

**Response of
USA Maritime
To Testimony of Matthew Nims, Office of Food for Peace
Dated October 19, 2017 Before the
United States Senate Foreign Relations Committee**

1. Mr. Nims: *“While not in our agency’s purview, it’s our understanding that Cargo Preference is a policy intended to address the desire to have a U.S.-flag commercial fleet with enough vessels and qualified mariners to meet our military sealift requirements.”*

Response: The statement is only partially accurate. Cargo preference is not just a policy, but a collection of Federal laws applicable to all Federal government cargo shipments. The purpose of the Merchant Marine Act and related statutes is to provide national security, firstly by supporting US commerce, and secondly by providing sealift capacity for use in wars or emergencies such as the recent wars and hurricane relief efforts. The need for a national merchant marine goes beyond just carrying military supplies to the battlefield. It contemplates that American commerce, which is deeply dependent upon imported goods and exports overseas, must never be held hostage to foreign interests or global politics (as happened, for example, during World War I). Mr. Nims is correct that the policy basis for cargo preference laws is not within his agency’s purview. USAID should defer any questions relating to cargo preference laws to MARAD.

2. Mr. Nims: *“[[I]n FY2017, we did not receive a single offer for a U.S. flag vessel for over 253,620 metric tons.”*

Response: (i) As Mr. Nims himself testified, the requirement to ship US flag only applies when such vessels “are both available and offered at fair and reasonable rates.” So, if no offer was provided, USAID could have shipped foreign flag. (ii) Past experience shows that, irrespective of whether additional US-flag tonnage is available, USAID generally will only ship the bare minimum on US-flag. So, even if more US-flag offers had been received, USAID likely would not have taken them. USAID’s bulk cargo was shipped only 52% US flag, packaged cargoes only 50% US flag in FY 2017. USAID’s cargo preference compliance numbers are inaccurate because when USAID ships on foreign-flag vessels in the event US-flag vessels are not available, USAID does not count those shipments as having shipped under foreign flag, or at all for that matter. USAID’s published Cargo Preference Compliance Status dated September 30, 2017 for Title II bulk does not account for approximately 233,630 MT moved by foreign-flag vessels, further distorting the actual percentage of such cargoes moved by US-flag vessels and USAID’s alleged compliance.

Actual total tonnage moved was 993,640 MT, however USAID accounts for moving only 760 MT. According to USAID's published Cargo Preference Compliance Status dated September 30, 2017, US-flag vessels moved 69.4% of the total bulk cargo shipped under Title II, when the actual percentage is 52% as stated above. USAID misrepresents its level of compliance with the cargo preference law.

3. *Mr. Nims: "[M]easured by volume, the majority of food assistance shipped on U.S. flagged vessels is done through only four ships, which can sometimes contribute to USAID's challenges to respond, particularly in emergencies."*

Response: (i) USAID is responsible for competitively awarding cargoes to US-flag vessels, particularly in light of the Agency's position that it is exempt from transparent cargo bidding and award requirements such as the Competition in Contracting Act which applies to all other Federal procurements. (ii) To the extent USAID asserts that it is forced to award where only four vessels are bid, we refer to Mr. Nims' testimony that US-flag cargo preference only applies where vessels are both available and offered at fair and reasonable rates, and to the fact that USAID has the option to ship half of all cargoes on foreign-flag vessels. (iii) As detailed in the foregoing response, the decrease in US-flag vessel availability -- down from over 100 to 78 internationally trading vessels in the five years since cargo preference requirements were reduced -- is the direct product of decreased government cargo availability. To counteract this and expand the fleet, USAID should begin immediately shipping on US-flag vessels whenever they are available. (iv) USAID's Division Chief of Transportation has developed an antagonistic and counterproductive relationship with MARAD and partners in the US-flag community, and often fails to work cooperatively with them. Better cooperation by USAID would increase its efficiency and ability to ensure improved US-flag vessel availability and efficiency of program operations.

4. *Mr. Nims: "Another obstacle is a lack of regular direct shipping services to certain regions. Food for Peace destinations and U.S. flag vessel routes are not always well-matched, as regular U.S. flag services do not exist for most of our destination ports directly, which requires that USAID rely on a hub and spoke system to deliver our food aid."*

Response: (i) As Mr. Nims states, the requirement to ship US flag only applies when such vessels "are both available and offered at fair and reasonable rates." Therefore, if US-flag service is not available, USAID is able to ship with foreign-flag vessels, and it often does. (ii) For many USAID destinations, there is no direct service and therefore "hub and spoke" delivery will be the case irrespective of whether the service is US or foreign-flag. Hub and spoke type deliveries are normal commercial practice under any flag and in similar trades as food commodities. (iii)

USAID has the option, and often does, ship a combination of US-flag and foreign-flag service for a given cargo where there is no fully exclusive US-flag service to that destination. (iv) Even though this is true, USAID transshipped only 6% of its cargoes via relay ports and, therefore, this is a red herring. (v) USAID's increasingly anti-commercial contracting terms cause less interest by Owners of all vessels, regardless of flag, to participate in the USAID food aid programs, which reduces competition and vessel availability and leads to increased costs. (vi) USAID makes little or no effort to actively engage US-flag carriers for reducing costs and working in partnership. USAID market awareness and efficiency would be significantly improved if it conducted market surveys regarding vessel availability on an ongoing basis -- a practice utilized by the Defense Department -- to enhance transparency regarding upcoming agency shipments. (vii) Finally, USAID always has the option to charter a ship, be it foreign or US-flag, for direct service to the desired port. USAID often uses this option when there is no direct US or foreign flag service available, making Mr. Nims comments inaccurate. In fact, most foreign vessels are fixed spot on a tramp voyage basis just like US-flag vessels.

5. *Mr. Nims: "Food for Peace pays substantially more per metric ton for U.S.-flag vessels compared with foreign-flag vessels. This cost differential has significant impacts on programs, in particular for humanitarian operations already struggling to keep pace with unprecedented levels of global hunger. Cargo preference requirements mean that we pay millions more for ocean freight out of the annual Food for Peace program budget."*

Response: (i) As Mr. Nims states, the requirement to ship US flag only applies when such vessels are "offered at fair and reasonable rates." Therefore, if the rates are not fair and reasonable, a resort may be to use foreign-flag carriers, which USAID does often. (ii) Shipping on US-flag vessels instead of foreign competitors costs Food for Peace less than 1% of the program budget.¹ In fact, *all* of Food for Peace's expenditures on ocean freight—foreign and US-flag shipping combined—consume only 8.2% of the Food for Peace program budget—compared with the 60.2% of the program that USAID spends on overhead items other than commodities, ocean freight, and inland transportation.² (iii) Owners have repeatedly approached USAID's Division Chief of Transportation with great concern to discuss the additional unnecessary clauses now being placed in freight tenders, which significantly increase the cost per ton to the US Government. These clauses place an open-ended financial

¹ United States Government Accountability Office, Report No. GAO-15-666 at 15 (Aug. 2015).

² United States Agency for International Development Response to Questions for the Record, *Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations for 2015: Hearings Before a Subcommittee of the Committee on Appropriations, House of Representatives*, Part 5A at 1234 (fiscal year 2015 latest available data).

liability onto the Owner for situations which are completely outside of their control and they must include this risk in the form of an increased freight rate to cover their liability. If these restrictions were removed, USAID would realize significant savings on ocean transportation for both US and foreign-flag vessels. (iv) The statement completely ignores the much larger savings to the US taxpayer because the Department of Defense can rely upon the commercial fleet supported by cargo preference requirements. The cost to replicate this capacity is approximately \$13 billion in vessel capital costs and over \$1 billion annually in operating costs. (v) The statement also ignores the leadership role that the US-flag community takes in advocating for and supporting the Food for Peace budget before Congress and the additional funds available to USAID, a result which more than compensate for any cargo preference premium needed to support our national defense sealift fleet.

6. *Mr. Nims: "In FY 2017, we made a number of food shipments to Ethiopia on U.S. flag vessels, at an average cost of \$100 per metric ton. Towards the end of the Fiscal Year, however, we were informed that prices had gone up to \$135/MT, though there had not been any significant market changes. We had no choice but to accept the offer, given the incredible need in Ethiopia, but it cost an additional two million in U.S. taxpayer dollars."*

Response: (i) As Mr. Nims states, the requirement to ship US flag only applies when such vessels are "offered at fair and reasonable rates." Therefore, if the prices actually were unreasonable, USAID could have, and often does, ship foreign flag. (ii) The data is not accurate. USAID's first shipment of the year contracted at \$139.48 / MT, its last at \$136.81 / MT, with the cheapest shipment during the year being \$131.73 / MT. The rates were never at \$100 / MT as stated. The average full berth term freight rate to Djibouti in 2015/16 was \$128.44 / MT and the average price in 2016/17 was \$145.45 / MT; a difference of \$17.01 / MT. The increase in freight rates are explained by the following conditions: (a) the terms of the freight tenders for cargo destined for Ethiopia have dramatically changed in the past year, USAID introduced new risks and costs for Owners which must be factored into rates offered; (b) USAID transportation did not take advantage of full vessel capacities; shipping on part-cargo basis which required the allocation of vessel operating costs to fewer tons of cargo; (c) fuel costs in 2015/2016 were at 15 year historic lows, which was not true a year later. None of these factors are attributable to US-flag operators.