Cargo Preference

<u>ISSUE</u>: The Agency for International Development (AID) and elements of the Office of Management and Budget (OMB) have been attempting to pressure the Office of the Secretary and the Maritime Administration (Agency) to issue cargo preference regulations that would allow AID to weaken the statutory requirement to move at least 75 percent of food aid cargoes on US-flag ships by vessel type by geographic area.

<u>ACTION NEEDED</u>: None – For Information Only

<u>BACKGROUND</u>:

- It is the National Policy of the United States to maintain a U.S.-flag merchant marine for the economic and defense security of the Nation (46 USC 50101). The merchant fleet is estimated to save the Department of Defense (DOD) over $13 billion in capital costs and more than $1 billion in annual operating costs since it would cost DOD $52 billion to replicate the global infrastructure associated with our entire merchant fleet.
- The U.S.-flag merchant fleet is subjected to higher regulatory, safety, tax, and labor requirements than their global competitors. The incentive for investors to retain a U.S.-flag merchant fleet and the associated skilled citizen mariners is primarily related to the cargo preference laws.
- At the same time Congress created the food aid assistance acts (P.L.-480) in 1954, they also created the Cargo Preference Act of 1954 (46 USC 55305) to require at least 50 percent of any cargoes financed directly or indirectly by the U.S. Government to be moved on U.S.-flag vessels. In 1970, Congress ordered the Agency to implement regulations governing cargo preference, in an effort to resolve the chaos created primarily by AID's continuing efforts to avoid compliance (46 USC 55305(d)). Regulations were issued in 1971 (46 CFR 381).
- In 1985, the Food Security Act (46 USC 55311 – 55314) removed certain agricultural products from preference but raised the shipment of remaining food aid cargoes to 75 percent in a public-private compromise fashioned by the Administration, the Congress and industry. It also requires the Agency to reimburse USDA and AID for the cost of using U.S.-flag vessels (46 USC 55316).
- Food aid cargoes represent about 30 percent of total preference cargoes and are vital to retaining critical elements of the U.S.-flag merchant fleet and the skilled mariners. However, AID's continuing resistance to compliance combined with the Agency's lack of enforcement authority has resulted in extensive litigation over the years.
- The Agency attempted to update its regulations as required by a 1998 court case but was frustrated by AID objections. In 2008, AID has worked with elements of OMB in an effort to try to force the Agency to propose regulations that would weaken the compliance requirement for both AID and anyone else subject to the law.
- In response, Congress passed legislation in October 2008 that clarifies the Act and also provides the Agency with enforcement authority. The Agency must now issue regulations to implement this legislation.

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