

**REVIEW OF THE EXEMPTION PROVIDED
UNDER PARAGRAPH 3 OF THE GATT 1994**

Response by the United States to Questions Posed Concerning Jones Act

The following communication, dated 12 December 2003, is being circulated at the request of the Delegation of the United States.

The United States submits the following responses to the questions from the delegation of the European Communities, contained in document WT/GC/W/521.

Questions from the European Community

Q: In order to assess the impact of the Jones Act legislation on the shipbuilding market the EU would like the US to provide precise figure regarding:

- (i) the number and types of vessels/ships produced in the last five years in the framework of the "Jones Act";**
- (ii) the sale price for these vessels/ships and the name of the company (name of the ship owners);**
- (iii) the total amount of the aid awarded in relation to the sale price.**

- A:**
- (i) Data on the number and types of vessels/ships produced in the last five years is provided by the United States to the WTO Secretariat annually. For your convenience, we have reproduced this information in the table in Annex I.
 - (ii) U.S. Law does not require that this information be notified to the U.S. government. We do not believe that there is complete information on sale value available from commercial sources.
 - (iii) Because we do not maintain sales price information, we are unable to respond fully to this question. In Annex II, however, we have provided a table containing the data from the Maritime Administration's financial guarantee program. For a full display of the publicly available data relevant to your request, please visit the Maritime Administration's website, <http://www.marad.dot.gov/TitleXI/approved.html>, which

provides information on vessels receiving financial guarantees from the Federal government.

Q: Furthermore the EU would appreciate information on the legal grounds for using foreign-built or foreign-reconstructed vessels for commercial application with the US waters (e.g. as of the appropriations bill for 2003 allowing a foreign owned shipping company to operate foreign build vessels between the islands of Hawaii). Does the United States intend to grant this possibility in the future to all WTO Members?

A: The EC is correct that 2003 appropriations legislation (Pub. L. 108-7) provides the legal grounds for up to three cruise ships constructed to completion in a shipyard located outside of the United States to receive a coastwise endorsement to operate in regular service transporting passengers between or among the islands of Hawaii. The thrust of the last part of the EC's question is not entirely clear, given that the legislation does not specify that such a shipyard be located in a particular country (WTO Member or otherwise). We are not aware of any similar legislation currently pending before the U.S. Congress.

In relation to maritime transport services:

Q: While we note that the provision of maritime transport services is not covered by the exemption provided for by paragraph 3 (a-e) of GATT 1994, the EU would like the US to clarify the conditions for granting exemption to the general restriction on provision of transport between ports in the US? In a recent case (the appropriations bill for 2003) a foreign owned shipping company was allowed to operate between the islands of Hawaii. Should this case be understood as a permanent derogation, or is it rather a partial step towards opening up some of the restrictions covering cabotage on a case by case basis?

A: The conditions for granting a waiver are governed by federal regulation, in particular 46 C.F.R. 388.4 and 46 C.F.R. 251.31, copies of which are attached. For detailed information regarding the conditions for eligibility and the criteria for governing the Maritime Administrator's actions in granting a waiver, please refer in particular to 46 C.F.R. 388.4 and 46 C.F.R. 251.31, copies of which are attached as Annex III, and which can also be found at the following websites:

http://a257.g.akamaitech.net/7/257/2422/14mar20010800/edocket.access.gpo.gov/cfr_2002/octqtr/pdf/46cfr388.4.pdf

and

http://a257.g.akamaitech.net/7/257/2422/14mar20010800/edocket.access.gpo.gov/cfr_2002/octqtr/pdf/46cfr251.31.pdf.

The U.S. administration is not aware of any legislation pending in the U.S. Congress that would suggest that the legislation to which the EC is referring is a first step towards opening up the restrictions referred to.

ANNEX I

U.S. SHIPYARD DELIVERIES - FIVE-YEAR PERIODS									
Time Period	Fishing Vessels			Non-Fishing Vessels			Total		
	No. of Vessels	Total Gross Tonnage	Average Gross Tonnage	No. of Vessels	Total Gross Tonnage	Average Gross Tonnage	No. of Vessels	Total Gross Tonnage	Average Gross Tonnage
1994	330	50,628	153	150	283,156	1,888	480	333,784	695
1998									
1995	352	50,908	145	174	747,093	4,294	526	798,001	1,517
1999									
1996	365	53,964	148	208	971,098	4,669	573	1,025,062	1,789
2000									
1997	360	55,895	155	226	1,328,856	5,880	586	1,384,751	2,363
2001									
1998	395	64,103	162	252	1,505,829	5,976	647	1,569,932	2,426
2002									
5 yr. Avg.(mv)	360	55,100	153	202	967,206	4,541	562	1,022,306	1,818

U.S. SHIPYARD ORDERBOOK (Expected Deliveries) - FIVE-YEAR PERIODS									
Time Period	Fishing Vessels			Non-Fishing Vessels			Total		
	No. of Vessels	Total Gross Tonnage	Average Gross Tonnage	No. of Vessels	Total Gross Tonnage	Average Gross Tonnage	No. of Vessels	Total Gross Tonnage	Average Gross Tonnage
1994	N/A	N/A	N/A	149	1,438,568	9,655	149	1,438,568	9,655
1998									
1995	N/A	N/A	N/A	169	1,702,848	10,076	169	1,702,848	10,076
1999									
1996	N/A	N/A	N/A	152	1,752,156	11,527	152	1,752,156	11,527
2000									
1997	N/A	N/A	N/A	139	1,566,127	11,267	139	1,566,127	11,267
2001									
1998	N/A	N/A	N/A	178	1,811,785	10,179	178	1,811,785	10,179
2002									
5 yr. Avg.(mv)	N/A	N/A	N/A	157	1,654,297	10,541	157	1,654,297	10,541

NOTE: Gross Tons 100 and above.

Source: Lloyd's Register-FairPlay / Coast Guard (Fishing Vessels).

ANNEX II

PUBLIC DISTRIBUTION
MARITIME ADMINISTRATION Title XI Ship Financing Guarantees
Pending Applications

Owner	No. of Ships	Types of Vessels/Projects
Fast Ship Atlantic, Inc.	2	High-Speed Container Vessels
Pasha Hawaii Transport Lines LLC	1	Pure Car/Truck Carrier
Vessel Management Services, Inc.	2	155,000 Barrel-Capacity ATB's
Speede Shipyard, LLC & Metro Machine Co	N/A	Shipyard Modernization
AHL Shipping Company	2	Double-hull Product Tankers
K Ship 1-4, LLC.	4	Double-hulled, 45,000 DWT, Crude Oil and Product Carriers
Harbor Fuel Service, Inc.	1 1	3,000 HP Harbor Tug Double-hull Tank Barge
Cashman Equipment Corporation	29	Steel Deck Barges
Rowan Companies, Inc.	2	Self-Elevating Mobile Offshore Jack-up Rigs
Alter Barge Line, Inc.	45	Covered Hopper Barges
New York Trans Harbor, LLC	6	Low-Wake Motorized Catamaran Ferries
Sterling Equipment, Inc.	4	Deck Barges
	2	Dump Scow
Port Imperial Ferry Corp.	5	Passenger Catamarans
Kvaerner Philadelphia Shipyard, Inc.	N/A	Shipyard Modernization
Santa Maria Shipping, LLC	1	Container Vessel
Perforadora Central, S.A. de C.V.	2	Supply Vessels
Vane Line Bunkering, Inc.	2	Double-Hull Heavy Oil Tank Barges

TOTAL 111

*Export

As of 6 November 2003

Shipyard Actual Cost to Owner	Orig. Amount of Loan	Terms of Guarantee	Arrival Date	
National Steel & Shipbuilding Co. – San Francisco, CA	\$857,500,000.00	\$750,500,000.00	Const. Period + 25 yrs	09/22/99
Halter Marine Inc. - Gulfport, MS	\$79,317,000.00	\$69,403,000.00	Const. Period + 25 yrs	12/07/00
Bay Shipbuilding - Sturgeon, WS	\$71,000,000.00	\$61,400,000.00	25 yrs	03/07/01
	\$39,691,419.00	\$34,700,000.00	25 yrs	03/23/01
	\$141,256,120.00	\$123,599,105.00	25 yrs	07/12/01
Kvaerner Philadelphia Shipyard - Phila., PA	\$68,000,000.00	\$59,500,000.00	25 yrs	07/16/01
Orange Jeffboat LLC - Jeffersonville, IN	\$6,617,250.00	\$5,790,094.00	25 yrs	03/20/02
HBC Barge LLC - Brownsville, PA Cove Fleeting - Morgan City, LA	\$14,076,923.00	\$12,561,000.00	25 yrs	08/19/02
LeTourneau, Inc. - Vicksburg, MS	\$200,909,000.00	\$175,795,000.00	15 yrs	08/29/02
Trinity Marine Products, Inc.	\$11,740,000.00	\$8,805,000.00	25 yrs	09/03/02
Robert E. Derecktor, Inc. - Mamaroneck, NY	\$4,800,000.00	\$3,840,000.00	25 yrs	11/18/02
HBC Barge, LLC - Brownsville, PA Corn Island Shipyard - Lamar, IN Conrad Industries - Morgan City, LA	\$8,487,000.00	\$7,426,000.00	20 yrs	11/21/02
AllenMarine, Inc - Stika, Alaska	\$12,315,084.00	\$10,775,000.00	25 yrs	01/13/03
	\$34,300,000.00	\$30,000,000.00	18 yrs	04/04/03
Santa Maria Steel LLC	\$18,170,000.00	\$15,600,000.00	Const. Period	09/16/03
Bollinger Shipyards Lockport, LLC - Lockport, LA	\$26,133,782.00	\$19,600,000.00	15 yrs	10/02/03
Jeffboat, LLC.	\$13,370,000.00	\$11,698,000.00	25 yrs	11/06/03
	\$1,607,683,578.00	\$1,400,992,199.00		

Annex III

§251.31 Charges for processing applications for authorization to transfer ownership of ships build with construction-differential subsidy.

- (a) Applications for an amendment or addendum to construction-differential subsidy contracts to provide the sale of a vessel built under Title V, Merchant Marine Act, 1936, as amended, to a buyer who assumes the obligations under said contracts, shall be filed with the Secretary, Maritime Subsidy Board, Washington, DC 20590.
- (b) *Fee.* Each such application shall be accompanied by the sum of \$200, which sum will be retained to recover the cost of processing the application.

(Sec. 4; 5 U.S.C. 553)

[G.O. 106, 31 FR 3397, Mar. 4, 1966]

§388.4 Criteria for grant of a waiver.

- (a) *General criteria.* (1) We will waive the foreign build and/or foreign rebuild prohibition in the coastwise trade laws for an eligible vessel only if we determine that the employment of the vessel in the coastwise trade will not unduly adversely affect –
 - (i) United States vessel builders; or
 - (ii) The coastwise trade business of any person who employs vessels built in the United States in that business.
- (2) We may not limit the determination of "unduly adverse affect" on a coastwise operator or an U.S. vessel builder to operators or builders of vessels carrying 12 or fewer passengers.
- (3) We will evaluate the expected impact of the proposed waiver on the basis of all the information received from all sources, including public comment, internal investigation and analysis, or any other sources or information deemed appropriate.
- (b) *Impact on U.S. vessel builders.* We may use the following criteria to determine the effect on U.S. vessel builders: Whether a potentially impacted U.S. vessel builder has a history of construction of similar vessels, or can demonstrate the capability and capacity to build a similar vessel, for use in the same geographic region of the United States, as the proposed vessel of the applicant.
- (c) *Impact on coastwise trade operators:* We may use the following criteria to determine the effect on existing operators of U.S. – built vessels in coastwise trade.
 - (1) Whether the proposed vessel of the applicant and a vessel of an existing operator (or the vessel of an operator that can demonstrate it has taken definite steps to begin operation) would provide similar commercial service and would operate in the same geographic area.
 - (2) The number of similar vessels operating or proposed to operate in the same market with the same or similar itinerary, relative to the size of the market.

- (d) *Advance notice and approval needed for changes.* When we approve a waiver application, we will notify the applicant that the applicant may not make substantial changes in the employment of the vessel in the coastwise trade without prior notice to MARAD. If the applicant fails to provide advance notice of substantial changes to MARAD, we may immediately revoke the waiver under §388.5.
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