

SEA Europe input on future EU-US Transatlantic Trade and Investment Partnership

SEA Europe is the Association for Ships and Maritime Equipment. Originating from the fusion of EMEC, the European Marine Equipment Council, and CESA, the Community of European Shipyards' Association, its purpose is to represent the European Maritime Technology Industry as a whole.

In preparation for the upcoming EU-US TTIP negotiations, Sea Europe would like to take the opportunity to raise concerns to European policy makers about the US Jones Act, which restricts free trade of maritime transport.

1 The Jones Act

The Jones Act (Merchant Marine Act of 1920, Section 27) requires all waterborne shipping between US ports to be carried out by vessels built in the US and these vessels have to be owned, registered and operated by Americans. Originally, the purpose of the Act is to ensure that the nation has a sufficient merchant marine and shipbuilding base to protect the nation's defense and commercial interest. Such type of law is not unique to the maritime industry. US cabotage¹ provisions apply to other transportation modes such as aviation, rail and trucking as well. However, while cabotage principles are similar, no US-build requirement exists for other transportation modes in the US. The Jones Act covers more than strict cabotage rules. Acts related to the Jones Act exist for instance in reserving the construction of fishing vessels to American shipbuilders for fishing zones where American fishermen have a license.² Other examples are dredging vessels³, marine mining vessels⁴ and waste disposal vessels⁵. Barges and supply ships for the oil and gas industry are covered by the Jones Act as well.

As a consequence of the Jones Act and its subsequent revisions, the European shipbuilding industry including ship repair⁶ and maintenance has been effectively excluded from selling vessels to be used in American coastwise trades. Although some European marine equipment manufacturers have managed to sell certain products to US shipbuilders, the Jones Act prevents them from offering integrated marine equipment systems more widely in the US, because the use of foreign parts for ship construction is heavily restricted⁷. On the

¹ Cabotage provisions restrict free trade, because it does not allow foreign companies to transport cargo or passengers between two points in the same country. (Jones Act)

² The key law governing the operation of fishing vessels in the US is *46 U.S.C. 12108* under which only a US built, owned and registered vessel may engage in the fisheries in the US territorial waters or the Exclusive Economic Zone (EEZ).

³ The 46 app. U.S. C. 292 requires that dredges operating in the US must be US built although foreign ownership and registry are permitted. An amendment of Jones Act (i.e. Public Law 100-329) requires that any dredged material which is transported between points within the US territory and/or the EEZ must be transported in a US built, owned and registered vessel.

⁴ The statute covering dredging (46 app. U.S.C. 292) applies to marine mining vessels as well. Vessels transporting mined material from a point on the high sea within the EEZ to the US are governed by this law.

⁵ The Transportation of Sewage Sludge Act (Public Law 100-329, 102 Stat. 588) amended the Jones Act to require waste disposal vessels to be US built, owned and registered.

⁶ Under the Jones Act, ship repair work of more than 10% of steel weight must be done by an American yard.

⁷ See the chart enclosed. Among the US built ships in 2012, 70% engines installed are US engines and 28% are European engines. These are in significant contrast with the figures from other major shipbuilding countries.

contrary, the EU does not exclude maritime manufacturers from the US or any other third countries. Such protectionism by the US is contrary to the overall liberalized trade intentions of the two trading partners.

A 1999 U.S. International Trade Commission economic study suggested that a repeal of the Jones Act would lower shipping costs by about 22%. A 2002 economic study from the same Commission estimated that repealing the Jones Act would have an annual positive welfare effect of 656 million USD on the overall US economy.⁸

The US has an exemption under the WTO (Paragraph 3(a) of GATT 1994) which allows the US to keep the Jones Act prohibition concerning the use, sale or lease of foreign-built or foreign-reconstructed vessels in commercial applications between points in US waters or waters of US exclusive economic zone. The WTO conducts in a two-year cycle a review of the US exemption.

Lobbying within the US has been undertaken throughout the years to scrap the Jones Act or at least a partial exemption (e.g. exception from the US-build requirement). In June 2010 Senator John McCain introduced "Open America's Water Act" which if adopted would fully repeal the Jones Act. Unfortunately, the Act did not manage to pass. In the following chapters we focus on reasons to at least partially adjust the Jones Act.

2 Reasons to adjust the Jones Act

The major criticism of the EU maritime industry against the Jones Act is that the legislation has created a severe distortion of the international level playing field. It raises a lot of problems for the competitiveness of the US merchant marine manufacturers and operators. There have been antitrust investigations and actions against price fixing practice among major Jones Act carriers.⁹

The Jones Act has the following negative consequences for the competitiveness of the US maritime industry:

High building costs and decline of market share

The Jones Act has resulted in much higher building and fleet costs and significantly declined competitiveness of the US merchant marine manufacturers and operators.

U.S. commercial ships built under the Jones Act cost four or five times more than in other major shipbuilding countries. According to the Shipping Intelligence Network, the building cost per ton in Japan is 769.80 USD whereas it is 9,910.48 USD in the US.¹⁰ Even though Japan's labor costs are slightly higher than those of the US and economic inputs in the US are cheaper than in Japan, it costs 1200% more to build a ship in the US. It is clear that only market distortions can drive such absurd increases in capital costs.

⁸ <http://www.mccain.senate.gov>.

⁹ March 2013 US Government Accountability Office Report on « Puerto Rico, Characteristics of the Island's Maritime Trade and Potential Effects of Modifying the Jones Act ».

¹⁰ <http://www.nationalreview.com>. Article on 1 March 2013 "Sink the Jones Act".

In 1979 the US built roughly a tenth of the world's commercial vessels. Today, the market share is less than 1%.

Lack of availability of qualified vessels

Qualified US vessels are not always available to meet market needs due to the lack of competition and innovation incentives. Besides, most American port authorities focus mainly on domestic maritime transport which has led to a situation where a majority of the ports on the US East Coast do not meet modern standards and are not constructed in such a way that they can receive the new generations of containerships.

A consequence of the lack of qualified vessels is that the US sometimes needs to authorize administrative waivers to foreign parties. In November 2012 following the effects of Hurricane Sandy, the Secretary of Homeland Security issued a temporary waiver of the Jones Act to allow foreign oil tankers to transport oil from US ports in the Gulf of Mexico to Northeastern ports to provide additional fuel resources to the region. It is in the interest of the US to directly and efficiently use international material without prior administrative waiver procedures.

Lack of skilled labor

As a result of a low order book, the US maritime work force is short on experience. There is a lack of human skills and expertise which is essential for building advanced and specialised vessels. If the US has to buy/licence knowledge from specialised foreign yards it will only further increase the domestic building costs. US yards have lost engineering talent to foreign competition. The unsustainable economic model created by the Jones Act has led to yard consolidations and closures. Talented US naval architect and engineers tend to work for more profitable oil-service firms or in foreign shipyards. One of the fundamental aims of the Jones Act, namely to preserve US shipbuilding knowledge, is being destroyed by the Act itself.

Higher operating costs and negative safety and environment impact

US ship operators have an economic incentive to continue operating old vessels rather than replace them with newer, safer and more environmental friendly ships. The average age of US Ro Ro vessels¹¹ is 28 years, US bulkers 32 years, and US containerships 29 years. The average age of foreign-flag vessels is around 11-12 years which is considerably less.

Older vessels impose higher operating costs because they are less efficient and require more maintenance and repair expenses. On top of that older vessels produce more emissions and do not have the same safety levels. It is expected that upcoming new environmental regulations will increase the transportation demand in certain specific markets (e.g. shipping refined petroleum and gas products). However, there is a lack of qualified Jones Act vessels available to meet the demand.

¹¹ The term Ro Ro (ro on/ro off) refers to ships designed to carry rolling-stock cargo which does not require cranes to be loaded or off-loaded but is driven on and off the ship decks.

3 **Defenders of the Jones Act**

US Jones Act defenders argue that the major reasons for high building and operating costs for Jones Act vessels are:

- 1) That foreign yards are larger and can enjoy economies of scale because of long production runs of relatively standard vessel designs whereas, US yards typically build customized vessels.

EU Counter argument → *this is not the case for Europe where most shipbuilders build complex and specialized ships and products and their ships are not produced in large standard series as those produced in the Far East.*

- 2) The wages in foreign yards are lower.

EU Counter Argument → *This is not the case for Europe who has the same labor standards*

- 3) Construction, safety and environmental regulatory standards in foreign countries are lower than the US standards.¹²

EU Counter Argument → *This is not the case for Europe where those standards are as high as in the US.*

The US Department of Defense states that it relies on commercial shipyards and an adequate shipyard industrial base to build service and repair military vessels. There are seven major American yards that currently construct the vast majority of military vessels. Some of these also construct a small number of commercial vessels and are generally capable of building larger oceangoing vessels. About 280 medium and small commercial US shipyards are engaged in repairing government ships and producing the large majority of smaller commercial vessels such as tugboats, barges and service boats engaged in Jones Act trade. The goals to maintain these are to serve in peacetime in the Jones Act trade and to provide sealift capability in time of national emergency.

EU Counter Argument → Looking at aviation which is also a strategic industry (from national defense and commercial interest perspective); there is no US-build requirement.

4 **SEA Europe position and recommendations**

SEA Europe understands that the debate on the Jones Act is a historical and complex one. Nevertheless, our goal is to achieve certain compromises and to open up certain market segments, which are important for Europe.

If the Jones Act would be partially lifted for European ship types, the European shipbuilding industry (including ship maintenance and repair, marine equipment) will be able to enter a new 'market' and to compete with the US industry on a fair level playing field. This would bring a win-win situation to both sides of the Atlantic, because:

1. The EU and the US share common values; both have comparable legal systems and high standards of labor and environmental protection.
2. In contrast with other major shipbuilding countries and regions in the Far East (e.g. Korea, China, Japan) the EU has very strict state aid rules.
3. US yards can continue to build their usual ship types (which do not compete with EU ship types) without a threat to its capacities.

¹² Please refer to the detailed counter arguments concerning the European situation under Session 5 *SEA Europe Position and Recommendations* second paragraph.

4. US ship operators will benefit from lower costs and better energy efficiency.
5. US consumers will be able to benefit from improved safety and a cleaner environment.
6. In time of need and emergency (e.g. natural disaster), maritime material will be available without unnecessary and burdensome administrative waiver procedures.
7. The US harbors will be able to meet the international modern standards and reduce bottlenecks for trade.
8. There will no longer be a lack of availability of ships in the US
9. US competitiveness will increase in the long term

Suggestions for the negotiations

SEA Europe suggests that the EU negotiate with the US for market access of passenger ships, Ro Ro vessels and other complex specialized ship types (e.g. dredgers, tugs, crane vessels, pipe laying vessels and all variety of specialized workboats for the offshore industry).

Background Note

SEA Europe brings together CESA and EMEC and represents an Industry which generates more than €72 billion turnover annually and offers employment in high profile jobs for more than 500 000 Europeans. The association represents close to 100% of the European shipbuilding industry in 18 nations, encompassing the production, maintenance, repair and conversion of all types of ships and floating structures, commercial as well as naval including the full supply chain with the various producers of maritime systems, equipment material, and services.