Merchant Marine Act (Jones Act)

The Merchant Marine Act of 1920 ("The Jones Act") requires that cargo transported by water between points in the United States be carried on vessels which are U.S. registered, built and crewed. Moreover, U.S. citizens must hold at least 75% equity interest in partnerships or corporations which own the vessel. Under other legislation, similar restrictions apply to the domestic carriage of passengers.

Foreign rebuilding of a vessel permanently forfeits domestic privileges as does foreign registration for any period during the life of the vessel. In response in part to a NAFTA undertaking, a final rule is expected to be issued in 1996 that will establish a clear threshold for rebuilt determinations. However, the proposed threshold (between 5-10% of the steelweight of the hull and/or superstructure) is so low that the rule is unlikely to result in any significant liberalization of U.S. restrictions in this area. Legislation being considered by Congress in early 1996 for the reauthorization of the Coast Guard also contains a provision that would require all non-emergency repairs to Coast Guard vessels to be performed in the United States.

The Jones Act (coupled with the defence-related prohibitions of the Byrnes/Tollefson Amendment), effectively prevents Canada from participating in the domestic shipping trade of the United States, from investing in the U.S. shipbuilding industry, and from supplying shipbuilding components and related services to the U.S. market.

Another extension of the Jones Act, the Commercial Vessel Anti-Reflagging Act of 1988, restricts the activities of foreign-built vessels over five net tonnes in the fishing industry to the transportation of fish. The Act also prohibits vessels built or rebuilt outside the United States from engaging in coastal shipping and the fishing industry.

Both the WTO/GATT agreement and the OECD Shipbuilding Agreement (when it enters into force) contain special monitoring and reporting requirements on the Jones Act, and the United States to submit a report to the WTO in December, 1995. A debate within the U.S. maritime industry on the reform of the Jones Act also resumed during 1995, but by early 1996 no specific proposals for change had emerged.

Federal Maritime Commission (FMC)

Under the Foreign Shipping Practices Act of 1988, the Federal Maritime Commission (FMC) is authorized to take unilateral action to address foreign shipping practices affecting U.S. carriers. The FMC may also take action against restrictions on non-liner vessels and port and onward transit services. Possible remedies include the imposition of fees; cargo restrictions; suspension of a carrier's operating rights; restrictions on sailings to and from U.S. ports; denial of entry to U.S. ports or waters, and detention of vessels.

Ocean shipping reform legislation being considered by Congress would abolish the FMC and introduce a number of regulatory changes, including ending the requirement for carriers to file their tariffs and contracts. It would also give individual lines within carrier conferences a mandatory right of independent action on service contracts and allow shippers and carriers to make confidential contracts, while retaining anti-trust immunity for carrier conferences. However, the initiative would retain the United State's ability to take unilateral action to address foreign shipping practices affecting U.S. carriers.