

STATEMENT

OF

H. E. SHEAR
MARITIME ADMINISTRATOR

ON

BEHALF OF

THE

MARITIME ADMINISTRATION
DEPARTMENT OF TRANSPORTATION

BEFORE THE

SUBCOMMITTEE ON MERCHANT MARINE
OF THE
COMMITTEE ON MERCHANT MARINE AND FISHERIES
U.S. HOUSE OF REPRESENTATIVES

IN SUPPORT OF

H.R. 3156
A BILL "TO AMEND THE MERCHANT MARINE ACT, 1936,
AND FOR OTHER PURPOSES."

JULY 21, 1983

STATEMENT OF ADMIRAL HAROLD E. SHEAR, MARITIME ADMINISTRATOR,
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July 21, 1983

Mr. Chairman and Members of the Subcommittee. My name is Harold E. Shear, and I am the Maritime Administrator of the Department of Transportation.

It is a pleasure to appear before you this morning to present the strong support of the Administration with respect to H.R. 3156, a bill "To amend the Merchant Marine Act, 1936, and for other purposes."

As you know, on May 20, 1982, and on August 5, 1982, the Secretary of Transportation announced various elements of the President's maritime policy intended to bolster the competitiveness and capabilities of the nation's maritime industry. Thereafter, on April 8, 1983, the Secretary of Transportation transmitted a draft bill to the Speaker of the House of Representatives and the President of the Senate that would implement the promotional elements of the President's Maritime Program. On May 26, 1983, this draft bill was introduced in the House of Representatives as H.R. 3156, and referred jointly to the Committee on Merchant Marine and Fisheries and the Committee on Ways and Means.

H.R. 3156 consists of two titles. Title I provides for so-called build foreign authority, immediate cargo preference eligibility for reflagged vessels, and additional foreign investment in U.S.-flag shipping. Title II of the bill provides for the use of capital construction funds for vessels constructed or acquired foreign, and the removal of the current ad valorem tariff on foreign repairs.

Mr. Chairman. I am pleased to present the views of the Administration with respect to all five elements of H.R. 3156.

Title I

Section 101 of the bill would amend the Merchant Marine Act, 1936, to provide authority for subsidized U.S.-flag ship operators to construct or acquire vessels outside the United States and still be eligible to receive operating-differential subsidies (ODS).

Since the enactment of the Merchant Marine Act in 1936, ODS vessels have been required to be constructed in the United States. Such vessels were generally built with the aid of construction differential subsidy (CDS). In order to assist subsidized operators in meeting their contractual obligations to replace overaged ships, Public Law 97-35 (approved August 13, 1981) added a section 615 to the Merchant Marine Act that authorizes the payment of ODS for the operation of foreign-built, U.S.-flag vessels in the absence of available CDS until the end of FY 1983. However, restrictions placed on this authority for FY 1983 mean that, for all practical purposes, the authority provided by section 615 was available only in FY 1982.

Section 101 of the bill would amend section 615 in order to continue to authorize U.S.-flag operators to construct or acquire vessels outside the United States and still be eligible to receive ODS. It would also clarify current authority under section 615 to acquire existing vessels outside the United States to be reflagged and made eligible to receive ODS. Section 615 authority would be effective upon a determination by the Secretary that the foreign built vessel is over 5,000 DWT and would be suitable for use by the Federal government for national defense or military purposes in time of war or national emergency. This provision would allow replacement of overaged vessels to continue on schedule and thus avert a decline in the size of the U.S.-flag liner fleet, which is the primary U.S. source of military sealift capability.

Section 102 of H.R. 3156 would amend the Merchant Marine Act, 1936, to provide immediate eligibility for reflagged vessels for the carriage of Government-impelled cargoes under section 901(b)(1) of that Act, commonly referred to as the Cargo Preference Act of 1954.

Cargoes covered by the Cargo Preference Act of 1954 are a major source of revenue for virtually all U.S. liner operators and many U.S. bulk operators. However, that Act now requires that foreign-built or rebuilt vessels must be documented under U.S. laws for three years before they can carry such cargoes.

This requirement is at variance with the thrust of various provisions of this bill (i.e., sections 101 and 201), which seek to

eliminate barriers to the acquisition of vessels constructed outside the United States. The U.S.-flag vessels constructed or acquired pursuant to these proposals cannot be denied immediate access to such important cargoes if we are to have a strong U.S.-flag merchant marine. Therefore, section 102 of H.R. 3156 would amend the Cargo Preference Act of 1954 to provide immediate eligibility for certain reflagged vessels for the carriage of Government-impelled cargoes. In order to promote a strong, modern and efficient merchant marine, the Secretary of Transportation would have to find any such vessel to be less than five years of age on the date of current registry under the U.S.-flag. A vessel older than five years but less than ten years of age on the date of current registry could be given immediate eligibility if the Secretary determined, upon consultation with the Secretary of Defense, that the particular ship was necessary for the security of the national defense. Vessels currently authorized to carry Government-impelled cargoes would not be required to meet proposed eligibility criteria.

Section 103 of H.R. 3156 would amend the Merchant Marine Act, 1936, to encourage foreign investment in U.S.-flag shipping and permit the current 49 percent foreign ownership in U.S.-flag vessels to be increased to 75 percent. This would attract needed capital to the industry, but still retain U.S. management control.

There currently are no U.S. ownership requirements for a U.S. corporation to operate U.S.-flag vessels in the foreign trade of

the United States. Section 104(3) of the Vessel Documentation Act, ~~as~~ amended (46 U.S.C. 65b(3)), requires that such a corporation be a U.S. corporation within the meaning of the Act, that the president or other chief executive officer and chairman of the board of directors of such corporation be citizens of the United States, and that no more of its directors be noncitizens than a minority of the number necessary to constitute a quorum. As long as these requirements are met, such a corporation may be wholly owned by noncitizens of the United States.

However, a problem arises with respect to the citizenship requirements for a U.S. corporation which avails itself of one or more of the promotional programs provided by the Merchant Marine Act, 1936. Subsection 905(c) of that Act (46 U.S.C. 1244(c)) mandates the use of the citizenship definition set forth in section 2 of the Shipping Act, 1916, as amended (46 U.S.C. 802, 803)). This section 2 definition requires that the controlling interest of a U.S. corporation be owned by citizens of the United States. Since the fundamental purpose of the Merchant Marine Act, 1936, is to assist U.S.-flag vessels to compete in the foreign trade of the United States, and all U.S. corporations who operate such vessels have therefore benefited by one or more of the programs provided by that Act, the section 2 citizenship definition controls. As a result, foreign ownership in U.S. corporations operating U.S.-flag vessels in the foreign commerce of the United States is currently limited to 49 percent.

Revitalization and expansion of the foreign trade segment of the U.S.-flag fleet will require substantial capital investment. Therefore, section 103 of H.R. 3156 would authorize an increase in the amount of foreign investment in such U.S. corporations from 49 percent to 75 percent. This relaxation of existing citizenship requirements would provide additional potential sources of capital for investment in U.S.-flag shipping that will be necessary to construct new vessels and to purchase and reflag used foreign-built tonnage.

Section 104 of H.R. 3156 makes conforming changes to section 9 of the Shipping act, 1916, which requires the Secretary's approval where a U.S. citizen charters or transfers a U.S.-flag vessel to any non-citizen. The provision would extend this approval process to any situation where a U.S.-flag vessel is transferred to foreign registry, even where the vessel is not owned by a U.S. citizen. This change will allow the Secretary to prevent operators from placing vessels under U.S.-flag on a temporary basis only to take advantage of promotional benefits under the Merchant Marine Act, 1936.

Title II

Moving on now to Title II of the bill, section 201 would amend the Merchant Marine Act, 1936, to permit U.S.-flag vessel operators to use existing and newly deposited tax-deferred monies in Capital Construction Funds (CCF) to construct or acquire foreign-built vessels.

Section 607 of the Merchant Marine Act, 1936, authorizes the Secretary of Transportation to permit a citizen of the United States owning or leasing vessels to defer the tax on certain funds generated by "eligible" vessels when such funds are deposited into a CCF, and subsequently used for the acquisition (including construction or reconstruction) of "qualified" vessels. An "eligible" vessel must be constructed or reconstructed in the United States, documented under U.S. law, and operated in the foreign or domestic commerce or fisheries of the United States. A "qualified" vessel, for which CCF funds may be expended, must be constructed or reconstructed in the United States, documented under U.S. law, and generally operated in the foreign, Great Lakes, fisheries or noncontiguous domestic trades of the United States.

As the Members of this Subcommittee are well aware, the tax-deferred funds from a CCF are an important source of capital for the construction of U.S.-flag vessels, particularly for subsidized operators engaged in foreign commerce. Present law, however, requires that CCF funds may be used only in connection with vessels constructed in the United States. Thus, subsidized operators who acquire foreign built ships under section 101 of the Act would be deprived of this important source of capital for the acquisition of their vessels. Non-subsidized U.S.-flag operators who acquire tonnage abroad are in the same difficult position with regard to the availability of CCF funds to assist in their capital

programs. Section 201 of the bill would amend section 607 of the ~~Merchant Marine Act~~ to authorize a U.S.-flag operator engaged in foreign commerce to use CCF funds in connection with foreign-built vessels.

Section 202 of H.R. 3156 would amend the Merchant Marine Act, 1936, to conform section 615 of that Act to the amendments made by section 201 of the bill.

Finally, Mr. Chairman, sections 203 and 204 of the bill would amend the Tariff Act of 1930, and the Merchant Marine Act, 1936, to relieve all U.S.-flag operators of the current 50 percent ad valorem duty on repairs performed abroad. These actions would also permit subsidized operators who are eligible for repair subsidy to perform such repairs outside the United States without subsidy or within the United States with subsidy.

Pursuant to the Tariff Act of 1930, a 50 percent tariff is currently levied on the cost of non-emergency foreign repairs that have been made on U.S.-flag merchant vessels. This ad valorem duty adversely affects the ability of U.S.-flag vessels to compete with foreign-flag vessels in the international commerce of the United States. By requiring U.S.-flag vessels to return to the United States for such repairs, this ad valorem duty limits the flexibility of our liner operators, places undue hardship on our bulk carriers operating in foreign-to-foreign trades, and results in the interruption of service with the loss of operating revenues.

Additionally, this duty places the U.S.-flag operator at a cost disadvantage with foreign competitors who are not subject to such a measure.

Section 203 of H.R. 3156 would repeal section 466 of the Tariff Act of 1930, as amended (19 U.S.C. 1466), so that the current 50 percent ad valorem duty would no longer apply to foreign repairs made to U.S.-flag vessels. This would help put U.S.-flag vessel operators on a par with foreign-flag competitors.

Additionally, section 606 of the Merchant Marine Act, 1936, currently requires subsidized operators to perform repairs in the United States or the Commonwealth of Puerto Rico. Section 204 of the bill would amend this section to permit subsidized operators who are eligible for repair subsidy to perform such repairs in foreign shipyards without subsidy, or within the United States and the Commonwealth of Puerto Rico with subsidy. As maintenance and repair costs currently account for about 5 percent of all ODS outlays, and the average differential for these costs is approximately 30 percent, allowing foreign repairs for subsidized vessels would result in significant ODS savings.

Mr. Chairman. That concludes my prepared statement, and I will be pleased to answer any questions you or the Members of the Subcommittee on Merchant Marine may have. Thank you.