

# BENEDICT'S MARITIME BULLETIN

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## WITH THE EXCEPTION OF HANDLING CONCURSUS PROCEEDINGS, STATE COURTS SHOULD BE DEEMED TO HAVE JURISDICTION TO ADJUDICATE ALL LIMITATION OF LIABILITY ISSUES UNDER THE SHIPOWNER'S LIMITATION OF LIABILITY ACT

By Gustavo A. Martinez-Tristani\*

### I. Introduction

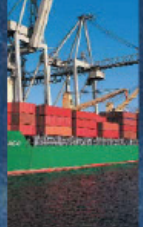
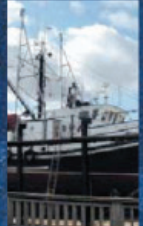
In this paper, we argue that the right to limitation of liability pursuant to the Shipowner's Limitation of Liability Act, 46 U.S.C., § 30501 et seq., (hereinafter "the Limitation Act") should not be deemed lost in a single claimant case, or in a case filed by multiple claimants joining together as co-plaintiffs in the same state court action, or federal action under diversity jurisdiction, merely because a petition for limitation of liability was not timely filed in an admiralty court, within the six-months period after the petitioner vessel owner received notice of a written claim.

We argue that a state court or a federal court sitting under diversity jurisdiction has the jurisdiction to adjudicate all issues regarding the defense of limitation of liability, provided same is timely raised in any such actions, even after the six-month period has lapsed from the time the defending vessel owner received notice of a written claim.

### II. The Limitation Act's Overview

The Limitation Act was originally enacted in 1851, and it is currently codified at 46 U.S.C. §§ 30501 et seq. "Congress passed the [Limitation Act] to 'encourage ship building and to induce capitalists to invest money

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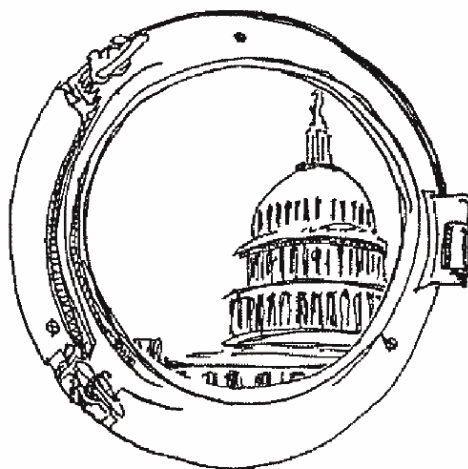
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## WINDOW ON WASHINGTON



### *Trump's Second First 100 Days*

By Bryant E. Gardner\*

President Trump's second term came crashing into D.C. like a tidal wave, including torrents of executive orders on all matter of topics, leaving almost no corner of American life and global relations unaffected. The U.S. maritime industry is no exception. Long-suffering readers of *Window on Washington* will recall that the last installment addressed the SHIPS act, which aims to revitalize the U.S.-flag fleet trading internationally and American shipbuilding. In keeping with Elon Musk's philosophy of "move fast and break things," the administration appears set on advancing that project through expansions of executive power, which is just now starting to be challenged in the courts.

Draft documents from the White House reflect an intention to enact a shipbuilding program and U.S.-flag fleet promotional program by executive order that

is very similar to the SHIPS act. The program would establish a Maritime Security Trust Fund, funded by tariffs and fees on Chinese vessels and Chinese maritime commerce. Specifically, the documents indicate that revenues may be raised through fees on Chinese vessels and maritime commerce pursuant to Section 301 of the Trade Act of 1974 as amended.<sup>1</sup> The proposal would also see the President utilize the Defense Production Act authorities to invest in commercial shipbuilding and mariner workforce development. Additionally, it would ensure cargo entering the U.S. from Canada and Mexico is treated the same as cargo entering U.S. ports by enforcing the Harbor Maintenance Tax on imported goods, applying applicable tariffs from the country of land transit for foreign cargo transiting those nations. The proposal also reflects an intent to develop cargo preference and tax policies aimed at promoting the use of U.S.-flag vessels, and to establish a Strategic Commercial Fleet of additional U.S.-flag vessels. The proposal would also establish "maritime prosperity zones," modeled after the Trump administration's prior "opportunity zones," to "incentivize and facilitate domestic and allied investment in U.S. maritime industries," and "include stipulations for appropriate regulatory relief." As of this writing, the executive order has not been issued in final form.

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<sup>1</sup> 19 U.S.C. § 2411.



However, the fundraising mechanism—the Section 301 tariffs on Chinese maritime interests—is well on its way.<sup>2</sup> On March 12, 2024, during the Biden Administration, five labor unions<sup>3</sup> filed a Section 301 petition with the U.S. Trade Representative “regarding the acts, policies, and practices of China to dominate the maritime, logistics, and shipbuilding sector.”<sup>4</sup> Subsequently, on February 27, 2025, the U.S. Trade Representative published proposed actions taking aim at Chinese maritime interests, noticing a hearing, and requesting comments from the public on the proposed actions.<sup>5</sup> The proposed actions are extensive, and hit D.C. like a bombshell—rattling importers, exporters, foreign and domestic shipping, agriculture interests, and others.

The U.S. Trade Representative notice proposes to assess fees on Chinese-built vessels upon arrival at U.S. ports, fees on “Chinese Maritime Transport Operators,” and incentives to use U.S.-flagged and U.S.-built vessels. “Chinese Maritime Transport Operators,” also defined as “a vessel operator of China,” would pay \$1 million per port call or \$1000 per net ton, apparently irrespective of whether using Chinese-built vessels. All vessel operators would be subject to fees of up to \$1.5 million for operators with more than 50% Chinese-built tonnage in their fleets. The fee would decrease as the percentage of Chinese-built tonnage in the fleet decreases. Additional port-call fees would apply to

operators with prospective orders for Chinese-built vessels in the following 24 months, again decreasing for lower percentages of vessel orders in China. Such fees would be refunded, on a calendar basis, in an amount up to \$1 million per entry of a U.S.-flag vessel through which the operator is providing international maritime transport. Furthermore, the proposal lays out a schedule by which an increasing percentage of U.S. exports must be by U.S.-flag vessels, beginning at 1% on the date of the action and scaling up to 15% after seven years. Such U.S.-flag vessels initially may be foreign-built, but by year three no less than 3% must be U.S.-built and by year seven no less than 5% must be U.S.-built. Lastly, U.S. goods must be exported on U.S.-flagged, U.S.-built vessels, but may be approved on other vessels provided the vessel operator demonstrates that at least 20% of U.S. products per year will be transported on U.S.-flagged, U.S.-built vessels.<sup>6</sup>

The fees on Chinese-built vessels have been the most controversial component of the proposal.<sup>7</sup> To date, 528 comments have been filed, almost all critical of the proposal in its current form. As expected, the international liner association World Shipping Council is strenuously opposed. Notably, that association’s comments appear among the only submissions seriously teeing up a litigation posture. The Council asserts that the U.S.-build targets are impossible as a practical matter, mariner shortages make large-scale U.S.-reflagging impossible, and the proposed fees exceed USTR’s authority because they are not reasonably capable of eliminating targeted Chinese attempts to dominate world shipbuilding and shipping.<sup>8</sup> Numerous ports and the American Trucking Associations objected to the measure because they fear it will lead to global shipping lines minimizing fees by only deploying the largest vessels to the largest U.S. ports, sidelining small and medium ports while adding massive congestion to the largest ports.<sup>9</sup> U.S. longshoremen expressed

<sup>2</sup> See U.S. Trade Representative, Section 301—China Targeting the Maritime, Logistics, and Shipbuilding Sectors for Dominance, <https://ustr.gov/issue-areas/enforcement/section-301-investigations/section-301-chinas-targeting-maritime-logistics-and-shipbuilding-sectors-dominance>.

<sup>3</sup> United Steel Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO/CLC (USW); International Brotherhood of Electrical Workers (IBEW); the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO/CLC (IBB), the International Association of Machinists and Aerospace Workers (IAM), and the Maritime Trades Department of the AFL-CIO (MTD).

<sup>4</sup> Office of the U.S. Trade Representative, Initiation of Section 301 Investigation: China’s Acts, Policies, and Practices Targeting the Maritime, Logistics, and Shipbuilding Sectors for Dominance, Notice of investigation, hearing, and request for comments, Docket Nos. USTR-2024-0004, USTR-2024-0005, 89 Fed. Reg. 29,424 (April 22, 2024).

<sup>5</sup> Office of the U.S. Trade Representative, Initiation of Section 301 Investigation: China’s Acts, Policies, and Practices Targeting the Maritime, Logistics, and Shipbuilding Sectors for Dominance, Request for comments and notice of public hearing, Docket Nos. USTR-2024-0004, USTR-2024-0005, 90 Fed. Reg. 10,843 (Feb. 27, 2025).

<sup>6</sup> *Id.*

<sup>7</sup> U.S. Trade Representative, Docket ID USTR-2025-0002, <https://comments.ustr.gov/s/docket?docketNumber=USTR-2025-0002>.

<sup>8</sup> Comments of the World Shipping Council (Mar. 24, 2025), <https://comments.ustr.gov/s/commentdetails?rid=89CYM823Y4>.

<sup>9</sup> See, e.g., Comments of the American Association of Port Authorities (Mar. 17, 2025), <https://comments.ustr.gov/s/commentdetails?rid=XVCVHF3YYV>; Comments of the American Trucking Associations (Mar. 24, 2025), <https://comments.ustr.gov/s/commentdetails?rid=C66CQ2RQWB>; Comments of the California Association of Port Authorities (Mar. 24, 2025), <https://comments.ustr.gov/s/commentdetails?rid=X99HTF2KGM>; Comments of the North Carolina State Ports Authority (Mar. 14, 2025), <https://comments.ustr.gov/s/commentdetails?rid=QK44J7HFWW>.

concerns with the proposal because they fear it will lead to diversions of cargo to Canadian and Mexican ports, and attendant loss of jobs.<sup>10</sup> The Port of Long Beach and the American Great Lakes Ports Association echoed concerns about cargo diversion.<sup>11</sup> Importers and exporters—including retailers,<sup>12</sup> agriculture,<sup>13</sup> manufacturers,<sup>14</sup> and the oil and gas<sup>15</sup> and coal<sup>16</sup> industries—strenuously oppose the action in its current form because they fear it will make U.S. exports uncompetitive and add to costs for U.S. imports.

A wide array of Caribbean interests, including U.S.-based foreign-flag carriers that export U.S. goods to the region,<sup>17</sup> the Florida ports,<sup>18</sup> and the Government of the U.S. Virgin Islands objected to the measure as making it extremely expensive to resupply the islands from the U.S., due to the small size of the vessels in the trade. For example, a 23,000 container vessel coming from China loaded with Chinese manufactures would incur a

fee of approximately \$65 per TEU, whereas the largest vessel resupplying the U.S. territory would encounter a fee of \$1,875 per TEU both upon calling upon the territory to resupply it and again when returning back to Florida empty to reload—for a total of \$3,750 per TEU—58 times what the Chinese vessel would pay.<sup>19</sup>

Support among commenters for the proposal has been limited. Several members of Congress submitted comments in support of the action.<sup>20</sup> The AFL-CIO comment was generally supportive, although it encouraged efforts to “couple the proposed remedy with actions to limit trade diversion and tailor the remedies to avoid adverse impacts in the near term of certain raw materials.”<sup>21</sup> The Marine Engineers’ Beneficial Association, a seafaring union that stands to gain significantly from the measure and is among the petitioners through its membership in the AFL-CIO Maritime Trades Department, supported the proposal in concept, but cautioned that “the USTR should avoid any unintended consequences that could harm U.S. flag shipping companies that employ American mariners.”<sup>22</sup> Part of the challenge to the U.S.-flag industry trading internationally is that China’s shipbuilding dominance is so widespread that even a number of U.S.-flag vessels are built in China. Accordingly, the union and many of the U.S.-flag carriers favor an approach that allows time to phase-out Chinese-built tonnage in the U.S. registry, or an outright waiver for U.S.-flag vessels.<sup>23</sup>

Given the strong opposition to the proposal from so many sectors of the American economy, it seems likely that the administration will further tweak the proposal prior to implementation. However, the Trump administration has demonstrated its willingness to take bold steps to advance the President’s agenda. Given the confluence of the draft executive order, building support for the SHIPS act, and the U.S. Trade Representative Section

<sup>10</sup> Comments of the International Longshore & Warehouse Union (Mar. 20, 2025), <https://comments.ustr.gov/s/commentdetails?rid=FRPKRFV46D>.

<sup>11</sup> Comments of the American Great Lakes Ports Association (Mar. 21, 2025), <https://comments.ustr.gov/s/commentdetails?rid=6VPG2C3J4H>; Comments of the Port of Long Beach (Mar. 21, 2025), <https://comments.ustr.gov/s/commentdetails?rid=YPKVVG7V43>.

<sup>12</sup> Comments of the National Retail Federation (Mar. 24, 2025), <https://comments.ustr.gov/s/commentdetails?rid=YW7BP8RVW8>.

<sup>13</sup> See, e.g., Comments of the American Farm Bureau Federation (Mar. 21, 2025), <https://comments.ustr.gov/s/commentdetails?rid=KCYDBR4KKD>; Comments of U.S. Wheat Associates and the National Association of Wheat Growers (Mar. 24, 2025), <https://comments.ustr.gov/s/commentdetails?rid=VPDQJ4RJYX>.

<sup>14</sup> Comments of the National Association of Manufacturers (Mar. 24, 2025), <https://comments.ustr.gov/s/commentdetails?rid=DMTYB6F4WQ>.

<sup>15</sup> Comments of the American Petroleum Institute (Mar. 24, 2025), <https://comments.ustr.gov/s/commentdetails?rid=R6TGKGBB7T>.

<sup>16</sup> Comments of America’s Coal Associations (Mar. 19, 2025), <https://comments.ustr.gov/s/commentdetails?rid=MV2BWWBWM6>; Comments of the United Mine Workers of America (Mar. 24, 2025); <https://comments.ustr.gov/s/commentdetails?rid=WDBXFT4R3B>.

<sup>17</sup> See, e.g., Comments of Seaboard Marine Ltd. (Mar. 24, 2025), <https://comments.ustr.gov/s/commentdetails?rid=687XYF2JWK>. See also Comments of the Caribbean Shipping Association (Mar. 20, 2025), <https://comments.ustr.gov/s/commentdetails?rid=GYYCBB2X4V>.

<sup>18</sup> Comments of the Florida Ports Council (Mar. 24, 2025), <https://comments.ustr.gov/s/commentdetails?rid=JG8D2X369D>.

<sup>19</sup> Comments of the Government of the United States Virgin Islands (Mar. 24, 2025), <https://comments.ustr.gov/s/commentdetails?rid=DTTW7WT3JR>.

<sup>20</sup> Comments of Rep. John Garamendi (D-CA) (Mar. 24, 2025), <https://comments.ustr.gov/s/commentdetails?rid=F4YFC2PDK6>; Comments of Rep. Ro Khanna (D-CA) (Mar. 24, 2025), <https://comments.ustr.gov/s/commentdetails?rid=8CBHMRHKRW>.

<sup>21</sup> Comments of the AFL-CIO (Mar. 27, 2025), <https://comments.ustr.gov/s/commentdetails?rid=MQHRV8KW7B>.

<sup>22</sup> Comments of the Marine Engineers’ Beneficial Association (Mar. 22, 2025), <https://comments.ustr.gov/s/commentdetails?rid=HYGPFQ8TY8>.

<sup>23</sup> See Comments of U.S. Ocean (Mar. 24, 2025), <https://comments.ustr.gov/s/commentdetails?rid=WTJ8KQ89VD>.

301 tariffs action, the U.S. maritime industry is hopeful for generational changes putting the United States back among maritime nations with a significant U.S.-flag fleet and shipbuilding industrial base. However, the administration may consider plotting a course toward gradually building up America's maritime capacity in order to avoid short-term shocks—particularly in light of constrained shipbuilding capacity and the limited

pool of mariners. Part of the challenge to a measured approach is that it would only be guaranteed to endure as long as the President remains in office. Which, given the President's discussion about a third term, might be a while. Cementing long-term progress through the SHIPS act, or similar legislation, would enshrine meaningful changes in statute and create a reliable foundation for private investment in the industry.

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