ADS 315 - CARGO PREFERENCE

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Functional Series 300: Acquisition & Assistance Agreement
ADS Chapter 315 - CARGO PREFERENCE

315.1 Authority

1. The Cargo Preference Act of 1954, Section 901(b)(1) of the Merchant Marine Act of 1936. **[46 USC Sec. 1241(b)(1)]**
2. **Section 603 of the Foreign Assistance Act of 1961, as amended (FAA).**
3. **Food Security Act of 1985, P.L. 99-198**.

315.2 Objective

* To ensure that ocean shipments of commodities are in accordance with the requirements of the **Cargo Preference** Act and with the regulations issued by the Maritime Administration of the U.S. Department of Transportation.

315.3 Responsibility

1. The Bureau for Management, Office of Procurement, Transportation and Commodity Division, Transportation Branch (M/OP/TC/TRANS) is responsible for **the following**:

a) Ensuring that U.S. flag vessels' participation in moving USAID-financed commodities and P.L. 480, Title II and Title III commodities complies with the requirements of the Cargo Preference Act and applicable Maritime Administration rules;

b) Reviewing individual country performance for compliance with the statutory requirements and policies in this chapter;

c) Preparing statements to geographic Bureaus to advise them of deficient country performance and of possible corrective measures;

d) Determining non-availability of U.S. flag vessels;

e) Maintaining statistics as to cargo preference performance and preparing reports as necessary; and

f) Assisting other USAID Offices and Missions in interpreting the Cargo Preference Act as administered by USAID.

2. The Strategic Objective Team is responsible for **the following**:

a) Incorporating cargo preference requirements into agreements with the cooperating countries and into the implementing documents; and

b) Transmitting policy, essential procedures, and performance statistics to cooperating countries and USAID Missions.

3. Missions are responsible for **the following**:

a) Advising cooperating country governments as to the applicable provisions of this chapter; and

b) Assisting the governments in remedying noted deficiencies in compliance.

4. The cooperating country is responsible for ensuring that USAID-financed commodities are shipped aboard ocean vessels in accordance with cargo preference provisions that are incorporated in their financing agreements with USAID.

315.4 Definitions (See ADS GLOSSARY)

Cargo Preference
quantitative unit of cargo

315.5 POLICY

The statements contained within the .5 section of this ADS chapter are the official Agency policies and corresponding essential procedures.

315.5.1 USE OF U.S. FLAG VESSELS

Tonnage: At least 50 percent of the gross tonnage of all USAID-financed commodities that are transported on ocean vessels (computed separately for dry bulk carriers, dry cargo liners, and tankers) shall be transported on privately-owned, U.S. flag, commercial vessels, to the extent such vessels are available at fair and reasonable rates for such vessels.

Revenue: At least 50 percent of the gross freight revenue generated by all shipments of USAID-financed commodities transported on ocean vessels (computed separately for dry bulk carriers, dry cargo liners, and tankers) shall be paid to or for the benefit of privately-owned, U.S. flag liners, to the extent such vessels are available at fair and reasonable rates for such vessels.

E315.5.1 Use of U.S. Flag Vessels

The Bureau for Management, Office of Procurement, Transportation and Commodity Division, Transportation Branch (M/OP/TC/TRANS) shall monitor cooperating countries' cargo preference performance. If M/OP/TC/TRANS determines that the cooperating country's compliance with the tonnage and revenue requirements over the life of an agreement is in doubt, the cooperating country may be required, as a corrective measure, to make all shipments by U.S. flag vessels for a specific period until compliance is reasonably ensured M/OP/TC/TRANS shall furnish written determinations to the USAID Bureau responsible for the agreement. The Bureau shall then initiate action to invoke USAID's rights under the standard agreement clause to institute the modified requirement.

***315.5.2 EXCEPTIONS**

* **The policies in this chapter do not apply to the following situations:**

* **a) Ocean transportation between foreign countries of commodities purchased with foreign currencies, or the transfer of fresh fruits and products thereof, as provided in Section 603 of the Foreign Assistance Act of 1961, as amended (FAA);**

* **b) Grants to American Schools and Hospitals Abroad or grants to Public International Organizations, except in the instances when USAID's procurement policies apply to these types of grants;**

* **c) Supplies donated by non-U.S. Government donors to the American Red Cross or to the private voluntary organizations (PVOs) registered with USAID, nor to supplies purchased by such PVOs with non-U.S. Government funds even if the transportation of such donated or purchased supplies is financed by USAID pursuant to Section 123 of the FAA;**

* **d) Property provided on an advance-of-funds or reimbursement basis under a determination made in accordance with Section 607(a) of the FAA;**

* **e) Cash transfer agreements; and**

* **f) Contractor-owned mobilization equipment, which must be owned prior to contract award, shipped to the host country**

and imported duty free for use on USAID-funded projects with the intent of re-export upon completion.

***E315.5.2 Exceptions - N/A**

315.5.3 QUANTITATIVE UNIT RULE

When cargo is contracted on a quantitative basis that may move in full shipload lots, U.S. flag vessels must be fixed for at least 50 percent of the quantitative unit if they are available at fair and reasonable rates, before fixtures may be made on non-U.S. flag vessels.

E315.5.3 Quantitative Unit Rule

M/OP/TC/TRANS shall withhold approval of the fixture of foreign flag vessel(s) for any portion of a **quantitative unit of cargo** until such time as U.S. flag vessel(s) which are available at fair and reasonable rates are fixed for at least 50 percent of the tonnage of the quantitative unit, or in the case of P.L. 480 commodities, 75 percent.

315.5.4 P.L. 480, TITLE II AND TITLE III

For shipments of commodities under Title II and Title III of P.L. 480, the requirements in 315.5.1 through 315.5.3 for use of U.S. flag vessels are 75 percent, rather than 50 percent.

E315.5.4 P.L. 480, Title II and Title III - N/A

315.5.5 DETERMINATIONS OF NON-AVAILABILITY

The Cargo Preference Act requires the use of U.S. flag vessels only to the extent that they are available, and available at fair and reasonable rates for U.S. flag vessels. USAID reserves the right to determine whether a U.S. flag vessel is available for any particular shipment of a USAID-financed commodity Determinations of non-availability are not applicable to PL 480 shipments.

E315.5.5 Determinations of Non-Availability

A liner's tariff rate, if filed with and accepted by the Federal Maritime Commission, shall normally be considered by USAID to be a fair and reasonable rate**.** A determination of liner non-availability shall relieve the cooperating country of the requirement to use U.S. flag vessels for the tonnage of commodities included in the determination.

315.5.5a DRY CARGO LINERS

M/OP/TC/TRANS shall determine that U.S. dry cargo liners are unavailable if the following criteria are met:

1) U.S. flag liner vessels do not offer service from the shipment's geographic source to the destination country;

2) U.S. flag vessels can provide liner service for commodities that cannot be containerized only by trans-shipment, and vessels under flag registry of countries to be authorized by the waiver provide liner service without trans-shipment;

3) U.S. flag vessels are not available, and cargo is ready and available for shipment, provided it is reasonably evident that delaying shipment until U.S. flag vessels become available would increase costs or significantly delay receipt of the cargo;

4) U.S. flag vessels, which are otherwise available, are found unsuitable because of loading, carriage, or unloading requirements, or are unsuitable for the available port handling facilities;

5) U.S. flag vessels do not provide liner service from the port of loading stated in the procurement's port of export delivery terms, provided the port is named in a manner consistent with normal trade practices and provided that the cargo cannot be delivered to another port served by U.S. flag vessels at no greater cost; or

6) The rates charged by available U.S. flag vessels are determined to be higher than fair and reasonable rates for non-U.S. flag vessels.

E315.5.5a Dry Cargo Liners - N/A

315.5.5b CHARTERED VESSELS

M/OP/TC/TRANS shall evaluate the availability, suitability, and responsiveness of U.S. flag vessels and shall evaluate whether the offered rates are fair and reasonable prior to approving any charters for the transport of cargoes**.** M/OP/TC/TRANS shall make these evaluations in consultation with the Maritime Administration**.** A determination that U.S. flag vessels are not available shall reduce the cooperating country's required use of U.S. flag vessels by the tonnage included in the determination.

E315.5.5b Chartered Vessels - N/A

315.5.5c BLANKET DETERMINATIONS OF NON-AVAILABILITY

M/OP/TC/TRANS may authorize omitting U.S. flag vessel shipping requirements from an agreement when it finds that it is impracticable for the cooperating country to comply because of non-availability of suitable U.S. flag vessels to deliver the commodities to be financed by the agreement. Such a blanket determination of non-availability shall make it unnecessary to issue determinations for individual shipments. Blanket determinations shall be made for limited periods of time, geographic scope, and service.

E315.5.5c Blanket Determinations of Non-Availability - N/A

315.5.6 IMPRACTICABILITY

USAID may not waive the statutory requirements of the Cargo Preference Act, but it may find in exceptional circumstances that it is not practicable to include the usual cargo preference requirements in a particular agreement. Such a finding shall enable USAID to exempt a particular agreement from the cargo preference requirements.

E315.5.6 Impracticability

Any other exemptions to the Cargo Preference Act based upon impracticability require approval by the USAID Administrator, in consultation with the Assistant Administrator for Management (AA/M) and the USAID General Counsel (GC). The following exemptions only require consultation with M/OP and GC:

a) The agreement funds are to be made available to intermediate credit institutions for dollar (foreign exchange) procurement, or the funds are for not more than $1 million or 20 percent of the total funding of a multi-laterally funded project, whichever is less; and

b) M/OP/TC/TRANS can determine or reasonably forecast that the current and prospective use of U.S. flag shipping by the cooperating countries within the concerned Bureau's geographic area will enable USAID to comply with its statutory cargo preference requirements for the total of all USAID-financed shipments to countries of this geographic area.

*315.6 Supplementary Reference - N/A

315.7 Mandatory Reference - N/A

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