

A Critical Analysis of  
“International Food Aid and Food Assistance  
Programs and the Next Farm Bill”  
In Defense of  
The United States Merchant Marine

May 2018



<http://www.usamaritime.org>

*It is our U.S.-flagged merchant fleet and our mariners that ensure that our Soldiers, Sailors, Airmen and Marines are supplied. From Inchon to Iraq, our mariners and our maritime industry delivered . . . Let us not, as a nation, sign away our remaining sealift capacity to non-U.S.-flagged fleets sailed by non-U.S. mariners.*

Rear Admiral Thomas Shannon,  
Commander, Military Sealift Command, 2015

## **EXECUTIVE SUMMARY**<sup>1</sup>

“International Food Aid and Food Assistance Programs and the Next Farm Bill” released by Professor Christopher B. Barrett, Stephanie Mercier, and Erin C. Lentz in October 2017 (“*Barrett Paper*”), argues for an end to the cargo preference system which currently sustains America’s merchant maritime fleet and sealift capacity. In attempting to bolster the argument to end the use of in-kind, U.S.-sourced food in Federal foreign assistance programs, the Barrett Paper undermines the political partnership among the agriculture, port, intermodal, milling, and maritime industries in the United States which have supported our nation’s flagship foreign food assistance programs in good times and bad for sixty years. The Barrett Paper is the latest attempt to misrepresent the importance of America’s merchant marine and fails to appreciate the need to avoid dependence on foreign vessels in times of crisis, which has been a consistent requirement of the United States Government since the birth of the Republic.

The Barrett Paper makes a number of erroneous statements and misleading claims. It argues that the cost of cargo preference exceeds the benefits it provides, and that the sealift capacity supported by cargo preference could be easily replicated with government-owned assets and more government employees. **The facts:**

1. Cargo Preference is a great deal for American tax payers. The Department of Defense (“*DOD*”) estimates that it would cost \$13 billion to replace U.S. vessel capacity alone, not counting intermodal capabilities, and an additional \$1 billion annually for operation and maintenance.

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2. The Barrett Paper fails to take into account both the direct cost of the changes it proposes and the indirect costs that would result if cargo preference was repealed, given the benefits it brings to the wider economy including tax revenues, jobs, and savings for other programs.
3. Employing U.S. mariners sailing under the U.S. flag imposes an additional cost of only \$8.8 million per year on the Food for Peace program—less than 1% of the program’s budget.
4. When cargo preference requirements for the food aid programs were slashed by a third in 2012, food aid shipping costs for the U.S. Department of Agriculture did not decline at all, and the U.S. Agency for International Development’s costs experienced a minor reduction.

The Barrett Paper argues that food aid moved under cargo preference laws is primarily “moved on vessels deemed by the [U.S. Government] not to be ‘militarily useful.’” **The facts:**

1. It is the Voluntary Intermodal Sealift Agreement (“VISA”) program that governs sealift readiness and provides the proper yard stick of “militarily useful,” not the Maritime Security Program as the Barrett Paper claims.
2. Vessels trading in the food aid programs under cargo preference fully meet the Defense Department’s requirements for “militarily useful” vessels.
3. Our nation’s sealift demands require a core fleet capable of sustaining the flow of foreign commerce. To do this, a wide variety of vessel types and other shipping assets are required, not just vessels for the carriage of military cargoes as Barrett suggests.
4. As even the Barrett Paper concedes, cargo preference provides an essential pool of U.S.-citizen mariners necessary to man the commercial fleet and organic Defense Department sealift assets in times of war and national emergency.
5. U.S.-Flag ships carrying food aid provide jobs for mariners, and it is those mariners who are the most critical part of the merchant marine that programs like cargo preference have been developed to support.

The Barrett Paper, while conceding the shortage of essential mariners, incongruously argues that the mariner pool may still be sufficient to meet sealift requirements. **The facts:**

1. Numerous Defense Department and U.S. Maritime Administration (“MARAD”) officials have gone on record indicating that the current mariner pool is insufficient to sustain a conflict overseas, as cited in detail herein.
2. The mariner numbers relied upon by the Barrett Paper are mis-cited and inaccurate as indicated even in the sources relied upon by the Paper’s authors.

The Barrett Paper suggests that food aid cargoes moved on U.S.-flag ships are not important to maintaining the U.S.-flag fleet. **The facts:**

1. DOD and MARAD authorities have repeatedly stressed the importance of these humanitarian assistance cargoes to the maintenance of a strong sealift fleet, as cited below.
2. These humanitarian assistance cargoes are the largest single source of preference cargo, which we can leverage toward ensuring the continued availability of the fleet.
3. When cargo preference was slashed by a third in 2012, the United States rapidly lost a quarter of its internationally trading sealift fleet.

The Barrett Paper argues that all of the benefits of cargo preference go to owners, most of whom are foreign, and none of the benefits accrue to the mariners sailing under the U.S. flag. **The facts:**

1. Only U.S. citizens or entities controlled by U.S. citizens can legally document vessels under the laws of the United States as implemented the U.S. Coast Guard.
2. As the Barrett Paper incongruously concedes, U.S. mariners receive compensation which is multiples higher than most mariners sailing under other flags. This is inconsistent with the Barrett Paper's argument that the entire benefit of cargo preference goes to owners – much of it goes to the mariners themselves in the form of wages, training, and benefits, further strengthening our U.S. Merchant Marine and the mariner pool needed by our nation.

The Barrett Paper fails to acknowledge **the wider benefits** that cargo preference brings to U.S. foreign policy and the U.S. economy:

1. Cargo preference in food aid alone resulted in \$1.9 billion in U.S. economic output and indirectly supported more than 97,000 jobs in the U.S. economy annually. There is no logic in outsourcing American jobs, and ultimately costing the American Government more money, in a time of ballooning government deficits.
2. Foreign-flag vessels do not have the same working condition and regulatory compliance standards that U.S. ships do. Often, workers on these “flag of convenience” vessels have to endure near slave-labor wages, lax work rule oversight, and even inadequate food and drinking water. This is not something the U.S. Government should be promoting when shipping humanitarian aid to alleviate suffering overseas.
3. In contrast, U.S. ships are emissaries for the country in terms of foreign policy and human rights. The American flag should be flown on American ships employing fairly-treated U.S. taxpaying workers who are delivering aid to the hungry around the world.

The current food aid programs not only help starving people around the world, they serve as examples of the values America represents. Removing American mariners and American farmers from these programs would undermine those values.

## I. INTRODUCTION

In October 2017, Christopher B. Barrett, Stephanie Mercier, and Erin C. Lentz released their paper, “International Food Aid and Food Assistance Programs in the Next Farm Bill” (the “*Barrett Paper*”). The Barrett Paper reflects a fundamental misunderstanding of cargo preference laws and maritime programs. This critical analysis presents a contradictory thesis challenging the Barrett Paper and invites further discussion.

The Barrett Paper attempts exploration of myriad maritime policy issues, taking up arguments regarding the military utility of the U.S.-flag fleet, the role of cargo preference in supporting that fleet, the shortage of U.S. mariners, and the cost-benefit proposition of cargo preference laws with respect to national defense sealift and international humanitarian assistance program budgets. This paper exposes the failure of the Barrett Paper’s position on each count. Additionally, it is worth noting that many of the most questionable propositions in the Barrett Paper are either unsupported or are similarly footnoted only to the authors themselves as alleged authorities, which is striking considering the authors are developmental and agricultural economists without credible authority on issues of maritime or national defense sealift matters.

## II. BACKGROUND AND PURPOSE OF CARGO PREFERENCE

### A. THE VALUE OF THE U.S. MERCHANT MARINE

Throughout its history, the United States has depended upon a viable U.S.-flag merchant marine for its economic and military national security. In his second annual address to Congress on December 8, 1790, President George Washington encouraged the Congress to “render our commerce and agriculture less dependent on foreign bottoms.”<sup>2</sup> This proscription remains just as relevant 228 years later.

Leading up to World War I and then again in the years preceding World War II, the United States found itself unable to respond to the economic and military needs of our nation, and therefore built a legal framework to support a privately-owned U.S.-flag merchant marine

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<sup>2</sup> Second Annual Message of George Washington (Dec. 8, 1790), in EDWIN WILLIAMS, THE STATESMAN’S MANUAL 37 (1854).

as a bulwark against foreign control of U.S. commerce, and to be available to serve U.S. national security interests.<sup>3</sup> The aim of these laws is succinctly encapsulated in the opening section of the Merchant Marine Act of 1936, which has been reaffirmed repeatedly over the years and remains the official statutory policy of the U.S. Government:

It is necessary for the national defense and development of its foreign and domestic commerce that the United States shall have a merchant marine (A) sufficient to carry its domestic water-borne commerce and a substantial portion of the water-borne export and foreign commerce of the United States and to provide shipping service on all routes essential for maintaining the flow of such domestic and foreign water-borne commerce at all times, (B) capable of serving as a naval and military auxiliary in time of war or national emergency, (C) owned and operated under the United States Flag by citizens of the United States insofar as may be practicable, and (D) composed of the best-equipped, safest, and most suitable types of vessels, constructed in the United States and manned with a trained and efficient citizen personnel. It is hereby declared to be the policy of the United States to foster the development and encourage the maintenance of such a merchant marine.<sup>4</sup>

Thus, the U.S.-flag merchant marine is designed to promote national security, first by supporting U.S. commerce, and second by providing sealift capacity for use in wars or national emergencies such as the recent Katrina, Haiti, Irma, and Maria hurricane disasters. Our privately owned, commercially operating U.S.-flag merchant marine provided over 90% of the sealift capacity for our warfighters in Iraq and Afghanistan.<sup>5</sup>

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<sup>3</sup> In 1914, the United States underwent a recession as goods sat on the dock while British ships, the largest merchant fleet in the world at the time, were diverted, and German vessels, the second largest merchant fleet, sought refuge. The United States fleet was unable to handle the flow of goods, leading to the adoption of legislation to ensure a robust commercial fleet.

<sup>4</sup> S. Rep. No. 91-1080, 1970 U.S.C.C.A.N. 4188 (quoting § 101 of the Merchant Marine Act of 1936) (emphasis added). *See also* 46 U.S.C. § 50501.

<sup>5</sup> National Defense Transportation Association Military Sealift Committee Working Group on Maritime Policy, *Operations Enduring Freedom and Iraqi Freedom: Use of Commercial Vessels and Intermodal Systems for Military Sealift (2002-2012 Update)* (Dec. 2012) (Testimony of General Duncan McNabb, Commander, U.S. Transportation Command); *Hearing Before the Subcomm. on Livestock and Foreign Agriculture, H. Agriculture Comm., and Subcomm. on Coast Guard and Maritime Transportation, H. Transp. & Infrastructure Comm.*, 114th Cong. (Nov. 17, 2015) (Statement of Paul N. Jaenichen, U.S. Maritime Administrator); A.J. Herberger, Kenneth C.

The need for a national merchant marine goes beyond just carrying our troops and their weapons to the battlefield. It contemplates that American commerce, which is deeply dependent upon both imported goods and exports overseas, must *never* be held hostage to foreign interests or global politics (as happened, for example, during World War I). For this, all types of merchant vessel which support commerce are needed: container ships, tankers, dry bulk carriers, roll-on/roll-off vessels, project cargo vessels, and others. Over the years, maritime policy has evolved to ensure that an appropriate mix of vessel types remains in the fleet. For example, the debate surrounding the Merchant Marine Act of 1970 specifically led to the expansion of certain maritime support programs to dry bulk vessels and to general cargo vessels, which operate on a chartered or “tramp” route, in addition to liners operating on fixed routes.<sup>6</sup> The Department of Defense (“*DOD*”) itself has recognized the twin goals of Federal policy impacting the U.S. fleet, opining in a 1994 submission to the GAO that “[b]ulk carriers, large crude oil carriers, and integrated tug/barge sets *are important to national security from an economic standpoint* rather than a militarily useful aspect. However, crews on all vessels are important as they are generally interchangeable and can provide support for manning the Ready Reserve Force (RRF).”<sup>7</sup>

The essential role that the U.S. Merchant Marine and sealift readiness play in ensuring U.S. economic independence and resilience, as well as military force projection capability, is encapsulated in *National Security Directive 28*, issued by the White House in 1989. The directive still governs sealift policy. It states that:

Sealift is essential both to executing this country’s forward defense strategy *and to maintaining a wartime economy*. The United States’ national sealift objective is to ensure that sufficient military and civil maritime resources will be available to meet defense deployment, *and essential economic requirements in support of our national security strategy*. . . . In coordination with the Department of Defense, the Department of Transportation will determine the capacity of our merchant marine industries *to support essential industrial activity during wartime*.<sup>8</sup>

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Gaulden, & Rolf Marshall, *Global Reach: Revolutionizing the Use of Commercial Vessels and Intermodal Systems for Military Sealift, 1990-2012* (2016).

<sup>6</sup> *See id.* (Section 28).

<sup>7</sup> Mem. from Assistant Deputy Under Secretary of Defense (Transp. Policy) to OIG, DOD Liaison Office for GAO Surveys/Reviews (May 22, 1994) (attachment to General Accounting Office, Report No. GAO/GGD-94-215 (Sept. 1994)) (emphasis added).

<sup>8</sup> National Security Directive 28 (Oct. 5, 1989) (emphasis added).

Along the same line, in 1954, during the congressional debate over the enactment of the civilian cargo preference law, the Secretary of the Navy stated:

With all our wealth and abundance of natural resources, it is hard to convince the average American that we must import and export to live, to assist our friends and neighbors, to maintain our standard of living, and to survive in the event of war.

Let us consider one example—our modern combat airplanes flying today. With only American and overland resources they could not be built in the numbers adequate for a total defense.

Essential to their manufacture are such raw materials as aluminum, chromium, titanium, antimony, tin, cobalt, mica, and tungsten. The largest percentages of these materials must be brought in merchant ships from overseas sources. I need not mention rubber for their tires, fuel for their tanks, and uranium for their atomic weapons. Even prosaic but necessary items such as coffee, sugar, and vegetable oils must be carried to our ports by merchant vessels.

The first answer, then, as to why we need a strong and adequate merchant marine in these modern times is that it is important to our peacetime economy and prosperity.

The second reason why we need a strong and adequate merchant marine is that it is essential to our success and security in time of war. Military production, like our peacetime industrial production, is dependent upon the importation of strategic materials, and the exportation of the finished products of war for ourselves and our friends. The protection of our friends against aggression, as well as the defeat of the enemy, will demand that we be able to project our strength across the seas. To do this, we must have an adequate merchant marine in peace—one which is rapidly expandable in times of war.<sup>9</sup>

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<sup>9</sup> 100 Cong. Rec. A6123-24 (daily ed. Aug. 17, 1954) (statement of Sen. Butler, quoting Sec. of the Navy Charles B. Thomas).

The need for a varied and broad-based U.S. Merchant Marine has again become clear, especially as President Trump has made restoration of American industrial capability a key goal of his Administration. The specter of increased tariffs or trade wars between the United States and our global market competitors, and rising tensions with North Korea and in the South China Sea, further underscore the need for a robust U.S.-flag fleet.<sup>10</sup>

Unfortunately, the United States Merchant Marine does not face a level field of competition on the high seas. Many of its competitors receive far greater support from their flag nations in the form of direct subsidies, nationalized health care, and tax incentives for both mariners and ship operators than do American mariners and operators of U.S.-flag vessels. As the Congress has explained:

Absent some form of government assistance in meeting foreign competition, the United States would probably have little or no merchant fleet at all in foreign commerce. However, both logic and experience require that in this area the unthinking dictates of the marketplace must be rejected as unacceptable to our nation. The Merchant Marine has been appropriately termed our fourth arm of national defense. To permit our security and economy to become totally dependent upon foreign vessels, operated by foreign crews, subject to the wishes of foreign governments would be to run an unacceptable risk. The presence of a viable U.S. merchant fleet is necessary to provide some assurance that this nation's security and foreign policy objectives will not be subject to the dictates of other nations, and that the ability of our export shippers to compete in world markets and the delivered price of our import commodities will not be unilaterally determined by foreign competitors.<sup>11</sup>

Cargo preference is a key component of the interconnected framework of governmental policies and programs that ensures the survival of a core U.S. Merchant Marine, as further set forth below.

## B. CARGO PREFERENCE AND THE MERCHANT MARINE

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<sup>10</sup> The rise of shipping mega-alliances further risks ensnaring large volumes of non-U.S. registered vessel capacity in national nation-based trade disputes.

<sup>11</sup> S. Rep. No. 91-1080 (1970).

Since at least 1904, cargo preference has been fundamental legislative policy ensuring the survival of the U.S. merchant fleet. It predates the Merchant Marine Act of 1920, which codified modern cabotage policy, and also predates all of the direct support programs that have existed in the modern era.<sup>12</sup> Cargo preference reflects the belief that when the U.S. Government buys ocean transportation, it should hire U.S. citizens paying U.S. income taxes for at least a portion of that work, provided they are available and can do so at a fair and reasonable rate.

The goal of cargo preference is to ensure that, despite the disruptions of war and national emergency, the U.S. can continue trading with the world, seeking essential resources and getting exports to market. In today's highly connected global economy and culture of "just in time" deliveries, this is more important than ever. And when, for example, full-scale war erupts again, cargo preference will ensure the availability of reliable U.S.-flag sealift assets controlled by Americans and crewed by American citizens, not just to carry weapons to the front in roll-on/roll-off vessels, but also to carry bulk food commodities to our allies through enemy blockades, to ensure the movement of vital fuel supplies to our home ports, allies, and troops in bulk tank vessels, and to ensure the movement of manufactured goods in container vessels through intermodal networks, by liner or charter service. This point was expressed by President Kennedy in his April 1962 Presidential Directive Regarding Cargo Preference:

The policy of the United States is to have a modern, privately owned, merchant marine sufficient to carry a substantial portion of the waterborne export and import foreign commerce of the United States and capable of serving as a naval and military auxiliary in times of war or national emergency. The achievement of this national policy is even more essential now because of the worldwide economic and defense burdens facing the United States. For these reasons, I stated in my message on

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<sup>12</sup> The Merchant Marine Act of 1920, commonly referred to as the Jones Act, is the primary domestic cabotage law, requiring that all vessels moving cargo between two U.S. points do so on vessels built in the United States, crewed by American mariners, owned by American citizens and documented under the U.S. flag. The Jones Act only applies to domestic movements, not international carriage. There have been two main operating support programs for the international fleet over the last century – the Operating Differential Subsidy ("ODS"), which previously operated to cover the difference in cost between operating a U.S.-flag vessel in the international trades, and the Maritime Security Program ("MSP"), a fleet of 60 militarily useful and commercially viable ships that receive an annual reservation payment to off-set the higher costs of operating under the U.S. flag in exchange for being available when necessary for use by the Department of Defense. ODS was phased out during the 1980s, and MSP is the successor program that is currently authorized through 2023. See Merchant Marine Act, 1920, Pub. L. No. 66-261, § 27, 41 Stat. 988 (codified as amended at 46 U.S.C. § 55102); Merchant Marine Act, 1936, Pub. L. No. 74-835, Title VI, 49 Stat. 1985; Maritime Security Act of 2003, 46 U.S.C. Ch. 531.

transportation to the Congress of the United States on April 4, 1962, that I was directing all executive branch agencies to comply fully with the purpose of our various cargo preference laws.

These statutes (including, but not limited to, sec. 901(b) of the Merchant Marine Act, 1936 (46 U.S.C. 1241(b)) and Public Resolution 17, 73d Cong. (15 U.S.C. 661A)), are designed to insure that U.S. Government-generated cargoes move in substantial volume on American-flag vessels. This policy, which is directed to Government-generated cargoes and which does not control commercial movements of export-import cargoes, is an important factor in maintaining the merchant fleet necessary to meet our national goals and is in accordance with the general practice of other maritime nations who move the vast majority of their government shipments in vessels of their own flag.<sup>13</sup>

He therefore directed that agencies cease viewing the 50% U.S.-flag requirement in the 1954 Cargo Preference Act as a maximum goal, and instead strive for the highest U.S.-flag participation possible.<sup>14</sup>

Today, more than ever, our cargo preference laws are critical to ensuring a steady supply of government impelled cargo to keep U.S.-flag international fleet vessels moving. The United States is facing a critical shortage of merchant mariners over the coming years.<sup>15</sup> As recently as March 2018, the U.S. Maritime Administrator testified before Congress that a study required by the National Defense Authorization Act of 2017 showed a shortfall of approximately 1,800 mariners currently exists for full mobilization of the Merchant Marine, and the problem is getting worse, not better.<sup>16</sup> U.S.-flag operators rely on cargo preference to provide the necessary cargo to keep their ships operating in the international trade. Without cargo preference, those ships would no longer be economically viable – whether they are

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<sup>13</sup> S. Rep. No. 87-2286 at 43 (1962).

<sup>14</sup> *Id.*

<sup>15</sup> See, e.g., John Grady, *U.S. Facing Looming Shortage of Merchant Mariners*, USNI NEWS, Mar. 22, 2016, <https://news.usni.org/2016/03/22/u-s-facing-looming-shortage-of-merchant-mariners>

<sup>16</sup> *Hearing on Mobility and Transportation Command Posture Before the Committee on Armed Forces, Subcomm. on Seapower and Projection Forces and Subcomm. on Readiness*, 115<sup>th</sup> Cong. (2018) (statement of U.S. Maritime Administrator Adm. Mark Buzby) (“Because of the historically low number of ships in the U.S.-flag, oceangoing fleet over the past several years, I am concerned about the availability of a sufficient number of qualified mariners with the necessary endorsements to operate large ships (unlimited horsepower and unlimited tonnage) and to sustain a prolonged sealift mobilization beyond the first four to six months. . . . One of the contributing factors for this projected shortfall is the declining pool of U.S.-flag ships that employ these mariners.”)

covered by a Maritime Security Program contract or not – and the mariner jobs those ships support would go away. It is the loss of jobs caused by the loss of ships that is the greatest threat to the continued viability of the United States Merchant Marine. The proposals made in the Barrett Paper would exacerbate, not alleviate, the problems the fleet faces. Reductions in cargo preference have already led to a loss of mariner jobs, and even greater reductions or outright repeal will make an already bad situation worse.

Cargo preference is a small price to pay to ensure we have an American fleet to rely on when it is needed. To quote a 1904 House report recalling the problems caused by a lack of American merchant auxiliaries in the Spanish-American War: “It is never safe or wise to depend on foreigners for the defense of our country. Our dependence must always be on our own sea and ships to uphold the honor and dignity of our flag in the time of extremity.”<sup>17</sup> Now, more than ever, the United States is expected to be able to project power and respond to crisis around the globe. Without a Merchant Marine, our nation, surrounded by water, would be unable to meet its obligations and responsibilities on the world stage. That is why the United States Merchant Marine has enjoyed such strong bipartisan support throughout our nation’s history.

### III. RESPONSE TO SELECTED POINTS IN THE BARRETT PAPER

The following analysis provides a detailed, point-by-point response to selected portions of the Barrett Paper.<sup>18</sup> This analysis is not meant to be an exhaustive rebuttal of all of the inaccuracies and misstatements in the Barrett Paper, and failure to address other points does not indicate concurrence.

#### A. “MILITARILY USEFUL” VESSELS

The Barrett Paper alleges, without citing any support, that vessels carrying food aid are not militarily useful and that only vessels enrolled in the Maritime Security Program (“MSP”) are militarily useful and valuable to national defense sealift capability.<sup>19</sup> This is wrong. First, it is

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<sup>17</sup> *Hearing Before the Subcomm. on Merchant Marine of the Senate Comm. on Commerce, Sci., and Transp.*, 99<sup>th</sup> Cong. (1985) (Statement of Sen. Ted Stevens). By way of example, President Theodore Roosevelt’s Great White Fleet, 1908-1909, sailing around the world was largely dependent upon foreign colliers for refueling because the commercial fleet lacked the ability to support national defense requirements. Naval Historical Center, *The World Cruise of the Great White Fleet* at 6 & 99 (2008).

<sup>18</sup> The failure to address here any of the other points in the Barrett Paper does not indicate concurrence.

<sup>19</sup> Barrett Paper at 5-6 (“the majority of shipments has been moved on vessels deemed by the USG not to be militarily useful. . . . non-MSP ships, which are US-flagged vessels deemed to be not militarily useful because of

the Voluntary Intermodal Sealift Agreement (“VISA”) program that governs sealift readiness and provides the proper yardstick of “militarily useful,” not MSP. And even if MSP were the applicable program standard, the Barrett Paper errs regarding the definition of “militarily useful” under MSP.<sup>20</sup>

As a preliminary matter, it should be recalled that the purpose of U.S. cargo preference laws, as set forth above, goes beyond simply the provision of vessels to be used in moving troops and military equipment to a theater of operations. Cargo preference also aims to sustain a viable merchant marine sufficient to carry a substantial portion of American commerce. By shifting the goal posts to make the U.S. Merchant Marine solely about military utility, the Barrett Paper turns a blind eye toward over two centuries of fundamental American maritime law and policy. The goals of cargo preference have always been two-fold – economic independence and military security.

These overarching cargo preference goals of economic and military security and self-sufficiency built upon a diverse base of sealift assets are reflected in the broad reach of the VISA program, which is the core foundational program for ensuring the availability of the U.S. merchant fleet for use in times of national emergency and war. MSP does not include its own emergency preparedness agreement—it ensures sealift availability of MSP assets by requiring that vessel owners enter into VISA agreements.<sup>21</sup>

VISA was established pursuant to section 708 of the Defense Production Act of 1950, as amended (“DPA”), which provides for voluntary agreements for emergency preparedness programs.<sup>22</sup> “The mission of VISA is to provide commercial sealift and intermodal shipping services and systems, including vessels, vessel space, intermodal systems and equipment, terminal facilities, and related management services, to the Department of Defense (“DOD”), as

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their age, size, or vessel type.”). Again, the authors cite nothing in support of either proposition. The authors’ flawed analysis is underscored the fact that the newest U.S.-flag roll-on, roll-off vessel, which is the most sought-after vessel type by the Defense Department, is in fact NOT enrolled in the MSP.

<sup>20</sup> For purposes of MSP, MARAD regulations provide: “*Militarily Useful* is defined according to DOD Joint Strategic Planning Capabilities Plan (JSCAP) guidance as follows: (1) *U.S. Sources*—All active and inactive oceangoing ships (and certain other specially selected vessels) within the following types and criteria from United States sources with a minimum speed of 12 knots. (2) *Dry Cargo*—All dry cargo ships, including integrated tug/barges (ITBs) with a minimum capacity of 6,000 tons (DWT) capable of carrying, without significant modification, any of the following cargoes: unit equipment, ammunition, or sustaining supplies.” 46 C.F.R. § 295.2(q).

<sup>21</sup> See 46 C.F.R. § 296.31 (MSP operators enroll in VISA as their required “Emergency Preparedness Agreement”).

<sup>22</sup> See, e.g., U.S. Maritime Admin., Notice of Open Season for Enrollment in VISA Program, 74 Fed. Reg. 53,000 (Oct. 15, 2009).

necessary, to meet national defense contingency requirements or national emergencies.”<sup>23</sup> Its goal is to provide DOD a “coordinated, seamless transition from peacetime to wartime” for the acquisition of sealift using pre-negotiated contracts.<sup>24</sup>

Under VISA, operators enroll certain percentages of their overall sealift capacity into the program, which is then available to the Federal Government if needed on a staged call-up basis. “As implemented, the VISA program is open to U.S.-flag vessel owners of oceangoing *militarily useful* vessels, to include tugs and barges.”<sup>25</sup> Eligible VISA capacity includes “all intermodal shipping services/systems and all ship types, including container, partial container, container/bulk, container/roll-on/roll-off, roll-on/roll-off (of all varieties), breakbulk ships, tug and barge combinations, and barge carrier (LASH, SeaBee).”<sup>26</sup> Actual enrollment of capacity by the owner is accomplished under the VISA “Voluntary Enrollment Contract,” which computes “militarily capacity” for purposes of sealift readiness under VISA as follows:

- a. Container ships: total TEU capacity (at any one time). Militarily planning capacity for container ships is determined by using stowbooks or capacity plans with average militarily TEU weights of:

15 st Ammo 20’  
15 st Sustainment 20’  
20 st Sustainment 40’

- b. RO/RO ships: total square feet of capacity (at any one time). Militarily planning capacity for RO/ROs is determined using the following deck strength and ceiling height:

Heavy duty—525 psf and 13 ft ht  
Medium duty—350 psf and 9.5 ft ht  
Light duty—150 psf and 7.5 ft ht  
Decks less than 150 psf deck strength and 7.5 ft ht  
are not counted

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<sup>23</sup> *Id.*

<sup>24</sup> U.S. Maritime Admin., Notice of Voluntary Intermodal Sealift Agreement, 70 Fed. Reg. 12,938 (Mar. 16, 2005).

<sup>25</sup> U.S. Maritime Admin., Notice of Open Season for Enrollment in VISA Program, 74 Fed. Reg. 53,000 (Oct. 15, 2009). *See also* U.S. Maritime Admin., Notice of Open Season for Enrollment in VISA Program, 71 Fed. Reg. 26,171 (May 3, 2006) (emphasis added).

<sup>26</sup> U.S. Maritime Admin., Notice of Voluntary Intermodal Sealift Agreement, 70 Fed. Reg. 12,938, 12,941 (Mar. 16, 2005).

- c. LASH barge: capacity is 490 measurement tons (MT) or 1800 sq ft.
- d. Breakbulk: deadweight (at any one time). Capacity is measured in MT.
- e. Combination ships: calculated on applicable combination of above elements.
- f. Barge ships: total square feet capacity (at any one time).
- g. Other ships:—Integrated and articulated tug and barge combinations—Tug and towed or pushed barge combinations—total square feet capacity (at any one time).<sup>27</sup>

For purposes of VISA, “militarily planning capacity” is treated the same for both “bulk” and “breakbulk” ships, and is based upon deadweight measured in metric tons.<sup>28</sup>

Under VISA, it is the *owners* that enroll a percentage of their militarily useful sealift capacity into the program, not *vessels* that enroll into the program individually, as the Barrett Paper suggests. The Barrett Paper’s incorrect conflation of VISA with MSP is further evidenced by the MARAD listing of VISA Participants as of August 2016, which reflects that only 12 of 56 listed VISA participants are also enrolled in the MSP program.<sup>29</sup> Obviously, this leaves 44 of 56 VISA participants with militarily useful vessels not enrolled in MSP. The Barrett Paper would argue that none of those vessels are militarily useful even though DOD has enrolled them in VISA and counted their militarily useful capacity. And, at all events, the Barrett analysis, focusing solely on vessels misses completely the crucial access to carriers’ global intermodal shipping networks which make cargo move.

As an incentive to enroll their capacity into VISA, participating owners are assigned a higher priority in the award of peacetime preference cargoes, which, because of intense competition for these cargoes, means that they are effectively restricted to VISA participants.<sup>30</sup> Under the scheme, priority goes to (1) U.S.-flag VISA capacity; (2) U.S.-flag non-VISA capacity;

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<sup>27</sup> VISA Voluntary Enrollment Contract at 2-3.

<sup>28</sup> *Id.*

<sup>29</sup> U.S. Maritime Admin., Voluntary Intermodal Sealift Agreement Participants as of August 2016, <https://www.marad.dot.gov/wp-content/uploads/pdf/VISA-PARTICIPANTS-8-1-2016.pdf>.

<sup>30</sup> *See, e.g.*, U.S. Maritime Admin., Notice of Open Season for Enrollment in VISA Program, 74 Fed. Reg. 53,000 (Oct. 15, 2009).

(3) U.S./foreign capacity offered by VISA participants; (4) combination U.S./foreign capacity operated by non-participants; (5) U.S.-owned or operated foreign-flag capacity held by VISA participants; (6) U.S.-owned or operated foreign-flag capacity held by non-participants; and finally (7) foreign-owned or operated foreign-flag capacity of non-participants.<sup>31</sup> Therefore, because of the way VISA works, only VISA participants' militarily useful planning capacity is likely to be eligible for the award and carriage of preference cargoes. Both MSP and cargo preference are essential to maintain sealift capacity, but the Barrett Paper fundamentally misunderstands the role of MSP and the application of VISA to both programs.

MSP is designed to provide the Defense Department with a mix of militarily useful and commercially viable vessels that are specifically chosen to meet the immediate requirements of current U.S. strategic planning. The mix of vessels in the program changes as Defense Department mission changes. Thus, using MSP as the sole indicator of what ships are most useful only gives a portion of the overall picture—the immediate needs of the Defense Department as opposed to long-term and contingency planning pursuant to the Defense Production Act. One thing that history has proven time and time again is that wartime often results in unplanned for events. Thus, having a mix of capabilities available, even if those capabilities are at times less utilized than others, is prudent. The authors of the Barrett Paper, however, would jettison such capabilities in order to argue on behalf of their own vested interests.

## B. CARGO PREFERENCE IS CRUCIAL TO MAINTAINING THE U.S. MERCHANT MARINE

The Barrett Paper understates how crucial cargo preference and food aid cargoes are to supporting the U.S.-flag Merchant Marine, back-handing the contribution these cargoes make when they are leveraged to employ American mariners in the national sealift fleet.<sup>32</sup>

Those in a position to know appreciate the value of cargo preference to the maintenance of our national defense sealift capability. The United States Department of Defense, and in particular its logistics command, the United States Transportation Command ("TRANSCOM"), support cargo preference requirements, as does MARAD. In 2017, TRANSCOM Commander, General Darren McDew testified: "**without cargo preference, our maritime**

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<sup>31</sup> *Id.* at 53,000-01.

<sup>32</sup> Barrett Paper at 5 ("[t]he food aid component of cargo preference has been particularly ineffective in meeting the policy's stated objectives . . ."). The statement bears no supporting citation.

**industry is in jeopardy and our ability to project force is in jeopardy.”<sup>33</sup> Further, in response to a 2018 letter from Congressmen Duncan Hunter (R-CA) and John Garamendi (D-CA), General McDew stated “[c]argo [p]reference laws, because of the impelled cargoes they generate, help maintain U.S.-flag ship capacity and the qualified mariners necessary to crew the MARAD Ready Reserve Fleet and the Military Sealift Command Surge Fleet,” and “a higher cargo preference requirement may incentivize increased government use of existing U.S.-flag vessels and stem the current decline of the fleet.”<sup>34</sup>**

General Duncan McNabb, one of General McDew’s predecessors in charge of global Defense Department logistics, stated:

**The movement of U.S. international food aid has been a major contributor to the cargo we have moved under the cargo preference law that our U.S. commercial sealift industry depends upon. Any reductions will have to be offset in other ways to maintain current DOD sealift readiness.<sup>35</sup>**

In March 2015, General Paul Selva, then-Commander of the United States Transportation Command and now Vice Chairman of the Joint Chiefs of Staff, stated:

**[T]he U.S. flag international fleet continues to decline. The reduction in government impelled cargoes due to the drawdown in Afghanistan and reductions in food aid from the Moving Ahead for Progress in the 21<sup>st</sup> Century Act policy changes [the reduction of cargo preference from 75% to 50%] are driving vessel owners to reflag to non-U.S. flag out of economic necessity. This reflagging and subsequent reduction of the U.S. flag international fleet has the unintended consequence of reducing the U.S. merchant mariner labor base. A strong mariner base is critical to crewing not only the merchant fleet in peacetime, but our DOD surge capacity in wartime. With the recent vessel reductions, the mariner base is at the point where**

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<sup>33</sup> *Hearing Before the Subcomms. On Readiness and Seapower and Projection Forces, H. Armed Servs. Comm.*, 115<sup>th</sup> Cong. (Mar. 30, 2017) (Statement of Gen. Darren McDew, Commander, U.S. Transportation Command) (emphasis added).

<sup>34</sup> Letter from Darren McDew, Commander, U.S. Transportation Command, to Rep. John Garamendi (Feb. 20, 2018) (emphasis added).

<sup>35</sup> Letter from Duncan J. McNabb, Commander, U.S. Transportation Command, to Rep. Stephen LaTourette (May 4, 2011) (emphasis added).

**future reductions in U.S.-flag capacity puts our ability to fully activate, deploy, and sustain forces at increased risk.<sup>36</sup>**

In the same vein, Jeff Marootian, Assistant Secretary for Administration, U.S. Department of Transportation, wrote in 2015:

**Cargo preference is a pillar that ensures America can activate and sustain a sealift fleet adequate to deploy and support the United States Armed Forces anywhere in the world. So the benefits of cargo preference are clear. . . .**

**The mandate for Federal government agencies to support the U.S.-flag fleet by shipping a percentage of their Federally-financed cargoes on U.S.-flagged ships is an important means of ensuring an adequate sealift fleet . . .**

**This program, which benefits both the public and private sectors, is less of a burden on the tax payer than other options to provide the same capability. If the Food Aid Program were exempted from current cargo preference requirements, it would shift the burden of supporting the Nation's sealift fleet to all other Federal civilian and military agencies that ship cargo.**

**Cargo preference supports ships that are available to support military operations and deployments. Most importantly, it provides the American mariners to crew them.<sup>37</sup>**

Food aid cargoes are a significant factor in sustainment of the fleet. Cargoes shipped under the various international humanitarian assistance programs are the largest single source of preference cargo available to the fleet, by dry tonnage. While Defense Department cargoes are the biggest single source of preference cargo revenues to the U.S.-flag fleet, food aid cargoes have been the largest source of tonnage.<sup>38</sup> As U.S. Maritime Administrator Paul N.

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<sup>36</sup> *Hearing Before the S. Armed Servs. Comm.*, 114<sup>th</sup> Cong. (Mar. 19, 2015) (Statement of Gen. Paul Selva, Commander, U.S. Transportation Command).

<sup>37</sup> Letter from Jeff Marootian, Assistant Secretary for Administration, U.S. Department of Transportation to Thomas Melito, Director, International Affairs and Trade, U.S. Government Accountability Office, (July 11, 2015) (reprinted at United States Government Accountability Office, Report No. GAO-15-666 at Appx. V (Aug. 2015)) (emphasis added).

<sup>38</sup> United States Maritime Administration, *A Report to Congress: Impacts of Reductions in Government Impelled Cargo on the U.S. Merchant Marine* (Apr. 21, 2015); *Hearing Before the Subcomm. on Livestock and*

Jaenichen testified in 2015: **“I will note that although the revenue base is about 15% for food aid, in terms of tonnage it’s about 50 percent. It’s tonnage that fills ships, not revenue.”**<sup>39</sup>

In a June 2010 report, Promar International concluded that the transportation of *food aid cargoes alone* resulted in more than 97,000 jobs in the U.S., \$1.9 billion in economic output, and \$523 million in earnings for American households.<sup>40</sup> According to Promar, without food aid cargoes, the U.S. merchant fleet would shrink approximately 30%.<sup>41</sup> Promar’s findings generally agree with the results of an economic report produced in the mid-1990s by Nathan Associates, which concluded that: “Without cargo preference, the merchant marine would have ceased to exist, but demand for oceangoing transport services would have remained and cargoes would have continued to be shipped. The provision of transport services without cargo preference, however, would have resulted in 40,000 fewer jobs.”<sup>42</sup>

Finally, the correlation between the 2012 reductions in cargo preference for food aid cargoes and the decline in U.S. national defense sealift capability is striking. Since MAP-21<sup>43</sup> slashed cargo preference from 75% to 50% in 2012, the loss of one-third of this essential government cargo has correlated to a 26% decline in the fleet, resulting in our inability to meet the sealift readiness needs established by the Department of Defense, noted above.<sup>44</sup> There is no other significant change in the U.S.-flag maritime sector from 2012 to today that would adequately account for this dramatic decline in the fleet, both in terms of ships and mariner jobs. As noted above, the United States is facing a shortfall of approximately 1,800 - 2,000

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*Foreign Agriculture, H. Agriculture Comm., and Subcomm. on Coast Guard and Maritime Transportation, H. Transp. & Infrastructure Comm.*, 114<sup>th</sup> Cong. (Nov. 17, 2015) (Statement of Paul N. Jaenichen, United States Maritime Administrator) (food aid constitutes half of all preference cargo shipped).

<sup>39</sup> *Hearing Before the Subcomm. on Livestock and Foreign Agriculture, H. Agriculture Comm., and Subcomm. on Coast Guard and Maritime Transportation, H. Transp. & Infrastructure Comm.*, 114<sup>th</sup> Cong. (Nov. 17, 2015) (Statement of Paul N. Jaenichen, United States Maritime Administrator).

<sup>40</sup> Promar Int’l, *Impacts on the U.S. Economy of Shipping International Food Aid* at i-ii (June 2010).

<sup>41</sup> *Id.* at i.

<sup>42</sup> Nathan Assocs. Inc., *Family, Industry, and Community Economics, Economic Analysis of Federal Support for the Private Merchant Marine* vii (Jan. 1995). In 1994, GAO concluded that “without preference cargo, the equivalent of up to two-thirds of the 165 U.S.-flag vessels engaged in international trade, by tonnage, would leave the fleet.” General Accounting Office, “Maritime Industry: Cargo Preference Laws—Estimated Costs and Effects,” GAO/RCED-95-34 (Nov. 1994).

<sup>43</sup> *Moving Ahead for Progress in the 21<sup>st</sup> Century Act (“MAP-21”)*, Pub. L. No. 112-141, 126 Stat. 405, 915 (2012).

<sup>44</sup> *Logistics and Sealift Requirement: Hearing Before the Subcomm. On Seapower and Projection Forces, H. Armed Servs. Comm.*, 115<sup>th</sup> Cong. (March 22, 2016) (Statement of Paul N. Jaenichen, United States Maritime Administrator); *Hearing Before the Subcomm. on Livestock and Foreign Agriculture, H. Agriculture Comm., and Subcomm. on Coast Guard and Maritime Transportation, H. Transp. & Infrastructure Comm.*, 114<sup>th</sup> Cong. (Nov. 17, 2015) (Statements of Paul N. Jaenichen, United States Maritime Administrator, and David J. Berteau, Assistant Secretary of Defense, Logistics and Material Readiness, Department of Defense).

mariners and 40 ships in meeting our national sealift needs.<sup>45</sup> This shortfall can be expected to grow if further cut-backs are made to any of the key maritime programs, with civilian cargo preference the most at-risk. All evidence points to one conclusion: The primary reason for this loss in ships and mariners has been the decline in cargoes available to the fleet, and the decline in cargoes available to the fleet is in large part due to changes in cargo preference associated with the food aid programs.<sup>46</sup>

### C. MARINER SHORTAGE

The Barrett Paper correctly concedes that a central threat to our nation's essential sealift capability is the shortage of available qualified mariners ready to activate.<sup>47</sup> This is of course incongruent with the authors' arguments that the ships carrying food aid can be let go without impacting sealift readiness, since every ship is an important source of sustained mariner employment, regardless of its type or military utility. As Assistant Secretary Marootian explained:

**Cargo preference supports ships that are available to support military operations and deployments. Most importantly, it provides American mariners to crew them. . . . The number of readily available merchant mariners is barely sufficient to meet the initial activation of surge vessels. This will severely challenge our ability to sustain crewing requirements over an extended period. For this reason, all preference cargoes, not just those carried on 'militarily useful' vessels, are essential to keep the ships in service that train and employ U.S. Coast Guard-**

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<sup>45</sup> *Logistics and Sealift Requirement: Hearing Before the Subcomm. On Seapower and Projection Forces, H. Armed Servs. Comm.*, 115<sup>th</sup> Cong. (March 22, 2016) (Statement of Paul N. Jaenichen, United States Maritime Administrator).

<sup>46</sup> *Logistics and Sealift Requirement: Hearing Before Subcomm. On Seapower and Projection Forces, H. Armed Servs. Comm.*, 115<sup>th</sup> Cong. (March 22, 2016) (Statement of United States Maritime Administrator Paul N. Jaenichen); *Hearing Before the Subcomm. on Livestock and Foreign Agriculture, H. Agriculture Comm., and Subcomm. on Coast Guard and Maritime Transportation, H. Transp. & Infrastructure Comm.*, 114<sup>th</sup> Cong. (Nov. 17, 2015) (Statement of Paul N. Jaenichen, United States Maritime Administrator); Letter from Jeff Marootian, Assistant Secretary for Administration, U.S. Department of Transportation to Thomas Melito, Director, International Affairs and Trade, U.S. Government Accountability Office, (July 11, 2015) (reprinted at United States Government Accountability Office, Report No. GAO-15-666 at Appx. V (Aug. 2015)).

<sup>47</sup> Barrett Paper at 6.

**licensed American mariners with ‘unlimited tonnage and ocean’ credentials.<sup>48</sup>**

Skilled U.S. mariners cannot be replaced easily or quickly. While a vessel can be purchased or replaced with a new build in a few years, it may require ten years or more to develop a skilled master mariner.<sup>49</sup> Entry level unlicensed mariners can be trained in one year, while licensed mariners require a minimum of four years post-secondary education plus on-the-job experience to qualify and advance up the ranks. And currently, shortages among mid-level and senior mariners are most challenging, and difficult to replace. Commercially operating mariners dependent upon cargo preference are not only essential for manning the commercial fleet, which provided over 90% of the sealift in Afghanistan and Iraq.<sup>50</sup> As the Barrett Paper concedes, they are also an essential resource for the manning of MARAD’s Ready Reserve Force Fleet and the Defense Department’s Military Sealift Command organic sealift assets as “CIVMARS” or DOD-employed civilian mariners. Without those mariners, the U.S. Government-owned fleet would not be capable of fulfilling its mission of supporting U.S. troops abroad.<sup>51</sup> In March of 2017, General Darren McDew, Commander, TRANSCOM, testified: **“As you know, the Merchant Mariner Force is the bedrock to how we move the force . . . It makes the difference between us being the most powerful military in the world and us not being the most**

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<sup>48</sup> Letter from Jeff Marootian, Assistant Secretary for Administration, U.S. Department of Transportation to Thomas Melito, Director, International Affairs and Trade, U.S. Government Accountability Office, (July 11, 2015) (reprinted at United States Government Accountability Office, Report No. GAO-15-666 at Appx. V (Aug. 2015)) (emphasis added).

<sup>49</sup> *Supra*, note 14 at 5 (noting “[o]n average, it takes 10 years to become a master or chief engineer. One of the contributing factors for this projected shortfall is the declining pool of U.S.-flag ships that employ these mariners.”).

<sup>50</sup> See National Defense Transportation Association Military Sealift Committee Working Group on Maritime Policy, Operations Enduring Freedom and Iraqi Freedom: Use of Commercial Vessels and Intermodal Systems for Military Sealift (2002-2012 Update) (Dec. 2012) (Testimony of Gen. Duncan McNabb, Commander, U.S. Transportation Command); *Hearing Before the Subcomm. on Livestock and Foreign Agriculture, H. Agriculture Comm., and Subcomm. on Coast Guard and Maritime Transportation, H. Transp. & Infrastructure Comm.*, 114<sup>th</sup> Cong. (Nov. 17, 2015) (Statement of Paul N. Jaenichen, United States Maritime Administrator).

<sup>51</sup> See, e.g., *Logistics and Sealift Requirement: Hearing Before the House Armed Services Subcomm. on Seapower and Projection Forces*, 115<sup>th</sup> Cong. (March 22, 2016) (Statement Lieutenant General Stephen Lyons, Deputy Commander, U.S. Transportation Command, U.S. Army) (“These two fleets, government and commercial, are inextricably bound together by the merchant mariners that crew both. U.S. merchant mariners crew our pre-positioned ships that are currently deployed and commercial commerce fleets day to day, and in crisis are called to crew our Navy sealift fleets. So without a healthy U.S. merchant mariner fleet, we lack the capability to deliver our military forces to war. . . . We share MARAD’s [concern] regarding the health of the U.S. flag commercial sealift industry.”).

**powerful military in the world. . . . The mariner force we have today is insufficient to go to war for an extended period of time.”<sup>52</sup>**

Having conceded the seriousness of the mariner shortage, the Barrett Paper goes on to cite a statistic from a 2015 GAO report concluding that “the number of qualified US mariners available for a surge fleet was nearly 55,000 based on information from the U.S. Coast Guard.”<sup>53</sup> This is a misleading distortion. First, the number cited includes mariners who are not qualified to serve on the types of vessels in the U.S.-flag international fleet, including mariners whose qualifications extend no farther than tugs, non-ocean-going barges and other small craft, as well as mariners who have left the industry but still have valid merchant marine documents. Second, even accepting for the sake of argument that the 55,000 number is accurate, the cited GAO report found only 11,280 of these mariners were readily available for sealift needs. Moreover, GAO itself conceded in October 2017, the Coast Guard database includes only 16,000 “potentially qualified, actively sailing mariners,” and that of these, “DOT stated that only about 11,000 mariners would be readily available.”<sup>54</sup> This is insufficient.

The shortage of mariners is well documented and not the subject of serious dispute by those familiar with the issue. Although the Defense Department is charged with establishing the sealift requirement, and the Coast Guard is responsible for merchant mariner documentation and licensing, it is MARAD, within the Department of Transportation, that is charged with monitoring the commercial merchant marine and mariner pool, and their availability to meet the Defense Department’s requirement. And the U.S. Maritime Administrator has indicated that as a nation we have lost over one quarter of our deep sea fleet since 2011 and we are approximately 1,800 to 2,000 mariners and 40 ships short of sealift needs, with further declines likely, as noted above.<sup>55</sup> Moreover, MARAD has previously reported that “the number of seafarers employed in the bulk industry represents close to one-

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<sup>52</sup> *Hearing Before the Subcomms. On Readiness and Seapower and Projection Forces, H. Armed Servs. Comm.*, 115<sup>th</sup> Cong. (Mar. 30, 2017) (statement of Gen. Darren McDew, Commander, U.S. Transportation Command) (emphasis added).

<sup>53</sup> Barrett Paper at 6.

<sup>54</sup> *Hearing Before the Senate Committee on Foreign Relations*, 115<sup>th</sup> Cong. (Oct. 19, 2017) (Statement of Thomas M. Melito, Government Accountability Office).

<sup>55</sup> *Logistics and Sealift Requirement: Hearing Before the Subcomm. On Seapower and Projection Forces, H. Armed Servs. Comm.*, 115<sup>th</sup> Cong. (March 22, 2016) (Statement Paul N. Jaenichen, United States Maritime Administrator); *Hearing Before the Subcomm. on Livestock and Foreign Agriculture, H. Agriculture Comm., and Subcomm. on Coast Guard and Maritime Transportation, H. Transp. & Infrastructure Comm.*, 114<sup>th</sup> Cong. (Nov. 17, 2015) (Statements of Paul N. Jaenichen, United States Maritime Administrator, and David J. Berteau, Assistant Secretary of Defense, Logistics and Material Readiness, Department of Defense); Letter from Jeff Marootian, Assistant Secretary for Administration, U.S. Department of Transportation to Thomas Melito, Director, International Affairs and Trade, U.S. Government Accountability Office, (July 11, 2015) (reprinted at United States Government Accountability Office, Report No. GAO-15-666 at Appx. V (Aug. 2015)).

half of the seafaring labor pool that would be relied upon to operate both active and inactive U.S.-flag ships in support of DOD sealift operations during a crisis. Any assertion that the liner industry alone is a sufficient crewing source for the military's laid up fleet is therefore incorrect and misleading."<sup>56</sup> As U.S. Maritime Administrator, Paul N. Jaenichen, testified in 2016: **"[T]he mariners themselves. They are a strategic national asset. That is what allows us to provide national security. If there were any other workforce sector that supported national security, that had experienced a 20 percent reduction in the number of people, there would be a public outcry. This is a crisis in the making and we're not talking about it."**<sup>57</sup>

MARAD's mariner shortage concerns are supported by the Defense Department.<sup>58</sup> As one U.S. Navy official testified in 2016, **"So what we've described is a catastrophe in the making, as the quality of the mariner pool begins to shrink, as the numbers shrink, the people that are going to be on the pointy end delivering Marine Corps and Army equipment are going to be at risk."**<sup>59</sup>

Lastly, the Barrett Paper entertains the novel assertion that the mariner base provided by the commercial fleet could be more economically obtained by having the Federal Government take on large new payroll obligations and directly employ the mariners, possibly

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<sup>56</sup> See Comments of U.S. Maritime Admin. at 2 to General Accounting Office, Cargo Preference Requirements: Objectives Not Significantly Advanced When Used in U.S. Food Aid Programs, GAO/GGD-94-215 (Sept. 2004).

<sup>57</sup> *Logistics and Sealift Requirement: Hearing Before the Subcomm. On Seapower and Projection Forces, H. Armed Servs. Comm.*, 115<sup>th</sup> Cong. (March 22, 2016) (Statement of Paul N. Jaenichen, United States Maritime Administrator) (emphasis added).

<sup>58</sup> *Logistics and Sealift Requirement: Hearing Before the Subcomm. On Seapower and Projection Forces, H. Armed Servs. Comm.*, 115<sup>th</sup> Cong. (March 22, 2016) (Statement Lieutenant General Stephen Lyons, Deputy Commander, U.S. Transportation Command, U.S. Army) ("We share MARAD's [concern] regarding the health of the U.S. flag commercial sealift industry." "[A]s Administrator Jaenichen indicated, we are in a downward trend in the number of mariners. We are very, very concerned. We're right on the margin between medium and high risk to be able to mobilize that fleet. And of course, the bigger issue is to be able to sustain that fleet over a long period of time. So we have some serious concern.").

<sup>59</sup> *Logistics and Sealift Requirement: Hearing Before the Subcomm. On Seapower and Projection Forces, H. Armed Servs. Comm.* 115<sup>th</sup> Cong. (March 22, 2016) (Statement of Scott DeLisio, Strategic Mobility / Combat Logistics Division, U.S. Navy) (emphasis added). See also *Hearing Before the Subcomms. On Readiness and Seapower and Projection Forces, H. Armed Servs. Comm.*, 115<sup>th</sup> Cong. (Mar. 30, 2017) (Statement of Gen. Darren McDew, Commander, U.S. Transportation Command) ("The mariner force we have today is insufficient to – to go to war for an extended period of time. . . . I think the first [limiting factor] we'll have is the mariners will fall short of the mariners. So 11,280 by merit, is what we need. But that has some assumptions that all of those mariners will be available right when we need them. I'm not sure that's an assumption we can – we can hold to."); *Hearing Before the Subcomm. on Readiness, H. Armed Servs. Comm.*, 115<sup>th</sup> Cong. (Mar. 15, 2016) (Statement of Gen. Darren McDew, Commander, U.S. Transportation Command) ("On the mariners—without the mariners we don't have the capability.").

through some kind of reserve program.<sup>60</sup> First, the Defense Department has already made abundantly clear that it cannot replicate the sealift capability provided by the commercial fleet without vast additional expenditures, as discussed *supra*. Second, the Barrett Paper provides no authority or analysis in support of this idea. Third, there are numerous practical difficulties associated with this idea. For example, it is unclear how a mariner could obtain proficiency one weekend a month, like national guardsmen, where the necessary voyages through key sea lanes and in ports around the world last months for even one tour.<sup>61</sup>

It is also important to note that while the Merchant Marine Academy at King's Point and the various state training schools around the nation provide training for officers and engineers and maintain robust enrollment, the bulk of the non-licensed merchant mariner pool is recruited, trained, and educated by the private sector – primarily the sea-going labor unions. That recruitment and training is undertaken without direct government subsidy or cost, funded by the ship operators holding operating agreements with the various unions. Further, all of the mariner unions, including those of the deck officers and engineers, provide significant ongoing education and training to members at their affiliated training schools, all at no direct cost to the government. Pulling the thread on the Barrett Paper idea of direct Federal employment, all of these schools and programs would need to be replicated under the government banner, greatly expanded the limited role the Federal Government plays in mariner education and training. This would add many additional millions of dollars to the already exorbitant price tag the Barrett Paper's proposal would exact upon taxpayers.

#### D. THE BARRETT PAPER MISSTATES THE COST OF CARGO PREFERENCE

The Barrett Paper distorts the cost burden of cargo preference in three ways. First, it ignores the offsetting benefits of maintaining a U.S.-flag Merchant Marine in lieu of maintaining a large fleet of government-owned vessels and thousands of additional government employees to provide the same capacity that is already available from commercial operators in the private sector. Second, it overstates the premium associated with employing U.S. mariners and the impact of any such premium on government agencies that ship cargo. Third, it ignores the

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<sup>60</sup> Barrett Paper at 8.

<sup>61</sup> Notably, it will be more challenging to onboard mariners than in past conflict-fueled sealift surges due to increased licensing requirements which make it more difficult for inactive mariners to maintain required training and certifications. This, coupled with the smaller organic and commercial fleets, heighten the threats to sealift readiness.

economic return from hiring American mariners, ships, and logistics providers to carry the cargo instead of the foreign competition.

### 1. COST SAVINGS ON SEALIFT ASSETS FOR THE DEPARTMENT OF DEFENSE

The incorporation of the commercial merchant marine to DOD's sealift readiness program provides one of the greatest bargains to the American taxpayer out of all government programs. TRANSCOM Commander General McDew has testified before Congress that it would cost DOD more than \$13 billion to replace the U.S. vessel capacity alone and an additional \$1 billion annually for operation and maintenance provided by the international fleet through the Maritime Security Program alone.<sup>62</sup> When combined with the intermodal networks, mariner training costs, and other associated benefits that DOD gets from MSP and cargo preference for the international fleet right now, the funding necessary to replicate existing capabilities exceeds \$50 billion.<sup>63</sup> All of this is done through cargo preference and MSP which together represent less than half a billion dollars in direct annual appropriations. These costs, which represent the replacement of the core of competent U.S. commercial mariners and global commercial intermodal networks upon which DOD relies should be factored into any comparative analysis of the type the Barrett Paper attempts. This is why Congress and successive administrations for the last sixty years have supported the continued application of cargo preference to all programs.<sup>64</sup> And our military has repeatedly committed its firm support for the U.S.-flag commercial sealift fleet and cargo preference as a vital tool for ensuring its continued existence.<sup>65</sup> These programs, working together, are the most cost effective way of maintaining

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<sup>62</sup> See, e.g., Reeve & Associates, *The Role of the United States' Commercial Shipping Industry in Military Sealift* at 4-5 (Aug. 2006); S. Rep. No. 113-45 at 86 (June 27, 2013); Letter from Charles T. Robinson, Commander in Chief, U.S. Transp. Command, to Sen. John B. Breaux (Aug. 2001); Letter from Sens. Mikulski, Schumer, Reed, Cardin, Vitter, Menendez, Lautenberg, et al. to Sens. Byrd, Cochran, Murray, and Bond (Apr. 22, 2008). See also, *Logistics and Sealift Requirement: Hearing Before the Subcomm. On Seapower and Projection Forces, H. Armed Servs. Comm.*, 115<sup>th</sup> Cong. (March 22, 2016) (Statement Lieutenant General Stephen Lyons, Deputy Commander, U.S. Transportation Command, U.S. Army) ("We think our reliance on the commercial industry for ships and mariners is a cost-effective means of providing military sealift when compared to the cost of building an equivalent government capability.").

<sup>63</sup> S. Rep. No. 113-45 at 86 (2012) (citing USTRANSCOM); Econometrica, Inc., *Maritime Security Program Impact Evaluation*, MARAD Order No. DTMA1F08157 at 33 (July 2009) (report prepared under contract to MARAD); Gen. Norton Schwartz, Commander, U.S. Transportation Command, *Speech Before the 37<sup>th</sup> Annual IFPA-Fletcher Conference on National Security and Policy: A New Maritime Strategy for Twenty-First Century National Security* (Sept. 26-27, 2007).

<sup>64</sup> See, e.g., *id.*; Government Accountability Office, Report No. GAO-04-1065 (Sept. 2004).

<sup>65</sup> See, e.g., *Hearing Before the Subcomm. On Readiness and Seapower and Projection Forces, H. Armed Servs. Comm.*, 115<sup>th</sup> Cong. (Mar. 30, 2017) (Statement of Gen. Darren McDew, Commander, U.S. Transportation Command) ("without cargo preference, our maritime industry is in jeopardy and our ability to project force is in jeopardy."); *Logistics and Sealift Requirement: Hearing Before the Subcomm. On Seapower and Projection Forces,*

our existing fleet, and the expansion of these programs is likely the best way to resolve the current merchant mariner shortfall and increase the size and capabilities of the U.S.-flag international fleet. The Barrett Paper suggests an untried, untested, and extremely expensive alternative in an effort to push a myopic policy agenda blind to its costs.

Despite all of the evidence on the record to the contrary, the Barrett Paper seems to be arguing that the commercial fleet is not necessary for national defense sealift—that this function could be performed wholly by government-owned assets such as the Military Sealift Command vessels and the MARAD Ready Reserve Fleet (“*RRF*”).<sup>66</sup> The Barrett Paper states that during the 2003 Iraq war, only some of the RRF vessels were activated, “none of the civilian U.S.-flagged ships were pulled off their regular routes,” none of the VISA participants were activated to “Stage III deployment,” and further states that vessels not enrolled in the Maritime Security Program “have never been mobilized in this way in the 60-plus years since the cargo preference law took effect.”<sup>67</sup> These statements, taken together, are misleading and confused, representing yet another example of the authors’ lack of understanding of the maritime industry and its role in meeting sealift needs.

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*H. Armed Servs. Comm.*, 115<sup>th</sup> Cong. (March 22, 2016) (Statement Lieutenant General Stephen Lyons, Deputy Commander, U.S. Transportation Command, U.S. Army) (“We share MARAD’s [concern] regarding the health of the U.S. flag commercial sealift industry.” “[A]s Administrator Jaenichen indicated, we are in a downward trend in the number of mariners. We are very, very concerned. We’re right on the margin between medium and high risk to be able to mobilize that fleet. And of course, the bigger issue is to be able to sustain that fleet over a long period of time. So we have some serious concern.”); *Logistics and Sealift Requirement: Hearing Before the Subcomm. on Seapower and Projection Forces, H. Armed Servs. Comm.*, 115<sup>th</sup> Cong. (March 22, 2016) (Statement of Scott DeLisio, Strategic Mobility / Combat Logistics Division, U.S. Navy); *Hearing Before the Subcomm. on Readiness, H. Armed Servs. Comm.*, 115<sup>th</sup> Cong. (Mar. 15, 2016) (Statement of Gen. Darren McDew, Commander, U.S. Transportation Command) (“We ought to have a dialogue about how important is a U.S. international fleet to the United States of America. I believe it’s vital to moving military goods and hardware. And as you articulated quite well, we could not have done the last wars we had without that decisive force being delivered by our maritime partners.”); *Hearing Before the S. Armed Servs. Comm.*, 114<sup>th</sup> Cong. (Mar. 19, 2015) (Statement of Gen. Paul Selva, Commander, U.S. Transportation Command); Letter from Duncan J. McNabb, Commander, U.S. Transportation Command, to Rep. Stephen LaTourette (May 4, 2011). See also Government Accountability Office, GAO-04-1065 (Sept. 2004) (“DOD strongly supports both the cargo preference and Maritime Security Programs. DOD officials said that DOD’s priority is to maintain or increase the current level of U.S.-flag ships and mariners and, therefore, it strongly supports both programs. Through the cargo preference and Maritime Security Programs, an additional manpower pool is maintained that DOD can draw on to crew the reserve fleet.”).

<sup>66</sup> Barrett Paper at 7. The authors also overlook the fact that the RRF fleet is badly in need of recapitalization, and if those ships are to be recapitalized with U.S.-built tonnage the cost would be in the range of \$850 million per ship. *U.S. Transportation Command Fiscal 2019 Posture: Hearing Before the Senate Armed Servs. Comm.*, 115<sup>th</sup> Cong. (April 10, 2018) (Statement of Gen. Darren McNabb, Commander, U.S. Transportation Command).

<sup>67</sup> Barrett Paper at 7.

First, as even the Barrett Paper authors concede, the government's reserve vessels cannot operate without civilian mariners who are made available by the commercial fleet.<sup>68</sup> The various vessels in the RRF, for example, are not maintained with full crews standing by to be called up. Those mariners are working in the commercial industry, and it generally takes time – based on the reserve operating status of the vessels – to crew them up and prepare them to sail. Without jobs in the commercial industry, those mariners are unavailable to be called up to crew the RRF. Therefore, the government-owned fleet cannot operate without a vibrant commercial mariner pool. Otherwise, the taxpayers would have to hire thousands of more government employees to remain in standby, at great cost. And although the entire Ready Reserve Force fleet was not 100% activated during Operation Iraqi Freedom/Enduring Freedom, this is only because the commercial fleet was there to provide necessary sealift under DOD's "commercial first" philosophy, designed to use commercially available ships whenever possible to avoid the expense of calling up RRF ships unnecessarily. Even assuming for the sake of argument that we should use the RRF more than has been used in the past, the need for that commercial sealift will be greater today, since the number of vessels currently left in the Ready Reserve Force is fewer than the number that were activated for Iraq and many of those remaining are at the end of their useful life, which now have an average age of 43 years old and will require large direct appropriations to recapitalize.<sup>69</sup> Indeed, TRANSCOM has indicated that if the United States were required to attempt a Desert Shield / Desert Storm-sized deployment today, it could not meet the sealift requirements.<sup>70</sup> Additionally, the comparison point offered by the Barrett Paper, based upon the 2015 GAO analysis, fails to account for the expiration of mariner licenses beginning in January 2017 as new International Maritime Organization ("IMO") Standards for Training Certification and Watchkeeping ("STCW") come into effect.<sup>71</sup> The new

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<sup>68</sup> Barrett Paper at 7. *Hearing Before the Subcomm. on Livestock and Foreign Agriculture, H. Agriculture Comm., and Subcomm. on Coast Guard and Maritime Transportation, H. Transp. & Infrastructure Comm.*, 114<sup>th</sup> Cong. (Nov. 17, 2015) (Statement of United States Maritime Administrator Paul N. Jaenichen: "The sufficiency of the mariner pool to support a large-scale activation [MARAD ships] depend upon the number of commercial U.S. flag vessels that are actively sailing. A fleet that is sufficiently sized provides an adequate pool of qualified Merchant Mariners to meet the crewing requirements of both the commercial and the government sealift fleets to meet national defense requirements and during both national emergencies and normal peacetime operations.").

<sup>69</sup> *Hearing before the Subcomm. on Coast Guard and Maritime Transportation, H. Transp. & Infrastructure Comm.*, 115<sup>th</sup> Cong. (Mar. 14, 2018) (Statement of U.S. Maritime Administrator Adm. Mark Buzby); *Logistics and Sealift Requirement: Hearing Before Subcomm. On Seapower and Projection Forces, H. Armed Servs. Comm.*, 115<sup>th</sup> Cong. (March 22, 2016) (Statements of United States Maritime Administrator Paul N. Jaenichen and Lieutenant General Stephen Lyons, Deputy Commander, U.S. Transportation Command, U.S. Army).

<sup>70</sup> *Hearing Before the Subcommittee on Livestock and Foreign Agriculture, H. Agriculture Comm., and Subcomm. on Coast Guard and Maritime Transportation, H. Transp. & Infrastructure Comm.*, 114<sup>th</sup> Cong. (Nov. 17, 2015) (Statement of Paul N. Jaenichen, United States Maritime Administrator).

<sup>71</sup> International Maritime Organization, STCW Manila seafarer training amendments enter into force on 1 January 2012 (Dec. 23, 2011), <http://www.imo.org/en/MediaCentre/PressBriefings/Pages/67-STCW-EIF.aspx#.Wv3dlEgvy70> (entry into force in 2012 with a transitional period until 1 January 2017)

standards, as practical matter, mean that there will be fewer mariners available from any inactive roster than the United States could count upon in past activations such as the Iraq mobilization.<sup>72</sup> Only actively sailing mariners will be available for sealift purposes, unless the government chooses to ignore its treaty obligations and allow mariners to sail who do not meet the new criteria.

Second, it is important to note that most ships do not operate on regular routes, instead operating in spot or “tramp” service, going where cargoes are available and needed. Although many ships operate in liner service and ships are assigned as needed, to suggest that ships were not used because they did not go off their regular routes, is a red herring, because most ships in the world fleet do not have “regular” routes. During Desert Shield / Desert Storm, the U.S. Government chartered the entire fleet of U.S.-flag vessels available for the deployment and there was still a shortage of available mariners and vessels, leading to a revamping of government sealift policy and ultimately the creation of the MSP program to help augment and bolster the commercial fleet.<sup>73</sup> If the Barrett Paper is correct, the flurry of changes in government policy, including the creation and later expansion of the MSP fleet, were all completely unnecessary. This assertion strains credulity, and flies in the face of extensive DOD and DOT analysis. Moreover, despite the Barrett Paper’s contention, many of those U.S.-flag vessels that do operate on “regular routes,” i.e., liner service, did supply the Iraq war through existing routes which already served the region and, ultimately, through the development of new routes to help serve the conflict.<sup>74</sup>

Third, the Barrett Paper confuses the mechanics of the VISA program and the operation of Stage III activation. VISA provides for pre-negotiated contracts, which ensure availability of U.S.-flag commercial sealift to the Defense Department in crisis situations at pre-negotiated rates and terms to ensure sustainment of deployed forces following initial deployment of pre-positioned or laid-up government-owned vessels, such as the RRF, during the initial surge.

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<sup>72</sup> *Logistics and Sealift Requirement: Hearing Before Subcomm. On Seapower and Projection Forces, H. Armed Servs. Comm.*, 115<sup>th</sup> Cong. (March 22, 2016) (Statement of United States Maritime Administrator Paul N. Jaenichen) (“We have a perfect storm coming. And the perfect storm is the fact that starting on the 1<sup>st</sup> of January 2017 the International Maritime Organization standards for watchkeeping and training come into effect. Those requirements are different. If you are not actively sailing today, which means you that you’re not actually being paid to get that upgraded license to be able to meet the STCW requirements, you’re likely not going to do it because it’s going to come out of your pocket. So in past situations where we’ve had to surge the fleet, we’ve actually had mariners that have come out of retirement to be able to do that. They will not be available to us after January 2017.”).

<sup>73</sup> National Defense Transportation Association Military Sealift Committee Working Group on Maritime Policy, Operations Enduring Freedom and Iraqi Freedom: Use of Commercial Vessels and Intermodal Systems for Military Sealift 6 (2002-2008 Interim Report) (Mar 2009).

<sup>74</sup> *Id.*

Under VISA, TRANSCOM first endeavors to deploy existing voluntary commercial assets to minimize disruption of commercial operations wherever possible.<sup>75</sup> If that volunteered capacity is insufficient, then USTRANSCOM will execute phased activation of assets, beginning with Stage I and ending with Stage III activation of assets.<sup>76</sup> In effect, requisition according to pre-negotiated terms, with an emphasis on minimizing disruption to existing commercial service. Therefore, if U.S.-flag operators offer sufficient capacity from existing commercial service, USTRANSCOM will not activate VISA. This is what happened during the Operations Iraqi Freedom/Enduring Freedom. The Defense Department put out the call, our mariners responded – both those sailing on vessels enrolled in MSP and those sailing on vessels not enrolled in MSP – and there was no need to activate Stage III VISA and requisition needed sealift capability, which would have caused extraordinary commercial disruption.<sup>77</sup> This represents the existing system working as intended, meeting DOD’s needs without the need for a complete government requisition of the U.S.-flag fleet as occurred in previous conflicts. Yet, the authors of the Barrett Paper turn the effectiveness of the existing programs, and the patriotism of the U.S. mariners and operators against them to suggest that, because they were able to meet DODs requirements without the massive disruption of Federal requisition of private assets, they are not needed. This is akin to saying that because the Defense Department did not activate the selective service for Operations Iraqi Freedom/Enduring Freedom, the men and women of our all-volunteer armed forces who answered the call of duty were not needed. This is obviously not true.

## *2. COST BURDEN UPON THE FOOD AID PROGRAMS*

Nor do ocean transportation costs consume an excessive or inordinate amount of food aid program costs. The Barrett Paper overstates the cost burden of cargo preference on the P.L. 480 Title II Food for Peace program and fails to account for the rate limitations imposed upon U.S.-flag operators under the law.

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<sup>75</sup> U.S. Transportation Command, VISA Solicitation, No. HTC711-15-R-WV01 at 45, Jul. 21, 2015.

<sup>76</sup> Department of Transportation, Maritime Administration, Voluntary Intermodal Sealift Agreement, 79 Fed. Reg. 64,462, 64,467 (Oct. 29, 2014).

<sup>77</sup> The 1982 United Kingdom initiative “STUFT” (Ships Taken Up From Trade) employed in 1982 to divert ships from their commercial fleet to the Falkland Islands is instructive. While the ships were very successful in sustaining the British military in their operations, when the ships left their routes and trades, they were replaced by non-British vessels on those routes and trades, and the British merchant marine suffered greatly from the disruption.

The Barrett Paper ignores that under existing cargo preference law, U.S.-flag carriage is only required where such vessels are available at fair and reasonable rates.<sup>78</sup> This means that if U.S.-flag vessels are not available, or if their rates are excessive, shipper agencies like USAID or USDA can ship on foreign-flag vessels instead—and they often do. Therefore, the complaints that rates are excessive or that the programs are burdened by an unavailability of U.S.-flag vessels are unfounded. They represent the misguided belief that ending cargo preference will somehow alleviate the funding issues these programs currently face despite the strong support they receive from the maritime industry and the farm community precisely because of the “Buy American” aspects reformers would dismantle.

Employing U.S.-flag mariners consumes a minute portion of food aid budgets. According to a 2015 GAO report, re-released as congressional testimony in 2017, employing American mariners to carry Food for Peace cargoes costs just one percent of the program’s budget – less than \$15 million of an approximately \$1.5 billion appropriation.<sup>79</sup> Similarly, the nonpartisan Congressional Budget Office calculated that restoring cargo preference to a 75% requirement, or increasing it by 50% over the current level, would cost only \$8.8 million annually.<sup>80</sup> *This is less than one percent of the program’s budget.* In contrast, when cargo preference requirements applicable to food aid cargoes were slashed by one third in the year 2012, leading to a corresponding loss of a third of our national defense sealift fleet,<sup>81</sup> USAID’s ocean shipping costs fell by only 9% and USDA’s not at all.<sup>82</sup> Further, nothing precludes Congress from increasing the appropriation for food aid to address the minute increase in shipping costs a restoration of the 75% rule for foreign aid cargo preference would incur to achieve the substantial savings in sealift costs otherwise incurred by American taxpayers.<sup>83</sup>

All ocean freight—foreign and U.S.-flag shipping combined—consumes only 8.2% of the Food for Peace program budget.”<sup>84</sup> In fact, ocean freight and inland freight together consumed

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<sup>78</sup> 46 U.S.C. § 55305; 46 C.F.R. §§ 381.5 (agencies shall ship U.S. flag except when “U.S.-flag vessels are not available at fair and reasonable rates for U.S.-flag commercial vessels,” or “there is a substantially valid reason for fixing foreign-flag vessels first”) & 382.3 (limitation of U.S.-flag carriers to fair and reasonable rates determined by the U.S. Maritime Administration).

<sup>79</sup> United States Government Accountability Office, Report No. GAO-15-666 at 15 (Aug. 2015).

<sup>80</sup> USAID, Cargo Preference FAQs, [www.usaid.gov](http://www.usaid.gov), Nov. 14, 2017.

<sup>81</sup> *Hearing Before the Subcomm. on Seapower and Projection Forces, H. Armed Servs. Comm.*, 115<sup>th</sup> Cong. (March 22, 2016) (Statement of Paul N. Jaenichen, United States Maritime Administrator).

<sup>82</sup> United States Government Accountability Office, Report No. GAO-15-666 at 19 (Aug. 2015).

<sup>83</sup> Notably, past experience suggests that increasing the size and scope of U.S. commodities shipments overseas develops a reliable distribution pipeline and creates economies of scale, further lowering the cost per ton-mile shipping costs.

<sup>84</sup> 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*

only 14.2% of the program budget, with commodities consuming only 25.6% of the program budget.<sup>85</sup> By contrast, USAID spent 60.2% of the budget nebulous other costs with names like “202(e)” and “ITSH”.<sup>86</sup> Yet the Barrett Paper’s authors would lead one to believe that it was ocean freight costs that eat up the bulk of the Food for Peace program funds. That is simply not true.

Finally, and of no small significance, the 2015 GAO report that the Barrett Report relies upon overstates the cost of U.S.-flag shipping. This is because, as the Barrett Paper admits,<sup>87</sup> the GAO report excluded bulk cargoes, which make up over half of food aid cargoes shipped and which are approximately 40% cheaper to ship than containerized cargoes on a per ton basis.<sup>88</sup> As a consequence, the GAO conclusions regarding the cost of U.S. flag, and the Barrett Paper’s whole analysis, are inaccurate and prejudicial to a true understanding and analysis of U.S.-flag costs applicable to food aid programs.

### 3. *ECONOMIC EFFECTS AND TAX BENEFITS*

The Barrett Paper also completely fails to factor in the economic benefits to the United States of employing U.S. vessels instead of the foreign-flag vessels. Cargo preference and the other governmental programs that support the merchant marine sustain thousands of jobs and billions of dollars in economic output for America, as discussed above, and that fact cannot be ignored in accurately assessing the costs and benefits of U.S. flag versus foreign flag, even if only in the context of foreign aid.

In addition to the direct economic benefit, the economic activity generated by these programs creates tax revenues that more than pay back any costs to the Federal Government and the U.S. taxpayer. When freight is paid to a foreign-flag carrier, as the Barrett Paper advocates, that money goes out of the country to foreign shipowners and foreign governments overseas, negatively affecting the U.S. balance of payments, budget deficit, employment rates, and economic well-being. When U.S. flag carriers are put to work, however, they and their crews, as well as the many shoreside industries that support them, all pay taxes back to the Government, whether in the form of tariffs and duties, tonnage taxes, or income taxes.

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*a Subcommittee of the Committee on Appropriations, House of Representatives, Part 5A at 1234 (fiscal year 2015 latest available data).*

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> Barrett Paper at 6.

<sup>88</sup> United States Government Accountability Office, Report No. GAO-15-666 at introduction, 3 n. 5, 15 & 21 (Aug. 2015).

Taking GAO’s 2015 accumulated cargo preference premium of \$44,900,000 for the period extending from April 2011 through Fiscal Year 2014, that prorates out to an annualized premium of \$17,960,000 million to hire American mariners; which yields a net return to the Treasury of \$56,389,831 when subtracted from the tax revenue of \$74,358,831.80 applying the marginal corporate income tax rate to freight earned by U.S. flag carriers.<sup>89</sup> Dividing that net return against the premium yields a return on investment of \$3.14 per dollar invested in cargo preference—revenue which can be returned to the program to reach more beneficiaries. While this effect alone means that cargo preference on Food for Peace returns more to the Treasury than it costs, the Barrett Paper misses it completely.

## E. BENEFICIARIES OF CARGO PREFERENCE

The Barrett Paper sensationally claims that “[t]he bulk of profits accruing through . . . cargo preference goes to vessel owners, not to workers,” citing nothing in support of the proposition.<sup>90</sup> Yet at the same time, the Barrett Paper alleges that “the daily operating costs of US-flagged ships averaged 270 percent more than their foreign counterparts,” citing to a study which concluded that this cost differential was due overwhelmingly to the living wage that U.S. owners pay their crews, in contrast with the wages on foreign flag ships, which often amount to less than \$14,000 a year for an able-bodied (“AB”) seafarer.<sup>91</sup> The same civilian AB on a Military Sealift Command vessel, for instance, would make a base salary of \$41,437 – almost three times the international base rate—and pay in the private sector is similar, if not higher.<sup>92</sup> Indeed, the International Transport Workers Federation has reported foreign-flag vessels, sometimes referred to as vessels flying “flags of convenience” (“FOCs”) pay “very low wages or no pay at all—crew on FOC ships are frequently owed large sums of money without which they cannot even make their way home.<sup>93</sup> Additionally, FOC mariners face other risks and hardships, as discussed in further detail below. Thus, the assertion that ship owners are the only ones benefitting from the profits generated by cargo preference is simply not true.

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<sup>89</sup> 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 1574-1584 (freight revenue data); United States Government Accountability Office, Report No. GAO-15-666 at 15 (Aug. 2015).

<sup>90</sup> Barrett Paper at 8.

<sup>91</sup> Int’l Transport Workers Fed’n, [http://www.itfseafarers.org/what\\_wages.cfm](http://www.itfseafarers.org/what_wages.cfm) (Mar. 2018).

<sup>92</sup> U.S. Navy Military Sealift Command, Shipboard Departments and Payscales, <https://sealiftcommand.com/payscales/>. A Master employed by the Military Sealift Command would earn a base salary of \$174,000 before overtime and benefits. *Id.* (2017 Pay Charts link).

<sup>93</sup> Int’l Transport Workers Fed’n, <http://www.itfseafarers.org/defining-focs.cfm> (Nov. 2017).

Given the higher cost of American mariners, it is clear that U.S.-flag operators, in contrast to the foreign-flag operators the Barrett Paper promotes at the expense of American labor, divert exponentially more revenue away from profit in order to pay their mariners a living wage. This point is further reinforced by the fact that U.S.-flag operators are overseen by MARAD, in contrast to open registry operators who are largely unregulated. As noted earlier, current law limits U.S.-flag operators to charge only fair and reasonable rates, which would preclude owners from charging exorbitant rates to reap windfall profits.<sup>94</sup> There is no such oversight of the FOC operators endorsed by the Barrett Paper.

The Barrett Paper also claims that the U.S.-flag internationally trading fleet is foreign-owned.<sup>95</sup> While some vessel operators are U.S. companies owned by a foreign parent, or are publicly traded corporations, all of the vessels sailing in the U.S. Merchant Marine are crewed by American citizens and meet United States Coast Guard regulations requiring only vessels owned by U.S. citizens or U.S. companies and controlled by citizens of the United States may be documented under the laws of the United States.<sup>96</sup> The idea that because some vessels are owned by an American company with a foreign parent they are somehow “foreigners” ignores both the letter and the spirit of the U.S.-flag registry and the laws Congress put in place to ensure American control of the U.S. fleet. The Barrett Paper’s suggestion that U.S.-flag vessels are and their operators are skills for foreign interests is simply not true.<sup>97</sup> Notably, the authors cite only to themselves for the erroneous proposition.<sup>98</sup>

#### F. RELIANCE UPON FOREIGN-FLAG VESSELS CARRIES HIDDEN COSTS

The Barrett Paper fails to consider the negative implications of relying upon foreign carriers for sealift needs. Successive administrations have expressed serious reservations about relying upon foreigners for our nation’s ability to project power and protect its interests around the globe. As the United States Maritime Administrator testified in 2016:

**[T]he U.S. merchant marine and the mariners that are part of the active workforce have always responded to the call. They are patriotic. They have done what is needed to conduct our sealift requirement. They have never failed to carry our requirements, equipment, supply, materials, to support Department of Defense**

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<sup>94</sup> 46 C.F.R. § 382.3(b).

<sup>95</sup> Barrett Paper at 7.

<sup>96</sup> 46 C.F.R. Part 67. *See also* 46 U.S.C. Ch. 121.

<sup>97</sup> Barrett Paper at 7.

<sup>98</sup> Barrett Paper at 7 n. 37.

**operations. I cannot say the same for foreign-flag crews. We have several instances in which they have not gone into theater for fear of their own safety. We also run the risk if you have foreign seafarers that potentially we are at the risk of some political decision by another country who those mariners are national citizens to. And I don't think that's a position we want to be in going forward.<sup>99</sup>**

And the Deputy Commander of U.S. TRANSCOM agreed:

**We believe that the case for a U.S. flag fleet is compelling. There is no guarantee whatsoever that a foreign-flag fleet will sail into harm's way, as the Administrator said, and we have had cases of that in the past.<sup>100</sup>**

Furthermore, foreign-flag operators are not the state-of-the-art alternative that the Barrett Paper seems to suggest. The International Transport Workers Federation ("ITF") has for years developed a network of inspectors to investigate FOC vessels and keep lookout for the rights of seafarers.<sup>101</sup> Unregulated foreign-flag owners flying FOCs are under pressure to control costs above all else, and they are unencumbered by U.S.-quality regulatory restraints on ships, ship operators, and mariners. The result is many of these FOC vessels are older than the average age of the rest of the world fleet, have a higher rate of casualties, and their mariners are underpaid, with spotty training and a mish-mash of nationalities and languages that make communication between crew members extremely difficult.<sup>102</sup> To the point, the ITF states:

Many FOC vessels are older than the average age of the rest of the world fleet. Tens of thousands of seafarers endure miserable, life-threatening conditions on sub-standard vessels. Many of the detentions by Port State Control authorities involve ageing and

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<sup>99</sup> *Logistics and Sealift Requirement: Hearing Before Subcomm. On Seapower and Projection Forces, H. Armed Servs. Comm.*, 115<sup>th</sup> Cong. (March 22, 2016) (Statement of United States Maritime Administrator Paul N. Jaenichen).

<sup>100</sup> *Logistics and Sealift Requirement: Hearing Before the House Armed Services Subcomm. On Seapower and Projection Forces*, 115<sup>th</sup> Cong. (March 22, 2016) (Statement Lieutenant General Stephen Lyons, Deputy Commander, U.S. Transportation Command, U.S. Army) (emphasis added).

<sup>101</sup> Int'l Transport Workers Fed'n, <http://www.itfglobal.org/en/transport-sectors/seafarers/in-focus/flags-of-convenience-campaign/> (Nov. 2017).

<sup>102</sup> Int'l Transport Workers Fed'n, <http://www.itfseafarers.org/focs-to-seafarers.cfm> (Nov. 2017).

badly maintained FOC vessels that never should have sailed. Many of these ships have been referred to as “floating coffins”.<sup>103</sup>

Yet, the Barrett Paper, in its rush to tar our U.S.-flag Merchant Marine, stumbles when it claims that U.S.-flag ships are “older, smaller, and slower than foreign competitors,” again citing nothing for the proposition.<sup>104</sup>

Reliance upon foreign-flag vessels as emissaries of American foreign policy and humanitarian efforts presents additional risks. The ITF has repeatedly confirmed that seafarers employed on some foreign-flag ships are denied basic human and trade union rights, receiving near slave-labor wages, are forced to endure poor on-board conditions, including inadequate food and drinking water, and long periods of work without rest. The vessels they crew are frequently unsafe and often fail to adhere to scheduled maintenance programs which a national flag state control regime, like the U.S.-flag Coast Guard regulatory process, would impose.<sup>105</sup> ITF reports these vessels take advantage of minimal oversight and enforcement, cheap registration fees, low or no taxes, and the freedom to shop for the very cheapest labor.<sup>106</sup> In addition, these foreign-flag ships represent potential security threats. As the ITF has reported:

In the raised security environment there are concerns that terrorist organizations can own and operate ships under the FOC system with impunity. Arms smuggling, the ability to conceal large sums of money, trafficking in goods and people, and other illegal activities can also thrive in the unregulated havens that the FOC system provides. This is because, as corporate investigators have found, the FOC system makes it easy for a shipowner to remain anonymous.<sup>107</sup>

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<sup>103</sup> *Id.*

<sup>104</sup> Barrett Paper at 5.

<sup>105</sup> Int’l Transport Workers Fed’n, <http://www.itfseafarers.org/defining-focs.cfm> (Nov. 2017).

<sup>106</sup> Int’l Transport Workers Fed’n, <http://www.itfglobal.org/en/transport-sectors/seafarers/in-focus/flags-of-convenience-campaign/> (Nov. 2017).

<sup>107</sup> Int’l Transport Workers Fed’n, <http://www.itfseafarers.org/defining-focs.cfm> (Nov. 2017). In another incident reported by the BBC, an ITF representative was able to pay \$4,000 for a First Officer’s certificate from one FOC, even though he had no maritime skills or experience. *Why so many shipowners find Panama’s flag convenient*, BBC NEWS, Aug. 5, 2014, <http://www.bbc.com/news/world-latin-america-28558480>.

In 2015, the New York Times conducted an in-depth investigation into practices on board FOC vessel sailing the high seas.<sup>108</sup> Investigators found that “[f]ew places on the planet are as lawless as the high seas, where egregious crimes are routinely committed with impunity,” including human slavery, murder, intentional pollution, and poor compliance with safety rules, with the result that on average one ship sinks every four days and between 2,000 and 6,000 seamen die annually, typically because of avoidable accidents and lax safety rules.<sup>109</sup> Moreover, they found that the FOC system, “which allows ships to buy the right to fly the flag of a country as long as it promises to follow its laws, provides good cover for the unscrupulous.”<sup>110</sup> Investigators described seafarers required to work outside in Norway in November without winter jackets, hard hats, or safety shoes, crew members forced to beg for food from passing ships, and crew members that were sent home with the promise of pay, only to find nothing once ashore.

There are serious concerns on a number of levels about the propriety of relying upon these operators and vessels to execute the foreign and humanitarian policy of the United States. This is why the Federal government, for more than half a century, has ensured that American values are projected abroad by using American ships as the carrier of choice for our diplomatic, military, and humanitarian aid. Reliance upon our domestic registry fleet also ensures a visible presence for the United States in areas where American interests are vital, under the protection of the United States Armed Forces, while executing the delivery of essential government cargoes overseas in furtherance of national policy. Rather than focusing solely on cost and fomenting a race to the bottom, procuring shipper agencies such as USAID should be considering the voluntary imposition of fair, living wage requirements and U.S.-caliber pollution and safety requirements on those foreign-flag service providers that they do hire at the expense of the American worker. None of those requirements now exist, and shipper agencies are free to go with the lowest bidder, no matter how many lives are put at risk by doing so. Instead, the U.S. Merchant Marine has long urged Federal support for the U.S.-flag mariners sailing American ships who pay taxes here at home and contribute to our national defense sealift capability.

Foreign aid, especially programs like the P.L. 480 Title II Food for Peace, Food for Progress, and McGovern-Dole programs, represent the highest ideals of America – Americans

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<sup>108</sup> *The Outlaw Ocean*, NEW YORK TIMES, July 25, 2015, <https://www.nytimes.com/interactive/2015/07/24/world/the-outlaw-ocean.html>.

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

willingly giving from our abundant food resources to improve the lives of those most in need around the world.

#### IV. CONCLUSION

The U.S. Merchant Marine stands with its colleagues in the foreign aid and farm communities, as we have for over 60 years. Our goals remain the same – to help feed hungry people around the world through gifts of food from the American people. We recognize that the authors of the Barrett Paper believe they are doing the right thing in advocating their position. However, in its zeal, the Barrett Paper too often ignores inconvenient facts which conflict with the authors' agenda. The result is a study whose contributions are of limited use in furthering an informed discussion about the future of U.S. foreign aid policy and practices and our national defense sealift capability.

The United States maritime industry has been a valuable partner in sustaining our humanitarian assistance programs over the years, despite misguided attempts to undermine its role in making these programs successful. The men and women of the U.S. Merchant Marine are proud of their role supporting our food aid programs, proud of their role in supporting our national security, and remain committed to ensuring the American flag flies across the seas.

## **2017 National Maritime Day Proclamation Issued By President Trump**

On National Maritime Day, we recognize the important role the United States Merchant Marine plays in supporting our commerce and national security. We honor the proud history of our merchant mariners and their important contributions in strengthening our economy.

Americans have long looked to the sea as a source of safety and well-being. Bounded by two oceans and the Gulf of Mexico, and crisscrossed by inland waterways, America was destined to be a maritime nation. Our fledgling Republic expanded and became stronger, as our Nation's growing Merchant Marine connected the States and cemented ties among our new allies.

Today, the men and women who crew ships remain essential to our Nation's prosperity and security. Those in the maritime industry, including merchant mariners, promote our economic growth, facilitating the export of more than \$475 billion in goods just last year and sustaining our critical defense industrial base. Merchant mariners also actively protect our homeland, serving as our eyes and ears on the seas. They serve with distinction and courage, heading into war zones, and too often sacrificing their own lives for our protection.

The Congress, by a joint resolution approved May 20, 1933, has designated May 22 of each year as "National Maritime Day," to commemorate the first transoceanic voyage by a steamship, in 1819 by the S.S. Savannah. By this resolution, the Congress has authorized and requested the President to issue annually a proclamation calling for its appropriate observance.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, do hereby proclaim May 22, 2017, as National Maritime Day. I call upon the people of the United States to mark this observance and to display the flag of the United States at their homes and in their communities. I also request that all ships sailing under the American flag dress ship on that day.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth day of May, in the year of our Lord two thousand seventeen, and of the Independence of the United States of America the two hundred and forty-first.

DONALD J. TRUMP