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COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

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[Amendments to Merchant Marine Act of 1936] B-95832

To be made available to public reading room

JUN 11 1979

The Honorable Howard W. Cannon  
Chairman, Committee on Commerce,  
Science and Transportation  
United States Senate

SEN 06200

Dear Mr. Chairman:

Mr. John Hardy of your committee's staff requested our assistance in drafting language to amend section 901(b) of the Merchant Marine Act of 1936, June 21, 1936, c. 850, 49 Stat. 2015, as amended, 46 U.S.C. 1241(b)(1) and (2). The purpose of these amendments is to address the problems discussed in our report CED-78-116, June 8, 1978, "Cargo Preference for Government-Financed Ocean Shipments Could Be Improved."

AGC-00279

Our report highlights disagreements between the Maritime Administration (MarAd) and other departments and agencies as to the applicability of the Cargo Preference Act of 1954, section 901(b)(1) of the 1936 Act, as amended, 46 U.S.C. 1241(b)(1), and recommends to Congress that

"section 901(b) of the Merchant Marine Act of 1936 should be clarified concerning the types of programs to be covered under cargo preference legislation and the extent of MarAd's authority to determine the applicability of cargo preference legislation to specific programs."

The exact nature of the clarifications were considered matters within the province of congressional decision making, but we offered our assistance in drafting any desired legislation. In this context, Mr. Hardy requested that we draft language covering the areas of disagreement mentioned in the report.

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Specifically, the applicability of section 901(b) was in dispute as to Department of Defense coproduction and offset military sales agreements, various Federal grants, Eximbank's insurance and medium term loan guarantees, Department of State/AID cash grants, and Department of

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Commerce/Economic Development Administration loans. The common thread in all these disagreements appears to be the Maritime Administration's interpretation that section 901(b) applies to all cargoes that would not have moved if the Federal Government had not been financially involved.

We believe that your committee's purpose can be accomplished and the Maritime Administration's interpretation given effect by inserting the following language at the beginning of subsection 901(b)(1):

"Whenever equipment, components, parts, assemblies, materials or commodities are obtained under agreements or arrangements directly or indirectly financed by the United States by way of any loans, credits, grants, grants-in-aid, insurance or guarantee programs, offset or coproduction agreements, or otherwise, or whenever \* \* \*."

By listing some types of "direct or indirect" Federal financing such as credits, grants, etc., we do not mean for the list to be all inclusive. The term "or otherwise" clearly allows for greater latitude in determining what arrangement constitutes Federal financial involvement.

This suggested amendment is offered in response to Mr. Hardy's specific request. We believe, however, that substantially the same results can be achieved by other means without amending section 901(b)(1).

The disagreements mentioned in Chapter 3 of our report arose because the Maritime Administration insisted on its interpretation of section 901(b)(1). The disagreements continued, at least at the time our report was issued, because the Maritime Administration did not clearly have authority to make a final determination as to the applicability of section 901(b)(1) to agency programs. Vesting the Maritime Administration with such authority should effectively end these disagreements. To do so, we suggest the following amendment to section 901(b)(2):

Strike all after the first sentence in subsection (b)(2) and insert in lieu thereof the following:

"The Secretary of Commerce shall by regulation determine which department and agency programs are to be administered with respect to this subsection. The Secretary of Commerce shall review such administration and shall annually report to the Congress with respect thereto."

We believe that except for programs that the Congress specifically excludes from cargo preference applicability, enactment of this amendment would provide the Maritime Administration with general authority to determine which Government programs are subject to the section 901 cargo preference provision.

We would note, however, that the exact impact of these changes to section 901(b) on our relations with foreign nations or their impact on domestic programs and parties is unclear to us. In these circumstances, we do not believe it appropriate to comment on the requested amendments.

Sincerely yours,

R. F. KELLER

(Deputy,

Comptroller General  
of the United States