
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.

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.

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.

Procurement

U.S. military supplies being transported by sea must be transported by U.S. vessels. In addition, 50% of government non-military cargoes and 75% of certain agricultural commodities (e.g., food and humanitarian aid shipments) must normally be transported by vessels of U.S. registry. As well, cargoes being shipped under U.S. export programs must normally be carried by U.S. vessels. (Up to 50% of such cargoes may be carried by vessels of the recipient country if the recipient country does not discriminate against U.S. vessels.)

Financial Services

Since 1980, Canadian financial sector reform has significantly outpaced that of the United States. Accordingly, many aspects of laws and regulations governing U.S. financial services result in significantly less access to the U.S. market than that enjoyed by U.S. financial institutions in Canada.

One of the key barriers is the variety of geographic restrictions on banking within and across state boundaries created by the MacFadden Act. Amendments in late-1994 have resulted in some improvements, but still offer no certainty that Canadian institutions will be able to operate freely across state lines.