84TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 2293

AMENDING THE SHIPPING LAWS, TO PROHIBIT THE OPERATION IN THE COASTWISE TRADE OF VESSELS REBUILT OUTSIDE THE UNITED STATES

JUNE 8, 1956.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BONNER, from the Committee on Merchant Marine and Fisheries, submitted the following

REPORT

[To accompany H. R. 6025]

The Committee on Merchant Marine and Fisheries, to whom was referred the bill (H. R. 6025) to amend the shipping laws, to prohibit the operation in the coastwise trade of vessels rebuilt outside the United States, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill do pass.

The amendments are as follows:

Delete all after the enacting clause and insert in lieu thereof the following:

That section 27 of the Merchant Marine Act, 1920, as amended (U. S. C., 1952 edition, title 46, sec. 883), is further amended by inserting the following new proviso at the end of the first proviso thereof: "*Provided further*, That no vessel of more than 500 gross tons which has acquired the lawful right to engage in the coastwise trade, either by virtue of having been built in or documented under the laws of the United States, and which has later been rebuilt outside the United States, its Territories (not including Trust Territories), or its possessions shall have the right thereafter to engage in the coastwise trade."

SEC. 2. If any vessel of more than 500 gross tons documented under the laws of the United States, or last documented under such laws, is rebuilt outside the United States, its Territories (not including Trust Territories), or its possessions, a report of the circumstances of such rebuilding shall be made to the Secretary of the Treasury upon the first arrival of the vessel thereafter at a port within the customs territory of the United States in accordance with such regulations as the Secretary may prescribe. If the required report is not made, the vessel, together with its tackle, apparel, equipment, and furniture, shall be forfeited, and the master and owner shall each be liable to a penalty of $200. Any penalty or forfeiture incurred under this Act may be remitted or mitigated by the Secretary under the provisions of section 5294 of the Revised Statutes of the United States, as amended (U. S. C., 1952 edition, title 46, sec. 7).

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SEC. 3. The Secretary of the Treasury shall prescribe such regulations as may be necessary to carry out the purposes of this Act.

SEC. 4. This Act shall be effective from the date of enactment hereof: *Provided, however*, That no vessel shall be deemed to have lost its coastwise privileges hereunder if it is rebuilt under a contract entered into before such date of enactment and if the work of rebuilding is commenced not later than six months after such date of enactment.

This bill would amend the coastwise laws to provide that vessels which have acquired the lawful right to engage in the coastwise trade, either by virtue of having been built in or documented under the laws of the United States, and which have later been rebuilt outside the United States, its territories, or possessions, shall not have the right thereafter to engage in the coastwise trade. The prohibition under the bill applies to all vessels in excess of 500 gross tons.

It has been the historical policy of the United States to maintain exclusive domestic shipping trade. In furtherance of this policy, the coastwise laws deny foreign-flag vessels the right to operate in the domestic waterborne commerce of the United States. This policy also extends to a prohibition against operation in the coastwise trade of vessels which may have been built abroad, even though owned and operated by American citizens. Citizenship requirements for eligibility for documentation of vessels for operation in the coastwise trade are more stringent than such requirements for vessels to be used in the foreign trade. In addition, all United States vessels are subject to an ad valorem duty of 50 percent on repairs made on equipment obtained abroad, except where required for safety and seaworthiness of the vessels on a voyage.

One of the major reasons for this restrictive policy is the preservation of an adequate American shipbuilding and ship-repair industry, which is so necessary in time of national emergency.

With major developments in technology in recent years there have been instances of American-owned, American-built vessels which have been substantially rebuilt in foreign shipyards, and then have returned to operate in American coastwise trade. Even though these rebuildings have been so extensive as to completely change the character of the vessels, the existing law does not subject the owners to payment of duty, nor is there any restriction against their use in domestic shipping service. This appears to be a gap in the law, which is clearly inconsistent with traditional policy. This bill is designed to close the gap and deny the right of vessels rebuilt abroad to operate thereafter in the domestic trade.

The bill, as introduced, was thought by both the Department of Commerce and the Treasury Department to require some clarification, particularly with regard to the meaning of the term "rebuilt." Accordingly, your committee amended the bill by substituting new language in line with recommendations of the Departments.

It is believed that the bill, as amended, would be consistent with national maritime policy and principles, and would be practicable of administration.

The departmental reports are as follows:

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, August 18, 1955.

Hon. HERBERT C. BONNER,
Chairman, Committee on Merchant Marine and Fisheries,
House of Representatives.

DEAR MR. CHAIRMAN: Reference is made to your letter of August 4, 1955, enclosing copies of H. R. 6025, 84th Congress, 1st session, and requesting our views and recommendations thereon.

H. R. 6025 would further amend section 27 of the Merchant Marine Act, 1920, as amended, to prohibit the operation in the coastwise trade of any vessel which was rebuilt outside the United States, its territories, its possessions, or the District of Columbia.

The proposed legislation appears to be consonant with the spirit and purpose of the Merchant Marine Act, 1920, as amended (46 U. S. C. 861 et seq), which was designed to foster not only a strong merchant marine but also the shipbuilding industry of the United States. However, we have no special information on the subject, and since the question as to whether there should be prohibited the operation of American vessels in the coastwise trade which were rebuilt abroad is one of policy for the Congress to determine, we have no recommendation to make with respect to H. R. 6025.

Pursuant to your request, this letter is furnished in quadruplicate.

Sincerely yours,

JOSEPH CAMPBELL,
Comptroller General of the United States.

THE SECRETARY OF COMMERCE,
Washington, March 22, 1956.

Hon. HERBERT C. BONNER,
Chairman, Committee on Merchant Marine and Fisheries,
House of Representatives, Washington, D. C.

DEAR MR. CHAIRMAN: This letter is in reply to your request of May 6, 1955, for the views of this department with respect to H. R. 6025, a bill to amend the shipping laws, to prohibit the operation in the coastwise trade of vessels rebuilt outside the United States, and for other purposes.

Subject to certain exceptions, vessels built outside the United States are excluded from operation in the coastwise trade of the United States under the laws establishing the policy of cabotage. The bill would amend section 27 of the Merchant Marine Act, 1920, as amended (46 U. S. C. 833), and section 9 of the Shipping Act, 1916 (46 U. S. C. 808). The purpose of the amendment of such section 27 is to deny, on penalty of forfeiture, the privilege of transporting merchandise by water between points in the United States (including districts, Territories (except trust territories), and possessions thereof embraced within the coastwise laws) on vessels rebuilt in foreign yards. The purpose of the amendment of such section 9 is to exclude from the coastwise trade and to deny to such vessels rebuilt outside the United States (its Territories (except trust territories), or possessions, or the District of Columbia) the privilege of engaging in the coastwise trade under such section 9. The word "rebuilt" as used in the amendments is defined in the bill as follows: "altered in form

or burden, by being lengthened or built upon, or from one denomination to another, by the mode or method of rigging or fitting."

The bill further provides that it shall be effective only as to vessels rebuilt after date of enactment of the measure.

Under existing law, United States vessels are subject to an ad valorem duty of 50 percent on repairs made or equipment obtained abroad, except where required for the safety and seaworthiness of the vessels en route. These duties are payable whether the vessel is engaged in domestic or foreign commerce or both. A United States vessel built in a foreign yard may engage in the foreign trade of the United States but may not engage in the coastwise trade of the United States. Under the Merchant Marine Act, 1936, a citizen of the United States may secure construction-differential subsidy to be used in the construction in United States shipyards of vessels to be used in the foreign trade of the United States. Such subsidy is also available, under exceptional conditions, for aid in the reconditioning or reconstructing of vessels to be used in the foreign trade of the United States. Construction-differential subsidy is not available for the construction or the reconditioning or reconstruction of vessels to be used in the coastwise trade of the United States. Citizenship requirements for eligibility for documentation of vessels under the United States flag differ as between vessels to be used in the foreign trade and vessels to be used in the coastwise trade. In the former, a citizen interest of 50 percent as defined in section 2 of the Shipping Act, 1916, is required, while in the case of coastwise trade operation, a citizen ownership of 75 percent is required.

It is not historically clear that the difference in the laws as applicable to vessels constructed abroad contrasted with vessels rebuilt abroad is an oversight or an anomaly. The provision for subsidy for the reconstructing or reconditioning of vessels to be used in the foreign trade of the United States was inserted in the 1936 act with reluctance, and strict limitations were imposed on this type of financial aid, which was made available only in exceptional cases and is to be granted only after a thorough study and a formal determination in each case that the proposed reconstruction or reconditioning would be consistent with the purposes and policy of the 1936 act. The purposes and policy of the act were to provide for the construction and maintenance of the best equipped, safest, and most suitable types of vessels constructed in the United States. It was emphasized in consideration of the bill that what was wanted was a merchant marine of new ships, not one of reconditioned ships.

From the policy viewpoint, it seems that closing the gap in the law with respect to the foreign reconstruction of a vessel and its eligibility for use in our coastwise trade would be consistent with national maritime policy and principles. Factual circumstances and certain possibilities deserve consideration in measuring the practical effect of the bill, if enacted.

So far as we are presently advised, there are no indications of any large volume of ship reconstruction and reconditioning of United States-flag ships to be done in foreign yards in the near future. According to the records available, there is only 1 recent case, involving 3 ships, in which major conversions of United States-flag ships were performed in a foreign yard. Further, our records show that as of December 31, 1955, only 4 privately owned United States-flag

ships of 1,000 gross tons and over were built abroad and none of these exceeds 5,000 gross tons.

If there should develop a substantial amount of rebuilding or remodeling in foreign yards in order to fit the vessels for service in a particular United States coastwise trade, such a development could, of course, strengthen and rehabilitate the coastwise trade at a lower cost than if the ships were rebuilt or remodeled in American yards. Such lower capital cost would put the owners of these vessels in a better competitive position. On the other hand, if a prohibition were placed on the use of United States-flag vessels in the domestic trade because of rebuilding abroad, the net result may be that such ships would not be rebuilt in the United States because of the higher cost of such rebuilding and neither the shipbuilder nor the coastwise trade, nor operators and shippers, nor the national defense would receive any benefit. Thus, the number of vessels available for use in national emergency and in war would be reduced, and, likewise, opportunities for employment of American seamen would be reduced.

Summarizing, it appears that any benefits to the domestic shipbuilding industry from the bill are conjectural, since there is no definite possibility that rebuilding will be done in the higher cost domestic yards. On the other hand, there is no definite possibility that coastwise ship operators contemplate any substantial foreign rebuilding from which the coastwise fleet would benefit. It seems, therefore, that the issue raised by the bill is primarily one of basic legislative policy for determination by the Congress.

It is our understanding that the Department of the Treasury is submitting for your consideration certain amendments to the bill designed to clarify its administration, if enacted, particularly with reference to the definition of the word "rebuilt" and the inclusion of a requirement for reporting of any rebuilding of United States ships done abroad. We have no objection to the report requirement.

We believe that some clarification of the definition of "rebuilt" is desirable, in that it may be so general as to unduly penalize a shipowner with the loss of his coastwise privilege because of some relatively minor alteration of the ship. We defer to the views of the Department of the Treasury in this respect. The committee may wish to consider an amendment as follows:

Page 3, line 10, after the word "means", insert a comma and the following: "subject to such rules and regulations as the Secretary of Commerce and the Secretary of the Treasury jointly shall prescribe," and a comma.

There appears to be no compelling reason why vessels of lesser tonnage than those normally used in offshore service should be covered by the bill and it is recommended that only vessels of over 1,000 gross tons be covered. This could be accomplished by inserting after the word "vessel", both on page 1, line 7, and on page 2, line 4, the clause "of more than 1,000 gross tons".

As a matter of technical drafting, the word "Act" on page 2, line 9, should be stricken out and the following inserted in its place: "section 27 of the Merchant Marine Act, 1920, as amended, or in section 9 of the Shipping Act, 1916, as amended".

As stated above, we believe that the main issue involved in the bill is one of legislative policy for determination by the Congress, and the Department of Commerce has no objection to favorable consideration

of the bill, subject to the considerations and amendments herein suggested for your attention.

We have been advised by the Bureau of the Budget that it would interpose no objection to the submission of this report.

Sincerely yours,

SINCLAIR WEEKS,
Secretary of Commerce.

DEPARTMENT OF THE NAVY,
OFFICE OF THE JUDGE ADVOCATE GENERAL,
Washington, D. C., April 2, 1956.

Hon. HERBERT C. BONNER,
Chairman, Committee on Merchant Marine and Fisheries,
House of Representatives, Washington, D. C.

MY DEAR MR. CHAIRMAN: Your request for comment on H. R. 6025, a bill to amend the shipping laws, to prohibit the operation in the coastwise trade of vessels rebuilt outside the United States, and for other purposes, has been assigned to this Department by the Secretary of Defense for the preparation of a report thereon expressing the views of the Department of Defense.

H. R. 6025 would prevent the use in coastwise trade of vessels rebuilt outside the United States or its possessions. This would extend the present prohibition against foreign-built vessels being used in such trade.

Limiting rebuilding work on vessels used in the coastwise trade to American shipyards would aid this seriously distressed industry, and would assist the Department of Defense in its attempts to maintain the mobilization capacity of this country's shipyards.

Accordingly, the Department of the Navy, on behalf of the Department of Defense, favors enactment of H. R. 6025.

This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

The Department of the Navy has been advised by the Bureau of the Budget that there is no objection to the submission of this report to the Congress.

Sincerely yours,

W. R. SHEELEY,
Rear Admiral, USN,
Acting Judge Advocate General of the Navy.
(For the Secretary of the Navy).

DEPARTMENT OF STATE,
Washington, August 17, 1955.

Hon. HERBERT C. BONNER,
Chairman, Committee on Merchant Marine and Fisheries,
House of Representatives.

DEAR MR. BONNER: In accordance with your letter of August 4, 1955, and the Department's acknowledgment thereof dated August 10, 1955, consideration has been given H. R. 6025 to amend the shipping laws, to prohibit the operation in the coastwise trade of vessels rebuilt outside the United States, and for other purposes.

H. R. 6025 would extend the protection presently afforded the American shipbuilding industry by the coastwise laws by denying participation in United States coastwise trade to vessels rebuilt in foreign shipyards. From the domestic point of view, this would appear to be a logical extension of the longstanding protection afforded our shipbuilding industry from foreign competition. From the standpoint of the Department's responsibilities, however, H. R. 6025 represents another restriction on the exchange of goods and services between nations. It is, therefore, inconsistent with the overall foreign economic policy being pursued by the United States. For this reason, the Department does not recommend the enactment of the proposed legislation.

The Department has been informed by the Bureau of the Budget that there is no objection to the submission of this report.

Sincerely yours,

THRUSTON B. MORTON,
Assistant Secretary
(For the Secretary of State).

TREASURY DEPARTMENT,
Washington, February 10, 1956.

Hon. HERBERT C. BONNER,
Chairman, Committee on Merchant Marine and Fisheries,
House Office Building, Washington, D. C.

MY DEAR MR. CHAIRMAN: Reference is made to your communication of May 6, 1955, requesting the Department's comments concerning H. R. 6025, a bill to amend the shipping laws, to prohibit the operation in the coastwise trade of vessels rebuilt outside the United States, and for other purposes.

The bill is designed to extend the historic policy of this Government looking to the protection of American shipbuilding and repair yards from foreign competition. Whether its enactment will affect adversely or further the development and maintenance of the American merchant marine, to which the United States is committed by section 101 of the Merchant Marine Act, 1936 (U. S. C., 1952 edition, title 46, sec. 1101), is a question which involves factual and policy considerations beyond the scope of the Treasury Department's jurisdiction. Since this Department would be charged with the administration of the bill, if enacted in its present form, there is enclosed a memorandum pointing out results that might be deemed undesirable and suggesting amendments.

The Department has been advised by the Bureau of the Budget that there is no objection to the submission of this report to your Committee.

Very truly yours,

DAVID W. KENDALL,
Acting Secretary of the Treasury.

MEMORANDUM ACCOMPANYING A REPORT ON H. R. 6025, A BILL TO AMEND THE SHIPPING LAWS, TO PROHIBIT THE OPERATION IN THE COASTWISE TRADE OF VESSELS REBUILT OUTSIDE THE UNITED STATES, AND FOR OTHER PURPOSES

The bill is apparently designed to encourage rebuilding of vessels of the United States in American shipyards by depriving any such vessel when rebuilt in a foreign country of the right to continue to engage in the coastwise trade. The bill would accomplish this by further amending the Merchant Marine Act, 1920, and the Shipping Act, 1916.

The purpose appears to be entirely consistent with policy pronouncements in other legislation which, as a general proposition, reserves the privileges of the coastwise trade to vessels built in the United States.

However, the Secretary of Commerce is primarily charged with consideration of policy matters affecting the development and maintenance of the merchant marine and will no doubt comment on the advisability of the proposal from that standpoint. Nevertheless, since this Department is charged with administration of the laws governing the coastwise trade, the following comments are submitted for the consideration of the committee.

One of the exceptions to the above-mentioned reservation of the coastwise trade to American vessels is found in section 9 of the Shipping Act, 1916, as amended (U. S. C., 1952 edition, title 46, sec. 808). That section among other things, permits foreign-built vessels purchased from the Maritime Administration by citizens to engage in the coastwise trade while so owned. Section 2 of the bill would exclude American-built vessels rebuilt abroad from such trade, even when purchased from the Administration under the same circumstances, and thus would appear to accord an unwarranted preference to foreign-built vessels and discriminate against vessels built in the United States. Further, the proposal would appear inequitably to exclude foreign-built vessels rebuilt abroad before acquisition and sale by Maritime from the coastwise trade, while still permitting foreign-built vessels which have not been so rebuilt to engage in that trade.

Section 3 of the bill includes a definition of the term "rebuilt." The generally accepted definition of that term as applied to vessels is that found in the case of *United States* v. *The Grace Meade* ((D. C., E. D. Va. 1876) 25 Fed. Cas. 1387, Fed. Cas. No. 15,243). That definition, which has been adopted by the Supreme Court and which is incorporated in the regulations of the Bureau of Customs of this Department, is in brief that a vessel is considered rebuilt if any considerable part of the hull of the vessel in its intact condition, without being broken up, is built upon. (*New Bedford Dry Dock Co.* v. *Purdy* (*The Jack-O'Lantern*) (1922) 258 U. S. 96; footnote 17, section 3.28; Customs Regulations (19 C. F. R. 328, footnote 17).)

The definition contained in section 3 of the bill, which appears to have been taken from section 4170 of the Revised

Statutes, as amended (U. S. C., 1952 edition, title 46, sec. 39), relating to the alteration of vessels, is much broader. It would apparently be broad enough to include a minor alteration affecting tonnage. For instance, an alteration in burden might occur if a permanent enclosure such as a deck locker for steamer chairs or life preserves were to be added during the course of repairs necessitated by damage under stress of weather. For such a relative trifle, the vessel involved might be deprived forever of the valuable right of engaging in the coastwise trade.

It is accordingly suggested that the proposed definition is probably broader than is desirable to accomplish the purposes of the bill and that the definition should be restated in more express terms or should be omitted, in which case the definition in the case of the *Grace Meade* would apparently be applicable.

Section 4 provides that the act shall be effective only as to vessels rebuilt after the date of enactment. It would apparently be effective as to vessels in the course of rebuilding on the date of enactment. In order to eliminate any retroactive applicability, it is recommended that the effectiveness of the act be limited to those vessels which are rebuilt under a contract, agreement, or understanding entered into after the date of enactment.

Since the act would require an affirmative action on the part of this Department to insure that vessels which are not entitled to engage in the coastwise trade will be excluded from the privilege of documentation therefor, and since the act would not be self-enforcing, it is suggested that a new section be added to provide a penalty for a failure to report a rebuilding of a vessel in a foreign country. It is suggested that the following language might be appropriate:

"SEC. —. If any vessel documented under the laws of the United States or last documented under such laws, if rebuilt outside the United States, its Territories (not including Trust Territories), or its possessions, a report of the circumstances of such rebuilding shall be made to the Secretary of the Treasury upon the first arrival of the vessel thereafter at a port within the customs territory of the United States in accordance with such regulations as the Secretary may prescribe. If the required report is not made, the vessel, together with its tackle, apparel, equipment, and furniture, shall be forfeited, and the master and owner shall each be liable to a penalty of $200. Any penalty or forfeiture incurred under this act may be remitted or mitigated by the Secretary under the provisions of section 5294 of the Revised Statutes of the United States, as amended (U. S. C., 1952 edition, title 46, sec. 7)."

The words "or the District of Columbia", although used in sections 1 and 2 of the bill, have been omitted from the above-suggested language respecting the place of rebuild because of the fact that the District is not excepted from the United States under any definition contained in the Merchant Marine Act, 1920, as amended. For the same reason,

your committee may wish to insert "or" before "its" in line 8, page 1 of the bill and delete ", or the District of Columbia,". A similar change may be made in line 6, page 2.

CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as introduced, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

MERCHANT MARINE ACT, 1920

(41 Stat. 988, ch. 250, Approved June 5, 1920)

* * * * * * *

SEC. 27. That no merchandise shall be transported by water, or by land and water, on penalty of forfeiture thereof, between points in the United States, including Districts, Territories, and possessions thereof embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation, in any other vessel than a vessel built in and documented under the laws of the United States and owned by persons who are citizens of the United States, or vessels to which the privilege of engaging in the coastwise trade is extended by sections 18 or 22 of this Act: *Provided further, That no vessel rebuilt outside the United States, its Territories, (not including Trust Territories), its possessions, or the District of Columbia, shall be deemed to be a vessel built in the United States for the purposes of this section: Provided further,* That this section shall not apply to merchandise transported between points within the continental United States, excluding Alaska, over through routes heretofore or hereafter recognized by the Interstate Commerce Commission for which routes rate tariffs have been or shall hereafter be filed with said Commission when such routes are in part over Canadian rail lines and their own or other connecting water facilities: *Provided further,* That this section shall not become effective upon the Yukon River until the Alaska Railroad shall be completed and the Shipping Board shall find that proper facilities will be furnished for transportation by persons citizens of the United States for properly handling the traffic: *Provided further,* That this section shall not apply to the transportation of merchandise loaded on railroad cars or to motor vehicles with or without trailers, and with their passengers or contents when accompanied by the operator thereof, when such railroad cars or motor vehicles are transported in any railroad car ferry operated between fixed termini on the Great Lakes as a part of a rail route, if such car ferry is owned by a common carrier by water and operated as part of a rail route with the approval of the Interstate Commerce Commission, and if the stock of such common carrier by water, or its predecessor, was owned or controlled by a common carrier by rail prior to June 5, 1920, and if the stock of the common carrier owning such car ferry is, with the approval of the Interstate Commerce Commission, now owned or controlled by any common carrier by rail and if such car ferry is built in and documented under the laws of the United States.

Shipping Act, 1916

Sec. 9. That any vessel purchased, chartered, or leased from the board, by persons who are citizens of the United States, may be registered or enrolled and licensed, or both registered and enrolled and licensed, as a vessel of the United States and entitled to the benefits and privileges appertaining thereto: *Provided,* That foreign-built vessels admitted to American registry or enrollment and license under this Act, and vessels owned by any corporation in which the United States is a stockholder, and vessels sold, leased, or chartered by the board to any person, a citizen of the United States, as provided in this Act, may engage in the coastwise trade of the United States while owned, leased, or chartered by such a person. *No vessel rebuilt outside the United States, its Territories (not including Trust Territories), its possessions, or the District of Columbia, shall be entitled to engage in the coastwise trade under any provision of this section.*

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