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*S2795 "DISECTING THE JONES ACT"

Mr. INOUYE.

Mr. President, I rise today to call the attention of my colleagues to an excellent article by Warren Dean that appeared in the March 11, 1997 edition of the Journal of Commerce, which so eloquently states the reasons why it would be foolish to weaken or repeal the Jones Act.

I am a longstanding supporter of the Jones Act and of the American-flag Merchant Marine. But it is important for those Members who are less familiar with the Merchant Marine to consider Mr. Dean's article. Mr. Dean is a senior partner in a Washington law firm, and an adjunct professor of transportation law at Georgetown University Law Center.

In his column, Mr. Dean spells out clearly and succinctly the reasons America stands to lose if foreign-flag ships and foreign crews are allowed to take over our domestic waterborne commerce, and why it would be unfair not only to America's maritime industry but also to our trucking, rail, and pipeline industries as well. If the Jones Act is eliminated, all these industries would have to abide by U.S. laws and regulations, and pay U.S. taxes, while their foreign competitors in our Nation's domestic market would not. Those who claim they want to deregulate domestic shipping and reform the Jones Act would do well to read this article. It explains just how poorly thought out and unfair such actions would be.

Mr. President, I request that the full text of the article be printed in the RECORD.

The article follows:

DISSECTING THE JONES ACT

(By Warren L. Dean)

Congress is facing an old and tired issue this year-the Jones Act Reform Coalition's clamor to "deregulate" domestic deep-water transportation services by repealing the Jones Act. This putative controversy speaks volumes about how poorly Washington understands what it is doing.

The Jones Act reserves for qualified U.S. corporations the right to carry domestic waterborne cargoes of the United States. The coalition wants to allow foreign-flag vessels to carry cargoes between points in the United States, such as New York and Miami. Those vessels, however, do not operate subject to U.S. law-and would not, under the coalition's proposals.

In an effort to keep the Jones Act Reform Coalition from wasting its members' money, and to help the U.S. government understand the difference between trade in goods and trade in services, I will offer a few thoughts.

First, the Jones Act regulates domestic transportation services. Companies in those industries pay U.S. income and excise taxes, employ workers who pay taxes, comply with fair labor standards and other employment laws, meet environmental and safety requirements and face tort and other liabilities.

Foreign companies that get involved in U.S. markets usually do so through U.S. affiliates established for that purpose. What the reform coalition is pushing, however, is permission for foreign flag-of-convenience operators to participate in domestic interstate commerce, while taking a pass on as many of the laws applicable to domestic commerce as possible.

**2 Just repealing the Jones Act won't do the job, however. What the Jones Act reform coalition is really advocating is a repeal of a variety of U.S. tax and labor laws that are at the heart of the U.S. economy.

Under international law, the applicable law on a vessel is that of the ship's registry. So, for example, to allow foreign seamen working for foreign-flag operators to work in U.S. interstate transportation, we would have to waive our tax, immigration, minimum wage, collective bargaining, workplace safety and unemployment laws, among others. We would have to pre-empt state laws in these areas as well.

Admittedly, some laws-particularly in the environmental area-currently apply to both U.S. and foreign-flag vessels, and would continue to do so under the coalition's proposal. But what's really going on here is that the coalition is out to create a whole new list of economic preferences-in effect, subsidies-for foreign-flag vessels to ”compete” in our domestic commerce.

The only reason that other domestic transportation industries have not yet objected to this nonsense is that they aren't persuaded that anyone in Washington is that stupid.

Their confidence may be misplaced. There actually is a federal agency that spent taxpayer's money to publish a report in 1993 proving that it doesn't have the foggiest idea where its money comes from. It's the U.S. International Trade Commission, which investigates allegations of damage to U.S. industries caused by trade.

The ITC report estimated that ”the economy-wide effect of removing the Jones Act is an economic welfare gain to the economy of *S2796 approximately $3.1 billion.” The ITC's main source for this conclusion was its own 1991 study that found the 1989 cost to the economy of the Jones Act ranged from $3.6 billion to $9.8 billion.

The ITC staff developed these estimates by figuring the difference between U.S. and world shipping rates, and saying the higher U.S. costs are a sort of ” tariff” charged to shippers using Jones Act vessels.

But the flaw in the ITC's analysis is that it took the rates charged by foreign-flag operators using ”flag of convenience” registry in countries such as Panama, Liberia or the Bahamas. Those nations have either nonexistent or very low rates of taxation and regulation.

The ITC then concluded that shippers could obtain world-rate savings in the waterborne domestic commerce of the United States by allowing in competitors who are free of the burdens of U.S. taxation and regulation, and who could compete with land and air modes of transportation that are subject to U.S. regulation and taxation. That premise is, of course, fatally flawed as a matter of law and policy.

The ITC doesn't understand the difference between importing shoes and importing transportation services. With shoes, the producer's costs, including associated tax and regulatory burdens, are incurred in the exporting state.

With most services, the producer's costs, including associated tax and regulatory burdens, are incurred in the importing state. But the reform coalition wants to change that with respect to domestic maritime transportation, and preserve the law of the flag of registry.

**3 The reason is simple: If U.S. tax and regulatory costs were extended to all competitors in domestic trades, whether U.S. or foreign flag, then the savings to shippers from repealing the Jones Act would range from $0 to nearly $0-setting aside the separate cost of building vessels in U.S. yards.

There's not much fuel for reform there.<>

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