

I. INTRODUCTION

The transfer of technology to the Soviet Union and the Eastern bloc countries has been under review by this Subcommittee since early 1974.

On June 11, 1974, Senator Henry M. Jackson, Subcommittee Chairman, introduced an amendment to the Defense Procurement Bill to assure that adequate weight was given to national security requirements in the complex process of assessing and approving export licenses to the Soviet Union and Eastern bloc countries.

On July 19, 1974, this Subcommittee held an executive hearing on the inadequacy of existing U.S. export controls on the shipment of law enforcement equipment to the Soviet Union and the Eastern bloc countries that could be used to tighten totalitarian control over minorities and dissenting intellectuals. The same day Secretary of Commerce Frederick B. Dent appeared before the Subcommittee to testify concerning this matter. His office announced a new policy of requiring validated export licenses on all shipments to the Soviets and Eastern bloc countries of any instruments and equipment useful in crime control and detection.

In May 1975, Senator Jackson directed the Subcommittee staff to begin a review of the transfer of technology involving Maritime matters to the Soviets. Among the issues discussed in this staff study was the December 1974 decision by the United States Government to permit the sale to the Soviets of a unique ship design that was developed in the United States and subsidized at great expense by the American taxpayer. The United States failed to share in the proceeds of the sale. This technology transfer will further enhance the ability of the Soviets to outdistance the United States in Maritime matters. The Soviet

merchant marine, during the period 1946 to 1974 moved from 23rd to 6th place on the list of the major merchant fleets of the world. In contrast, the United States went from first to eighth place over the same comparable period.^{1/}

Peter -
land

^{1/} Soviet Ocean Activities: A Preliminary Survey,
U.S. Senate Commerce Committee report, April 30, 1975, p. 1.

The Subcommittee's Jurisdiction

On March 1, 1974, the 93rd Congress, 2nd Session, adopted Senate Resolution 269, which authorized the Senate Permanent Subcommittee on Investigations of the Committee on Government Operations, to investigate the efficiency, economy of operations of all branches and functions of the Government with reference to the national security aspects of the transfer of technology to the Soviet Union and Eastern Europe.^{1/} Also, under this resolution the Subcommittee is charged with the authority to investigate the efficiency, economy of operations of all branches of the Government including mismanagement and other improper practices. This Subcommittee authority was extended to the 94th Congress by S. Res. 111, adopted March 17, 1975.

1/ (6) The efficiency and economy of operations of all branches and functions of the Government with particular reference to:

(A) The effectiveness of present national security methods, staffing, and processes as tested against the requirements imposed by the rapidly mounting complexity of national security problems:

(B) The capacity of present national security, staffing, methods, and processes to make full use of the Nation's resources of knowledge, talents and skills:

(C) The adequacy of present intergovernmental relationships between the United States and international organizations principally concerned with national security of which the United States is a member: and

(D) Legislative and other proposals to improve these methods, processes and relationships.

The Scope and Purpose of the Staff Study

On March 17, 1975, officials of Lykes Brothers Steamship Company, Inc., of New Orleans, Louisiana, issued a press statement announcing they had reached an agreement with the Soviet Ministry of Merchant Marine to supply the necessary plans and specifications in order for a Finnish shipbuilding company to build two uniquely designed barge ships for the Soviets to be delivered during 1978-79.

The Lykes press statement said "Members of the Soviet delegation inspected the Lykes SEABEE System during the call of the ships at North European ports in 1974, and were highly impressed with the performance of the ships, and particularly the 2,000 ton submersible, hydraulic, stern elevator which loads or discharges two loaded barges simultaneously. After evaluating other barge handling ships, the Soviet Ministry of Merchant Marine selected the Lykes Seabee System as having the capacity and flexibility they desired in meeting the requirements for merchant vessels of this class."

The press statement further indicated the U.S. Department of Commerce had issued a permit for the export of U.S. technical data "following a review of the permit application by the U.S. Department of Defense and other government agencies."

In May 1975, the Chairman Senator Jackson directed the Subcommittee staff to investigate the details of this transfer of technology to the Soviets.

It was established during the early stages of this staff investigation that the Soviet Union had completed in December 1974 an agreement, under a license arrangement, to pay Lykes Brothers in excess of \$1 million to obtain the necessary drawings and specifications to build two SEABEE type barge ships. The agreement also provided Lykes Brothers would be further compensated if the Soviets used the same drawings and specifications to build more than the two ships provided for in the original agreement.

With respect to these drawings and specifications which were made available to the Soviets, staff inquiry established that the U. S. Government had earlier made a substantial financial contribution to their development under our Maritime Administration (MARAD) construction differential subsidy program. In fact, a 1968 MARAD-Lykes Brothers contract which produced these drawings and specifications stated they were jointly owned by Lykes Brothers and the U. S. Government. But the U. S. Government did not participate with Lykes in the proceeds of the sale.

One of the areas of staff inquiry concerned the failure of the Government to share pro rata in this commercial sale as to its financial contribution to the development of these plans and specifications.

It was also alleged prior to the Russian sale, Lykes Brothers in 1973 attempted to charge the U. S. Navy twice what the firm charged the Soviets for the same drawings and specifications. This occurred despite the fact the U. S. Government was to have free access to these drawings and specifications by virtue of our substantial contribution to their development.

These specific issues plus the policy decision by the U. S. Department of Commerce to transfer this technology to the Soviets at a time when the Soviets already have a superiority in Maritime matters vis a vis the U. S. were examined in this Staff Study.

In probing these various issues, the Subcommittee staff examined the records of the Maritime Administration of the Department of Commerce, Bureau of East West Trade, Office of Export Control, Department of Commerce, Military Sealift Command, Department of the Navy and Lykes Brothers Steamship Company.

II. U. S. APPROVES TRANSFER OF TECHNOLOGY TO SOVIETS

Lykes Bros., Request License

On November 18, 1974, W. J. Amoss, Jr., President of Lykes Brothers, wrote a letter to the Office of Export Control, Bureau of East-West Trade, U. S. Department of Commerce, and requested a general license to re-export to the USSR specifications, drawings and other technical data. The data was to be made available to Valmet Oj, a Finnish shipbuilding company that would construct two Seabee type barge carriers for the Soviets under a license from Lykes.

DOD and MARAD Approve Sale

After the Lykes request was received, the Office of Export Administration, Department of Commerce solicited the views of the Maritime Administration and the Department of Defense to see if they objected to the transfer of the data to the Soviets.

Both the Maritime Administration and the Department of Defense had no objection to the action.

Robert J. Blackwell, Assistant Secretary for Maritime Affairs, Department of Commerce, in a letter dated June 24, 1975, to Mr. Howard Feldman, Chief Counsel of the Subcommittee, gave the position of MARAD concerning this matter.

Mr. Blackwell said MARAD had made a determination that it was not contrary to the national interest to transfer this technology to the Soviets. According to Mr. Blackwell, the barge ship concept could easily be copied in some form. He said:

"As barge carriers are now in world-wide service, design details can easily be seen in over one hundred ports around the world

when these ships call at regular intervals.
. . . . Additionally, design details of various
barge ship designs have appeared in the
foreign technical press for a number of years.
Accordingly, details of the barge system are
well known world-wide.

These observations by Mr. Blackwell seem to run counter to
the fact the Soviets thought the Lykes design was sufficiently
unique for them to pay \$1,000,000 to obtain the specifications and
other technical data from Lykes so they could have constructed
two vessels for their own Merchant Marine fleet.

Commerce Department Approves License

On December 12, 1974, the Office of Export Administration,
Department of Commerce, issued a license to Lykes Brothers to
transfer to the Soviets the specifications and drawings and
other technical data for a barge carrying ship of the Lykes Seabee
design.

III. FINANCIAL DETAILS OF SALE

Agreement Reached in December 1974

On December 4, 1974, W. J. Amoss, Jr., President of Lykes Brothers, and I. Avern, Head, Foreign Relations Department, USSR Ministry of Merchant Marine, signed an agreement that Lykes would provide the specifications, drawings and technical data to Valmet Og Shipyard in Helsinki, Finland, to be used to assist them in the design and quoting on the cost to construct two barge carrying vessels for the USSR.

The agreement also stated:

2. Should the Soviet Companies place an order for Seabee type vessels with other shipyards, they will not use or make available the license, know-how, drawings, or other documents without first securing Lykes' consent and making payment therefor.

MARAD Supplies Details

No other mention was made in this agreement as to the amount of financial compensation Lykes would receive for this transfer of technology to the Soviets. However, this information was supplied to the Subcommittee staff by the U. S. Maritime Administration on June 24, 1975.

As the breakdown below indicates, Lykes will receive a total of \$1,007,000 from the Soviets for the bidding plans, specifications and the transfer of the license to construct two Seabee type vessels. For the transfer of the license alone, Lykes will receive \$800,000 in deferred payments.

Payment to Lykes Brothers for Seabee Design

Applicable to sale of original bidding plans and specifications	\$250,000
Reimbursement for out-of pocket cost of updating the bidding plans and specifications	27,000
Transfer of license to construct two Seabee type vessels: 20% of \$800,000 to be paid on date of signing of a contract between Finnish shipyard and Soviet purchaser	160,000
80% of \$400,000 to be paid at time of keel laying of first vessel	320,000
80% of \$400,000 to be paid at time of keel laying of second vessel	<u>320,000</u>
TOTAL	\$1,007,000

In addition, Lykes will be compensated at specified rates for any consulting or technical services that the company may render to the Finnish shipyard relating to the construction of the Seabee type vessels.

IV. U. S. PROPERTY INTEREST IN DATA SOLD TO SOVIETS

Data Developed Under U. S. MARAD Subsidy Program

The evidence developed in the staff inquiry shows that the Government through the U. S. Maritime subsidy program developed the contract plans, specifications and other technical data sold to the Soviets by Lykes. As a result of making a substantial contribution to their development, the U. S. Government obtained a property interest in this data but did not share with Lykes in the proceeds of the sale. The facts surrounding the Government's failure to share pro rata in the proceeds of the sale is covered in a separate section of this staff study.

Three Lykes Vessels Constructed by General Dynamics

In 1968 construction began on the three barge container carrying ships for Lykes under the U.S. Maritime subsidy program. The contract plans and specifications that were sold to the Soviets were developed during the course of the planning and construction of these three Lykes ships.

The ships were built by General Dynamics at Quincy, Mass. under a construction subsidy contract (CDS) MA/MSB-72, between MARAD, Lykes and General Dynamics, dated October 31, 1968.

The three barge and container carrying ships, with their patented design features, joined the Lykes fleet during 1972-73. These ships now regularly serve the trade route between the U.S. Gulf ports and North Europe and the United Kingdom.

Specifications Subsidized under Pre-Contract Design Work

Prior to the beginning of the construction of the three vessels, MARAD paid a total of \$519,168.00 in pre-contract design work to develop the contract plans and the necessary specifications which were then submitted to the shipyard in order for them to make an offer to construct the vessels.

2

Working Plans Subsidized Under Construction Differential Subsidy

In addition to the pre-contract design payments, MARAD paid, as the following figures indicate, a total of \$57,623,679.20 to General Dynamics for the actual construction of the three Lykes vessels under its construction differential subsidy program.

<u>Vessel</u>	<u>Total Cost of Vessel</u>	<u>U.S. Construction Differential Subsidy to Shipyard</u>	
S.S. Doctor Lykes	\$53,610,638.92	\$19,233,970.23	(54.02%)
S.S. Almeria Lykes	35,446,444.89	19,196,156.78	(54.16%)
S.S. Tillie Lykes	<u>35,440,213.87</u>	<u>19,191,552.19</u>	(54.15%)
	\$106,497,297.68	\$57,623,679.20	

The working plans which are the detailed drawings used in the construction phase were subsidized under this contract.

1968 MARAD Contract Reviewed

Due to the substantial financial contribution the U. S. Government made in the development of the design plans that were sold to the Soviets, a review was made of the 1968 contract that produced this data. The contract was examined to see if it spelled out each parties respective rights in the ownership of the contract plans, specifications and working plans.

Article 19(a) of the General Provisions of contract MA/MSB-72 sets out the rights of Lykes Brothers, MARAD and the contractor (General Dynamics) in the technical data developed during the course of the planning and construction of the three Lykes Seabee Vessels.^{1/}

^{1/} Article 19. Rights of owner and Board in Respect to Engineering and Design Data. (a) All design and engineering data furnished to the Contractor by the Owner or the Board shall be the sole property of the owner and the Board as their interests appear. All plans, including working plans (including reproducibles) and such other specified design and engineering data, required to be furnished to owner by the Plans and Specifications, produced by the Contractor in the performance of this Contract, shall be the sole property of the owner and the Board as their interests appear and the Owner and the Board shall have the full right to use the same in such manner as they may deem proper including without limitation to the generality of the foregoing, the right to make reproducibles and copies, the right to publish, or to withhold from publication, and the right to make alterations therein, additions thereto or other changes. Unless prohibited by provision of law relating to the national defense or security, the Contractor shall be permitted to return copies or duplicates of such plans, working plans and data thereof for its own office records. The Contractor shall have no right to sell or transfer such plans, working plans and data, provided, however, the Contractor in the development of other ship designs may utilize information embodied in such plans, working plans and data. With the approval of the owner and the Board, the Contractor may use such plans, working plans and data for the construction of a ship or ships, subject to such payments to the Owner or the Board or both, as may be required by the Board as a condition of such approval. The provisions covering the use by the Contractor of design and engineering data furnished to the Contractor by the Owner or the Board as produced by the Contractor in the performance of the Contract, set out in this paragraph (a), shall not include the right to use any patented data.

Joint Ownership of Data

Under Article 19(a) the government represented by the Maritime Subsidy Board, the Lykes Brothers have joint ownership of the technical data. General Dynamics has only a very restricted right to its use. As Article 19(a) states, the contract plans, specification and working plans are "the sole property of the owner [Lykes Brothers]" is no explanation in the contract as to what is meant by "interests appear."

V. FAILURE OF THE U. S. TO SHARE IN PROCEEDS OF SALE TO SOVIETS

U. S. Sharing in Proceeds Based on Equity

The joint ownership of the data raises the question why this Government did not participate with Lykes in the proceeds of the sale. It would seem logical that the Government should have shared pro rata in the commercial sale consistent with its financial contribution to the development of the data.

Mr. Dudley J. Clapp, Jr., General Counsel of the Military Sealift Command, Department of the Navy, is familiar with this Government's property interest in the data sold to the Soviets. He said the Government should have shared in the sale. ¹

Mr. Clapp made the following statement in an interview with the subcommittee staff on June 16, 1975:

The Government was entitled to share in the proceeds of sale of any plans, contract specifications or technical data which had been developed with financial assistance provided by the Government in the form of subsidy or R&R funds.

Mr. Clapp explained that in the absence of any contractual provisions to the contrary it was a fundamental principle of equity that the benefits emanating from a joint venture belonged to the joint venture and that a sale or other disposition of the product by one party should redound to the benefit of both.

Mr. Clapp said that in such cases a court would impose upon the proceeds of sale an equitable trust for the benefit of all.

Mr. Clapp said the preparation of working plans, contract specifications, and technical data necessary to build the Lykes ships was the result of a joint venture between the Government and Lykes. The retention of the full amount of the proceeds of sale represented an unjust enrichment of Lykes at the Government's expense, Mr. Clapp said.

¹ Mr. Clapp wrote a letter dated February 22, 1973 to MARAD seeking specific information as to the U. S. Government's property rights in this data which was later sold to the Soviets. See p. ___ of this staff study.

MARAD Policy Reviewed

Mr. Clapp said that his reading of the construction contract with General Dynamics and his interpretation of the purposes and mechanics of the Merchant Marine Act of 1936 as amended strengthened his conviction that the Government had a proprietary interest in the data sold to the Soviet Government.

Mr. Clapp said in accordance with the Merchant Marine Act of 1936, the Government subsidizes the construction of ships at amounts ranging up to 55 percent of the capital costs of the ship with the owner paying the remainder of the costs. Although the owner receives a legal title to the ship free and clear of any lien by the Government for the construction subsidy, the Government does retain certain substantial beneficial interests as provided in the Act. For example, Mr. Clapp said, the ship must be used on a specified trade route; if used in the domestic trade, the owner must remit to the Government a proportionate share of the construction subsidy; the ship may be sold only under certain conditions including in some instances mandatory application of the proceeds of sale to new construction; and if requisitioned for title, the requisition price can be based on the owner's investment in the ship.

MARAD Regulations Need Overhaul

Mr. Clapp said the restrictions set forth in the Act upon the owner's free and unfettered use of the ship or its proceeds are all in furtherance of strengthening the U. S. Merchant Marine and represent adequate consideration to the Government for payment of subsidy. What was not contemplated by the Act and not provided for in MARAD regulations was the fact that the plans, specifications, and technical data developed during the course of construction would have a commercial value to interests not in furtherance of the purpose of the Merchant Marine Act such as the sale to a foreign government. In such cases it would have been reasonable to fall back on common law principles

of equity. Mr. Clapp pointed out the plans, specifications, and data represented property interests clearly separable from the ship itself and, therefore, should have been treated as any other property owned by a governmental agency and which can only be disposed of in accordance with statutory provisions providing for the disposition of property.

Mr. Clapp said Article 19 of the construction contract with General Dynamics clearly indicates that both MARAD and Lykes believed that the plans, specifications, and technical data were a valuable property right which belonged to them "as their interests" appear and General Dynamics was severely restricted as to the use it might make of the plans even though in fact its personnel actually developed the working plans and some of the technical data. The interest of MARAD could only have been derived from the fact that it paid approximately 55 percent of the cost of producing the plans and data.

Mr. Clapp further explained that the Lykes ships incorporated several novel features including a unique elevator system. In view of the large financial costs involved in constructing such a ship, it was unlikely that the ship would have been built without a substantial financial investment by the United States Government. In situations where the Government is underwriting the majority of the financial risk which a commercial enterprise would be unwilling to assume on its own, he believes that the patent policy set forth in President Nixon's memorandum of August 23, 1971 has a degree of applicability which should have been followed. Briefly that policy provides that when the Government has funded contracts which have resulted in inventions or discoveries, the Government receives varying economic and property rights in the inventions, depending on the nature of the inventions and the status of the prior art. In some instances the Government is entitled to acquire the principal or exclusive rights throughout the world.

While Mr. Clapp is clearly of the opinion that the data sold to the Soviet Government was the product of expenditures made from the public treasury and therefore vested a property right in the Government, what is not clear to him is the amount of which the Government is entitled nor the impact of the Government's acquiescence in the transaction upon the sale price especially since the sale price presumably included a royalty fee for the use of the patents owned solely by Lykes. In his opinion there is considerable question as to whether MARAD could legally waive its right to share in the proceeds of sale although admittedly it may have prejudiced the amount it may recover by its actions.

Mr. Clapp said there is a need for the promulgation of regulations to cover situations such as this plus the much broader field of improvements and aids to the maritime industry developed through the use of MARAD research and development funds.

MARAD Presents Views

Mr. Robert Garske, Assistant General Counsel of MARAD, was asked by the subcommittee staff why his agency did not share in the proceeds of the Lykes sale to the Soviets. He said MARAD regulations do not provide for the U. S. Government to share pro rata in a commercial sale in a factual situation as occurred in the Lykes case. He added, however:

One can ask as a matter of policy - not
as a matter of legal requirement - whether
there should be some provision for recovery.

In an interview with the subcommittee staff on July 1, 1975, Mr. Garske said he planned to talk to the legal staff of MARAD with a view of discussing whether to recommend to his superior in MARAD changes in MARAD regulations which would provide for recoupment by the Government in commercial sales to cover a situation like that which occurred in the Lykes case.

VI U. S. RESERVED RIGHT TO USE DATA SOLD TO SOVIETS

Data Available in Future Government Projects

During the course of the subcommittee's staff interviews with Mr. Garske concerning the property rights of the Government in the data sold to the Soviets, Mr. Garske said the Government reserved the right to use the data at any time for Government use. He said if the Government decided to construct a vessel or vessels for the U. S. Government, it had free access to use the Lykes design data because of the Government's substantial financial contribution to its development.

This statement by Mr. Garske was confirmed in a letter dated June 24, 1975, addressed to Howard J. Feldman, Chief Counsel of the Subcommittee, signed by Robert J. Blackwell, Assistant Secretary for Maritime Affairs, Department of Commerce. Mr. Blackwell said:

The applicable contracts, in accord with the general United States policy of reserving to the government a royalty-free license to use technical data and inventions developed under a contract, provide that the government has the right to use all design information produced under the . . . Seabee contracts in future projects which the government may pursue.

If in fact this Government did have access to the Lykes design including the drawings and working plans as stated by MARAD, it was apparently ignored by the same agency in 1973.

Facts developed by the Subcommittee staff established that MARAD in 1973 refused to make these same working plans available to the Navy so they could have constructed a ship of the Lykes design for the exclusive use of the Department of Defense. This occurred after Lykes complained to MARAD that they had exclusive proprietary interest in these working plans. Then Lykes attempted to charge the U. S. Navy \$1.2 million to obtain access to the plans. (This was twice as much as they charged the Soviets for the same drawings in 1974.)

Details of this scenario were supplied by Lar Anderson, Assistant Counsel of the Military Sealift Command, Department of the Navy, in a sworn statement submitted to this Subcommittee dated July 16, 1975.

In 1973 Navy Requested Working Plans from MARAD

Mr. Anderson said on November 1, 1972 the Military Sealift Command (MSC) Department of the Navy issued a request for proposals to have one Lykes Seabee ship built and chartered to MSC specifically for Navy use. At the time the request for proposals was issued MSC planned to use the plans for the Lykes vessels that had been constructed by General Dynamics under the MARAD subsidy programs in order to avoid duplication and expensive development costs.

Mr. Anderson said he contacted Mr. Robert A. Garske, Assistant General Counsel of MARAD, in order to ascertain the proprietary interests in such plans. Mr. Garske was very helpful and cooperative during the several conversations in November and December 1972, Mr. Anderson said. Mr. Garske supplied Mr. Anderson with copies of the MARAD/Lykes/General Dynamics contract for the construction of three Seabee vessels.

Mr. Anderson said he and Mr. Garske discussed various sections in the contract which provided that MARAD would pay a construction-differential subsidy equaling 55 percent of the construction cost including development of the working plans. They also discussed the fact that MARAD and Lykes received equal proprietary rights to such working plans and specifications. Mr. Garske indicated general concurrence with MSC's position that the Government owned the plans and that there was no reason why MARAD should not furnish the plans for MSC's use, Mr. Anderson said.

Lykes Objects to Navy Using Data

In early January 1973, Mr. Anderson said, he was informed by Mr. Garske that Lykes had raised the issue of its proprietary interest in the plans with MARAD and that there appeared to be legal questions involved which Mr. Garske was unaware of in these earlier conversations. Mr. Anderson was told by Mr. Garske that the matter was being reviewed at a higher level in MARAD.

Lykes Wants \$1.2 from Navy for Data

Mr. Anderson said at the same time Mr. Hans G. Blocklin, Lykes Vice President, had indicated to MSC representatives that Lykes considered itself to have the exclusive proprietary interest in the working plans and that the matter was being raised with MARAD. Lykes contended that the plans could not be made available to MSC without Lykes consent which would not be given without payment of at least \$1.2 billion, Anderson said.

Mr. E. Scott Dillon, MARAD Assistant Administrator for Operations, sent a telegram to Lykes on January 11, 1973, indicating that MARAD would purchase copies of the plans to MSC and that MSC would notify offerors that the offerors would be responsible for making appropriate arrangements for the right to use the Seabee design for construction. Mr. Garske arranged for Mr. Anderson to receive an information copy of that telegram. Lykes stated its position formally in a letter of January 26, 1973 to Mr. Dillon.

Mr. Anderson said from that time on his conversations with Mr. Garske became somewhat strained, and he was of the impression that Mr. Garske was not responsible for formulating MARAD's position in this matter.

Mr. Anderson said during February and March 1973 he talked to Mr. Garske several times in an effort to ascertain the facts and clarify the government's legal interest in the plans in order to determine MSC's right to use the plans for the construction of a Seabee for the exclusive use of the Department of Defense (DOD).

It was the view of Mr. Anderson, after researching the issue, that if the government had paid for a portion of the cost of developing such plans, then the government, including DOD, had the right to use those plans for "government purposes" which include building a ship to be used exclusively by DOD. ^{1/}

(As indicated earlier when the Subcommittee requested the official view of MARAD on the government's right to use these plans, Mr. Robert J. Blackwell, Assistant Secretary of MARAD, in his June 24, 1975 letter to the Subcommittee, expressed the same view that was given by Mr. Anderson.)

MARAD Supports Lykes Position on Data

In order to obtain a formal record of the government's monetary interest in the plans and certain patents, Dudley J. Clapp, Jr., General Counsel of the Military Sealift Command, requested specific information from Mr. E. Scott Dillon in a letter dated February 22, 1973. MARAD's response of April 6, 1973 was less than satisfactory, Mr. Anderson said, because it indicated that the government had only a limited right to use the plans and that MSC would have to reimburse Lykes for its proportionate cost of developing such plans. ^{2/}

The MARAD/Lykes/General Dynamics contract indicated that both Lykes and the government could use the plans as "their interests appear" and in such manner as they may deem proper. Mr. Anderson said he argued with Mr. Garske that MSC's proposed use of the plans was proper and requested that MARAD so state officially. Mr. Garske made the argument, according to Mr. Anderson, that MARAD acquired an interest in the plans to promote and foster the interests of the American merchant marine and that MSC's proposed utilization of the plans to construct a ship for the exclusive use of DOD appeared to be outside the interest in the plans acquired by MARAD.

1/ Mr. Anderson's superior, Mr. Dudley Clapp, Jr., General Counsel, Military Sealift Command, made the same statement in an interview with Lavern J. Duffy of the Subcommittee staff.

2/ Mr. E. Scott Dillon, now retired, was questioned by Lavern Duffy of the Subcommittee staff on June 27, 1975, about his April 6, 1973 letter to Mr. Clapp. Mr. Dillon was asked why these plans were not made available to the Navy. Mr. Dillon said Lykes may have asserted an interest at the time. He said "you follow the line of least resistance. That is, if they are not going to actually build the ship why go to great lengths about the thing. Let them go ahead and use the plans and specifications for getting bids and if they decide to build the ships, face up to the legal problems involved in it if there are any."

Mr. Anderson said Mr. Garske indicated that MARAD was not prepared to officially support MSC and that once the plans had been purchased by MSC, the matter should be resolved between MSC and Lykes.

MARAD Offers Explanation

Mr. Robert Garske was interviewed by LaVern Duffy, Subcommittee Assistant Counsel, in June and July, 1975. Mr. Duffy asked why these plans were not made available to the Navy so the Navy could have constructed a vessel for the exclusive use of the Department of Defense. Mr. Garske said the objection by MARAD was based on the fact that the Navy would not have legal title to the vessel under the "build and charter" financial arrangement that the Navy was going to use to construct the vessel. Mr. Garske said under such a "build and charter" arrangement the Navy would be merely a charterer of the vessel. Legal title could be in a private party such as a financial institution, he said.

Mr. Duffy pointed out to Mr. Garske that his own organization, MARAD, enters into similar type financial arrangements to construct vessels called a "lease and leverage" arrangement. Under this lease-back arrangement, legal title is also with a private party such as a financial institution and not with the charterers of the vessel. When Mr. Garske was confronted with this point, he could not point out any valid distinction between a "build and charter" arrangement and a "lease and leverage" arrangement.

MARAD Explanation News to Navy

The statement by Mr. Garske that MARAD objected to the "build and charter" leaseback arrangement advocated by the Navy because legal title would be in a private party, was not presented

at any time in discussions with either Mr. Clapp or Mr. Anderson. Both Mr. Clapp and Mr. Anderson said they only recently heard about this position advocated by Mr. Garske. Mr. Anderson, in his sworn statement explained:

I understand that Mr. Garske has stated to you [Mr. Duffy of the Subcommittee staff] that MARAD was unable to support MSC's proposed use of the plan on the basis that MSC's build and charter program would provide for private ownership of the vessel. This position was not stated by Mr. Garske in my discussions with him, but in fact, a contrary position was stated, i.e., that MSC's build and charter program and bareboat charter of the vessel for its useful life would be an exclusive DOD or military utilization which would not foster the interests of the Merchant Marine. Therefore, it was MSC's noncommercial utilization of the vessel that was given as reason for MARAD's lack of support. MSC's letter of 22 February, 1973 stated that the vessel was to be constructed specifically for the exclusive use of the government and if MARAD had raised the question of private ownership MSC would have replied by explaining the government's ownership rights under the proposed bareboat charter management.