and they have chartered them under the American flag to a so-called United Tankers, which operates between the Persian Gulf and Shanghai and Chinese ports. It flies the American flag and is something slightly over 50 percent American-owned, but I understand it is Chinese capital.

Now, I understand they have placed in their contract an operation (option) for the charterer at the end of 1 year to purchase those three ships.

Mr. Bradley. At the end of 20 years?

Admiral Smith. At the end of 1 year. It is still American-flag operation, of course.

The other one, American Viking, my assistant has been to New York and has seen that contract, and that is merely a voyage charter to the same company, but has no such option agreement in it. That is, it is a clean contract, and the American Viking is using these tankers as anybody else does.

Mr. Bradley. If the option is exercised, does that mean the tanker would go foreign as far as the flag is concerned?

Admiral Smith. No, sir; it would go to this company, which is only slightly 50-percent American-

**EXHIBIT H.**

CHEMICAL BANK & TRUST COMPANY  
165 Broadway  
New York 15, N. Y.

FOREIGN DEPARTMENT

May 14, 1948

Bank of China  
New York Agency  
40 Wall Street  
New York 5, N. Y.

*Attention: Mr. Tuh-Yueh Lee, Manager*  
*Re: S/T "Meacham"*

Dear Sirs:

We are enclosing a signed copy of a letter dated May 13, 1948, constituting the Loan Agreement between National Tanker Corporation and United Tanker Corporation and China Trading & Industrial Development Corporation on the one hand and Chemical Bank & Trust Company on the other. There are also enclosed (or will subsequently be forwarded to you) copies of the various relevant papers listed in the schedule attached hereto.

You have requested us to extend to you a 49% participation in the principal amount of \$931,000.00 in our \$1,900,000.00 loan to the above mentioned companies under the said Loan Agreement. We hereby confirm to you such participation effective May 14, 1948, subject to your signing the acceptance appearing below on the carbon copy hereof and returning the same to us.

The said participation is extended subject to the following terms and conditions:

1. We make no representation with regard to and shall in no way be responsible for the validity, genuineness

or effect of the said Loan Agreement or any paper or document therein referred to or listed in the said schedule of papers, or heretofore or hereafter delivered to you in connection therewith, nor for the accuracy of any statements in the said Loan Agreement, or in any such paper or document.

2. It is understood in connection with your participation in this Loan that, although we may from time to time communicate with you with respect thereto, we shall be under no obligation to keep you informed and that you will be satisfied with such action or inaction and with such degree of diligence and attention on our part as may, from time to time, attend our own interests in the situation, including the recording or filing or non-recording or non-filing of any of the various loan papers or documents, as we may see fit, our only responsibility in connection with the subject matter of this letter being not to act in bad faith, and to turn over to you your proportionate share of the net amounts received or applied by us on account of principal of or interest on the Loan.
3. You shall be responsible to us for your pro-rata share of any expenses or liabilities incurred by us in connection with the said Loan Agreement and/or the loan made pursuant thereto.
4. We may make other loans, continue or extend any existing loans, or otherwise extend credit to or deal with National Tanker Corporation and United Tanker Corporation and China Trading & Industrial Development Corporation, or any of them, and may grant participation in the present loan to others, all in the same manner and as freely as though no participation had been granted to you.

If the foregoing is in accordance with your understanding, kindly endorse your acceptance on the carbon copy

of this letter and its attached schedule ad return the same to us.

Very truly yours,

CHEMICAL BANK & TRUST COMPANY

By C. E. ROBERT CLUKIES (signed)  
Authorized Signature

Enclosures

We acknowledge receipt of the enclosures described in the foregoing letter and accept the participation therein mentioned on the terms and conditions therein specified.

BANK OF CHINA

By T. Y. LEE, Manager (signed)  
Authorized Signature

Dated: May 14, 1948.

**EXHIBIT I.**

**GUARANTY OF BANK OF CHINA**

To induce the Chemical Bank & Trust Company to execute the notation on the foot of a letter dated September 27, 1949, addressed to it by National Tanker Corporation, United Tanker Corporation and China Trading & Industrial Development Corporation (together hereinafter called the Borrowers), a copy of which is attached hereto and the form of which we hereby approve, we the undersigned Bank of China hereby guarantee the repayment to the Chemical Bank & Trust Company of the outstanding principal, interest and expenses of the loan therein referred to which it made to the Borrowers on May 14, 1948, and as collateral security for the payment of our guaranty, we hereby pledge to Chemical Bank & Trust Company \$350,000. face amount of United States Treasury 2- $\frac{1}{4}$ % bonds due December 15, 1962-1959.

The rights of the Chemical Bank & Trust Company under this guaranty shall not be affected or prejudiced by its failing to obtain new assignments of charter hires and/or freight moneys under any charter party or freight engagements entered into by all or any of the Borrowers or by its failing to notify us of any default of the Borrowers or its granting any further leniency or extension of time to the Borrowers. We hereby waive notice of acceptance of and demand for payment under this guaranty and of extension of credit to the Borrowers, presentment and demand for payment by the Borrowers, protest and notice to us of dishonor or default of the Borrowers, and all other notices to which we might otherwise be entitled.

If and when the Chemical Bank & Trust Company shall notify us in writing that it has called its said loan because the Borrowers have defaulted in paying in accordance with their said letter dated September 27, 1949, or under any provision of the said loan agreement, loan note, mortgage or other security, we shall immediately exercise one or the

other of the two following alternatives, namely: (1) pay to the Chemical Bank & Trust Company the full amount of the then outstanding principal, interest and expenses of the said loan in exchange for an assignment without recourse by it to us of the evidence of said loan and the security therefor and the cancellation of the pledge of securities given as collateral security for our within guaranty; (2) notify the Chemical Bank & Trust Company that we prefer that it endeavor to collect the loan indebtedness due it by resorting to whatever remedies are available to it against the Borrowers and/or the security for the loan and if and when we shall subsequently receive written notice from the Chemical Bank & Trust Company stating that the steam tanker "MEACHAM" has been sold under a judgment or decree of foreclosure of the mortgage thereon held by the Chemical Bank & Trust Company or under the power of sale as provided in said mortgage and that the proceeds of such sale have been applied as provided in said mortgage and that notwithstanding such application the sale proceeds were insufficient to pay in full all of the Borrowers mortgage indebtedness to the Chemical Bank & Trust Company as provided in said mortgage and specifying the exact amount of the insufficiency or deficiency then due to the Chemical Bank & Trust Company, we will immediately upon receipt of such notice pay to the Chemical Bank & Trust Company 51% of the amount of the insufficiency or deficiency therein specified assuming that such insufficiency or deficiency represents only unpaid balance of principal and unpaid interest but if such insufficiency or deficiency also comprises some unpaid expenses incurred by the Chemical Bank & Trust Company in connection with the loan and/or its enforcement, we will pay to it a sum of money equal to 100% of any unpaid balance of such expenses incurred by it and interest thereon at the rate of 6% per annum for the period from the date when such expenses were paid or incurred up to the date of our payment, plus 51% of the unpaid balance of loan principal and loan interest accrued to the date of our payment. Upon our making such payment to the Chemical Bank & Trust

Company, all its rights under this guaranty and all our rights under our loan participation agreement with it dated May 14, 1948, shall be deemed satisfied and released. In the event we select alternative (2), we appreciate that in the nature of the case the Chemical Bank & Trust Company may encounter considerable, practicable and/or legal difficulties in enforcing its rights and remedies under the said mortgage and it is specifically agreed that in so far as this guaranty is concerned, the rights of the Chemical Bank & Trust Company hereunder shall not be prejudiced by the lapse of any period of time whatsoever or any period of time that might otherwise be considered unreasonable in length and that we shall not be entitled to the surrender of the securities pledged by us as collateral security for this guaranty until such time as we shall have made full payment to the Chemical Bank & Trust Company as provided in this guaranty and particularly as above provided under alternative (2). Upon our making such payment to the Chemical Bank & Trust Company as above provided, we shall be entitled to receive from the Chemical Bank & Trust Company an assignment by it to us, without recourse against it, of any evidence of said loan then remaining in its possession and all of the then remaining security therefor then remaining in its possession and all of the then remaining rights, if any, of Chemical Bank & Trust Company in, to and under said remaining security and all its then remaining rights, if any, against the said Borrowers.

PROVIDED HOWEVER, that notwithstanding anything to the contrary hereinbefore stated, this guaranty shall cease and determine when and if the Borrowers or any of them shall have become legally free to charter the "MEACHAM" to someone other than Chinese Petroleum Corporation and shall have entered into a written long term non-cancellable charter party extending beyond January 14, 1952, which the Chemical Bank & Trust Company and the Bank of China, New York Agency, shall have approved in writing as being satisfactory to them and the charter hire whereof shall have been validly assigned to the Chemical Bank &



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Trust Company by instrument in writing accepted by it and notified to and accepted by such long term charterer.

This guaranty is, and shall be deemed to be, a contract entered into under and pursuant to the laws of the State of New York and shall be in all respects governed, construed, applied and enforced in accordance with the laws of said State; and no defense given or allowed by the laws of any other State or country shall be interposed in any action hereon unless such defense is also given or allowed by the laws of the State of New York.

New York, N. Y., 27th day of September, 1949.

BANK OF CHINA

By T. Y. LEE  
Authorized Signature.

**EXHIBIT J.**

**Affidavit of C. D. Shiah.**

IN THE  
UNITED STATES DISTRICT COURT,  
FOR THE EASTERN DISTRICT OF VIRGINIA,  
NORFOLK DIVISION.

UNITED STATES OF AMERICA,  
Libelant,

v.

Tanker *Meacham* and her tackle  
apparel, furniture, equipment, etc.,  
*in rem.*

Admiralty No. 7477.  
Affidavit.

STATE OF NEW YORK, }  
COUNTY OF NEW YORK, } ss.:

C. D. SHIAH, being duly sworn deposes and says:

I am the representative in the United States of Chinese Petroleum Corporation, which is a wholly owned subsidiary of a department of the Nationalist Government of China.

My attention has been called to the fact that the United States Government has commenced proceedings in this Court seeking to forfeit the American tanker *Meacham*. I have been advised that the United States Government contends that control of *Meacham* Corporation, owner of the tanker *Meacham*, was conferred upon certain Chinese interests. Apparently one of the principal claims of the Government in this connection is that Chinese Petroleum Corporation "controlled" *Meacham* Corporation as a result of a certain promissory note which was given by *Meacham* Corporation to Chinese Petroleum Corporation. The pur-

pose of this affidavit is to call to the Court's attention the provisions of this note from which it can readily be seen that Chinese Petroleum Corporation most clearly did not and could not control the debtor corporation. A copy of the note is annexed hereto and marked Exhibit "A".

I wish to call the Court's particular attention to certain more important provisions in the note. The note was payable in installments over a period of over seven years. More than this, however, the position of Chinese Petroleum Corporation was particularly weak in that not only was the note in essence an income note but could, it would seem, be extended by the debtor more or less indefinitely. In this connection the note provides:

"If the net income of the Corporation, as hereinafter defined, shall be insufficient to permit the payment in full of the installment or installments of this note coming due in such year, the due date of the unpaid deficiency of such installment or installments shall be extended from year to year, if necessary, until the final maturity of this note on February 15, 1957, and thereafter for two additional years if necessary, and thereafter on mutually agreeable terms, until the Corporation has accumulated sufficient net income, as hereinafter defined, to enable it to pay such installment or installments."

It is difficult to see how a creditor who is in such a weak position as a holder of a note containing such provisions as the above could possibly be said to "control" the debtor corporation.

I understand that the United States Government has called attention to the fact that the vessel *Meacham* could not be sold without the approval of the payee of the note. Such a provision in no way places control of the debtor corporation in the hands of the creditor. It is one of the routine and common provisions in loans designed to give some measure of safety to the creditor and to prevent the squandering or dissipation of the debtor's assets. In other words the obvious purpose of such a provision is to prevent

the debtor from disposing of its principal asset at a ridiculous price and thus in effect avoiding its obligation to repay a loan. It in no way places any control in the hands of the creditor over the Meacham Corporation nor does it enable it to dictate the Corporation's policies or the operations of the vessel. Of course, once the note was paid in full Chinese Petroleum Corporation would have no further claim of any kind whatsoever against the vessel's owner, the Meacham Corporation.

Chinese Petroleum Corporation does not now and never has owned or had any interest in any stock of Meacham Corporation or of any corporation affiliated with or in any way related to Meacham Corporation. In short, I wish to emphasize that there was no agreement or understanding whatsoever by which control of Meacham Corporation was conferred upon or permitted to be exercised by Chinese Petroleum Corporation or any employee or representative thereof and that control of the corporation was not in fact exercised by said Chinese Petroleum Corporation or any employee or representative thereof.

C. D. SHIAH

Sworn to before me this 14th }  
day of November, 1951. }

GERALD HERMAN

GERALD HERMAN  
Notary Public, State of New York  
No. 24-6866850  
Qualified in Kings County  
Cert. filed with Kings and N. Y. Co.  
Clerks and Registers Offices  
Term Expires March 30, 1952

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Exhibit A.

Note.

(Opposite )

EXHIBIT A

UNITED STATES OF AMERICA  
STATE OF DELAWARE

Jersey City, New Jersey

November 10, 1949

\$1,595,000

# Mecham Corporation

FOR VALUE RECEIVED, MECHAM CORPORATION, a corporation duly organized and existing under the laws of the State of Delaware (herein called the "Corporation"), promises to pay to CHINANSK PETROLEUM CORPORATION, a Chinese corporation (herein called the "Payee"), at the office of Chemical Bank & Trust Company, 148 Broadway, New York, N. Y., or at such other place in the City of New York as the Payee shall designate, in lawful money of the United States of America, the sum of One Million Five Hundred Ninety-Five Thousand Dollars (\$1,595,000), as follows:

\$150,000 on August 15, 1949	\$150,000 on February 15, 1950	\$150,000 on August 15, 1950
\$150,000 on February 15, 1951	\$150,000 on August 15, 1951	\$150,000 on February 15, 1952
\$150,000 on August 15, 1952	\$150,000 on February 15, 1953	\$150,000 on August 15, 1953

The balance on February 15, 1957, with interest from September 10, 1949 at the rate of four per cent (4%) per annum for the year ending September 10, 1950, and thereafter at the rate of three per cent (3%) per annum, said interest to be computed on the unpaid balance and paid on the dates hereinafter set forth.

If the first preferred ship mortgage dated May 14, 1948 on the SS MECHAM held by Chemical Bank & Trust Company and the note secured thereby shall be paid in full more than six months prior to August 15, 1955, then in such event the maturity date of the first preferred ship mortgage shall be accelerated to a date six months after the date on which said mortgage and note were paid in full to Chemical Bank & Trust Company, and subsequent installments of this note shall be at six month intervals after the said accelerated date of the payment of the first installment hereof in lieu of the installment dates as above provided. After said first preferred ship mortgage on the Mecham shall have been paid in full and discharged, the Corporation may at its option prepay the principal hereof, or any part thereof, together with interest accrued on the principal so prepaid, at any time before maturity without premium or penalty. The Corporation shall be entitled in each year prior to the payment of any installment on this note, to make expenditures of not more than \$25,000 for charitable purposes, or as long as all of the stock of the Corporation is held by a corporation created exclusively for charitable purposes, to pay dividends of not more than \$25,000 of this note coming due in such year, the due date of the unpaid deficiency of such installment or installments shall be extended from year to year, if necessary, until the due date of this note on February 15, 1957, and thereafter for two additional years if necessary, until the Corporation has accumulated sufficient net income, as hereinafter defined, to enable it to pay such installment or installments.

If the net income of the Corporation, as hereinafter defined, shall be more than sufficient to permit payment in full of the installment or installments of this note, the term "net income" for any year shall mean the gross income of the Corporation shall be applied to the payment of this note, less the amount of (1) any operating expenses of the Mecham (twice used to any other bareboat charter) and any legal expenses, (2) all overhead expenses not in excess of \$15,000, (3) provision for taxes, if any, and (4) \$25,000 for charitable purposes.

The foregoing provision for the extension of the payment dates of the installments on this note shall only be effective, however, if there has been no default by the Corporation under the provisions hereof and no default by United Tanker Corporation over the provisions of the bareboat charter party between the Corporation and United Tanker Corporation bearing even date here with, a copy of which has been furnished to the Payee.

The indebtedness hereby created shall rank prior to all other indebtedness of the Corporation except the indebtedness to Chemical Bank & Trust Company created by the Corporation's assumption of the liability under the first preferred ship mortgage dated May 14, 1948 covering the SS Mecham, at the request of the Payee, and subject to the consent of the holder of the first preferred ship mortgage dated May 14, 1948 on the Mecham, if then unsatisfied, it will promptly execute a second preferred ship mortgage on the said Mecham to some New York bank or trust company as trustee to secure this note. The Corporation further agrees that, if the said Mecham to some New York bank or trust company as trustee to secure this note on said Mecham shall have been paid in full and discharged, execute a first preferred ship mortgage on the Mecham to some New York bank or trust company as trustee to secure this note.

Until this note shall have been fully paid the Corporation agrees that, without the prior written consent of the Payee:

- (1) it will not sell, lease, transfer or otherwise dispose of the Mecham.
- (2) it will not purchase or otherwise acquire or sell, transfer or otherwise dispose of any vessel.
- (3) it will not sell, transfer or otherwise dispose of the \$1,175,000 par value of preferred stock of United Tanker Corporation owned by the Corporation. In the event of the sale of any of said preferred stock with the consent of the Payee, so much of the principal of this note, together with interest accrued on said principal sum, shall become immediately due and payable as equals the proceeds of sale of said stock. The Corporation agrees that the certificates representing said preferred stock will be deposited in escrow in a New York bank or trust company satisfactory to the Payee with irrevocable instructions to said bank or trust company to release the principal custody of said certificates only upon presentation of satisfactory evidence that this note has been fully paid, or with the written consent of the Payee.
- (4) it will not engage in any business other than that of owning, chartering and/or operating the Mecham.
- (5) it will not incur any indebtedness other than its existing indebtedness on the first preferred mortgage of the Mecham and on this note, or incur any indebtedness necessarily incurred in the ordinary course of business in connection with the chartering and/or operation of the Mecham.

The Corporation agrees that, until the note shall have been fully paid:

- (1) The Payee or its duly authorized representative shall have the right to inspect the books of account of the Corporation and shall be given full information as to the results of the operation of the Mecham. The Corporation will furnish the Payee as promptly as possible at the end of each voyage of the Mecham a detailed statement of the revenues received and expenses incurred in connection with such voyage.
- (2) The Corporation will, within thirty (30) days after receipt of a written request of the Payee, cancel the charter between the Corporation and United Tanker Corporation bearing even date herewith covering the Mecham, if an agreement is reached within thirty (30) days after receipt of the request of the Payee, or if the charter is not cancelled within the period the charter hire received by the Corporation under said charter is less than \$50,000. Any such cancellation shall be subject to any required consent of the holders of the first preferred mortgage dated May 14, 1948, and to the execution of any sub-charter theretofore made by United Tanker Corporation. Upon such cancellation the Corporation will endeavor to obtain a more favorable charter.

(3) The Corporation will carry and maintain, or cause to be carried and maintained with such insurance company, underwritten, clause or form as the Payee may approve, marine and war risk hull insurance and marine and, if required, war risk and cargo and, if required, war risk protection and indemnity insurance and second ocean's war risk insurance. The total war risk and cargo and, if required, war risk protection and indemnity insurance and second ocean's war risk insurance value shall be in total marine risk insurance shall be not less than \$2,000,000. The marine protection and indemnity insurance value shall be the amount of \$2,000,000. The war risk marine and war risk hull insurance policies shall by their terms be payable to Chemical Bank & Trust Company, as mortgagee, and the Corporation shall make appropriate arrangements so that the insurance proceeds under said policies, after payment of any amount remaining unpaid on said first preferred ship mortgage dated May 14, 1948 on the Vessel and accrued interest and charges, if any, shall be payable by Chemical Bank & Trust Company to the Payee. Upon satisfaction of said first preferred ship mortgage dated May 14, 1948, the aforesaid insurance policies shall by their terms be made payable to the Payee.

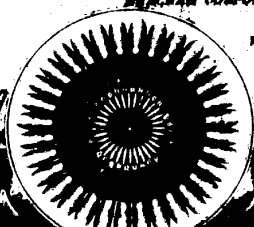
This note is subject to the first preferred mortgage dated May 14, 1948 on the Mecham to Chemical Bank & Trust Company and in all respects subordinate to the notes of the Payee executed and agreed that no action will be taken to enforce any of the terms and provisions of this note, or of any mortgage given as security therefor, until said first preferred mortgage shall have been fully paid and discharged.

If any of the following events (herein called "events of default") shall happen or be continuing, that is:

- (1) If default shall be made in the payment of any installment of principal or interest on this note (but the extension of the due date of any such installment as heretofore provided shall not be considered an event of default); or
- (2) If the Corporation fails to fully document the Mecham in its name as owner at the office of the Collector of Customs at Wilmington, Delaware, or to comply with the requirements of the laws of the United States of America, or if said vessel departs from such first Continental United States Port without having been first fully documented; or
- (3) If default shall be made by the Corporation in the performance of any of the other covenants or agreements set forth herein, and such default shall continue for, or shall not have been made good within, a period of thirty (30) days after written notice thereof to the Corporation from the Payee; or
- (4) If United Tanker Corporation shall at any time be in default under the provisions of its charter of the Mecham, bearing even date herewith, as defined in Clause "11"; or
- (5) If the Corporation shall become insolvent or be unable to pay its debts as they mature, or if the Corporation shall admit in writing its inability to pay its debts as they mature, or shall make a general assignment for the benefit of creditors or to an agent for creditors (authorized to liquidate any substantial amount of its property or assets), or shall become or be adjudicated a bankrupt, or shall voluntarily file a petition in bankruptcy or for reorganization or to effect a plan or other arrangement with creditors, or shall file an answer to a creditor's petition or other petition filed against it (admitting the material allegations thereof) for an order of bankruptcy or for reorganization, or to effect a plan or other arrangement with creditors, or shall apply for or consent to the appointment of a receiver or trustee of itself or of all or any major part of its property, or if an order for the appointment of such receiver or trustee shall be made without its consent and such order shall remain unaccounted for a period of sixty (60) days; then, and upon the happening and continuance of any such event of default, by notice in writing to the Corporation, addressed to it at its principal office or agency in New York, N. Y., or at such other address as the Corporation may hereinafter designate to it in writing, the Payee may declare the principal of and all interest then accrued on this note to be immediately due and payable, and such notice having been given, thereupon the principal of this note, together with all interest accrued thereon, shall be immediately due and payable without presentation, demand, notice of protest, or other notice of dishonor of any kind, all of which are hereby expressly waived. In case the principal of this note shall become due, whether at maturity or by acceleration of maturity or otherwise, the Corporation agrees promptly to pay the amount thereof, together with all expenses incurred by the Payee in the enforcement of this note.

No recourse shall be had for the payment of the principal of or interest on this note or for any claim hereon or otherwise in respect hereof against any director, stockholder, officer, trustee or officer of the Corporation, whether by virtue of any constitution, statute, or rule of law, or by the enforcement of any assessment or penalty, or otherwise, all such liability being waived and released by every holder hereof by the payment of this note and by the consent of the Corporation to the terms hereof. The terms of this note shall be deemed to be agreed in its entirety when it is signed by the officers thereof duly authorized.

Attest  
*Walter A. Meling*  
Secretary



*Harold H. Lempfer*  
President

Exhibit A

Approved For Release 2004/10/12 : CIA-RDP57-00384R001100100001-0

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Approved For Release 2004/10/12 : CIA-RDP57-00384R001100100001-0

**EXHIBIT K.**

April 27, 1950.

Department of State,  
Washington, D. C.

Dear Sirs:

We wish to advise you with respect to the chartering of certain vessels operated by this Corporation to Russian Governmental agencies for carrying oil products between Roumania and the Far East.

In June, 1949, the London brokerage firm of Stevinson, Hardy & Co., Ltd., 155 Fenchurch Street, London, advised our brokers, Messrs. Sieling & Jarvis, that the Russian oil bureau wished to charter a tanker to carry benzine and/or kerosene from Constanza to Shanghai, Tsingtao or Taku Bar. We authorized Messrs. Sieling & Jarvis to accept the charter for the *Kettleman Hills* subject to first obtaining clearance from the State Department. We enclose a copy of a letter dated June 20, 1949, from Sieling & Jarvis to this Corporation advising us of the making of the charter and confirming that the State Department had indicated the absence of any objection to this charter. We also enclose a copy of a letter dated August 18, 1949, from Sieling & Jarvis Corporation to the State Department referring to the prior conversations and to the possibility of future charters. Since the original charter of the *Kettleman Hills*, Sieling & Jarvis have arranged for us a charter of the *St. Christopher*, which loaded kerosene at Constanza on August 11, 1949, for discharge at Dalny, and subsequently loaded a cargo of crude oil on September 25, 1949, at Vladivostok for discharge at Gensan. Sieling & Jarvis also arranged additional charters for the *Kettleman Hills*, one for loading kerosene at Constanza on December 29, 1949, for discharge at Tsingtao, and one for loading clean petroleum products at Constanza on April 22, 1950, for discharge at Dalny.

As a United States corporation we do not wish to take any action inconsistent with the foreign policy of our country. We understand that in a conference with our counsel on April 26, 1950 your representatives indicated that they questioned the advisability of our making further charters of our tankers to engage in the type of business referred to above under present circumstances. Accordingly, we will refrain from making similar charters in the future without further discussion of the matter with your representatives.

In addition to the shipments of petroleum products referred to above, the *Kettleman Hills* also loaded vegetable oil at Dalny on September 6, 1949 for discharge at Nakhodka. While this type of business may be regarded as falling in a somewhat different category from that described above, we will also advise you prior to undertaking any further charters of this kind.

We are enclosing a schedule showing in detail the cargo carried under the charters referred to. We are also enclosing a memorandum from Sieling & Jarvis Corporation listing certain other vessels which we understand have engaged in similar trade.

Very truly yours,

UNITED TANKER CORPORATION

By HAROLD C. LENFEST

Enclosures



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SIELING & JARVIS  
*Tanker Brokers & Agents*  
*Managing & Operating*  
74 Trinity Place  
New York 6, N. Y.

Agents and  
General Agents  
for  
U. S. Maritime  
Commission

June 20, 1949

United Tanker Company  
48 Wall Street,  
New York 5, New York

*S/T "Kettleman Hills"*

Gentlemen:

We confirm our telephone conversation of Friday, June 17, in which we advised that we had chartered the above named vessel to the official Russian oil bureau as follows:

12,000 tons, 10% more or less Owner's option,  
Benzine and/or Kerosene

Laydays June 28—Cancelling July 5

Constanza, Roumania to Shanghai, Tsingtao, or  
Taku Bar

Rate \$15.00 per ton on intake quantity

192 hours, for loading or discharging

\$2,000.per day demurrage, half breakdown

Full freight payable in advance on signing Bills of

Lading

Chamber of Shipping War Clause

New Jason Clause

Both-to-Blame Collision Clause

Paramount Clause

Charterers' Agents at both ends

Any increase in warrisk insurance rate over and  
above that prevailing on May 17, to be for Charterers'  
account

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If vessel discharges at Taku Bar, discharge will be accomplished in the Roads

Roumanian Export Tax on freight for Charterers' account

Usual Russian clauses as attached

Otherwise London form of Charter Party as attached

5% address commission payable in Moscow and 2½% brokerage to Sieling & Jarvis for division with Stevinson, Hardy & Company, Ltd., London

We confirm that on Thursday, June 16, we communicated with the State Department in Washington and were informed by Mr. Faulk of the Shipping Department that the State Department had no objection to this vessel being chartered to the Russians for discharge in North China.

We have asked our London friends to ascertain if additional cargo can be obtained and loaded for Owners' account for discharge in Siam, either at Constanza or in a Persian Gulf port where vessel would proceed for bunkers.

Very truly yours,

SIELING & JARVIS

By s/ D. B. JARVIS  
(David B. Jarvis)

DBJ:DH  
Encs.

SEILING & JARVIS CORPORATION  
*Tanker Brokers & Agents*  
*Managing & Operating*  
74 Trinity Place  
New York 6, N. Y.

August 18, 1949

Department of State  
Shipping Department  
Washington, D. C.

*Attn: Mr. Falk*

Gentlemen:

On or about June 15, 1949, our Mr. David B. Jarvis had a telephone conversation with Mr. Falk in which we were assured that there would be no objection to our chartering a U. S. flag tanker to load a cargo of petroleum products in Constanza for discharge in North China, under charter to U. S. S. R.

U. S. Maritime Commission, Bureau of Law, are questioning the authority of Mr. Falk to give us such assurance, also our sagacity in not obtaining the assurance in writing.

We contend that, as a shipping firm, we could not be expected to consult with any department other than the Shipping Department. Mr. Jarvis sought to discuss the matter with Mr. Sangstad or Mr. John Mann, but was referred to Mr. Falk.

So far as requesting written assurance is concerned, our telephone conversation made it obvious that there was no real reason for obtaining the assurance, and it did not enter our mind to ask for anything in writing. Furthermore, our relations with personnel in the State Department have always given us confidence that any verbal assurance was as good as a written one.

Since obtaining the above assurance, we have made other charters with various bureaus of U. S. S. R. and, naturally, will continue to do business with them until, as intelligent citizens of the United States of America, we are on notice

that to do so will harm our nation in any way, or, until we are notified by you or other competent authority to desist.

We are from time to time being questioned by other government bureaus, as well as Naval Intelligence, in regard to the vessels involved in this trade. We are, of course, making available all information in our possession.

The first of these vessels, the "*Kettleman Hills*", is due to arrive at Dalny on August 21 to discharge her cargo of Gasoline. We are presently in constant communication with the vessel by radio and will be until the vessel arrives in port when, as usual, the ship's station will be shut down.

Very truly yours,

SIELING & JARVIS CORPORATION

By DAVID B. JARVIS

DBJ:DH

Charterer	Ship's Name Voyage No.	Cargo	Loading	Discharging
SOJUSNEFTEXPORT	<i>Kettleman Hills</i> #11	13024.748 tons Ethylated Benzine, 70 ON sp. gr. 0.727, API 63.1 at 76F	7/20/49 Constanza	8/26/49 Dalny
EXPORTCHLEB, LTD.	<i>Kettleman Hills</i> #12	6667.84 tons peanut oil sp. gr. 0.912 5071.64 tons soyabean oil sp. gr. 0.916 at 79F	9/6/49 Dalny	9/24/49 Nakhodka
SOJUSNEFTEXPORT	<i>St. Christopher</i> #11	118,638.48 bbls or 14902.7 tons refined Kerosene at 76°F	8/11/49 Constanza	9/13/49 Dalny
SOJUSNEFTEXPORT	<i>St. Christopher</i> #12	11291.338 tons crude oil sp. gr. 0.8630 at 62°F	9/25/49 Vladivostok	9/28/49 Gensan
SOJUSNEFTEXPORT	<i>Kettleman Hills</i> #14	10,111.34 tons Kerosene 42 API 0.815 sp. gr. at 42°F	1/4/50 Constanza	2/5/50 Tsingtao
SOJUSNEFTEXPORT	<i>Kettleman Hills</i> #16	14517 tons Ethylated Benzine, 70 ON, API 60.8 at 59°F 1008 tons Lubricating Oil (AVTOL)18) API 21.9 sp. gr. 0.922 at 107°F	4/22/50 Constanza	Enroute to Dalny

Telephone: Whitehall 3-0420  
 Night and Holiday Phones  
 Boulevard 8-0646  
 Bayshore 1056  
 Elizabeth 2-4632

Cable Address: Tanksteam  
 Boe Code  
 Oil Cargo and  
 Bunker Sales

STELING & JARVIS CORPORATION

*Tanker Brokers & Agents  
 Managing & Operating*

74 Trinity Place  
 New York 6, N. Y.

April 27, 1950

MEMORANDUM TO THE DEPARTMENT OF STATE

Our office records show that SOYUSNEFTEXPORT, the present Charterers of the *Kettleman Hills*, had offices in Shanghai and Harbin as early as 1926.

When Shanghai became short of Petroleum Products and it was reported that Gasoline was selling for \$1.25 per gallon, perhaps it was only natural for a company that had been established there since 1926 to make every effort to ship in Petroleum Products. We know numerous opportunists here in New York who were trying to do the same thing but failed, because they were not established concerns or could not obtain the product and transport on terms favorable to making a profit.

Our office records show that since June 1949, tanks vessels have discharged Petroleum Products in Dalny and Tsingtao as follows:

Flag	Name	Tonnage	Grade Cargo	Discharging Port
Nor.	<i>Beauregard</i> .....	11,500	? .....	Dalny
Nor.	<i>Amica</i> .....	6,500	? .....	Dalny
Dan.	<i>Kate Maersk</i> ....	9,000	? .....	Dalny
U. S.	<i>Kettleman Hills</i>	13,000	Motor Gasoline....	Dalny
U. S.	<i>St. Christopher</i>	15,000	Kerosene .....	Dalny
Pan.	<i>Loideste</i> .....	11,000	Diesel Oil (? ).....	Tsingtao
U. S.	<i>Kettleman Hills</i>	10,000	Kerosene .....	Tsingtao
U. S.	<i>Kettleman Hills</i>	14,000	Motor Gasoline....	enroute Dalny
		1,000	Lub Oil	

Our records show that all of the above vessels loaded at Constanza except the *Loideste* which loaded at Trinidad and proceeded to Tsingtao via the Panama Canal, bunkering in the United States port of San Pedro.

We might mention that from our experience we have noted that this business has all the appearance of normal, commercial transactions. When we were negotiating for the last charter, we had private information that the U. S. tanker *Merrimac* was offering to the Russians in competition with us. We secured the business because we were able to load earlier than the *Merrimac*, although there was some indication that the Russians preferred our vessel, probably because of previous good experience.

SEILING & JARVIS CORPORATION

DBJ :DH

EXHIBIT L

CHRONOLOGICAL RECORD OF VOYAGES OF S/T *Meacham*  
5/10/48—12/6/51

Voyage No.	Dates		Ports		Rate	Voyage Charterer*
	Started	Ended	From	To		
1	5/10/48	6/7/48	Everett, Wash.	Long Beach, Cal.	\$15.30 per ton	Chinese Petroleum Corp.
2	6/7/48	7/24/48	Shanghai	Ras Tanura	\$14.364 "	"
3	7/24/48	9/7/48	Shanghai	Ras Tanura	"	"
4	9/7/48	10/20/48	Kaoshiung	Falahaed	\$14.896 per ton	"
5	10/20/48	11/30/48	Kaoshiung	Ras Tanura	\$14.364 "	"
6	11/30/48	1/12/49	Kaoshiung	Ras Tanura	"	"
7	1/12/49	2/22/49	Kaoshiung	Ras Tanura	"	"
8	2/22/49	4/3/49	Kaoshiung	Ras Tanura	"	"
9	4/3/49	5/12/49	Kaoshiung	Ras Tanura	\$13.0416 "	"
10	5/12/49	6/21/49	Kaoshiung	Ras Tanura	\$12.616 "	"
11	6/21/49	8/6/49	Amoy	Amoy & Kaoshiung	\$13.0416 "	"
12	8/6/49	9/20/49	Kaoshiung	Ras Tanura	USMC less 55%	"
13	9/20/49	10/15/49	Nynashamn	Nynashamn		A. Johnson & Co.
	10/15/49	11/21/49	Tyne	Castle-on-Tyne, England for repairs		Stockholm, Sweden
14	11/21/49	12/24/49	Bari	Ras Tanura		"
15	12/24/49	2/2/50	Genoa	Ras Tanura	USMC less 40%	Azienda Nazionale Idrogenozone
16	2/2/50	3/13/50	Rotterdam	Ras Tanura		Combustible, Rome
17	3/13/50	4/17/50	Bari	Ras Tanura	USMC less 35%	Pernolio, SPA of Milan
18	4/17/50	5/29/50	Rotterdam	Ras Tanura	USMC less 25%	Overseas Tanker Corp.
19	5/29/50	7/7/50	Bari	Ras Tanura	USMC less 35%	Azienda Nazionale Idrogenozone
20	7/7/50	9/6/50	Donges	Ras Tanura		Combustible
21	9/6/50	10/28/50	San Lorenzo	Bandar Mashur	USMC less 30%	Overseas Tanker Corp.
22 R. P.	10/29/50	11/21/50	Fawley for Falmouth for repairs	Ras Tanura	USMC less 41%	Azienda Nazionale Idrogenozone
23	11/22/50	1/4/51	Fawley	Ras Tanura		Combustible, Rome
24	1/4/51	2/25/51	Pt. Eliz.-Capetown	Abadan	USMC less 35%	Raffinerie Francaise Petroles
25	2/25/51	4/24/51	San Lorenzo	Bandar Mashur		De L'Atlantique
25 R. P.	4/24/51	5/1/51	Nynashamn	Bandar Mashur		Anglo-Iranian Oil Co. Ltd.
26	5/1/51	5/7/51	Falmouth	(Ballast for repairs)	\$71/3 per ton	"
27	5/8/51	7/4/51	Falmouth	(Repair Period)	\$53/9 "	"
27A	7/5/51	9/2/51	La Plata	Bandar Mashur		Anglo-Iranian Oil Co. Ltd.
27B R. P.	9/3/51	10/20/51	Nynashamn	Mena-al-Ahmadi		"
	10/21/51	11/1/51	Swansea	Mena-al-Ahmadi	\$64/9 per ton	"
	11/2/51	12/6/51	Newport News	(Ballast for repairs)	\$59/3 "	Standard Vacuum Oil Co.
			Newport News	(Repair Period)	USMC plus 50%	"

\* Reference to any intermediate bareboat or time charters is omitted.



CHRONOLOGICAL RECORD OF VOYAGES OF S/T Antelope Hills  
9/21/50—2/2/52

Voyage No.	Dates		From	Ports		To	Voyage Charterer*	Rate
	Started	Ended		Loading	Discharging			
1	9/21/50	10/4/50	Jacksonville	Tampico	New York	Paragon Oil Company	USMC less 5%	
2	10/4/50	10/17/50	New York	Amnay Bay	Everett	Esso Shipping Company	USMC plus 25%	
3	10/17/50	11/3/50	Everett	Inglésida	Marcus Hook	Sun Oil Company	USMC plus 40%	
4	11/3/50	11/29/50	Marcus Hook	Mannool	Berre (Marselles)	The Anglo-Saxon Petroleum Co. Ltd.	\$6.75 per ton	
5	11/29/50	1/12/51	Berre	Mena-al-Ahmadi	Philadelphia	Gulf Oil Corp.	USMC less 27 1/2%	
6	1/12/51	1/25/51	Philadelphia	Harbor Isl.	Philadelphia	The Atlantic Refinery Co.	USMC plus 150%	
7	1/25/51	2/17/51	Philadelphia	Harbor La Cruz	Genoa	Standard Talo Americana Petrol	USMC plus 35%	
8	2/17/51	3/10/51	Genoa	Sidon	Le Havre	Socony-Vacuum Oil Co., Inc.	USMC plus 110%	
9	3/10/51	4/26/51	Le Havre	Mena-al-Ahmadi	Philadelphia	Gulf Oil Corp.	USMC less 27 1/2%	
10	4/27/51	5/20/51	Philadelphia	Amnay Bay	Genoa	Pernolio SPA	USMC plus 135%	
11	5/21/51	6/23/51	Genoa	Bahrein	Genoa	"Aynala" Societa per Azioni Tecnico Industriale	USMC plus 130%	
12	6/24/51	7/22/51	Genoa	Ras Tanura	Sidon	Gulf Oil Corp.	USMC less 27 1/2%	
13	7/23/51	9/1/51	Sidon	Mena-al-Ahmadi	Philadelphia	Gulf Oil Corp.	USMC less 27 1/2%	
14	9/2/51	9/3/51	Philadelphia	(Ritard Point)	New York	Gulf Oil Corp.	USMC flat	
15	9/4/51	9/7/51	New York	(Ballast for repairs)	Jacksonville	---	---	
15 R.P.	9/8/51	9/18/51	Jacksonville	(Repair Period)	Jacksonville	---	---	
15	9/19/51	9/27/51	Jacksonville	Tampico	Houston	Gissel Corp. of Panama, S. A.	USMC plus 37 1/2%	
16	9/28/51	10/5/51	Houston	Tampico	Houston	Gissel Corp. of Panama, S. A.	USMC plus 37 1/2%	
17	10/6/51	10/17/51	Houston	Aruba	Norfolk	Military Sea Transportation Service	USMC plus 25%	
18	10/18/51	11/12/51	Norfolk	Tampico	Rotterdam	Hamburger Mineralwerke	USMC plus 62 1/2%	
19	11/13/51	12/26/51	Rotterdam	Mena-al-Ahmadi	Swansea	Gulf Oil Corp.	USMC plus 22 1/2%	
20	12/27/51	2/2/52	Swansea	Puerto la Cruz	Philadelphia	Gulf Oil Corp.	USMC plus 22 1/2%	
21	2/3/52	---	Philadelphia	Las Piedras	Philadelphia	"	USMC plus 22 1/2%	

\*Reference to any intermediate harbors or time charters is omitted.

CHRONOLOGICAL RECORD OF VOYAGES OF S/T *Kettleman Hills*  
5/4/48—2/22/51

Voyage No.	Dates		Ports		From	To	Voyage Charterer*	Rate
	Started	Ended	Loading					
1	5/ 4/48	5/22/48	Tampico		Norfolk	Havana	Petroleos Mexicanos	\$0.272727 per barrel
2	5/22/48	7/ 8/48	Tampico		Havana	Shanghai	"	\$18.20 per ton
3	7/ 9/48	8/24/48	Ras Tanura		Shanghai	Shanghai & Takao	Chinese Petroleum Corporation	\$14.364 per ton
4	8/24/48	10/ 6/48	Ras Tanura		Takao	Shanghai & Takao	"	"
5	10/ 6/47	11/19/48	Ras Tanura		Takao	Shanghai & Takao	"	"
6	11/19/48	12/29/48	Ras Tanura		Takao	Shanghai & Takao	"	"
7	12/29/48	2/ 9/49	Ras Tanura		Takao	Shanghai & Takao	"	"
8	2/ 9/49	3/20/49	Ras Tanura		Takao	Shanghai & Takao	"	"
9	3/20/49	4/29/49	Ras Tanura		Takao	Shanghai & Takao	"	"
10	4/29/49	6/ 6/49	Ras Tanura		Takao	Shanghai & Takao	"	"
11	6/ 6/49	8/27/49	Ras Tanura		Takao	Shanghai & Takao	"	"
12	8/27/49	9/24/49	Constanza		Kaoshiung	Takao	"	"
13 R. P.	9/24/49	11/ 4/49	Dalny		Dalny	Dalny	"	"
14	11/ 4/49	12/19/49	(Repair at Hong Kong)		Nakhodka	Nakhodka	Sojusnefteexport	\$12.464 "
15	12/19/49	2/ 9/50	Bahrain		Hong Kong	Hong Kong	Exportchleb	\$15.50 "
16	2/ 9/50	3/26/50	Constanza		Antwerp	Antwerp	"	\$6.50 "
17 R. P.	3/26/50	4/ 5/50	Abadan		Tsingtao	Tsingtao	Overseas Tankship Corp.	USMC less 30%
18	4/ 5/50	5/30/50	(Under Repairs)		Isle of Grain	Isle of Grain	Sojusnefteexport	\$18.50 per ton
19	5/30/50	7/17/50	Constanza		Isle of Grain	Isle of Grain	Anglo American Oil	\$60/3 "
20	7/17/50	9/10/50	Ras Tanura		Dalny	Dalny	Sovfracht	\$15.50 "
20 R. P.	9/10/50	10/26/50	Ras Tanura		Hamburg	Hamburg	Hamburger Mineralolwerke	USMC less 35%
21	10/26/50	10/27/50	Ras Tanura		Hamburg	Hamburg	"	USMC less 35%
22	10/28/50	11/17/50	(Ballast for repairs)		Newcastle	Newcastle	"	USMC less 35%
23	11/18/50	12/22/50	(Under Repairs)		Newcastle	Newcastle	"	USMC less 35%
24	12/23/50	2/20/51	Trinidad & Puerto La Cruz		Malmö	Gothenberg & Malmö	Svenska Gulf Oil Co.	USMC plus 75%
25	2/21/51	2/22/51	Puerto La Cruz (Delivery)		Malmö	Gothenberg & Malmö	"	USMC plus 95%
26						Copenhagen	"	—

\* Reference to any intermediate bareboat or time charters is omitted.

CHRONOLOGICAL RECORD OF VOYAGES OF S/T St. Christopher  
3/20/48-1/23/52

Voyage No.	Dates		Ports		Voyage Character*	Rate
	Started	Ended	From	To		
1	3/20/48	4/19/48	Mobile	Le Havre	Compagnie Francaise de Raffinage	USMC plus 22½%
2	4/19/48	6/2/48	Le Havre	Le Havre	"	"
3	6/2/48	7/16/48	Fahsheel	La Mede	"	"
4	7/16/48	8/31/48	Ras Tanura	Le Havre	"	USMC plus 22½%
5	8/31/48	11/10/48	Ras Tanura	La Mede	Yacimientos Petroliferos Fiscales	USMC less 20%
6	11/10/48	12/21/48	Puerto La Cruz	La Plata	"	USMC flat
7	12/21/48	1/13/49	Aruba	Buenos Aires	"	USMC less 10%
8	1/13/49	3/11/49	Buenos Aires	New York	Paragon Oil Co. Inc.	\$6.40 per ton
9	3/11/49	4/12/49	New York	La Plata	Anglo-Saxon Petroleum Co. Ltd.	USMC less 7½%
10	4/12/49	5/12/49	La Plata	La Plata	Yacimientos Petroliferos Fiscales	USMC less 18%
11-p-1	5/12/49	5/28/49	La Plata	Brooklyn, N. Y.	"	"
11 R.P.	5/29/49	7/10/49	La Plata	Brooklyn, N. Y.	"	"
11	7/11/49	9/13/49	New York	Dairen	Solinstreexport	\$15.50 per ton
12	9/13/49	9/28/49	New York	Gensan	"	\$ 3.75 per ton
13	9/28/49	11/13/49	Dairen	Bari	Azienda Nazionale	USMC less 55½%
14 R.P.	11/13/49	1/ 8/50	Gensan	Bari	Idrogenazione Combustibile	"
14	1/ 8/50	2/17/50	(Under Repairs)	Lehborn	"	USMC less 22%
15	2/17/50	4/ 9/50	Ras Tanura	Lehborn	"	USMC less 35%
16	4/ 9/50	5/19/50	Ras Tanura	Le Havre	Compagnie Francaise de Raffinage	USMC less 40%
17	5/19/50	6/28/50	Fahsheel	Bari	Azienda Nazionale	"
18	6/28/50	8/ 5/50	Ras Tanura	Financino & Genova	Idrogenazione Combustibile	USMC less 41%
19	8/ 5/50	9/ 8/50	Genoa	Bari	Pernolio S. P. A.	USMC less 40%
20	9/ 8/50	10/10/50	Ras Tanura	Financino-Genoa	Stamic Industria Petroliere	USMC less 34%
21	10/10/50	11/18/50	Ras Tanura	Le Havre	Hernolio S. P. A.	USMC less 15%
22	11/18/50	1/ 4/51	Le Havre	Le Havre	Compagnie Francaise de Raffinage	USMC plus 25%
23	1/ 4/51	3/14/51	Fahsheel	La Plata	Compagnie Francaise de Raffinage	USMC plus 40%
24	3/14/51	4/ 1/51	Bandar Mashur	La Plata	Anglo-Iranian Oil Co. Ltd.	508½ per ton
24 R.P.	4/ 1/51	4/15/51	La Plata	Durban	"	"
24 R.P.	4/15/51	5/31/51	Near Durban	Durban	"	"
24 R.P.	5/31/51	6/19/51	Durban	Durban	"	"
24 R.P.	6/19/51	7/ 4/51	Durban	Durban	"	"
24	7/ 4/51	7/31/51	Durban	Kuwait	"	"
24	7/31/51	8/ 2/51	Kuwait	Le Havre	Compagnie Francaise de Raffinage	USMC plus 35%
25	8/ 2/51	8/ 8/51	Le Havre	Brest	"	"
25 R.P.	8/ 8/51	8/31/51	Brest	Brest	"	"
25	8/31/51	8/11/51	Brest	Algers	"	"
25 R.P.	8/11/51	8/22/51	Algers	Algers	"	"
25	8/22/51	10/10/51	Algers	Algers	"	"
26 R.P.	10/10/51	11/ 5/51	Algers	Philadelphia	Gulf Oil Corporation	USMC plus 22½%
26	11/ 5/51	11/17/51	Philadelphia	Baltimore	Sacony-Vacuum Oil Co.	USMC plus 25%
27	11/17/51	12/ 9/51	Baltimore	Baltimore	Esso Petroleum Company	USMC plus 157¼%
28	12/ 9/51	1/23/52	Panama	Bremenhaven	Esso Petroleum Company	USMC plus 182½%

\* Reference to any intermediate bareboat or time charters is omitted.

CHRONOLOGICAL RECORD OF VOYAGES OF S/T *Destiny*

10/21/48—2/12/52

Voyage No.	Dates		Ports		To	Rate
	Started	Ended	From	Loading		
1	10/21/48	11/18/48	Baltimore	Aruba	Buenos Aires	USMC less 20%
2	11/18/48	12/22/48	Buenos Aires	Puerto La Cruz	La Plata	USMC flat
3	12/22/48	1/26/49	La Plata	Aruba	Buenos Aires	USMC plus 2½%
4	1/26/49	3/21/49	Buenos Aires	Abadan	Swansea	56 Shillings per ton
5	3/21/49	5/ 6/49	Swansea	Ras Tanura	Rotterdam	USMC less 2½%
6	5/6/49	1/19/50	Rotterdam	Lay up period	Genoa	—
7	1/20/50	2/21/50	Genoa	Ras Tanura	Bari	—
8	2/21/50	3/ 6/50	Bari	Tripoli	Trieste	USMC less 26%
9	3/ 6/50	4/13/50	Trieste	Bandar Mashur	Le Havre	USMC less 31%
10	4/13/50	5/20/50	Le Havre	Ras Tanura	Genoa	USMC less 40%
11	5/20/50	6/24/50	Genoa	Ras Tanura	Leghorn	USMC less 38%
12	6/24/50	8/ 8/50	Leghorn	Abadan	Swansea	USMC less 35%
13	8/ 8/50	9/23/50	Swansea	Bandar Mashur	Nynashamn	S 57/6 per ton
14	9/24/50	12/17/50	Nynashamn	Bandar Mashur	River Plate	S 62/- "
15	12/17/50	2/17/51	River Plate	Mena-al-Ahmadi	Philadelphia	S 68/3 "
16 R. P.	2/17/51	3/ 2/51	Philadelphia	(Repair Period)	Jacksonville	USMC less 27½%
16	3/ 2/51	3/13/51	Jacksonville	Aruba	Baltimore	—
17	3/14/51	4/ 6/51	Baltimore	Puerto La Cruz	Genoa	USMC plus 170%
18	4/ 7/51	4/16/51	Genoa	Tripoli	Augusta, Sicily	USMC plus 120%
19	4/17/51	5/27/51	Augusta, Sicily	Mena-al-Ahmadi	Philadelphia	USMC plus 170%
20	5/28/51	6/25/51	Philadelphia	Magpetco	Buenos Aires	USMC less 27½%
21	6/26/51	8/21/51	Buenos Aires	Mena-al-Ahmadi	Philadelphia	USMC less 5%
22	8/22/51	9/13/51	Philadelphia	Baytown	Donges	USMC less 27½%
23	9/14/51	10/ 6/51	Donges	Sidon	Donges	USMC plus 10%
24	10/ 7/51	11/22/51	Donges	Mena-al-Ahmadi	Swansea	USMC plus 49.9%
25	11/23/51	1/ 9/52	Swansea	Mena-al-Ahmadi	Le Havre and Rouen	USMC less 27½%
26	1/10/52	1/31/52	Rouen	Las Piedras	Philadelphia	USMC less 27½%
27 R. P.	2/ 1/52	2/12/52	Philadelphia	(Repair Period)	Baltimore	USMC less 25%

\* Reference to any intermediate bareboat or time charters is omitted.

CHRONOLOGICAL RECORD OF VOYAGES OF S/T *New London*  
7/9/48—2/9/52

Voyage No.	Dates		Ports		Voyage Charterer*	Rate
	Started	Ended	From	To		
1	7/ 9/48	7/22/48	New York	New York	Easo Standard Oil Co.	USMC plus 50%
2	7/23/48	8/ 6/48	New York	Everett, Mass.	"	"
3	8/ 7/48	8/19/48	Everett, Mass.	Corpus Christi	Baltimore	"
4	8/20/48	8/31/48	Baltimore	Boytown	Jacksonville	"
5	9/ 1/48	9/11/48	Jacksonville	Corpus Christi	New York	"
6	9/12/48	9/24/48	New York	Baton Rouge	Pt. Everglades	"
7	9/25/48	10/ 6/48	Pt. Everglades	Aruba	Portland, Me.	"
8	10/ 7/48	10/19/48	Portland	Avondale	Baltimore	"
9	10/20/48	10/31/48	Baltimore	Corpus Christi	Baltimore	"
10	11/ 1/48	11/15/48	Baltimore	Cartagena	New York	"
11	11/16/48	12/ 8/48	New York	Aruba	Rio De Janeiro & Santos	"
12	12/ 9/48	12/29/48	Rio De Janeiro	Puerta La Cruz	Portland, Me.	"
13	12/30/48	1/13/49	Portland	Puerta La Cruz	New York	"
14	1/14/49	1/25/49	New York	Beaumont	New York	"
15	1/26/49	2/ 8/49	New York	Corpus Christi	New York	"
16	2/ 9/49	2/22/49	New York	Puerta La Cruz	Portland	"
17	2/23/49	3/ 7/49	Portland	Beaumont	New York	"
18	3/ 8/49	3/21/49	New York	Aruba	Portland	"
19	3/22/49	4/12/49	Portland	Aruba	Recife & Beltem	"
20	4/13/49	4/25/49	New York	Caripito	New York	"
21	4/26/49	5/17/49	Beltem	Aruba	Avonmouth	"
22	5/18/49	6/ 6/49	New York	Caripito	Halifax	"
23	6/ 7/49	6/20/49	Avonmouth	Aruba	New York	"
24	6/21/49	7/14/49	Halifax	Aruba	Portland	"
25	7/15/49	8/14/49	New York	Amnay Bay	Portland	"
26	8/15/49	8/29/49	Copenhagen	Caripito	Le Havre	"
27	8/30/49	9/12/49	Le Havre	Caripito	Aruba	"
28	9/13/49	9/27/49	Aruba	Corpus Christi	New York	"
29	9/28/49	10/ 9/49	New York	Aruba	Charleston	"
30	10/10/49	10/21/49	Charleston	Amnay Bay	Everett, Mass.	"

\* Reference to any intermediate harbors or time charters is omitted.

Voyage No.	Dates		Ports		To	Rate
	Started	Ended	From	Loading		
31	10/22/49	11/ 6/49	Everett	Caripito	New York	USMC plus 50%
32-A	11/ 7/49	11/23/49	Jacksonville			USMC less 35%
32	11/23/49	12/ 5/49	Philadelphia	Puerta La Cruz	Philadelphia	"
33	12/ 5/49	1/27/50	Philadelphia	Kuwait	Philadelphia	"
34	1/28/50	3/25/50	Philadelphia	Mena-al-Ahmadi	Las Palmas	S 25/6 per ton
35	3/26/50	4/17/50	Philadelphia	Cardon	Las Palmas	USMC less 35%
36	4/18/50	5/23/50	Las Palmas	Ras Tanura	Leghorn	
37	5/24/50	7/ 7/50	Leghorn	Kuwait	Philadelphia	USMC less 35%
38	7/ 8/50	7/10/50	Philadelphia	Girard Pt.	Deepwater Pt.	\$.06 per bbl.
39	7/11/50	8/ 1/50	Deepwater	Caripito	Genoa	USMC less 45%
40	8/ 2/50	9/10/50	Genoa	Bandar Mashur	Swansea	55 S per ton
41	9/11/50	10/29/50	Swansea	Mena-al-Ahmadi	Philadelphia	USMC less 35%
42	10/30/50	12/ 2/50	Philadelphia	Las Piedras	Destrehan	USMC plus 65%
43	12/ 3/50	12/12/50	Destrehan	Pt. Arthur	Marcus Hook	USMC plus 40%
44	12/13/50	12/26/50	Marcus Hook	Las Piedras	Destrehan	USMC plus 50%
45	12/27/50	1/ 7/50	Destrehan	Corpus Christi	New York	USMC plus 55%
46	1/ 8/51	1/29/51	New York	Amuay Bay	Le Havre	USMC plus 60%
47	1/30/51	3/20/51	Le Havre	Mena-al-Ahmadi	Philadelphia	USMC less 35%
48	3/21/51	4/ 4/51	Philadelphia	Puerta La Cruz	Marcus Hook	USMC plus 200%
49	4/ 5/51	4/18/51	Marcus Hook	Puerta La Cruz	Marcus Hook	USMC plus 200%
50	4/18/51	5/10/51	Philadelphia	Aruba	Stanlow	USMC plus 140%
51	5/11/51	6/28/51	Stanlow	Mena-al-Ahmadi	Philadelphia	USMC less 27 1/2%
52	6/29/51	7/25/51	Philadelphia	Amuay Bay	Harburg	USMC plus 15%
53	7/26/51	9/ 8/51	Harburg	Ras Tanura	Le Havre	USMC plus 25%
54	9/ 9/51	10/23/51	Le Havre	Mena-al-Ahmadi	Heysham (U. K.)	USMC less 27 1/2%
55	10/24/51	12/20/51	Heysham	Mena-al-Ahmadi	Philadelphia	USMC less 27 1/2%
56	12/21/51	12/24/51	Philadelphia	Ballast	Jacksonville	USMC plus 200%
56 R. P.	12/25/51	1/ 5/52	Jacksonville	(Repair Period)	Jacksonville	
56	1/ 6/52	1/18/52	Jacksonville	Puerto La Cruz	Portland, Me.	USMC plus 200%
57	1/19/52	2/ 9/52	Portland	Aruba	Shelhaven	USMC plus 185%

\* Reference to any intermediate bareboat or time charters is omitted.

Voyage Charterer:  
 Esso Standard Oil Co.  
 Gulf Oil Corporation  
 " "  
 Anglo-Iranian Oil Co. Ltd.  
 Order of Azienda Nazionale Idrogenazione Combustibile  
 Gulf Oil Corporation  
 " "  
 Ballestrina, Tuena & Canepa  
 Anglo-Iranian Oil Co. Ltd.  
 Gulf Oil Corporation  
 Pan-Am Southern Corp.  
 Paragon Oil Company  
 Pan-Am Southern Corp.  
 Paragon Oil Company  
 Panama Transportation Company  
 Gulf Oil Corporation  
 Sinclair Refining Co.  
 Sinclair Refining Co.  
 The Anglo-Saxon Petroleum Co. Ltd.  
 Gulf Oil Corporation  
 Panama Transport Corp.  
 Compagnie Francaise de Raffinage  
 Gulf Oil Corporation  
 Gulf Oil Corporation  
 The Texas Company  
 Repair Period  
 The Texas Co.  
 Anglo-Saxon Petroleum Co.

Approved For Release 2004/10/12 : CIA-RDP57-00384R001100100001-0

# MEMORANDUM

Approved For Release 2004/10/12 : CIA-RDP57-00384R001100100001-0

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## MEMORANDUM

Submitted

IN SUPPORT OF APPLICATION FOR REMISSION OR MITIGATION OF FORFEITURES OR PENALTIES WITH RESPECT TO THE T2 TANKERS *Meacham*, *Antelope Hills*, *Kettleman Hills*, *St. Christopher*, *Destiny* AND *New London*.

### **Introductory Statement.**

The libel filed by the United States on November 9, 1951 in the United States District Court for the Eastern District of Virginia seeks the forfeiture of the vessel *Meacham*, then owned by Meacham Corporation, for alleged violations, on grounds of lack of citizenship, of the provisions of Section 9 of the Shipping Act of 1916, as amended, and of certain provisions of the registry statutes. The *Meacham* was one of six U. S. flag T2 tankers sold by the United States Maritime Commission (succeeded on May 24, 1950 by the Department of Commerce, Maritime Administrator, and herein called the "Commission") at the statutory sales price fixed by Congress to companies financed by United Tanker Corporation ("United"), a Delaware corporation. The facts as to the acquisition and ownership of the *Meacham* are somewhat similar to the facts involved in the acquisition and ownership of the other vessels referred to above. Accordingly, the accompanying Application (the "Application") seeks remission or mitigation of any forfeitures or penalties which might be asserted against the other vessels as well as the *Meacham*, and this memorandum will discuss questions of law and fact which may be common both to the *Meacham* and the other vessels.

United was organized in December 1947 to engage in the tanker business. Its controlling stock has at all times been held by United States citizens experienced in the shipping business. Substantially all of its equity capital

was supplied by China Trading & Industrial Development Corporation ("China Trading"), a Chinese corporation, not experienced in the shipping business. China Trading was interested in financing a company from which it could charter tankers for recharter to Chinese Petroleum Corporation ("Chinese Petroleum"), a subsidiary of National Resources Commission of China, a branch of the Nationalist Government of China. All of these facts were disclosed at the time to the Commission when United applied to it to purchase tankers. The Commission informed United that the available tankers had been allocated to earlier applicants.\* The Commission raised no question as to the United States citizenship of United. On the contrary the Assistant General Counsel for the Commission gave his opinion that United was a United States citizen within the meaning of Section 2 of the Shipping Act of 1916, as amended.

United then sought to charter tankers from, or invest in the stock of, more successful applicants. The arrangements made by it were fully disclosed to the Commission. The charters made by United of two of the tankers to China Trading and to Chinese Petroleum were specifically approved by the Commission. The tankers were operated by United States citizen shipping firms specifically approved by the Commission.

During the difficult times of 1949-1950, when United was losing money from the operation of tankers in an unprofitable tanker market, the Commission, knowing all the facts, repeatedly refused to take back one of the

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\* Section 299.2 of General Order 60 of the Commission under the Merchant Ship Sales Act of 1946 provided "All citizen applications received by the Secretary within a given calendar month shall be given preference over all applications received by the Secretary in any subsequent calendar month."

tankers in cancellation of a mortgage held by the Commission. Now the United States, having been paid the full statutory sales price fixed by Congress for the *Meacham*, seeks in effect to be paid twice by forfeiting the vessel, in shocking disregard of the past actions of the Commission upon which United and Meacham Corporation were entitled to rely.

This memorandum will show: (1) that there has been no violation of Section 9 of the Shipping Act of 1916, as amended; (2) that there has been no violation of the provisions of the registry statutes; and (3) that if any technical violations have occurred, which is denied, they should be disregarded in view of the mitigating circumstances, including reliance upon advice from representatives of the Commission, full disclosure of facts to such representatives, and complete compliance with the purpose and intent of the relevant statutes.

I.

**There has been no violation of Section 9 of the Shipping Act of 1916.**

In demonstrating that there has been no violation of Section 9, this memorandum will (A) analyze the provisions of Section 9, (B) establish that United and Meacham Corporation have at all times been United States citizens within the meaning of Section 2 of the Shipping Act of 1916, as amended, (C) establish that the tanker owning subsidiaries of United have also at all times been United States citizens, and (D) establish that all transactions subject to the provisions of Section 9 have received the requisite approval of the Commission.

**(A) Analysis of Section 9 of the Shipping Act of 1916.**

Section 9 of the Shipping Act of 1916, as amended (46 U. S. C. 808) provides as follows:

“Any vessel purchased, chartered, or leased from the United States Maritime Commission, by persons who are citizens of the United States, may be registered or enrolled and licensed, or both registered and enrolled and licensed, as a vessel of the United States and entitled to the benefits and privileges appertaining thereto: *Provided*, That foreign-built vessels admitted to American registry or enrollment and license under this chapter, and vessels owned by any corporation in which the United States is a stockholder, and vessels sold, leased, or chartered by the commission to any person a citizen of the United States, as provided in this chapter, may engage in the coastwise trade of the United States while owned, leased, or chartered by such a person.

Every vessel purchased, chartered, or leased from the commission shall, unless otherwise authorized by the commission, be operated only under such registry or enrollment and license. Such vessels while employed solely as merchant vessels shall be subject to all laws, regulations, and liabilities governing merchant vessels, whether the United States be interested therein as owner, in whole or in part, or hold any mortgage, lien, or other interest therein.

Except as provided in section 1181 of this title, it shall be unlawful, without the approval of the United States Maritime Commission, to sell, mortgage, lease, charter, deliver, or in any manner transfer, or agree to sell, mortgage, lease, charter, deliver, or in any manner transfer, to any person not a citizen of the United States, or transfer or place under foreign registry or flag, any vessel or any interest therein owned in whole or in part by a citizen of the United States and documented under the laws of the United States, or the last documentation of which was under the laws of the United States.

Any such vessel, or any interest therein, chartered, sold, transferred, or mortgaged to a person not a citizen of the United States or placed under a foreign registry or flag, or operated, in violation of any provision of this section shall be forfeited to the United States, and whoever violates any provision of this section shall be guilty of a misdemeanor and subject to a fine of not more than \$5,000, or to imprisonment for not more than five years, or both."

Attached hereto as Appendix A is a compilation showing the original language of the 1916 Act, together with the amendments made in 1918, 1920 and 1938.

Section 9 provides in substance that any U. S. flag vessel, or any interest therein, shall be forfeited to the United States if it has been transferred, mortgaged or chartered without the approval of the Commission by a United States citizen to a person not a United States citizen. The language of Section 9 is analyzed under (1) below to determine the prerequisites of forfeiture. It will be shown under (2) below that the language must be strictly construed, since Section 9 is penal in nature. It will be shown under (3) below that, by its sweeping delegation of power to the Commission and its denial of the right of alienation of property, Section 9 is unconstitutional.

**(1) Prerequisites of forfeiture under Section 9.**

A vessel may only be forfeited under Section 9 if all of the following four elements are established:

- (a) The transfer must be to a person not a citizen;
- (b) The transfer must be of a vessel or interest therein;
- (c) The transfer must be without the approval of the Commission;

(d) The transfer must be made by a United States citizen. Unless all four of the above elements are present there is no ground for forfeiture under Section 9.

(a) The transfer must be to a person not a citizen.

The definition of citizen for the purpose of Section 9 of the Shipping Act of 1916 is contained in Section 2 of the Act and, in the case of a corporation, rests primarily upon the control of the corporation by United States citizens. Section 2 (46 U. S. C. 802) provides as follows:

“(a) Within the meaning of this chapter no corporation, partnership, or association shall be deemed a citizen of the United States unless the controlling interest therein is owned by citizens of the United States, and, in the case of a corporation, unless its president and managing directors are citizens of the United States and the corporation itself is organized under the laws of the United States or of a State, Territory, District, or possession thereof, but in the case of a corporation, association, or partnership operating any vessel in the coastwise trade the amount of interest required to be owned by citizens of the United States shall be 75 per centum.

(b) The controlling interest in a corporation shall not be deemed to be owned by citizens of the United States (a) if the title to a majority of the stock thereof is not vested in such citizens free from any trust or fiduciary obligation in favor of any person not a citizen of the United States; or (b) if the majority of the voting power in such corporation is not vested in citizens of the United States; or (c) if through any contract or understanding it is so arranged that the majority of the voting power may be exercised, directly or indirectly, in behalf of any person who is not a citizen of the United States; or, (d) if by any other means whatsoever control of the corporation is conferred upon or permitted to

be exercised by any person who is not a citizen of the United States.

(c) Seventy-five per centum of the interest in a corporation shall not be deemed to be owned by citizens of the United States (a) if the title to 75 per centum of its stock is not vested in such citizens free from any trust or fiduciary obligation in favor of any person not a citizen of the United States; or (b) if 75 per centum of the voting power in such corporation is not vested in citizens of the United States; or (c) if, through any contract or understanding it is so arranged that more than 25 per centum of the voting power in such corporation may be exercised, directly or indirectly, in behalf of any person who is not a citizen of the United States; or (d) if by any other means whatsoever control of any interest in the corporation in excess of 25 per centum is conferred upon or permitted to be exercised by any person who is not a citizen of the United States."

Attached hereto as Appendix B is a compilation showing the original language of Section 2 of the Shipping Act of 1916 and the changes effected by the various amendments thereto.

Section 2 originally provided that no corporation should be deemed a citizen of the United States unless "the controlling interest therein" is owned by citizens and the president and the managing directors are citizens and the corporation is organized under the laws of the United States or of a State. Subsequent amendments expanded the language of Section 2 in order to prevent any possible evasion of its provisions. However, the legislative history of the amendments makes it clear that no substantive change was intended in the underlying concept of the statute. Congress was concerned in maintaining unquestioned con-



trol of American shipping in the hands of United States citizens so that all U. S. flag vessels would be available to the United States in time of national emergency. Congress was not concerned in preventing the investment of foreign capital in United States shipping if such investment did not defeat the control in the hands of United States citizens.

House Report No. 568 accompanying H. R. 12100, ordered printed May 15, 1918, summarized the reason for the new legislation and the effect of the amendment to Section 2 of the Shipping Act which added present paragraph (b) to Section 2, as follows:

“ \* \* \* The new legislation is rendered necessary by the dearth of tonnage created by the unrestricted submarine warfare of the Imperial German Government. As a consequence of this shortage there has been during the past two years a systematic, determined, and resourceful effort on the part of foreign financial interests to buy up and take from under the American flag the vessels of the American merchant marine. \* \* \* ”

\* \* \* \* \*

“ Section 2 of the bill amends section 2 of the shipping act by setting forth more in detail under what circumstances a corporation is deemed to be a citizen of the United States within the meaning of the act. Under the present law a corporation, partnership, or association is not a ‘ citizen ’ unless ‘ the controlling interest therein is owned by citizens of the United States. ’ This phrase has been elaborated to include every possible device by which foreign interests could obtain control in law or fact over corporations formed under American law. ”

In the debates in the House of Representatives (65th Congress, 2d Session, June 5-28, 1918; Congressional Record, Vol. 56), J. W. Alexander, Chairman of the Committee on

Merchant Marine and Fisheries, made the following statement:

“Now, if I had the time I would explain just in what respects we amend the shipping act under the provisions of H. R. 12100. Section 2 of the shipping act is amended by adding at the end of the first paragraph a provision the purpose of which is to further safeguard our Government and insure the control of ships being built in American shipyards, to prevent foreign interests, under any sort of device or contract or trust agreement, to get control of our shipping. The same is true as regards our shipyards. The committee were impressed with the importance of so hedging these great interests with legislation that all the resources of this country might be utilized and made effective in the building of ships and retaining to ourselves the control of all our great shipbuilding interests. In other words, during this crisis, when one of the great problems confronting us is to build ships quickly and in large numbers and make them available to transport our troops and supplies and munitions to Europe, provide food and munitions of war for our allies, it should be placed beyond the power of any foreign government to hamper us or get control in any way of our ships or of our shipbuilding industries” (p. 8026).

In the course of these debates Mr. Robbins described the reference in the amendment to “a majority of the stock” as meaning “majority control of the stock which controls the company”. Mr. Robbins said:

“What I conceive to be a very important feature of this bill, Mr. Chairman, is that provision by which they seek to prevent the control of a shipping company, or a ship even, under section 2 from passing into foreign hands. As I understand this section and the explanation that the gentleman gave of it,

it relates only to the majority interest of the stock of the company. The minority may be held by foreigners. This inhibition only works against the majority control of the stock which controls the company \* \* \*." (p. 8029).

Mr. Saunders described the purpose of the amendment as follows:

"In other words, by the wording of this amendment such a situation is intended to be brought to pass that by no possible legal legerdemain can any arrangement be made by which the controlling interest may be in the hands of some other person or persons than citizens of the United States, and at the same time the corporation continues to be a citizen of the United States. I rather think the original act accomplished this result, but there were certain subtle suggested possibilities under the existing law that caused the committee to report the amendment under consideration, as a corrective for these possibilities" (p. 8032).

In the hearings before the Committee on Commerce of the United States Senate (65th Congress, 2d Session) on the 1918 amendment, Gerard C. Henderson, an attorney on the legal staff of the United States Shipping Board, made the following statement to the effect that the amendment probably would not change the existing law:

"Section 2 of the bill probably does not change existing law. Existing law says that a corporation shall not be deemed a citizen of the United States for the purposes of this act, unless it is substantially controlled by citizens of the United States, or words to that effect. Section 2 of the bill amplifies that somewhat—

Senator Nelson (interposing)                      It makes it more definite.

Mr. Henderson It makes it more definite, so as to be certain that the ingenuity of lawyers cannot find a way out of the simpler statement in the present shipping act. There is no change of policy there, but merely a better drafted provision.'

The Merchant Marine Act of June 5, 1920 amended Section 2 of the Shipping Act of 1916 by adding the present paragraph (c) and the last clause in paragraph (a) requiring 75% of the interest in a corporation to be owned by United States citizens for purposes of the coastwise trade. The bill as originally introduced provided that "all the stock and securities" of a corporation must be owned by United States citizens for purposes of coastwise trade and 75% for purposes of foreign commerce. This was opposed on the floor of the Senate, and the bill as finally passed left the pre-existing law unchanged except for the additional requirement of a 75% interest for purposes of the coastwise trade.

In the course of the Senate debates on the 1920 amendment (66th Congress, 2d Session, May 4-May 24, 1920, Vol. 59) the question was raised as to what would happen in the event of the acquisition by an alien through inheritance of stock in a corporation owning a United States vessel registered for coastwise trade. In order to guard against this contingency Senator King introduced an amendment providing that in such a case the stock acquired by the alien should have no voting power. This amendment was agreed to by the Senate but omitted from the final legislation. It is significant that the proposal was not to prevent the alien from retaining a financial interest in the corporation or from receiving dividends but merely to insure that the alien would not acquire control of a voting interest.

The legislative history of Section 2 of the Shipping Act of 1916 contains no specific discussion of the necessary stock ownership of a corporation with several classes of stock. It is significant, however, that the reference to "a majority of the stock" is part of a definition of "controlling interest" and that Congress rejected an amendment which would have required all of the stocks and securities of a corporation to be owned by United States citizens. The reference to 75% of the interest should be construed in the same way, the difference being in percentage rather than in nature of interest. As stated by Senator Jones on the floor of the Senate on June 4, 1920:

"\* \* \* Some people, however, on the outside have raised the question as to the meaning of the words 'controlling interest', which are found in the section relating to the ownership of stock in shipping corporations. The term is used just the same as it is used in the present shipping act, and I do not think there can be any question about the construction that should be given to it. I know that the committee understood it to mean actual bona fide American ownership of a majority of the stock of corporations doing business in the foreign trade and 75 per cent in the coastwise trade. I am satisfied that that is the understanding that the Senate has with reference to that language and that provision. \* \* \*"

The intent of the Shipping Act of 1916 would thus seem to require the reference to stock ownership to be construed to mean ownership of voting stock. This does not render surplusage the additional requirements of Section 2 that a majority or 75% of the voting power must be vested in citizens and that a majority or 75% of the voting power must not be exercised through any contract or understanding on behalf of a non-citizen. Without these two addi-

tional requirements it would be possible for a citizen to own a majority or 75% of the voting stock but to give an irrevocable proxy to a non-citizen, or to enter into a contract to vote his stock in accordance with directions received from a non-citizen.

The language of Section 2 of the Shipping Act of 1916, as amended, is also significant for its omissions. It requires the president and managing directors to be citizens of the United States. It does not prohibit a citizen corporation from having other non-citizen officers or employees. It prohibits control on the part of a non-citizen, but it does not prohibit the investment of foreign capital in a citizen corporation or the giving to a foreign investor of the normal safeguards of a creditor or investor.

In this connection the case of *American Union Line, Inc., v. Oriental Navigation Corporation*, 239 N. Y. 207 (1924) is of interest. A United States citizen held as trustee the stock of American Union Line to be delivered to another United States citizen upon the settlement by the latter of his indebtedness to a Danish corporation. The Court of Appeals held that the existence of the indebtedness by the stockholder to the Danish corporation did not preclude the possibility of American Union Line's being considered a citizen within the meaning of the Shipping Act. The Court said:

“\* \* \* Under these circumstances, we think it became a question of fact and judgment for the governmental boards to decide whether plaintiff came within the meaning of the statute that ‘no corporation \* \* \* shall be deemed a citizen of the United States unless the controlling interest therein is owned by citizens of the United States,’ and the War Board might have found that under that statute this stock, in the hands of a citizen and going to a citizen and simply held as security for the payment of indebtedness to an alien, was ‘owned by a citizen of the United States’ \* \* \*” (p. 216).

It is therefore clear from the legislative history of Section 2 of the Shipping Act of 1916, as amended, that the requirements of citizen ownership of stock relate to ownership of the voting stock of a corporation, not to the ownership of each class of stock. Congress was concerned with preventing foreign control of U. S. shipping. It has never been the policy of the United States to prevent the investment of foreign capital in this country, and Congress rejected a proposal in 1920 to require "all the stock and securities" of a ship owning corporation to be owned by United States citizens. Certainly there is no more reason to prohibit alien ownership of a non-voting preferred stock than to prohibit alien ownership of notes or bonds. If United States citizens own the controlling stock of a corporation in the requisite percentages, the corporation is a United States citizen within the meaning of the Shipping Act of 1916, as amended.

(b) The transfer must be of a vessel or interest therein.

Section 9 of the Shipping Act of 1916, as amended, requires the approval of the Commission only for the transfer of "any vessel or any interest therein". It does not require approval for the transfer of shares of stock of a corporation owning a vessel. Similarly, the language as to forfeiture provides only for the forfeiture of "any such vessel, or any interest therein" and not for the forfeiture of any stocks or securities. This limitation of the restrictions in Section 9 to "any vessel or any interest therein" must have been intentional, since the Act of July 15, 1918 which amended Section 9 of the Shipping Act of 1916 also added Section 37 of that Act in its present form, applicable only in time of national emergency, which specifically requires the approval of the Commission for transfers of the controlling interest or a majority of the voting power in a corporation owning a vessel, and specifically provides

that any stocks, bonds or other securities transferred in violation of the restrictions of the section should be forfeited (46 U. S. C. 835). Section 37 came into effect again in December, 1950 when the President declared a national emergency, but was not in effect at the time of the transaction with which this memorandum is concerned.

The distinction between an interest in a vessel and an interest in the stock of a corporation owning a vessel had been well established in the law long before the enactment of the Shipping Act of 1916 and its subsequent amendments. In the English case of *The Queen v. Arnaud and Powell*, 9 Q. B. 806 (1846) involving the registry of a British vessel owned by a British corporation which had alien stockholders, Lord Denman emphasized the distinction as follows:

“The individual members of the corporation, no doubt, are interested, in one sense, in the property of the corporation, as they may derive individual benefit from its increase, or loss from its destruction; but in no *legal sense* are the individual members the owners. If all the individuals of the corporation were duly qualified British subjects, they could not register the vessel in their individual names *as owners*, but must register it as belonging wholly to the corporation as owner.”

\* \* \* \* \*

“It was contended that the effect might be to defeat the object and policy of the Navigation laws in this respect. The individual members of the British Corporation might, either originally or by transfer, be all foreigners. Such does not appear to be contemplated or provided for by the act in question. If it be *casus omissus*, and evil consequences arise, they may be remedied by the interference of the legislature, \* \* \* as the case stands, it seems to us that the British corporation is to all intents the legal owner of the vessel, and entitled to the registry, and that we cannot notice any disqualification of an



individual member which might disable him, if owner from registering the vessel in his own name'' (p. 816).

The decision in the *Arnaud* case has been followed in the United States both in the opinions of the Attorney Generals and in the decisions of the courts under the registry statutes, as will be shown under Point II below, it has long been held that an oath as to absence of foreign interest in a vessel may properly be made if the vessel is owned by a domestic corporation, even though all the stock of the domestic corporation is owned by foreigners.

The legislative history of the 1918 and 1920 amendments to Section 9 of the Shipping Act of 1916 shows clearly that Congress was aware that Section 9 imposed no penalty on the transfer to a non-citizen of stock in a corporation owning a U. S. flag vessel. Thus in the debates in the House of Representatives at the time of the passage of the 1918 amendment (65th Congress, 2d Session, June 5-28, 1918, Congressional Record, Vol. 56), Mr. Robbins stated:

“\* \* \* This inhibition only works against the majority control of the stock which controls the company. If this company owns ships how are you going to enforce that provision? There is no provision in this bill that works a forfeiture of the charter. There is no provision here that renders null and void the transfer of the stock'' (p. 8029).

In the hearings which had been called on the 1918 amendment before the House Merchant Marine and Fisheries Committee, 65th Congress, 2d Session, in April 1918, Mr. Burling, General Counsel for the United States Shipping Board, made the following statement with respect to the proposed addition of Section 37, applicable only during national emergency, and restricting the transfer of stock in corporations owning vessels:

“\* \* \* You see the original act prohibited a ship from being transferred to a corporation which is owned abroad, but there is nothing in the act to prevent foreigners from coming in and buying all the stock. You can organize a corporation the stock of which is owned by Americans, and as soon as it is organized you can go to work and have that stock transferred to foreigners and thereby defeat the spirit of the law, and this forbids that any such stock shall be so transferred.”

In the course of the debates in the Senate on the 1920 amendment (66th Congress, 2d Session, May 4-May 24, 1920, Congressional Record, Vol. 59), Senator King and Senator Jones engaged in the following colloquy:

“Mr. King. Suppose a case where a foreigner is an heir to an American who owns a certain block of stock in a coastwise boat, and under the laws of distribution that alien received the stock. What becomes of the stock? Is it forfeited? What provisions are there in the bill to penalize the corporation, if it is to be penalized, for permitting some alien to remain the owner of stock in the corporation?”

Mr. Jones of Washington. There are no penalizing provisions. There are no penalizing provisions in the law now and as it has existed ever since we had a Shipping Board. We have made no change in that particular.

Mr. King. How would the provision be enforced, if there is any enforcement of the provision, restricting the ownership to all Americans?

Mr. Jones of Washington. I will say that I do not know just how it would be done. I think probably the Shipping Board would make some rules and regulations under which they would seek to control the issuance of stock to aliens, or something of that kind; but there is no penalty.

Mr. King. It is just a sort of a naked fulmination?

Mr. Jones of Washington. Really, that is about it.”

Following this colloquy, Senator King introduced his amendment to provide that shares of stock acquired by an alien by intestate or involuntary succession should lose their voting power. There would have been no purpose in this proposed amendment if the result of the acquisition of stock by an alien was the automatic forfeiture of either the stock itself or the vessel owned by the corporation.

The foregoing review of the legislative history of Section 9 makes it clear that, except during time of national emergency when Section 37 comes into operation, there is no restriction upon the transfer to a non-citizen of stock of a corporation owning U. S. flag vessels.

(c) The transfer must be without the approval of the Commission.

A vessel may be transferred, mortgaged or chartered to a non-citizen if the approval of the Commission has been obtained. The statute does not prescribe the form or manner in which such approval should be given. It has been the custom in connection with charters to foreign charterers to rely upon the approval of the appropriate official of the Commission given by telephone or telegram.

The act of the Commission itself in executing a bill of sale to a vessel being sold by it would obviously establish its approval of the sale although, as indicated below, Section 9 does not contemplate the necessity of the Commission's approving its own acts. As stated in *The Helori*, 24 F. 2d 710 (W. D. Wash., 1928):

“ \* \* \* The government of the United States is the principal, and it would appear rather anomalous to require the government to give consent to itself to do an act which it itself inspired, for its use \* \* \* ”  
(p. 712).

(d) The transfer must be made by a United States citizen.

Section 9 applies only to the transfer of a vessel by a citizen as defined in Section 2 to a person not a citizen.

The original acquisition of the vessels discussed in this memorandum was from the Commission itself. In so far as concerns Section 9 of the Shipping Act it is immaterial whether the corporations acquiring the vessels were citizens or non-citizens.

Congress intended the forfeiture provisions of Section 9 to relate only to transactions between private parties, not to transactions to which the United States itself was a party. Section 9 was never intended as a limitation upon the powers of the United States to dispose of vessels. Accordingly, the United States was not included in the definition of "citizen", and the provisions of Section 9 therefore do not apply to its transactions.

*The Northern No. 41*, 297 Fed. 343 (District Court, S. D. Fla., 1924) established the principle that the United States, acting through the Commission, is not a citizen. In this case the Court, while upholding the right of the United States to take the benefit of the Ship Mortgage Act as the holder of a preferred mortgage, held that the United States was not itself a citizen. The Court, after quoting Section 2 of the Shipping Act of 1916, as amended, made the following statement:

"The section was amended by the Act of July 15, 1918, by adding the last paragraph relating to the control of corporations. The first paragraph negatively defines what corporations, partnerships, or associations are citizens. The word 'citizen', as applied to the individual, is not attempted to be defined by the act. Therefore I take it that the word 'citizen', as used in subdivision (5) of subsection D, was used by Congress in its ordinarily understood

meaning. The Standard Dictionary defines 'citizen' to mean:

'A member of a nation or sovereign state, especially of a republic; one who owes allegiance to a government and is entitled to protection from it.'

Tested by this definition, the United States, as a body politic, cannot be a citizen of the United States \* \* \*."

This case was followed with approval by the District Court for the Southern District of New York in its decision in *The Southern Cross*, 24 Fed. Supp. 91 (1938).

Under what appears to be the theory of the *Meacham* libel Section 9 would be similarly inapplicable to the subsequent transfer to the *Meacham* by National Tanker Corporation to Meacham Corporation in November 1949. At this time both National Tanker Corporation and the Meacham Corporation were controlled by the same interests. Obviously if National Tanker Corporation and Meacham Corporation were both citizens as defined in Section 2, no forfeiture arises under Section 9. Further, even if both National Tanker Corporation and Meacham Corporation are regarded as failing to meet the citizenship requirements of Section 2, which is denied, nevertheless the transfer would not violate the provisions of Section 9. It would be a transfer from one non-citizen to another non-citizen which does not fall within the restrictions of Section 9 of the Shipping Act of 1916, as amended.

**(2) Section 9 of the Shipping Act must be strictly construed as a penal statute.**

The penalty of forfeiture prescribed by Section 9 is a heavy one not to be imposed unless there has been a clear violation of the literal meaning of the statute. The courts

have properly refused to expand the scope of such penal statutes beyond the strict meaning of their language. In the case of *The Helori*, 24 Fed. 2d 710 (W. D. Wash., 1928) the United States sought to forfeit *The Helori*, under Section 9 on grounds of citizenship. Under Section 9 as it then existed, prior to the 1938 amendment, the prohibition against transfer applied only to vessels documented under the laws of the United States. *The Helori* had originally been documented under the laws of the United States, but it became undocumented upon being sold to the United States Navy. The Navy then sold *The Helori* to a California corporation which, without documenting the vessel, sold it to a Canadian corporation. The Court held that there had been no violation of Section 9, and rejected the argument that the vessel should be deemed to be still documented because there had been no formal approval by the Shipping Board of the surrender of its registry upon its original sale to the Navy. The Court said:

“Section 8146r(6), C. S. (46 USCA §840), providing any vessel registered, etc., under the laws of the United States shall be deemed to continue to be a documented vessel until such registry is surrendered with the approval of the Shipping Board, can have application only to vessels engaged in commerce, all-inclusive, or for pleasure. The Shipping Board is an agency of the government of the United States, and the navy is an arm of the government of the United States. The government of the United States is the principal, and it would appear rather anomalous to require the government to give consent to itself to do an act which it itself inspired, for its use. The intent of the Congress, obviously, from the consideration of the several statutory provisions, was that, since vessels purchased or owned by the United States for naval service were excluded from

the registry provision, no approval of the Shipping Board to a surrender of the registry certificate was required for a vessel purchased for use in the navy" (p. 712).

The strict interpretation given Section 9 of the Shipping Act was recognized at the time of its amendment in 1938. House Report No. 2168, accompanying H. R. 10315, ordered printed April 20, 1938, summarized the effect of the amendment in this regard as follows:

"Section 43: Thus section amends section 9 of the Shipping Act, 1916, as amended. Section 9 of the Shipping Act, 1916, deals with the requirement of securing the permission of the Commission before an owner of a vessel documented under the laws of the United States can transfer that vessel to foreign registry. As the section is worded in the present law, it may be possible for an owner to surrender the documents of the vessel or arrange to have them surrendered and sell the vessel to an alien, without first securing the consent of the Commission. The amendment is designed to prevent possible evasions and to require the permission of the Commission in all cases of transfer to foreign registry."

The Courts have similarly rejected liberal construction of forfeiture provisions of the registry laws. In *United States v. Worthington*, 117 Fed. 2d 936 (C. C. A. 9th 1941), the United States attempted to forfeit a vessel for alleged fraudulent use of a certificate of registry in violation of 46 U. S. C. 60. The Court said:

"Still we think that the vessel cannot be forfeited under the provisions of Section 60, as the essence of this section is that the registry has been fraudulently obtained or used.

The statute is highly penal, and cannot be so liberally construed. See *Rederiaktiebolaget Nor-*

*stjernen v. United States*, 9 Cir., 1932, 61 F. 2d 808, 812. Use of the vessel for purposes other than authorized by the registry is not necessarily a fraudulent obtaining nor use of the certificate of registry.”

The above holding was cited with approval in *The Snapper King, U. S. v. Flechas*, 127 Fed. 2d 461 (C. C. A. 5th 1942) where the Court said:

“\* \* \* to forfeit a vessel worth \$15,000 for carrying passengers on two separate and unconnected occasions, under conditions here shown, would be so drastic as to shock the conscience. We will not attribute any such intention to Congress.”

Similarly, in the case of *United States v. Hamilton*, 26 Fed. Cas. No. 15,289, at 91 (C. C. D. Ore., 1879), the United States brought suit to forfeit the value of a schooner on the ground of a false oath to the effect that no subject of any foreign power was directly or indirectly, by way of trust, confidence, or otherwise, interested therein, or in the profits or issues thereof. In fact, one-half of the vessel was owned by a subject of Great Britain. In holding that the amount of penalty must be fixed by the value of the vessel at the moment of the commission of the illegal act, the Court stated:

“This is a penal statute and therefore not to be construed so as to include ‘cases other than those which clearly appear to have been intended by the legislature, and are fairly included in the language used to express such intention,’ however much they may appear to be within the reason or what is called the equity of it; *U. S. v. Mattock* [Case No. 15,744]; *U. S. v. Hartwell*, 6 Wall. [73 U. S.] 391.” (p. 92).



**(3) Section 9 of the Shipping Act of 1916 is unconstitutional.**

- (a) Section 9 constitutes a deprivation of property without due process of law.

Section 9 prevents a United States citizen from freely disposing of a U. S. flag vessel to any person not a United States citizen without the approval of the Commission. The restriction is not limited to time of war or national emergency, and applies not only to vessels purchased from the Commission but to all vessels documented under U. S. flag. The restriction imposed by the statute upon the freedom of alienation of property raises a question as to whether Section 9 results in a deprivation of property rights without due process of law, in violation of the Fifth Amendment of the Constitution. This memorandum will not attempt to review the many cases in which invasions of property rights have been struck down as unconstitutional. However, the question involved is an obvious and a serious one.

- (b) Section 9 is invalid as an attempt to delegate legislative power to the Commission.

Section 9 purports to give the Commission absolute power to approve or disapprove the transfer of a vessel to a non-citizen. Yet the statutes nowhere prescribe any standard for the Commission's guidance. The Merchant Marine Act of 1920 and the Merchant Marine Act of 1936 contain some general statements of policy to the effect that it is necessary for the national defense and for the growth of its foreign and domestic commerce that the United States have a merchant marine to carry a portion of its commerce and to serve as a naval and military auxiliary in time of war or national emergency, and to be owned and

operated by United States citizens. This general statement of objective provides no adequate criterion to guide the determination of the Commission in deciding in a particular case whether to approve or disapprove a proposed foreign transfer.

In the case of *Panama Refining Co. v. Ryan*, 293 U. S. 388 (1935), the Supreme Court held unconstitutional legislation authorizing the President to prohibit the transportation of oil in interstate and foreign commerce. Chief Justice Hughes described the relevant portion of the statute and the problem presented as follows:

“Section 9 (c) is assailed upon the ground that it is an unconstitutional delegation of legislative power. The section purports to authorize the President to pass a prohibitory law. The subject to which this authority relates is defined. It is the transportation in interstate and foreign commerce of petroleum and petroleum products which are produced or withdrawn from storage in excess of the amount permitted by state authority. Assuming for the present purpose, without deciding, that the Congress has power to interdict the transportation of that excess in interstate and foreign commerce, the question whether that transportation shall be prohibited by law is obviously one of legislative policy. Accordingly, we look to the statute to see whether the Congress has declared a policy with respect to that subject; whether the Congress has set up a standard for the President's action; whether the Congress has required any finding by the President in the exercise of the authority to enact the prohibition.”

Chief Justice Hughes in words which can be applied almost exactly to Section 9 of the Shipping Act of 1916, then

described the shortcomings of Section 9 of the National Industrial Recovery Act as follows:

“\* \* \* It establishes no criterion to govern the President's course. It does not require any finding by the President as a condition of his action. The Congress in section 9 (c) thus declares no policy as to the transportation of the excess production. So far as this section is concerned, it gives to the President an unlimited authority to determine the policy and to lay down the prohibition, or not to lay it down, as he may see fit. And disobedience to his order is made a crime punishable by fine and imprisonment.”

Section 9 of the Shipping Act of 1916, as amended, establishes no criterion to govern the course of the Commission. It does not require any finding by the Commission as a condition of its action. Congress has declared no policy as to when approval could be given or withheld, and the Commission is given unlimited authority to determine the policy and to lay down the prohibition, or not to lay it down as it may see fit. Any disobedience to the Commission's order is made a crime punishable, not only by fines and imprisonment, but by forfeiture of the offending vessel.

The case of *Panama Refining Co. v. Ryan* was followed in the *Schechter* case, 295 U. S. 495 (1935) holding invalid as an unconstitutional delegation of legislative powers the provisions of the National Industrial Recovery Act authorizing the President to prescribe codes of fair competition.

More recent cases involving war powers have upheld statutes where the administrative standards have been more carefully prescribed. In no case, however, has the doctrine of unconstitutional delegation of legislative power been denied or overruled. In *Yakus v. United States*, 321 U. S. 414 (1944) upholding the constitutionality of the

Emergency Price Control Act, Chief Justice Stone described the legislative function as follows:

“\* \* \* The essentials of the legislative function are the determination of the legislative policy and its formulation and promulgation as a defined and binding rule of conduct—here the rule, with penal sanctions, that prices shall not be greater than those fixed by maximum price regulations which conform to standards and will tend to further the policy which Congress has established. These essentials are preserved when Congress has specified the basic conditions of fact upon whose existence or occurrence ascertained from relevant data by a designated administrative agency, it directs that its statutory command shall be effective. It is no objection that the determination of facts and the inferences to be drawn from them in the light of the statutory standards and declaration of policy call for the exercise of judgment, and for the formulation of subsidiary administrative policy within the prescribed statutory framework \* \* \*” (p. 667).

Chief Justice Stone then found that the Act contained sufficient standards:

“The standards prescribed by the present Act, with the aid of the ‘statement of the considerations’ required to be made by the Administrator, are sufficiently definite and precise to enable Congress, the courts and the public to ascertain whether the Administrator, in fixing the designated prices, has conformed to those standards. Compare *Kiyoshi Hirabayashi v. United States*, *supra*, 320 U. S. at page 104, 63 S. Ct. at page 1387, 87 L. Ed. 1774. Hence we are unable to find in them an unauthorized delegation of legislative power \* \* \*” (p. 668).

Section 9 of the Shipping Act of 1916 contains no standards. It follows from the opinion of Chief Justice Stone

quoted above that Section 9 of the Shipping Act of 1916 constitutes an unauthorized delegation of legislative power to the United States Maritime Commission.

The absolute and unlimited discretion given the Commission by Section 9 makes appropriate the following statement by Mr. Justice Douglas in his dissenting opinion in *U. S. v. Wunderlich*:

“Law has reached its finest moments when it has freed man from the unlimited discretion of some ruler, some civil or military official, some bureaucrat. Where discretion is absolute, man has always suffered. At times it has been his property that has been invaded; at times, his privacy; at times, his liberty of movement; at times, his freedom of thought; at times, his life. Absolute discretion is a ruthless master. It is more destructive of freedom than any of man’s other inventions.” (U. S. Supreme Ct., 20 Law Week 4018, Nov. 27, 1951.)

**(B) United Tanker Corporation and Meacham Corporation have at all times been United States citizens within the meaning of Section 2 of the Shipping Act of 1916.**

(1) United Tanker Corporation.

As set forth in the accompanying Application, United was organized on December 10, 1947 under the laws of the State of Delaware. Its President and Directors have at all times been citizens of the United States, with long experience in the field of American shipping. The Chairman of the Board, Arthur M. Tode, was the founder of the American Merchant Marine Conference held each year under the auspices of the Propeller Club. Both he and Harold C. Lenfest, President, have had practical training at sea, holding unlimited licenses as chief engineer for both steam and diesel propelled vessels. Walter H. Sieling, Vice-President, has been active in the shipping business since

1905, and the firm of Sieling & Jarvis, of which he was formerly a member, operated tankers for the War Shipping Administration during World War II.

The original certificate of incorporation of United provided for two classes of stock, a Class A Stock and a Class B Stock. All of the Class B Stock was issued to Messrs. Lenfest, Sieling and Tode who thus acquired at all relevant times up to June 18, 1948 75% of the voting power of United. The Class B Stock was also entitled to 10% of any dividends declared. The Class A Stock of United was initially issued to China Trading, entitling it to 90% of the earnings of the corporation declared as dividends, and 25% of the voting power.

On December 11, 1947 both China Trading and United filed applications to the Commission for the purchase of T2 tankers. The applications pointed out the interest of China Trading in United and the fact that the tankers applied for were intended to be devoted to the transportation of oil from the Persian Gulf to China under charter to the National Resources Commission, a branch of the Nationalist Government of China, or one of its controlled corporations. The application of United listed as its secretary and treasurer, Mr. C. C. Wei, a Chinese citizen, associated with China Trading, and pointed out that the funds required by United were expected to be received either from China Trading as payment for shares of Class A Stock or as a loan, or from the National Resources Commission or from commercial banks. While these applications were not acted upon by the Commission they formed the basis for the subsequent opinion rendered by the Assistant General Counsel of the Maritime Commission on February 3, 1948 to the effect that United was a citizen of the United States within the meaning of Section 2 of the Shipping Act of 1916, as amended. A copy of this opinion is

attached as Exhibit D to the application accompanying this memorandum.

The original capitalization of United remained as described above until June 18, 1948, the funds required for the financing of the acquisition of tankers being provided in part by China Trading, in part by commercial banks and in part by the Commission. On June 18, 1948, the certificate of incorporation of United was amended to authorize 25,000 shares of a new class of preferred stock, par value \$100 per share, and to increase the authorized shares of Class B Stock to 75,000 shares, 10¢ par value. At this time 61,000 shares of Class B Stock were issued and sold to The China International Foundation, Inc., (the "Foundation"), a Delaware corporation, described below, and China Trading accepted in cancellation of advances previously made 20,300 shares of the new preferred stock. At the same time China Trading donated to the Foundation 10 shares of Class A Stock, which had been initially issued to it, representing all of the outstanding Class A Stock. Subsequently, the Foundation acquired by purchase or donation the shares of Class B Stock originally issued to Messrs. Lenfest, Sieling and Tode. The funds for the purchase of shares of Class B Stock by the Foundation were provided by China Trading.

Subsequently, China Trading acquired additional shares of preferred stock bringing its total holdings to 25,000 shares, and the Foundation, with funds provided by China Trading, acquired additional shares of Class B Stock. The Class A and Class B Stock were reclassified into one class of common stock on August 18, 1949, all of the presently outstanding 85,000 shares of common stock being held by the Foundation. The certificate of incorporation of United requires that shares of common stock may only be held by

citizens of the United States within the meaning of Section 2 of the Shipping Act of 1916, as amended.

On November 7, 1949, 3,450 shares of the preferred stock of United were surrendered by China Trading for cancellation, and 11,750 shares of such preferred stock were sold to Meacham Corporation, a wholly-owned subsidiary of the Foundation. From this date on China Trading, or its assignees, held a minority of the outstanding preferred stock of United which, by successive purchases commencing in the spring of 1951, has now been reduced to 3,550 shares, representing less than 25% of the outstanding preferred stock.

75% of the voting stock of United until June 18, 1948, and 100% of the voting stock thereafter, has been held by citizens of the United States. Of the funds expended in connection with the acquisition and placing in operation of the six tankers financed by United, less than 20% were provided by China Trading. The president and directors of United have at all times been United States citizens. There has been no trust or fiduciary obligation in favor of any person not a citizen nor by any contract or understanding or any other means has control of United been exercised on behalf of or conferred upon or permitted to be exercised by any person who is not a citizen of the United States.

(2) Interest held by China Trading & Industrial Development Corporation.

China Trading purchased ten shares of Class A Stock of United on original issue for \$2,000, which it later donated to the Foundation. It advanced substantial funds to United (largely from advances received from Chinese Petroleum) to assist in financing its investments in tanker-owning corporations and subsequently received shares of non-voting preferred stock in satisfaction of these advances.



Moneys advanced by China Trading represented less than 20% of the cost of the six tankers financed by United.

China Trading's interest in United has been that of an investor. It was willing to make substantial advances to United involving a high degree of risk in order to make it possible for it to charter two vessels, the *Meacham* and the *Kettleman Hills*, from United, which it could in turn recharter to Chinese Petroleum at a substantial profit.

Two former employees of China Trading became employees of United, C. Y. Chen and C. C. Wei. Both were able young graduates of engineering schools with no prior shipping experience. Dr. Chen and Mr. Wei and several other young Chinese engineers employed by United have rendered valuable and useful services to it under the direction of the Board.

(3) The China International Foundation, Inc.

The Foundation now owns all of the stock of Meacham Corporation, and, directly or through Meacham Corporation, all of the Common Stock and over 75% of the preferred stock of United. The Foundation was incorporated on June 4, 1948 as a charitable membership corporation under the laws of the State of Delaware. The Foundation has no capital stock, and under its certificate of incorporation no part of its net income shall enure to the benefit of any member, officer, trustee or employee. Its president, trustees and members have at all times been United States citizens.

The purposes for which the Foundation was organized are to further educational, medical and scientific enterprises both in the United States and China by grants in aid of educational institutions, by creating scholarships, by establishing hospitals and public health centers, by encouraging medical and scientific research and by disseminating scientific and technical knowledge. Its income

has consisted in gifts amounting to approximately \$23,000 (including original cost of shares of stock received) from China Trading and gifts and dividends from Meacham Corporation and United amounting to about \$280,000. Exhibit A to the accompanying Application describes some of the philanthropic projects undertaken by the Foundation.

The original donations from China Trading to the Foundation were made as absolute gifts and not as gifts in trust. While the Foundation has from time to time awarded scholarships to Chinese students as well as to American students and made gifts to Chinese institutions, such as the University of Formosa, the Foundation is not subject to any "trust or fiduciary obligation in favor of any person not a citizen of the United States" as those terms are used in Section 2 of the Shipping Act of 1916. These terms in Section 2 are intended to prohibit the ordinary type of trust where there is an alien beneficiary who has power to enforce the terms of the trust and the performance by the trustees of their duties under some trust instrument, and thus may exercise some controlling influence upon the trustees. The Foundation is under no obligation or trust in favor of any potential Chinese donee. Its only obligation or trust is to apply its funds to the philanthropic purposes set forth in its certificate of incorporation. Enforcement of this obligation or trust rests with the Attorney General of the State of Delaware.

(4) Meacham Corporation.

This corporation was organized on October 17, 1949 under the laws of the State of Delaware, and, on November 7, 1949, took title to the *Meacham*, as set forth in the accompanying Application. Its entire capital stock is now and has always been owned by the Foundation. Its president and directors are now and have always been United States citizens. Its unsecured note in the amount of \$1,595,000

is held by Chinese Petroleum, an agency of the Nationalist Government of China. The position of Chinese Petroleum was purely that of an investor. Payment of the note could be postponed by Meacham Corporation to 1959 or longer if its income was insufficient to meet its installments. Thus, as set forth in Exhibit J to the Application, Chinese Petroleum was in no position to exert financial pressure on Meacham Corporation.

**(C) The tanker-owning subsidiaries of United Tanker Corporation have at all times been United States citizens.**

The accompanying Application describes the organization of National Tanker Corporation, its subsidiaries, Oceanic Maritime Corporation and Trans-World Maritime Corporation, and the organization of American Viking Corporation and Arctic Tankers, Inc. All of the stock of these corporations was ultimately acquired by United. If, as has been shown above, United meets all of the requirements of a United States citizen under Section 2 of the Shipping Act, it follows that its various subsidiaries were also citizens. However, even on the assumption that United was not initially a citizen, the citizenship of the companies referred to at the time of acquisition of vessels would not have been affected.

National Tanker Corporation was organized in January 1948 as a Delaware corporation. Its president, its directors and its stockholders were United States citizens. On January 24, 1948 it agreed to execute bareboat charters of the *Meacham*, the *Kettleman Hills* and the *Antelope Hills* to United in consideration of financing of the acquisition of the vessels. United represented that the statements made as to its citizenship in its application filed with the Commission dated December 10, 1947 were true and correct and that its president and directors and the holders of a majority of its stock were United States citizens and would

continue to be such during the life of the contract. The stockholders of National Tanker Corporation on the same day gave United an option to purchase their stock, exercisable between September 15 and October 15, 1948. The option was based upon the representations by United as to its citizenship. If the representations had not been correct the stockholders of National Tanker Corporation could have refused to deliver their stock to United in January, 1949 at the time of final payment by United under the extended option agreement. In other words, during the period January 24, 1948 to January, 1949, the stock of National Tanker Corporation was owned by three U. S. citizens, and was not subject to the option unless the representations made by United as to its citizenship were correct. It follows that during the period when the *Meacham*, the *Kettleman Hills* and the *Antelope Hills* were acquired from the Commission, and on June 15, 1948 when the *Kettleman Hills* was transferred by National Tanker Corporation to its wholly owned subsidiary Oceanic Maritime Corporation, National Tanker Corporation and its subsidiaries were citizens within the meaning of the Shipping Act of 1916, as amended, regardless of whether or not United was a citizen.

The *New London* was purchased by Arctic Tankers, Inc. from the Commission on July 9, 1948. At this time a majority of the common stock of Arctic Tankers, Inc. was held by M. A. Mathiasen, a United States citizen, and United held a minority of the common stock and all of the non-voting preferred stock of Arctic Tankers, Inc. United also held an option dated May 24, 1948 by which it was entitled to purchase all of the stock held by Mathiasen. The option agreement provided, however, that the exercise of the option must be supported by proof of citizenship of United. If United had not been a United States citizen

Mathiasen could have refused to agree to the exercise of the option by United on July 23, 1948 and could have retained a majority of the common stock. Accordingly, on the date of acquisition of the *New London* by Arctic Tankers, Inc. from the Commission, the citizenship of Arctic Tankers, Inc. did not depend upon the citizenship of United.

American Viking Corporation purchased two vessels from the Commission, the *St. Christopher* and the *Destiny*. A majority of the common stock of American Viking Corporation was at all times owned by Olga Konow, a United States citizen, until December 1949. There was no contract or understanding or option relating to these shares of stock, but such shares were sold to United as a result of arm's length bargaining in December 1949. Prior to this time, United had held a minority of the common stock and a majority of the non-voting preferred stock of American Viking Corporation. Thus during the period from the acquisition of the vessels in 1948 to December 1949 the citizenship of American Viking Corporation did not depend upon the citizenship of United.

**(D) All transactions subject to the provisions of Section 9 of the Shipping Act of 1916 have received the requisite approval of the United States Maritime Commission.**

In analyzing Section 9 this memorandum has pointed out that the approval of the Commission is required only if a United States flag vessel, or an interest therein, is transferred, mortgaged or chartered by a United States citizen to a person not a United States citizen. Against the background of these requirements, the transactions affecting transfers of vessels, or of stock in corporations owning vessels, will be briefly summarized below:

(1) Original acquisition of vessels.

All of the vessels referred to in this memorandum were originally acquired by bill of sale from the Commission. These transactions did not require a separate approval from the Commission because (a) the acquiring company was in each case a citizen, and (b) regardless of the citizenship of the acquiring company, Section 9 was not intended to apply to acts of the United States, since the United States is not included in the definition of a "citizen". Assuming, however, that approval was required, the act of the Commission in delivering the bill of sale, with notice of all relevant facts, was itself a sufficient act of approval.

(2) Subsequent transfers of vessels.

The *Kettleman Hills* was transferred by National Tanker Corporation to its wholly-owned subsidiary, Oceanic Maritime Corporation, on June 15, 1948. This transfer did not require approval from the Commission because (a) both transferor and transferee were citizens; and (b) if the transferee were to be regarded as not a citizen, then its parent, the transferor, must also not have been a citizen. In other words Section 9 prohibits only a transfer by a citizen to a non-citizen. In the case of a transaction between parent and subsidiary both companies must fall into the same category. If both are citizens there is no violation. If neither are citizens there is no violation. In any event the approval of the Commission may be implied from the Commission's act in approving the surrender of the document of the *Kettleman Hills* by Order No. C-3157, dated June 15, 1948, on condition that the vessel be redocumented with all endorsements necessary to preserve the preferred status of the preferred mortgages on the vessel.

The *Meacham* was transferred by National Tanker Corporation to Meacham Corporation on November 7, 1949.

At this time both companies were direct or indirect subsidiaries of the Foundation, and the analysis in the preceding paragraph applies. If both companies were citizens there was no violation of Section 9. If neither were citizens there was no violation.

(3) Mortgages of vessels.

Four of the vessels, namely, the *St. Christopher*, the *Destiny*, the *New London* and the *Antelope Hills*, have been mortgaged only to the Commission. The act of the Commission in accepting the mortgages as a part of the purchase price of the vessels is presumably a sufficient approval by the Commission, for the purposes of Section 9 of the Shipping Act of 1916, as amended, assuming that any approval was required. As set forth under I (A) (1) (d) above, Section 9 does not apply to transactions involving the United States.

The other two vessels were mortgaged to private banks. The *Meacham* was mortgaged to Chemical Bank & Trust Company, a New York bank, which is a citizen within the meaning of Section 2 of the Shipping Act of 1916, as amended. Its citizenship is not affected by its transfer of a minority participation in the mortgage to the Bank of China since Chemical Bank & Trust Company retained all of the powers of the mortgagee. Under the Ship Mortgage Act the citizenship of a trustee under a mortgage is considered to be the citizenship of the mortgagee (46 U. S. C. 911). By analogy the citizenship of Chemical Bank & Trust Company which, with respect to the Bank of China participation, had all of the powers of a trustee, would seem to be determinative. (*Collier Advertising Service v. Hudson River Day Line*, 14 F. S. 335, D. C. S. D. N. Y. 1936).

The *Kettleman Hills* was mortgaged by National Tanker Corporation to Bankers Commercial Corporation as first

mortgagee and to United as second mortgagee. The existence of both mortgages was recognized, and impliedly approved, at the time of the transfer of the *Kettleman Hills* to Oceanic Maritime Corporation by Order No. C-3157, dated June 15, 1948 of the Commission which approved the surrender of the vessel's document on the condition, among others, that

“The vessel shall be redocumented under the laws of the United States and that all endorsements necessary and proper to preserve the preferred status of all preferred mortgages thereon, if any, be made upon the new document when issued, with particular reference to that first preferred mortgage dated April 29, 1948 in favor of Bankers Commercial Corporation, New York, N. Y. and that second preferred mortgage dated April 29, 1948 in favor of United Tanker Corporation, New York, N. Y.”

(4) Charters of vessels.

The *Meacham* and the *Kettleman Hills* were both bare-boat chartered by National Tanker Corporation to United, time chartered by United to China Trading, a Chinese corporation, and consecutive voyage chartered by China Trading to Chinese Petroleum, a Chinese corporation which was an agency of the Nationalist Government of China. Applications were filed by United, as chartered owner, for the requisite approvals under Section 9 of both the time charters and the consecutive voyage charters on both vessels. By Orders No. CH-1133 and CH-1143, issued in April 1948, the Commission gave the requested approvals. An extension of the charter parties on both vessels was subsequently approved by the Commission by Orders CH-1594 and CH-1595, dated March 29, 1949. The bare-boat charter from National Tanker Corporation to United was filed with the Commission as well as the time charters and voyage charters. While the Commission's orders did



not specifically approve the bareboat charters, since the Commission regarded United as a citizen, the approval of the charters by United to China Trading necessarily implies approval of the bareboat charters.

The *New London* was bareboat chartered by Arctic Tankers, Inc. to United for a period of five years. On July 9, 1948, the day Arctic Tankers, Inc. took title to the *New London* from the Commission, it filed an application for approval of the bareboat charter to United. This approval was required under the terms of the preferred mortgage on the *New London* held by the Commission. By letter dated September 2, 1948 the Secretary of the Commission gave the required consent to such bareboat charter and described United as "a citizen of the United States within the meaning of Section 2 of the Shipping Act 1916, as amended".

From time to time vessels have been chartered to foreign charterers. During a part of the period since the acquisition of the vessels such charters, if for a relatively short period of time, came within the general approval contained in General Order No. 59 of the Commission. In cases where such foreign charters did not come within General Order No. 59 application for approval has been filed with the Commission and the requisite approval obtained. The Commission would have had no jurisdiction to grant these approvals if it had not regarded the vessels as being owned by citizens of the United States within the meaning of Section 2 of the Shipping Act of 1916, as amended.

(5) Transfers of stock or securities of tanker-owning companies.

In analyzing the provisions of Section 9 of the Shipping Act of 1916, as amended, this memorandum has pointed out the distinction between transfers of stocks or securities

of tanker-owning companies and transfers of a vessel or an interest therein. Only the latter requires the approval of the Commission under Section 9. Assuming for the purposes of discussion, however, that the transfer of stock of a company owning a vessel also requires approval under Section 9 the knowledge on the part of the Commission of the various transfers of stock and the investment of foreign capital here involved and its acquiescence in such transfers would seem to amount to approval.

In the January 24, 1948 agreement between United and National Tanker Corporation providing for the acquisition and financing of the vessels *Meacham*, *Kettleman Hills* and *Antelope Hills*, and in the stock option agreement of the same date between United and the stockholders of National Tanker Corporation, the representation was made by National Tanker Corporation and its stockholders that the subject matter of the agreements had been discussed with members of the Commission and that the Commission had no objections to the carrying out of the agreements. The correctness of these representations is indicated by the testimony of Admiral Smith, then Chairman of the Commission, on February 13, 1948 before the House Committee on Merchant Marine and Fisheries, a copy of which is annexed to the accompanying application as Exhibit G. The subsequent sale by the Commission of the three vessels to National Tanker Corporation or its subsidiary, Trans-World Maritime Corporation, with full knowledge on the part of the Commission of the existence of the option through which United later acquired the stock of National Tanker Corporation, indicates the approval by the Commission of the acquisition of such stock.

The Commission was also familiar at the time with the investment by United in the preferred stock and minority common stock of American Viking Corporation. The hold-

ings of United in American Viking Corporation were specifically enumerated in a letter dated April 15, 1948 from counsel for American Viking Corporation to a member of the legal staff of the Commission (Exhibit E to the accompanying Application). The subsequent acquisition by United of the balance of common stock of American Viking Corporation, and the acquisition by United of the stock of Arctic Tankers, Inc. were reflected in reports filed by the respective companies with the Commission. On September 9, 1949 counsel for United transmitted to the Commission a statement listing the then stockholders of United and referring to the ownership by United, through wholly-owned subsidiaries, of the *Kettleman Hills*, *Meacham* and the *New London* (as well as the *Antelope Hills*) and its investment in 49% of the common stock and 8,000 shares of preferred stock of American Viking Corporation, the corporation owning the *St. Christopher* and the *Destiny*. During the discussions with representatives of the Commission of the problems created by the default on the *Antelope Hills* mortgage a proposal was made to increase the mortgage notes on the *Destiny* and the *St. Christopher* in connection with the settlement of the default on the *Antelope Hills*. At this time the representatives of the Commission were of course aware of the acquisition by United of the controlling stock of American Viking Corporation. On August 10, 1950 the foreclosure proceedings instituted in connection with the *Antelope Hills* mortgage were dismissed on motion of the Assistant United States Attorney upon the remedying of the default. At this time the Commission had full knowledge of the holdings by United in all of its tanker-owning subsidiaries. If the Commission had regarded the acquisition by United of the stocks of its subsidiaries as causing those subsidiaries to cease to be citizens within the meaning of Section 2 of the

Shipping Act of 1916, it would have had the right to foreclose on the mortgages of the *New London*, the *Destiny*, the *St. Christopher* and the *Antelope Hills*. Instead of taking any such action it caused the pending foreclosure proceedings under the *Antelope Hills* mortgage to be dismissed.

## II.

### **There has been no violation of the provisions of the Registry Statutes.**

The *Meacham* libel alleges violation of 46 U. S. C. 60 which provides for forfeiture whenever a certificate of registry "is knowingly and fraudulently obtained or used for any vessel not entitled to the benefit thereof"; of 46 U. S. C. 21 and 33 which provide for forfeiture if any of the matters of fact alleged in the oath taken to obtain the registry "which are within the knowledge of the party so swearing are not true"; and of 46 U. S. C. 41 which provides for forfeiture for failure to report the sale or transfer of any United States flag vessel "in whole or in part, by way of trust, confidence, or otherwise, to a subject or citizen of any foreign prince or state." The grounds alleged for the violations of Sections 60, 21 and 33 are that James G. Mackey, Secretary of National Tanker Corporation, executed a false oath when he swore "that no subject or citizen of any foreign prince or state, directly or indirectly, by way of trust, confidence, or otherwise, was interested therein, or in the profits or issues thereof."

It has already been shown that Meacham Corporation, United and its tanker-owning subsidiaries have at all times been citizens of the United States under the strict requirements of Section 2 of the Shipping Act of 1916, as amended. Even if it were held that the tanker-owning companies did

not meet the strict requirements of Section 2 of Shipping Act of 1916, as amended, it would not follow that there had been any violation of the registry statutes. The provisions of the registry statutes referred to in the *Meacham* libel have been in existence for many years going back in substance to the Act of December 31, 1792. They were not changed by the Shipping Act of 1916, as amended. It is clear that a corporation may register a vessel as a United States flag vessel under the registry statutes, even though the corporation is not a citizen as defined by Section 2 of the Shipping Act of 1916, as amended. It is also clear that a corporation may not be a citizen as defined by Section 2 but still does not become a subject of a foreign prince or state. To the extent that the required oath for registry of a vessel included statements of fact not required by law, any misstatements of such facts (which is denied) were immaterial, as indicated under (B) below. Moreover, forfeiture under Sections 60, 21 and 33 of Title 46 depend upon elements of fraud or knowing misstatements, which are not present here.

**(A) Under the registry statutes the nationality of the stockholders of a domestic corporation is not material.**

Under the registry statutes in existence prior to the enactment of the Shipping Act of 1916, and which that act did not purport to change, it was clear that a domestic corporation was entitled to register a United States flag vessel without regard to the ownership of the stock of the domestic corporation by aliens. Section 20 of Title 46 provides that for the purpose of registering a vessel owned by any incorporated company, an officer or agent of the company "shall swear to the ownership of the vessel without designating the names of the persons composing the company." Section 15 of Title 46 provided that register

for vessels owned by any incorporated company might be issued in the name of the president or secretary; "and such register shall not be vacated or affected by sales of any shares of stock in such company." Substantially similar language was contained in the Act of March 3, 1825 which first made provision for registry of vessels owned by corporations.

The legislative history of the registry of vessels owned by corporations was reviewed by the court in the case of *Steaua Romana Societate, etc. v. Woodman*, 2 F. Supp. 303 (D. C. E. D. Pa. 1931). In this case in 1914 a Roumanian company transferred a vessel to a Delaware company, the stock of which was held by a United States citizen under an oral agreement of trust to hold such stock for the benefit of the Roumanian company. The vessel was out of the United States and obtained a provisional American registry from an American Consul by the filing of an affidavit in the required form. After the war the United States citizen denied the existence of the trust and, in this action, alleged as a defense that such a trust would be unenforceable as a fraud upon the registry laws of the United States. The court upheld the validity of the trust and of the registry of the vessel as a United States flag ship, as follows:

\* \* \* \* \*

"Second Conclusion of Law: No fraud upon the ship registry laws of the United States was involved in the provisional registry of the *Steaua Romana* in Bremen or her subsequent transfer to the American flag.

Discussion: As has been noted, the special affidavit of the vendee for the issue of provisional registry by consuls contains a statement that: "There is no agreement or understanding reserving to the vendor, or for his benefit, any interest in the vessel,

or its operation, or right or voice or control therein.' The defendant's contention is that this clause should be construed broadly, to cover an interest in the stock of a vendee corporation, such as the plaintiff acquired at the time of the transfer of the *Steaua Romana*. If the absence of such interest was a legal prerequisite to transfer and the affidavit was intended to cover that point, then the affidavit was false and the obtaining of provisional entry was a fraud and the plaintiff's case, necessarily depending upon the transaction, must fall.

But a review of the navigation laws of the United States and the construction given them by departmental practice leaves no doubt whatever that this term in the affidavit was inserted solely for the purpose of insuring a clear and unencumbered title in the American corporation which was to become the owner of the vessel, and that if such corporation was one created under the laws of the United States or of any state thereof the vessel was legally entitled to American registry without regard to who owned the stock either directly or indirectly.

The original Navigation Act of September 1, 1789 (1 Stat. 55) provided that no ship could be registered or enrolled unless it was owned by a citizen or citizens of the United States. Even an American owner of ships living abroad could not obtain registry unless an agent or partner in an American firm was in business in the country of his residence. By the Act of December 31, 1792 (1 Stat. 289, §4 [46 USCA §19]), a vessel owned by a citizen domiciled in a foreign country was given the right of registry provided the owner take an oath, 'That there is no subject or citizen of any foreign prince or state, directly, or indirectly, by way of trust, confidence, or otherwise, interested in such vessel, or in the profits or issues thereof.' The requirement for this particular statement in the oath (originally intended only for citizens living abroad) was by the courts extended to all

cases of registry by American citizens and was incorporated in all oaths for that purpose.

Neither of the two acts referred to made any provision for the registry of vessels owned by corporations. The Act of March 3, 1825 (4 Stat. 129), admitted vessels owned by corporations to registry upon an oath to be taken by the president or secretary as to the ownership of the vessel, 'without designating the names of the persons composing such company.' Section 4 (46 USCA §254). A further requirement that the oath should contain a statement that 'no part of such steamboat or vessel has been, or is then, owned by any foreigner or foreigners,' was removed by the repeal in 1858 of the fifth section of the act. (4 Stat. 129; 11 Stat. 313.)

This legislation was codified in the Revised Statutes, and substantially as stated (subject to the amendment by the Act of June 24, 1902, c. 1155, §1, 32 Stat. 398 [46 USCA §20], which so far as corporations are concerned re-enacted the provisions of the Revised Statutes as to the oath), was in force on October 31, 1914. It will be observed that the oath required in order to obtain registration was as to the absence of any foreign interest in such vessel, and in case of a corporation as to the ownership of the vessel without designating the names of the persons composing the company.

On July 11, 1911, the Attorney General had rendered an opinion to the Department of Commerce in which the law was carefully reviewed and fully and clearly discussed. The precise question involved was the enrollment in the coasting trade of a vessel owned by a New York corporation, most if not all of the stock of which was owned by Canadians. The opinion, however, relates to registry as well as enrollment and reaches the conclusion that, 'a vessel belonging to a domestic corporation is entitled to registry, or enrollment, even though some stock of the company be owned by aliens' (pp. 310-311).



Attorney General Brewster in 1884 (17 Treas. Dec. 187) and Attorney General Wickersham in 1911 (29 Op. Atty. Gen. 188) both concluded that under the registry statutes it was permissible for aliens to own stock in a United States corporation which owned a vessel. The distinction drawn between ownership of an interest in a vessel and ownership of stock of a corporation which owns a vessel, has also been recognized by the British courts. See opinion of Lord Denman in *The Queen v. Arnaud & Powell*, 9 Q. B. 806 (1846). The United States Supreme Court has recognized the distinction in relation to other facts in the cases of *Humphreys v. McKissock*, 140 U. S. 304 (1891) and in *United States v. Delaware & Hudson Co.*, 213 U. S. 366 (1909).

The regulations of the Bureau of Customs for the documentation of vessels defined the word "citizen" as follows (19 C. F. R. 3.19):

*"Citizenship; documentation.* (a) Whenever used in this part, the word 'citizen' includes the plural as well as the singular. Unless the context requires a different meaning, it means:

• • • • •

(3) In the case of a corporation, one which is incorporated under the laws of the United States or of one of the States, and of which the president and all the managing directors are citizens of the United States. If no directors are authorized to act as managing directors, all the directors of the corporation shall be considered to be managing directors for the purpose of this paragraph.

• • • • •

The regulations specifically contemplate the possibility that a vessel may be documented as a vessel of the United States, even though owned by a corporation not a citizen as defined in Section 2 of the Shipping Act:

“(c) A vessel, although owned by a corporation which is not a citizen as defined in section 2 of Shipping Act, 1916, as amended, may be documented as a vessel of the United States if the sale or transfer to the corporation was not in violation of section 9 or 37 of the Shipping Act, 1916, as amended (46 U. S. C. 808, 835), and if the corporation is a citizen as defined in paragraph (a) (3) of this section.”

**(B) Any misstatement in the registry oath of facts not required by law is immaterial.**

In order to register a vessel it is customary for an officer or agent of a corporate owner to subscribe to an oath on Customs Form 1259. This form contains a statement to the effect that the president and managing directors of the corporation are citizens of the United States and that no subject or citizen of any foreign prince or state is directly or indirectly by way of trust, confidence, or otherwise, interested therein or in the profits or issues thereof. These are the statements required by the registry statutes. In addition the form contains several paragraphs paraphrasing the language of Section 2 of the Shipping Act with respect to the ownership by citizens of 75% of the interest in the corporation. These provisions are unnecessary in order to obtain the registry of the vessel. They serve as a guide to the Bureau of Customs as to whether a notation should be made on the register of the vessel indicating that the vessel may or may not engage in coastwise trade. Since these statements are unnecessary in obtaining a registry, a misstatement contained in these provisions would not constitute a ground for forfeiture of the vessel. Thus in the *Steana* case cited above, the Court stated:

“\* \* \* He of course had no right to prescribe any oath which the law did not authorize, and, in view

of the existing law, it is clear that the oath actually required was not intended to disclose ultimate stock ownership by way of trust or otherwise in the corporation which took over the vessel" (p. 312).

Similarly, in the case of *The Acorn*, 1 Fed. Cas. No. 29 at 52 (D. C., E. D. Mich. 1870), the United States claimed a forfeiture on the ground that the person taking the oath was not a citizen, and that there were subjects of a foreign prince or state, directly or indirectly, by way of trust, confidence, or otherwise, interested in the vessel or in the profits or issues thereof. In this case by an act of Congress approved April 25, 1866, the Secretary of the Treasury was directed to issue an American enrollment and license to the bark *Acorn*, among a large number of other vessels named in the act. The Court held that the act was mandatory in its terms, that no oath was required to register the vessel and that, therefore, the validity of the oath actually made was no ground for forfeiture:

"\* \* \* I hold, therefore, that no oath to obtain enrollment and license was necessary in this case, and hence that the oath which was made, and upon the alleged falsity of which a forfeiture is predicated, was extra-judicial, void, and of no effect. The provisions of law, therefore, declaring a forfeiture in such cases, have no application to this case. \* \* \*"

There have been similar holdings under perjury statutes to the effect that a misstatement of fact in an oath not required by law does not constitute perjury. In *Shelton v. United States*, 165 Fed. 2d, 241 (U. S. App. D. C. 1947) Associate Justice Prettyman referred approvingly to

"the doctrine that an administrative officer cannot add to the content of an oath prescribed by statute

so as to make falsification of the additional information perjury.”

In *Patterson v. United States*, 181 Fed. 970 (C. C. A. 9th 1910) another case involving perjury, the Court said, referring to a requirement by the Patent Office:

“\* \* \* Granted that such a requirement can be legally made by rule of the department in order to determine whether or not the applicant was alone entitled to the patent applied for, or only in conjunction with some one else, it by no means follows that the department can by any rule or regulation add any word or words to the statutory oath, making that a crime which Congress did not make such. The law is thoroughly well settled that crimes in such matters are such only as the statutes have defined and declared. \* \* \*

In the instance in hand, the statute has defined the matters the wilful false swearing to which is made to constitute the crime of perjury. Whether or not an applicant is the ‘sole’ inventor of the thing claimed is not among the elements of the crime denounced by the statute. Therefore false swearing in respect to that matter cannot be a crime” (p. 973).

These cases make it clear that even if there had been a misstatement in the prescribed oaths as to stock ownership of the corporations acquiring vessels (which there was not) the vessels were nevertheless entitled to U. S. registry and are not subject to forfeiture under the provisions of the registry statutes.

**(C) If any misstatements were made to obtain the registry of the vessels, the misstatements were made innocently.**

In order to establish a forfeiture under 46 U. S. C. 60 the Government must establish that the certificate of registry for a vessel was “knowingly and fraudulently obtained

or used." In order to establish a forfeiture under 46 U. S. C. 21 and 33 the Government must establish that matters of fact alleged in the oath "within the knowledge of the party so swearing are not true." James G. Mackey in the case of the National Tanker Corporation vessels, Olga Konow in the case of the American Viking Corporation vessels and Captain M. A. Mathiasen in the case of the Arctic Tankers, Inc. vessel, were all familiar with the facts set forth in the December 10, 1947 application of United to the Commission as to the investment of Chinese capital in United, and the existence of a controlling interest on the part of United States citizens. They were also familiar with the opinion of the Assistant General Counsel of the Commission holding on those facts that United was a United States citizen. Certainly they were not guilty of fraud or intentional misstatement in relying upon the opinion of the Assistant General Counsel of the United States governmental agency entrusted with the administration of the shipping laws. Therefore, no forfeiture can be established under these provisions of the registry statutes.

### III.

**If any technical violations of law have occurred, which is denied, they should be disregarded in view of the mitigating circumstances.**

United and its tanker-owning subsidiaries have acted openly and honestly, with full disclosure of material facts to the Commission, and in reliance upon advices from representatives of the Commission that there was full compliance with the applicable laws of the United States.

United's initial application to the Commission dated December 10, 1947 disclosed fully the financial interest of

China Trading, the fact that a person associated with China Trading would serve as the secretary and treasurer of United, and the fact that it looked to China Trading or to subsidiaries of National Resources Commission of China as the sources of capital to finance the acquisition of vessels. At no time did representatives of the Commission indicate that the application was looked upon with disfavor because of any citizenship question. On the contrary, they advised that tankers were not being allocated to United only because the available supply was exhausted by earlier applications. Representatives of the Commission assured United that, if additional tankers should become available, its application would be given the most serious consideration.

When United was unsuccessful in obtaining tankers directly from the Commission it sought to obtain tankers by purchase or charter from companies which had successfully made applications to the Commission, or to purchase shares of stock of such companies. Before consummating the purchase of any share of stock of a tanker-owning company, and before the acquisition of any vessel by a company later to become a United subsidiary, United sought and obtained a confirmatory opinion from the then Assistant General Counsel of the Commission to the effect that it complied with the requirements of Section 2 of the Shipping Act of 1916, as amended.

United entered into agreements dated January 24, 1948 providing for the chartering of three tankers, *Meacham*, *Kettleman Hills* and *Antelope Hills*, for a ten-year period from National Tanker Corporation, and for the acquisition of an option to purchase all of the capital stock of National Tanker Corporation. These transactions did not require the approval of the Commission, but in order to be sure that the members of the Commission had no objections to

these transactions United insisted upon representations in the agreements of January 24, 1948 to the effect that the subject matter of the agreements had been discussed with members of the Commission and that the Commission had no objections thereto. The truth of these representations is established by the testimony of Admiral Smith on February 13, 1948, a copy of which is annexed as Exhibit G to the accompanying Application.

As indicated in the original application of United to the Commission, dated December 10, 1947, the *Meacham* and the *Kettleman Hills* were then sub-chartered under time charter to China Trading which in turn consecutive voyage chartered the vessels to Chinese Petroleum, an agency of the Nationalist Government of China. The three charters in connection with each vessel were submitted to the Commission and the two foreign charters specifically approved by the Commission prior to the sale of the vessels to National Tanker Corporation. The subsequent transfer by National Tanker Corporation of the *Kettleman Hills* to its wholly-owned subsidiary, Oceanic Maritime Corporation, was reported to the Commission which specifically approved the surrender of the document of the vessel in connection with the transaction.

The original interest of United in American Viking Corporation was fully set forth in a letter dated April 15, 1948 from Julius J. Rosenberg to a member of the legal staff of the Commission. This was shortly after the purchase by American Viking Corporation of the *St. Christopher* and prior to its purchase of the *Destiny* from the United States Maritime Commission. The Commission took back preferred mortgages on both vessels and has continued to hold such mortgages, knowing of United's interest in the vessels.

Before agreeing to finance the acquisition by Arctic Tankers, Inc. of the *New London* from the Commission and obtaining an option to purchase the stock of Arctic Tankers, Inc., United required a representation from M. A. Mathiasen that the carrying out of the agreement "is consistent with any representations made by Mathiasen to the Commission". Prior to the exercise by United of its option to purchase the stock of Arctic Tankers, Inc. an application was made to the Commission for approval of a five year bareboat charter of the *New London* to United. The Commission, as preferred mortgagee, approved the bareboat charter referring to United as a citizen within the meaning of Section 2 of the Shipping Act of 1916.

As a result of the default by Trans-World Maritime Corporation under the preferred mortgage on the *Antelope Hills* held by the Commission, a full review was made by the representatives of the Commission of the facts regarding United, its stockholders and its tanker-owning subsidiaries. In letters to the Commission in September 1949 full information was given as to the Foundation, its holdings of common stock in United, the preferred stock interest in United then held by China Trading, and United's holdings of stock in its subsidiary companies and in American Viking Corporation. In the spring of 1950 United's acquisition of the remaining stock interest in American Viking Corporation was disclosed to representatives of the Commission. With full knowledge of the facts, the Commission refused to take back the *Antelope Hills* in cancellation of the mortgage and, after prolonged negotiations and the final remedying of the default, the foreclosure proceedings instituted under the mortgage were dismissed in August 1950.

The legislative history of the Shipping Act of 1916, and the amendments thereto, indicates that Congress was



primarily interested in making certain that physical control and operation of U. S. flag vessels should always be in the hands of United States citizens so that the vessels would be available to the United States in times of national emergency. The actual operation of the vessels with which this memorandum is concerned has been at all times in the hands of experienced American operators specifically approved by the Commission. The vessels acquired by National Tanker Corporation, or its subsidiaries, have been operated by Sieling & Jarvis Corporation which was specifically approved as operator by the Maritime Commission in its capacity as mortgagee of the *Antelope Hills*. American Viking Corporation was specifically approved by the Commission as operator of the *St. Christopher* and the *Destiny*, until replaced by Sieling & Jarvis Corporation at the time of United's acquisition of the controlling stock interest in American Viking Corporation. Mathiasen's Tanker Industries, Inc. operated the *New London* with specific approval of the Commission until replaced by Sieling & Jarvis Corporation.

The foreign capital originally invested in United has been largely repaid. Chinese Petroleum holds \$1,595,000 face amount of unsecured notes of Meacham Corporation, which can be discharged out of the proceeds of the sale of the *Meacham* upon the remission or dismissal of the forfeiture proceeding. The only other foreign interest consists of \$355,000 par value of preferred stock held by United Securities Corporation, a Liberian corporation, being the remainder of the preferred stock originally issued to China Trading. When these two investments on the part of foreign corporations have been repaid, United and its subsidiaries will be wholly owned by the Foundation, a Delaware membership corporation, whose trustees are United States citizens of prominence and of unquestioned integrity. The

equity held by the Foundation in terms of modern values of tankers will be something in excess of \$4,000,000. The only other financial interest in the tankers will be mortgages held by the Commission in the amount of approximately \$4,000,000.

The record is clear that the vessels referred to in this memorandum have been purchased and operated in good faith in reliance upon advice from the Commission, and under actual control and operation by United States citizens. If the investment of foreign capital in corporations owning U. S. flag vessels is *per se* a violation of the shipping laws, contrary to the opinion of the former Assistant General Counsel of the Commission, then admittedly a violation has unwittingly occurred. On the facts as shown, however, it is submitted that even on this interpretation of the law complete justice will be done by the remission of any penalties or forfeitures upon the complete elimination of all foreign investment in United and its subsidiaries. Certainly, it would not be equitable for the United States, after having received the full statutory sales price of the vessels in question, to receive a windfall by keeping the purchase price and taking back the vessels, because of the reliance of the owning companies in good faith upon the opinions received from the representatives of the United States at the time of purchase of such vessels.

This memorandum and the accompanying Application are submitted without prejudice to the position of Meacham Corporation, United Tanker Corporation and its subsidiaries, that no violations of law have been committed or forfeitures or penalties incurred.

APPENDIX A

Section 9, Shipping Act, 1916 as amended

Key:  
 Underscoring—language deleted or changed in next amendment.  
 Broken underscoring—language deleted but not in next amendment.  
 CAPITALS—language added and appearing for the first time.  
 [ ]—language in brackets previously used but in different context or position.

1916 Act

That any vessel purchased, chartered, or leased from the board may be registered or enrolled and licensed, or both registered and enrolled and licensed, as a vessel of the United States and entitled to the benefits and privileges appertaining thereto: Provided, That foreign-built vessels admitted to American registry or enrollment and license under this Act, and vessels owned, chartered, or leased by any corporation in which the United States is a stockholder, and vessels sold, leased, or chartered to any person a citizen of the United States, as provided in this Act, may engage in the coastwise trade of the United States.

Every vessel purchased, chartered, or leased from the board shall, unless otherwise authorized by the board, be operated only under such registry or enrollment and license. Such vessels while employed solely as merchant vessels shall be subject to all laws, regulations, and liabilities governing merchant vessels, whether the United States be interested therein as owner, in whole or in part, or hold any mortgage, lien, or other interest therein. No such vessel, without the approval of the board, shall be transferred to a foreign registry or flag, or sold; nor, except under regulations prescribed by the board, be chartered or leased.

When the United States is at war, or during any national emergency the existence of which is declared by proclamation of the President, no vessel registered or enrolled and licensed under the laws of the United States shall, without the approval of the board, be sold, leased, or chartered to any person not a citizen of the United States, or transferred to a foreign registry or flag. No vessel registered or enrolled and licensed under the laws of the United States, or owned by any person a citizen of the United States, except one which the board is prohibited from purchasing, shall be sold to, any person not a citizen of the United States or transferred to a foreign registry or flag, unless such vessel is first tendered to the board at the price in good faith offered by others, or, if no such offer, at a fair price to be determined in the manner provided in section ten.

Any vessel sold, chartered, leased, transferred, or operated in violation of this section shall be forfeited to the United States, and whoever violates any provision of this section shall be guilty of a misdemeanor and subject to a fine of not more than \$5,000 or to imprisonment of not more than five years, or both, such fine and imprisonment.

1918 Act

That any vessel purchased, chartered, or leased from the board may be registered or enrolled and licensed, or both registered and enrolled and licensed, as a vessel of the United States and entitled to the benefits and privileges appertaining thereto: Provided, That foreign-built vessels admitted to American registry or enrollment and license under this Act, and vessels owned, chartered, or leased by any corporation in which the United States is a stockholder, and vessels sold, leased, or chartered to any person a citizen of the United States, as provided in this Act, may engage in the coastwise trade of the United States WHILE OWNED, LEASED, OR CHARTERED BY SUCH A PERSON.

Every vessel purchased, chartered, or leased from the board shall, unless otherwise authorized by the board, be operated only under such registry or enrollment and license. Such vessels while employed solely as merchant vessels shall be subject to all laws, regulations, and liabilities governing merchant vessels, whether the United States be interested therein as owner, in whole or in part, or hold any mortgage, lien, or other interest therein. No such vessel, without the approval of the board, shall be transferred to a foreign registry or flag, or sold; nor, except under regulations prescribed by the board, be chartered or leased.

No vessel DOCUMENTED under the laws of the United States or owned by any person a citizen of the United States OR BY A CORPORATION ORGANIZED UNDER THE LAWS OF THE UNITED STATES, OR OF ANY STATE, TERRITORY, DISTRICT, OR POSSESSION THEREOF, except one which the board is prohibited from purchasing, shall be sold to any person not a citizen of the United States or transferred to OR PLACED UNDER a foreign registry or flag, unless such vessel is first tendered to the board at the price in good faith offered by others, or, if no such offer, at a fair price to be determined in the manner provided in section ten.

Any vessel sold, chartered, leased, transferred TO OR PLACED UNDER A FOREIGN REGISTRY OR FLAG, or operated, in violation OF ANY PROVISION of this section shall be forfeited to the United States, and whoever violates any provision of this section shall be guilty of a misdemeanor and subject to a fine of not more than \$5,000, or to imprisonment for not more than five years, or both.

1920 Act

That any vessel purchased, chartered, or leased from the board, BY PERSONS WHO ARE CITIZENS OF THE UNITED STATES, may be registered or enrolled and licensed, or both registered and enrolled and licensed, as a vessel of the United States and entitled to the benefits and privileges appertaining thereto: Provided, That foreign-built vessels admitted to American registry or enrollment and license under this Act, and vessels owned by any corporation in which the United States is a stockholder, and vessels sold, leased, or chartered BY THE BOARD to any person a citizen of the United States, as provided in this Act, may engage in the coastwise trade of the United States while owned, leased, or chartered by such a person.

Every vessel purchased, chartered, or leased from the board shall, unless otherwise authorized by the board, be operated only under such registry or enrollment and license. Such vessels while employed solely as merchant vessels shall be subject to all laws, regulations, and liabilities governing merchant vessels, whether the United States be interested therein as owner, in whole or in part, or hold any mortgage, lien, or other interest therein.

IT SHALL BE UNLAWFUL TO SELL, TRANSFER OR MORTGAGE, OR, EXCEPT UNDER REGULATIONS PRESCRIBED BY THE BOARD, TO CHARTER, ANY VESSEL PURCHASED FROM THE BOARD OR [documented under the laws of the United States to any person not a citizen of the United States,] OR TO PUT THE SAME under a foreign registry or flag, WITHOUT FIRST OBTAINING THE BOARD'S APPROVAL.

Any vessel [chartered, sold,] transferred or MORTGAGED TO A PERSON NOT A CITIZEN OF THE UNITED STATES or placed under a foreign registry or flag, or operated, in violation of any provision of this section shall be forfeited to the United States, and whoever violates any provision of this section shall be guilty of a misdemeanor and subject to a fine of not more than \$5,000, or to imprisonment for not more than five years, or both.

1938 Act

Same

(By the 1936 Act the word "Commission" was inserted in place of the word "board".)

Same

(By the 1936 Act the word "Commission" was inserted in place of the word "board".)

EXCEPT AS PROVIDED IN SECTION 611 OF THE MERCHANT MARINE ACT, 1936, AS AMENDED, it shall be unlawful, without THE APPROVAL OF THE UNITED STATES MARITIME COMMISSION, to sell, [mortgage,] LEASE, [charter,] DELIVER, OR IN ANY MANNER TRANSFER, OR AGREE TO SELL, MORTGAGE, LEASE, CHARTER, DELIVER, OR IN ANY MANNER TRANSFER, [to any person not a citizen of the United States,] OR TRANSFER OR PLACE UNDER foreign registry or flag, any vessel OR ANY INTEREST THEREIN OWNED IN WHOLE OR IN PART BY A CITIZEN OF THE UNITED STATES AND [documented under the laws of the United States,] OR THE LAST DOCUMENTATION OF WHICH WAS UNDER THE LAWS OF THE UNITED STATES.

ANY SUCH vessel, OR ANY INTEREST THEREIN, chartered, sold, transferred, or mortgaged to a person not a citizen of the United States or placed under a foreign registry or flag, or operated, in violation of any provision of this section shall be forfeited to the United States, and whoever violates any provision of this section shall be guilty of a misdemeanor and subject to a fine of not more than \$5,000, or to imprisonment for not more than five years, or both.

## APPENDIX B

## Section 2, Shipping Act, 1916, As Amended

Key: Capital—Language added and appearing for first time.

## 1916 Act

That within the meaning of this Act no corporation, partnership, or association shall be deemed a citizen of the United States unless the controlling interest therein is owned by citizens of the United States, and, in the case of a corporation, unless its president and managing directors are citizens of the United States and the corporation itself is organized under the laws of the United States or of a State, Territory, District, or possession thereof.

## 1918 Act

That within the meaning of this Act no corporation, partnership, or association shall be deemed a citizen of the United States unless the controlling interest therein is owned by citizens of the United States, and, in the case of a corporation, unless its president and managing directors are citizens of the United States and the corporation itself is organized under the laws of the United States or of a State, Territory, District, or possession thereof.

## 1920 Act

(a) That within the meaning of this Act no corporation, partnership, or association shall be deemed a citizen of the United States unless the controlling interest therein is owned by citizens of the United States, and, in the case of a corporation, unless its president and managing directors are citizens of the United States and the corporation itself is organized under the laws of the United States or of a State, Territory, District, or possession thereof. BUT IN THE CASE OF A CORPORATION, ASSOCIATION, OR PARTNERSHIP OPERATING ANY VESSEL IN THE COASTWISE TRADE THE AMOUNT OF INTEREST REQUIRED TO BE OWNED BY CITIZENS OF THE UNITED STATES SHALL BE 75 PER CENTUM.

THE CONTROLLING INTEREST IN A CORPORATION SHALL NOT BE DEEMED TO BE OWNED BY CITIZENS OF THE UNITED STATES (A) IF THE TITLE TO A MAJORITY OF THE STOCK THEREOF IS NOT VESTED IN SUCH CITIZENS FREE FROM ANY TRUST OR FIDUCIARY OBLIGATION IN FAVOR OF ANY PERSON NOT A CITIZEN OF THE UNITED STATES; OR (B) IF THE MAJORITY OF THE VOTING POWER IN SUCH CORPORATION IS NOT VESTED IN CITIZENS OF THE UNITED STATES; OR (C) IF THROUGH ANY CONTRACT OR UNDERSTANDING IT IS SO ARRANGED THAT THE MAJORITY OF THE VOTING POWER MAY BE EXERCISED, DIRECTLY OR INDIRECTLY, IN BEHALF OF ANY PERSON WHO IS NOT A CITIZEN OF THE UNITED STATES; OR, (D) IF BY ANY OTHER MEANS WHATSOEVER CONTROL OF THE CORPORATION IS CONFERRED UPON OR PERMITTED TO BE EXERCISED BY ANY PERSON WHO IS NOT A CITIZEN OF THE UNITED STATES.

(b) The controlling interest in a corporation shall not be deemed to be owned by citizens of the United States (a) if the title to a majority of the stock thereof is not vested in such citizens free from any trust or fiduciary obligation in favor of any person not a citizen of the United States; or (b) if the majority of the voting power in such corporation is not vested in citizens of the United States; or (c) if through any contract or understanding it is so arranged that the majority of the voting power may be exercised, directly or indirectly, in behalf of any person who is not a citizen of the United States; or, (d) if by any other means whatsoever control of the corporation is conferred upon or permitted to be exercised by any person who is not a citizen of the United States.

(c) SEVENTY-FIVE PER CENTUM OF THE INTEREST IN A CORPORATION SHALL NOT BE DEEMED TO BE OWNED BY CITIZENS OF THE UNITED STATES (A) IF THE TITLE TO 75 PER CENTUM OF ITS STOCK IS NOT VESTED IN SUCH CITIZENS FREE FROM ANY TRUST OR FIDUCIARY OBLIGATION IN FAVOR OF ANY PERSON NOT A CITIZEN OF THE UNITED STATES; OR (B) IF 75 PER CENTUM OF THE VOTING POWER IN SUCH CORPORATION IS NOT VESTED IN CITIZENS OF THE UNITED STATES; OR (C) IF, THROUGH ANY CONTRACT OR UNDERSTANDING, IT IS SO ARRANGED THAT MORE THAN 25 PER CENTUM OF THE VOTING POWER IN SUCH CORPORATION MAY BE EXERCISED, DIRECTLY OR INDIRECTLY, IN BEHALF OF ANY PERSON WHO IS NOT A CITIZEN OF THE UNITED STATES; OR (D) IF BY ANY OTHER MEANS WHATSOEVER CONTROL OF ANY INTEREST IN THE CORPORATION IN EXCESS OF 25 PER CENTUM IS CONFERRED UPON OR PERMITTED TO BE EXERCISED BY ANY PERSON WHO IS NOT A CITIZEN OF THE UNITED STATES.

(d) The provisions of this Act shall apply to receivers and trustees of all persons to whom the Act applies, and to the successors or assignees of such persons.

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