STATEMENT

OF

ELAINE L. CHAO
DEPUTY MARITIME ADMINISTRATOR

OF THE

DEPARTMENT OF TRANSPORTATION

BEFORE THE

SUBCOMMITTEE ON MERCHANT MARINE
OF THE HOUSE MERCHANT MARINE
AND FISHERIES COMMITTEE

ON

THE TITLE XI GUARANTEE PROGRAM, AND ON H.R. 1037,
A BILL "TO REQUIRE THAT DEPARTMENTS AND AGENCIES
OF THE UNITED STATES OBTAIN SUITABLE VESSELS OWNED
BY AND AVAILABLE FROM THE MARITIME ADMINISTRATION
OR ANY OTHER DEPARTMENT OR AGENCY BEFORE ACQUISITION
OR CONSTRUCTION OF ANY NEW NONCOMBATANT VESSEL."

OCTOBER 15, 1987

STATEMENT OF ELAINE L. CHAO, DEPUTY MARITIME ADMINISTRATOR OF THE DEPARTMENT OF TRANSPORTATION, BEFORE THE SUBCOMMITTEE ON MERCHANT MARINE OF THE HOUSE MERCHANT MARINE AND FISHERIES COMMITTEE ON THE TITLE XI GUARANTEE PROGRAM, AND ON H.R. 1037, A BILL "TO REQUIRE THAT DEPARTMENTS AND AGENCIES OF THE UNITED STATES OBTAIN SUITABLE VESSELS OWNED BY AND AVAILABLE FROM THE MARITIME ADMINISTRATION OR ANY OTHER DEPARTMENT OR AGENCY BEFORE ACQUISITION OR CONSTRUCTION OF ANY NEW NONCOMBATANT VESSEL."

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MR. CHAIRMAN, AND MEMBERS OF THE SUBCOMMITTEE ON MERCHANT MARINE. MY NAME IS ELAINE CHAO, AND I AM THE DEPUTY MARITIME ADMINISTRATOR OF THE DEPARTMENT OF TRANSPORTATION (DOT). IT IS A PLEASURE FOR ME TO APPEAR THIS MORNING AT YOUR OVERSIGHT HEARING ON THE TITLE XI GUARANTEE PROGRAM. MY TESTIMONY WILL INCLUDE COMMENTS ON THE MAJOR ACCOMPLISHMENTS WHICH HAVE BEEN MADE IN THE STRENGTHENING OF THAT PROGRAM DURING THE CURRENT DEPRESSION IN THE MARITIME INDUSTRY AND THE MAGNITUDE OF BANKRUPTCIES THAT HAVE PLAGUED THE TITLE XI PROGRAM. IN CLOSING, I WILL ALSO COMMENT ON H.R. 1037, A BILL DESIGNED TO ASSIST IN THE EFFICIENT AND ECONOMICAL USE OF EXISTING VESSELS, INCLUDING DEFAULTED TITLE XI VESSELS, THAT ARE SURPLUS TO THE REQUIREMENTS OF GOVERNMENT AGENCIES.

FIRST, I WILL ADDRESS THE TITLE XI GUARANTEE PROGRAM. MR. CHAIRMAN, THE LAST TIME THE DEPARTMENT APPEARED BEFORE YOUR SUBCOMMITTEE ON OVERSIGHT OF THE TITLE XI GUARANTEE PROGRAM WAS ON JUNE 25, 1985 -- OVER TWO YEARS AGO. AT THAT TIME THE TITLE XI PROGRAM WAS ADVERSELY AFFECTED BY THE WORST MARITIME DOWN TURN

IN HISTORY, AND APPROXIMATELY 20% OF THE TITLE XI PORTFOLIO DEFAULTED OR WAS AT SIGNIFICANT RISK. WE ARE CAUTIOUSLY OPTIMISTIC NOW THAT THE RISK PORTION OF OUR CURRENT $4.3 BILLION PORTFOLIO HAS DROPPED SIGNIFICANTLY.

SINCE THE ADMINISTRATOR AND I JOINED THE AGENCY, ONE OF OUR KEY AREAS OF CONCERN HAS BEEN THE LEVEL OF DEFAULTS IN OUR TITLE XI PORTFOLIO. IN THE PAST YEAR, WE HAVE INITIATED A NUMBER OF ACTIONS TO IMPROVE OUR MANAGEMENT OF THE EXISTING PORTFOLIO, STRENGTHEN THE AGENCY'S ABILITY TO BETTER ASSESS PORTFOLIO QUALITY, AND IMPROVE CUSTODIAL CARE AND TRACKING OF OUR INVENTORY OF DEFAULTED VESSELS.

THESE ACTIONS INCLUDE THE FOLLOWING: (1) REORGANIZING OUR STAFF TO DEAL WITH BANKRUPTCY AND WORKOUT SITUATIONS; (2) ESTABLISHING A SPECIAL ASSET SALES UNIT WHOSE SOLE RESPONSIBILITY IS THE DISPOSAL OF REPOSSESSED EQUIPMENT; (3) UPDATING THE AGENCY'S MANAGEMENT INFORMATION SYSTEM TO PROVIDE MORE TIMELY AND BETTER MANAGEMENT INFORMATION ON OUR EXISTING PORTFOLIO AND INVENTORY OF DEFAULTED EQUIPMENT; (4) IMPLEMENTING A MORE COORDINATED AND COMPUTERIZED COVENANT MONITORING SYSTEM TO PROVIDE ADDITIONAL EARLY WARNINGS OF TITLE XI COMPANIES ENCOUNTERING DIFFICULTIES; 5) INSTITUTING A PORTFOLIO-WIDE RISK CATEGORIZATION SYSTEM, AND 6) IMPLEMENTING AN EFFICIENT, NEOTERIC CUSTODIAL PROGRAM FOR DEFAULTED LAID-UP ASSETS TO OPTIMIZE THE RESALE VALUES AND THUS RETURN TO THE U.S. TAXPAYERS.

IN ADDITION TO THESE MANAGEMENT IMPROVEMENTS, A SIGNIFICANT TITLE XI DEVELOPMENT HAS BEEN THE ENACTMENT OF BANKRUPTCY LEGISLATION (SECTION 5001 OF PUBLIC LAW 99-509) ON OCTOBER 21, 1986. WHEN WE APPEARED TWO YEARS AGO, WE INFORMED THE SUBCOMMITTEE OF THE INABILITY OF DOT, AS A TITLE XI MORTGAGEE, TO TAKE TIMELY FORECLOSURE ACTION ON A DEFAULTED TITLE XI MORTGAGE. THE SECRETARY DID NOT HAVE THE ABILITY TO PROTECT THE GOVERNMENT'S FINANCIAL INTEREST BY RECOVERING THE COLLATERAL VALUE OF THE VESSELS, BECAUSE ALMOST ALL OF THE DEFAULTED TITLE XI VESSELS WERE BEING OPERATED BY THEIR OWNERS UNDER THE PROTECTION OF THE BANKRUPTCY COURTS. THOSE VESSELS WERE BEING OPERATED IN MOST CASES WITH NO CAPITAL COST TO COVER, BECAUSE THEY HAD DEFAULTED AND HAD BEEN PAID OFF. THEIR CONTINUED OPERATION WAS CAUSING SIGNIFICANT INJURY TO THE REMAINDER OF THE INDUSTRY, INCLUDING THOSE TITLE XI OPERATORS WHO CONTINUED TO HONOR THEIR FINANCIAL COMMITMENTS. THE BANKRUPTCY LEGISLATION AMENDED SECTION 362 SO THAT AFTER 90 DAYS BOTH DOT AND THE DEPARTMENT OF COMMERCE HAVE THE AUTHORITY TO FORECLOSE. THIS LEGISLATION WILL EXPIRE BY ITS TERMS ON DECEMBER 31, 1989.

THERE HAVE BEEN ENCOURAGING ASPECTS OF THIS LEGISLATION WHICH SHOULD NOT GO UNNOTICED. CARRIERS IN FINANCIAL TROUBLE ARE NOW MUCH MORE INCLINED TO ATTEMPT TO FIND WORKOUT SOLUTIONS WITH US THAN IN THE PAST. ADDITIONALLY, IT HAS HELPED SIGNIFICANTLY

IN GETTING ADEQUATE PROTECTION PAYMENTS FOR VESSELS OPERATING IN BANKRUPTCY, AS WELL AS ACCELERATING THE FILING AND DEVELOPMENT OF CHAPTER 11 REORGANIZATION PLANS.

YOU SHOULD ALSO BE AWARE, HOWEVER, THAT SOME OF THE BANKRUPTCY COURTS WHICH CONSIDERED THIS ISSUE HAVE ENJOINED US FROM FORECLOSING AFTER 90 DAYS ON DEFAULTED TITLE XI VESSELS WHOSE OWNERS HAD FILED FOR PROTECTION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE. THE COURTS' RATIONALE APPEARS TO BE THAT THE OPPORTUNITY FOR A DEBTOR TO REORGANIZE UNDER CHAPTER 11 OUTWEIGHS THE RIGHT OF THE GOVERNMENT TO FORECLOSE UNDER 11 U.S.C. 362. WE BELIEVE THAT THESE BANKRUPTCY COURT DECISIONS CONTINUE TO UNDULY FAVOR THE DEBTOR AT THE EXPENSE OF THE TAXPAYER, AND ADVERSELY AFFECT THE CAREFULLY DRAWN BALANCE CONGRESS STRUCK BETWEEN THE INTERESTS OF MARITIME DEBTORS AND THE DEPARTMENTS OF TRANSPORTATION AND COMMERCE. WE BELIEVE THAT CONGRESS DID NOT INTEND THE COURTS TO ENJOIN THE GOVERNMENT IN THE EXERCISE OF ITS POWERS UNDER SECTION 362 OF THE BANKRUPTCY CODE, AND THEREFORE WE ARE PURSUING APPEALS OF THESE DECISIONS. DEPENDING ON THE OUTCOME OF THESE APPEALS, WE MAY NEED ADDITIONAL LEGISLATIVE LANGUAGE.

MR. CHAIRMAN, I WOULD NOW LIKE TO RESPOND TO YOUR REQUEST FOR THE ADMINISTRATION'S VIEWS ON THE SEPTEMBER 14, 1986 REPORT OF THE DOT INSPECTOR GENERAL ON THE MARITIME ADMINISTRATION'S

MANAGEMENT OF THE TITLE XI GUARANTEE PROGRAM AND THE RECENT GENERAL ACCOUNTING OFFICE (GAO) REPORT CONCERNING THIS PROGRAM.

THESE REPORTS COVERED A WIDE VARIETY OF ASPECTS OF OUR TITLE XI PROGRAM WHICH I NEED NOT OUTLINE HERE.

WHAT IS IMPORTANT TO NOTE MR. CHAIRMAN, IS THAT THESE REPORTS HAVE BEEN MOST HELPFUL IN REINFORCING THE ADMINISTRATOR'S AND MY EFFORTS TO IDENTIFY AND IMPLEMENT IMPROVEMENTS IN THE MANAGEMENT OF THE TITLE XI GUARANTEE PROGRAM. THE AGENCY HAS ALREADY COMPLIED WITH THE RECOMMENDATIONS IN THE DOT INSPECTOR GENERAL'S AUDIT, AND HAS BEEN OR IS COMPLYING WITH THE GAO RECOMMENDED IMPROVEMENTS IN FINANCIAL AND ACCOUNTING REPORTING.

FINALLY, MR. CHAIRMAN, YOU HAVE REQUESTED OUR VIEWS ON H.R. 1037. THE BILL WOULD APPEAR TO HAVE MERIT, AS IT WOULD ASSIST DEPARTMENTS AND AGENCIES, INCLUDING DOT, IN DISPOSING OF VESSELS SURPLUS TO THEIR REQUIREMENTS, AND SHOULD RESULT IN OVERALL SAVINGS TO THE FEDERAL GOVERNMENT.

MR. CHAIRMAN, AS YOU KNOW THE EFFICIENT DISPOSAL OF DEFAULTED TITLE XI EQUIPMENT HAS BEEN A PROBLEM, AND WE DEEPLY APPRECIATE THE INTEREST OF THIS SUBCOMMITTEE, AND CONGRESSMAN LOWRY IN PARTICULAR, IN PROPOSING H.R. 1037. HOWEVER, IT NOW APPEARS THAT SUCH LEGISLATION MAY NOT BE REQUIRED.

FOR NONMARTIME EQUIPMENT FOR AGENCIES OTHER THAN DOT, AN ADMINISTRATIVE PROCESS ALREADY EXISTS THROUGH THE GENERAL SERVICES ADMINISTRATION TO ASSURE THE COORDINATION PROPOSED IN

THE BILL. WITH RESPECT TO DOT, AND SPECIFICALLY THE MARITIME ADMINISTRATION, TITLE XI OF THE MERCHANT MARINE ACT, 1936, GIVES US SPECIAL AUTHORITY FOR DISPOSING OF DEFAULTED TITLE XI EQUIPMENT. THE INTRODUCTION OF H.R. 1037 HAS SERVED TO FURTHER SENSITIZE US IN RECOGNIZING AN AREA WHERE ADDITIONAL COORDINATION WITHIN THE GOVERNMENT WOULD BE HELPFUL, AND WE ARE CURRENTLY WORKING WITH OMB AND OTHER AGENCIES TO ACHIEVE THIS RESULT ADMINISTRATIVELY. WE HAVE STRONG REASONS TO BELIEVE THAT THIS EFFORT WILL BE SUCCESSFUL, SO THAT LEGISLATION WOULD NOT BE REQUIRED. THEREFORE, MR. CHAIRMAN, WE RESPECTFULLY REQUEST THAT FURTHER ACTION ON H.R. 1037 BE DEFERRED FOR AT LEAST 30 DAYS UNTIL WE HAVE HAD A REASONABLE OPPORTUNITY TO DETERMINE WHETHER OUR MUTUAL GOALS CAN BE ACCOMPLISHED ADMINISTRATIVELY.

MR. CHAIRMAN, THAT CONCLUDES MY PREPARED STATEMENT. I WILL BE PLEASED TO ANSWER ANY QUESTIONS THAT YOU OR THE MEMBERS OF THE SUBCOMMITTEE MAY HAVE. THANK YOU.