

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

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MAY 11 1978

The Honorable John M. Murphy
Chairman, Committee on Merchant
Marine and Fisheries
House of Representatives

Dear Mr. Chairman:

We refer to your letter of February 2, 1978, requesting a legal interpretation and a statement in quantitative terms of what is meant by the phrase "substantial portion" in the Declaration of Policy of the Merchant Marine Act of 1936, as amended, 46 U.S.C. 1101 (Supp. V, 1975). In addition to the interpretation, you request a statement as to the extent the Executive Branch is carrying out the intent of this policy.

Section 101 of Pub. L. No. 835, ch. 858, 49 Stat. 1985, codified as Section 1101 of the Merchant Marine Act of 1936, 46 U.S.C. 1101 (Supp. V, 1975), provides in pertinent part that:

"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 import foreign commerce of the United States and to provide shipping service essential for maintaining the flow of such domestic and foreign water-borne commerce at all times, * * *." (Emphasis ours.)

While the Declaration of Policy in the 1920 and 1928 Merchant Marine Acts used the words "greater portion," Section 1 of H.R. 8555, which as modified was enacted as Section 101 of Pub. L. 835, originally contained this language in the Declaration of Policy:

"Section 1. 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 at least one-half of the water borne export and import 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, * * *." (Emphasis ours.)

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B-124032

It passed the House and as introduced into the Senate contained the same language. There were many counterpart bills introduced at that time, in both the House and Senate, which contained the same language. See S. 2582, 74th Cong. 1st Sess.; S. 3500, 74th Cong. 2d Sess.; H.R. Report No. 1277, 74th Cong. 1st Sess. 20 (1935).

The Senate amended H.R. 8555 and changed the language from "at least one-half" to "substantial portion." We were unable to find the reason for that change. However, a similar change was made in S. 3500, a counterpart bill. See Hearings Before The Committee on Commerce, United States Senate on S. 3500, S. 4110 and S. 4111, 74th Cong. 2d Sess. 121 (1936), in which the Committee states that "There is no apparent reason for changing 'at least one-half' to 'a substantial portion'."

The legislative history of the Merchant Marine Act of 1936 is inconclusive as to what Congress meant by the phrase "substantial portion." However, the Federal Maritime Board, predecessor to the Federal Maritime Commission, made this observation in Bloomfield Steamship Company - Application For Operating - Differential Subsidy, 4 F.M.B. 349 (1953):

"Section 101 of the Act declares that it is necessary for the national defense and development of the foreign and domestic commerce of the United States that this country shall have a merchant marine which is 'sufficient to carry its domestic water-borne commerce and a substantial portion of the water-borne export and import foreign commerce of the United States'

The earlier decision of the Board [4 F.M.B. 305 (1953)] held that 'substantial portion' was intended by the Congress to mean more than half of the water-borne foreign commerce of the United States. Our present judgment is that while 50 percent participation by vessels of United States registry in our total foreign commerce was intended by Congress to be a generally desirable goal, Congress never intended to establish 50 percent as an absolute level below which we, in the exercise of our discretion, might never descend in determining adequacy for any particular trade route under the Act."

The Secretary of Commerce in considering another subsidy application in 1963, stated in Atlantic Express Lines of America - Subsidy Application, Combination Passenger/Cargo Service, No. S-124, May 23, 1963, reported in Pike and Fisher, 2 Shipping Regulation Reports (SRR) 732:

B-124032

"In my judgment, it is possible and desirable to combine the various verbal concepts as to the Congressional meaning of 'substantial portion' that have been argued and arrive at a statement of a standard or guideline which accurately reflects Congressional intent. Upon consideration of the express language of the statute in question, the extensive presentation of legislative history, and what I believe are the meaningful realities of the merchant marine industry, I believe the Congressional declaration of policy should be interpreted to mean we should consider a 50% objective as a goal in determining whether we have a merchant marine sufficient to carry 'a substantial portion of the water-borne export and import foreign commerce of the United States.'
* * *"

See also Sea-Land Service, Inc. v. Kreps, U.S. Court of Appeals, D.C. Circuit, Docket Nos. 76-1204, 76-1389, September 30, 1977, 15 SRR 223, 224. Thus, the Department of Commerce, has construed the law to set a goal of a merchant marine fleet sufficient to carry at least 50 percent of its waterborne export and import foreign commerce. The consistent administrative interpretation of a statute by an agency charged with its implementation is entitled to great weight. See Iran National Airlines Corp. v. United States, 360 F.2d 640, 643 (Ct. Cl. 1966).

As to the extent that the Executive Branch is carrying out the intent of this policy, we have been advised that the Maritime Administration recently has completed a plan that may be of some interest to the Committee. The plan shows the additions and replacements required for the United States-flag merchant fleet to carry out the National Maritime Policy as declared in section 101 of the 1935 Act. 46 U.S.C. 1101^{*} (Supp. V, 1975).

In addition, we anticipate issuing a report in May or June, a copy of which will be sent to the Committee, pertaining to the Maritime Administration's regulation and monitoring of United States cargo preference laws.

Sincerely yours,

R.F.KELLER

Deputy Comptroller General
of the United States