

STATEMENT OF CHARLES SWINBURN, DEPUTY ASSISTANT SECRETARY FOR POLICY AND PROGRAM DEVELOPMENT, DEPARTMENT OF TRANSPORTATION, BEFORE THE SUBCOMMITTEE ON MERCHANT MARINE OF THE HOUSE COMMITTEE ON MERCHANT MARINE AND FISHERIES ON THE PAYBACK OF CONSTRUCTION-DIFFERENTIAL SUBSIDIES FOR TANKERS, MARCH 3, 1983.

Mr. Chairman and Members of the Subcommittee:

Thank you for inviting me to appear before you to discuss the question of the repayment of construction-differential subsidies (CDS) for tanker vessels.

Let me begin by stating that my comments here today must be constrained for two reasons. First, this issue is now the subject of a rulemaking proceeding by the Department. On January 27 Secretary of Transportation Drew Lewis issued a Notice of Proposed Rulemaking proposing a total repayment policy for construction-differential subsidy repayment. The docket will be open for public comment on that Notice until April 1, 1983. Until then no decision will be made by the Department on the proposal in the notice, and it would be inappropriate for me or any other official of the Department to discuss what final action the Department should take in this area.

Second, on February 2, the Independent U.S. Tanker Owners Committee filed a petition in United States District Court for the District of Columbia seeking to enjoin the Department's rulemaking proceeding, in part on the grounds that the terms of the Secretary's delegation of authority for the Maritime Administration preclude him from acting in this area. The Department filed its response to this petition on February 22, and the matter is now pending before the Court. Thus, it would also be inappropriate for me to comment on issues raised in this litigation.

With that in mind, Mr. Chairman, I'd like to provide you with some background information about the issue of permitting the repayment of CDS and the consequent removal of domestic trading restrictions, and about the Department's notice of January 27.

As you are aware, subsidized vessels, with certain exceptions, are prohibited by law from operating in domestic commerce. Since the late 1970's, however, there have been relatively few prospects for employment of large U.S. flag tankers in foreign commerce, particularly the CDS built very large crude carriers (VLCCs). This has given rise to a series of events hinging on the question as to whether and how to allow those tankers to operate in the domestic trades.

The total repayment of CDS and the consequent elimination of domestic trading restrictions has been permitted by the Department's Maritime Administration since 1977. It surfaced as a major issue in that year with MarAd's decision granting total repayment to the VLCC "Stuyvesant". Competitors in the domestic trade brought suit challenging Marad's determination which eventually resulted in the Supreme Court's 1980 decision in Seatrains Shipbuilding Corp. v. Shell Oil Co. Essentially, the court held that the Secretary's broad contracting powers and discretion to administer the Act encompassed authority to grant permanent release from the restriction associated with the domestic trades in exchange for the repayment of CDS plus interest.

Since that decision, MarAd, and now the Department has initiated a series of rulemakings to define precisely a policy for the exercise of the authority upheld by the Supreme Court. In the meantime, MarAd adopted a policy resulting in the granting of temporary waivers of domestic trading restrictions in the Alaskan Oil Trade, under section 506 of the Act for large tankers (particularly the CDS-built VLCCs). Since 1978, MarAd has granted over 25 temporary waivers for the VLCCs under Section 506 of the Act, the majority of which were for 6 month periods. This added about 900,000 deadweight tons of capacity to the Alaska oil trade in 1982.

In its Notice of Proposed Rulemaking of January 27, the Department proposed a policy which would allow any owner or operator of a tanker built with CDS to repay its subsidy and consequently obtain the permanent removal of domestic trading restrictions. The terms of repayment proposed by the Department are intended to put these operators on an equal footing with existing competitors in the domestic trade, by requiring the payment of compounded interest on the unamortized CDS from the date of the initial subsidy payment. This is consistent with the Supreme Court's analysis in the Seatrains decision. The Department described the background, analysis and rationale in detail that led to the formulation of this proposal in the notice, which was published in the Federal Register on January 31, 1983. Also published with the notice were summaries of public comments on MarAd's prior rulemakings that were considered by the Department during the development of the proposed CDS repayment policy, and a regulatory impact evaluation containing an economic analysis of the proposed policy.

These matters are described in full in our January 27 notice, which I would like to submit with my testimony for the record. It is the practice of the Department of Transportation to publish sufficient information so that all interested parties will have a sufficient opportunity to comment on proposed policies such as this. We, in turn, will give thorough consideration to all the comments received when we again consider this issue in April. The Department welcomes the interest of this Subcommittee in this issue and we will include in our docket the transcript of this hearing in order that we may address all of the concerns raised here today.

Mr. Chairman, that concludes my prepared statement. I am prepared to answer your questions, subject to the constraints I described earlier.