

Appendixes

Appendix A

Administration Announcements on Maritime Policy, 1982-83

The Reagan administration early in its term indicated that a strong merchant marine was one of its goals. Administration spokesmen, such as the Secretary of Transportation, the Maritime Administrator, and the Chairman of the Federal Maritime Commission (FMC), have reiterated the administration's commitment to rejuvenation of the U.S. fleet. This rejuvenation is supposed to be stimulated by a reduction of Government regulations that hinder the ability of the U.S. fleet to be competitive. The administration has supported regulatory reform legislation providing an expanded anti-trust immunity and permitting the U.S.-flag liner operators similar flexibility as its international competitors.

Shortly after the administration took office, an inter-agency task force was set up to examine current maritime policies and to make specific recommendations for changes. The first major step was the curtailment initially and then the cutoff of construction differential subsidy (CDS) funding. For fiscal year 1982, no CDS funds were requested (\$49.5 million in carryover funds were made available), compared with an average annual request of \$132 million in the previous 4 years. It was announced that this was intended as a phasing out of the CDS program and that in the future no funding would be made available. Temporary authority (for 1 year) was granted for the building of subsidized vessels abroad.

On May 20, 1982, Secretary of Transportation Drew Lewis announced the initial elements of a new program.¹ He stated the administration's intent to honor existing operating differential subsidy (ODS) contracts and to maintain the sanctity of the Jones Act and existing cargo-preference laws covering government-impelled cargoes. In addition, he announced the following initiatives:

- support of an extension of temporary authority for subsidized U.S.-flag operators to construct or acquire vessels built abroad without CDS but still qualify for ODS under U.S.-flag operations;
- administrative reform of ODS by Department of Transportation (DOT)/Maritime Administration (MarAd) to increase operating flexibility and reduce costs in the program;
- encourage foreign investment in U.S.-flag shipping and permit the current 49 percent foreign owner-

ship in U.S.-flag vessels to be increased to 75 percent;

- relieve all U.S.-flag ships of the current 50 percent ad valorem duty on repairs performed abroad, providing flexibility to ship operators in making such repairs and reducing the repair costs to ODS;
- reduction of unnecessary regulation of the shipbuilding and ship operating industries and establishment of a top level government-industry group to further that effort; and
- support by the administration of elimination of FM-C relations governing the level of the rates of liner operators in the domestic trades.

On August 5, 1982, the Secretary announced a second set of policy initiatives:²

- the administration would authorize an increase in the fiscal year 1983 ceiling on ship financing guarantees (title XI) from \$600 million to \$900 million. The additional funds would be held in reserve by the Secretary to be used in the interests of national security;
- permission was to be granted to U.S.-flag operators to use existing and newly deposited tax-deferred moneys in capital construction funds (CCF) and construct or acquire foreign-built vessels; and
- the Department of Defense (DOD) would continue its efforts to expand use of civilian nongovernment seafarers to crew Government ships.

It was reaffirmed that the Government would honor existing ODS contracts, but that no new contracts would be signed. The fiscal year 1982-83 moratorium on new GDS contracts would be continued.

It also was announced that an interagency international shipping policy group would be established to evaluate the options available to the government. The group would be chaired by the Secretary of Transportation with the vice chairman from the State Department.

It was affirmed that the U.S. Navy would be providing significant work for U.S. yards, not only in combatant ships, but the U.S. Navy T-ship programs that are essentially construction/conversion of merchant ships for Navy use,

¹'<' ~'. S. Department of Transportation News, May 20, 1982, Washington, D.C.

²'U.S. Department of Transportation News, " Aug. 5, 1982, Washington, D.C.

The administration subsequently announced that a third round of policy initiatives would be forthcoming in the first half of 1983.

Most of the initiatives listed above require legislative authority, although some can be implemented administratively. MarAd's proposed fiscal year 1983 authorization bill included some elements consistent with the administration's position and others that limit the administration's ability to implement some of the proposed policies. The proposed bill included a 9-month extension of authority for foreign building of ODS ships. The administration sought a 1-year limit of \$950 million on title XI guarantees and annual limits in the future, as well as limited guarantees because of vessel type (oil drilling rigs were to be prohibited).

The administration also has sought authority within authorization bills to allow use of CGF moneys for foreign building. Amounts for subsidy programs in the proposed authorization bill for fiscal year 1983 were \$454 million for ODS, \$15.3 million for research and development, \$78 million for operations and training, and \$25 million for three ships being turned into the reserve fleet by American President Lines Ltd.

In December 1982, the administration reported the status of its policy initiatives as follows:

- reform of ODS—simplification of procedures under section 605(c) of the Merchant Marine Act is under review in DOT. Other reforms were presented to the industry for comment. Legislation will be drafted within the next few months;
- shipbuilding, ship-operating regulatory reform—changes in the number of statutes regarding manning have been drafted. These deal with such items as mixing deck and engine room duties, persons subject to watch, and number of persons in bridge watch. They are all part of title 46 of the U.S. Code, which has been proposed for recodification. When this is accomplished, the above modifications will be pursued;
 - amending the Longshoremen and Harbor Workers Compensation Act;
 - revise buy America requirements for title XI ships. Would require modification of 46 CFR 298.11—a committee will be formed to evaluate the proposal and insure an opinion as to its economic consequences;
 - memorandum of understanding between U.S. Coast Guard (USCG) and American Bureau of Shipping (ABS)—discussions are continuing to identify additional areas that can be transferred to ABS;
 - simplify vessel documentation requirements—rules were published in June 1982;
 - simplify and improve requirements for licensing of officers and motorboat operators—regu-

lations have been drafted and are being received in USCG. Proposed changes are to 46 CFR part 10;

- revision of watch relief—Federal Communication Commission (FCC) has changed requirements for ships in coastal trade, international Maritime Organization (IMO) to consider changes in international requirements;
- modification of regulations for vessel sanitation devices—Coast Guard and Environmental Protection Agency (EPA) have under consideration, findings to be published in Federal Register shortly;
- review proposed Occupational Safety and Health Administration (OSHA) regulations pertaining to marine terminals and shipyards—Maritime Advisory Committee to review in near future;
- Interagency international Shipping Policy Group—working group will continue to monitor developments in a number of Asian countries and assess recent Organization for Economic Cooperation and Development (OECD) negotiations;
- authority for overseas construction of ODS vessels;
- use of Capital Construction Funds (CCF) for foreign-built ships;
- authority for reflagged vessels to gain immediate access to government-impelled cargoes;
- authority to increase allowable foreign ownership of U.S.-flag vessels;
- relief of duty on foreign repairs;
- rate deregulation of the domestic offshore trades—MarAd draft legislation is under DOT review, FMC staff report and analysis of comments will be sent to Commission shortly; and
- possible legislation on fiscal year 1983 title XI ceiling.

The Shipping Act Amendments which are currently (September 1983) before Congress were also supported by the administration.

In summary, the promotional maritime policy elements which do not require legislation announced by the administration to date are: 1) operating subsidy contracts (22) will continue but no new contracts will be signed; 2) construction subsidies no longer will be funded; and 3) the mortgage guarantee program will continue, as will the CCF program.

On April 8, 1983, the Secretary of Transportation transmitted draft legislation to implement five promotional elements of the previously announced maritime policy package. The following are excerpted from that letter:

(1) Build *Foreign*

Since the enactment of the Merchant Marine Act of 1936, vessels receiving operating differential subsidy (ODS) have been required to be constructed in the United States. Such vessels were generally constructed with the

aid of construction differential subsidy (CDS). Public Law 97-35 added section 615 to the Merchant Marine Act authorizing the granting of ODS for the operation of foreign-built, U.S.-flag vessels in the absence of available CDS. However, that authority technically expires at the end of fiscal year 1983, and because of certain restrictions such authority cannot be used after the last day of fiscal year 1982. The draft legislation continues the statutory authority to permit subsidized operators to construct and acquire vessels outside the United States and still receive ODS. It also clarifies current authority to acquire existing vessels outside the United States to be reflagged and made eligible to receive ODS.

(2) Immediate Cargo Preference Eligibility for Reflagged Vessels

Section 901(b) of the Merchant Marine Act of 1936 currently requires that foreign-built or rebuilt vessels must be documented under U.S. laws for 3 years before they can carry Government-impelled cargoes under the provisions of that section. This requirement is inconsistent with a major thrust of the President's policies, which is to allow U.S. operators to construct or acquire foreign tonnage. Government-impelled cargoes are a major source of revenue for virtually all the U.S. liner operators and many U.S. bulk operators. U.S.-flag vessels cannot be denied immediate access to such important cargoes if we are to have a strong U.S.-flag merchant marine. The draft legislation would provide immediate eligibility for reflagged vessels of less than 5 years of age for the carriage of Government-impelled cargoes. Vessels between 5 and 10 years of age could receive immediate eligibility if they were determined to be useful for the national defense.

(3) Foreign Investment in U.S.-Flag Shipping

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. However, problems arise with respect to the citizenship requirements for a U.S. corporation that has availed itself of one or more of the promotional programs provided by the Merchant Marine Act of 1936. Such a situation invokes the citizenship definition set forth in the Shipping Act of 1916, which requires that the controlling interest of a U.S. corporation must be owned by U.S. citizens. Relaxation of the existing citizenship requirements would provide additional potential sources of capital for new investment in U.S.-flag tonnage. The draft legislation provides that for-

eign investment in U.S.-flag shipping be encouraged by increasing the current 49 percent foreign-ownership limitation to 75 percent.

(4) Capital Construction Funds for Foreign Building or Acquisition

Section 607 of the Merchant Marine Act of 1936 authorizes the Secretary to permit a citizen of the United States owning or leasing vessels to defer the tax on certain funds generated by particular vessels when such funds are deposited into a CCF and subsequently used for the acquisition of qualified vessels. 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 the foreign trade. Present law, however, requires that CCF 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 draft bill would be deprived of this important source of capital for the acquisition of their vessels. Nonsubsidized U.S.-flag operators who acquire tonnage abroad are in the same difficult position with regard to the availability of CCF to assist in their capital programs. The draft bill would authorize a U. S.-flag operator engaged in foreign commerce to use CCF in connection with foreign built vessels.

(5) Ad Valorem Tariff on Foreign Repairs

Pursuant to the Tariff Act of 1930, a 50 percent tariff currently is levied on the cost of nonemergency foreign repairs that have been made on U.S.-flag vessels. This ad valorem duty adversely affects the ability of U. S.-flag vessels to compete with foreign-flag vessels. 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. The draft legislation would amend the Tariff Act so that the current 50 percent ad valorem duty would no longer apply to foreign repairs made to U.S.-flag vessels. In addition, section 606 of the Merchant Marine Act of 1936 currently requires subsidized operators to perform repairs in the United States or Commonwealth of Puerto Rico. The draft legislation would permit subsidized operators who are eligible for repair subsidy to perform such repairs in foreign shipyards without subsidy or within the United States and Commonwealth of Puerto Rico with subsidy.