

Final

**DEPARTMENT OF TRANSPORTATION
STATEMENT OF THE MARITIME ADMINISTRATOR**

CAPTAIN WARREN G. LEBACK

**BEFORE THE SUBCOMMITTEE ON MERCHANT MARINE
OF THE COMMITTEE ON MERCHANT MARINE AND FISHERIES**

U.S. HOUSE OF REPRESENTATIVES

**OVERSIGHT HEARING ON FEDERAL AGENCY COMPLIANCE WITH
AND ENFORCEMENT OF CARGO PREFERENCE LAWS**

September 30, 1992

Mr. Chairman, members of the Committee, my name is Captain Warren G. Leback and I am the Maritime Administrator of the Department of Transportation. I appreciate the opportunity to be here today to review and to report on our administration of the requirements for cargo preference in our government maritime trades.

U.S. cargo preference programs are designed to support the privately-owned and operated, U.S.-flag merchant marine by requiring a certain percentage of government-impelled cargo to be carried on U.S. vessels. In 1990, these programs generated \$2.4 billion in revenue to the U.S. fleet and accounted for about one-third of all revenue from U.S.-flag foreign trade cargo. This is a very important program for the ship owners who require

compensation for maintaining a U.S. fleet, and for our nation which needs militarily useful U.S.-flag vessels. As this Committee knows well, the ships that carry these cargoes provide quality jobs for American seafarers.

This is a difficult and pivotal time for the future of our private merchant marine. Vessel owners currently are formulating future strategies and deciding whether to retain any kind of U.S.-flag commitment in U.S. foreign commerce. We must retain and improve our fleet. Its vital role in supporting national security was amply proved during Operations Desert Shield and Desert Storm.

The total volume of cargoes moving under programs subject to preference has been declining.* The quantity of agricultural preference cargo shipped on U.S.-flag vessels totaled 4.1 million metric tons (MT) in 1985. The Food Security Act of 1985 (P.L. 99-198) included the "cargo compromise": U.S.-flag shipping interests traded their entitlement to carry

*** See chart attached to this statement.**

"blended credit" cargoes, in return for increasing the amount of agricultural preference cargo carried on U.S. tonnage from 50 to 75 percent. In 1987, 6 million MT were being moved on U.S. tonnage and yet by 1990, that amount had dropped to 5.1 million MT. The U.S. Department of Agriculture (USDA), Agency for International Development (AID), and MARAD are projecting further declines.

Since 1985, we have seen a decline of 1.1 million MT in our military programs and a decline of 1 million MT in our other civilian agency programs. With the successful conclusion of the Cold War and the resultant draw-down of military staff and equipment, there will be additional significant declines. Moreover, relatively new forms of foreign assistance have been developed that are not subject to the cargo preference requirements (for example, the Export Enhancement Program and Commonwealth of Independent States (CIS) credit guarantees). The industry has also witnessed the loss of some programs because of the legislative insertion of "notwithstanding any other law" clauses, which bar the application of existing

cargo preference laws. This makes close monitoring of cargoes subject to preference essential.

Some time ago, MARAD reviewed its cargo preference oversight functions. We met with vessel owners and shipper agencies to examine the efficacy of our current monitoring and compliance mechanisms. While overall compliance with preference requirements is high, we found several areas where improvement is necessary. Accordingly, we have taken the following actions:

THE ROLLING AVERAGE - Under the "cargo compromise" in the Food Security Act of 1985, a minimum tonnage requirement was established for each year for the application of the new 75 percent requirement. This annual minimum tonnage amount was derived by itemizing the amounts exported under the programs for five fiscal years prior to the current fiscal year, dropping the highest and lowest number and averaging the remaining three years. The current fiscal year exports could not drop below that figure. This requirement could be waived by the President at the request of the U.S. Department of

Agriculture. MARAD was charged with "monitoring" the rolling average.

In the past year, due to the concerns that have been expressed by the industry, I instructed my staff to establish an independent data system to track the minimum average. We currently are setting up that program.

MILITARY HOUSEHOLD GOODS - There has been an ongoing problem of identifying military household goods for purposes of preference. Freight forwarders/agents often do not clearly differentiate such government cargo from commercial shipments. In 1989, MARAD requested that the Military Traffic Management Command (MTMC) include a clause in household goods contracts to require freight forwarders to submit bills of lading to MARAD. They did so. The Household Goods Freight Forwarders Association challenged this requirement, and MTMC then made reporting a voluntary program. Since then, MARAD has received very few bills of lading.

MARAD staff recently met with MTMC in order to try to solve the cargo identification problem. MTMC has agreed to require forwarders to clearly identify military shipments of Department of Defense personal property. A notice to this effect has been submitted by MTMC to the Federal Register. We believe this is a very positive step which will allow prompt identification of cargo mandated for U.S.-flag carriage. It is our opinion that ocean carriers, freight forwarders, or non-vessel operating common carriers (NVOCCs) should not be compensated in the event they fail to comply with cargo preference laws. We will continue to work with MTMC on this issue.

Regarding another issue, MARAD is currently considering its regulations on cargo preference for U.S.-flag vessels, in response to vessel owners' complaints of discriminatory, non-commercial contracting terms in the preference trades. The vessel owners contend that discriminatory contract terms increase U.S. vessel owners' costs and risks. This, in turn, causes higher freight rates and unnecessary expenditure of U.S. Government funds.

Currently, there is inconsistency in contracting procedures affecting U.S.-flag vessels carrying preference cargoes; some programs have uniform charter parties containing few non-commercial terms, while others allow a multiplicity of non-standard, discriminatory charter parties. In view of the unfavorable conditions that now exist for U.S.-flag carriers in the agricultural cargo preference trades, we believe that the establishment of a uniform charter party (or contract) would help to eliminate these problems.

CONCLUSION

MARAD has the obligation to monitor the implementation of cargo preference laws by other government agencies. We view our mandate very seriously. As the statistics disclose, our record of compliance is very high. The U.S.-flag carriage rate for agricultural programs is 75 percent, for military programs it is over 99 percent, and for civilian programs it is 51 percent. I hope that we can focus on the constructive ideas which may come out of this hearing, and I commend the members of this

Committee, particularly the Congresswoman from Maryland, for their continuing support for the cargo preference program.

Mr. Chairman, I will be glad to answer any questions that you or other Subcommittee members may have regarding cargo preference issues.

#

**Chart of Cargo Volumes Moving Under Programs
Subject to Cargo Preference Requirements**

	<u>Agricultural Programs</u>	<u>Military Programs</u>	<u>Other Civilian Programs</u>
1980	2,313,650 * 45.01% **	no data	N/A in this format
1985	4,088,285 50.52%	12,862,557 99.7%	4,107,132 52.7%
1990	5,151,605 74.93%	11,782,923 99.9%	3,118,872 50.8%

* U.S. metric tons.

** Percent of U.S.-flag carriage.