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U.S. flag interests push cargo preference enforcement

In advance of a hearing Monday by the Maritime Administration, USA Maritime, a trade association for the U.S.-flag shipping industry, issued a statement calling for strong support of cargo preference laws reserving government subsidized and guaranteed cargo for U.S.-flag ships.

"The history of cargo preference administration indicates that cargo reservation requirements are often not self-enforcing and strict MarAd oversight is necessary to ensure that the law is followed and its purposes fulfilled across the U.S. government. Now, more than ever, rigorous enforcement of cargo preference requirements is needed to preserve and grow," the group said.

"Without cargo preference, the U.S. government would have to spend far in excess of the cost of cargo preference in direct spending to replicate the national security capabilities of the privately owned U.S.-flag commercial fleet," it argued.

USA Maritime counts both major labor unions, trade associations, and 10 U.S.-flag operators as members, but the unity of the alliance was unclear. Over the weekend, one union member, the Marine Engineers Beneficial Association, had become embroiled in a spat with U.S.-flag vessel operator Liberty Maritime Corp. which decided to hire officers from a rival union.

USA Maritime said cargo preference was needed both to sustain a privately-owned U.S.-flag commercial fleet and to employ a pool of trained U.S. merchant mariners.

"Absent cargo preference, it is no exaggeration at all to say that the U.S.-flag fleet in foreign commerce would disappear and the U.S. government would have to duplicate that seafit capability at enormous expense with government-owned vessels," the group said.

USA Maritime said "all too often, cargo preference is either not complied with at all or applied in a way as to make it ineffective."

It complained that the U.S. Agency for International Development (USAID) "has undertaken procurements in the billions of dollars in Iraq, Afghanistan and Pakistan and has routinely avoided cargo preference when ocean transportation was involved.

"Numerous cargo preference waivers have been granted by USAID for shipments without USAID involving MarAd in the waiver process or canvassing the U.S.-flag carriers to validate assumptions that no U.S.-flag service was available. Had either MarAd or the carriers been involved, they would have had the opportunity offer service for the shipments."

The group also said the U.S. Department of Energy issued billions of dollars of loan guarantees and avoided cargo preference throughout until the industry prompted MarAd to take a stand on the application of cargo preference."

USA Maritime made several recommendations, including requests that MarAd:

- Fill open senior cargo preference positions as soon as possible, saying both the director of the Office of Cargo Preference and Domestic Trade and associate administrator for Business and Finance Development "have been vacant for months."
- Improve cargo preference information collection and dissemination efforts, saying MarAd currently does not maintain up-to-date publicly available information on cargo preference compliance.
- Step up efforts to enforce cargo preference in general. "MarAd is the agency charged by law with overseeing other agencies' compliance with cargo preference. Only MarAd can ensure that the cargo preference laws are adequately enforced and that the purpose of those laws is fulfilled." —

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Calls for strict enforcement of cargo preference

A parade of shipping executives and union officials called for maintaining and strictly enforcing the nation's cargo preference laws at a public meeting on Monday in Washington with officials from the U.S. Maritime Administration.



Speaker after speaker said cargo preference for government-impelled cargo would become even more important as the wars in Iraq and Afghanistan wind down, noting the military has been a major source of cargo for their ships over the past decade.

Maritime Administrator David Matsuda said the purpose of the meeting was to get industry input as the agency develops a rule "that will govern how we implement cargo preference laws moving forward."



Matsuda

He said the "importance of U.S. flag fleet is undeniable as is the importance of cargo preference to sustaining that fleet," but added "it might be that the way that it is implemented can be subject to improvement."

In an interview after the hearing, Matsuda said "cargo is king. If there is no cargo, there is no fleet, and if there is no fleet, that is a problem."

Bill Kenwell, senior vice president and chief commercial officer of Maersk Line Ltd., testified on behalf of the USA Maritime Coalition, and said without cargo preference the U.S. commercial fleet would not be available for national security or moving humanitarian aid.

The coalition has called for amending cargo preference regulations to implement a 2008 amendment enacted by Congress that it says provides MarAd with new authority. For example, MarAd could fine persons that violate the cargo preference laws and direct agencies to transport cargo in U.S.-flagged vessels not otherwise subject to cargo preference to make up for cargo that was improperly shipped on foreign ships.

USA Maritime also wants MarAd to appoint a director of cargo preference and an associate administrator job that it says have been vacant for months and improve the collection and dissemination of information about cargo preference.

Cargo preference was "a highly cost efficient means of obtaining sealift capabilities that are vital to our nation's national security," said Kenwell.

Eric Mensing, the chief executive officer of APL Maritime, said he did not see the need for substantive revision of existing regulations and would not advocate a "major rewriting of what is already on the books."

Instead "better accountability and tougher enforcement are key areas where MarAd should focus its efforts. Sadly, we are convinced that shipments that should be subject to cargo preference are frequently slipping through the system."

He said this happens for a variety of reasons, including a lack of visibility into the supply chain, lack of familiarity with cargo preference rules and, in some cases, willful evasion of the obligation to use U.S. ships and "disinterest or outright hostility to cargo preference by some shipper agencies."

Augustin Tellez, executive vice president of the Seafarers International Union, complained that while industry recognizes the growing importance of non-defense cargo to the U.S.-flag fleet "we have not seen an equal recognition on the part of MarAd and this administration. If I had to sum up my feelings about the administration's performance in cargo preference matters in one word that word would be 'frustration,' and I am being generous," he said.

He said three years ago Congress passed revisions to cargo preference

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laws that provide for penalties for those in government who "flaunt" cargo preference laws, but regulations implementing those changes have not been implemented.

He complained the Energy Department had engaged in a long debate with MarAd about cargo preference, "but all that changed was a slight modification to the DOE Web site. Meanwhile the cargo has long since sailed."

Will Terrill, vice president of U.S. flag services at Intermarine, said even after that change, wind turbine components for the Record Hill wind energy project in Roxbury, Maine were carried to the United States on foreign-flag ships in violation of U.S. cargo preference laws.

"Without cargo preference and without consistency and oversight, there would be no U.S.-flag fleet," he said. "Consistency is necessary to sustain encourage investment in the U.S. flag."

Tellez also said the U.S. Agency for International Development issued waivers for aid going to Iraq and Afghanistan without contacting MarAd and U.S.-flag shipping companies resulting in further cargo "leakage."

He complained that MarAd is not effectively handling its statutory responsibility to oversee cargo preference laws.

"We don't need any more working groups, studies, power point presentations or conferences," he said. "We need action. Cargo preference laws work when they are properly enforced."

Bruce White, a policy advisor for Catholic Relief Services, was the one voice at the hearing that raised questions about the cargo preference program, noting his group's concern was "that the resources available to help the suffering from hunger are maximized. In terms of cargo preference, our issue is that if U.S.-flag carriers are more expensive than the world market rate and then food aid programs should be reimbursed in a fair and timely manner."

He said the history of cargo preference "does not paint a very pretty picture" citing in the past there has been a lack of transparency and shortfalls and delays of up to eight years in reimbursements that relief organizations get for using U.S.-flag carriers.

Denise Krepp, the chief counsel at MarAd, said the administration is devoted to transparency and she believes the agency is now close to being up-to-date on those payments. — **Chris Dupin**

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