

**FIVE-YEAR 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 14 July 2000 has been received from the Permanent Mission of the United States with the request that it be circulated to Members.

The United States submits the following responses to the questions from the delegations of Japan and the European Communities, contained in documents WT/GC/W/402 and WT/GC/W/403 respectively.

Questions from Japan

1. Japan appreciates the US replies regarding questions (d) and (j) and would further appreciate it if replies are provided on the following additional questions:

Q: Regarding the response to question (d), the US states that ships built in the US by a foreign capital company are considered as "US-built". Japan wishes to know whether there are any restrictions for foreign capital participation in shipbuilding companies and, if so, what they are. Japan also wishes to know how many foreign capital shipbuilding companies are currently being operated in the US.

A: We are aware of no laws or regulations restricting or limiting foreign investment in US shipyards or ship repair facilities. No information is collected on how many companies with foreign investment are operating shipyards or ship repair facilities in the United States.

Q: Referring to question (j), the US states that, "There have been proposals in Congress to change US cabotage laws (also referred to collectively as the "Jones Act"). Please inform Members of the contents of such proposals.

A: We are aware of proposals in the following bills that have been introduced into this (1999-2000) Congress:

- S. 1510 ("United States Cruise Ship Tourism Development Act of 1999");
- H.R.3392 /S.2564 ("All American Cruise Act of 2000"); and
- H.R. 248/S.1032 ("United States Cruise Tourism Act of 1999").

The Congress has not acted upon any of these proposals.

Details about these proposals may be obtained through the Library of Congress website at <http://thomas.loc.gov>.

As opposed to the answers mentioned in 1. above, it is regrettable to note that the replies to questions (a), (b), (e), (f), (g), (h) and (i) are far from sufficient. Japan would appreciate it if the US could resubmit its replies, taking into consideration the following points.

Q: The US refers to the existence of specific mandatory legislations that fall within the scope of paragraph 3 of the GATT 1994, but fails to explain in more detail why such legislations are deemed necessary. In light of the purpose of this review (to examine "whether the conditions which created the need for the exemption still prevail"), we believe that a more detailed and substantiated explanation would be required on the conditions of the shipbuilding industry in the US, including the present situation as regards international competition and other relevant matters.

A: There is no provision in paragraph 3 of the GATT 1994 for the General Council to examine "why the US legislation is deemed necessary". As has been noted previously, the terms of the exemption do not require us to justify our invocation of its coverage. This point was clear to all concerned when the GATT 1994 was concluded.

To place the US legislation into context, it should be recalled that the core shipbuilding industrial base, upon which the US Navy depends to meet its acquisition needs, has historically been sustained by a combination of commercial shipbuilding for the domestic trade and military orders. It is critical for US shipbuilders to build commercial ships for this trade if a viable industrial base is to be maintained to meet future Navy requirements. Moreover, the Navy relies upon shipyards that perform commercial work for the Jones Act trades for day-to-day maintenance of naval and surge fleet vessels, such as the Ready Reserve Fleet. Vessels in the Ready Reserve Fleet are maintained in a state of readiness by the US Government, capable of providing strategic sealift resources to meet national defense and other national security requirements.

Q: Regarding the response to question (e), the US simply refers to the information it submits to the WTO each year. However, as such information does not include the data on the following points, which, in our view, are vital to conduct meaningful and balanced review under paragraph 3 of the GATT 1994, Japan requests the US to provide Members with the relevant details.

- **What is the exact number of shipbuilding companies in the US that build and repair ships falling within the scope of the "Jones Act", as well as their percentage in the shipbuilding industry as a whole? What is the exact number of employees, and their percentage in the industry as a whole, working in such companies?**

- **Over the last ten years, what is the amount of annual sales for building and repairing ships alike which fall within the scope of the "Jones Act", and what is the change in percentage, also over the last ten years, of such sales in relation to the total amount of sales within the US shipbuilding industry?**

A: There are no data distinguishing between shipyards and ship repair companies that build vessels exclusively for the domestic trade or foreign trade. As of May 2000, there were 94 shipyards and ship repair facilities located in the United States, employing 80,414 workers.

Questions from the European Union

Q1: The figures provided by the US concerning the operation of the Jones Act show that during the 1994-98 period the production has doubled and the expected deliveries (new orders) have been multiplied by four, compared with the period 1990-1994. The US now represents 2 per cent of the world market. This tends to demonstrate that the operation of the Jones Act is benefitting to the US industry to the detriment of other Members that have not access to the US market. Does the US have a market share target to be reached before repealing its protective legislation?

A: The statistical information provided in the annual notifications on vessel deliveries and orders covers vessels 100 tons and above that may operate in either the domestic or international (non-Jones Act) trades. The Jones Act does not require that vessels built in US shipyards must operate exclusively in the domestic trade.

The United States is not a major builder of ships, and the EC's estimate that the US represents 2 per cent of the world market appears to be overstated. The United States has no market share target. Our objective is to sustain a core industrial shipbuilding base to preserve our national security. The United States does not intend to repeal the legislation covered by paragraph 3 of the GATT 1994.

Q2: In document WT/GCIW/397 (responses by the US to the questions posed concerning the Jones Act), the US, in replying to the question 7 recognized that the notified legislation has been subject to changes since 1994. Could the US inform the Members of these changes in detail and explain why it considers that they do not alter the conformity with Part II of GATT 1994?

A: None of the changes referred to in the European Communities' question have modified the legislation to decrease its conformity with Part II of the GATT 1994.

Q3: The reason invoked by the US to justify the existence of such protection is the need to maintain a naval capability for security reasons. Could the US give a break down of the figures between commercial and naval ships built under the Jones Act provisions?

A: The legislation is to maintain a viable industrial base to meet future Navy requirements, as well as maintain shipyards that the Navy can rely upon for day-to-day maintenance of naval and surge fleet vessels, such as the Ready Reserve Fleet. The number of commercial and naval ships that have been built in the past is not relevant to the issue of sustaining a capability for future Navy requirements and ongoing maintenance requirements.
