



Hearing Memorandum
November 13, 2015

To: Members, Subcommittee on Livestock and Foreign Agriculture (Agriculture) and Subcommittee on Coast Guard and Maritime Transportation (Transportation and Infrastructure)

From: Committee Staff (Joint)

Subject: Joint Subcommittee Hearing, Tuesday, November 17, 2015

The Subcommittee on Livestock and Foreign Agriculture of the Committee on Agriculture and the Subcommittee on Coast Guard and Maritime Transportation of the Committee on Transportation and Infrastructure will hold a joint public hearing, “U.S. International Food Aid Programs: Transportation Perspectives,” at **10:00 a.m.** on **Tuesday, November 17, 2015**, in room 1300 of the Longworth House Office Building.

Witnesses:

Panel I

Mr. David J. Berteau, Assistant Secretary of Defense, Logistics and Material Readiness, Department of Defense, Washington, DC

The Honorable Paul N. (Chip) Jaenichen, Sr., Administrator, Maritime Administration, Washington, DC

Panel II

Mr. James E. Caponiti, President, American Maritime Congress, Washington, DC

Mr. Philip Shapiro, President and CEO, Liberty Maritime Corporation, New Hyde Park, NY

Captain John W. Murray, President and CEO, Hapag-Lloyd USA, LLC, Piscataway, NJ

Mr. Brian Schoeneman, Political and Legislative Director, Seafarers International Union, Washington, DC

Hearing Purpose:

The purpose of this hearing is to continue the Agriculture Committee’s review of U.S. international food aid programs. Thus far, the Committee has heard from U.S. Department of Agriculture (USDA) and U.S. Agency for International Development (USAID) officials charged with the administration of these programs; the Government Accountability Office (GAO) and the inspectors general from USDA and USAID regarding their oversight of the implementation of international food aid programs; and most

recently, from those who actually grow and process the commodities used abroad, as well as from on-the-ground implementers of emergency feeding and development programs. Now, we will have the opportunity to hear from the maritime industry about its longtime role in the transportation of food aid and how proposed changes to existing food aid programs and cargo preference rules would affect that historic partnership. While the agriculture and maritime communities have worked hand-in-hand to deliver food to hungry people around the world for the past 60 years, the vast majority of government-impelled cargo is military hardware. Now with the volume of military cargo declining, the availability of other government-impelled cargoes has assumed greater significance in sustaining a viable U.S. merchant marine. Tuesday's hearing will explore the intersection between food aid shipping and sealift capacity, particularly that provided by the Maritime Security Program (MSP).

Key Hearing Themes:

Continuing the work started by the Committee this summer to review U.S. international food aid programs, this hearing will build on the following similar themes:

- For more than six decades, the U.S. has played a leading role in global efforts to alleviate hunger and malnutrition and to enhance world food security through international food aid assistance—primarily through either the donation or sale on concessional terms of U.S. agricultural commodities, which is then transported overseas predominantly on U.S.-flagged commercial vessels.
- In 2012, Congress reduced the required share of food aid that must be carried on U.S.-flag vessels from 75% to 50%, and in 2013 the Bipartisan Budget Act of 2013 repealed reimbursements made to USDA for costs associated with the transportation of food aid shipments on U.S.-flag vessels. Furthermore, the Agricultural Act of 2014 (2014 Farm Bill) made several reforms to U.S. international food aid programs allowing for more flexibility to use cash assistance. Even as these reforms are still in the early stages of implementation, many in the food aid community continue to push for additional reform. Some in the agricultural industry are also concerned that additional reforms being developed by USAID—principally a continued shift to less in-kind donations in exchange for additional cash-based assistance—are not being considered in an open and transparent manner. Discussions of any needed changes to food aid shipping should be considered in the context of the next farm bill and should be transparent, involving the agricultural and maritime industries as partners.
- To achieve that goal, the Committee must carefully review and consider the efficiencies and inefficiencies of the programs and practices currently in place while not jeopardizing the long-term support and accomplishments these programs have achieved.

Hearing Recap:

June 24, 2015

Full Committee

Review of U.S. International Food Aid Programs

The purpose of this hearing was to begin a review of current international food aid programs implemented by USAID and USDA. The hearing was the Committee's first in a series of hearings in preparation for food aid discussions that will occur as part of the next farm bill. Thomas Staal, Acting Assistant Administrator from USAID, and Phil Karting, Administrator of the Foreign Agricultural Service, gave an

overview of current programs and discussed the advantages and disadvantages of the manner in which they are currently operated. Members made clear their concerns that food aid reforms being developed by USAID—principally a continued shift to less in-kind donations in exchange for additional cash-based assistance—are not being considered in an open and transparent manner, and as result, the agricultural industry—one of the central partners in the 60-year history of U.S. international food aid—is being excluded from the discussion. Members also made clear that the effects of the reforms made in the 2014 farm bill should be closely monitored before making additional reforms, and that the next farm bill is the appropriate legislative vehicle for future reforms.

July 9, 2015

Subcommittee on Livestock and Foreign Agriculture

U.S. International Food Aid Programs: Oversight and Accountability

This hearing was the second in the Committee’s series to review current international food aid programs implemented by USAID and USDA. Witnesses from the Government Accountability Office (GAO) and the USDA and USAID Offices of the Inspector General testified about their work to monitor the implementation of various food aid projects. The Members and witnesses made clear that efforts have only just begun to evaluate the issues that come with shifting to cash-based assistance, and much more attention to the matter is needed in order to strike the proper balance of in-kind and cash-based assistance made available through the next farm bill.

September 30, 2015

Full Committee

U.S. International Food Aid Programs: Stakeholder Perspectives

The purpose of this hearing was to continue the Committee’s review of U.S. international food aid programs by giving private voluntary organizations, commodity groups, and agricultural suppliers an opportunity to share their experiences regarding the strengths and potential weaknesses of the current slate of international food aid programs administered by USDA and USAID. The hearing helped Members develop a better understanding of the implementing partners’ respective roles in the overall scheme of international food aid, and the witness’ input will serve as a valuable guide for future farm bill negotiations through which the Committee will strive to strike the appropriate balance between in-kind and cash-based assistance.

Background:

Agricultural Cargo Preference (ACP)

Ocean transport of all U.S. government-impelled cargoes—including food aid shipments—is permanently authorized in Chapter 553 of title 46, United States Code, popularly known as the Cargo Preference Act of 1954 (CPA) (P.L. 83-644). This act requires that at least 50% of the volume of U.S. agricultural commodities financed under U.S. food aid programs ship on U.S.-flag vessels. An amendment to the act in the 1985 farm bill increased the cargo preference share to 75% and required the Commodity Credit Corporation (CCC) be reimbursed for the “excess” ocean freight associated with the cargo preference requirement and excessive shipping costs during periodic spikes in shipping rates (called the Twenty Percent Excess Freight (TPEF)). In 2012, the cargo preference share was reduced from 75% to 50% in the surface transportation reauthorization act (MAP-21, P.L. 112-141). The 2012 Act also eliminated the reimbursement requirement for excess ocean freight.

Vessels that qualify to carry cargo preference shipments must be privately owned U.S.-flag vessels that have been registered in the U.S. for at least three years and are crewed by U.S. citizens. The U.S. Maritime Administration (MARAD) monitors and enforces cargo preference compliance.

According to MARAD, cargo preference laws are intended,¹

“...to provide a revenue base that will retain and encourage a privately owned and operated U.S.-flag merchant marine because the U.S.-flag merchant marine is a vital resource providing: essential sealift capability in wartime or other national emergencies; a cadre of skilled seafarers available in time of national emergencies; and to protect U.S. ocean commerce from total foreign domination and control.”

Cargo Preference Implementation Differences: USAID versus USDA

Both USDA and USAID offer tenders for international freight shipping providers in a competitive process, subject to U.S. cargo preference requirements. However, because of differing interpretations of the CPA of 1954, particularly the requirement to apply the cargo preference by geographic area of destination, USAID and USDA implement cargo preference differently. USDA, under judicial order, is applying the 50% U.S.-flag requirement to individual countries.² In contrast, USAID is interpreting geographic areas to be regional country groupings. As a result, USAID is able to substantially increase the portion of food aid awarded to lower-cost foreign-flag vessels, thus helping to reduce its shipping costs relative to USDA. U.S. agencies have not fully updated guidance or agreed on a consistent method for agencies to implement cargo preference, which would allow USDA to administer it using a method other than country-by-country.³

What is the Issue: The debate surrounding ACP is related to concerns about the costs added to U.S. food aid delivery by complying with ACP (costs which are paid by the CCC out of annual food aid appropriations) versus costs to build, maintain, and operate a viable U.S. merchant fleet with military-readiness capability.

Maritime Security Program (MSP)

The Maritime Security Act of 1996 (P.L. 104-239) established MSP, replacing the Operating Differential Subsidy Program established under the Merchant Marine Act of 1936. The MSP provides direct financial assistance to the operators of U.S. owned, flagged, and crewed vessels to make their vessels available to support military sealift during times of war or national emergency. Currently, 13 vessel operators enrolled under MSP operate a fleet of 60 vessels. Each vessel receives an annual operating stipend of \$3.1 million to partially compensate for higher costs under the U.S. flag (i.e., taxes, wages, insurance, maintenance and repair, etc). Language included in the National Defense Authorization Act of 2015 would increase the annual per vessel stipend to \$3.5 million in Fiscal Year 2016.

¹ U.S. DOT, MARAD, “Cargo Preference,” May 21, 2014, at http://www.marad.dot.gov/ships_shipping_landing_page/cargo_preference/Cargo_Preference_Landing_Page.htm.

² For details, see GAO, *Cargo Preference in Food Aid*, GAO-15-666, August 2015.

³ For a detailed discussion of this issue, see GAO, *Cargo Preference in Food Aid*, GAO-15-666, August 2015.

Voluntary Intermodal Sealift Agreement (VISA)

In 1997, MARAD established the Voluntary Intermodal Sealift Agreement (VISA),¹⁸ which permits DOD to reserve space for military cargo on board U.S.-flag commercial ships in the event of war or national emergency. The VISA program is activated in three stages, requiring ship owners to provide increasing percentages of ship capacity to DOD. Prior to activating VISA, however, the DOD would first extend requests for voluntary capacity to VISA participants. At stage three, VISA participants must commit at least 50% of their vessel capacity to DOD, and those with ships enrolled in MSP must commit 100% of the capacity of those ships. Unlike MSP, VISA participants do not receive direct subsidies but are favored when bidding for military cargoes in peacetime. As of October 2015, in addition to the 60 ships enrolled in MSP, 41 ships were enrolled in VISA – the majority of them engaged in domestic (i.e. coastwise trade) service rather than international service.¹⁹

The U.S.-Flag Fleet

The U.S. has three separate U.S.-flag fleets—privately owned domestic, privately owned international, and government-owned—capable of carrying commercial cargo.

The **U.S.-flag domestic fleet** is comprised of privately owned ships and barges that carry cargo and passengers between U.S. ports, including Alaska and Hawaii and most U.S. island territories. Under a 1920 law, which included the provisions commonly referred to as the Jones Act, only vessels under U.S. ownership, built in the U.S., and crewed by U.S. citizens may operate in the domestic coastwise trade. The domestic fleet—often referred to as the “Jones Act” fleet⁴—does not receive direct government subsidies, but benefits by having exclusive access to cargoes such as oil shipments from Texas to the Northeast and goods moving by containership from California to Hawaii. Jones Act ships are not affected by cargo preferences, because the services they provide cannot be offered by foreign-flag ships that are precluded from participating in the U.S. coastwise trade by U.S. cabotage protections.

The **U.S.-flag international fleet** is comprised of privately owned vessels registered under U.S. law that carry cargo and passengers between the U.S. and other countries. U.S.-flag ships in foreign trade must be owned and crewed by U.S. citizens,⁵ but need not be built in the United States. Unlike the Jones Act fleet, the U.S.-flag international fleet faces competition from vessels registered in other countries. The contemporary U.S.-flag international cargo fleet consists of roughly 80 ships, including 37 containerships and 16 ships with roll-on/roll-off ramps to transport vehicles, including military vehicles.⁶ The fleet is owned by 19 different ocean carriers and is crewed by a pool of approximately 3,200 private-sector merchant mariners.

The **U.S.-flag government-owned fleet** includes the Military Sealift Command (MSC), the Ready Reserve Force (RRF), and the National Defense Reserve Fleet (NRDF). The MSC operates a fleet of about 120 ships. Many of these resupply Navy combatant ships at sea or perform missions such as ocean surveillance and submarine tendering. Approximately 50 MSC vessels carry military cargoes in port-to-port voyages similar to those undertaken by commercial ships. The cargo component of the MSC fleet includes oil tankers, containerships, and ships designed to carry oversize cargo, but the most prevalent type is roll-on/roll-off ships. The MSC fleet is mostly crewed by about 6,000 licensed mariners, who are federal civilian employees (known as CivMars). Vessels crewed by CivMars do not plan to sail in combat waters. The MSC fleet does not receive a direct appropriation from Congress but bills DOD for ocean transportation services.

⁴ The Jones Act was included in the Merchant Marine Act of 1920 (P.L. 66-261).

⁵ There are certain exceptions to the crewing requirements. For details, see 46 U.S.C. §8103.

⁶ <http://www.marad.dot.gov/resources/data-statistics/>. The U.S.-flag international fleet may include some seagoing barges but MARAD data does not indicate the number, if any.

The government-owned fleet of cargo ships also includes a reserve fleet of inactive vessels, the RRF, available for military deployment. The RRF consists of 46 ships on standby at various ports that can sail upon either five or ten days' notice. The RRF has a skeleton crew of 460 commercial mariners (10 per ship) but would require an additional 1,200 mariners to sustain fleet operations once activated.⁷ The average age of the ships in the RRF is 40 years, about 20 years beyond the typical economic life of a foreign-flag commercial ship. The RRF consists mostly of roll-on/roll-off ships and is a subset of a larger National Defense Reserve Fleet. Some NRDF ships are ready for scrapping. In general, NRDF vessels are not expected to be called into action on short notice. The government-owned reserve fleet is managed by MARAD in peacetime and by the MSC when activated for military deployment. The reserve fleet is relevant to cargo preference because the U.S.-flag privately owned fleet provides employment for mariners who would be drawn upon to serve on reserve fleet ships when those vessels are activated.

Current State of the U.S.-Flag International Fleet

In 1955, U.S.-flag ships carried about 25% of U.S. foreign trade. Today, their share is around 1%. The U.S.-flag international fleet has shrunk during this time from 1,100 ships to 80 ships (as of August 2015). Sixty of these ships receive annual MSP operating subsidies of \$3.1 million each. In return, the 60 ships are to be made available to DOD in times of war or national emergency. MSP vessels are designated as "militarily useful" by MARAD in consultation with DOD, and are funded from MARAD's budget.⁸

The size of the privately owned fleet fluctuates. As of August 2015 it was about the same size as in 2000, but peaked at 107 ships in 2011.⁹ During the first seven months of 2015, ten ships left and eight ships joined the fleet.¹⁰ A vessel cannot be transferred to a foreign flag without MARAD's approval unless it no longer receives MSP subsidies or is being replaced with an equally capable vessel.¹¹ Ships joining the U.S.-flag international fleet would seek a "registry endorsement" from the U.S. Coast Guard, submitting documentation demonstrating U.S. ownership, among other things.¹² Over 30 of the U.S.-flag ships carrying preference cargoes (about 40% of the fleet) were built before 2000. If preference cargoes were not available, they might be scrapped, as likely being too old to be attractive to a foreign-flag carrier.

About 60% of the 80 ships in the fleet are controlled by U.S. entities owned by four large foreign shipping lines (they are permitted as "documentation citizens"¹³). The ships owned by these entities make up the majority of the vessels receiving MSP subsidies. The largest operator of U.S.-flag international vessels, Maersk Line, which also owns Farrell Lines, owns 27 U.S.-flag vessels. Most of the U.S. owners that are not affiliated with a foreign parent company have small fleets under U.S. flag. Three of them have between five and seven ships each, and about a dozen companies have one or two U.S.-flag ships each. By contrast, the leading foreign-flag containership lines operate hundreds of containerships each, and the largest foreign-flag tanker operators own more than 100 ships each.

It appears that the profitability of U.S.-flag international services is highly dependent on revenues from preference cargos, as many of the operators also use foreign-flag vessels to compete for commercial business. According to MARAD, U.S.-flag carriers face a significantly higher cost regime than do foreign-flag carriers.¹⁴ A U.S.-flag containership in international trade, for example, has a daily operating cost that is more than twice that of a foreign-flag containership (**Table 1**). According to MARAD, the largest cost difference comes from higher wage costs for U.S.-flag containerships.

⁷ Oral testimony of MARAD Administrator Paul N. Jaenichen, House Committee on Armed Services, Subcommittee on Seapower and Projection Forces, Hearing – *Sealift Force Requirements*, July 30, 2014.

⁸ Congress did not act on a FY2002 budget request to transfer funding of MSP from DOT to DOD.

⁹ MARAD; <http://www.marad.dot.gov/resources/data-statistics/>.

¹⁰ MARAD; http://www.marad.dot.gov/wp-content/uploads/pdf/DS_CY15-Flag-Changes-20150821.pdf.

¹¹ 46 U.S.C. §56101.

¹² 46 U.S.C. §12103, §12111.

¹³ 46 C.F.R. §296.10.

¹⁴ MARAD, *Comparison of U.S. and Foreign-Flag Operating Costs*, September 2011, p. 1.

Table 1. Daily Operating Costs, U.S. vs Foreign-flag Containership

Cost Categories	U.S.-Flag	Foreign-flag
Wages	\$14,872	\$2,698
Stores/Lubes	\$1,053	\$2,200
Maintenance and Repair	\$2,866	\$3,237
Insurance	\$959	\$868
Overhead	\$1,444	\$581
Total Daily Cost	\$21,194	\$9,583

Source: MARAD, *Comparison of U.S. and Foreign-Flag Operating Costs*, September 2011, p. 13.

Notes: Wages include basic wages, subsistence, overtime, travel, training, pensions, and union fees.

Outlook for Cargo Preference

Several recent developments suggest that the volume of preference cargo may change in the coming years. U.S. international food-aid policy has been increasing the use of cash payments and local or regional sourcing of food overseas, potentially reducing food aid shipments from the United States.¹⁵ The drawdown of forces in Iraq and Afghanistan has reduced military shipments to these regions. The Export-Import Bank generated about 2% of U.S.-flag freight revenue from government-sponsored cargo in 2011.¹⁶ While the Bank's authorization expired on July 1, 2015, the House and Senate have passed reauthorization bills.¹⁷ The votes in both the House and Senate indicate bipartisan support for the Bank, but the path for its renewal remains unclear. On the other side of the ledger, an increased U.S. military presence in Asia and the Pacific, where voyages between stations are relatively long, could increase demand for U.S.-flag shipping.¹⁸

In recent years, military cargo has accounted for the vast majority of government-sponsored cargo. According to the latest available data compiled by MARAD, in FY2011 military cargo accounted for about 86% of cargo preference tonnage while food aid accounted for 11% and civilian agency cargoes the remaining 3% (**Figure 1**).¹⁹

¹⁵ See CRS Report R41072, *U.S. International Food Aid Program: Background and Issues*, by Randy Schnepf.

¹⁶ Based on FY2011 shipments, the latest year available from MARAD.

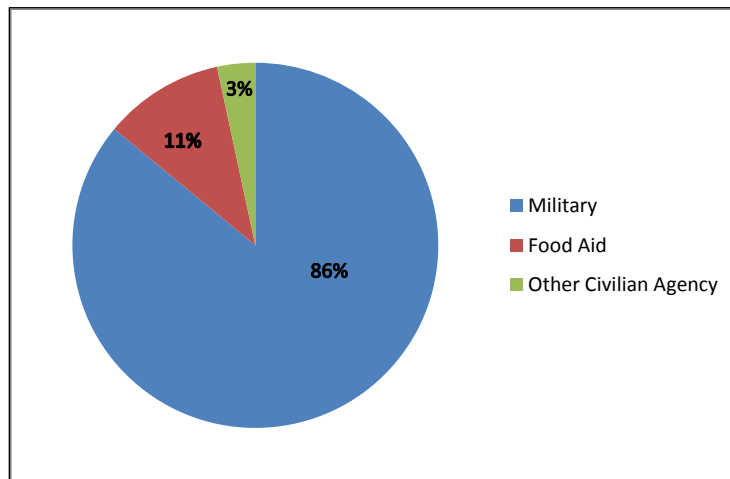
¹⁷ On July 30, 2015, the Senate passed [H.R. 22](#) with an amendment containing a six-year surface transportation reauthorization, as well as a provision (agreed to by a vote of 64-29) to reauthorize the Bank through FY2019. On October 27, 2015, the House voted (313-118) in favor of [H.R. 597](#) which, as amended, is substantively the same as the Ex-Im Bank extension agreed to by the Senate. The House passed [H.R. 597](#) after a numerical majority employed a discharge process in order to secure consideration of the bill without the support of the committee of jurisdiction or party leadership.

¹⁸ Military Sealift Command, *2013-2018 Strategic Plan*, September 2012, p. 14-15; http://www.msc.navy.mil/publications/MSC_StrategicPlan.pdf.

¹⁹ Data on cargo preference tonnage by agency is available in MARAD's annual reports to Congress.

Figure 1. U.S. Government-Impelled Cargo, FY2011

(Metric Tons)



Source: MARAD FY2012 Annual Report (latest available as of Sept. 2015).

Proposals for Reform

There have been numerous proposals surrounding “food aid reform;” most of these proposals would, in effect, reduce the proportion of in-kind food aid and increase the proportion of direct cash food aid. These proposals have been floated by the George W. Bush administration in 2007 (to use up to 25% of Title II funds for local and regional procurement) and by the Obama administration (to change the structure and intent of U.S. food aid, especially Food for Peace Title II, and to eliminate monetization, increase flexibility for local and regional procurement, and reduce the volume of commodities subject to cargo preference.)

Despite additional flexibility added in the 2014 Farm Bill, efforts to further reform food aid have continued. Most recently, USAID has negotiated with the maritime community to provide additional support for the MSP (presumably by diverting \$95 million from food aid) in exchange for their support in converting Food for Peace Title II to 45% cash-based assistance. USAID’s proposal would also reform cargo preference in a manner in which the agency claims will result in \$15 million in savings. Regarding vessel categories, the proposal would amend the Cargo Preference Act to categorize shipments by cargo type (dry bulk, liquid bulk and packaged cargoes) rather than by vessel category. Regarding geographic area, the proposal would allow USAID and USDA to apply the 50 percent cargo preference requirement on a three-region basis. The proposal would also allow U.S.-flag vessels to carry on the first leg of a journey—counting towards the 50 percent cargo preference requirement—and then transfer commodities onto foreign vessels for final delivery. To date, however, the administration has not officially transmitted to the Congress a proposal advocating for these changes.

What is the Issue: There are numerous concerns by many impacted parties regarding the contents of the proposals that have been made public regarding food aid reform—for example, losing broad-based political support; fraud, waste, and abuse associated with cash assistance; and minimizing the number of “tools in the toolbox.” In the current discussion on potential reforms to make food aid more effective and efficient, many agriculture (and some maritime) groups feel they have not had a “seat at the table” and the negotiations have not been transparent. Agriculture and the maritime industry have comprised a central and long-standing part of the history of food aid over the past 60 years and play an important role in providing the commodities needed for in-kind assistance from the United States.