

74
.C 73/7
96-70

1041

96-96
C-43/4
96-96

WAR RISK INSURANCE

GOVERNMENT

Storage

DOCUMENTS

APR 22 1980

FARRELL LIBRARY
KANSAS STATE UNIVERSITY

HEARING

BEFORE THE

SUBCOMMITTEE ON
MERCHANT MARINE AND TOURISM

OF THE

COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION
UNITED STATES SENATE

NINETY-SIXTH CONGRESS

FIRST SESSION

ON

S. 1452

TO EXTEND THE PROVISIONS OF TITLE XII OF THE MERCHANT
MARINE ACT, 1936, RELATING TO WAR RISK INSURANCE

DECEMBER 11, 1979

Serial No. 96-70

Printed for the use of the
Committee on Commerce, Science, and Transportation



U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1980

58-224 O

KSU LIBRARIES



A11900 969595

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

HOWARD W. CANNON, Nevada, *Chairman*

WARREN G. MAGNUSON, Washington
RUSSELL B. LONG, Louisiana
ERNEST F. HOLLINGS, South Carolina
DANIEL K. INOUE, Hawaii
ADLAI E. STEVENSON, Illinois
WENDELL H. FORD, Kentucky
DONALD W. RIEGLE, Jr., Michigan
J. JAMES EXON, Nebraska
HOWELL HEFLIN, Alabama

BOB PACKWOOD, Oregon
BARRY GOLDWATER, Arizona
HARRISON H. SCHMITT, New Mexico
JOHN C. DANFORTH, Missouri
NANCY LANDON KASSEBAUM, Kansas
LARRY PRESSLER, South Dakota
JOHN W. WARNER, Virginia

AUBREY L. SARVIS, *Staff Director and Chief Counsel*
EDWIN K. HALL, *General Counsel*

JOHN D. HARDY, *Merchant Marine and Tourism Counsel*

WILLIAM M. DIEFENDERFER, *Minority Staff Director*

MALCOLM M. B. STERRETT, *Minority Counsel*

PHILIP M. GRILL, *Minority Staff Counsel*

SUBCOMMITTEE ON MERCHANT MARINE AND TOURISM

DANIEL K. INOUE, Hawaii, *Chairman*

WARREN G. MAGNUSON, Washington
RUSSELL B. LONG, Louisiana

JOHN W. WARNER, Virginia
BOB PACKWOOD, Oregon

CONTENTS

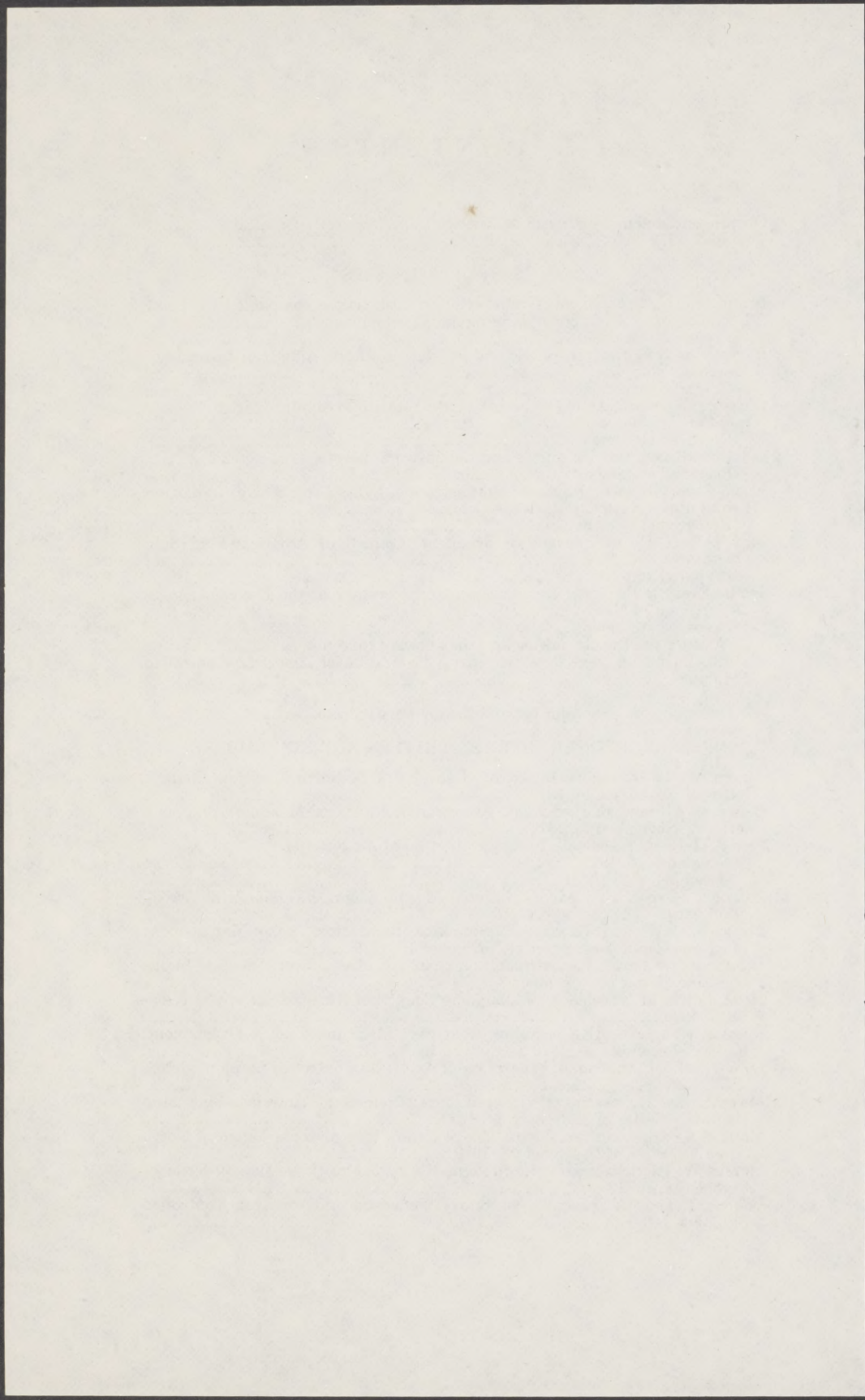
	Page
Opening statement by Senator Warner.....	1
Text of S. 1452	2

LIST OF WITNESSES

Brand, Herbert, president, Transportation Institute; accompanied by Peter Luciano, director of policy planning and development.....	18
Prepared statement	19
Burke, Barbara, director, public and legislative affairs, American Institute of Merchant Shipping	34
Prepared statement	35
Dickstein, Leonard, Acting General Counsel, Maritime Administration, Department of Commerce	3
Prepared statement	4
Questions of the committee and the answers thereto	6
Resumed statement.....	20
Koch, Robert J., vice president, administration, Lykes Bros. Steamship Co., on behalf of the National Maritime Council	14
Prepared statement	16
May, Albert E., executive vice president, Council of American-Flag Ship Operators.....	31
Prepared statement	33
Pyatt, Everett, Principal Deputy Assistant Secretary of the Navy, Logistics, Department of Navy	11
Prepared statement	12
Questions of the committee and the answers thereto	13
Yourch, Eugene A., executive secretary, Federation of American Controlled Shipping	21
Prepared statement	23
Questions of the committee and the answers thereto	30

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

Amoss, W. J., Jr., chairman, board of governors, National Maritime Council, letter of November 14, 1979	46
Benkert, William M., president, American Institute of Merchant Shipping, letter of November 13, 1979	44
Brand, Herbert, president, Transportation Institute, letters of:	
November 16, 1979	49
December 11, 1979	50
Calhoun, Jesse M., president, National Marine Engineers' Beneficial Association, letter of December 11, 1979	50
Clark, Earl W. and Talmage E. Simpkins, co-directors, Labor-Management Maritime Committee, letter of November 15, 1979	47
Hiltzheimer, Charles I., chairman and chief executive officer, Sea-land Industries, Inc., letter of November 8, 1979	44
Hood, Edwin M., president, Shipbuilders Council of America, letter of December 7, 1979	50
Ingrao, Jean, executive secretary-treasurer, Maritime Trades Department, letter of December 13, 1979	51
Loree, Philip J., chairman, Federation of American Controlled Shipping, letter of July 27, 1978	37
May, Albert E., executive vice president, Council of American-Flag Ship Operators, letter of November 14, 1979	45
Mollard, Charles, vice president, The Seafarers International Union of North America, letter of December 13, 1979	51
Morris, W. Patrick, legislative director, National Maritime Council, letter of October 18, 1979	43
Yourch, Eugene A., executive secretary, Federation of American Controlled Shipping, letter of November 15, 1979	47



WAR RISK INSURANCE

TUESDAY, DECEMBER 11, 1979

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
SUBCOMMITTEE ON MERCHANT MARINE AND TOURISM,
Washington, D.C.

The subcommittee met, at 10:05 a.m., in room 457, Russell Senate Office Building, Hon. John W. Warner presiding.

OPENING STATEMENT BY SENATOR WARNER

Senator WARNER. The hour of 10 having arrived and slipped by, this committee meeting will come to order.

Today we will receive comments from the administration and other interested parties on S. 1452, to permanently extend the authority of the Secretary of Commerce to provide marine war-risk insurance.

The war-risk insurance program creates a pool wherein war risks can be distributed among a large number of vessel owners. In a period of hostility, the Federal Government plays an essential role as administrator of the pool. Indeed, the inherent nature of maritime operations may require ships to travel through hostile waters or be caught in distant ports without military protection. It is clearly unreasonable to ask crews and ships to serve under these conditions without at least making insurance available to them.

Title XII of the Merchant Marine Act of 1936 vests authority in the Secretary of Commerce to offer insurance against loss by war risk to U.S.-registered and certain foreign-registered merchant ships, their crews and cargoes, when commercial coverage becomes unavailable on reasonable terms. The title XII was risk program was enacted at the outbreak of the Korean war for an initial 5-year period. Following a series of extensions, it expired on September 7, 1975, but was extended once again until September 30, 1979.

Commercial insurance underwriters provide war-risk insurance to United States- and foreign-flag ships. However, commercial policies contain a clause which terminate coverage automatically either upon an outbreak of war between the United States, the United Kingdom, France, the U.S.S.R., or the People's Republic of China, or upon any hostile detonation of any nuclear weapon.

In peacetime, the Federal Government's only obligation under title XII is to issue interim insurance binders. These binders guarantee that when commercial coverage terminates, Government war-risk insurance will be effective immediately. After the binders have been in effect for 30 days, premiums are determined retroactively on the basis of actual loss. Future premiums are determined on the basis of circumstances existing at the time and these premiums are regularly adjusted by the Government to cover all future

losses. Therefore, the program is operated at no cost to the Government.

At the time the Secretary's title XII authority expired on September 7, 1975, about 260 binders were written on vessels of Panamanian, Honduran, and Liberian registry along with about 40 additional binders on other flag vessels that the Maritime Administration had determined to be operating in the interest of American national defense or economic security. These ships are referred to as the effective U.S. control (EUSC) fleet because as a condition to their receiving an interim insurance binder, the ship's owners and charterers enter into a contract of commitment with the U.S. Government. This contract provides that upon a Presidential declaration of a national emergency, the vessel will be made available to the United States upon demand.

However, about the time legislation to extend the war-risk program was being considered in 1976, the reliability of the EUSC fleet was being questioned. Critics argued that these ships were manned by crews of various nationalities which could be unsympathetic to the United States in a national emergency. They therefore could not be relied upon to return their ship to U.S. control in spite of their contractual commitment. Accordingly, it was argued that U.S. war-risk insurance should not be available to these ships.

As a result, new language was added to title XII in 1976 which directed the Secretary of Commerce to consider the characteristics, employment, and general management of a foreign-flag ship before granting it war risk insurance. With these new considerations, the Maritime Administration anticipates that war risk insurance will only be available to 25 percent of the EUSC ships that were previously enrolled in the program.

The Merchant Marine and Tourism Subcommittee recently completed 2 days of hearings on the national security capabilities of the American merchant fleet. It was clearly demonstrated that the U.S.-flag fleet alone does not have the sealift capability necessary to support our economy in the face of a major boycott or to support a military confrontation overseas. In spite of its drawbacks, we must rely on the EUSC fleet for some measure of support if a national emergency arises.

S. 1452 would permanently extend the present war risk insurance program. The subcommittee would like to hear from the administration and affected parties on the application of these new criterion and what their effect has been on the national security posture of the United States.

[The bill follows:]

[S. 1452, 96th Cong., 1st sess.]

A BILL To extend the provisions of title XII of the Merchant Marine Act, 1936, relating to war risk insurance.

Be it enacted by the Senate and House of Representatives of the United State of America in Congress assembled, That title XII of the Merchant Marine Act, 1936 (46 U.S.C. 1281 et seq.), is amended by striking section 1214.

Senator WARNER. As a former lawyer, I looked at this statute last night and I am concerned as to whether or not the language that was incorporated in the 1950 act is consistent with the weap-

ons that are now in the world today, with regard to the definition of war.

Consequently, I am going to ask the Secretary of Defense to provide this committee with the Department's viewpoint with respect to the need to revise the definition of war and the definition of a nuclear weapon.

If any of the witnesses would like to direct their testimony to that point, the Chair would appreciate it because I'm of the opinion that we will have to revise that language in a manner consistent with all those interested in this statute.

Our first witness will be Mr. Leonard Dickstein, Acting General Counsel, Maritime Administration, U.S. Department of Commerce.

STATEMENT OF LEONARD DICKSTEIN, ACTING GENERAL COUNSEL, MARITIME ADMINISTRATION, DEPARTMENT OF COMMERCE

Mr. DICKSTEIN. Thank you, Mr. Chairman.

Senator WARNER. Mr. Dickstein, your statement in its entirety will be included in the record. It may be your wish to just paraphrase and address the principal points.

Mr. DICKSTEIN. The bill we're testifying on this morning would revive on a permanent basis the authority to issue war-risk insurance under title XII of the Merchant Marine Act, which expired on September 30 of this year.

Title XII was enacted with the outbreak of the Korean war in 1950. It was temporary legislation which expired every 5 years.

Since then, of course, it has been extended several times. The last extension was for 3 years, to terminate on the date corresponding with the end of the new fiscal year, established by the Congressional Budget and Impoundment Act of 1974.

Briefly, title XII authorizes the Secretary of Commerce, with the approval of the President, to provide war-risk insurance covering ships, cargos, and lives and personal effects of the crew, and other liabilities resulting from the ownership and operation of vessels when commercial insurance cannot be obtained on reasonable terms and conditions.

The purpose of title XII is to maintain the flow of the U.S. waterborne commerce, including the maintenance of essential transportation services unless insurance is available against all risks, including war risks.

Commercial operators are not likely to send their ships into situations where a risk of war damage exists.

The administration fully supports the reenactment of this authority in order to be able to grant war-risk coverage to our fleet.

If authority to underwrite war-risk insurance is renewed by Federal action on this bill by the Congress, it is our intention to issue war-risk binders for both the U.S.-flag vessels and those foreign-flag vessels meeting the previously stated criteria, the criteria stated in my statement and for which we now have applications in hand.

Mr. Chairman, I will leave the rest of my prepared statement for the record and I will be glad to answer any of your questions.

Senator WARNER. Would you indulge the Chair just a minute to examine the statute again? [Pause.]

Would you care to comment on the following? "The commercial insurance underwriters do provide war-risk insurance to U.S.- and foreign-flag ships." However, commercial policies contain a clause which provides that the coverage shall terminate automatically upon the outbreak of war between any of the five nations—the United States, the United Kingdom, France, the U.S.S.R., and the People's Republic of China—or upon the hostile denotation of a nuclear weapon.

Now, do you think that that language is satisfactory in light of the changed technology of today?

Mr. DICKSTEIN. I believe that would be a question which the Department of Defense would be more qualified to answer.

The war-risk insurance which the Government provides is backup insurance. And if the commercial companies are willing to cover war-risk insurance, with the exception of those two conditions, war between any two of the great five powers, or a war in which an atomic device has been detonated, then I take it the Government, which is an insurer of last resort, doesn't have to enter the picture.

Senator WARNER. Very well. You don't wish to comment on that, then. Thank you.

Traditionally, maritime nations have several kinds of preference laws and programs, including sabotage laws to support the maritime industry.

Why shouldn't the war-risk insurance program be considered as such, a preference program to induce vessel owners to fly the U.S. flag?

Mr. DICKSTEIN. Actually, Senator Warner, the war-risk insurance is a small factor in influencing what flag a ship will fly. It is primarily designed to make sure the vessels continue to operate in times of an emergency.

But I believe that given the international nature of the insurance market today, that when a vessel owner determines which flag his ship is going to fly, the availability of this type of insurance plays only a small role in that decision.

Such factors as tax considerations and the various subsidies which are available for operating under different flags are far more significant in determining which flag a vessel will operate under.

Senator WARNER. To expedite the hearing, we have some 25 questions here, and I would like to ask if you could provide the answers to these for the record.

The record will remain open for 1 week.

Thank you very much.

[The statement follows:]

STATEMENT OF LEONARD H. DICKSTEIN, ACTING GENERAL COUNSEL, MARITIME
ADMINISTRATION

Mr. Chairman and members of this subcommittee, I am pleased to appear before this Subcommittee today to testify on S. 1452.

This bill would revive on a permanent basis the authority to issue war risk insurance under Title XII of the Merchant Marine Act, 1936, which expired on September 30 of this year.

Title XII of the Act was enacted with the outbreak of the Korean War in 1950. It was temporary legislation that expired five years later. Since then, it has been extended several times, normally for five-year periods expiring on September 7 of

each fifth year. The last extension was for three years to terminate on the date corresponding with the end of the new fiscal year established by the Congressional Budget and Impoundment Act of 1974.

Title XII authorizes the Secretary of Commerce, with the approval of the President, to provide war risk insurance covering ships, cargoes, the lives and personal effects of the crew and other liabilities resulting from ownership and operation of the vessels when commercial insurance cannot be obtained on reasonable terms and conditions.

Such a situation may be triggered when commercial underwriters drastically increase war risk hull insurance rates because conditions existing at certain ports are considered by underwriters to be hazardous to the safety of the vessels. Vessel owners, in turn, may refuse to trade in the areas where high rates are charged and the waterborne commerce of the United States could be adversely affected by such action.

The purpose of Title XII is to maintain the flow of the United States waterborne commerce, including the maintenance of essential transportation services. Unless insurance is available against all risks, including war risks, commercial operators are not likely to send their ships into situations where a risk of war damage exists.

Government war risk insurance binders become effective for a period of 30 days immediately upon the termination of commercial war risk insurance through the operation of the automatic termination clauses of the commercial policies which provide that insurance automatically terminates upon the hostile detonation of a nuclear weapon of war anywhere in the world whether or not insured vessels are involved or upon outbreak of hostilities between any of the five great powers including the United States, the United Kingdom, France, the Soviet Union and the Peoples Republic of China. Premiums for the war risk insurance coverage will be charged on a mutual basis for the 30-day binder period.

At the expiration of the 30-day binder period, a full insurance program will provide war risk coverage for hull, cargo, second seamen's war risk, protection and indemnity and builders' risk for both the prelaunching and postlaunching periods. Premiums will be charged on an actuarial basis and will be changed from time to time as loss experience dictates.

Mr. Chairman, as you and the members of this Sub-Committee are well aware, Section 1203(a) of the 1936 Act authorizes the Secretary to provide insurance not only to American vessels, but also to "foreign-flag vessels owned by citizens of the United States or engaged in transportation in the waterborne commerce of the United States or in such other transportation by water or such other services as may be deemed by the Secretary to be in the interest of the national defense or the national economy of the United States when so engaged."

Public Law 94-523 added the requirement that "the characteristics, the employment and the general management of the vessel by the owner or charterer" of foreign flag tonnage would have to be evaluated before war risk insurance could be extended to those ships. This provision was part of a Maritime Administration proposal not only to check closely those qualifying requirements, but also to withdraw the blanket finding that all effective United States controlled vessels of Panamanian, Honduran and Liberian registry were automatically eligible for war risk insurance. This agreement was made following introduction of an amendment to eliminate all foreign-flag participation in the war risk insurance program. While not reflected in the new language inserted into the law, participation would be limited to approximately 25% of the foreign-flag tonnage entered in the program which expired on September 7, 1975. Only those foreign-flag vessels deemed most suitable to augment the United States-flag merchant fleet in event of a national emergency would be selected on a case by case basis for inclusion in the program.

War risk insurance binders covering United States-flag vessels on September 7, 1975, were reinstated effective March 8, 1977, provided that conditions had not changed in respect of the vessel's ownership, registry or certain other particulars and that binder fees were paid. Foreign-flag binders were cancelled until new regulations could be published in the Federal Register.

Proposed regulations were published for public comment on June 2, 1978. As a result of comments received, final regulations with some modifications were published on November 20, 1978.

Although 87 foreign-flag applications had been received when the legislation expired on September 30, 1979, no binders had been issued for foreign-flag vessels. Most of the applications had to be returned due to serious deficiencies. Also, in view of our expressed intention to deal with requests for insurance on foreign-flag vessels on a case-by-case basis, we delayed the issue of any binders until we had applications for a representative group of vessels from which to choose.

If authority to underwrite war risk insurance is renewed by favorable action on this bill by the Congress, it is our intention to issue binders for these foreign-flag vessels meeting the previously stated criteria and for which we now have applications in hand. We estimate that processing of applications for foreign-flag vessel operators under a newly-developed system will be done in less than 15 working days from receipt.

The Administration fully supports enactment of this bill.

Mr. Chairman, this concludes my prepared statement. I would be pleased to answer any questions that you or other members of this Subcommittee may have on the bill.

[The following information was subsequently received for the record:]

QUESTIONS OF THE COMMITTEE AND THE ANSWERS THERETO

Question. Whenever the President proclaims that the security of the national defense makes it advisable, or during any national emergency, Sec. 902(a) of the Merchant Marine Act of 1936, empowers the President to "requisition", "charter", or "purchase" any vessel owned by citizens of the United States. (a) Thus, it is not necessary to make all foreign-flag vessels under effective U.S. control eligible for war risk insurance to their owners to make them available in time of national emergency. The President has the authority to requisition or charter them anyway. Isn't that accurate? (b) If a foreign-flag vessel under effective U.S. control is covered under the war risk insurance program does it make it easier for the government to "requisition" or "charter" the vessel in the event of a national emergency?

Answer. (a) Yes, that is an accurate statement. If the vessels are requisitioned for title or for use on a bareboat basis they would, of course, be self-insured by the Government. However, if the Government elects to time charter them, they could, if desired, be insured under the war risk insurance program after 30 days or perhaps even sooner.

Actually, the war risk insurance program as delineated in 46 CFR Part 308 is a two-stage program. The interim binder program becomes operative for a period not to exceed 30 days following the termination of commercial war risk insurance through the operation of the automatic termination clauses in the commercial policies. The interim binders become effective simultaneously with the termination of the commercial insurance, thereby giving the shipowner back-to-back coverage for his vessel. After 30 days a full war risk insurance program is instituted for which all vessels that meet the criteria of Section 1203(a) of the Merchant Marine Act of 1936 are eligible whether covered by interim binders or not. If the President declares a national emergency before the 30-day binder period expires, it would be possible to put the full insurance program into effect at that time.

(b) Yes. Over the years that the war risk insurance program has been in existence, the Government's on-going relationship with the shipowner has engendered a mutual understanding as to the availability of the vessel to the Government upon request. Through the medium of the contract of commitment, some of the formalities of requisition have been disposed of beforehand, with the administrative details to be accomplished after the delivery of the vessel on request of the Government. In addition, deployment of the requisitioned vessels will be easier because we will have the advantage of knowing the location of the vessel since the shipowner is required to report its location by way of regular reports through the U.S. Merchant Vessel Locator Filing System (USMER). All of this will save time when it is important.

Question. (a) If S. 1452 is enacted without amendment, would MarAd, as a matter of policy, limit the amount of foreign-flag tonnage it would permit to participate in the war risk insurance program?

(b) If so, what is the amount or percentage; and how did MarAd arrive at the figure?

(c) In determining the amount of foreign-flag tonnage eligible to participate, did MarAd consult with the Department of Defense?

Answer. (a) Participation of foreign flag tonnage in the war risk insurance program is limited only with respect to the writing of interim binders in peacetime. Binders are written to cover ships automatically from the time commercial insurance is terminated by the outbreak of war, by the hostile detonation of a nuclear weapon of war, or by requisitioning. The third factor, requisitioning, is the one of principal concern from the defense mobilization viewpoint. When a binder has been written on a ship, the insurance cover applies immediately when the ship is requisitioned. That facilitates the taking of the ship for national defense or national security use at the beginning of an emergency or war. Restriction of binders to

those ships likely to be needed first is a practical matter rather than a policy matter. It does not imply limitation of eligibility for participation in the war risk insurance program under wartime procedures when all ships in the service of the United States or in trades important to the United States are eligible for cover. However, restriction of peacetime binders to those ships we know are most likely to be needed allows the requirement for other ships to be evaluated according to the conditions of the emergency.

(b) We estimate that about 25 percent of the total foreign-flag tonnage under effective U.S. control is of types likely to be needed for defense use and predictable national security use. This figure, which is an approximation that is subject to variation as the composition of the EUSC fleet and the nature of U.S. trade vary, is reached simply by excluding ships which are not predictably needed for support of the essential civil economy.

(c) MarAd did not consult with Department of Defense on the details of the regulations for the interim binder program but the regulations were based on DoD requirements expressed in continuing MarAd/DoD planning for wartime shipping support of the DoD.

Question. (a) As a practical matter, would inclusion of all foreign-flag vessels subject to effective U.S. control assure that more of these vessels would be available to the U.S. in time of national emergency?

(b) Can't the U.S. requisition these ships whether or not they are under the war risk insurance program?

Answer. (a) The requisitioning authority contained in section 902 of the Merchant Marine Act, 1936, makes all U.S.-owned vessels, regardless of registry, available to the United States. All of those vessels are eligible for war risk insurance after the outbreak of war.

(b) Yes, the U.S. can requisition these ships whether or not they are under the war risk insurance program. The war risk insurance program is designed to meet the need for insurance, not to make the ships available to the United States.

Question. (a) Why do MarAd's rules limit eligibility of U.S. effective control product tankers for war risk insurance to those "up to 90,000 dead weight tons"? What relevance does this requirement have?

(b) Why do MarAd's rules condition eligibility of U.S. effective control foreign-flag vessels upon the requirement that they must serve 30% of the time in U.S. waterborne commerce? What relevance does this have?

Answer. (a) MarAd's rules do not in fact limit eligibility of product tankers for war risk insurance to those "up to 90,000 deadweight tons." Again, it must be remembered that the rules apply only to the 30-day interim binder program. In any event, the new rules merely have the effect of granting a blanket approval of all foreign-flag EUSC product tankers of up to 90,000 deadweight tons that otherwise meet the criteria of Section 1203 of the Act. There is nothing in the rules affecting the authority of the Secretary of Commerce to make a case-by-case finding with respect to vessels larger than 90,000 deadweight tons, if circumstances were to warrant.

The 90,000 deadweight tonnage figure for product tankers was used primarily because of the lack of deep-draft port facilities in the United States. The potential refueling at sea capabilities of such vessels as well as their overall versatility also were considerations.

(b) Section 1203(a) of the 1936 Act requires that foreign-flag vessels be engaged in the waterborne commerce of the United States or in such other transportation services deemed to be in the interest of the national defense of the national economy of the United States. The rationale behind using the 30% trade with the United States figure is that it would be easier to get possession of a vessel which trades about one-third of the time with the United States than it would be to get possession of a vessel trading foreign-to-foreign. Again, the rules do not exclude vessels which do not meet the 30% trading stipulation.

Question. Why were no foreign-flag vessel covered by war risk interim binders when the legislation expired on September 30, 1979?

Answer. In view of our expressed intention to deal with requests for insurance on foreign-flag ships on a case-by-case basis to provide for the needed wartime augmentation of the United States-flag fleet, it was necessary to have a fully representative group of vessel applications from which to choose. Had we issued binders on a first-come, first served basis, one major oil company's shipping subsidiary could have exhausted the anticipated foreign-flag tonnage since it submitted almost half of the 87 applications now in hand.

Question. In your opinion why have only 87 applications for insurance binders been received when previously there were approximately 300 foreign-flag vessels in the program?

Answer. We believe it was a combination of the date of publication of the regulations and a wait-and-see attitude on the part of the ship operators. Some owners have indicated that they were waiting for expiration of the program to see what changes, if any, would be made with respect to foreign-flag participation upon renewal of the legislation.

Question. How many foreign-flag vessels do you expect to become eligible for war risk insurance binders under the published regulations?

Answer. When the legislation expired on September 7, 1975, there were 298 EUSC vessels in the war risk insurance program, totaling 26.94 million deadweight tons. Anticipating that ships totaling about 25 percent of this tonnage would be needed in an emergency to augment the United States-flag fleet, most of them in the small to medium size range, we expect to issue binders on approximately 120 to 150 foreign flag vessels.

Question. How many U.S.-flag vessels participate in the program?

Answer. In addition to the 2,595 LASH and similar type barges entered, there were 600 other United States-flag vessels covered by binders on September 30, 1979. These vessels included in addition to the more traditional oceangoing fleet of break bulk ships, containerhips and tankers, such diverse configurations as fishing boats, including processing vessels; tugs; RO/RO's; LNG carriers, and drill rigs.

Question. After the legislation was renewed on October 17, 1976, why did it take until November, 1978, to form final regulations for foreign-flag vessels and publish them in the Federal Register?

Answer. The statutory authority for war risk insurance had lapsed on September 7, 1975, so, of course, after the legislation was reenacted our first priority was to reinstate the binders covering the United States-flag vessels. After that was accomplished, a committee was formed within MarAd to arrive at final regulations for foreign-flag vessel participation in the program. A series of meetings was required in order to develop criteria which not only would both implement the new language inserted in the Act by Public Law 94-523 and accommodate the tonnage restrictions as contemplated by the legislative history of Public Law 94-523, but also would meet the requirements of section 1203 to ensure that the vessel is engaged in trades or services deemed by the Secretary of Commerce to be in the interest of the national defense or the national economy. MarAd received a substantial number of comments on the proposed regulations implementing the war risk insurance program. These had to be evaluated before final regulations could be implemented.

Question. Is there any reason to believe that if MarAd's rules are not changed, the U.S. would not have the effective U.S. control vessels available that it now counts on in case of a national emergency?

Answer. No. The availability of EUSC ships depends on the requisitioning authority contained in section 902 of the Merchant Marine Act, 1936. MarAd's present rules simply facilitate the taking of ships most likely to be needed at the beginning of an emergency or war.

Question. We understand that receipts from binders do not now cover the cost of administering the program. Do you have any comment on this?

Answer. You are correct that receipts from binder fees have not covered the administrative costs in recent years. Vessels in the program are valued twice each year and their deficiency is due primarily to increases in vessel appraisal fees. We have now developed a system which will enable us to determine the appropriate level of the binder fees to cover not only appraisal fees but also underwriting agency fees. This should not be a problem in the future.

As of September 30, 1979, the fund balance was \$8,217,219, an increase of \$444,156 over the year despite a loss of \$125,775 from binder income due to underwriting agency fees and vessel appraisals.

Question. With respect to the emergency employment of tankers in the U.S. effective control fleet, the Committee has received testimony from the Federation of American Controlled Shipping that "MarAd seems to focus only on what it perceived as the direct military needs for tankers, and disregarded entirely the broader national security needs as they relate to maintaining the U.S. economy by continuing the flow of vitally needed oil imports under emergency conditions." Would you please comment?

Answer. Our primary interest is to secure suitable vessels to augment the naval forces in time of emergency; however, the rules are sufficiently flexible to enable us to enroll other vessels as needed. If a national emergency is declared and a full insurance program is instituted after termination of the 30-day interim binder

period, all vessels needed to sustain the waterborne commerce of the United States will be eligible for war risk insurance coverage.

Question. You state that under the regulations MarAd promulgated in November 1978, 87 foreign-flag applications had been received, but most of them were returned for serious deficiencies.

This morning the Federation of American Controlled Shipping (FACS) will testify that "applications by FACS members for 53 vessels have been sent to MarAd, and that there has been absolutely no response from MarAd to any of these applications."

(a) Do you know if 53 applications by FACS were among those MarAd returned for serious deficiencies?

(b) Would you comment generally on FACS statement?

Answer. Actually, the use of the word "returned" was perhaps not strictly technically correct with respect to all 87 of these applicants. We had retained most of the applications, but requested that some applicants submit further supporting documents such as financial data, statements of trade and letters from the Republic of Liberia consenting to the applicants' entering into a contract of commitment with the United States.

MarAd has never made a practice of acknowledging receipt of applications for war risk insurance since normally the applicant is contacted, for one reason or another, during the processing of the applications or binders are issued and forwarded within a reasonable period of time. In fact, those 53 applications referred to by FACS did not contain any of the serious deficiencies we referred to, so that there was no reason for us to have made any immediate contact with the applicants. Since we had on hand a total of only 87 applications, we felt it was necessary to have a fully representative group of vessel applications from which to choose before issuing any binders or contacting applicants whose applications were not deficient.

Question. If all foreign-flag vessels subject to effective U.S. control were made eligible for the war risk insurance program wouldn't that spread the monetary risk among more companies? Isn't this desirable?

Answer. Yes, that would substantially broaden the financial basis of the program and spread the monetary risks among more ships and companies. Strictly from an insurance viewpoint that would be very desirable. It is always more desirable to have a broad spread of risk, particularly when the losses are being shared on a mutual basis as they will be during the 30-day binder period.

Question. In the event the government "requisitions" or "charters" a vessel in a national emergency, what insurance covers the ship, and the lives and personal effects of the crew?

Answer. If the Government requisitions for title or for use on a bareboat basis, the ship and the lives and personal effects of the crew are self-insured by the Government. The insurance clauses of charters will govern the insurance aspects on chartered vessels. However, if the emergency is of a nature that invokes the automatic termination clauses in the commercial war risk policies, the only insurance available to chartered vessels would be the government war risk insurance program.

Question. This morning the Committee will hear testimony that "the paramount consideration in determining vessel participation should be whether the vessels concerned will or will not be required by the United States in the event of a national emergency".

Can we achieve that objective under present MarAd policy and regulations regarding eligibility of foreign-flag vessels under effective U.S. control?

Answer. Yes. Under our regulations for the interim binder program, arrangements are made in peacetime for cover for ships most likely to be needed in a national emergency. The need for other EUSC ships can be determined at the time of the emergency, under regulations applying to the insurance program in wartime.

Question. The Federation of American Controlled Shipping recommends that S.1452 be amended to either authorize the Secretary of Defense to establish the eligibility of U.S. effective control vessels for war risk insurance; or to require MarAd to restore the blanket war risk insurance coverage that existed prior to 1975.

Would you please comment?

Answer. The Federation of American Controlled shipping may be confused about the difference between the interim binder program and the regular war risk insurance program. Under the regular program, all ships in the service of the United States or employed in trades of significance to the United States are eligible for insurance in wartime. MarAd regulations for the interim binder program restrict the writing of binders in peacetime to classes of ships likely to be needed for national defense use or predictably needed for support of the national economy.

MarAd's regulations provide for the writing of interim binders on some types of ships in which the Secretary of Defense has no direct interest—dry bulk carriers, for example—and provide for broader coverage under the interim binder program than would be likely if the Secretary of Defense made the selections. MarAd sees no reason for the restoration of blanket coverage of ships registered in Panama, Honduras and Liberia, but it would not be necessary to amend title XII to provide blanket coverage.

Question. Has the procedure whereby you award interim insurance on a case-by-case basis given rise to any administrative problems? How long does it take MarAd to reach a decision on whether or not to award interim insurance from the time an initial application is made. How much has the U.S. Effective Controlled Fleet been reduced since MarAd was given authority to take into account a foreign-flag vessel's "characteristics, . . . employment, and the general management . . .?"

Answer. Examining each vessel on a case-by-case basis has caused some administrative problems, but we believe that they are now solved. Once we have obtained a suitably representative number of applications and have initially issued interim binders on foreign-flag vessels, we estimate that it will take about 15 days to process each application subsequently received. We are unable to calculate the exact reduction of the EUSC fleet which will ultimately be enrolled in the 30-day binder program since only 87 applications have been received out of a total approximately 300 vessels enrolled on September 7, 1975. We have estimated that we would enroll approximately 120 to 150 vessels under the new criteria.

Question. Please provide the Committee with a description (including numbers and types of ships) of the Effectively Controlled U.S. Fleet prior to November 7, 1975 and a description of the Controlled Fleet today.

Answer. The Effective U.S. Controlled Fleet comprises those ships that are owned by U.S. parent companies and registered in Panama, Liberia, or Honduras.

EUSC VESSELS AS OF SEPT. 7, 1975

Vessel type	Liberian	Panama- nian	Honduran	Total
Refrigerated.....			7	7
Tankers.....	176	57		233
Bulk.....	25	2		27
Special product.....	13	2		15
Freighters.....	5			5
LNG (gas).....	5	4		9
Container roll on/roll off.....	1			1
Roll on/roll off.....		1		1
Total.....	225	66	7	298

EUSC VESSELS AS OF JULY, 1979

Vessel type	Liberian	Panama- nian	Honduran	Total
Tankers.....	239	48		287
Bulk.....	87	7		94
Special product.....	22	3		25
Freighters/reefers.....	15	17	13	45
LNG (gas).....	11	3		14
Container roll on/roll off.....	1			1
Total.....	375	78	13	466

Question. Why have you decided to exclude product tankers over 90,000 dead-weight tons from obtaining war risk insurance? If tankers over 90,000 dead-weight tons are "suitable for use by United States for national defense or military purposes in time of war or national emergency" (Section 501(a) of the Merchant Marine Act of 1936 and are therefore eligible to receive construction-differential subsidy, why are such vessels categorically excluded from these eligible for interim insurance?

Answer. As we indicated in our answer to your fourth question, we have not categorically excluded foreign-flag tankers over 90,000 deadweight since the regulations permit entry of larger vessels on a case-by-case basis. All U.S. flag vessels are eligible to participate. With respect to foreign-flag vessels the regulations merely focus the interim binder program on ships suitable for military purposes, leaving the need for large tankers to be determined at the time of the emergency. When that need is determined, the ships could be covered by the regular war risk insurance program after the onset of an emergency.

Question. Has MarAd made a policy determination to reduce the U.S. Effectively Controlled Fleet to 25 percent of the size it was on September 7, 1975?

If so, what is particularly significant about the 25 percent figure?

Answer. No, MarAd has not made such a determination. The 25 percent figure is merely our estimate of the portion of the present EUSC tonnage that is likely to be needed for national defense use or that is predictably needed for support of the essential civil economy in wartime and therefore the sensible focus for the peacetime war risk insurance interim binder program. The 25 percent figure does not limit the eligibility of the rest of the EUSC fleet for wartime insurance and has no implications regarding the size of the EUSC fleet, which is an entirely separate economic issue.

Senator WARNER. Mr. Everett Pyatt, Principal Deputy Assistant Secretary of the Navy for Logistics, Department of the Navy.

We're ready to proceed. Thank you very much.

STATEMENT OF EVERETT PYATT, PRINCIPAL DEPUTY ASSISTANT SECRETARY OF THE NAVY, LOGISTICS, DEPARTMENT OF THE NAVY

Mr. PYATT. In the interest of time, I will just enter my statement for the record.

Briefly summarized, it says that we support the main intent of this legislation to provide war risk insurance.

Senator WARNER. I've read through your statement very carefully. Do you wish to comment on the questions posed by the chairman to all witnesses as to whether or not we need some further clarification of the definition of war and the detonation of a nuclear weapon.

Mr. PYATT. I'd like to comment for the record. I've been briefly thinking about it in the time we've been allowed. I think you first have to start from what the insurance industry says and what risk it is willing to assume and then pick up the rest by Government action.

If it is an adequate definition for their uses, it may be satisfactory as it is. Although I think with the proliferation of weapons around the world now, they may be, in the long run, unwilling to accept the restriction to those five countries.

Speculatively, in my mind right now, it could evolve that they would broaden the numbers of countries. Even so, if we have in the general coverage of all the risk mentioned in the statutes, it may be entirely adequate when commercial insurance is canceled.

But that's all speculation.

Senator WARNER. I think it's a scenario which we'd better address. We'll be using language which was drafted in 1950 in the light of world history at that time as to what was defined as war. Also, in 1950, the nuclear arsenal in the world bore little resemblance to what it is today.

We had weapons that have been reduced in size basically to artillery pieces today. If one were to fire off, I question whether all insurance would suddenly become the Government responsibility.

Mr. PYATT. But I think the key in the statute is that the government picks up the risks when the private sector says it wants out.

And as I understand the words, the statute, as currently worded, is pretty general in that regard.

[The following information was subsequently received for the record:]

The language of the present statutorily provided war risk insurance (Merchant Marine Act of 1936, Sec. 1201 et seq.) works to provide an immediate binder on certain categories of ships participating in U.S. commerce upon termination of commercial insurance through operation of automatic termination clauses. The commercial policies ordinarily call for termination simultaneously with any hostile detonation of any weapon of war or outbreak of war between any of the following countries: U.S., UK, USSR, Peoples Republic of China or France. The authority of the Government to issue binders upon termination in the event of either occurrence stated or for any other act of war causing termination for whatever reason is contained in Section 1202 of the Act. "The Secretary . . . may provide insurance . . . against loss or damage by war risks in the manner and to the extent provided in this title (emphasis added) . . . "War risks" as defined in Section 1201(c) include "all or any part of those losses which are excluded from marine insurance coverage" The Government authority to attach binders upon termination of commercial policies for any way risk is thus both pervasive in coverage and total in so far as all elements of liability are concerned.

Senator WARNER. I think that Congress should take a fresh look at when it picks up this insurance. There has to be a meeting of the minds on some of these terms.

Mr. PYATT. Yes, sir.

Senator WARNER. Thank you very much.

[The statement follows:]

STATEMENT OF EVERETT PYATT, PRINCIPAL DEPUTY ASSISTANT SECRETARY OF THE NAVY (LOGISTICS)

Mr. Chairman, it is a pleasure to appear before this committee again and present the Navy's views with respect to War Risk Insurance.

As you know, the War Risk Insurance Program is administered by the Secretary of Commerce—The Maritime Administration (MARAD)—under authority contained in Title XII of the Merchant Marine Act of 1936, as amended. This statute provides for certain types of insurance coverage for U.S.-flag vessels and certain foreign-flag vessels subject to appropriate determination by the Secretary of Commerce. As for the details of the Administration of the program, the Maritime Administration is in a better position to describe the program and its implementing regulations.

S. 1452 is a bill to extend the provisions of Title XII of the Merchant Marine Act, 1936, by striking Section 1214 therefrom. The effect of this would be to make the insurance program permanent. Heretofore, the authority had terminated on specified dates. As a matter of fact, the current authority expired on 30 September 1979.

As I testified earlier, under our most demanding contingency, we would need all of the U.S.-flag general cargo fleet plus foreign-flag assistance. While ships from the NATO pool could be insured by the Interallied Insurance organization, we would need other foreign-flag shipping to support the national economy and possibly military operations. Although the Department of Defense could contractually assume war losses for shipping under DoD contract, it would be preferable to insure such ships used by the U.S. under MARAD Title XII authority because the risks could be spread more broadly.

In the case of foreign-flag ships owned or controlled by U.S. citizens, war risk coverage serves as an inducement for owners to execute a contract of commitment with MARAD for the availability of those ships in time of emergency. These ships hold a potential to serve the national interest. We have no reason to believe that a significant number of these ships would not be made available.

Therefore, we believe that the current War Risk Insurance Program, as administered by MARAD, contributes to our national defense and security. Accordingly, we favor the extension of Title XII Merchant Marine Act of 1936, by the deletion of Section 1214 which terminated the program on 30 September 1979.

I will now answer your questions or supply answers for the record for any questions you may have subsequent to this hearing.

[The following information was subsequently received for the record.]

QUESTIONS OF THE COMMITTEE AND THE ANSWERS THERETO

Question. 1. Do you agree with the regulations which MarAd has adopted with respect to the eligibility of foreign-flag ships subject to effective U.S. control?

Response. Section 1203, Merchant Marine Act, 1936, (46 USC 1283) gives the Secretary of Commerce sole discretionary authority to issue insurance or reinsurance under Title XII of the Act. This authority is exercised subject to the guidelines established in Section 1203(a), et seq., of the Act. We have reviewed the current regulations promulgated by the Maritime Administration which appeared in 43 Federal Register 54090 et seq. We believe these regulations to be consistent with the direction of Congress and accordingly agree. However, we believe that the current regulations should be reviewed periodically and amended as changing conditions render such action appropriate.

Question. 2. The Federation of American Controlled Shipping recommends that S. 1452 be amended to either authorize the Secretary of Defense to establish the eligibility of U.S. effective control vessels for war risk insurance, or to require MarAd to restore the blanket war risk insurance coverage that existed prior to 1975. Would you please comment?

Response. We agree, as mentioned in our response to Question No. 1, with the current regulations as promulgated by the Maritime Administration pursuant to 46 USC 1283. From a Navy viewpoint, the Effective U.S. Controlled (EUSC) Fleet is comprised largely of large tankers and dry bulk carriers of a type best suited to support the national economy. Accordingly the Secretary of Commerce is in a much better position to assess the need for insurance of the EUSC Fleet.

Question 3. (a) As a practical matter, would inclusion of all foreign-flag vessels subject to effective U.S. control assure that more of these vessels would be available to the U.S. in time of national emergency?

(b) Can't the U.S. requisition these ships whether or not they are under the war risk insurance program?

Response. (a) We would expect that foreign-flag vessels owned or controlled by U.S. citizens would be made available to the U.S. in time of national emergency. Although all might not be able to respond in time of need, we have no reason to believe that a significant amount would not be placed at the disposal of the U.S. The owners of the ships in question would undoubtedly find less monetary risk in returning the ships to the U.S. if these ships were covered by War Risk Insurance.

(b) Although we are not aware of any disputed cases, we believe that the provisions of Section 902 of the Merchant Marine Act, 1936, are sufficient to authorize requisitioning of the EUSC fleet. As pointed out above, the provisioning of insurance might facilitate the return of those ships in distant waters.

Question 4. Is there any reason to believe that if MarAd's rules are not changed, the U.S. would not have the effective U.S. control vessels available that it now counts on in case of a national emergency?

Response. As we have stated before, we have no reason to believe that a significant number of these ships would not be made available. Again, War Risk Insurance might facilitate their return by reducing the monetary risk involved.

Question 5. This morning the Committee will hear testimony that "the paramount consideration in determining vessel participation should be whether the vessels concerned will or will not be required by the United States in the event of a national emergency." Can we achieve that objective under present MarAd policy and regulations regarding eligibility of foreign-flag vessels under effective U.S. control?

Response. We believe the objective can be accomplished under current regulations. However, as we have noted, the regulations should be reviewed from time to time with appropriate amendments consistent with changing conditions.

Senator WARNER. Mr. Robert J. Koch, vice president, administration, Lykes Bros. Steamship Co.

STATEMENT OF ROBERT J. KOCH, VICE PRESIDENT, ADMINISTRATION, LYKES BROS. STEAMSHIP CO., ON BEHALF OF THE NATIONAL MARITIME COUNCIL

Mr. KOCH. Good morning, Mr. Chairman. I, too, would like to paraphrase my prepared statement that has been entered for the record.

Mr. Chairman, the National Maritime Council appreciates this opportunity to appear before the Subcommittee on Merchant Marine and Tourism and to present its views on S. 1452, a bill to extend the provisions of title XII of the Merchant Marine Act of 1936 relating to war-risk insurance.

I am Robert J. Koch, vice president, administration, of Lykes Bros. Steamship Co. I have been authorized by the council to testify on this bill, which is very important to its members.

The council's objective is to foster the development of a strong, competitive, modern, American-built, privately owned and operated merchant marine, which will afford U.S. importers and exporters the finest and most cost-efficient fleet of commercial ships in the world.

Title XII authorizes the Secretary of Commerce, with the approval of the President, to provide war risk and certain marine and liability insurance for the protection of merchant vessels, cargos, crew life, and personal effects of the crew and other persons transported on vessels when commercial insurance adequate for the needs of the waterborne commerce of the United States cannot be obtained on reasonable terms and conditions from companies authorized to do business in a State of the United States.

The necessity for title XII arises out of the fact that commercial war-risk insurance on merchant vessels and crews contain automatic termination clauses.

The events that trigger these clauses may occur while many of these ships engaged in shipping service essential for the maintenance of the waterborne commerce of the United States are far from our home ports.

Thus, such vessels are exposed to war risks and deprived of commercial insurance coverage exactly when insurance coverage is most needed.

The longstanding policy of the U.S. Government to provide war-risk insurance to cover ships, cargos, and their crews, while similar coverage is not extended to industries other than aviation, is based on the greater hazards to which ships are exposed in wartime.

Ships range all over the world and are exposed to risks far beyond industries at home, which are protected by our military defenses.

Ships and their cargos are peculiarly exposed to war risks which may only remotely affect other industrial establishments.

Recognizing that ships and cargos cannot move without war risk insurance, many of the major maritime nations of the world—England, France, Canada, and the Scandinavian countries—provide for continuing coverage when commercial underwriters find it financially impossible to write such insurance.

The purpose of war-risk insurance, then, is to maintain the free flow of the U.S. waterborne commerce, including the maintenance of essential transportation services for the Department of Defense.

At the present time, the Maritime Administration of the Department of Commerce, we understand, has tentatively issued war-risk insurance binders on all U.S.-flag vessels.

However, no such binders have been issued with respect to foreign-flag vessels owned by citizens of the United States.

Apparently, the Maritime Administration has encountered some difficulties in implementing Public Law 94-523, which added the requirement that the characteristics, the employment, and the general management of the vessel by the owner or charterer of foreign-flag tonnage had to be evaluated before war-risk insurance could be extended to those vessels.

S. 1452 would make the title XII program permanent law. The National Maritime Council believes that the authority of the Secretary of Commerce to provide war-risk insurance and reinsurance should not, however, be permanent.

Rather, the NMC is of the view that the title XII program should, as it has been in the past, be extended for a number of years.

The council would recommend a period of 5 years. This would allow appropriate oversight of the program by those committees of the Congress having jurisdiction over maritime affairs.

Accordingly, the National Maritime Council urges the prompt enactment of S. 1452 with the suggested amendment.

Mr. Chairman, this concludes my statement and I will attempt to answer any questions which you may have.

Senator WARNER. The amendment being the 5-year termination. Is that right?

Mr. KOCH. Yes, sir.

Senator WARNER. Would you care to address the point raised by the Chair with respect to the definitions used in these clauses?

Mr. KOCH. I really have no problem with the definition. I assume that you are referring to the definition of war in this case.

I really find it rather clear from our standpoint, inasmuch as the termination clauses of the underwriters are really quite specific; that is, hostile detonation of a nuclear weapon and outbreak of hostilities between any of the five great powers.

Senator WARNER. What about the phrase, "declared or undeclared"?

Mr. KOCH. I'd have to say that I have no real problem with that, sir, inasmuch as the coverage is retroactive for a period of 90 days for undeclared hostilities.

Senator WARNER. What about limiting this to only five nations of the world, in view of the fact that other nations now possess nuclear weapons?

Mr. KOCH. I believe that you might say that that's one of the reasons why the National Maritime Council feels that it should not be permanent authority, but it should be reviewed again on a 5-year recurring basis. And at that point in time, when other nations have nuclear capability, it could certainly be taken into consideration.

And I feel that they might have the capability, but I'm not sure that they have the delivery capability that we normally look at in the context.

Senator WARNER. I'll take this up with Chairman Inouye, but I'm persuaded to look at this 5-year clause favorably.

Do you think it's adequate just to name these five countries and let it go at that?

Mr. KOCH. It has been pointed out to me by legal counsel that the five nations are not contained in the statute, but are contained in the underwriter's statement of automatic termination.

Senator WARNER. I understand that very clearly. I read the statute three times already.

But, very well, we'll take a look at it.

I want to direct the staff of the committee and counsel to get together with the Department of Commerce and the Department of Defense and other interested parties to determine whether or not there should be some definition or some revision of the statute.

I, frankly, want the statute to give adequate protection and there's no sense, if a problem arises in the world where the United States needs the transportation of goods, in us sitting in a law court trying to figure out what the definition is.

It's too late then.

Mr. KOCH. That is pretty much the situation that we find ourselves in at the present time.

Senator WARNER. I presume that your 5-year recommendation is predicated on the change in the state of the world and the changing state of our weaponry, as well as other reasons.

Mr. KOCH. The world situation is pretty much of a fluid situation at this point in time, I would say, sir. We would be well advised, perhaps, to review it on a periodic 5-year basis.

Senator WARNER. If all foreign-flag vessels subject to effective U.S. control were made eligible for the war-risk insurance program, wouldn't that spread the monetary risk among more companies?

Isn't this desirable?

Mr. KOCH. I presume that you are referring to the insurance pool. It would certainly be less expensive to the American-flag ships if that pool did contain a greater number of ships.

As I understand it, the premiums after the first 30 days would be on an actuarial basis and it would be far less expensive. However, premiums during the first 30 days would be on a mutual basis apportioned on a tonnage basis among shipowners' participation in the war-risk insurance program.

Senator WARNER. Thank you very much. I appreciate your taking the trip up today.

You're associated with a very distinguished company.

Mr. KOCH. I appreciate that.

[The statement follows:]

STATEMENT OF THE NATIONAL MARITIME COUNCIL

Mr. Chairman, the National Maritime Council appreciates this opportunity to appear before the Subcommittee on Merchant Marine and to present its views on S. 1452, a bill to extend the provisions of Title XII of the Merchant Marine Act, 1936, relating to war risk insurance. I am Robert J. Koch, Vice-President Administration, Lykes Bros. Steamship Co., Inc., and have been authorized by the Council to testify on this bill, which is important to its members.

The NMC is a non-profit trade association which represents virtually all segments of the American maritime industry. I have attached to my testimony a list of the members of the Board of Governors of the NMC, who represent the member

companies and organizations. The position of the National Maritime Council on this bill was agreed upon by the senior executives of all NMC member U.S.-flag liner and bulk carriers, seagoing and shoreside labor unions, and major shipyards. The Council's objective is to foster the development of a strong, competitive, modern, American-built, privately-owned and operated merchant marine which will afford United States importers and exporters the finest and most cost-efficient fleet of commercial ships in the world.

Mr. Chairman, S. 1452, if enacted, would make permanent, the authority of the Secretary of Commerce to provide war risk insurance and reinsurance under the terms and conditions set forth in Title XII of the Merchant Marine Act, 1936. The authority of the Secretary to provide such insurance expired on September 30 of this year. The Title XII program then is presently in limbo.

Title XII authorizes the Secretary of Commerce, with the approval of the President, to provide war risk and certain marine and liability insurance for the protection of merchant vessels, cargoes, crew life and personal effects of the crew and other persons transported on vessels when commercial insurance adequate for the needs of the waterborne commerce of the United States cannot be obtained on reasonable terms and conditions from companies authorized to do business in a State of the United States.

Similar authority existed during both World Wars I and II and then expired; but on September 7, 1950, was reenacted as Title XII of the Merchant Marine Act, 1936, for an initial period of five years. Such authority has been extended for four five-year periods and one three-year period. This last extension also changed the date of expiration from September 7 to September 30 so as to correspond with the end of the new fiscal year established by the Congressional Budget and Impoundment Act of 1974.

The necessity for Title XII arises out of the fact that commercial war risk insurance on merchant vessels and crews contain "automatic termination clauses." These clauses provide that, effective upon outbreak of war, declared or undeclared, between any of the so-called five great powers—the United States, the United Kingdom, France, the Soviet Union, or the People's Republic of China—or the hostile detonation of a nuclear weapon of war, such commercial war risk insurance automatically terminates. The events that trigger these clauses may occur while many of the ships engaged in shipping service essential for the maintenance of the waterborne commerce of the United States are far from their home ports. Thus, such vessels are exposed to war risks but deprived of commercial insurance coverage exactly when insurance coverage is most needed.

The long-standing policy of the United States Government to provide war risk insurance to cover ships, cargoes, and their crews, when similar coverage is not extended to industries other than aviation, is based on the greater hazards to which ships are exposed in wartime. Ships range all over the world and are exposed to risks far beyond industries at home which are protected by our military defenses. Ships and their cargoes are peculiarly exposed to war risks which may only remotely affect other industrial establishments.

Recognizing that ships and cargoes cannot move without war risk insurance, many of the major maritime nations of the world (e.g., England, France, Canada, and the Scandinavian countries) provide for continuing coverage when commercial underwriters find it financially impossible to write such insurance. The purpose of war risk insurance then is to maintain the free flow of the United States waterborne commerce, including the maintenance of essential transportation services for the Department of Defense.

Government war risk insurance binders become effective for a period of 30 days after the termination of commercial war risk insurance because of the operation of the previously described automatic termination clauses. Premiums for insurance coverage will be charged on a mutual basis during the binder period, that is, all losses occurring during this period would be apportioned, on a tonnage basis, among the vessel operators. At the conclusion of this binder period, a full war risk insurance program will come into effect. Premiums for insurance coverage will be charged on an actuarial basis during the program period.

At the present time the Maritime Administration of the Department of Commerce, we understand, has tentatively issued war risk insurance binders on all U.S.-flag vessels. However, no such binders have been issued with respect to "foreign-flag vessels owned by citizens of the United States or engaged in transportation in the waterborne commerce of the United States . . . deemed by the Secretary to be in the interest of the national defense or the national economy of the United States, when so engaged." Apparently, the Maritime Administration has encountered some difficulties in implementing Public Law 94-523, which added the requirement that

"the characteristics, the employment, and the general management of the vessel by the owner or charterer" of foreign-flag tonnage had to be evaluated before war risk insurance could be extended to those vessels.

It should be stressed that when the United States Government furnishes war risk insurance, it is not a gratuity to the shipowner or the cargo owner. The Government merely steps into a commercial transaction where private underwriters are no longer able to function because of the lack of financial capacities. The best evidence that Government war risk insurance is not a form of aid is the experience during World War II where total premium receipts exceeded, by a substantial margin, losses paid.

As mentioned at the outset, S. 1452 would make the Title XII program permanent law. The National Maritime Council believes that the authority of the Secretary of Commerce to provide war risk insurance and reinsurance should not, however, be made permanent. Rather the NMC is of the view that the Title XII program should, as it has been in the past, be extended for a number of years. The Council would recommend a period of five years. This would allow appropriate oversight of the program by those committees of the Congress having jurisdiction over maritime affairs.

Accordingly, the National Maritime Council urges the prompt enactment of S. 1452, with the suggested amendment.

Mr. Chairman, this concludes my statement, and I will attempt to answer any questions of the Subcommittee.

Senator WARNER. Mr. Herbert Brand, president of the Transportation Institute.

STATEMENT OF HERBERT BRAND, PRESIDENT, TRANSPORTATION INSTITUTE; ACCOMPANIED BY PETER LUCIANO, DIRECTOR OF POLICY PLANNING AND DEVELOPMENT

Mr. BRAND. Good morning, Mr. Chairman. Once again I want to thank you for the opportunity to appear before this committee. My name is Herbert Brand and I am president of the Transportation Institute. I am accompanied today by Peter Luciano, who is director of policy planning and development for the institute.

Mr. Chairman, with your permission I will present my brief statement for the record and just indicate that we think everything points to the need for this particular legislation. We have one slight reservation. That is that we think that a period, possibly 5 years, would be a likely term for renewal of the legislation rather than making it permanent. The reason I say that, sir, is that I would be afraid that if the complete control were confined to the bureaucracy without some measure of congressional oversight, I think that we might not be taking into consideration changes and factors that develop in the course of that period of time.

I should like to remind the committee that, as has been pointed out in previous testimony, this legislation was renewable, generally on a 5-year basis. But at the last go-around, it was renewed for a period of 3 years. This stemmed from the fact that a controversy developed over the coverage provided in the legislation and there were representations made to the Congress at that time that foreign-flag ships manned by foreign nationals should not be covered under the terms of this legislation, the theory being that, first of all, in the context of national security, that these crews were not reliable and we could not be assured of their allegiance to this country.

And second, in effect, it represented encouragement of the concept of flags of convenience. It encouraged, rather than discouraged, continued operation of American-owned vessels under so-called flags of convenience.

As a result of that controversy, it was Congressman McCloskey in the House Merchant Marine and Fisheries Committee who proposed as part of the compromise, a diminution of the period of 5 years to 3 years, and that was accepted.

Also, the Maritime Administration, cognizant of the problem that was raised, indicated that it was time for review of the criteria by which eligibility was provided to foreign-flag ships. And they testified, and it subsequently became part of the regulation, that new criteria would reduce the then-existing some 260 foreign-flag ships covered, by approximately 75 percent.

It was with that understanding, as I understand it, that the measure that was then adopted with the 3-year provision—I do think that most of the points of contention have been removed, but we think that the 5-year period with congressional oversight is a safeguard, and a guarantee that will be a little more likely to enable us to meet the realities of the conditions at that point.

We support the legislation with that proviso.

Senator WARNER. We thank you very much for your effort today. I would like to ask a question. If all foreign-flag vessels subject to effective U.S. control are made eligible for the war-risk insurance program, wouldn't that spread the monetary risk among more companies? Is that desirable?

Mr. BRAND. Yes, but as I understand it, this legislation is designed to cover that period when, in the event of a conflict, the Government would step in and provide the guarantees until the insurance could be picked up by the private sector.

And it is my feeling that for the Government to provide insurance automatically for all the vessels that might be involved, without a guarantee, that the vessels would be available to the United States is, I think, misguided.

Senator WARNER. Traditionally, maritime nations have several kinds of preference laws and programs, including cabotage laws to support the maritime industry.

Why wouldn't the war-risk insurance program be considered as such a preference program, to induce vessel owners to fly the U.S. flag?

Mr. BRAND. You say that this would induce vessel owners? Oh, no, I think that—as I pointed out earlier, I think this in effect provides encouragement to sustain fleets under foreign flags. However, if the war-risk insurance were available to only U.S.-flag ships, it might induce some to fly U.S. flags.

Senator WARNER. Thank you very much.

[The statement follows:]

STATEMENT OF HERBERT BRAND, PRESIDENT, TRANSPORTATION INSTITUTE

Mr. Chairman and members of the committee, my name is Herbert Brand. I am President of the Transportation Institute, a private nonprofit research and educational organization established to promote a strong maritime capability in the United States. The Institute is composed of 174 member companies that operate U.S.-flag vessels in the nation's foreign and domestic shipping trades, including the inland waterways and the Great Lakes.

I appreciate the opportunity to express our views on S. 1452, a bill to extend permanently the war-risk insurance program. I will be very brief in my remarks.

In 1975, when war-risk legislation was last before the Congress, we argued against coverage for foreign-flag vessels. At that time, approximately 260 flag-of-

convenience, foreign-manned vessels were included in the program. We felt that the policy of inclusion was not in our national interest for reasons of security.

Proponents of the "effective control" theory claimed that they should be included in the war-risk program because of their contention that foreign-flag vessels would be available to the U.S. in time of war or national emergency. We, however, expressed reservations regarding the underwriting of the safety of those vessels which, because of the nationality of their crews, their uncertain allegiance, and the unknown disposition of their country of registry, or their size, might never be available to the United States in times of hostilities.

In response to the arguments against foreign-flag coverage, the Maritime Administration agreed to tighten the criteria by which foreign ships would be evaluated for inclusion in the program. Accordingly, it was agreed that these stricter requirements for eligibility would result in a reduction of approximately 75 percent of the 260 foreign vessels covered at that time.

It is our understanding that there are presently no foreign-flag vessels covered by war-risk insurance, but that there are 87 applications pending. That number might well increase dramatically at some point. It is, however, our clear impression that the number of foreign-flag vessels that may be included will never exceed 25 percent of the 1975 figure.

There are those who would, once again, try to include a larger number of foreign-flag vessels in this program. We continue to be opposed to any inclusion beyond the 25 percent figure that has been agreed to by the Maritime Administration.

With respect to S. 1452, we have serious reservations about a blanket extension of the program, without the opportunity for continued review by the Congress. Mr. Chairman, with all of the mercurial changes in the world order that we are witnessing every day and with all the hidden and potentially dangerous variables involved, we think it would be imprudent of the Congress to make this program permanent. Why should we lock ourselves into a position needlessly? We think there should continue to be periodic Congressional oversight of this program. Accordingly, we recommend that S. 1452 be amended to provide for continued review every five years.

Thank you for this opportunity to express our views.

Senator WARNER. I'd like to recall to the witness stand Mr. Dickstein.

Mr. Dickstein, we have heard the testimony of some very distinguished and knowledgeable individuals and they all approve of this 5-year limitation, whereas the administration proposes it in perpetuity.

Would you comment on this?

STATEMENT OF LEONARD DICKSTEIN—Resumed

Mr. DICKSTEIN. Yes. The Administration backs the permanent inclusion of this program because it is a program which has been in existence since 1950. There have been continuous 5-year extensions, with the exception of the last, which was a 3-year extension. The program has worked. We believe that a program which has been on the books since 1950 with continuous extension, without any changes but for the change made at the last go around, should be made permanent.

That is why the administration favors permanent reenactment of this authority.

Senator WARNER. Well, how unfavorably would you look upon this 5-year—

Mr. DICKSTEIN. We would not look upon it unfavorably, Senator, since, although we would prefer a permanent extension, it is most important that we receive authorization to reinstitute the war-risk insurance program now.

Senator WARNER. Thank you. Mr. Eugene A. Yourch, executive secretary, Federation of American Controlled Shipping.

STATEMENT OF EUGENE A. YOURCH, EXECUTIVE SECRETARY,
FEDERATION OF AMERICAN CONTROLLED SHIPPING

Mr. YOURCH. Thank you, Senator. I, too, will very briefly paraphrase my statement. One thing, I think, that has been made clear already this morning is that the war-risk insurance program, especially as it applies to the American-owned foreign-flag ships, mixes politics, the politics of shipping, with the question of the readiness of this country to supply its national economy in the event of an emergency.

And some of the statements that you have received reflect that political controversy.

My statement makes a series of points. As has been pointed out, there has been a war risk program in World War I and World War II, this interim program has been in existence since 1950, it has had essentially automatic 5-year renewals, and up until 1975 the American-controlled foreign flagships—Liberian, Panamanian, and Honduran—were given essentially blanket eligibility.

We support the legislation insofar as it goes. But we think the record of lack of availability of insurance over the last 4-plus years has affected the Nation's readiness.

During this past 4-plus years, foreign-flag vessels have been able to apply for insurance for only about 10 months, and of the 53 applications of our member companies, contrary to Mr. Dickstein's statement, we have had no response from MarAd in that 10-month period at all.

The regulations that MarAd has published, I point out in considerable detail in my statement, are far too restrictive. They take a very narrow view of the national interest insofar as provision of war risk insurance for the foreign-flag vessels is concerned. We argue that it is as much in the national interest to provide a fleet to supply the Nation's economy, to keep the Nation's economy going, as it is to provide direct military support.

MarAd's regulations with regard to size bear no relation to the size of the fleet that is in existence, that would be needed to support the economy, and MarAd's regulations with regard to trade emphasize trade with the United States in the 6-month period. We argue that it is far more important to consider where the ships are at the time that they're needed and not where they have been in the previous 6 months.

MarAd did not apply those size or trade restrictions to the dry bulk fleet. Obviously those dry bulk ships would be needed to supply the Nation with raw materials. We say the same thing is true with tankers.

My statement points out that MarAd exceeded its statutory authority. It did not have to make these determinations with regard to the American-controlled ships, only with regard to foreign-owned ships.

The statement recommends that either the Department of Defense be given the authority to determine the eligibility of the ships for this program or that MarAd's restrictive regulations be amended or removed.

I also, in my statement—in some detail—respond to the recurring questions of reliability that have been raised before your committee only 2 weeks ago, and suggested again here by Mr.

Brand. The point is that these ships are in existence. We have never suggested that the American-controlled foreign ships are a substitute for the U.S. flag. All we say is they are a fleet in being, and if you needed them today, if something happened in the Persian Gulf and you needed them to resupply this country, rearrange the system of supply of the country with oil, you would want the war-risk insurance system in place.

You would want a war risk insurance program and contracts of commitment that enabled, without any need for congressional hearings, the greatest possible supply of ships. You don't know in advance what ships you are going to need or where you are going to need them.

Finally, as I say in my statement, the absence over the past 4 years, effective absence of war-risk insurance for the foreign-flag fleet, has not built up the American-flag fleet and it has not hurt the foreign-flag fleet.

The question of war risk insurance is a neutral element in regard to the commercial decisions of shipping. But it does raise a question of readiness of the country for emergencies. And we urge, therefore, that it be permanent, so that you would not have to worry about 2- or 3-month lapses or longer before the enactment of new legislation.

Oversight hearings on war risk insurance could be held at any time.

With regard to the definition of war, which you have asked the other witnesses, remember that interim war-risk insurance comes into effect when commercial policies are canceled. As long as the authorizing legislation tracks the commercial policies in that sense, then you have the automatic authority for the Government to provide the interim war-risk coverage, regardless of how the insurance industry changed their definition of war that triggers their cancellation clauses.

I think that sums up what I have to say.

Senator WARNER. The last comment you made is that Uncle Sam would pick up just about anything. Is that it?

Mr. YOURCH. The theory is that interim 30-day war risk binders come into force when the commercial policies are canceled. You can't predict in advance when they are going to be canceled. They could very well have canceled them for trade with Iran yesterday.

What I think you need is a statute that tracks that kind of a possibility without the need for hearings or new legislation.

Senator WARNER. I agree with you. I just want to make sure there's a meeting of the minds on this issue, because the thrust of what you say I concur with.

Also, I think you raise some very interesting issues in your complete statement, which will be put in the record. I asked both MarAd and the Department of Defense to answer the questions that are raised in your statement. We'll also ask if you'll answer some questions which we will submit to you.

Mr. YOURCH. I'd be delighted.

Senator WARNER. Thank you.

[The statement follows:]

STATEMENT OF EUGENE A. YOURCH, EXECUTIVE SECRETARY, FEDERATION OF
AMERICAN CONTROLLED SHIPPING

My name is Eugene A. Yourch. I am Executive Secretary of the Federation of American Controlled Shipping or "FACS" as it is often called.

The companies within FACS beneficially own almost 85% of the 50 million deadweight tons of modern tankers, oil/bulk/ore and oil/ore vessels, bulkers, reefers and other specialized bulk cargo ships which are controlled by American enterprises and are registered under the laws of Liberia and Panama. These vessels are under the effective control of the United States pursuant to a policy formulated by the Joint Chiefs of Staff, and are available for use, requisition or charter by the United States in event of war or national emergency. Appendix A to this statement explains U.S. effective control policy in much greater detail.

Title XII of the Merchant Marine Act of 1936 authorizes the Secretary of Commerce to provide war risk insurance for U.S. flag and U.S. controlled foreign flag vessels when commercial insurance cannot be obtained. The purpose of Title XII is to protect U.S. assets and maintain the flow of U.S. waterborne commerce and commercial Defense Department transportation services in the event of war. Section 1214 is a form of "sunset" law under which the authority of the Secretary of Commerce to issue such insurance expires unless renewed. Prior to September 7, 1975, renewals for five year periods were enacted by Congress essentially without question. S. 1452 would provide permanent authority by eliminating section 1214.

Under the war risk insurance program in effect for twenty years prior to 1975 all U.S. controlled Liberian, Panamanian and Honduran registered vessels were automatically eligible for coverage in exchange for their owners' contractual commitment to make such vessels available to the U.S. government for use, requisition and charter in the event of war or national emergency. Some U.S. maritime union spokesmen objected to the program, apparently believing that it bestowed a special status, which they did not like, on U.S. controlled vessels. Thus, in early 1975 the union spokesman urged that eligibility for war risk insurance be restricted solely to U.S. flag vessels.

We opposed the proposed deletion of foreign flag ships, pointing out, among other things, that it ignored both the large number of "handy size" tankers in the controlled fleet suitable for direct military support and the contribution the entire controlled fleet would make to maintaining the flow of strategic materials to the U.S. economy during war or national emergency. The Department of Defense and the American Institute of Merchant Shipping (A.I.M.S.), among others, also opposed the proposed deletion. A stalemate resulted.

The program lapsed on September 7, 1975, and was not reenacted until October 17, 1976, following testimony in which the Maritime Administration proposed that they would promulgate new regulations substantially restricting (but not eliminating) eligibility for the U.S. controlled foreign flag fleet.¹ In addition, the reenactment provided authority to the Secretary of Commerce for only three years (to September 30, 1979) instead of the five year periods of the past.

Some five months later, on March 8, 1977, MARAD's regulations for the American flag fleet were published. However, proposed regulations for the foreign flag fleet were not published until June 2, 1978 and the final regulations were not published until November 20, 1978. Thus, in the four years and two months since the program lapsed in 1975, U.S. flag vessels could apply for war risk insurance for only 2½ years and the U.S. controlled Liberian, Panamanian and Honduran vessels could apply only during a 10 month period. As you know, the program lapsed once again on September 30, 1979.

We believe that the war risk insurance program is important to the nation and should not be made a political football. We therefore support S. 1452 insofar as it grants permanent authority for the issuance of war risk insurance. We do not, however, believe that the bill goes far enough.

When the war risk insurance program was reenacted in 1976 (Public Law 94-523, Oct. 17, 1976) section 1203(a) of the Merchant Marine Act of 1936 was amended by inserting at the end thereof the following language:

¹ Nothing demonstrates MARAD's subsequent change of heart better than to quote its statement of June 2, 1975 to the House Subcommittee on Merchant Marine: "There is inadequate U.S. flag tonnage to satisfy the defense and commercial needs of the United States in the event of a national emergency or war. . . . It would be much more desirable to have adequate U.S. flag tonnage available. However, this ideal situation does not exist, and until enough U.S. flag tonnage is available, we need to do what we can to make foreign flag ships available. If the United States did not offer war risk binders on these vessels in return for their commitment of availability, it is possible that some other nation might. If war risk insurance can help assure the availability of these ships, it is worth the small price to furnish it."

"In determining whether to grant such insurance or reinsurance to foreign flag vessels, the Secretary shall further consider the characteristics, the employment, and the general management of the vessel by the owner or charterer. . . ."

MARAD's final regulations for foreign flag vessels, issued under this statutory authority, were rather restrictive:

§ 308.2(b) "(b) *Special rules—foreign-flag vessels.* For the purpose of providing interim insurance on vessels described in § 308.1(b), the Assistant Secretary shall consider the characteristics, employment, and general management of the vessel. The Assistant Secretary formally determines that the following vessels are engaged in a service in the interest of the national defense or the national economy of the United States and qualify for interim insurance:

(1) Vessels substantially engaged in the foreign commerce of the United States or which would be required in the event of a war or national emergency: *Provided*, That a vessel will be considered to be substantially engaged in the foreign commerce of the United States if, on a semiannual basis, in excess of thirty percent (30%) of the net tons of cargo carried by the vessel is carried between a foreign port or ports and a port or ports in the United States (including Alaska, Hawaii, Puerto Rico, and any territory or insular possession of the United States), but only if such cargo is transported to such port or ports for consumption therein or for transshipment (in its raw state or subsequent to refining) for consumption elsewhere in the United States:

(2) Product tankers up to 90,000 deadweight tons and with particular emphasis on so-called handy-sized tankers having relatively high speed and refueling at sea capability:

(3) Dry bulk cargo vessels:

(4) Heavy lift vessels:

(5) Refrigerated vessels and other classes of ships in short supply in the United States flag fleet; and

(6) Other vessels with special capabilities."

In considering the potential emergency employment of tankers in the U.S. effective control fleet, MARAD seemed to focus only on what it perceived as the direct military needs for tankers, and disregarded entirely the broader national security needs as they relate to maintaining the U.S. economy by continuing the flow of vitally needed oil imports under emergency conditions.

The nation's dependence on imported oil hardly needs to be mentioned here. Suffice it to say that over the past twelve months U.S. imports of crude and oil products have averaged 8.3 million barrels per day. These levels of imports translate into a tremendous reliance on tanker transportation. We estimate that the tanker capacity needed to maintain these imports (including the necessary back-up transportation of crude oil to offshore Western Hemisphere refineries) totals approximately 49,000,000 dwt. of tanker carrying capacity—most of which, because of the volumes and distances involved, would have to be medium size tankers and large size VLCCs. Under wartime or other emergency conditions the level of imports would most certainly drop because of rationing and other conservation measures. Nevertheless the demand for tankers would still be substantial. U.S. energy needs are such that even under wartime conditions oil imports would have to be continued for the U.S. economy to function and thus be able to supply vital military and civilian needs. In wartime, the high attrition rate for tankers would probably require the employment of every available vessel both for maintaining the flow of oil and also for providing offshore floating storage.

As is painfully obvious, national emergencies other than wartime conditions must also be considered. A political or military interruption affecting one or more of the petroleum exporting nations could give rise to a national emergency, escalating the need for tankers of various sizes. For example, if the African oil producing nations embargoed oil exports to the United States as the result of a political dispute, or if some OPEC members other than Saudi Arabia imposed an oil embargo in an effort to raise prices, the need for additional tanker capacity, primarily VLCCs, would skyrocket. On the other hand, if military action interrupted Middle East oil production the need for VLCCs would probably decrease but the demand for medium size tankers would increase.

The active, privately owned U.S. flag tanker fleet, with a total carrying capacity of about 13,000,000 dwt. and average size of about 50,000 dwt., is not capable of providing emergency coverage under these conditions. Today, with the advent of the Alaskan oil trades, most of the subsidized larger tankers capable of transporting oil internationally have been permitted by MARAD to be employed in the domestic trades, where they probably would have to remain during an emergency.

Under emergency conditions the only American controlled tankers readily available for requisition, use or charter by the United States in the U.S. import trades are those flying the Liberian and Panamanian flags. The U.S. effective control tanker fleet totals about 45,000,000 dwt., with an average size about 140,000 dwt. clearly designed for the international oil trades.²

In our view, there is no better example of bureaucratic myopia than MARAD's most recent war risk regulations which treated all U.S. effective control tankers over 90,000 dwt. in this fleet as if they were of no importance to the national security in an emergency—unless, as we will discuss momentarily, they happened to spend 30% of the time in U.S. foreign commerce.

The illogic of this approach is further highlighted by the fact that MARAD's regulations granted automatic interim war risk coverage to American controlled Liberian, Panamanian and Honduran registered dry bulk carriers regardless of trading patterns and regardless of size. The utility of large dry bulk carriers (today such vessels range in size up to 160,000 dwt.) under wartime or emergency conditions clearly is to maintain the flow of strategic, critically needed iron ore, bauxite and other bulk materials from abroad rather than to serve direct military needs.

It scarcely needs to be pointed out that precisely the same considerations apply to tankers regardless of their size and regardless of their trading patterns. The only distinction is that crude oil and residual and other fuel oils imported from abroad would probably be much more critically needed in terms of maintaining the U.S. economy under emergency conditions than iron ore, bauxite and other ores which can be stockpiled far more easily than oil.

We strongly believe that each and every one of these American controlled tankers should be eligible for automatic interim war risk coverage—thus having them under contracts of commitment and facilitating their availability for requisition, use or charter by the United States in the event of war or national emergency.

We are also struck by the lack of rhyme or reason in the requirement that U.S. effective control vessels (other than dry bulk, refrigerated, heavy-lift and product tankers under 90,000 dwt.) would have to carry 30% of their cargoes on a semi-annual basis in U.S. foreign trade in order to qualify for automatic interim war risk insurance coverage.

We would like to think that after the experience it has undergone in repeatedly waiving U.S. trade requirements for subsidized non-liner vessels in recent years, MARAD would now understand that vessels in the bulk trades engage in worldwide trading for competitive reasons and generally do not operate on shuttle runs between two or more countries. In our opinion, the proposed "trade" requirement for automatic war risk insurance eligibility has no more relevance or meaning when applied to tankers (or certain other types of U.S. effective control vessels) than it would if applied, say, to dry bulk vessels, refrigerated vessels and heavy-lift vessels—three types of American controlled ships for which, wisely, MARAD imposes no trade requirement.

The irrationality of a trade requirement is highlighted when one considers that under wartime conditions there is a definite advantage in having a worldwide dispersal of tanker carrying capacity rather than having all available tankers clustered into trades with the United States where enemy submarine and missile attacks may, at the onset of hostilities, be concentrated.

Perhaps more importantly is the consideration that if a future emergency erupts the critical national security factor will not be where tankers may have been trading over the past six months but their location and cargoes at the time the emergency occurs. For example, U.S. effective control tankers which happen to be near foreign loading ports or which are laden with oil that can be diverted from foreign destinations to American ports could be of much greater utility in meeting immediate national security needs than, say, tankers which have completed discharge of their cargoes in American ports and will not return with additional cargoes from the Middle East until completion of round trip voyages lasting more than two months.

The possible examples are endless, but all bear witness to the inescapable conclusion that past trading patterns of American controlled Panlibhon tankers or other vessels have no relevance in determining their utility in a future war or national emergency.

²On average, half of the U.S. effective control tanker fleet is at any given time laden with 157.5 million barrels of oil—about 19 days' supply of imported oil for the United States under present rates of consumption. The size diversity of this tanker fleet is illustrated by the following breakdown: under 50,000 dwt.—96; 50,000-90,000 dwt.—40; 90,000-160,000 dwt.—62; over 160,000 dwt.—124.

Further, we submit that, in promulgating these regulations, MARAD actually exceeded its statutory authority. The language of § 1203(a) left intact by the 1976 amendment reads as follows:

Sec. 1203. The Secretary may provide the insurance and reinsurance authorized by section 1202 with respect to the following persons, property, or interest: (a) American vessels, including vessels under construction, foreign-flag vessels owned by citizens of the United States or engaged in transportation in the waterborne commerce of the United States or in such other transportation by water or such other services as may be deemed by the Secretary to be in the interest of the national defense or the national economy of the United States, when so engaged. (emphasis added)

Foreign flag vessels owned by citizens of the United States are thus distinguished from foreign flag vessels of foreign ownership. Only the latter group requires an administrative determination that the service of the foreign vessel is "in the interest of the national defense or the national economy of the United States."³ The statute implicitly makes that determination for U.S. citizen owned foreign flag vessels. Thus there is no requirement under current law that MARAD formally determine that some or all U.S. citizen owned foreign flag vessels are engaged in a service in the interest of the national defense or national economy.

By letter of July 27, 1978 we called MARAD's attention to this language, but that agency either ignored or disagreed with us. The final regulations allowed MARAD to issue insurance for vessels "which would be required in the event of a war or national emergency" in the event that such vessels do not otherwise fit into any of the preferred categories devised by MARAD in its regulations. But this general exception points out the inherent problem in allowing MARAD to determine eligibility on an ad hoc basis. To the best of our knowledge, applications by FACS members for 53 vessels with a corporate expenditure of 2 to 3 man days per application have been sent to MARAD. The fact is that there has been absolutely no response from MARAD to any of these applications. The inaction on the part of MARAD probably reflects the fact that 40 of the vessels are VLCCs and require an ad hoc determination under the above exception. This must present dilemma to MARAD since the agency has freely granted construction subsidies to build U.S. flag VLCCs (subsidy payments which require a national security determination) and have granted waivers to allow foreign-to-foreign trading of subsidized bulk carriers.

Those who oppose the blanket extension of war risk insurance to American controlled Liberian, Panamanian and Honduran flag vessels sometimes lose sight of the fact that these are real ships in a real world. To illustrate this point we call your attention to an article in the November 26, 1979 issue of the Journal of Commerce:

[From the Commodity News Service]

PERSIAN GULF WAR RISK RATES UP

LONDON.—The additional premium on the London market for war risk has been increased to 0.05 percent on hull coverage for vessels trading to the Persian Gulf. The previous level was 0.025 percent.

Sources say the new rate is effective immediately, unlike prior changes when insurers have given some warning of intended increases.

In addition to the general war risk premium of 0.05 percent, vessels trading to Iran will be subject to a 0.1 percent additional premium charge, according to sources. Owners wishing to cover a vessel against blocking and trapping in the Persian Gulf will have to pay an additional premium of 0.25 percent.

The situation, however, is said to be extremely fluid and it has been mentioned that the levels of premium affected will be subject to continuing review.

Since U.S.-flag vessels are not being rated at all, it seems unlikely that they will be able to obtain a war risk policy in the London market for the Persian Gulf. However, some insurers may consider coverage, though at an inflated figure. This is obviously due to the poor political relations between the U.S. and Iran, sources said.

It is true that, as described in Appendix A, § 902 of the Merchant Marine Act of 1936 provides that the effective control fleet is subject to requisition, use or charter in the event of war or national emergency. We submit that a far more desirable state of readiness for conditions such as those prevailing today would exist if blanket eligibility and a fully functioning system of insurance binders and contracts of commitment were in place.

³ In fact, using this statutory authority, MARAD had determine beginning in 1961 that it was in the national interest to issue war risk binders on 37 small foreign owned, foreign flag (primarily Saudi Arabian) vessels used abroad for research, servicing offshore oil wells, etc.

While we can accept the fact the MARAD has the staff and expertise to process the applications, issue interim war risk insurance binders and administer the application fees and revolving fund (some \$6 million at last report) we do not believe that MARAD should determine the eligibility of vessels for the program on a case-by-case basis. Unless the essentially blanket eligibility for U.S. effective control vessels that existed prior to 1975 is restored, MARAD's restrictive approach will continue to be counterproductive in terms of the best interests of the United States.

MARAD's policies clearly do not accord with those of defense officials having the ultimate responsibility for assuring that the nation's emergency sealift needs can be met. In July 1977, for example, Vice Admiral Edward W. Cooke, Deputy Chief of Naval Operations for Logistics, U.S. Navy, testified as follows on the subject of U.S. effective control policy:

"In case of mobilization, we believe those ships will be available. There is a contractual control, based on war risk insurance, but beyond that, there is the fact that they are U.S.-owned in case of mobilization. We believe they would be available for U.S. forces." (Hearings before the Committee on Merchant Marine and Fisheries, Serial No. 95-12)

Similarly, Admiral James L. Holloway III, Chief of Naval Operations, in his policy statement dated March 1, 1978 on the Navy's military and budget postures confirmed that:

"The United States has plans for the utilization of foreign flag ships of the Effective U.S. Control (EUSC) fleet. These are U.S.-owned or U.S. controlled ships of foreign registry of 1,000 gross tons or more, which are under contract to the Maritime Administration. These can reasonably be expected to be made available for U.S. use in time of emergency."

Thus, the incongruous situation exists today where MARAD seeks to restrict U.S. effective control policy, despite continuing, longstanding support of the policy by officials charged with responsibility for the nation's security. The incongruity is intensified by the fact that MARAD, not the Department of Defense or Navy, is the lead agency for writing regulations under the war risk insurance program—one of the important underpinnings of U.S. effective control policy.

We therefore urge your Subcommittee to modify S. 1452 in one of two ways: either authorize the Secretary of Defense to establish the eligibility of U.S. effective control vessels for war risk insurance or require MARAD to restore the blanket war risk insurance coverage that existed prior to 1975.

There is one additional point we would like to make. In his November 21, 1979 statement before your Subcommittee, the Honorable Robert L. Leggett, President of the Joint Maritime Congress, questioned the reliability of the effective control fleet. In doing so he evidenced some misunderstanding of effective control policy and its underpinnings.

First, in summarizing a portion of Professor Boleslaw Adam Boczek's study entitled *Flags of Convenience*, Mr. Leggett inexplicably failed to include Professor Boczek's conclusion on the subject of flag state intervention:

"Of decisive practical importance in the whole issue is the fact that the flag-of-convenience vessels in their bulk never put in at the ports of registry, and that the flag-of-convenience countries would be unable in case of emergency to enforce their control over the ships flying their flags on the high seas."

Second, in referring to the Liberian executive order of 1973, Mr. Leggett failed to point out that the Liberian government did not and would not consider any such order as applicable to U.S. effective control vessels requisitioned, chartered or used by the United States. This is so because of the overriding effect of Liberian Maritime Regulation 1.41 which would prevail in such situations. Simply stated, the official position of the Liberian government is that when it approves in advance U.S. effective control agreements, it is in effect ceding its authority subsequently to control the movement of those vessels in the event they are chartered, requisitioned or used by the United States government.

Finally, Mr. Leggett is apparently unaware of a speech by Dr. William R. Tolbert, Jr., President of Liberia, on November 1, 1977, in which he emphasized Liberia's support of the United States' effective control policy:

"Let me state categorically that Liberia has supported, and will continue to support the effective control policy of the United States Department of Defense. Liberia has never taken any action, nor will it take any action in the future which would interfere with the availability of American controlled ships to the United States in times of declared emergency. Moreover, I wish to emphasize that Liberia stands willing to cooperate with the United States government in any way, be it by Executive Agreement, treaty or otherwise, to reinforce our commitment to its effective control policy."

Following that speech we wrote to both the Secretary of Defense and the Secretary of State urging the effectuation of a more formal agreement with Liberia on U.S. effective control policy. The reply from the Department of Defense dated November 28, 1977 speaks for itself:

"As you know, we are aware of the provisions of Liberian Maritime Regulation 1.41 which provides for the commitment of vessels of Liberian registry to another country in accordance with pre-existing approved agreements. We have no reason to believe that a significant number of these vessels would not be made available to us in time of need although perhaps not all vessels would be suitable or able to respond."

Mr. Chairman, we have never suggested that the effective control fleet is a substitute for a large and healthy U.S. flag fleet. We do say that it is a large, modern and efficient fleet that is available if needed. The availability of interim war risk insurance binders is not an inducement to invest in foreign flag ships. Conversely, its absence has not contributed to the growth of the U.S. flag fleet—it has only adversely affected this country's state of readiness to respond to emergency situations.

APPENDIX A—U.S. EFFECTIVE CONTROL FLEET

The U.S. effective control fleet is made up of Liberian, Panamanian and Honduran flag ships which American companies have committed to be made available to the United States in the event of war or national emergency. These commitments are based on federal law as well as agreements and voluntary undertakings with the United States government which, in effect, provide that the ships will be made available in times of crisis in exactly the same manner as U.S. flag vessels. U.S. effective control policy comes into full force and effect in time of war or national emergency proclaimed by the President pursuant to § 902 of the Merchant Marine Act of 1936 which provides, in part:

"Whenever the President shall proclaim that the security of the national defense makes it advisable or during any national emergency declared by proclamation of the President, it shall be lawful for the Secretary of Commerce to requisition or purchase any vessel or other watercraft owned by citizens of the United States or under construction within the United States, or for any period during such emergency, to requisition or charter the use of any such property. The termination of any emergency so declared shall be announced by a further proclamation by the President."

In recent years, the more outspoken advocates of building up the U.S. flag merchant marine have adopted a stance that *only* U.S. built and registered merchant ships represent an asset in terms of the national security. We do not believe that anyone can seriously contend that having the U.S. effective control fleet available as a large reserve fleet for use or requisition in time of war or national emergency is not a plus factor in terms of the national security. This is particularly so considering the tremendous carrying capacity of the U.S. effective control fleet, most of it modern tankers, combination vessels, and dry bulk carriers. The replacement value alone of these vessels today, if they were to be built in U.S. shipyards, would be upwards of \$50 billion. The cost of providing the same fleet with operating subsidies, if these ships were under U.S. registry, would be almost \$1 billion dollars each year. Most importantly, these U.S. effective control ships represent a fleet in being, which can be called upon immediately if a war or national emergency erupts.

As the Department of Defense has pointed out over the years, it has never been intended that U.S. effective control ships should be a substitute for U.S. flag ships. Instead, U.S. effective control ships represent an auxiliary fleet which is available to be called upon in a crisis to supplement the sealift capacity offered by the U.S. flag fleet.

As government officials have emphasized on various occasions, the primary task for U.S. effective control vessels during war or national emergency is not to provide direct support to the armed forces, although it is likely that some ships would be employed in this fashion. Instead, as the Department of Defense informed your Committee in various hearings, the value of these vessels lies in "transporting critical materials in times of crisis."

In this regard, it should be noted that the carrying capacity of these ships is so great that, together with U.S. flag ships, they provide the nation with a sizeable sealift capacity in terms of transporting bulk cargoes under emergency conditions. For example, assuming that during a crisis, conservation, rationing and other measures did not result in a drastic cutback in U.S. oil imports, U.S. effective control tankers and combination vessels together with U.S. flag tankers would have the capacity to deliver all domestic oil shipments plus about 75% of current water-

borne petroleum imports to our shores. At the same time, under emergency conditions the shipping requirements for current import levels of other raw materials, such as iron ore and bauxite, could easily be handled by the bulk carriers under U.S. effective control.

The potential value of U.S. effective control ships to the United States goes beyond a shooting war. For example, it is certainly conceivable that in the event of another oil embargo, a national emergency could be declared by the President. Under such circumstances the benefit of having American controlled tankers readily available should be apparent. U.S. effective control tankers and combination vessels, excluding those on ballast voyages, are at any given point in time carrying oil cargoes equal to about 20 days supply in terms of this nation's current consumption of imported oil.

One of the strongest arguments in favor of U.S. effective control policy is past performance. In testimony during March 1966, Maritime Administrator Nicholas Johnson, speaking of U.S. effective control policy, said:

"Certainly if the history of the Second World War and Korea is valid for purposes of future planning, history is on the side of this judgment. As a practical matter these ships have been available to the United States when needed."

The history of U.S. effective control policy dates back to the early days of World War II when American companies, acting at the request of the United States government, made available their Panamanian, Honduran and Venezuelan flag ships as part of the effort to supply Great Britain and France with essential supplies, a trade barred to American flag ships by the Neutrality Act of 1939. At the same time, the government encouraged transfers to Panamanian registry—an action which gave birth to the U.S. effective control concept. By July 1941 there were 111 vessels of more than 1 million deadweight tons under U.S. effective control, including 88 tankers aggregating over 950,000 deadweight tons.

Later, when the United States entered World War II, U.S. effective control ships joined with the American merchant marine in the war effort, including the famous convoys to Murmansk. During the war many were sunk by enemy action. One American company alone lost 19 ships, while another operator lost 17 vessels.

As reported in a U.S. Department of Commerce study, it was during World War II that the term "effective control" was actually adopted by the War Shipping Administration to differentiate between ships operating under U.S. flag and those under foreign flags, principally Panamanian. The same governmental study points out that the present U.S. effective control policy was developed originally by the Joint Chiefs of Staff.

In 1948, when the first U.S. controlled ships were placed under Liberian registry, the Joint Military Transportation Committee of the Joint Chiefs of Staff recommended that these ships could also be considered under U.S. effective control. In 1959 it was decided that ships under Venezuelan registry could no longer be considered as part of the U.S. effective control fleet. At present, Liberian, Panamanian and Honduran vessels are the only foreign registered ships which have been expressly recognized as eligible for U.S. interim war risk insurance pursuant to § 1283(a) of the Merchant Marine Act of 1936.

Since World War II there has not been a national emergency which required the requisitioning of U.S. effective control vessels or, for that matter, American flag vessels. Nevertheless, U.S. effective control vessels have been credited with aiding the nation's sealift requirements during the Korean and Vietnamese conflicts. During the Korean war American companies committed both their U.S. flag and foreign flag vessels to the voluntary tanker pool, and U.S. effective control vessels were credited with making most of the foreign tanker voyages under the voluntary tanker plan. In December 1960 the Office of Civil and Defense Mobilization reported:

"... in practice during World War II and Korea, when the United States called on privately-owned tonnage to meet defense needs, PANLIBHON [meaning Panamanian, Liberian and Honduran flag] vessels subject to emergency utilization by the United States were immediately made available. In neither case did serious problems develop because of the foreign nationality of the crews."

Throughout the Viet Nam conflict U.S. effective control tankers were engaged in the carriage of essential petroleum products to South Viet Nam on a commercial basis. For example, a 1967 study showed that during the 12-month period ending March 31, 1967 U.S. effective control tankers made 61 voyages to or between South Vietnamese ports, delivering more than 5½ million barrels of petroleum products. During this same period these same ships spent an aggregate of 429 days in Vietnamese waters on floating storage or shuttle service duty, transferring petroleum products to and from other tankers, including MSTTS vessels.

In late 1966, during the period of increasing U.S. involvement in Viet Nam, FACS (then named American Committee for Flags of Necessity) was approached by Captain J. W. Lipscomb, Jr., Contracting Officer of the Military Sea Transportation Service (now Military Sealift Command) and asked to respond on behalf of the member companies to various suppositions, including one in which "a high level policy decision was reached within the government whereby chartering by MSTs was confined to U.S. effective control tankers."

By letter dated December 20, 1966, then Chairman Breck P. McAllister advised the Military Sea Transportation Service that if this supposition became reality, the member companies, which had been individually polled, could make 31 Liberian and Panamanian tankers of 1.6 million deadweight tons available over the next 14 to 90 days. This represented more tonnage than would have been needed at that time to supply military operations in Viet Nam. In addition, Mr. McAllister advised:

"Moreover, our members have expressed their determination to do whatever they could to make even more ships available, assuming that additional effective control tonnage was required by the government. Some companies report that this would require them to enter the charter market to secure replacement tonnage to meet their own transportation needs."

He also emphasized that: "In the event of a national emergency, I can report the determination of our members to honor their commitment to make available to the United States whatever effective control ships are requested by the government. I want to make this point very clear and also to report the willingness of these companies, even in the absence of a national emergency, to cooperate to the greatest extent possible in making their ships available should specific requests be made to individual companies by MSTs."

The high regard in which government officials held U.S. effective control ships during the Viet Nam conflict was reflected in the testimony of Maritime Administrator Nicholas Johnson in March 1966:

"The government believes these ships to be subject to the 'effective control' of the United States under emergency conditions. We are not now talking about ships owned by foreign citizens and registered in foreign countries—which have in a small number of cases refused to carry our defense cargoes—but ships owned by American citizens. We are talking of plans that, by and large, those ships will continue to serve the raw materials import trades that they now serve—although some of them would be directly involved in the defense effort (and are today)."

It might be added that no crews on U.S. effective control vessels refused to sail during World War II, the Korean conflict or at any time during the Viet Nam conflict. This may explain why during 1967 Secretary of Defense Robert S. McNamara stated:

"In a full scale national emergency, we believe 'effective U.S. controlled' ships will be as available to DoD [Department of Defense] as U.S. flag ships."

One of the most recent descriptions of the role of the U.S. effective control fleet in defense planning is contained in an April 3, 1979 letter from Secretary of the Navy, W. Graham Clayton, Jr., to Congressman McCloskey:

"With respect to your question on foreign-flag shipping, we understand that the Merchant Marine and Fisheries Committee was provided in April 1977 with a study prepared by the Joint Chiefs on the utilization of the Effective U.S. Controlled (EUSC) Fleet. The EUSC fleet consists of U.S. owned or U.S. controlled ships of foreign registry which are subject to call for the use of the U.S. government. Sealift resources identified in the Joint Staff study included the EUSC fleet as one of the several sources of sealift for reinforcement of Europe. Department of Defense (DoD) planning for contingencies includes the use of EUSC assets, as necessary, based on the availability of U.S.-flag shipping. EUSC sealift envisioned is minimal, and is comprised of tankers. There is presently sufficient U.S.-flag tanker capacity to support DoD needs for a NATO contingency. However, there is the likelihood of a requirement for EUSC shipping to carry sufficiently petroleum imports to meet national security requirements. While all EUSC ships might not be needed or necessary under contingency conditions, we have no reason to believe that a significant portion would not be made available if required."

[The following information was subsequently received for the record:]

QUESTIONS OF THE COMMITTEE AND THE ANSWERS THERETO

Question 1. Is there any reason to believe that if MARAD's rules are not changed, the U.S. would not have the effective U.S. control vessels available that it now counts on in case of a national emergency?

Answer. The effective U.S. control vessels are, pursuant to § 902 of the Merchant Marine Act of 1936, subject to requisition, use or charter by the United States in the event of war or national emergency. If MARAD's restrictive eligibility rules are not changed at all the vessels are still available. The point I made before your subcommittee was that the nation would be in a far greater state of readiness if there were blanket eligibility and war risk insurance binders and contracts of commitment were executed and in place.

Question 2. In your opinion why have only 87 applications for insurance binders been received when previously there were approximately 300 foreign-flag vessels in the program?

Answer. Many of the FACS member companies felt that MARAD's long delay in issuing regulations and restrictive approach in those regulations when finally issued were evidence of a very negative attitude on the part of MARAD. The general reaction was to submit some applications to determine how MARAD would respond rather than go through the time consuming process of submitting applications for all the ships. While MARAD's statement to your subcommittee said that many of the applications had to be returned for serious deficiencies the fact is that the companies that I represent who submitted applications heard nothing from MARAD at all. Naturally we hope that our recommendations are accepted and that a more positive attitude by MARAD will result in more applications being filed.

Question 3. How many foreign-flag vessels do you expect to become eligible for war risk insurance binders under the published regulations?

Answer. If MARAD's restrictive approach prevails I would expect that approximately 140 tankers of 90,000 dwt. and under, 16 general cargo ships, 79 bulk cargo ships, 28 reefer cargo ships and 25 special product tankers would be deemed eligible. This would exclude approximately 200 larger tankers—the type most needed to maintain our flow of oil imports.

Question 4. Traditionally maritime nations have several kinds of preference laws and programs, including sabotage laws, to support their maritime industry. Why shouldn't the war risk insurance program be considered as such a preference program to induce vessel owners to fly the U.S.-flag?

Answer. This question points out the infusion of political questions into what should be and what prior to 1975 was a straightforward determination that the more ships that were eligible for war risk insurance the better off the country would be. War risk insurance for foreign flag vessels is not an inducement for U.S. owners to build foreign flag ships and it is not a disincentive for U.S. flag construction. The record of the past four years shows this to be the case if common sense were not enough. Our argument in favor of blanket eligibility is based on the fact that the nation would be in a better state of readiness. Indeed even U.S. flag owners would be in a better position because the administrative costs and insurance risks could be spread over a larger number of vessels.

Senator WARNER. Mr. Albert E. May, executive vice president, Council of American Flagship Operators.

STATEMENT OF ALBERT E. MAY, EXECUTIVE VICE PRESIDENT, COUNCIL OF AMERICAN-FLAG SHIP OPERATORS

Mr. MAY. Good morning, Chairman Warner, gentlemen. Most of what needs to be said on this has been said, so I would request that my statement be submitted for the record, sir. I will not read it.

I would like to make two observations. One is to stress the fact that what we're talking about is a Government-managed mutual pool.

Insurance pool, in which the premiums are set retroactively so as to insure that all the losses are recovered from the carriers who are participating. In the Second World War, the Government made a profit of \$127 million on a similar program. The Government doesn't have very many programs of that sort. I do think it's important to keep that fact in mind when considering when the insurance should attach.

It seems to me, in response to a question you've asked all of the other witnesses, that perhaps it would be a good idea to go ahead with this bill and get it enacted, because we're not covered right

now during a very dangerous period. Later you could request the Maritime Administration and the Department of the Navy, as you yourself have twice suggested, to take a look at this.

I would think that if this committee requested a review, that they could come back to you with some meaningful suggestions.

I would point out that in this morning's Journal of Commerce there is a report which starts out this way:

Several London insurers are refusing to quote war risk insurance rates for American ships planning to enter Iranian ports, and have hiked war risk rates for other ships by 400 percent.

I don't know that that's true; in fact, I am surprised that there are any U.S. ships steaming for Iranian ports right now. But it does point up the problem—

Senator WARNER. Excuse me, there still is a lingering question of food. I'm sure you're following that.

Mr. MAY. I'm sure that's what is involved. I didn't know that U.S. flagships were taking food in.

In any case, I think it emphasizes the fact that there is a serious problem, that we need to have the war risk insurance legislation back on the books.

In my opinion we should later take a look at the terms and causes and come back to this committee, perhaps with a recommendation for change in the law.

Senator WARNER. That's a very helpful suggestion. In other words, conditions being what they are in the world as of today, we'd better reinstitute the legality of this procedure right away. Then we can take the time necessary to determine whether or not any amendments are required to the statute.

Mr. MAY. Exactly, sir.

Senator WARNER. Would you care to comment on the 5-year question?

Mr. MAY. Well, I don't think that that's crucial one way or the other. It does seem to me that this is a legislative body, and if we see a problem or the Department of Defense sees a problem in a permanent law, then we'll come back to you or you can reopen it yourself and we can change that permanent law.

But we will not, if the law is permanent, come up against this situation that we have now, where at the moment of crisis the law is lapsed. We could have a terribly costly situation if there should be some losses that weren't covered.

Senator WARNER. Thank you. Will you give me a moment to confer with counsel?

[Pause.]

I think your point's very well taken, and the Congress will act expeditiously with respect to the existing law, and then take a look at what needs to be done. Any other observations?

Mr. MAY. No, sir.

Senator WARNER. Your statement will be included in the record in its entirety. I thank you for taking the time to come here.

[The statement follows:]

STATEMENT OF ALBERT E. MAY, EXECUTIVE VICE PRESIDENT, COUNCIL OF
AMERICAN-FLAG SHIP OPERATORS

Good morning Mr. Chairman. My name is Albert E. May and I am Executive Vice President of the Council of American-Flag Ship Operators (CASO). CASO is a national association representing six major U.S. flag steamship companies whose members own and operate 151 large, modern U.S. flag liner vessels in the foreign trade of the United States.

We appreciate this opportunity to appear before you today in support of S. 1452, to extend the provisions of Title XII of the Merchant Marine Act of 1936 with regard to war risk insurance.

All CASO members are participants in the mutual insurance pool provided by Title XII of the Merchant Marine Act, 1936 as amended, which gives authority to the Maritime Administration to provide, at no cost to the Government, war risk insurance when commercial coverage cannot be obtained on reasonable terms and conditions.

Title XII was added to the Act on 7 September, 1950 (ch 906, 64 Stat. 773) for an initial period of five years. There have been five subsequent amendments to extend the provisions of this title, the most recent of which expired on 30 September, 1979.

Commercial insurance companies, both in the United States and abroad, are unable to underwrite the concentrated and massive risk to which merchant shipping may be exposed in the event of a major armed conflict. Consequently, all commercial war risk insurance policies presently contain a termination clause, which automatically becomes effective upon "... the occurrence of any hostile detonation of any nuclear weapon of war ... wheresoever or whensoever such detonation may occur and whether or not the vessel may be involved ..." or "the outbreak of war, whether there may be a declaration of war or not, between any of the following countries: United States of America, United Kingdom, France, the Union of Soviet Socialist Republics or the People's Republic of China".

The inability of the commercial market to insure the potential losses which could occur during a major war is understandable, since merchant shipping, which supports the military and economic logistics of war, is usually a primary target at the outbreak of war, whether there be a declaration of war or not, between any of the following countries: United States of America, United Kingdom, France, the Union of Soviet Socialist Republics or the People's Republic of China."

The war risk insurance program creates a mutual pool to spread this risk among a large number of vessel operators trading worldwide. Our Government operates as the administrator of this pool. For modest fees it issues binders to U.S. and selected foreign flag operators to provide war risk insurance effective immediately upon the termination of commercial insurance. During the first 30 days when such binders are in effect, losses are paid by the Government. However, at the end of 30 days, premiums are fixed on the basis of losses actually incurred and those anticipated. During the entire period Title XII war risk insurance is effective, the Government as the program's administrator, is charged with regularly adjusting the premiums so as to cover the losses. Thus, the program should cost the Government nothing. In fact, during World War II, when a similar program was in effect, the Government collected an excess of insurance premiums and other credits over amounts expended in settlement of losses of \$127,285,014.00 (S. Rep. No. 1828, 81st Cong., 2nd Sess., at 5 (1959)).

The very nature of maritime operations often requires vessels to travel through hostile waters beyond the immediate protection of our military forces. It is not reasonable to ask the crews, cargoes and ships to serve under such conditions without insurance being made available to them.

In order to overcome the problems attendant to timely passage of legislation to further extend the authority under Title XII for a limited period, we wish to record our support for H.R. 5784, which provides permanent authority for the Maritime Administration to issue interim binders for war risk insurance. This action will assure the continuity of insurance coverage in the event of war and eliminates an insurance problem as a basis for interruption of military sea lines of communication or the movement of necessary strategic material.

Accordingly, CASO urges the enactment of S. 1452 as introduced.

That completes my statement, Mr. Chairman. I would be pleased to answer any questions you or members of the Committee might wish to ask.

Senator WARNER. Mr. William Benkert, president of the American Institute of Merchant Shipping.

Ms. BURKE. Senator, I'm very sorry—we're testifying twice today and we've got a schedule conflict. I'm Barbara Burke, director of public and legislative affairs for the institute. Would you mind if I presented the statement for the admiral?

Senator WARNER. Basically, I know what the problem is. All the witnesses know. I think all too often we consume too much time up here with other people.

Ms. BURKE. You're moving very quickly. I expected you to go until noon.

STATEMENT OF BARBARA BURKE, DIRECTOR, PUBLIC AND LEGISLATIVE AFFAIRS, AMERICAN INSTITUTE OF MERCHANT SHIPPING

Ms. BURKE. We only have two points to make on behalf of our 28 companies which own, operate, and charter 190 American-flag bulk vessels. First, we strongly support permanent authority for this title XII insurance program. We think that it's a matter of urgency that you should go ahead and act on this legislation.

The lapses have been very bad for our members and have caused a lot of administrative burden in that they've had to reapply and get the paperwork through every time the program lapses.

The second point is that the MarAd program, as far as its application to foreign flag vessels in the implementing regulations, is too restrictive. We would like to see some action by the committee—perhaps language in the report—to indicate that the more vessels they cover the better.

From the American flag point of view, if there are losses and they're spread through the pool, it would be cheaper if there were broader coverage. We're not taking a position here on whether you should depend on foreign-flag vessels or not. Regardless of the relative dependability of these versus American-flag carriers, this program cannot be used as an incentive to American-flag registry or a disincentive to foreign-flag registry. You just can't use it in that vein.

Those were our two main points.

Senator WARNER. Do you have any comment with respect to the definitions that are now being used?

Ms. BURKE. In the regulations of MarAd? Yes. We feel those regulations are too restrictive in scope, and as far as their application to foreign-flag vessels, particularly the size restrictions.

Senator WARNER. I understand. Did you get the question from the Chair to all witnesses about the definition of war and the detonation of nuclear weapons?

Ms. BURKE. We have not taken a position on that, and did not realize there was a question about it. We will have to review the transcript and submit something to you for the record.

[The following information was subsequently received for the record.]

Having reviewed the definition of war presently being used, AIMS believes that the current practice of conforming to the conditions under which commercial insurance is terminated is basically sound and meets the need to have an automatic way of switching from commercial to government coverage. It should be kept in mind that this program operates at no cost to the taxpayer and fills a void in private capacity. If the situation with respect to commercial coverage changes, MARAD can of course revise its regulations accordingly.

Senator WARNER. All right. Thank you. The Chair will see that the hearing record will remain open for a week. If there are any other suggestions with respect to this procedure, the Chair would appreciate them.

[The statement follows:]

STATEMENT OF REAR ADM. WILLIAM M. BENKERT, PRESIDENT, AMERICAN INSTITUTE OF MERCHANT SHIPPING

Mr. Chairman, and members of the subcommittee, my name is William M. Benkert. I am the President of the American Institute of Merchant Shipping (AIMS), a national trade association composed of 28 companies, which own, operate and charter 190 American-flag bulk vessels, aggregating over 8 million deadweight tons, which serve U.S. foreign and domestic oceanborne commerce.

AIMS is testifying today in support of S. 1452, legislation to provide permanent authority for the Title XII war risk insurance program. Our member companies have relied upon the now-expired Title XII war risk insurance program and thus have a direct interest in the proposed legislation.

Permanent authority for Government-issued war risk insurance would help to ensure that vessels are available to the United States in time of war when commercial insurance is unable to cover at reasonable rates and conditions the risks of vessel operation.

Offering war risk insurance costs the Government and the taxpayers nothing, for fees and premiums are calculated in a manner to cover all administrative costs and any actual losses.

Due to this inherent safeguard in the program, we think it is eminently reasonable for Congress to grant permanent authority to issue war risk binders. Continuous coverage should be provided so that, in time of war or national emergency, shipowners whose vessels are committed to the United States can serve this country exposing themselves to uninsured losses. The recurrent lapses in coverage, caused by the short-term legal authority for the program, has been inefficient for all concerned.

Furthermore, it is our view that the program, as it is currently being administered, is unnecessarily restrictive in its scope of coverage. Since final regulations were issued November 20, 1978, the administrative policy of the Maritime Administration has been unclear as to whether U.S.-owned foreign-flag vessels will be allowed to participate in the war risk program. Yet, in November 1, 1979, testimony before the Senate Merchant Marine and Tourism Subcommittee on U.S. sealift capability, Assistant Secretary of Commerce for Maritime Affairs Nemirow contended that, "If supply of Persian Gulf oil were cut off, the existing U.S. tanker fleet in addition to meeting military plus U.S. domestic requirements, could carry about a quarter of U.S. wartime imports. To be able to carry all imports at that reduced level, an additional 7.5 million DWT of capacity would be needed—about 75 tankers averaging 100,000 DWT. In addition, ships would be needed to replace losses to enemy action. In the absence of additional U.S.-flag ships, we would have to rely on foreign-flag ships, including U.S.-owned "effective U.S.-control fleet" ships. . . ."

In view of these comments, we find it puzzling that MARAD has imposed a series of arbitrary restrictions on participation in the Title XII program by U.S.-owned foreign-flag vessels. Restricting foreign-flag tankers to product carriers of 90,000 DWT or less is particularly incomprehensible since larger ships would be needed in time of war by the United States and her allies to keep the economy going as long as we are dependent upon imported oil. Regardless of one's view of the relative dependability of U.S.-owned American and foreign-flag vessels, it is clear that the more ships available to serve, the better. The benefits of war risk insurance program are not conferred upon those who fail to respond to the U.S. Government; insurance coverage for such recalcitrants would be automatically terminated without refund of fees or premiums.

The inclusion of U.S.-controlled vessels in the program would be beneficial both to the Government and U.S.-flag operators. The Government would have available more vessels to maintain the flow of U.S. waterborne commerce in the national interest. Operators would benefit because the larger the mutual insurance pool, the lower the rates for participants.

In conclusion, AIMS believes that all U.S.-owned vessels committed to the United States should be eligible for Title XII war risk insurance regardless of size or flag. We firmly believe that the paramount consideration in determining vessel participation should be whether the vessels concerned will or will not be required by the United States in the event of a national emergency. We see advantage, not disadvantage,

vantage, to the U.S.-flag fleet in broadening the scope of the Title XII program. The fact is that the absence of coverage for U.S.-controlled vessels over the last few years has not served as a disincentive to flags of convenience or as an incentive to American registry. We urge this Committee to make the Title XII program permanent and take such other action as it deems appropriate to end MARAD's restrictive practices on foreign-flag coverage.

Senator WARNER. I am supposed to recommend to Chairman Inouye and Chairman Cannon that we proceed forthwith to provide that the existing law be made operative as soon as possible. Then, subsequently, we will hold hearings on the issues that have been raised this morning. The hearing is concluded.

[Whereupon, at 10:55 a.m., the hearing was adjourned.]

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

FEDERATION OF AMERICAN CONTROLLED SHIPPING,
New York, N.Y. July 27, 1978.

SECRETARY,
*Maritime Administration,
Washington, D.C.*

DEAR SIR: The Federation of American Controlled Shipping (FACS) represents 24 American companies controlling approximately 43 million deadweight tons of Liberian and Panamanian registered vessels. FACS' ships represent almost 84 percent of the Panamanian, Liberian and Honduran tonnage considered to be under U.S. effective control and "which can reasonably be expected to be made available to the United States in time of national emergency." (See Annex to Military Sealift Command Ship Register, MSC P504 A, April 1, 1978).

We offer the following comments on proposed amendment 36 which, we believe, should be modified in at least three critical respects in order that the amendment serve the best interests of the national defense and national economy of the United States. Furthermore, we urge that the Maritime Administration (MarAd), prior to finalizing amendment 36, formally consult with the Department of Defense, which has an important stake in the interim war risk insurance program as it relates to U.S. effective control policy. With that thought in mind we are forwarding copies of this letter to appropriate Defense and Navy officials, as well as to concerned Department of Energy officials.

In offering our comments on proposed amendment 36 we note that it is perhaps too much to expect that MarAd, as presently constituted, could accept the fact that American controlled Panamanian, Liberian and Honduran (sometimes collectively called "Panlibhon") vessels represent an important asset to both the national defense and national economy—an asset which should be strengthened rather than deprecated. In our opinion, too often in recent years MarAd officials have proceeded on the premise that any recognition of, or support for, the U.S. effective control fleet would be offensive to the agency's avowed role of promoting the U.S. flag fleet and would detract from the agency's efforts to obtain legislation favoring domestic flag shipping.

It is regrettable that over the past few years MarAd officials have become increasingly flag conscious and have expressed opinions typified by the comment of Assistant Secretary for Maritime Affairs Robert J. Blackwell, speaking with U.S. flag management and maritime union representatives, at a recent press conference of the National Maritime Council. As reported by the Congressional Information Bureau of June 15, 1978, Mr. Blackwell called the existence of the U.S. effective control fleet "a terrible, inconsistent policy." Frankly we do not believe that such parochial attitudes, which reflect the views of maritime union leaders, contribute anything to the well-being of either the U.S. merchant marine or the national security.

Mr. Blackwell's personal views clearly do not accord with those of defense officials having the ultimate responsibility for assuring that the nation's emergency sealift needs can be met. In July 1977, for example, Vice Admiral Edward W. Cooke, Deputy Chief of Naval Operations for Logistics, U.S. Navy, testified as follows on the subject of U.S. effective control policy:

"In case of mobilization, we believe those ships will be available. There is a contractual control, based on war risk insurance, but beyond that, there is the fact that they are U.S.-owned in case of mobilization. We believe they would be available for U.S. forces." (Hearings before the Committee on Merchant Marine and Fisheries, Serial No. 95-12)

Similarly, Admiral James L. Holloway III, Chief of Naval Operations, in his policy statement dated March 1, 1978 on the Navy's military and budget postures confirmed that:

"The United States has plans for the utilization of foreign flag ships of the Effective U.S. Control (EUSC) fleet. These are U.S.-owned or U.S. controlled ships of

foreign registry of 1,000 gross tons or more, which are under contract to the Maritime Administration. These can reasonably be expected to be made available for U.S. use in time of emergency."

Thus, the incongruous situation exists today where MarAd officialdom has openly opposed U.S. effective control policy, despite continuing, long-standing support of the policy by officials charged with responsibility for the nation's security. The incongruity is intensified by the fact that MarAd, not the Departments of Defense or Navy, is the lead agency for writing regulations under the war risk insurance program—one of the important underpinnings of U.S. effective control policy.

In offering the following comments, we can only hope that MarAd will put aside its promotional aims in its consideration of proposed amendment 36 and adhere to the two statutory standards for issuing war risk insurance: (1) the interest of the national defense and/or (2) the interest of the national economy.

I. PROPOSED DELETION OF U.S. EFFECTIVE CONTROL REGISTRIES FROM GENERAL ORDER 75 CONTRAVENES NATIONAL SECURITY INTERESTS

The preamble to the second revision of General Order 75 (26 FR 4541, May 27, 1961) explains:

"On November 23, 1959, the Maritime Administrator further found that vessels of Panamanian, Honduran and Liberian registry, when eligible under certain categories hereinafter specifically described, are deemed to be engaged in services which are in the interest of the national defense of the United States. Accordingly, on April 8, 1960, war risk insurance was made available for such vessels provided such vessels remain eligible in accordance with published regulations and also are made available to the United States Government upon request in the event of national emergency, pursuant to an unqualified Contract of Commitment in form prescribed by the Administration, both of these requirements to be warranted in the application, binder and insurance policy."

In proposed amendment 36 MarAd would amend General Order 75 by deleting all references to Panamanian, Honduran and Liberian registries—despite the fact that only vessels under these three registries have been determined by the Joint Chiefs of Staff to be included within the U.S. effective control fleet and thus considered available by defense officials for requisition, use or charter by the United States in time of war or national emergency. (The Joint Chiefs of Staff determinations are detailed in MarAd report entitled "Effective United States Control of Merchant Ships—A Statistical Analysis 1979"). We know of no other registries which the Joint Chiefs of Staff would recognize as eligible for inclusion in the U.S. effective control fleet. (See listing of registries of U.S. effective control vessels in MSC P504A cited above.)

Not only is there no rational explanation or justification for MarAd's deletion of all references to these three registries, but, worse yet, such deletion could produce a very undesirable result in terms of emergency sealift planning. Such a revision in General Order 75 would expand the eligibility of interim war risk insurance to as many as 206 vessels of about 16,500,000 deadweight tons which are controlled by American companies under 18 other registries—including those of the United Kingdom, France, Germany, Spain, Netherlands, Norway, Belgium and Italy. (See MarAd report entitled "Foreign Flag Merchant Ships Owned by U.S. Parent Companies," May 1978). At first glance, permitting U.S. controlled ships under all foreign registries to qualify for interim war risk insurance might seem to be a sound approach, since it would permit a larger number of vessels to be covered by contracts of commitment under the war risk program. However, upon closer examination, such an approach seems very ill-advised.

For example, under propose amendment 36, an American company controlling a French or Dutch flag product tanker under 60,000 dwt. could automatically obtain interim war risk insurance by entering into an agreement to make the vessel available in time of war or national emergency. The French or Dutch government probably would not and could not prevent the American company from executing the contract of commitment with MarAd. However, regardless of the good intentions of the company, a nation such as France or The Netherlands likely would not recognize the commitment when an emergency erupted and would take steps to frustrate the American company's attempt to make the vessel available to the United States at the time when it was needed most. At that time, the interim war risk insurance coverage would automatically terminate because of the American company's inability to comply with its contract of commitment, leaving U.S. defense officials, whose planning was based on the assumption that the vessel would be made available, with no recourse. This is hardly the way to build up a reserve emergency sealift capability.

The same scenario could just as easily develop with any or all of the other registries, other than those of Panama, Honduras and Liberia. This critical distinction between Panlibhon vessels and those under European and other flags, seems to have escaped those who drafted the proposed amendment to General Order 75. Yet this distinction was foremost in the minds of defense officials who developed U.S. effective control policy. For example, in a 1959 Memorandum entitled "Ocean Shipping to Support the Defense of the United States" prepared by the Department of Defense, the following statements are made:

"The term 'Effective U.S. control' applies to selected American-owned ships which have been registered under the so-called 'flags of convenience' (Panama, Liberia and Honduras), in order to reduce operating costs. In such cases, the Maritime Administration has effected agreements with the parent shipping companies in the United States to make these ships available to the U.S. Government in the event of a national emergency. These agreements can be fulfilled without restraint, because the laws of Panama, Liberia, and Honduras do not impose restrictions on the control of merchant ships that fly their flags. These countries have no shipping requirements of their own and they are likely to remain neutral in the event of war. In view of these circumstances, the Department of Defense considers such ships to be under 'Effective U.S. control.'" (Congressional Record, April 25, 1959, at p. 6015)

In the same context, President John F. Kennedy, in a June 29, 1961 press conference, underscored the basis distinction between American controlled ships under the Panlibhon registries and American controlled ships under other foreign registries.

"This is a competitive business and we could very well find, instead of flags of convenience * * * that they could actually put them under flags or have contractual relationships with the British or Norwegians and then we would not have the control in case of a national emergency. * * *"

Perhaps the most penetrating analysis of the basic distinction between American controlled Panlibhon ships and those under other foreign registries, including NATO registries, was made in a 1959 study by the National Academy of Sciences—National Research Council of "The Role of the U.S. Merchant Marine in National Security." In considering the soundness of U.S. effective control under Panlibhon flags, the study cited the following factors:

"The absence of operational control restrictions in the existing maritime laws of Panlibhon governments permits the exercise of effective U.S. control without restraint;"

"The ocean shipping requirements of these small, friendly countries are limited and they would be unlikely to requisition ships for their own use in the event of war;"

"The small Panlibhon countries possess limited capabilities to both operate and maintain sizable merchant fleets. Ships under their flags usually ply the world's trade routes and have rare occasion to put into ports of their registries;"

"Panlibhon countries possess negligible capability to intercept, seize, or protect shipping on the high seas. Consequently, these nations are not in a position to expropriate U.S. property afloat or to dispute U.S. assumption of control over selected shipping;"

"The United States possesses a definite and sizable capability to protect shipping at sea. Thus, the United States has both the power and the intent, in event of a national emergency, to consummate agreements with individual shipowners in respect to designated shipping registered under Panlibhon flags;" and

"* * * U.S. citizen-owned ships registered under Panlibhon flags, for which effective U.S. control agreements exist, would, in the event of a national emergency gravitate towards a United States protective umbrella for self-preservation."

In contrast, the study pointed out that "U.S.-owned ships are registered under nine NATO flags—Belgian, British, Canadian, Danish, Dutch, French, German, Italian and Norwegian. Such registries represent 'flags of convenience,' for practical and economical purposes. However, none of these ships is under effective U.S. control. No agreements exist for making this shipping available to the U.S. government in the event of an emergency."

The study then pointed out that with regard to exercising effective U.S. control, considerations applicable to Panlibhon countries would not apply to the registry of shipping under the flags of other NATO nations for the following reasons: (1) "Most NATO countries are recognized as traditional maritime nations. They have the means and facilities to both operate and maintain a large number of merchant ships;" (2) "their maritime laws incorporate rigid restrictions with respect to ownership, manning and operational control of ships that fly their flags. They possess

some degree of capability to protect or seize shipping on the high seas;" and (3) "NATO nations in general have committed their merchant shipping to a common pool in the event of a NATO war."

On the subject of NATO ships controlled by American companies, the National Academy of Sciences—National Research Council study concluded that: "Without appropriate bilateral agreements to the contrary, approved NATO policy would preclude our taking control of such U.S.-owned ships as may be under NATO flags." The study then warned that: "It is of utmost significance in this connection that the United States must be prepared for emergencies other than a NATO war." (pp. 56-59)

Apart from disregarding the basic distinction between the availability of American controlled Panlibhon registries as opposed to American controlled ships under other foreign flags, the deletion of these registries ignores the significance of the policies and attitudes of these three friendly nations, one of which, Liberia, has gone so far as to recognize and provide for advance approval of contracts of commitment in § 1.41 of the Liberian Maritime Regulations. In fact, just nine months ago President William R. Tolbert of Liberia publicly declared:

"Let me state categorically that Liberia has supported, and will continue to support the effective control policy of the United States Department of Defense. Moreover, I wish to emphasize that Liberia stands willing to cooperate with the United States Government in any way, to reinforce our commitment to its effective control policy."

Thus, we urge that MarAd refrain from substituting its judgment for that of the Joint Chiefs of Staff by leaving unchanged the present language in General Order 75 which recognizes that American controlled vessels under Panamanian, Honduran and Liberian registries can be covered by binding contracts of commitment and thus qualify for interim war risk insurance.

II. PROPOSED ARBITRARY AND UNREASONABLE TREATMENT OF TANKERS IS CONTRARY TO BOTH NATIONAL DEFENSE AND NATIONAL ECONOMY INTERESTS

As a result of MarAd's own compromise suggestion to Congress in response to maritime union pressures, the 1976 amendment to § 1203(a) of the Merchant Marine Act of 1936 provided that "In determining whether to grant such [war risk] insurance or reinsurance to foreign flag vessels, the Secretary shall further consider the characteristics, the employment and the general management of the vessel by the owner or charterer."

In an apparent response to the 1976 Amendment, MarAd's proposed amendment 36 contains a formal determination that certain U.S. controlled foreign flag vessels are in a service "in the interest of the national defense or the national economy of the United States" and thus automatically qualify for interim war risk insurance.¹

As we understand proposed amendment 36, MarAd would exclude tankers over 60,000 dwt.² from automatic interim war risk coverage—unless such tankers were engaged in carrying more than 30 percent of their cargoes in U.S. foreign commerce. Objections to the trade requirement are discussed separately below.

¹ We believe that every U.S. controlled PANLIBHON ship meets this test since each offers a potential benefit either to the national defense or national economy because of its availability in time of war or national emergency. The statutory language supports this view. § 1203(a) distinguishes foreign flag vessels owned by citizens of the United States from foreign flag vessels of foreign ownership, requiring only for the latter group an administrative determination that the service of the foreign vessel is "in the interest of the national defense or the national economy of the United States." The statute implicitly makes that determination for U.S. citizen owned foreign flag vessels. We point out that the 1976 amendment left intact this basic distinction. (Public Law 94-523, 46 U.S.C.A. § 1283(a)). Thus there is no requirement under current law that MarAd formally determine that some or all U.S. citizen owned foreign flag vessels are engaged in a service in the interest of the national defense or national economy.

² With respect to tankers, proposed amendment 36 would provide automatic coverage for "product tankers up to 60,000 dwt." Most persons in the tanker industry probably would consider "product tankers" to be multiple-grade, coated product tankers capable of carrying as many as 20 different grades of so-called clean products (such as gasoline, jet fuel, kerosene, etc.). Conventional tankers are not only capable of carrying crude oil but also so-called "dirty products" such as bunkers and residual and other fuel oils. While these ships are generally not referred to as "product tankers," we are assuming herein that the phrase "product tankers" was intended to include tankers capable of carrying dirty products as well as those designed to carry clean products.

Proposed amendment 36 would also provide automatic coverage for any U.S. controlled foreign flag "ships in short supply in the United States flag fleet" and "other vessels with special capabilities." It is an open question whether conventional tankers are in "short supply" and/or have "special capabilities."

In considering the potential emergency employment of tankers in the U.S. effective control fleet, MarAd seems to have focused only on what it perceives as the direct military needs for tankers³ and has disregarded entirely the broader national security needs as they relate to maintaining the U.S. economy by continuing the flow of vitally needed oil imports under emergency conditions.

The nation's dependence on imported oil hardly needs to be mentioned here. Suffice it to say that over the past twelve months U.S. oil imports have averaged more than 8 million barrels per day. According to government energy officials, the demand could rise to 11.5 million barrels per day by 1985, while the President recently pledged to hold imports to 9 million barrels per day.

These levels of imports translate into a tremendous reliance on tanker transportation. For instance, we estimate that at a level of 8.3 million barrels per day in crude and products, the tanker capacity needed to maintain the flow of imports (including the necessary back-up transportation of crude oil to offshore Western Hemisphere refineries) totals approximately 56,000,000 dwt. of tanker carrying capacity—most of which, because of the volumes and distances involved, would have to be medium size tankers and large size VLCCs.

Because most of the incremental oil available for U.S. imports would have to be transported from distant Middle East sources, an increase in the level of oil imports would sharply escalate the need for tonnage. For example, if the level of imports at 8.3 million barrels per day is raised to 10.2 million barrels per day, our calculations indicate that the tonnage demand would rise from about 56,000,000 dwt. to about 76,000,000 dwt.

Under wartime or other emergency conditions the level of imports would most certainly drop because of rationing and other conservation measures but the demand for tankers would still be substantial. U.S. energy needs are such that even under wartime conditions oil imports would have to be continued for the U.S. economy to function and thus be able to supply vital military and civilian needs. In wartime, the high attrition rate for tankers would probably require the employment of every available vessel both for maintaining the flow of oil and also for providing offshore floating storage.

National emergencies other than wartime conditions must also be considered. A political or military interruption affecting one or more of the petroleum exporting nations could give rise to a national emergency, escalating the need for tankers of various sizes. For example, if the African oil producing nations embargoed oil exports to the United States as the result of a political dispute, or if the OPEC members other than Saudi Arabia imposed an oil embargo in an effort to raise prices, the need for additional tanker capacity, primarily VLCCs, would skyrocket. On the other hand, if military action interrupted Middle East Oil production the need for VLCCs would probably decrease but the demand for medium size tankers would increase.

Not even MarAd can believe that the active, privately owned U.S. flag tanker fleet would be capable of providing emergency coverage under these conditions. Because of its total carrying capacity (about 11,000,000 dwt.) and average size (about 40,000 dwt.), the U.S. flag tanker fleet is not designed to undertake the task of maintaining a meaningful percentage of the flow of oil imports. Today, with the advent of the Alaskan oil trades, most of the subsidized larger tankers capable of transporting oil internationally have been permitted by MarAd to be employed in the domestic trades, where they probably would have to remain during an emergency.

Under emergency conditions the only American controlled tankers readily available for requisition, use or charter by the United States in the U.S. import trades are those flying the Liberian and Panamanian flags. The U.S. effective control tanker fleet totals about 41,000,000 dwt., with an average size about 125,000 dwt. clearly designed for the international oil trades.⁴ Yet MarAd would cavalierly treat all tankers over 60,000 dwt. in this fleet as if they were of no importance to the national security in an emergency—unless, as discussed below, they happened to spend 30 percent of the time in U.S. foreign commerce.

³ The proposed maximum tonnage of 60,000 dwt. disregards Department of Defense testimony that tankers up to 90,000 dwt. may be used for direct military sealift support in some circumstances. (See Hearings before Subcommittee on Merchant Marine of the House Merchant Marine and Fisheries Committee, Serial No. 94-15, p. 9). Ironically, the Assistant Secretary for Maritime Affairs has also testified on at least one occasion that tankers up to 90,000 dwt. are "potentially useful for military support." (Id. at 369)

⁴ On average, half of the U.S. effective control tanker fleet is at any given time laden with 135 million barrels of oil—about 16 days' supply of imported oil for the United States under present rates of consumption.

The illogic of this approach is further highlighted by the fact that proposed amendment 36 would grant automatic interim war risk coverage to American controlled dry bulk carriers regardless of trading patterns and regardless of size. The utility of large dry bulk carriers (today such vessels range in size up to 160,000 dwt.) under wartime or emergency conditions clearly is to maintain the flow of strategic, critically needed iron ore, bauxite and other bulk materials from abroad rather than to serve direct military needs.

It scarcely needs to be pointed out that precisely the same considerations apply to tankers regardless of their size and regardless of their trading patterns. The only distinction is that crude oil and residual and other fuel oils imported from abroad would probably be much more critically needed in terms of maintaining the U.S. economy under emergency conditions than iron ore, bauxite and other ores which can be stockpiled far more easily than oil.

There is no cogent reason for denying automatic interim war risk coverage to each and every one of these American controlled tankers and thus to have them under contracts of commitment assuring their availability for requisition, use or charter by the United States in the event of war or national emergency. Indeed, in analyzing proposed amendment 36 we cannot help but wonder whether MarAd is still trying to promote its oft-rejected oil import cargo preference proposal by deliberately restricting the application of interim war risk insurance to U.S. effective control tankers on the basis of trade and size.

III. THE 30 PERCENT U.S. TRADE REQUIREMENT IS UNREALISTIC AND ILL-ADVISED

We are also struck by the lack of rhyme or reason in the proposal that U.S. effective control vessels (other than dry bulk, refrigerated, heavy-lift and product tankers under 60,000 dwt.) would have to carry 30 percent of their cargoes on a semi-annual basis in U.S. foreign trade in order to qualify for automatic interim war risk insurance coverage. This proposal flies in the face of the statutory language which, as discussed above, differentiates between U.S. citizen owned and noncitizen owned foreign flag vessels. At best, it reflects the same unrealistic "liner" thinking that MarAd unsuccessfully attempted to apply to subsidized U.S. flag tankers and other bulk vessels under the Merchant Marine Act of 1970.

We would like to think that after the experience it has undergone in repeatedly waiving U.S. trade requirements for subsidized non-liner vessels in recent years, MarAd would now understand that such vessels engage in worldwide trading for competitive reasons and generally do not operate on shuttle runs between two or more countries. In our opinion, the proposed "trade" requirement for automatic war risk insurance eligibility has no more relevance of meaning when applied to tankers (or certain other types of U.S. effective control vessels) than it would if applied, say, to dry bulk vessels, refrigerated vessels and heavy-lift vessels—three types of American controlled ships for which, wisely, MarAd would impose no trade requirement.

The irrationality of a trade requirement is highlighted when one considers that under wartime conditions there is a definite advantage in having a worldwide dispersal of tanker carrying capacity rather than having all available tankers clustered into trades with the United States where enemy submarine and missile attacks may, at the onset of hostilities, be concentrated.

Perhaps more important is the consideration that if a future emergency erupts the critical national security factor will not be where tankers may have been trading over the past six months but their location and cargoes at the time the emergency occurs. For example, U.S. effective control tankers which happen to be near foreign loading ports or which are laden with oil that can be diverted from foreign destinations to American ports could be of much greater utility in meeting immediate national security needs than, say, tankers which have completed discharge of their cargoes in American ports and will not return with additional cargoes from the Middle East until completion of round trip voyages lasting more than two months.

The possible examples are endless, but all bear witness to the inescapable conclusion that past trading patterns of American controlled PANLISBON tankers or other vessels have no relevance in determining their utility in a future war or national emergency.

IV. CONCLUSION

We strongly believe that in order to serve the interests of both the national defense and national economy, amendment 36 to General Order 75 should continue to provide that interim war risk insurance is automatically available to all American controlled Panamanian, Liberian and Honduran vessels in the U.S. effective

control fleet. If MarAd believes that the 1976 amendment to § 1203(a) of the Merchant Marine Act of 1936 requires it to make more formal determinations as to specific types of Panlisbbon vessels such as those in proposed amendment 36, then we recommend that tankers of all types (including LNG vessels) should be treated exactly the same as dry bulk cargo vessels, refrigerated vessels and heavy-lift vessels. There should be no artificial and unrealistic limitation based on trading patterns or on size.

Sincerely,

PHILIP J. LOREE, *Chairman.*

NATIONAL MARITIME COUNCIL,
Washington, D.C., October 18, 1979.

Hon. DANIEL K. INOUE,
Chairman, Subcommittee on Merchant Marine and Tourism, Committee on Commerce, Science, and Transportation,
U.S. Senate, Washington, D.C.

DEAR SENATOR: On July 9, 1979, Senator Cannon, at the request of Secretary of Commerce Kreps, introduced S. 1452, a bill to extend the provisions of Title XII of the Merchant Marine Act, 1936, relating to war risk insurance. To date, there has been no action on this proposal. The purpose of this letter is to respectfully request that the Merchant Marine and Tourism Subcommittee, which you chair, begin the legislative process with respect to this measure because the authority of the Secretary of Commerce to provide war risk insurance and reinsurance expired on September 30 of this year.

Title XII authorizes the Secretary of Commerce, with the approval of the President, to provide war risk and certain marine and liability insurance for the protection of merchant vessels, cargoes, crew life and personal effects of the crew and other persons transported on vessels when commercial insurance adequate for the needs of the waterborne commerce of the United States cannot be obtained on reasonable terms and conditions from companies authorized to do business in a State of the United States. Similar authority existed during both World Wars I and II and then expired; but on September 7, 1950, was reenacted as Title XII of the Merchant Marine Act, 1936, for an initial period of five years. Such authority has been extended for four five-year periods and one three-year period.

The necessity for Title XII arises out of the fact that commercial war risk insurance on merchant vessels and crews contain "automatic termination clauses". These clauses provide that, effective upon outbreak of war, declared or undeclared, between any of the so-called five great powers—the United States, the United Kingdom, France, the Soviet Union, or the People's Republic of China—or the hostile detonation of a nuclear weapon of war, such commercial war risk insurance automatically terminates. The events that trigger these clauses may occur while many of the ships engaged in shipping service essential for the maintenance of the waterborne commerce of the United States are far from their home ports. Thus, such vessels are exposed to war risks but deprived of commercial coverage exactly when insurance coverage is most needed.

The long-standing policy of the United States Government to provide war risk insurance to cover ships, cargoes, and their crews, when similar coverage is not extended to industries other than aviation, is based on the greater hazards to which ships are exposed in wartime. Ships range all over the world and are exposed to risks far beyond industries at home which are protected by our military defenses. Ships and their cargoes are pecuniary exposed to war risks which may only remotely affect other industrial establishments.

Recognizing that ships and cargoes cannot move without war risk insurance, many of the major maritime nations of the world (e.g., England, France, Canada, and the Scandinavian countries) provide for continuing coverage when commercial underwriters find it financially impossible to write such insurance. The purpose of war risk insurance then is to maintain the flow of the United States waterborne commerce, including the maintenance of essential transportation services for the Department of Defense.

It should be stressed that when the Government furnishes war risk insurance, it is not a gratuity to the shipowner or the cargo owner. The Government merely steps into a commercial transaction where private underwriters are no longer able to function because of the lack of financial capacities. The best evidence that Government war risk insurance is not a form of aid is the experience during World War II where total premium receipts exceeded, by a substantial margin, losses paid.

Thank you for your consideration of this request.
Sincerely yours,

W. PATRICK MORRIS,
Legislative Director.

SEA-LAND INDUSTRIES, INC.,
Edison, N.J., November 8, 1979.

Hon. HOWARD CANNON,
*Chairman, Committee on Commerce, Science, and Transportation,
U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: Sea-Land Industries, Inc. supports S. 1452—A Bill "To Amend the Provisions of Title XII of the Merchant Marine Act, 1936, Relating to War Risk Insurance,"

We have already, in the 96th Congress, given our support to similar legislation (Sec. 305 of H.R. 4769). This was done in our Appendix to the testimony we gave on H.R. 4769 before the House Subcommittee on the Merchant Marine on 10/17/79.

Sea-Land believes that in time of war risks, the continued flow of waterborne commerce, including essential services for the Department of Defense, is assured by war risk insurance. We have consistently supported this insurance concept and hope the Congress would extend permanently the life of Title XII.

Sea-Land Industries, is located in Menlo Park, New Jersey and is the transportation group of R. J. Reynolds, Inc., headquartered in Winston-Salem, North Carolina. Sea-Land Service, Inc. is our subsidiary and is the world's largest containership carrier with a fleet of 55 vessels that call in 121 ports and 45 countries around the globe.

Sincerely,

CHARLES I. HILTZHEIMER,
Chairman and Chief Executive Officer.

AMERICAN INSTITUTE OF MERCHANT SHIPPING,
Washington, D.C., November 13, 1979.

Hon. HOWARD W. CANNON,
*Chairman, Commerce, Science, and Transportation Committee,
U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: The American Institute of Merchant Shipping (AIMS) is a national trade association whose 28 member companies own, operate, and charter 190 U.S.-flag tankers and other types of vessels in both domestic and foreign commerce. Most of these companies have participated in the Title XII war risk insurance program for many years and thus have a direct interest in the proposed legislation, S. 1452.

AIMS strongly supports this legislation to provide for permanent authority for offering war risk insurance. This program, whose authority expired September 30, 1979, helps to ensure, at no cost to the taxpayer, that vessels are available to the United States in time of war when commercial insurance alone is unable to cover the risks of vessel operation.

Furthermore, it is our view that the program, as currently administered, is unnecessarily restrictive in scope of coverage. We urge, therefore, that all U.S.-owned vessels regardless of size or flag be made eligible, since the broader the participation the better the program in terms of cost and for the U.S. national security. We firmly believe that the paramount consideration in determining vessel eligibility and participation should be whether the vessels concerned will or will not be required by our nation in the event of a true national emergency.

Again, AIMS strongly supports favorable action by the Committee on S. 1452. We would appreciate the inclusion of this statement in the record.

Sincerely,

William M. Benkert, *President.*

COUNCIL OF AMERICAN-FLAG SHIP OPERATORS,
Washington, D.C., November 14, 1979.

HON. HOWARD W. CANNON,
Senate Committee on Commerce, Science, and Transportation,
Russell Building, Washington, D.C.

DEAR MR. CHAIRMAN: This letter is in response to the Committee on Commerce, Science and Transportation's request of October 31, 1979 for written comments on S. 1452, a bill to extend the provisions of Title XII of the Merchant Marine Act, 1936, relating to war risk insurance. The Council of American-Flag Ship Operators welcomes the opportunity to present its views on this legislation.

The Council of American-Flag Ship Operators (CASO) was organized in 1978 by major U.S. flag liner operators to more effectively promote a U.S. built, manned and owned Merchant Marine. The 151 vessels currently operated by CASO members in the foreign trade of the United States were all built in U.S. Shipyards since World War II. This varied fleet of container, barge carrying, ro-ro and break-bulk ships is the world's most modern and efficient.

Our members are all participants in the mutual insurance pool provided by Title XII of the Merchant Marine Act, 1936 as amended (the Act), which gives authority to the Maritime Administration to provide, at no cost to the Government, war risk insurance when commercial coverage cannot be obtained on reasonable terms and conditions. CASO, on behalf of its members, is pleased to record its support of S. 1452, a bill to amend the Act by striking Section 1214.

Title XII was added to the Act on 7 September 1950 (ch 906,64 Stat. 773) for an initial period of five years. There have been five subsequent amendments to Section 1214 of the Act to extend the provisions of this title, the most recent provides for an expiration of the authority on 30 September 1979.

Commercial insurance companies, both in the United States and abroad, are unable to underwrite the concentrated and massive risk to which merchant shipping may be exposed in the event of a major armed conflict. Consequently, all commercial war risk insurance policies presently contain a termination clause, which automatically becomes effective upon "... the occurrence of any hostile detonation of any nuclear weapon of war ... wheresoever or whensoever such detonation may occur and whether or not the vessel may be involved ..." or "the outbreak of war, whether there be a declaration of war or not, between any of the following countries: United States of America, United Kingdom, France, the Union of Soviet Socialist Republics or the People's Republic of China".

The inability of the commercial market to insure this risk is understandable, since merchant shipping, which supports the military and economic logistics of war, is usually a primary target at the outbreak of hostilities. Even if a conflict between the great powers were brief and localized, steamship companies which specialize in serving the geographic area involved would suffer enormous losses.

The war risk insurance program in effect, creates a mutual pool to spread this risk among a large number of vessel operators trading worldwide. Our Government operates as the administrator of this pool. For modest fees it issues binders to U.S. and selected foreign-flag operators to provide war risk insurance effective immediately upon the termination of commercial insurance. During the first 30 days when such binders are in effect, losses are paid by the Government. However, at the end of 30 days, premiums are fixed retroactively on the basis of losses actually incurred and those anticipated. During the entire period Title XII war risk insurance is effective, the Government as the program's administrator, is charged with regularly adjusting the premiums so as to cover all the losses. Thus, the program should cost the Government nothing. In fact, during World War II, when a similar program was in effect, the Government collected an excess of insurance premiums and other credits over amounts expended in settlement of losses of \$127,285,014 (S.Rep. No. 1828, 81st Cong., 2nd Sess., at 5(1950)).

While the program is designed to operate without cost to the Government, Government's role is absolutely vital, for it alone has the world-wide resources to back and administer such a program, particularly during wartime. The requirement for Government cooperation in programs of this sort is illustrated by the fact that other nations, including Canada, England, France and some Scandinavian countries have similar national programs.

It is altogether fitting and proper for the Government to organize this war risk program for our Merchant Marine and not provide a similar coverage for our domestic industries other than our international airlines. The very nature of maritime operations, which require vessels to travel often through hostile waters, places them beyond the immediate protection of our military forces. It is not reasonable to

ask that crews, cargoes and ships serve under such conditions without insurance being made available to them. Domestic industries are not faced with similar perils.

In order to overcome the problems attendant to timely passage of legislation to further extend the authority under Title XII for a certain period, we wish to record our support for S. 1452 which provides permanent authority for the Maritime Administration to issue interim binders for war risk insurance. This action will assure the continuity of insurance coverage in the event of war and eliminates an insurance problem as a basis for interruption of military sea lines of communication or the movement of necessary strategic material.

Accordingly, CASO urges the enactment of S. 1452 as submitted.

Yours sincerely,

ALBERT E. MAY,
Executive Vice President.

NATIONAL MARITIME COUNCIL,
Washington, D.C., November 14, 1979.

HON. DANIEL K. INOUE,
Chairman, Subcommittee on Merchant Marine and Tourism, Senate Committee on Commerce, Science, and Transportation, Russell Building, Washington, D.C.

DEAR MR. CHAIRMAN: This letter is in response to the Committee on Commerce, Science and Transportation's request of October 31, 1979 for written comments on S. 1452, a bill to extend the provisions of Title XII of the Merchant Marine Act, 1936, relating to war risk insurance. The National Maritime Council welcomes the opportunity to present its views on this legislation.

The NMC is a non-profit trade association which represents virtually all segments of the American maritime industry. The position of the Council on S. 1452 was agreed upon by the senior executives of all NMC member U.S.-flag carriers, seagoing and shoreside labor unions, and major shipyards. The Council's objective is to foster the development of a strong, competitive, modern, American-built, privately-owned and operated merchant marine which will afford United States importers and exporters the finest and most cost efficient fleet of commercial ships in the world.

S. 1452, if enacted, would make permanent the authority of the Secretary of Commerce to provide war risk insurance and reinsurance under the terms and conditions set forth in Title XII of the Merchant Marine Act, 1936. The authority of the Secretary to provide such insurance expired on September 30 of this year.

Title XII authorizes the Secretary of Commerce, with the approval of the President, to provide war risk and certain marine and liability insurance for the protection of merchant vessels, cargoes, crew life and personal effects of the crew and other persons transported on vessels when commercial insurance adequate for the needs of the waterborne commerce of the United States cannot be obtained on reasonable terms and conditions from companies authorized to do business in a State of the United States. Similar authority existed during both World Wars I and II and then expired; but on September 7, 1950, was reenacted as Title XII of the Merchant Marine Act, 1936, for an initial period of five years. Such authority has been extended for four five-year periods and one three-year period.

The necessity for Title XI arises out of the fact that commercial war risk insurance on merchant vessels and crews contain "automatic termination clauses". These clauses provide that, effective upon outbreak of war, declared or undeclared, between any of the so-called five great powers—the United States, the United Kingdom, France, the Soviet Union, or the People's Republic of China—or the hostile detonation of a nuclear weapon of war, such commercial war risk insurance automatically terminates. The events that trigger these clauses may occur while many of the ships engaged in shipping service essential for the maintenance of the waterborne commerce of the United States are far from their home ports. Thus, such vessels are exposed to war risks but deprived of commercial coverage exactly when insurance coverage is most needed.

The long-standing policy of the United States Government to provide war risk insurance to cover ships, cargoes, and their crews, when similar coverage is not extended to industries other than aviation, is based on the greater hazards to which ships are exposed in wartime. Ships range all over the world and are exposed to risks far beyond industries at home which are protected by our military defenses. Ships and their cargoes are peculiarly exposed to war risks which may only remotely affect other industrial establishments.

Recognizing that ships and cargoes cannot move without war risk insurance, many of the major maritime nations of the world (e.g., England, France, Canada,

and the Scandanavian countries) provide for continuing coverage when commercial underwriters find it financially impossible to write such insurance. The purpose of war risk insurance then is to maintain the free flow of the United States waterborne commerce, including the maintenance of essential transportation services for the Department of Defense.

It should be stressed that when the Government furnishes war risk insurance, it is not a gratuity to the shipowner or the cargo owner. The Government merely steps into a commercial transaction where private underwriters are no longer able to function because of the lack of financial capacities. The best evidence that Government war risk insurance is not a form of aid is the experience during World War II where total premium receipts exceeded, by a substantial margin, losses paid.

The National Maritime Council believes that the authority of the Secretary of Commerce to provide war risk insurance and reinsurance should not, however, be made permanent. Rather the NMC is of the view that the Title XII program should, as it has been in the past, be extended for a number of years. The Council would recommend a period of five years. This would allow appropriate oversight of the program by those committees of the Congress having jurisdiction over maritime affairs.

Accordingly, the National Maritime Council urges the enactment of S. 1452, with the suggested amendment.

Sincerely,

W. J. AMOSS, Jr., *Chairman,*
Board of Governors.

LABOR-MANAGEMENT MARITIME COMMITTEE,
Washington, D.C., November 15, 1979.

HON. DANIEL K. INOUE,
Chairman, Subcommittee on Merchant Marine and Tourism, Committee on Commerce, Science, and Tourism, U.S. Senate, Rayburn Senate Office Building, Washington, D.C.

DEAR SENATOR INOUE: The Labor-Management Maritime Committee, composed of major steamship lines and maritime labor, supports without reservation S. 1452, which amends Title XII of the Merchant Marine Act of 1936 (46 U.S.C. 1281, et seq.) by striking Section 1214. This places War Risk Insurance on a continuing basis without cut-off date as heretofore.

We respectfully request that this communication be filed as a part of the official record in connection with the hearings on S. 1452.

Respectfully submitted,

EARL W. CLARK,
TALMAGE E. SIMPKINS,
Codirectors.

FEDERATION OF AMERICAN CONTROLLED SHIPPING,
New York, N.Y., November 15, 1979.

HON. HOWARD W. CANNON,
Chairman, Senate Committee on Commerce, Science, and Transportation, Russell Senate Office Building, Washington, D.C.

DEAR SENATOR CANNON: We wish to express our views on S. 1452, a bill which would give the Secretary of Commerce permanent authority to issue war risk insurance. The Federation of American Controlled Shipping (FACS) represents American companies controlling about 85 percent of the 50,000,000 dwt of Liberian, Panamanian and Honduran vessels which would be affected by the legislation.

Title XII of the Merchant Marine Act of 1936 authorizes the Secretary of Commerce to provide war risk insurance for U.S. flag and U.S. controlled foreign flag vessels when commercial insurance cannot be obtained. The purpose of Title XII is to protect U.S. assets and maintain the flow of U.S. waterborne commerce and commercial Defense Department transportation services in the event of war. Section 1214 is a form of "sunset" law under which the authority of the Secretary of Commerce to issue such insurance expires unless renewed. Prior to September 7, 1975, renewals for five year periods were enacted by Congress essentially without question. S. 1452 would provide permanent authority by eliminating section 1214.

Some American maritime union leaders have long felt that the war risk insurance program, under which, in exchange for the insurance, U.S. controlled Liberian, Panamanian and Honduran registered vessels were contractually committed to the

U.S. government for use, requisition and charter in the event of war or national emergency, somehow bestowed a special status on those vessels to the detriment of the U.S. flag merchant marine. Thus, in early 1975 there was considerable pressure mounted on Congress to restrict eligibility for war risk insurance solely to U.S. flag vessels.

On July 17, 1975, we wrote to the Honorable Thomas N. Downing, Chairman of the House Subcommittee on Merchant Marine (copy attached) opposing the proposed deletion of foreign flag ships, pointing out, among other things, that it ignored both the large number of "handy size" tankers in the controlled fleet suitable for direct military support and the contribution the entire controlled fleet would make to maintaining the flow of strategic materials to the U.S. economy. A stalemate resulted.

The program lapsed on September 7, 1975 and was not reenacted until October 17, 1976 following testimony by the Maritime Administration that they would promulgate new regulations substantially restricting (but not eliminating) eligibility for the U.S. controlled foreign flag fleet. In addition, the reenactment provided authority to the Secretary of Commerce for only three years (to September 30, 1979) instead of the five year periods of the past.

The record of MARAD since 1975 has been abysmal. Regulations for the American flag fleet were not published until March 8, 1977. Proposed regulations for the foreign flag fleet were published on June 2, 1978 and the final regulations were not published until November 20, 1978. Thus, in the four years and two months since the program lapsed in 1975, U.S. flag vessels could apply for war risk insurance for only 2-½ years and the U.S. controlled Liberian, Panamanian and Honduran vessels could only apply during a 10 month period. The program has, of course, lapsed again.

We believe that the war risk insurance program is important to the nation and should not be made a political football. We therefore support S. 1452 insofar as it grants permanent authority for the issuance of war risk insurance. We do not, however, believe that the bill goes far enough.

When the war risk insurance program was reenacted in 1976 (Public Law 94-523, Oct. 17, 1976) section 1203(a) of the Merchant Marine Act of 1936 was amended by inserting the following language:

"In determining whether to grant such insurance or reinsurance to foreign flag vessels, the Secretary shall further consider the characteristics, the employment, and the general management of the vessel by the owner or charterer"

Under this authority, MARAD's proposed regulations established a "preference" approach that emphasized participation in the U.S. foreign trades and product tankers of 60,000 deadweight tons or less. Rather than reiterate all the arguments against the trade and size restrictions, we are attaching our July 27, 1978 letter to MARAD which analyzes the impact of the restrictions in detail. Some of our objections were partially addressed when the regulations were finally promulgated but there are still arbitrarily restrictive provisions which have a potentially negative impact on the national interest.

In contrast to MARAD's narrow approach the Department of Defense, in July, 1975, arguing against the deletion of U.S. controlled ships from eligibility, said:

"... in the case of EUSC ships [i.e., U.S. controlled Liberian and Panamanian vessels], war risk coverage serves as an inducement for owners to execute the Contract of Commitment with the United States Maritime Administration for the availability of those ships in time of National emergency. We have previously expressed reservations as to the total availability of these ships, and have indicated that there are very few that possess a capability of direct use to DoD. The EUSC ships do, however, hold a potential to serve the National interest, and the commitment induced by war risk insurance is better than no commitment at all, even though all may not be able to respond in time of need. We have no reasons to believe that a significant number of these ships would not be available."

It is true that MARAD's regulations allow the issuance of insurance for vessels "which would be required in the event of a war or national emergency" in the event that such vessels do not otherwise fit into any of the preferred categories devised by MARAD in its regulations. But this general exception points out the inherent problem in allowing MARAD to determine eligibility on an ad hoc basis. To the best of our knowledge, applications by FACS members for 53 vessels with a corporate expenditure of 2 to 3 man days per application have been sent to MARAD. The fact is that there has been no response from MARAD to any of these applications. The inaction on the part of MARAD probably reflects the fact that 40 of the vessels are VLCCs and require an ad hoc determination under the above exception. This must present a dilemma to MARAD since the agency has freely granted construction

subsidies to build U.S. flag VLCCs (subsidy payments which require a national security determination) and have granted waivers to allow foreign-to-foreign trading of subsidized bulk carriers.

While we can accept the fact that MARAD has the staff and expertise to process the applications, issue interim war risk insurance binders and administer the application fees and revolving fund (some \$6 million at last report) we do not believe that MARAD should determine the eligibility of vessels for the program on a case-by-case basis. Unless the essentially blanket eligibility that existed prior to 1975 is restored, MARAD's restrictive approach will continue to be counterproductive in terms of the best interest of the United States.

In summary, we urge that your Committee schedule hearings on S. 1452 to consider whether the bill should be modified to provide either that the Secretary of Defense establish the eligibility of U.S. controlled foreign flag vessels for war risk insurance or that MARAD's restrictive regulations be removed.

We regret the delay in forwarding these comments to you and request that his letter and attachments be made a part of the record on S. 1452.

Sincerely,

EUGENE A. YOURCH,
Executive Secretary.

TRANSPORTATION INSTITUTE,
Washington, D.C., November 16, 1979.

Hon. DANIEL INOUE,
Chairman, Subcommittee on Merchant Marine and Tourism, Committee on Commerce, Science and Transportation, Carroll Arms Building, Washington, D.C.

DEAR MR. CHAIRMAN: The Transportation Institute, a research and education organization composed of 174 U.S.-flag shipping companies engaged in all aspects of U.S. domestic and international trade, wishes to express its support for S. 1452, legislation to extend the war risk insurance program of Title XII of the Merchant Marine Act of 1936.

In hearings held before the House Merchant Marine and Fisheries Committee during the 94th Congress, you may recall that the Transportation Institute proposed an amendment limiting war risk insurance to American-flag vessels. At that time, approximately 260 American-owned vessels registered under the flags of Panama, Liberia and Honduras were included in the war risk insurance program and therefore comprised the "effective control" fleet of the United States. As we expressed in a letter submitted for the record:

"Effective control is little more than a theory by which the oil companies attempt to justify their non-payment of U.S. taxes and their employment of non-American workers. There is no factual basis for believing that foreign-flag tankers, regardless of who they are owned by are under any control of the United States."

Proponents of the effective control theory advertised war risk insurance to support their contention that foreign-flagged and foreign-manned vessels would be available to the United States in time of war and emergency. We, however, expressed reservations regarding the underwriting of the safety of these vessels which because of the nationality of their crews, disposition of their country of registry or their size, might never be made available to the United States in time of war or emergency.

In response to our concern, the Maritime Administration withdrew the blanket finding made in 1959 that all Effective United States Controlled (EUSC) vessels be eligible automatically for war risk insurance binders. As promulgated in regulations which recently expired September 30, 1979, requests for insurance of EUSC ships, dealt with on a case-by-case basis, have been effective in reducing the number of foreign-flag vessels included in the program. We believe such regulations should be extended and enforced.

In view of the effectiveness of these regulations, the Transportation Institute supports this legislation in order to assure the free and uninterrupted flow of U.S. waterborne commerce on American-flag vessels in the event of an outbreak of war.

We request that this letter be made part of the record on S. 1452.

Sincerely,

HERBERT BRAND, *President.*

SHIPBUILDERS COUNCIL OF AMERICA,
Washington, D.C., December 7, 1979.

Hon. HOWARD W. CANNON,
*Chairman, Committee on Commerce, Science, and Transportation,
Senate Office Building, Washington, D.C.*

DEAR MR. CHAIRMAN: The Shipbuilders Council of America endorses S. 1452, a bill to extend the war risk insurance provisions of Title XII of the Merchant Marine Act of 1936 on a permanent basis. As you are aware, a similar provision extending war risk coverage indefinitely is contained in Section 306 of the "Omnibus Maritime Bill" (H.R. 4769).

The war risk insurance program is of great importance in assuring against interruption of coverage in the event of war among any of the five great powers (United States, United Kingdom, France, U.S.S.R., People's Republic of China) or the hostile detonation of a nuclear weapon. The coverage provided by war risk insurance when commercial war risk policies have automatically terminated ensures against interruption of sea lines critical for the movement of military and strategic material.

It is unnecessary and undesirable for the Congress to undertake a legislative extension of this program every few years. Thus, the Shipbuilders Council strongly supports the initiative of S. 1452 to make the program permanent.

Cordially,

EDWIN M. HOOD, *President.*

TRANSPORTATION INSTITUTE,
Washington, D.C., December 11, 1979.

Hon. DANIEL INOUE,
Chairman, Subcommittee on Merchant Marine and Tourism, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, D.C.

DEAR SENATOR INOUE: We appreciated the opportunity to express our views on S. 1452 pertaining to war risk insurance and the question of whether to make the program permanent. We are writing in response to Senator Warner's solicitation of further views for the record.

We agree with the wisdom of Senator Warner's recommendation that the war risk insurance program be renewed at the earliest possible date.

However, we would like to reiterate our belief that there should continue to be periodic formal Congressional review every five years. This is a belief that was shared by a number of witnesses. As we said in our testimony, we believe that swiftly changing world events make it unwise to undertake permanent programs without regular Congressional oversight. In addition, we think that the awareness of such reviews would tend to assure greater accountability and responsiveness on the part of the bureaucracy charged with the administration of this program.

We would appreciate this letter being made part of the record on S. 1452.

Sincerely,

HERBERT BRAND, *President.*

NATIONAL MARINE ENGINEERS' BENEFICIAL ASSOCIATION,
Washington, D.C., December 11, 1979.

Hon. DANIEL K. INOUE,
Chairman, Subcommittee on Merchant Marine and Tourism, Committee on Commerce, Science, and Transportation, Carroll Arms Hotel, Washington, D.C.

DEAR SENATOR INOUE: I am writing this letter to apprise your Committee of the fact that the National Marine Engineers' Beneficial Association is unequivocally opposed to S. 1452, to the extent that its coverage includes a selected number of foreign-flag vessels. I am, of course, referring to those foreign-registered, but United States-owned ships that are allegedly under "effective U.S. control."

Despite domestic legislation, contractual agreements between the Maritime Administration and the owners of the vessels and other "assurances" of U.S. control, the fact remains that flag-of-convenience countries have, under customary international law, the unquestionable right to control the movements and activities of the vessels registered under their flags. So far as requisition itself is concerned, the rules of international law are much similar. The country of registry has the right, in case of national emergency, to appropriate for its own purposes those ships registered under its flag. Obviously, *its* national emergency and *our* national emer-

gency may not be the same. This reality was brought home dramatically in 1973, during the so-called Yom Kippur War, when Liberia issued an edict forbidding any Liberian-registered vessel from entering the war zone. Had the United States in fact requisitioned any U.S.-owned Liberian vessels, for its own national interest in that conflict, I doubt we could have made the order effective. The facts have not changed in the last six years with respect to either the precedents that exist in international law or third world sympathies.

For the foregoing reasons, extending war risk insurance coverage to these vessels (and their owners whose least concern is our national interest) grants them a benefit for which the United States is guaranteed nothing in return.

Respectfully,

JESSE M. CALHOON,
President.

MARITIME TRADES DEPARTMENT,
Washington, D.C., December 13, 1979.

Hon. DANIEL INOUE,
Chairman, Subcommittee on Merchant Marine and Tourism, Committee on Commerce, Science, and Transportation Carroll Arms Building, Washington, D.C.

DEAR MR. CHAIRMAN: The AFL-CIO Maritime Trades Department, a constitutional department of the AFL-CIO, wishes to express its support for S. 1452, legislation to extend the war risk insurance program of Title XII of the Merchant Marine Act of 1936. The Maritime Trades Department is composed of 42 national and international unions which represent approximately eight million workers.

Title XII of the Merchant Marine Act of 1936, as amended, vests authority in the Secretary of Commerce with the approval of the President to provide insurance and reinsurance against loss or damage by war risks to American vessels and their crews and cargoes when commercial coverage is not available on reasonable terms or conditions.

The Maritime Trades Department supported efforts made in 1975 to reduce the number of foreign-flag vessels in the Federal war risk insurance program. We continue to believe that American-owned foreign registered vessels, the so called effective control fleet, can not be relied upon and therefore should not be enrolled in the program.

As a result of these efforts, the maritime Administration promulgated regulations which considered foreign flag eligibility on a ship-by-ship basis, examining the ship's age and capability, the nationality of its crews, its general management and other relevant factors. Because of this new regulation, the war risk program was extended for three years rather than the customary five. The program expired on September 30, 1979.

The Maritime Trades Department feels that the regulations issued three years ago have been effective in reducing the number of American-owned but foreign-flagged vessels covered under the war risk program. However, S. 1452 makes the Title XII program permanent law. The MTD feels that the program should not be made permanent, but rather extended for five year periods. This would result in periodic review of the program by the appropriate Congressional committees, thus ensuring proper, efficient implementation and operation of the program.

Therefore, the Maritime Trades Department supports S. 1452 with five year extensions of the program.

We request that this letter be made part of your hearing record on S. 1452.

Sincerely,

JEAN INGRAO,
Executive Secretary-Treasurer.

THE SEAFARERS INTERNATIONAL UNION
OF NORTH AMERICA,
Washington, D.C., December 13, 1979.

Hon. DANIEL INOUE,
Chairman, Subcommittee on Merchant Marine and Tourism, Committee on Commerce, Science, and Transportation, Carroll Arms Building, Washington, D.C.

DEAR MR. CHAIRMAN: The Seafarers International Union of North America, AFL-CIO, would like to express its support for S. 1452, which seeks to extend the provisions of Title XII of the Merchant Marine Act of 1936 relating to war risk insurance.

As the members of the Subcommittee know, Title XII authorizes the Secretary of Commerce to provide insurance against loss or damage by war risks with respect to vessels, cargoes, crew life and personal effects, and liabilities related to ownership or operation of the vessels when commercial insurance cannot be obtained on reasonable terms and conditions.

The long-standing policy of the United States government to provide war risk insurance, as embodied in the Title XII authority, is well founded and consistent with the policies of most other major maritime nations. Reauthorization of this provision is absolutely necessary to maintain the steady flow of United States' waterborne commerce, including the maintenance of essential transportation services for the Department of Defense during a national emergency. Historical experience has proven the Title XII mechanism to be critical to the national security interests of the United States, and has clearly demonstrated the economic viability of the program. We would, however, urge that the extended authorization be for a period of five years rather than a permanent reauthorization. This would assist in insuring adequate oversight by the committee of jurisdiction.

The SIUNA has supported efforts in the past to limit war risk insurance to American-flag vessels. While our opposition to the inclusion of foreign-flag vessels continues, we believe the recently expired regulations promulgated by the Maritime Administration, which provide for a case-by-case review of requests for coverage by American-owned, foreign-flag ships, have been effective. These regulations should be extended and vigorously enforced.

Passage of S. 1452 would fill the gap that occurs when vessels are exposed to war risks but deprived of commercial insurance coverage exactly when that coverage is needed most. The Seafarers International Union respectfully urges the Subcommittee to act expeditiously and favorably on this important measure.

We request this letter become part of the hearing record on this legislation.
Sincerely,

CHARLES MOLLARD,
Vice President.

○