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LAKE SUCCESS, NEW YORK

BEFORE THE

SUBCOMMITTEE ON LIVESTOCK AND FOREIGN AGRICULTURE

COMMITTEE ON AGRICULTURE

AND THE

SUBCOMMITTEE ON COAST GUARD AND MARINE TRANSPORTATION

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

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THE ROLE OF THE U.S.-FLAG MERCHANT FLEET IN THE TRANSPORTATION OF U.S. INTERNATIONAL FOOD AID

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Background

Formed in 1988, Liberty Maritime Corporation is the proud operator of five U.S.-flag vessels. Over the last fifteen years, the Liberty Shipping Group has invested almost $250 million in private capital to construct new vessels for the U.S.-flag fleet. Liberty Maritime and its affiliates are 100 percent U.S. citizen-owned and 100 percent U.S. citizen-controlled.

Three of Liberty's vessels are modern dry bulk vessels primarily engaged in the carriage of U.S. Government international food-aid cargoes. Through its 25 plus years of operating history, Liberty Maritime has successfully delivered almost 30 million tons of U.S. food aid to over 30 countries around the world on over 500 voyages.

In the last few years, Liberty has had to reflag U.S.-flag vessels foreign that were purpose-built to carry U.S. Government food aid and which predominantly carried such aid since their delivery. The reason such vessels have had to leave the U.S.-flag is primarily because of the decline in international in-kind food aid. That decline in turn has been the result of a decrease in program funding during the Obama Administration, the diversion of international food-aid funds to expenditures other than delivering in-kind food aid and the reduction in the reservation of cargoes to U.S.-flag vessels in 2012 from 75 percent to 50 percent.

The other two vessels Liberty operates are roll-on/roll-off (Ro/Ro) vessels configured as Pure Car Truck Carriers or PCTC's. Those vessels are among the most modern vessels in the U.S.-flag fleet and are regularly engaged in both the carriage of U.S. Government military cargoes as well as a variety of commercial vehicles. The M/V LIBERTY PROMISE and M/V LIBERTY PRIDE, delivered in August 2009 and April 2010, respectively, can each carry about 6,500 cars and have a high degree of military utility because of their flexible deck configuration, ultra strong ramps and other factors.

Liberty also participates in the Maritime Security Program. Both the LIBERTY PROMISE and the LIBERTY PRIDE are covered by Maritime Security Program Operating Agreements with the U.S. Maritime Administration (MARAD). All of Liberty's vessels are enrolled in the Voluntary Intermodal Sealift Agreement (VISA) Program and therefore the capacity of those vessels is fully committed to the U.S. Government in the event of national need.

Liberty is no stranger to the tribulations of the international market. On April 14, 2009, Liberty's vessel the M/V LIBERTY SUN was attacked by pirates off the coast of Kenya while en route to deliver a U.S. Government food-aid cargo to Mombasa. The occurred shortly after the attack on the M/V MAERSK ALABAMA. Both vessels were engaged in the carriage of U.S. Government international food aid. Liberty's crew performed admirably in implementing the company's security plan and in warding off the attack without a boarding. Fortunately, no one on the crew was hurt although the vessel was hit by rocket propelled grenades and automatic weapons fire.

Importance of the Privately Owned U.S.-Flag Commercial Fleet

U.S. Government vessel promotional programs have long recognized an enduring truth about strategic sealift. That truth is that it is far more efficient and economical over the long term to support a privately owned commercial fleet during peacetime to have available in times of war or national emergency than it is either to rely on the vicissitudes of the international market or to maintain on stand-by status a fleet of inactive government-owned ships.

This axiom is reflected both in law and official national security policy.

Section 50101 of Title 46 of the U.S. Code (going back to the Merchant Marine Act, 1920 and amended and affirmed over time) provides in part that: "It is necessary for the national defense and the development of the domestic and foreign commerce of the United States that the United States have a merchant marine . . . capable of serving as a naval and military auxiliary in time of war or national emergency."

The official national security policy is reflected in National Security Directive 28 issued on October 5, 1989 which provides, in part, that "[s]ealift is essential both to executing this country's forward defense strategy and to maintaining a wartime economy" and that the "US-owned commercial ocean carrier industry, to the extent it is capable, will be relied upon to provide sealift in peace, crisis, and war."

These bedrock policies reject the alternatives of relying on the foreign market and U.S. Government vessel ownership and bely much of the criticisms of the U.S. maritime industry offered by uninformed observers.

In the case of dependence on the international market, the U.S. Government has seen through its own experience as well as that of other governments (such as that of the United Kingdom in the Falklands War or Canada in Operations Desert Storm/Desert Shield) that foreign vessels are not always available when needed or reliable when chartered. Moreover, as the U.S. Government found when it needed Ro/Ro's in Operations Desert Storm/Desert Shield, foreign flag Ro/Ro's, when available, were only available at very high (some would say exorbitant) charter rates.

In the case of dependence on inactive government-owned vessels, the cost of maintaining such vessels is often much higher than the cost to keep available a privately owned U.S.-flag commercial vessel. The reasons for this are obvious – the private operator has a high incentive to operate efficiently to maximize earnings and the U.S. Government is able to leverage the owner's receipts from the ongoing carriage of commercial cargoes to pay for maintenance, a well trained, loyal and motivated crew and other aspects of vessel operation.

Military Utility of Vessels Carrying Food Aid

It has been wrongly suggested that U.S.-flag vessels transporting international food aid assistance are not "militarily useful." The usual basis of this fallacious argument is the simplistic and wrong assertion that only vessels enrolled in the Military Sealift Program or MSP are "militarily useful."

This approach is wrong on many levels.[1]

First, all vessels under the U.S.-flag are militarily useful and for that reason are subject to requisition by the U.S. Government for any declared national emergency.[2] This is the case because vessels can be put to varied uses with or without modification. Moreover, every U.S.-flag vessel employs experienced and licensed U.S. citizen mariners who take years to train and are needed to man both privately and U.S. government owned vessels committed to national defense.

Second, most every U.S.-flag vessel in the foreign trade is enrolled in the Voluntary Intermodal Sealift Agreement (VISA) program that provides for sealift

[1] For further information see USA Maritime, "A Critical Analysis of 'Food Aid And Agricultural Cargo Preference'" (Dec. 2010) available at www.usamaritime.org.
[2] 46 U.S.C. § 56301.

readiness. VISA was established pursuant to section 708 of the Defense Production Act of 1950, as amended, which authorizes voluntary emergency preparedness programs. The VISA program is only "open to U.S.-flag vessel owners of oceangoing militarily useful vessels, to include tugs and barges."[3] Indeed, VISA defines "military planning capacity" for bulk and breakbulk vessels based on deadweight measured in metric tons. The U.S. Government relies on VISA for sealift capacity and participation in that Program is a much more valid measure of "military usefulness" than participation in MSP. As of July 2015, there were 58 VISA participating companies of which only 11 were MSP participants. Obviously, MSP participation is an insufficient measure of military utility.

The Liberty vessel M/V LIBERTY EAGLE is a perfect example of a VISA-enrolled (but not subject to an MSP agreement) vessel carrying food aid on a regular basis that has substantial military utility. The LIBERTY EAGLE is a 2004 built-dry bulk carrier capable of transporting 51,812 metric tons of food aid or ammunition or other similar hazardous cargo and can also carry approximately 600 containers. In fact, we believe that the LIBERTY EAGLE may be the largest U.S.-flag vessels specially configured to carry ammunition.

Third, every U.S.-flag vessel of which we are aware which was built abroad and registered under U.S.-flag since the inception of MSP has accomplished its reflagging by first applying to MARAD for confirmation that the vessel would be eligible for MSP if an MSP agreement would be available. The reason this is done is that MSP-eligible vessels receive expedited reflagging processing by the U.S. Coast Guard. Therefore, all of these vessels meet the MSP standard of military utility.

State of the Privately Owned U.S.-Flag Commercial Fleet

The privately owned U.S.-flag commercial fleet engaged in the foreign trade, so necessary to national defense, is in a state of crisis. A combination of the creation of the MSP in 1996 and its expansion in 2005 from 47 to 60 vessels, relatively robust levels of U.S. Government cargo reserved to U.S.-flag vessels by federal cargo preference laws and international shipping conditions sustained a stable fleet from roughly the year 2000 to 2012. During that period of time, there were an average of 105 privately owned U.S.-flag vessels engaged in the foreign trade. However, since 2012 the fleet has been declining precipitously as vessels leave the U.S. registry. According to MARAD, that number of vessels as of October 30, 2015 was 77. With this trend, it is no exaggeration at all to say that the future of the privately owned U.S.-flag fleet hangs in the balance.

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[3] 79 Fed. Reg. 64,462 (Oct. 29, 2014).

The reason for this decline, we believe, is readily apparent -- the number of cargoes reserved to U.S.-flag vessels by U.S. cargo preference laws has decreased substantially in the last few years. This has occurred both with international food aid (PL 480) and Department of Defense cargoes – which are the two main sources of U.S.-flag U.S. Government freight revenue.

With respect to the food aid, that program has been under siege by the Obama Administration which has decreased overall funding for the program while simultaneously diverting more and more of the program to agency overhead, ancillary expenses, vouchers and cash payments. And the reservation to U.S.-flag vessels – long a matter of bipartisan consensus – was decreased from 75 percent to 50 percent as a "pay for" expedient in the 2012 federal highway legislation. According to a recent MARAD report, this led to a decline of about ***40 percent in a single year*** in U.S.-flag freight revenue from fiscal year 2012 to fiscal year 2013.[4] Overall, dry bulk food aid cargo volumes have declined 56 percent since 2010.[5]

While food aid cargoes for the U.S.-flag have fallen precipitously in the last few years, nothing has taken their place. In March 2015, General Paul Selva, Commander, United States Transportation Command, stated -- "The reduction in government impelled cargoes due to the drawdown in Afghanistan and reductions in food aid . . . are driving vessel owners to reflag to non-US-flag out of economic necessity. . . With recent reductions, the mariner base is at the point where future reductions in U.S.-flag capacity puts our ability to fully activate, deploy, and sustain forces at increased risk." According to an August 2015 Government Accountability Office report,[6] the United States is already short 1,400 mariners needed to meet DoD readiness requirements.

With respect to Department of Defense cargoes, from fiscal year 2012 to fiscal year 2014 the volume of such cargoes declined almost 25 percent as measured by tons.[7] The carriers who have reflagged or retired vessels in the last few years have all stated "that the predominate driver in their decision to remove vessels has been the loss of preference cargoes."[8] This has occurred for the readily apparent reasons that the U.S. Government has reduced its overseas bases and installations and because of the decreased military operations in Iraq and Afghanistan. In fact, DoD has indicated that

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[4] U.S. Maritime Administration, U.S. Department of Transportation, "A Report to Congress – Impacts of Reductions in Government Impelled Cargo on the U.S. Merchant Marine" (April 21, 2015) at 12.
[5] Id. at 5.
[6] U.S. Government Accountability Office, "International Food Assistance – Cargo Preference Increases Food Aid Shipping Costs, and Benefits Are Unclear" (August 2015).
[7] Id. at 3.
[8] Id. at 4.

"the American military presence in Europe as of 2014 is 86 percent smaller than it was in 1989, with the closing of over 700 sites including hundreds of bases and radio and radar positions."[9]

Regrettably, these trends are likely to continue which will have a devastating effect on the privately owned U.S.-flag merchant marine. As the Members of the two Subcommittees are well aware, there are proposals pending in both Chambers to gut the in-kind international food aid program and essentially convert it into a cash and voucher program. And the critics of in-kind food aid – a program which has served the United States well since 1954 and has saved millions and millions of people around the world – are unceasing and shrill. In fact, even without a fundamental change to the U.S. food aid program, "overall cargo preference volumes will likely decrease over the next two to three years . . .".[10] The privately owned U.S.-flag fleet, already struggling financially, is not likely to survive such a further decline without direct, immediate and substantial U.S. Government support.

Importance of Keeping a Viable In-Kind Food Aid Program

Although PL 480 and related programs have historically been in-kind food aid programs where U.S. grown agricultural commodities are shipped abroad to needy people, there has been increasing pressure from the Obama Administration and certain academics to send cash or vouchers abroad instead and permit such cash or vouchers to purchase foreign-sourced agricultural commodities. We believe that such a shift would be a tragic mistake on many levels and, as well intentioned as the pressure to shift to cash/vouchers may be, ultimately it will result in reducing U.S. aid to vulnerable populations or, in other words, the exact opposite of what is intended.

There are those who say that cash/voucher aid is "faster" and more "efficient" than in-kind food – we would not agree. And there is no doubt that wiring money to a foreign account or printing vouchers in a foreign country can be done quickly and that cash can be handed out "efficiently". But at what cost to accountability, efficacy and transparency and to the reputation of the program with the American people?

The "faster" and more "efficient" theories, in any event, don't square with reality. In-kind food aid is usually delivered to places where there is known recurring food insecurity and therefore speed of delivery is not an issue. The U.S. Government already has other substantial programs, like the Foreign Disaster Assistance program and the Emergency Food Security Program, which are intended for unanticipated emergencies (where cash and vouchers can be used) – if those programs are under-funded, why has

[9] Id. at 16.
[10] Id. at 48.

the Obama Administration not asked for substantial increases? Moreover, shipments can be diverted at sea and frequently are to meet present needs, and U.S. food can be stockpiled abroad to meet unanticipated needs and has in fact been so stockpiled.

But these are issues for another hearing focused on the supposed benefits and downsides of sending cash and vouchers instead of U.S. food. We only would point out for the present that early returns on the extensive use of cash and vouchers are negative. Such use has led to fraud, abuse and a lack of transparency and accountability exactly as common sense would indicate when cash or vouchers are used in countries where there is war, violence and weak social, legal and political systems.

For example, in March 2015 GAO released a report exposing numerous cash giveaway issues,[11] including:

- There is little to no oversight of these cash programs, and as a consequence there is widespread pilfering, corruption, graft and diversion of funds. For example: USAID had only two people in Syria to oversee a half a billion dollar program; USAID let contractors use overhead satellite imagery to monitor "food for work" programs in Somalia; when GAO visited a food for work program in Kenya, nobody from USAID had been there for over a year to check on the program; and USAID is actually handing out envelopes of cash to crowds in developing countries, particularly Syria, without any accountability or record of how that cash gets spent.

- The Report also indicated that USAID lacks guidance on program award modifications which took awards from $91 million to $626 million, or $535 million in program expenditures, and that absent such guidance 'USAID cannot hold its staff and partners accountable." The GAO report also found that handing out cash in areas where people lack access to food caused local food price spikes of 20-25 percent in numerous instances, and that neither USAID nor its partners put in place protections to prevent counterfeiting, diversions, and other misuse of funds leading to fraud and theft problems.

In November 2014 the UN World Food Programme's Inspector General also issued a report which made "two high-risk and nine medium-risk observations."[12] The high risk observations were that there is a persistent diversion of vouchers for non-

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[11] U.S. Government Accountability Office, "International Cash-Based Food Assistance – USAID Has Developed Processes for Initial Project Approval but Should Strengthen Financial Oversight" (March 2015).

[12] United Nations World Food Programme Office of the Inspector General, "Internal Audit of WFP Operations in Syria and Neighbouring Countries" (November 2014).

food procurement purposes and that the WFP persons in charge of the program could only meet 25 percent of their verification targets. Part of the problem was attempting to solve a humanitarian crisis in a war zone (Syria), but the problem of "persistent encashment of vouchers" was also prevalent in Jordan and Lebanon.

Recommendations

Liberty strongly recommends that the U.S. Congress consider making improvements in the way that U.S. in-kind food aid is contracted for and transported to increase transportation and other efficiencies with the use of privately owned U.S.-flag commercial vessels. Among the potential possibilities that should be considered are: (1) modifying contracting for transportation services so that it is based on established commercial practices which place the risk of loss on the person in the transportation chain most able to control and mitigate that risk; (2) moving the transportation function for PL 480 from the U.S. Agency for International Development back to the U.S. Department of Agriculture, as it used to be, to more closely align commodity purchasing decisions and practices with transportation purchases thereby making the program more cost efficient and reducing agency coordination delays; (3) requiring foreign ocean carriers to comply with the same tender and contractual terms and conditions as U.S.-flag carriers; and (4) requiring shipper agencies to comply with customary U.S. Government procurement integrity laws, such as the Competition in Contracting Act and the Federal Acquisition Regulation, to prevent non-competitive practices such as permitting foreign speculators to make offers to carry cargoes that they have no ships for.

Finally, and most importantly, we believe that it is essential that Congress reverse the reduction in the percentage of international food assistance cargoes reserved to U.S.-flag vessels that occurred in 2012 and resume the 75 percent reservation. Certain officials have grossly overestimated the cost of such a resumption using old, outmoded data not taking into account the current size of the food aid program and current freight costs. When the U.S. House of Representatives passed the 75 percent resumption in the 2014 Coast Guard authorization, CBO estimated the annual cost of the increase to be an average of $8.8 million over five years in increased outlays.[13] We respectfully submit that this is a very small price to pay to support the sealift capabilities provided by U.S.-flag vessels carrying food aid and other U.S. Government cargoes.

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[13] H.R. Rep. No. 113-384, 113th Cong., 2d Sess. at 30 (March 25, 2014).

Conclusion

Liberty Maritime supports a strong and vibrant privately owned U.S.-flag commercial fleet and has proven that it is willing to invest significant capital to achieve that objective. The current fleet is in mortal danger because of declining cargo preference volumes and significant action is needed to prevent a precipitous decrease in the number of privately owned U.S.-flag vessels available for national defense.