EXHIBIT 141

China Cuts Railway Trade Link With Lithuania Amid Taiwan Row, Report Says

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By John Feng
Contributing Editor, Asia

China's state-owned rail operator has denied that a freight link with Lithuania has been suspended after a report that the company was halting the transportation of goods in the wake of Beijing's spat with Vilnius over Taiwan.

China Railway Container Transport, a subsidiary of China Railway Group, sent a letter to Lithuanian customers informing them that the freight link would be put on hold from August and September, according to a copy acquired by the Baltic News Service.

The CRCT letter cited "the deterioration of bilateral relations" between China and Lithuania for the suspension, which would be in place indefinitely and "until further notice," said a report published on Wednesday by Taiwan's Central News Agency.

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The decision will affect a shipment of goods scheduled for later this month, according to the Baltic News Service report published on Tuesday. The rail company operates links in Europe and Central Asia as part of China's Belt and Road initiative. The line to Vilnius was established last June, said the news service.

In a statement to China's official news agency Xinhua, CRCT said the report about freight suspension was not accurate. The company said train transportation between China and Lithuania was operating normally.

However, in a comment that appeared to contradict CRCT, Lithuania's national railway operator has confirmed elements of Tuesday's report.

A Lithuanian Railways spokesperson, Gintaras Liubinas, told *Newsweek*: "We have received information through our customers that several freight trains from China will not arrive in Lithuania at the end of August and in the first half of September. Meanwhile, transit trains pass through Lithuania in the usual way.

"We hope that all the agreements reached earlier will be respected and that both sides will successfully develop mutually beneficial cooperation in the field of freight transport."

China recalled its ambassador to Vilnius on August 10 and demanded the Baltic nation withdraw its envoy from Beijing in a diplomatic row over the planned opening of a de facto Taiwanese embassy in the Lithuanian capital. China claims the democratic island is part of its territory and has protested the Lithuanian government's decision to allow Taipei's first diplomatic mission in Europe for nearly 20 years—and its first under the name "Taiwan."

The Taiwanese Representative Office in Lithuania will be followed by a reciprocal office in Taipei later this year, the two governments have confirmed.

Like most countries, Lithuania has no official diplomatic relations with Taiwan, but Vilnius says forging closer cultural and economic ties with the self-ruled island does not undermine its "one China" policy.

Baltic News Service that his country had the right to conduct independent foreign policy and that "unilateral ultimatums" were not acceptable in international relations.

On Tuesday, Chinese Foreign Ministry spokesperson Hua Chunying said Beijing would "firmly defend" its core territorial interests, adding that the Lithuanian government was "fooling itself" if it thought it could maintain a "one China" policy that differed from Beijing's "one China" principle.

While Beijing's principle explicitly lists Taiwan as a province of China, the former policy—adopted by most major nations including the U.S.—is ambiguous and leaves room for informal ties with Taipei.

Lithuania's position has been backed by the U.S. and the European Union. Beijing has warned Vilnius of further consequences, ahead of the 30th anniversary of the establishment of Lithuania-China relations on September 14.

Ramūnas Rimkus, a transport official at the Lithuanian Embassy in China, told the Baltic News Service that his office had yet to receive formal notification of the reported rail suspension. Such a decision, however, would involve political considerations by China, he said.

File photo of a freight train transporting containers laden with goods from London, arriving at Yiwu port station in the province of Zhejiang, China, on April 29, 2017.

STR/AFP VIA GETTY IMAGES

Countries including South Korea, the Philippines and, most recently, Australia have been on the receiving end of what observers term China's "economic coercion," which involves some form of trade or tourism ban as an indirect punishment for offending Beijing.

China's economic leverage over Vilnius is small, but not inconsequential. According to the United Nations International Trade Statistics Database—also known as Comtrade—Lithuania imported $1.3 billion of goods from China while exporting $357.7 million in products in 2020. The figures represented 4 percent of Lithuania's total imports and 1.1 percent of exports.

Lithuania's largest import partner was Poland at $4.34 billion, or 13 percent, followed by Germany at $4.29 billion, or 12.9 percent. Russia topped its export list at $4.3 billion, or 13.3 percent. Neighboring Latvia was second at $3 billion, or 9.3 percent, according to Comtrade.

Update 8/18/21, 10:15 a.m. ET: This article was updated to add a comment from Lithuanian Railways.

EXHIBIT 142

POLICY

Lithuania’s resistance to Chinese pressure a test for US strategy

'The Lithuanians have stood up and they’ve held their ground,' says U.S. ambassador to China

Ting Yen-che, chairman of Taiwan Tobacco and Liquor Corporation, poses with bottles of rum imported from Lithuania in Taoyuan on Jan. 22, after the state-run liquor company snapped up 20,000 bottles of the spirit blocked from China after a row between Beijing and Vilnius. (Sam Yeh/AFP via Getty Images)

By Rachel Oswald
Posted February 3, 2022 at 6:30am

Little Lithuania — population less than 3 million — has been taking a trade battering from China, but it is becoming a test case on whether smaller countries can be persuaded to resist Beijing's economic coercion.

Lithuania's pushback on the Asian giant is viewed as an indication of whether global Davids, backed by Western powers, might find enough strength to withstand the Goliath's economic pressure to force compliance with Chinese foreign policy goals.

Tensions are coming to a head over the Baltic country's decision last year to allow Taiwan to open a de facto embassy in its capital, Vilnius, and to call it a "Taiwanese Representative Office" — rather than the less-controversial "Taipei Office" nomenclature used by most countries.

The European Union said last week it is pursuing a World Trade Organization consultation — the first part of an official proceeding —over China's trade actions against Lithuania. The WTO said those moves "appear to be discriminatory and illegal under WTO rules."

The WTO actions follow weeks of pressure on Brussels from officials in Washington and other European capitals over the long-term implications from China's unchallenged bullying for the EU single market and the principle of national sovereignty.

"If these countries are left to twist in the wind, then they will decide it's too difficult [to stand up to China]," said Edward Lucas, a senior fellow at the Center for European Policy Analysis in an interview from London. "We really need this democratic solidarity that if China picks on you then other countries pick up the slack."

Even as the economic stakes for Lithuania receive more international attention, the credibility of Beijing using access to its massive economy to pressure other countries into acquiescence to its foreign policy wishes is also on the line.

If the United States and other countries collectively take steps to alleviate China's trade harm on Lithuania, it would go far in puncturing the myth Beijing has worked to prop up: that the economic pain on countries that disobey its wishes is too severe to be risked, said Lucas, a former journalist who is running for parliament for the UK Parliament as a Liberal Democrat.

"The great thing is that once China realizes its sanctions aren't effective, then it won't do it," Lucas said. "The whole point is that China's stuff works because people believe it works."

China generally does not officially link economic retaliatory measures with specific foreign policy grievances. Rather, it uses these measures informally and extralegally.

Those examples include China in 2010 halting shipments of rare earth minerals to Japan, increasing fees in 2016 on commodity imports from Mongolia, and imposing questionable regulations to limit imports of Norwegian salmon and bananas from the Philippines. In recent years, Beijing also imposed import bans and tariffs on its neighbors.

But China's recent actions against go much further.

'Upsetting China'

Reports of China's economic retaliation include halting rail freight to Lithuania, adding bureaucratic hurdles to the permit approval process for Lithuanian exporters, temporarily removing Lithuania from China's customs registry, pressuring multinational companies to stop using Lithuanian-made parts, and blocking the export of Chinese goods and electronic parts used in Lithuanian-made products.

"It's China training everyone to be afraid of upsetting China," said Theresa Fallon, director of the Brussels-based Center for Russia Europe Asia Studies. "But I think they've really gone ballistic with Lithuania."

China's retaliatory trade actions could reduce Lithuania's GDP growth between 0.1 and 0.5 percent this year and as much as 1.3 percent in 2023, according to Lithuanian Central Bank figures reported by the Lithuanian public broadcaster LRT.

"It is the first time China has used economic coercion against global supply chains. This is an affront to the EU's single market and the EU as a trading block, but also a severe violation of international trade rules and China's own commitments to the WTO," the Lithuanian Foreign Ministry said in a statement.

"It is in the interest of all the market economies and democratic world at large to respond to the Chinese coercive practices and to stop them from distorting the world trading system and turning it into a routine practice to be used again against anyone else," the ministry added.

Though Lithuania's naming of the de facto Taiwanese embassy is its most serious offense in Beijing's eyes, Vilnius has asserted independence in other ways. In 2019, Lithuania determined a proposed Chinese investment in a deep-water port expansion project too great a security risk.

Last year, the Lithuanian government withdrew from a Chinese-dominated framework for investment in Central and Eastern European economies and urged the public to throw out Chinese-made smartphones after some devices sold there were found to feature built-in software that could censor search results for terms like "Free Tibet." The Baltic country also donated over 250,000 COVID-19 vaccines to Taiwan.

While Vilnius remains committed publicly to resisting Chinese pressure over its engagement with Taiwan, the retaliation is seriously worrisome to the Lithuanian public. A December survey of Lithuanians found that roughly 60 percent opposed the government's China policies, according to a report from LRT.

'European cohesion'

Increasingly, U.S. lawmakers are using Lithuania to raise the alarm about the consequences for Washington's broader goals of building international solidarity against China's human rights violations and its territorial ambitions in Taiwan and the South and East China seas.

"The challenge many of those [European] countries face is their economic ties to China are a pretty substantial percentage of their economy and I think it sort of balances out how far they are willing to go on some of these things," Sen. Marco Rubio, a prominent anti-China hawk, said in an interview a week before the EU sought the WTO consultation over China's actions.

"If there's really going to be European cohesion, they're going to have to reach a point where they ask themselves: 'Are we willing to live in a world and to continue to have economies that are structured in such a way where a great power from another continent holds this sort of sway over every decision they're allowed to make?'

"It's a huge test for the EU," the Florida Republican said, "or Europe at large and we should try to be as helpful as we can in terms of offering alternative economic engagement."

Senate Foreign Relations ranking member Jim Risch, R-Idaho, and Sen. Jeanne Shaheen, D-N.H., who leads the Foreign Relations Europe subcommittee, have introduced a bipartisan resolution that commends Lithuania for "its resolve in increasing ties with Taiwan and supporting its firm stance against coercion by the Chinese Communist Party."

In the House, Rep. Ami Bera, D-Calif., who chairs the Foreign Affairs Asia subcommittee, has introduced a bill to establish an interagency National Security Council task force charged with developing a strategy for deterring and responding to cases where China uses economic coercion on businesses and foreign governments.

A cynic's viewpoint of Lithuania's actions — one experts say at least a few European governments hold—is Vilnius initially calculated it had more to gain globally by picking a fight with China, which is not a major trade

partner.

Lithuania's willingness to face economic retaliation to deepen ties with Taiwan has endeared it to the Biden administration. In November, the U.S. Export-Import Bank signed a $600 million export credit agreement with Lithuania.

"I'm proud that the Biden administration has stood up for Lithuania," Nicholas Burns, U.S. ambassador to China, told senators last fall. "The Chinese government has launched an intensive intimidation campaign ... and the Lithuanians have stood up and they've held their ground."

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EXHIBIT 143

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Background Information

PREAMBLE

THE PARTIES to this Agreement,

CONSCIOUS of the importance to international and national commerce of a healthy commercial shipbuilding and repair industry;

HAVING REGARD to the aims of the Organisation for Economic Co-operation and Development and considering the important role of its Council Working Party on Shipbuilding in promoting normal competitive conditions in the shipbuilding industry and noting in particular its work concerning the "Revised General Arrangement for the Progressive Removal of Obstacles to Normal Competitive Conditions in the Shipbuilding Industry" (RGA), the "Understanding on Export Credits for Ships" and the "Revised Guidelines for Government Policies in the Shipbuilding Industry"

TAKING INTO ACCOUNT principles governing international trade as set forth in the General Agreement on Tariffs and Trade 1994 (hereafter referred to as "GATT 1994");

NOTING the severe structural disequilibrium and market trends which depressed for many years the world shipbuilding and repair industry, the increased competition, the deteriorating price levels and the implementation of measures of public assistance;

DESIRING to improve transparency regarding obstacles to normal competitive conditions in the commercial shipbuilding and repair industry and to have the Organisation for Economic Co-operation and Development reinforce its collection of data about and monitoring of the market situation, prices, and policies in that industry;

RECOGNISING the need to intensify their commitment to reach normal competitive conditions and to provide for an effective means of protection against sales of ships under their normal value which cause injury;

RECOGNISING also that special characteristics of ship purchase transactions have made it impractical to apply countervailing and anti-dumping duties, as provided under Article VI of GATT 1994, the Agreement on Subsidies and Countervailing Measures, and the Agreement on the Implementation of Article VI of GATT 1994;

RECOGNISING further the need to provide for a speedy, effective and equitable resolution of disputes about these matters;

HEREBY AGREE as follows:

Article 1: Restoration and Maintenance of Normal Competitive Conditions

1. The Parties shall, in accordance with the specific provisions set out in Annex II, eliminate all existing measures or practices which are inconsistent with normal competitive conditions in the commercial shipbuilding and repair industry pursuant to Annex I (hereafter referred to as "measures of support").

2. The Parties shall not introduce any new measures of support.

3. The Parties recognise that the sale of commercial ships at less than their normal value is to be condemned if it causes or threatens material injury to an established shipbuilding and repair industry in the territory of another Party, or materially retards the establishment of a domestic shipbuilding and repair industry. In order to remedy or prevent such injurious pricing, Annex III is applicable.

Article 2: Scope of the Agreement

1. This Agreement covers the construction and repair of any self-propelled seagoing vessels of 100 gross tons and above used for transportation of goods or persons or for performance of a specialised service (for example, ice breakers and dredgers) and tugs of 365 kW and over.

2. This Agreement excludes:

a) military vessels and modifications made or features added to other vessels exclusively for military purposes. This exclusion is subject to the requirement that any measures or practices taken in respect of such vessels, modifications or features are not disguised actions taken in favour of commercial shipbuilding and repair inconsistent with this Agreement. If a Party considers that this requirement has not been met, it may, without prejudice to its rights to initiate the other procedures foreseen in this Agreement, request further information, which the other Party shall co-operate to provide as fully and quickly as possible.

b) fishing vessels destined for the building or repairing Party's fishing fleet. This exclusion is subject to the requirement that the Party provides full transparency in accordance with Article 4.

3. For purposes of this Agreement:

a) a vessel is considered "self-propelled seagoing" if its permanent propulsion and steering provide it all the characteristics of self-navigability in the high seas;

b) "repair" includes, inter alia, conversion and reconditioning of self-propelled seagoing vessels as defined in subparagraph a. above; and

c) "military vessels" are vessels which according to their basic structural characteristics and ability are intended to be used exclusively for military purposes.

Article 3: Parties Group

1. A Parties Group, composed of a representative of each of the Parties to this Agreement, shall examine the functioning of the Agreement and carry out the other functions provided for in this Agreement.

2. The Parties Group shall annually elect a Chairman, who will serve in his personal capacity. The Chairman shall convene meetings of the Parties Group annually or, upon request of a Party, more frequently. If the country of which the Chairman is a national, or in which the Chairman has his usual residence or is employed, is an interested Party in any advisory opinion, derogation, or dispute settlement procedure pursuant to Articles 5 or 8, the Parties Group shall, at the request of any Party, elect an alternate Chairman to perform the functions of Chairman relating to those procedures.

3. The Parties Group shall act by consensus, except as otherwise provided. A Party may abstain and express a differing view without barring consensus.

4. The Secretary-General of the OECD shall provide the Secretariat for the Parties Group, the costs for which shall be borne by the Parties as approved and apportioned by the Parties Group.

Article 4: Provision and Review of Information

1. In order to ensure transparency, each Party shall provide the Parties Group, through the Secretariat:

a) every six months, all publicly available information on contract price trends and on the credit terms and conditions of all ships covered by this Agreement and sold during the previous six months;

b) as far in advance as possible, relevant information on any assistance it proposes to provide specifically to the commercial shipbuilding and repair industry, including relevant information on assistance excluded from the prohibitions of this Agreement by Annex I, Section B.1.h and prompt supplementary information on any such assistance it has so provided and assistance provided under Annex II A;

c) information and notifications regarding credit terms and facilities which are called for by the Understanding on Export Credits for Ships, as defined in Annex I, Section A.1. and corresponding information and notifications for the Home Credit Schemes authorised by Annex I, Section B.2.(2);

d) for yards able to build merchant ships over 5000 gt, publicly available information on capacity developments and on the structure of ownership (capital structure, share of direct and indirect public ownership); financial statements (balance sheet, profit and loss statement) including, if available, separate accounts covering the shipbuilding activities of holdings; transfer of public resources (including debt guarantees, bond infusion, etc.); exemptions from financial or other obligations (including tax privileges, etc.), capital contribution (including equity infusions, withdrawal of capital, dividend, loans and their refunding, etc.); debt write-off; and transfer of losses.

2. Any Party may request from any other Party, either directly or through the Secretariat, information that it believes to be relevant to the provision of any measures of support and may provide the Parties Group with information on measures of support maintained or permitted by another Party.

3. The Parties Group shall, once every three years, review in depth the competitive conditions prevailing on each Party's territory. This will include the examination of the possible impact on normal competitive conditions of the evolution in ownership of yards. Information required for this review may be requested from the Parties by the Secretariat.

4. Each Party shall co-operate fully in the effort to obtain information requested under this Agreement.

5. The provisions of this Article shall not require any Party to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private. Information provided on a confidential basis shall not be disclosed without the express consent of the Party supplying the information.

Article 5: Opinions and Derogations

1. Any Party may request that the Parties Group provide a written opinion on the consistency with this Agreement of measures or practices[1]:

a) it proposes or has taken or engaged in; or

b) taken or engaged in by another Party.

The Parties Group shall provide such an opinion within 60 days of the request.

2. An opinion adopted by consensus of all the members of the Parties Group shall be final and binding upon all the Parties regarding that particular measure or practice.

3. If, with respect to an opinion requested under subparagraph 1.b. there is an objection by a requesting Party or by the Party the measure or practice of which is the subject of the opinion, the Parties Group shall act by consensus of the other Parties. An opinion adopted in this manner shall be advisory.

4. The initiation of an opinion proceeding by a Party shall not prejudice the right of any Party to initiate a Panel under Article 8. If a disputed measure or practice is submitted for Panel consideration, opinion proceedings shall terminate upon request by a Party to the dispute made to the Parties Group within 15 days of the request to establish a Panel or of the request for the opinion.

5. A Party which considers that, in response to extraordinary circumstances, it must temporarily take a measure or engage in a practice inconsistent with this Agreement, may do so only in conformity with the terms and conditions of a derogation which may be granted by the Parties Group. In critical circumstances which do not allow time for prior consideration by the Parties Group, action may be

initiated provisionally, on condition that any action taken shall be rescinded no later than thirty days from initiation, and any benefit provided shall be recovered, unless its continuation is approved by the Parties Group which shall meet within this period.

Article 6: Notification of Inconsistent Measures

Whenever a Party has reason to believe that a measure or practice has been introduced or is being maintained by another Party, contrary to the terms of Article 1, paragraph 1 or 2, that Party shall notify the Parties Group, specifying the section or sections of Annexes I and II with which it believes the measure or practice is inconsistent.

Article 7: Consultations

1. A Party which has reason to believe that a measure of support has been or is being introduced or maintained by another Party, contrary to the terms of Article 1, paragraph 1 or 2, may request consultations with the other concerned Party. The request shall include a statement of available information with regard to the existence and nature of the measure of support in question.

2. If a Party considers that an injurious pricing charge proceeding has been carried out regarding a shipbuilder in its territory by another Party in a manner not in conformity with Article 1, paragraph 3, and Annex III, it may request consultations with that other Party no later than 60 days after the notification to the shipbuilder of the decision imposing the injurious pricing charge.

3. A Party may request consultations with any other Party or Parties concerning any other matter respecting the operation of this Agreement, including possible initiation of a proceeding under Annex III.

4. The requesting Party or Parties shall inform the Parties Group of the request for consultations and of the reasons for the request.

5. The requested Party or Parties shall provide adequate opportunity for such consultations and shall enter into them within thirty days of such a request. The purpose of the consultations shall be to clarify the facts of the situation and to arrive at a mutually acceptable solution in conformity with this Agreement.

6. The parties to the consultations shall inform the Parties Group of significant developments in the consultations as they occur and of their results.

Article 8: Dispute Panel Proceedings

1. If a mutually acceptable solution has not been reached in consultations under Article 7, paragraph 1, on a measure of support introduced, or under Article 7, paragraph 2, on a charge imposed, within 30 days after the beginning of consultations or 60 days after the date of the request, whichever is sooner, any party to the consultation may request the establishment of a Panel to consider the dispute, in accordance with Annex IV. This right is independent of whether an affected shipbuilder has taken an appeal to the Courts of a Party.

2. A Party seeking to redress a violation by another Party of the obligations subject to the provisions of this Article and Annex IV of this Agreement, shall have recourse to, and abide by, the rules and procedures of this Agreement. In such a case, the Party shall not make a determination to the effect that a violation has occurred except in accordance with the above-mentioned provisions. Each Party shall ensure the conformity of its laws, regulations and administrative procedures with its obligations under this paragraph.

3. If a party to the dispute seeks, as a remedy, the collection of a charge from a shipbuilder, or is contesting the imposition of an injurious pricing charge on its shipbuilder, that shipbuilder shall, subject to the consent of its Party, be entitled to participate in the Panel proceeding and shall be given a full and fair opportunity to present its case against the imposition of the charge. The shipbuilder may be excluded from government-to-government aspects of the proceeding by agreement of the parties to the dispute.

4. Any other Party to this Agreement with an interest in the dispute shall be provided an opportunity to make its views on the dispute known to the Panel.

5. If the dispute involves a measure of support in Annex I, the Panel shall determine whether such measure of support is inconsistent with this Agreement. If the Panel finds the measure of support to be inconsistent:

a) the Party responsible for such measure of support shall eliminate or modify it to conform with the Agreement, within a time limit set by the Panel;

b) the Panel shall include in its findings a determination of (i) which shipbuilders benefited from the measure of support, (ii) the amount of the benefit received by each shipbuilder concerned under such measure of support, and (iii) interest on the benefit at the Commercial Interest Reference Rate (CIRR) of the country in question from the date of receipt of the benefit. For subsidies within the meaning of Article 1 of the Agreement on Subsidies and Countervailing Measures, the benefit shall be determined in accordance with Article 14 of that Agreement. For other measures, the Panel shall follow any generally accepted trade practice and/or understanding;

c) the Party responsible shall, within a time limit set by the Panel, collect from the shipbuilders concerned a charge in the amount determined under subparagraph b. or if collection is not legally possible, it may, with the agreement of the adversely affected Party or Parties, take other appropriate action to remove or offset the benefits obtained.

6. If the dispute involves an injurious pricing charge, the Panel shall examine whether the charge was imposed in accordance with Annex III.

a) The Panel shall, in its assessment of the facts of the matter, determine whether the authorities' establishment of the facts was proper and whether their evaluation of those facts was unbiased and objective. If the establishment of the facts was proper and the evaluation was unbiased and objective, even though the Panel might have reached a different conclusion, the evaluation shall not be overturned.

b) The Panel shall interpret the Agreement in accordance with customary rules of interpretation of public international law. Where the Panel finds that a relevant provision of the Agreement admits more than one permissible interpretation, the Panel shall find the authorities' measure to be in conformity with the Agreement if it rests upon one of those permissible interpretations[2]; and

c) Where the Panel finds that imposition of a charge was inconsistent with the Agreement, the Panel may recommend, in light of the nature of the inconsistency, either that the investigating authority terminate the investigation or that it reconsider its determination in light of the Panel's findings. If the Panel recommends reconsideration, it may suggest ways in which the investigating authority could implement the recommendation. The investigating authority shall make its determination consistent with the findings of the Panel.

7. If the amount required is not paid within the time limit set by the Panel, interest shall accrue at the CIRR of the currency of the charge from, in the case of a charge under paragraph 5, the expiry of that time limit and, in the case of a charge under paragraph 6, the expiry of the time limit for payment provided in Annex III, Article 7, paragraph 3, until the date of payment.

8. The decisions of the Panel shall be final and binding upon the parties to the dispute, unless rejected by the Parties Group within thirty days.

9. With regard to a dispute concerning a measure of support in Annex I, in the event a party to the dispute does not implement the Panel's decisions as provided in paragraphs 5 a) and 5 c) above, or implement appropriate alternative compensation or remedial action by agreement with the adversely affected party or parties, and until implementation occurs, the following actions may be taken, and shall not be subject to complaint under any other agreement:

a) The Parties Group, acting by consensus minus one, may deny benefits of Article 1, paragraph 3, and Annex III to shipbuilders which received the benefit but did not pay the charge or comply with the agreed alternative compensation or remedial action, by making such shipbuilders ineligible to be considered injured by the pricing of vessels sold by shipbuilders of other Parties.

b) The adversely affected party or parties to the dispute may suspend equivalent concessions under the GATT 1994, subject to disapproval of the amount of the concessions suspended by the Parties Group acting by consensus minus one. In determining such suspensions, preference shall be given to those that are related to the product or products associated with the violation. If a Party concerned objects to the amount or the product related to the suspension of concessions proposed, it may refer the matter to the Panel.

10. In the event the shipbuilder concerned does not pay a charge imposed pursuant to Annex III, void the sale of the vessel at a price below normal value, or comply with another lawful alternative equivalent remedy acceptable to the investigating authority in the applicable time limit[3], the investigating Party may deny onloading and offloading privileges to certain vessels built by the shipbuilder in question, to the extent sufficient but not excessive to achieve the purpose of Annex III. Such denial of onloading and offloading privileges shall not be subject to complaint under any other agreement.

a) The investigating Party may initially impose this countermeasure, subject to thirty days prior public notice, and pending compliance by the shipbuilder, for a maximum period of 4 years after delivery of vessels contracted for during a maximum period of 4 years from the end of the public notice period;

b) A party to the dispute may request the establishment of a Panel to consider countermeasure cases, where there is no Panel already in existence to consider the underlying injurious pricing determination.

   i) A Panel shall increase or decrease the periods and/or authorise additional Parties to apply the countermeasure, if necessary for the countermeasure to be sufficient but not excessive to achieve the purpose of Annex III.

   ii) In accordance with Section 11 of Annex IV, a Panel may provisionally suspend or reduce the imposition of a countermeasure, pending completion of its consideration of the matter if, considering the prospects of the Party complaining about the countermeasure prevailing on the merits, such action is necessary to preclude irreparable harm.

c) The Secretariat will prepare, update periodically and circulate to the Parties, the lists of the vessels which are subject to the countermeasure or remedial action. The Parties shall supply information to the Secretariat on the vessels concerned.

Article 9: Dispute Settlement for Export Credits

1. With respect to any dispute with regard to measures of support covered by Annex I, Section A.1, the Parties shall make full use of the consultation mechanisms provided by the Understanding on Export Credits for Ships, referred to in Annex I.

2. If, however, any such dispute is not satisfactorily resolved through a full use of the mechanisms, and a party to the dispute believes that such a measure of support significantly undermines the balance of rights and obligations under this Agreement, that party may seek review of the matter by the Parties Group in order to establish if the measure of support has significantly undermined the balance of rights and obligations under this Agreement. If an affirmative determination is made, the Parties Group shall establish the conditions under which the offending party is to discontinue the measure of support giving rise to the dispute.

3. If appropriate, the Parties Group may recommend amending the Agreement or the Understanding.

Article 10: Security Interests

1. Subject to the requirement that measures or practices with respect to security interests are not disguised actions taken in favour of the commercial shipbuilding and repair industry inconsistent with the Agreement, nothing in this Agreement shall be construed:

a) to require any Party to furnish any information the disclosure of which it considers contrary to its essential security interests;

b) to prevent any Party from taking any action which it considers necessary for the protection of its essential security interests:

i) relating to fissionable materials or the materials from which they are derived;

ii) relating to traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment

iii) taken in time of war or other emergency in international relations; or

c) to prevent any Party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

2. If a Party is of the opinion that measures or practices taken by another Party are disguised action taken in favour of the commercial shipbuilding and repair industry, it may, without prejudice to its right to initiate the other procedures foreseen in this Agreement, request further clarification. The other Party shall co-operate to discuss whether or not a measure or practice relates to essential security and to provide the available information as fully and quickly as possible through the appropriate responsible government channels.

Article 11: Review and Amendment of the Agreement

1. The Parties Group shall review this Agreement triennially. The Parties Group shall also review this Agreement if the market share in terms of world production represented by the Parties to the Agreement falls below 70 per cent of gross tonnage.

2. Any Party may propose to the Parties Group amendments to this Agreement. Any amendment adopted by the Parties Group shall enter into force upon the deposit of an instrument of acceptance by all the Parties, or at such later date as may be specified by the Parties Group at the time of adoption of the amendments.

Article 12: Signature, Ratification, Acceptance, Approval and Accession

1. Until its entry into force, this Agreement shall be open for signature at the OECD by the European Community, Finland, Japan, Republic of Korea, Norway, Sweden, the United States of America, and any State invited by them which has a commercial shipbuilding and repair industry. This Agreement shall be subject to ratification, acceptance or approval which the signatories shall seek to accomplish before January 1, 1996.

2. After entry into force, States with a commercial shipbuilding and repair industry may, subject to the approval of the Parties Group, become Party to this Agreement by accession.

3. Ratification, acceptance, approval and accession shall be effected by the deposit of a formal instrument to that effect with the Depositary.

Article 13: Entry into Force

1. This Agreement, of which the Annexes form an integral part shall enter into force on January 1, 1996, subject to deposit of instruments of ratification, acceptance or approval, in accordance with Article 12, by the European Community, Finland, Japan, Republic of Korea, Norway, Sweden and the

United States of America[4]. If one or more of them has not deposited such instrument by that date, the Agreement shall enter into force 30 days after the last instrument has been deposited.

2. Parties accept the Understanding on Export Credits for Ships, referred to in Annex I, Section A.1. of this Agreement.

Article 14: Withdrawal

1. Any Party may withdraw from this Agreement by giving written notice of its intention to do so to the Depositary, such withdrawal to take effect one year from receipt of such notice. Within this period, at the request of any of the Parties, the Parties Group shall meet to review this Agreement. Within thirty days after such a Parties Group meeting, any other Party, by written notification to the Depositary, may withdraw from this Agreement as of the date of withdrawal of the Party which first gave notice.

Article 15: Depositary

1. The Secretary-General of the OECD shall be the Depositary of this Agreement.

DONE at Paris, this twenty-first day of December, one thousand nine hundred and ninety-four, in the English and French languages, each text being equally authentic.

ANNEX I

MEASURES OF SUPPORT INCONSISTENT WITH NORMAL COMPETITIVE CONDITIONS IN THE COMMERCIAL SHIPBUILDING AND REPAIR INDUSTRY[5]

The following measures of support are inconsistent with normal competitive conditions when specifically provided[6], directly or indirectly, to the commercial shipbuilding and repair industry by a Party, including the constituent states or regional or local authorities of a Party or their agencies or instrumentalities, or through public resources or public intervention in any form:

A. EXPORT SUBSIDIES

1. Officially Supported Export Credits[7]

Export credit facilities inconsistent with the provisions of the Understanding on Export Credits for Ships, as set out in C/WP6(94)6, and amendments thereto adopted in accordance with Clause 14 of that Understanding.

2. Export Subsidies

Subsidies contingent, in law or in fact[8], whether solely or as one of several other conditions, upon export performance, including those illustrated in Accompanying Note 8 to this Annex[9].

B. DOMESTIC SUPPORT[10]

1. Direct Domestic Support

a) The following measures of support are inconsistent when provided directly to the shipbuilder or ship repairer:

b) grants;

c) loans on terms and conditions more favourable than those of a comparable commercial loan which a firm can actually obtain on the market;

d) loan guarantees that support loans on terms and conditions more favourable than those that the firm would obtain on a comparable commercial loan absent the government guarantee, or on terms and conditions more favourable than those otherwise permitted by this Agreement;

e) forgiveness of debts;

f) provision of equity capital inconsistent with the usual investment practice (including for the provision of risk capital) of private investors in the territory of that Party;

g) provision of goods and services at less than the adequate remuneration;

h) tax policies and practices benefiting the shipbuilding and repair industry, such as tax credits;

i) other assistance except for: (i) assistance to cover the cost of measures for the exclusive benefit of workers who lose retirement benefits or who are made redundant or otherwise separated permanently from employment in the respective shipbuilding enterprise, when such assistance is related to the discontinuance or curtailment of shipyards, bankruptcy, or change of activities away from shipbuilding and (ii) research and development assistance granted in accordance with the provisions in Section B.3.

2. Indirect Domestic Support[11]

1. The following measures of support are inconsistent where the benefit is passed or may reasonably be expected to be passed to the shipbuilder or ship repairer indirectly, through a shipowner or other third parties[12]. Domestic build requirements, in law or in fact, are inconsistent.

a) grants;

b) loans and loan guarantees:

i) home credits, linked to the contract value of a new vessel, granted to a domestic shipowner or other domestic third parties placing orders for such vessel on terms and conditions more favourable than those of a comparable commercial loan which a firm can actually obtain on the market, subject to paragraph 2 and paragraph 3 below;

ii) other loans, on terms and conditions more favourable than those of a comparable commercial loan which a firm can actually obtain on the market;

iii) loan guarantees that support loans on terms and conditions more favourable than those that the firm would obtain on a comparable commercial loan absent the government guarantee, or on terms and conditions more favourable than those otherwise permitted by this Agreement;

c) forgiveness of debts;

d) tax policies and practices benefiting the shipbuilding and repair industry such as tax credits;

e) any assistance provided to suppliers of goods and services to the shipbuilding and repair industry if such assistance specifically provides benefits to that industry of a country; or

f) any indirect assistance that is similar to measures and practices listed in points a. through e. of this paragraph, except for research and development which is dealt with under Section 3 below.

2. Paragraphs 1 b.i) and iii) shall not apply to loans and loan guarantees to domestic purchasers on the same terms and conditions as may be granted pursuant to the Understanding on Export Credit for Ships [C/WP6(94)6], including, *inter alia*, terms and conditions regarding interest rate, downpayment, grace period, duration, equal instalments and guarantee premiums. Eligibility for such loans and loan guarantees may be limited to purchase of ships from domestic shipyards.

3. In accordance with terms and conditions to be agreed upon by the Council Working Party on Shipbuilding, paragraphs 1 b) i) and iii) above shall also not apply to loans and loan guarantees which:

a) provide more favourable terms and conditions for a domestic shipowner placing an order for a new vessel at a foreign shipyard than those placing an order at a domestic shipyard; or

b) make such schemes subject to an open international bidding procedure; or

c) provide a total "soft" or concessional element no greater than that of the loans permitted under paragraph 2, above.

3. Research and Development[13]

1. Assistance provided by public authorities in the form of grants, preferential loans, preferential tax treatment or other means for research and development to the shipbuilding and ship repair industry, except for:

a) fundamental research as defined in Accompanying Note 5.b);

b) basic industrial research, where the aid intensity is limited to 50 per cent of the eligible costs;

c) applied research, where the aid intensity is limited to 35 per cent of the eligible costs;

d) development, where the aid intensity is limited to 25 per cent of the eligible costs;

2. The maximum allowable aid intensity for research and development related to safety and the environment may be 25 percentage points higher than those percentages mentioned in subparagraphs 1 b., c. and d. above, on the condition that the Parties Group has approved the project by consensus minus one, or more than 25 percentage points higher if the Parties Group has approved the project by consensus.

3. The maximum allowable aid intensity for research and development carried out by small and medium sized shipbuilding enterprises shall be 20 percentage points higher than those percentages mentioned in subparagraphs (1) b., c. and d. above. Small and medium sized enterprises are those with less than 300 employees whose yearly sales figure does not exceed 20 million ECU and which are not more than twenty five per cent owned by a large company.

4. Information on the results of research and development is to be published promptly, at least annually.

C. OFFICIAL REGULATIONS AND PRACTICES

1. Administrative acts, guidance, or practices which authorise, encourage or require shipbuilders or ship repairers to enter into anti-competitive arrangements with competitors including but not limited to agreements to fix prices, rig bids, allocate markets, restrain production or sales, or engage in predatory practices[14].

2. Domestic build or repair or domestic content requirements that discriminate in favour of the commercial shipbuilding and repair industry of the Party, or official regulations or practices that have similar effects including, inter alia, cargo reservation schemes directly linked with domestic shipbuilding or repair requirements[15].

ACCOMPANYING NOTES TO ANNEX I

Note 1: Disciplines in Annex I include measures of support provided to related entities, where a "related entity" is any natural or juridical person (i) who owns or controls a shipbuilder or (ii) is owned or controlled by a shipbuilder, directly or indirectly, whether through stock ownership or otherwise. A rebuttable presumption of control arises when a person or shipbuilder owns or controls an interest of 25 per cent in the other.

Note 2: Section B does not apply to measures of support dealt with in Section A.

Note 3: Item A.1 and B.2: Transparency and Review of Export and Home Credit Schemes

Within two years of entry into force of this Agreement, the Parties Group shall set up a Working Group to review the functioning of Annex I, Sections A.1 and B 2.2.

i) examining the reports submitted each year on the value, tonnage, interest rates, etc. on all ships financed through officially supported Export Credits and Home Credit Schemes; and

ii) evaluating the adequacy of the notification procedures provided for in Article 4.1.c. in terms of revealing measures or practices that are inconsistent with the Agreement.

The Working Group is to examine whether the use of such measures has significantly undermined the balance of rights and obligations under this Agreement. If this is the case, the Working Group may

recommend to the Parties Group appropriate amendments to the Agreement or to the Understanding on Export Credit for Ships.

Note 4: Item B.2

A measure of support is understood to be provided through a shipowner or other third parties where, e.g. the benefit is passed or may reasonably be expected to be passed to the shipbuilder or ship repairer or where the work is required by law or encouraged in fact to be carried out at the yards of a specific country.

Note 5: Item B.3

The following definitions apply to research and development:

a) "Eligible costs":

   i) costs of instruments, materials, land and buildings to the extent that they are used for the specific research and development project;

   ii) costs of researchers, technicians and other supporting staff to the extent that they are engaged in the specific research and development project;

   iii) consultancy and equivalent services including bought in research, technical knowledge, patents, etc;

   iv) overhead costs (infrastructure and support services) to the extent that they are related to the research and development project, on condition that they do not exceed 45 per cent of the total costs of the project for basic industrial research, 20 per cent for applied research and 10 per cent for development.

b) The term "fundamental research" means research activities independently conducted by higher education or research establishments for the enlargement of general scientific and technical knowledge, not linked to industrial or commercial objectives.

c) "Basic industrial research" is understood to mean original theoretical and experimental work whose objective is to achieve new and better understanding of the laws of science and engineering in general and as they might apply to an industrial sector or to the activities of a particular undertaking.

d) Applied research" is understood to mean investigation or experimental work on the basis of the results of the basic research with a view to facilitating the attainment of specific practical objectives such as the creation of new products, production processes and services. It normally ends with the creation of a first prototype and does not include efforts whose principal aim is the design, development or testing of specific items of services to be considered for sale.

e) "Development" is understood to mean work based on the systematic use of scientific and technical knowledge in a design, development, testing or evaluation of a potential new product, production processes or service or of an improvement of an existing product or service to meet specific performance requirements and objectives. This stage will normally include pre-production models such as pilot and demonstration projects but does not include industrial application and commercial exploitation.

f) Public assistance for research and development specifically provided to the shipbuilding and repair industry includes, but is not limited to, the following cases:

   i) research and development projects carried out by the shipbuilding or ship repair industry or research institutes controlled by or financed by this industry;

ii) research and development projects carried out by the shipping industry or research institutes controlled by or financed by this industry when the project is directly related to shipbuilding or repair;

iii) research and development projects carried out by universities, public or independent private research institutes and other industrial sectors in collaboration with the shipbuilding industry;

iv) research and development projects carried out by universities, public or independent private research institutions and other industrial sectors, when, at the time the project is carried out, it is reasonably anticipated that the results will be of substantial specific importance for the shipbuilding and ship repair industry.

Note 6: Item C.1

The Parties recognise that differences exist among their competition policies or laws and regulations. The provision of Item C.1 is not intended to unify competition policies among the Parties to this Agreement nor to compel a Party to amend its national competition laws and regulations.

Note 7: Item C.2

While customs duties on newly built vessels or vessel repairs are included within the scope of Item C.2, the Parties do not intend thereby to characterise customs duties as obstacles to normal competitive conditions in the commercial shipbuilding industry.

Note 8: Item A.2: Illustrative List of Export Subsidies

a) The provision by governments of direct subsidies to a firm or an industry contingent upon export performance.

b) Currency retention schemes or any similar practices which involve a bonus on exports.

c) Internal transport and freight charges on export shipments, provided or mandated by governments, on terms more favourable than for domestic shipments.

d) The provision by governments or their agencies either directly or indirectly through government-mandated schemes, of imported or domestic products or services for use in the production of exported goods, on terms or conditions more favourable than for provision of like or directly competitive products or services for use in the production of goods for domestic consumption, if (in the case of products) such terms or conditions are more favourable than those commercially available (1) on world markets to their exporters.

e) The full or partial exemption, remission, or deferral specifically related to exports, of direct taxes (2) or social welfare charges paid or payable by industrial or commercial enterprises (3).

f) The allowance of special deductions directly related to exports or export performance, over and above those granted in respect to production for domestic consumption, in the calculation of the base on which direct taxes are charged.

g) The exemption or remission in respect of the production and distribution of exported products, of indirect taxes (2) in excess of those levied in respect of the production and distribution of like products when sold for domestic consumption.

h) The exemption, remission or deferral of prior stage cumulative indirect taxes (2) on goods or services used in the production of exported products in excess of the exemption, remission or deferral of like prior stage cumulative indirect taxes on goods or services used in the production of like products when sold for domestic consumption; provided, however, that prior stage cumulative indirect taxes may be exempted, remitted or

deferred on exported products even when not exempted, remitted or deferred on like products when sold for domestic consumption, if the prior stage cumulative indirect taxes are levied on inputs that are consumed in the production of the exported product (making normal allowance for waste) (4). This item shall be interpreted in accordance with the guidelines on consumption of inputs in the production process contained in Annex II of the Agreement on Subsidies and Countervailing Measures.

i) The remission or drawback of import charges (2) in excess of those levied on imported inputs that are consumed in the production of the exported product (making normal allowance for waste); provided, however, that in particular cases a firm may use a quantity of home market inputs equal to, and having the same quality and characteristics as, the imported inputs as a substitute for them in order to benefit from this provision if the import and the corresponding export operations both occur within a reasonable time period, not to exceed two years. This item shall be interpreted in accordance with the guidelines on consumption of inputs in the production process contained in Annex II of the Agreement on Subsidies and Countervailing Measures and the guidelines in the determination of substitution drawback systems as export subsidies contained in Annex III of the Agreement on Subsidies and Countervailing Measures.

j) The provision by governments (or special institutions controlled by governments) of export credit guarantee or insurance programmes, of insurance or guarantee programmes against increases in the cost of exported products or of exchange risk programmes, at premium rates which are inadequate to cover the long-term operating costs and losses of the programmes.

k) The payment by governments (or by institutions controlled by and/or acting under the authority of governments) of all or part of the costs incurred by exporters or financial institutions in obtaining credits, in so far as they are used to secure a material advantage in the field of export credit terms.

l) Any other charge on the public account constituting an export subsidy in the sense of Article XVI of GATT 1994.

Footnotes to the Illustrative List of Export Subsidies

1. The term "commercially available" means that the choice between domestic and imported products is unrestricted and depends only on commercial considerations.

2. For the purpose of this Agreement:

The term "direct taxes" shall mean taxes on wages, profits, interests, rents, royalties, and all other forms of income, and taxes on the ownership of real property;

The term "import charges" shall mean tariffs, duties, and other fiscal charges not elsewhere enumerated in this note that are levied on imports;

The term "indirect taxes" shall mean sales, excise, turnover, value added, franchise, stamp, transfer, inventory and equipment taxes, border taxes and all taxes other than direct taxes and import charges;

"Prior stage" indirect taxes are those levied on goods or services used directly or indirectly in making the product;

"Cumulative" indirect taxes are multi-staged taxes levied where there is no mechanism for subsequent crediting of the tax if the goods or services subject to tax at one stage of production are used in a succeeding stage of production;

"Remission" of taxes includes the refund or rebate of taxes;

"Remission or drawback" includes the full or partial exemption or deferral of import charges.

3. The Parties recognise that deferral need not amount to an export subsidy where, for example, appropriate interest charges are collected. The Parties reaffirm the principle that prices for goods in transactions between exporting enterprises and foreign buyers under their or under the same control should for tax purposes be the prices which would be charged between independent enterprises acting at arm's length. Any Party may draw the attention of another Party to administrative or other practices which may contravene this principle and which result in a significant saving of direct taxes in export transactions. In such circumstances the Parties shall normally attempt to resolve their differences using the facilities of existing bilateral tax treaties or other specific international mechanisms, without prejudice to the rights and obligations of Parties under this Agreement, including the right of consultation created in the preceding sentence. Paragraph (e) is not intended to limit a Party from taking measures to avoid the double taxation of foreign source income earned by its enterprises or the enterprises of another Party.

4. Paragraph (h) does not apply to value-added tax systems and border-tax adjustment in lieu thereof; the problem of the excessive remission of value-added taxes is exclusively covered by paragraph (g).

ANNEX II

SPECIAL PROVISIONS RELATING TO MEASURES OF SUPPORT

Existing measures of support that are inconsistent with the Agreement are to be eliminated at the time this Agreement enters into force, except as provided in Sections A and B below. Support committed before the entry into force of the Agreement may be paid after entry into force, provided that it complies with the provisions of the understanding set out in paragraph 3 of the Final Act of the negotiations concerning this Agreement.

A. Support for Restructuring

Support may be provided in accordance with the following notification to the Council Working Party on Shipbuilding:

i) The Republic of Korea's ongoing programme for Daewoo and KSEC described in [C/WP6(91)58].

ii) Restructuring assistance in Belgium, Portugal and Spain, information on which is set out in [C/WP6(93)31] and the Accompanying Note 1 to this Annex.

B. Official Regulations and Practices

Coastwise Laws of the United States

1. The United States reserves the right to retain the domestic build requirements incorporated in the public laws referred to in the Accompanying Note 2 to this Annex.

2. Regarding the coastwise laws of the United States which reserve the domestic market for US shipyards, the following will apply:

a) Any domestic build, rebuild, or repair requirements found in United States laws other than those specified in Accompanying Note 2 to this Annex (hereafter "the coastwise laws") that are inconsistent with the Agreement are subject to elimination as of entry into force of the Agreement.

b) Recognizing that a permanent derogation for the coastwise laws could undermine the balance of rights and obligations of the Parties under the Agreement and is unacceptable to the other Parties, the Parties agree that responsive measures may be taken as provided below and on the special review and monitoring procedure.

c) The United States agrees to co-operate in an annual review by the Parties Group and to ensure full transparency regarding the construction of vessels under the coastwise law, including the provision of information on new orders and ratified contracts (both adjusted subsequently for cancellations), expected and actual delivery dates, by tonnage and type of ship. The United States will provide such information no less than annually, and more frequently when requested or appropriate (e.g., when it appears that annual actual and expected deliveries may increase beyond the threshold described below under subparagraph e).

d) The United States estimates the average annual deliveries for vessels subject to the Agreement constructed under the provisions of the coastwise laws following adoption of the Agreement will not exceed 200,000 gt.

e) The Parties Group will carefully monitor the information provided under subparagraph c) above. It may by consensus minus one make determinations and authorize responsive measures as specified in subparagraphs (i) and (ii) below.

i) Until three years after entry into force of the Agreement:

If the Parties Group determines that actual or expected deliveries in any year after the entry into force of this Agreement exceeds 200 000 gt[16] and that such deliveries will significantly undermine the balance of rights and obligations under the Agreement, the Parties Group may authorize one or more affected Parties to take responsive measures (e.g., impose a charge or restriction on bids or contracts) with respect to shipyards that in the year in which the threshold is exceeded benefited from the construction of coastwise vessels, aimed at effecting a loss of sales opportunities comparable to that resulting from deliveries of coastwise vessels in excess of the threshold.

For purposes of this paragraph, actual or expected deliveries in excess of the threshold, as defined above, in any one year establishes a rebuttable presumption of significantly undermining the balance of rights and obligations under this Agreement.

ii) After three years following entry into force of the Agreement:

If the Parties Group determines that actual or expected deliveries will significantly undermine the balance of rights and obligations under the Agreement, the Parties Group may authorize one or more affected Parties to take responsive measures (e.g., impose a charge or restriction on bids or contracts) with regard to shipyards benefiting from the construction of coastwise vessels, aimed at effecting a loss of sales opportunities or other commercial advantages comparable to that resulting from deliveries of coastwise vessels.

For purposes of this paragraph, there is a rebuttable presumption that the balance of rights and obligations under this Agreement is significantly undermined.

f) If the United States believes that the level, kind, or duration of the measures taken by a Party or Parties under subparagraph e) result in a loss of sales opportunities for its shipbuilders greater than that caused by the delivery of coastwise vessels, it may invoke dispute panel proceedings under Annex IV of the Agreement. The Panel shall determine whether the measures taken under subparagraph e) are disproportionate or excessive and make appropriate recommendations. Measures taken by the Parties must be made consistent with the Panel's recommendations.

g) As part of and in sufficient time prior to the first triennial review provided for in Article 11 of the Agreement, the Parties Group shall examine whether the conditions which created the need for Part B of Annex II still prevail and whether the measures provided for under subparagraph e) above are adequate to maintain the balance of rights and obligations under the Agreement. On the basis of that review and with the aim of maintaining the balance of rights and obligations under the Agreement, the Parties Group may decide to:

- modify the provisions of subparagraph e);
- withdraw other rights under the Agreement;
- authorize the withdrawal of GATT concessions; or
- take other appropriate action.

h) If, after the review called for in subparagraph g) is completed, a Party continues to believe that the responsive measures available to it are unsatisfactory, such Party may withdraw from this Agreement three months after submitting a notification of its determination to this effect to the Parties Group. The same procedures for withdrawal are available to a Party entitled to take the above-mentioned responsive measures at any time after four years from entry into force of this Agreement, if Part B of Annex II remains in effect.

ACCOMPANYING NOTES TO ANNEX II

Note 1: Item A. ii): Restructuring Support

a) The total amounts of assistance included in the restructuring plans of item A. ii) are as follows:

Spain 180 billion pesetas

Portugal 17.7 million contos

Belgium 2 369 million Belgian francs

b) These total amounts of assistance consist of the following:

i) assistance for social measures exempted under Annex I, B.1. h;

ii) assistance for restructuring costs incurred before the date of signature of the present agreement, committed by the respective national governments and approved by the Commission of the European Community before that date, but which have not been paid due to budgetary problems;

iii) other assistance for restructuring measures committed and paid, on the basis of costs incurred before 1 January 1996;

iv) assistance for restructuring measures paid after 1 January 1996, broken out in two categories:

- investment assistance; and
- any assistance for social measures not exempted under Annex I, B.1.h.

c) The European Community will provide to the Parties Group, in accordance with Article 4 1. b. of the present Agreement information which splits up the amounts mentioned in point a. above into the categories referred to in point b. above, allowing the Parties Group to monitor the restructuring plans.

d) The European Community can state that assistance paid after the 1 January 1996 and not falling under b) i) and ii) above, will be subject to maximum limits and payment deadlines particular to each country as follows:

Aid Volume	**Ultimate Payment**	**Deadline**
Spain	10 billion pesetas	31 December 1998
Portugal	5.2 million contos	31 December 1998
Belgium	1 320 million Belgian francs	31 December 1997

e) The European Commission has not yet received complete notifications of these restructuring plans as required by the internal legislation of the European Community. The Commission will ensure that the above limits and restrictions on the aid will be fully respected when it takes its final decisions authorising these aids.

Note 2: Item B: Coastwise Laws of the United States

The United States reserves the right to retain the domestic build requirements incorporated in the legislation listed below.

a) Laws that prohibit the transportation of merchandise between points in the United States except on U.S. built vessels documented under U.S. law and owned by citizens of the United States:

Section 27 of the Act of June 5, 1920 (41 STAT. 999), as amended by the Act of April 11, 1935 (49 STAT. 154); the Act of July 2, 1935 (49 STAT. 442); Section 1 of the Act of July 14, 1956 (70 STAT. 544); Section 27(a) of Public Law 85-508 (72 STAT. 351); Section 1 of Public Law 86-583 (74 STAT. 321); Public Law 89-194 (79 STAT. 823); Section 1 of Public Law 86-583 (74 STAT. 321), Public Law 89-194 (79 STAT. 823); Public Law 90-474 (82 STAT. 700); Section 1 of Public Law 92-163 (85 STAT. 486); Section 213 of Public Law 95-410 (92 STAT. 904); Section 4 of Public Law 96-112 (93 STAT. 848); Section 12(49) of Public Law 97-31 (95 STAT 157); Sections 502 and 504 of Public Law 97-389 (96 STAT. 1954, 1956); Section 6(c)(1) of Public Law 100-239 (101 STAT. 1782, Section 1(a) of Public Law 100-329 (102 STAT. 588); and Section 5501(b) of Public Law 102-587 (106 STAT. 5085).

b) Laws that prohibit the transportation of passengers between points in the United States except on U.S. built vessels documented under U.S. law and owned by the citizens of the United States:

Section 8 of the Act of June 19, 1886 (24 STAT. 81), as amended by Section 2 of the Act of February 17, 1898 (30 STAT. 248).

c) Laws requiring that dredges must be built and registered in the United States:

Section 1 of the Act of May 28, 1906 (34 STAT. 204), as amended by Section 5501(a)(1) of Public Law 102-587 (106 STAT. 5084).

d) Laws requiring that towing vessels must be U.S. built and documented under the laws of the U.S. and owned by citizens of the United States to engage in towing vessels from any port or place in the U.S. to any other port or place in the United States:

Revised Statute No. 4370 (54 STAT. 304), as amended by Section 10 of Public Law 99-307 (100 STAT. 447); and Section 2 of Public Law 100-329 (102 STAT. 589).

e) Though fishing vessels destined for a country's fishing fleet are excluded from the scope of the Agreement, listed below for the sake of completeness are laws requiring that fishing vessels, fish tender vessels and fish processing vessels operating in U.S. waters, or in the waters of the U.S. Exclusive Economic Zone (unless operating under a permit pursuant to a governing international fishing agreement), must be built in the United States and documented under U.S. law and owned by citizens of the United States:

Section 1 of Public Law 98-89 (97 STAT. 587), as amended by Section 301(c) of Public Law 98-454 (98 STAT. 1734); Section 3(4), (5), 6(a)(6) of Public Law 100-239 (101 STAT. 1779, 1782); and Section 301(a)(8) of Public Law 101-225 (103 STAT. 1921).

ANNEX III

INJURIOUS PRICING CHARGES

A. BASIC PRINCIPLES

1. The Parties recognise that injurious pricing, by which vessels covered by Article 2 of the Agreement Respecting Normal Competitive Conditions in the Commercial Shipbuilding and Repair Industry ("vessels") of one Party are sold[17] directly or indirectly to one or more nationals or companies of another Party[18] or to one or more companies owned[19] or controlled[20] by such nationals or companies[21] at less than the normal value of the vessels, is to be condemned if it causes or threatens material injury to an established industry in the territory of a Party or materially retards the establishment of a domestic industry.

2. In order to remedy or prevent injurious pricing, a Party may impose on the producer of any injuriously priced vessel an injurious pricing charge not greater in amount than the margin of injurious pricing in respect of such vessel.

3. No vessel of the territory of any Party sold to a buyer of any other Party shall be subject to injurious pricing charges by reason of the exemption of such vessel from duties or taxes borne by the like product when sold to a buyer of the Party in which the vessel originates, or by reason of the refund of such duties or taxes.

4. a. No Party shall impose any injurious pricing charge on a shipbuilder that is a national or company of another Party unless it determines that the effect of the injurious pricing is such as to cause or threaten material injury to an established domestic industry, or is such as to retard materially the establishment of a domestic industry.

b. The Parties may waive the requirement of sub-paragraph a) of this paragraph so as to permit a Party to impose an injurious pricing charge on a shipbuilder with regard to the sale of any vessel to a buyer which is its company or national for the purpose of remedying injurious pricing which causes or threatens material injury to an industry in the territory of another Party exporting the product concerned to the Party of the buyer.

5. The Parties agree to take action only under this Annex with regard to transactions involving the injurious pricing of vessels covered by this Agreement. A Party shall withhold action under this Annex if any member of the World Trade Organisation not a Party to this Agreement has previously initiated an anti-dumping action pursuant to Article VI of GATT 1994 and the Agreement on the Implementation of Article VI of GATT 1994 with regard to a particular transaction. If subsequent to the initiation of an action under this Annex, a member of the World Trade Organisation who is not a Party to this Agreement initiates an antidumping action pursuant to Article VI of GATT 1994 and the Agreement on the Implementation of Article VI of GATT 1994 with regard to a particular transaction, the Party that had initiated an action under this Annex shall suspend the action. If the antidumping investigation is concluded by the imposition of measures or a negative finding, a Party shall not initiate or continue action under this Annex. If the antidumping investigation is not concluded within a reasonable period of time, but not less than one year, or if, in the event of an affirmative finding, action is not taken, the Party to this Agreement may initiate or continue its investigation, but in no case may both an injurious pricing charge under this Agreement and an antidumping duty under the GATT 1994 be imposed with respect to a particular transaction.

B. SUPPLEMENTARY PROVISIONS REGARDING THE BASIC PRINCIPLES

Regarding Paragraph 1

1. Hidden injurious pricing by associated houses (that is, the sale by a buyer at a price below that corresponding to the price invoiced by a shipbuilder with whom the buyer is associated, and also below the price in the country of sale) constitutes a form of injurious pricing with respect to which the margin of injurious pricing may be calculated on the basis of the price at which the vessels are resold by the buyer.

2. It is recognised that, in the case of sales from a country which has a complete or substantially complete monopoly of its trade and where all domestic prices are fixed by the State, special difficulties may exist in determining price comparability for the purposes of paragraph 1, and in such cases Parties may find it necessary to take into account the possibility that a strict comparison with domestic prices in such a country may not always be appropriate.

Regarding Paragraph 2

Multiple currency practices can in certain circumstances constitute a form of injurious pricing by means of a partial depreciation of a country's currency which may be met by action under paragraph 2. By "multiple currency practices" is meant practices by governments or sanctioned by governments.

Regarding Paragraph 4 b)

Waivers under the provisions of paragraph 4 b) shall be granted only on application by the Party proposing to impose an injurious pricing charge.

SHIPBUILDING INJURIOUS PRICING CODE

THE PARTIES,

RECOGNISING that anti-injurious pricing practices should not constitute an unjustifiable impediment to international trade and that injurious pricing charges may be applied against injurious pricing only if such injurious pricing causes or threatens material injury to an established industry or materially retards the establishment of an industry;

CONSIDERING that it is desirable to provide for equitable and open procedures as the basis for a full examination of injurious pricing cases;

DESIRING to interpret the Basic Principles and to elaborate rules for their application in order to provide uniformity and certainty in their implementation;

RECOGNISING the need to take account of the complexity of ship purchase transactions and the manner in which the ownership of a vessel may be obscured;

RECOGNISING the nature of commercial shipbuilding and repair, which often involves a single transaction covering one vessel and the adaptation of shipyard operations to render them capable to produce a particular ship, and thus, understanding that the investigating authorities shall consider the context of these and other characteristics of commercial shipbuilding and repair in assessing the impact of sales on a domestic industry;

Hereby agree as follows:

Article 1: Principles

1.1 An injurious pricing charge on a vessel covered by Article 2 of the Agreement Respecting Normal Competitive Conditions in the Commercial Shipbuilding and Repair Industry ("vessel") shall be applied only under the circumstances provided for in this Annex and pursuant to investigations initiated[22] and conducted in accordance with its provisions. The following provisions govern the application of the Basic Principles in so far as action is taken under implementing legislation or regulations.

1.2 The Parties agree to incorporate into this Code any amendments made in the future to the Agreement on the Implementation of Article VI of GATT 1994. Changes to such amendments shall be limited to those necessitated by the special characteristics of commercial shipbuilding.

Article 2: Determination of Injurious Pricing

2.1 For the purpose of this Agreement, a vessel is to be considered as being injuriously priced, i.e., sold[23] directly or indirectly to one or more nationals or companies of another Party, or to one or

more companies owned or controlled by such nationals or companies, at less than its normal value, if the export[24] price of the vessel sold is less than the comparable price, in the ordinary course of trade, for the like vessel when sold to a buyer of the exporting country.

2.2 When there are no sales of the like vessel in the ordinary course of trade in the domestic market of the exporting country or when, because of the particular market situation, such sales do not permit a proper comparison, the margin of injurious pricing shall be determined by comparison with a comparable price of the like vessel when exported to an appropriate third country provided that this price is representative. If such sales to any appropriate third country do not exist or do not permit a proper comparison, the margin of injurious pricing shall be determined by comparison with the cost of production in the country of origin plus a reasonable amount for administrative, selling and general costs and for profits.

2.2.1 Sales of the like vessel in the domestic market of the exporting country or sales to a third country at prices below per unit (fixed and variable) costs of production plus administrative, selling, and general costs may be treated as not being in the ordinary course of trade[25] by reason of price and may be disregarded in determining normal value only if the authorities[26] determine that such sales are at prices which do not provide for the recovery of all costs within a reasonable period of time[27]. If prices which are below costs at the time of sale are above weighted average costs for the period of investigation, such prices shall be considered to provide for recovery of costs within a reasonable period of time.

2.2.1.1 For the purpose of paragraph 2.2 of this Article, costs shall normally be calculated on the basis of records kept by the shipbuilder under investigation, provided that such records are in accordance with the generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sale of the vessel under consideration. Authorities shall consider all available evidence on the proper allocation of costs, including that which is made available by the shipbuilder in the course of the investigation provided that such allocations have been historically utilised by the shipbuilder, in particular in relation to establishing appropriate amortisation and depreciation periods and allowances for capital expenditures and other development costs. Unless already reflected in the cost allocations under this sub-paragraph, costs shall be adjusted appropriately for those non-recurring items of cost which benefit future and/or current production, or for circumstances in which costs during the period of investigation are affected by start-up operations[28].

2.2.2 For the purpose of paragraph 2.2 of this Article, the amounts for administrative, selling and general costs and for profits shall be based on actual data pertaining to production and sales in the ordinary course of trade of the like vessel by the shipbuilder under investigation. When such amounts cannot be determined on this basis, the amounts may be determined on the basis of:

i) the actual amounts incurred and realised by the shipbuilder in question in respect of production and sales in the domestic market of the country of origin of the same general category of vessel;

ii) the weighted average of the actual amounts incurred and realised by other shipbuilders of the country of origin in respect of production and sales of the like vessel in that country's domestic market;

iii) any other reasonable method[29], provided that the amount for profit so established shall not exceed the profit normally realised by other shipbuilders on sales of vessels of the same general category in the domestic market of the country of origin; and

iv) the profit added in constructing value shall, in all instances, be based upon the average profit realised over a reasonable period of time[30] prior to and after the sale under investigation and shall reflect a reasonable profit at the time of such sale. In making such calculation, any distortion which would result in other than a profit which is reasonable at the time of the sale shall be eliminated.

2.2.3 In light of the long lead time between contract and delivery of vessels, a normal value shall not include actual costs which are due to extraordinary circumstances (e.g., labour disputes, fire, natural

disaster), and which are significantly over the cost increase which the shipbuilder could have reasonably anticipated and taken into account at the time the material terms of sale were fixed[31].

2.3 In cases where there is no export price or where it appears to the authorities concerned that the export price is unreliable because of association or a compensatory arrangement between the shipbuilder and the buyer or a third party, the export price may be constructed on the basis of the price at which the vessels are first resold to an independent buyer, or if the vessels are not resold to an independent buyer, or not resold in the condition as originally sold, on such reasonable basis as the authorities may determine.

2.4 A fair comparison shall be made between the export price and the normal value. This comparison shall be made at the same level of trade, normally at the ex-factory level, and in respect of sales made at as nearly as possible the same time[32]. Due allowance shall be made in each case, on its merits, for differences which affect price comparability, including differences in conditions and terms of sale, taxation, levels of trade, quantities, physical characteristics, and any other differences which are also demonstrated to affect price comparability[33]. In the cases referred to in paragraph 2.3 of Article 2, allowances for costs, including duties and taxes, incurred between original sale and resale, and for profits accruing, should also be made. If, in these cases, price comparability has been affected, the authorities shall establish the normal value at a level of trade equivalent to the level of trade of the constructed export price, or make due allowance as warranted under this paragraph. The authorities shall indicate to the Parties in question what information is necessary to ensure a fair comparison and shall not impose an unreasonable burden of proof on those Parties.

2.4.1 When the price comparison under this paragraph requires a conversion of currencies, such conversion should be made using the rate of exchange on the date of sale[34], provided that when a sale of foreign currency on forward markets is directly linked to the export sale involved, the rate of exchange in the forward sale shall be used.

2.4.2 Subject to the provisions governing fair comparison in paragraph 2.4 of this Article, the existence of margins of injurious pricing during the investigation phase shall normally be established on the basis of a comparison of a weighted average normal value with a weighted average of prices of all comparable export transactions or by a comparison of normal value and export prices on a transaction to transaction basis. A normal value established on a weighted average basis may be compared to prices of individual export transactions if the authorities find a pattern of export prices which differ significantly among different purchasers, regions or time periods and if an explanation is provided why such differences cannot be taken into account appropriately by the use of a 'weighted average to weighted average' or 'transaction to transaction' comparison.

2.5 In the case where vessels are not sold to a buyer of another Party directly from the country of origin but are exported to that other Party from an intermediate country, the price at which the vessels are sold from the country of export to the buyer of that other Party shall normally be compared with the comparable price in the country of export. However, comparison may be made with the price in the country of origin, if, for example, the vessels are merely trans-shipped through the country of export, or such vessels are not produced in the country of export, or there is no comparable price for them in the country of export.

2.6 Throughout this Agreement the term "like vessel" shall be interpreted to mean a vessel of the same type, purpose and approximate size as the vessel under consideration and possessing characteristics closely resembling those of the vessel under consideration. The term "same general category of vessel" shall be interpreted to mean a vessel of the same type and purpose, but of a significantly different size. Small differences in size and equipment will not affect the category of the vessel, but may be reflected in appropriate adjustments in calculations and comparisons made under this Code.

2.7 This Article is without prejudice to the second Supplementary Provision to paragraph 1 of the Basic Principles.

Article 3: Determination of Injury[35]

3.1 A determination of injury for purposes of this Annex shall be based on positive evidence and involve an objective examination of both (a) the effect of the sale at less than normal value on prices in the domestic market for like vessels, and (b) the consequent impact of that sale on domestic producers of like vessels[36].

3.2 With regard to the effect of the sale at less than normal value on prices, the investigating authorities shall consider whether there has been a significant price undercutting by the sale at less than normal value as compared with the price of like vessels of the domestic producers, or whether the effect of such sale is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. No one or several of these factors can necessarily give decisive guidance.

3.3 Where sales of vessels from more than one country are simultaneously subject to injurious pricing investigations, the investigating authorities may cumulatively assess effects of such sales only if they determine that (1) the margin of injurious pricing established in relation to the purchases from each country is more than de minimis as defined in paragraph 5.8 of Article 5 and that (2) a cumulative assessment of the effects of the sales is appropriate in light of the conditions of competition between vessels sold by shipbuilders of other Parties to its buyers and the conditions of competition between such vessels and the like domestic vessels.

3.4 The examination of the impact of the sale at less than normal value on the domestic industry concerned shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investments, or utilisation of capacity; factors affecting domestic prices; the magnitude of the margin of injurious pricing; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments. This list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance.

3.5 It must be demonstrated that the sale at less than normal value is, through the effects of the sale at less than normal value, as set forth in paragraphs 3.2 and 3.4 of this Article, causing or has caused injury within the meaning of this Agreement. The demonstration of a causal relationship between the sale at less than normal value and the injury to the domestic industry shall be based on an examination of all relevant evidence before the authorities. The authorities shall also examine any known factors other than the sale at less than normal value which at the same time are injuring the domestic industry, and the injuries caused by these other factors must not be attributed to the sale at less than normal value. Factors which may be relevant in this respect include, inter alia, the volume and prices of sales by shipbuilders of other Parties to buyers of the investigating Party not sold at less than normal value, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry.

3.6 The effect of the sale at less than normal value shall be assessed in relation to the domestic production of the like product when available data permit the separate identification of that production on the basis of such criteria as the production process, producers' sales and profits. If such separate identification of that production is not possible, the effects of the sale at less than normal value shall be assessed by the examination of the production of the narrowest group or range of products, which includes the like product, for which the necessary information can be provided.

3.7 A determination of a threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances which would create a situation in which the sale at less than normal value would cause injury must be clearly foreseen and imminent[37]. In making a determination regarding the existence of a threat of material injury, the authorities should consider, inter alia, such factors as:

i) sufficient freely disposable or an imminent, substantial increase in capacity of the exporter indicating the likelihood of substantially increased sales at less than normal value to the market of the buyer's country, taking into account the availability of other export markets to absorb any additional exports; and

ii) whether vessels are being exported to the domestic market at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further purchases from other countries.

No one of these factors by itself can necessarily give decisive guidance but the totality of the factors considered must lead to the conclusion that further sales at less than normal value are imminent and that, unless protective action is taken, material injury would occur.

3.8 With respect to cases where injury is threatened by sale at less than normal value, the application of injurious pricing measures shall be considered and decided with special care.

Article 4: Definition of Domestic Industry

4.1 For the purposes of this Agreement, the term "domestic industry" shall be interpreted as referring to the domestic producers[38] as a whole of the like vessels or to those of them whose collective capability to produce a like vessel constitutes a major proportion of the total domestic capability to produce a like vessel, except that when producers are related[39] to the exporters or domestic buyers or are themselves domestic buyers of the allegedly injuriously priced vessel, the term "domestic industry" may be interpreted as referring to the rest of the producers.

4.2 Where two or more countries have reached under the provisions of paragraph 8(a) of Article XXIV of GATT 1994 such a level of integration that they have the characteristics of a single, unified market, the industry in the entire area of integration shall be taken to be the domestic industry referred to in paragraph 4.1 above.

Article 5: Initiation and Subsequent Investigation

5.1 Except as provided for in paragraph 5.6 of this Article, an investigation to determine the existence, degree and effect of any alleged injurious pricing shall be initiated upon a written application by or on behalf of the domestic industry.

5.2 An application under paragraph 5.1 shall be filed not later than six months from the time that the applicant knew or should have known of the sale of the vessel[40] in a case falling under subparagraphs (d)(i) or (d)(ii) below; 9 months from that time in a case falling under subparagraph (d)(iii) below, provided that a notice of intent to apply[41] had been filed no later than six months from that time; but in any event no later than six months from its delivery. The application shall include evidence:

a) of injurious pricing[42];

b) of injury within the meaning of this Annex;

c) of a causal link between the injuriously priced sale and the alleged injury; and

d) i) that, if the vessel was sold through a broad multiple bid[43], the applicant was invited to tender a bid on the contract at issue, it actually did so, and the bid of the applicant substantially met bid specifications (i.e., delivery date and technical requirements), or

ii) that, if the vessel was sold through any other bidding process and the applicant was invited to tender a bid on the contract at issue, it actually did so, and the bid of the applicant substantially met bid specifications, or

iii) that, in the absence of an invitation to tender a bid other than under a broad multiple bid, the applicant was capable of building the vessel concerned and, if the applicant knew or should have known of the proposed purchase[44], it made demonstrable efforts to conclude a sale with the buyer consistent with the bid specifications in question.

Simple assertion, unsubstantiated by relevant evidence, cannot be considered sufficient to meet the requirements of this paragraph. The application shall contain such information as is reasonably available to the applicant on the following:

i) the identity of the applicant and a description of the volume and value of the domestic production of the like vessel by the applicant. Where a written application is made on behalf of the domestic industry, the application shall identify the industry on behalf of which the application is made by a list of all known domestic producers of the like vessel and, to the extent possible, a description of the volume and value of domestic production of the like vessel accounted for by such producers;

ii) a complete description of the allegedly injuriously priced vessel, the name of the country or countries of origin or export in question, the identity of each known exporter or foreign producer and the identity of the buyer of the vessel in question who is a company or national of the investigating Party;

iii) prices at which such vessels are sold in the domestic market of the country of origin or export (or, where appropriate, information on the prices at which such vessels are sold from the country of origin or export to a third country or countries or on the constructed value of the vessel) and information on export prices or, where appropriate, on the prices at which such vessels are first resold to an independent buyer of the other country;

iv) the effect of the allegedly injuriously priced sale on prices of the like vessel in the domestic market and the consequent impact of the sale on the domestic industry, as demonstrated by relevant factors and indices having a bearing on the state of the domestic industry, such as those listed in paragraphs 3.2 and 3.4 of Article 3.

5.3 The authorities shall examine the accuracy and adequacy of the evidence provided in the application to determine whether there is sufficient evidence to justify the initiation of an investigation.

5.4 An investigation shall not be initiated pursuant to paragraph 1 unless the authorities have determined, on the basis of an examination of the degree of support for, or opposition to, the application expressed by domestic producers of the like vessel, that the application has been made by or on behalf of the domestic industry[45]. The application shall be considered to have been made "by or on behalf of the domestic industry" if it is supported by those domestic producers whose collective capacity to produce the like vessel constitutes more than 50 per cent of the total capacity to produce the like vessel of that portion of the domestic industry expressing either support for or opposition to the application. However, no investigation shall be initiated when domestic producers expressly supporting the application account for less than 25 per cent of total capacity of the domestic producers capable of producing the like vessel.

5.5 The authorities shall avoid, unless a decision has been made to initiate an investigation, any publicising of the application for the initiation of an investigation. However, before proceeding to initiate an investigation, whether upon application or upon decision of the authority to initiate an investigation under paragraph 5.6 below, the authorities shall notify the government of the exporting country concerned.

5.6 If in special circumstances, the authorities concerned decide to initiate an investigation without having received a written application by or on behalf of a domestic industry for the initiation of such investigation, they shall proceed only if they have sufficient evidence of injurious pricing, injury, a causal link, and that a member of the allegedly injured domestic industry met the criteria of paragraph 5.2(d), to justify the initiation of an investigation.

5.7 The evidence of both injurious pricing and injury shall be considered simultaneously (a) in the decision whether or not to initiate an investigation, and (b) thereafter, during the course of the investigation.

5.8 An application under paragraph 5.1 shall be rejected and an investigation shall be terminated promptly as soon as the authorities concerned are satisfied that there is not sufficient evidence of

either injurious pricing or of injury to justify proceeding with the case. There shall be immediate termination in cases where the authorities determine that the margin of injurious pricing is de minimis or the injury is negligible. The margin of injurious pricing shall be considered to be de minimis if this margin is less than 2 per cent, expressed as a percentage of the export price.

5.9 A final decision on initiation will be taken no later than 45 days following an application and, in case of initiation without application, no later than six months from the time the investigating authority knew or should have known of the sale of the vessel. For cases involving price to price comparison, where a like vessel has been delivered, investigations must be completed no later than one year from the date of initiation. For cases in which the like vessel is under construction, investigation will end no later than one year from delivery of that like vessel. Investigations involving constructed value shall be concluded within one year after their initiation or within one year of delivery of the vessel, whichever is later.

Article 6: Evidence

6.1 All interested Parties in an injurious pricing investigation shall be given notice of the information which the authorities require and ample opportunity to present in writing all evidence which they consider relevant[46] in respect of the investigation in question.

6.1.1 Exporters or foreign producers receiving questionnaires used in an injurious pricing investigation shall be given at least thirty days for reply[47]. Due consideration should be given to any request for an extension of the thirty day period and, upon cause shown, such an extension should be granted whenever practicable.

6.1.2 Subject to the requirement to protect confidential information, evidence presented in writing by one interested Party shall be made available promptly to other interested Parties participating in the investigation.

6.1.3 As soon as an investigation has been initiated, the authorities shall provide the full text of the written application received under paragraph 5.1 of Article 5 to the exporter and to the authorities of the exporting country and make it available, upon request, to other interested Parties involved. Due regard shall be paid to the requirement for the protection of confidential information as provided for in paragraph 6.5 below.

6.2 Throughout the injurious pricing investigation, all interested Parties shall have a full opportunity for the defence of their interests. To this end, the authorities shall, on request, provide opportunities for all interested Parties to meet those Parties with adverse interests, so that opposing views may be presented and rebuttal arguments offered. Provision of such opportunities must take account of the need to preserve confidentiality and of the convenience to the Parties. There shall be no obligation on any Party to attend a meeting, and failure to do so shall not be prejudicial to that Party's case. Interested Parties shall also have the right, on justification, to present other information orally.

6.3 Oral information provided under paragraph 6.2 shall be taken into account by the authorities only insofar as it is subsequently reproduced in writing and made available to other interested Parties, as provided for in sub-paragraph 6.1.2.

6.4 The authorities shall whenever practicable provide timely opportunities for all interested Parties to see all information that is relevant to the presentation of their cases, that is not confidential as defined in paragraph 6.5 and that is used by the authorities in an injurious pricing investigation, and to prepare presentations on the basis of this information.

6.5 Any information which is by nature confidential (for example, because its disclosure would be of significant competitive advantage to a competitor or because its disclosure would have a significantly adverse effect upon a person supplying the information or upon a person from whom he acquired the information) or which is provided on a confidential basis by Parties to an investigation shall, upon good cause shown, be treated as such by the authorities. Such information shall not be disclosed without specific permission of the Party submitting it[48].

6.5.1 The authorities shall require interested Parties providing confidential information to furnish non-confidential summaries thereof. These summaries shall be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence. In exceptional circumstances, such Parties may indicate that such information is not susceptible of summary. In such exceptional circumstances, a statement of the reasons why summarisation is not possible must be provided.

6.5.2 If the authorities find that a request for confidentiality is not warranted and if the supplier of the information is either unwilling to make the information public or to authorise its disclosure in generalised or summary form, the authorities may disregard such information unless it can be demonstrated to their satisfaction from appropriate sources that the information is correct[49].

6.6 Except in circumstances provided for in paragraph 6.8, the authorities shall during the course of an investigation satisfy themselves as to the accuracy of the information supplied by interested Parties upon which their findings are based.

6.7 In order to verify information provided or to obtain further details, the authorities may carry out investigations in other countries as required, provided they obtain the agreement of the firms concerned and provided they notify the representatives of the government of the country in question and unless the latter object to the investigation. The procedures described in Addendum I shall apply to verifications carried out in exporting countries. The authorities shall, subject to the requirement to protect confidential information, make the results of any investigations available or provide disclosure thereof pursuant to paragraph 6.9, to the firms to which they pertain and may make such results available to the applicants.

6.8 In cases in which any interested Party refuses access to, or otherwise does not provide, necessary information within a reasonable period or significantly impedes the investigation, determinations, affirmative or negative, may be made on the basis of the facts available. The provisions of Addendum II shall be observed in the application of this paragraph.

6.9 The authorities shall, before a final determination is made, inform all interested Parties of the essential facts under consideration which form the basis for the decision whether to apply definitive measures. Such disclosure should take place in sufficient time for the Parties to defend their interests.

6.10 For the purposes of this Agreement, "interested Parties" shall include:

i) an exporter or foreign producer or the buyer of a vessel subject to investigation, or a trade or business association a majority of the members of which are producers, exporters or domestic buyers of such vessels;

ii) the government of the exporting country; and

iii) a producer of the like vessel in the investigating country or a trade or business association a majority of the members of which produce the like vessel in the investigating country.

This list shall not preclude the investigating Party from allowing domestic or foreign parties other than those mentioned above to be included as interested Parties.

6.11 The authorities shall provide opportunities for buyers[50] of the vessel under investigation to provide information which is relevant to the investigation regarding injurious pricing, injury, causality and the elements set out in paragraph 5.2(d) of Article 5.

6.12 The authorities shall take due account of any difficulties experienced by interested Parties, in particular small companies, in supplying information requested and provide any assistance practicable.

6.13 The procedures set out above are not intended to prevent the authorities of a Party from proceeding expeditiously with regard to initiating an investigation, reaching determinations, whether

affirmative or negative, or from applying measures, in accordance with relevant provisions of this Agreement.

Article 7: Imposition and Collection of Injurious Pricing Charges

7.1 The decision whether or not to impose an injurious pricing charge in cases where all requirements for the imposition have been fulfilled and the decision whether the amount of the injurious pricing charge to be imposed shall be the full margin of injurious pricing or less, are decisions to be made by the authorities of the investigating Party. It is desirable that the imposition be permissive and that the charge be less than the margin, if such lesser charge would be adequate to remove the injury to the domestic industry.

7.2 The amount of the injurious pricing charge shall not exceed the margin of injurious pricing as established under Article 2.

7.3 If the Party conducting the investigation determines that an injurious pricing charge is warranted, the Party may require the shipbuilder to pay that charge to it 180 days after notice to the shipbuilder of the amount due. The shipbuilder shall be given a reasonably extended period to pay where payment in 180 days would render it insolvent or would be incompatible with a judicially supervised reorganisation, in which case the Party may require interest to accrue, at CIRR of the currency of the charge, on any unpaid portion.

7.4 The obligation of a shipbuilder to pay the charge shall expire (i) if the shipbuilder voids the sale on which the charge was based or complies with the alternative equivalent remedy accepted by the investigating authority or (ii) if the countermeasures, applied in accordance with Article 8, paragraph 10 of the Agreement, have expired.

Article 8: Public Notice and Explanation of Determinations

8.1 When the authorities are satisfied that there is sufficient evidence to justify the initiation of an injurious pricing investigation pursuant to Article 5, the Party the vessel of which is subject to such investigation and other interested Parties known to the investigating authorities to have an interest therein shall be notified and a public notice shall be given. A public notice of the initiation of an investigation shall contain or otherwise make available through a separate report[51] adequate information on the following:

i) the name and country of the shipbuilder and the buyers and a description of the vessel involved;

ii) the date of initiation of the investigation;

iii) the basis on which injurious pricing is alleged in the application;

iv) a summary of the factors on which the allegation of injury is based;

v) the address to which representations by interested Parties should be directed;

vi) the time-limits allowed to interested Parties for making their views known.

8.2 Public notice shall be given of any determination, whether affirmative or negative. Each such notice shall set forth or otherwise make available through a separate report in sufficient detail the findings and conclusions reached on all issues of fact and law considered material by the investigating authorities. All such notices and reports shall be forwarded to the Party the vessel of which is subject to such determination and to other interested Parties known to have an interest therein. A public notice of conclusion shall contain or otherwise make available through a separate report all relevant information on the matters of fact and law and reasons which have led to the imposition of measures, due regard being paid to the requirement for the protection of confidential information. The notice or report shall in particular contain the information described below as well as the reasons for the acceptance or rejection of relevant arguments or claims made by the exporters and buyers:

i) the name of the shipbuilder, buyer, applicant, and country of export;

ii) description of the type, purpose and size of the vessel;

iii) the margin of injurious pricing established and a full explanation of the reasons for the methodology used in the establishment and comparison of the export price and the normal value under Article 2;

iv) considerations relevant to the injury determination, as set out in Article 3; and

v) the main reasons leading to the determination.

Article 9: Judicial Review

Each Party whose national legislation contains provisions on injurious pricing measures shall maintain judicial, arbitral or administrative tribunals or procedures for the purpose, inter alia, of the prompt review of administrative actions relating to final determinations. Such tribunals or procedures shall be independent of the authorities responsible for the determination in question.

Article 10: Injurious Pricing Action on Behalf of a Third Country

10.1 An application for injurious pricing action on behalf of a third country shall be made by the authorities of the third country requesting action.

10.2 Such an application shall be supported by price information to show that a vessel is being or has been injuriously priced and by detailed information to show that the alleged sale at less than normal value is causing or has caused injury to the domestic industry concerned in the third country. The government of the third country shall afford all assistance to the authorities of the buyer's country to obtain any further information which the latter may require.

10.3 The authorities of the buyer's country in considering such an application shall consider the effects of the alleged injurious pricing on the industry concerned as a whole in the third country; that is to say the injury shall not be assessed in relation only to the effect of the alleged injurious pricing on the industry's sales to buyers of the investigating country or even on the industry's total exports.

10.4 The decision whether or not to proceed with a case shall rest with the buyer's country. If the buyer's country decides that it is prepared to take action, the initiation of the approach to the Parties Group seeking its approval[52] for such action shall rest with the buyer's country.

Article 11: Consultations

Each Party shall afford sympathetic consideration to, and shall afford adequate opportunity for consultation regarding representations made by another Party with respect to any matter affecting the operation of this Annex.

Article 12: Addenda

The Addenda to this Code constitute an integral part thereof.

Article 13: Non-retroactivity

This Annex is not applicable to vessels contracted for prior to the date of entry into force of the Agreement, except for vessels contracted for after the opening of this Agreement for signature and for delivery more than 5 years from the date of contract. Such vessels shall be subject to this Annex unless the shipbuilder can demonstrate that the extended delivery date was for normal commercial reasons and not to avoid the applicability of this Annex.

Addendum I to Annex III:

PROCEDURES FOR ON-THE-SPOT INVESTIGATIONS PURSUANT TO PARAGRAPH 6.7 OF ARTICLE 6

1. Upon initiation of an investigation, the authorities of the exporting Party and the firms known to be concerned should be informed of the intention to carry out on-the-spot investigations.

2. If in exceptional circumstances it is intended to include non-governmental experts in the investigating team, the firms and the authorities of the exporting Party should be so informed. Such non-governmental experts should be subject to effective sanctions for breach of confidentiality requirements.

3. It should be standard practice to obtain explicit agreement of the firms concerned in the exporting Party before the visit is finally scheduled.

4. As soon as the agreement of the firms concerned has been obtained the investigating authorities should notify the authorities of the exporting Party of the names and addresses of the firms to be visited and the dates agreed.

5. Sufficient advance notice should be given to the firms in question before the visit is made.

6. Visits to explain the questionnaire should only be made at the request of an exporting firm. Such a visit may only be made if the investigating authorities notify the representatives of the government of the Party in question and unless the latter do not object to the visit.

7. As the main purpose of the on-the-spot investigation is to verify information provided or to obtain further details, it should be carried out after the response to the questionnaire has been received unless the firm agrees to the contrary and the government of the exporting Party is informed by the investigating authorities of the anticipated visit and does not object to it; further, it should be standard practice prior to the visit to advise the firms concerned of the general nature of the information to be verified and of any further information which needs to be provided, though this should not preclude requests to be made on the spot for further details to be provided in the light of information obtained.

8. Enquiries or questions put by the authorities or firms of the exporting countries and essential to a successful on-the-spot investigation should, whenever possible, be answered before the visit is made.

Addendum II to Annex III

FACTS AVAILABLE IN TERMS OF PARAGRAPH 6.8 OF ARTICLE 6

1. As soon as possible after the initiation of the investigation, the investigating authorities should specify in detail the information required from any interested Party, and the way in which that information should be structured by the interested Party in its response. The authorities should also ensure that the Party is aware that if information is not supplied within a reasonable time, the authorities will be free to make determinations on the basis of the facts available, including those contained in the request for the initiation of the investigation by the domestic industry.

2. The authorities may also request that an interested Party provide its response in a particular medium (e.g., computer tape) or computer language. Where such a request is made, the authorities should consider the reasonable ability of the interested Party to respond in the preferred medium or computer language, and should not request the company to use for its response a computer system other than that used by the firm. The authority should not maintain a request for a computerised response, if the interested Party does not maintain computerised accounts and if presenting the response as requested would result in an unreasonable extra burden on the interested Party, e.g., it would entail unreasonable additional cost and trouble. The authorities should not maintain a request for a response in a particular medium or computer language if the interested Party does not maintain its computerised accounts in such medium or computer language and if presenting the response as requested would result in an unreasonable extra burden on the interested Party, e.g., it would entail unreasonable additional cost and trouble.

3. All information which is verifiable, which is appropriately submitted so that it can be used in the investigation without undue difficulties and which is supplied in a timely fashion, and, where applicable, supplied in a medium or computer language requested by the authorities, should be taken into account when determinations are made. If the interested Party does not respond in the preferred medium or computer language but the authorities find that the circumstances set out in paragraph 2 have been satisfied, this should not be considered to significantly impede the investigation.

4. Where the authorities do not have the ability to process information if provided in a particular medium (e.g., computer tape) the information should be supplied in the form of written material or any other form acceptable to the authorities.

5. Even though the information provided may not be ideal in all respects, this should not justify the authorities from disregarding it provided the interested Party has acted to the best of its ability.

6. If evidence or information is not accepted, the supplying Party should be informed forthwith of the reasons thereof and have an opportunity to provide further explanations within a reasonable period, due account being taken of the time-limits of the investigation. If the explanations are considered by the authorities as not being satisfactory, the reasons for rejection of such evidence or information should be given in any published findings.

7. If the authorities have to base their determinations, including those with respect to normal value, on information from a secondary source, including the information supplied in the request for the initiation of the investigation, they should do so with special circumspection. In such cases, the authorities should, where practicable, check the information from other independent sources at their disposal, such as published price lists, official statistics of sales to domestic buyers and customs returns, and from the information obtained from other interested Parties during the investigation. It is clear, however, that if an interested Party does not co-operate and thus relevant information is being withheld from the authorities, this situation could lead to a result which is less favourable to the Party than if the Party did co-operate.

ANNEX IV

DISPUTE SETTLEMENT PURSUANT TO ARTICLE 8

The following provisions and rules of procedure are applicable in the implementation of Article 8 of this Agreement.

Section 1: Initiation of a Panel Proceeding

1. A Panel proceeding is initiated by a request to establish a Panel, communicated in writing through diplomatic channels to the other party to the dispute ("responding Party") and to the Parties Group, through its Secretariat, which shall act as Secretariat to the Panel to be formed.

2. The request shall identify the Party initiating the establishment of a Panel, the responding Party and the specific measures at issue, and shall provide a brief summary of the legal basis of the complaint sufficient to present the problem clearly.

3. The responding Party shall, within ten days of receipt of the request, deliver a copy to any shipbuilder entitled to become a Participant.

Section 2: Shipbuilder Participants and Other Interested Parties

1. A shipbuilder eligible under Article 8, paragraph 3, of this Agreement shall become a Participant by submission to the other Party and the Panel, through its Secretariat, of a written statement of intent to participate within 15 days of receipt by the shipbuilder of notification of the request to establish a Panel.

2. Another Party to the Agreement wishing to make its views on the dispute known to the Panel (hereafter an "interested Party") shall notify the Panel, through its Secretariat, within thirty days of the date on which the Parties Group was notified of the request to establish a Panel.

Section 3: Agents and Service of Documents

1. Each party to the dispute, shipbuilder Participant, and other interested Party shall designate an agent to represent it in the Panel proceedings and shall communicate the name and address of that agent to the Panel, through its Secretariat, and to the other Parties and Participants. A party to the dispute shall do so at the time it or its side appoints a member of the Panel. An interested Party or shipbuilder Participant shall do so at the time of notification of its interest or intent to participate.

2. Should a Panel proceeding involve the disclosure of a shipbuilder's confidential business information, the Panel may require that the shipbuilder Participant's representatives not be employees of or otherwise under the shipbuilder's professional direction or control and that the representatives undertake to maintain the confidentiality of that information.

3. Any document that is submitted by a party to the dispute or a shipbuilder Participant during a Panel proceeding shall be delivered to the Panel, through its Secretariat, and at the same time, subject to provisions the Panel may adopt to protect confidentiality, to the other parties to the dispute and other shipbuilder Participants. The submitting Party shall inform other interested Parties of such submissions and, subject to requirements of confidentiality, shall make such documents available to other interested Parties.

4. Any document submitted by an interested Party shall be delivered to the Panel, through its Secretariat, to the parties to the dispute, and to any shipbuilder Participant and other interested Parties.

5. Service of a document may be effected by delivery through diplomatic channels to a Party and to the Panel or by personal service, facsimile transmission or expedited international courier or expedited mail service, such as express mail, to the person and address designated in paragraph (1) of this Section. Service shall be deemed made when the document is received.

Section 4: Time Limits

1. If the last day of any time period falls on a legal holiday, which means any day on which the offices of the government of any party to the dispute are officially closed, the time period is extended until the next working day.

2. The Panel, in consultation with the parties to the dispute, may modify the time periods provided in this Annex.

Section 5: Languages

1. Subject to an agreement of the parties to the dispute and any shipbuilder Participant, the Panel shall decide the language or languages in which proceedings shall be conducted. At least one official language of the OECD shall be used.

2. If more than one language is used:

a) any document submitted in the course of a Panel proceeding which is not in an official language of the OECD being used for this procedure shall be accompanied by a translation into that official language. Documents submitted in such an official language of the OECD shall be translated into one or more of the other languages of the proceeding at the direction of the Panel; and

b) no less than ten days before the hearing, each party to the dispute, other interested Party and shipbuilder Participant shall inform the Secretariat of the language or languages it or its witnesses will use at the hearing and simultaneous translation will be provided.

3. Awards and decisions of the Panel under Section 14 shall, if issued in one official language of the OECD, be promptly translated into the other by the Secretariat of the Parties Group at Parties Group expense.

Section 6: Formation of the Panel

1. The Panel shall consist of two members and a Chairman or, at the option of any party to the dispute, four members and a Chairman ("the panellists").

2. Each party to the dispute shall appoint one member of the Panel within thirty days of receipt by the responding Party of the request to initiate a Panel. If there are two or more parties on a side of a dispute, or a shipbuilder Participant and one or more parties, the parties (and, subject to the consent of its Party, a participant) on that side shall jointly choose one member of the Panel. The appointing Party or side shall provide the name of such member of the Panel to the Secretariat. If a Party or side does not appoint a member within thirty days of receipt by the responding Party of the request to establish a Panel, within seven days thereafter the Secretary-General of the OECD, after consultation with the Party or side, shall select a member from a list of eligible panellists maintained by the Parties Group in accordance with paragraph (5) of this Section (hereinafter referred to as "Parties Group list").

3. Within thirty days of their appointment, the Panel members shall jointly choose a Chairman and, where applicable, two other members of the Panel from the Parties Group list. If the two Panel members are unable to agree upon a Chairman or any other members, the Secretary-General, in consultation with the two Panel members selected pursuant to paragraph (2) of this Section, shall select the Chairman or such other members of the Panel from the Parties Group list within seven additional days. With the agreement of the parties to the dispute, the Panel members or the Secretary-General may select a Chairman and other members of the Panel who are not on the Parties Group list.

4. A vacancy on the Panel shall be filled by the procedures applicable to that position pursuant to paragraphs (2) and (3) of this Section.

5. Panellists shall be persons with demonstrated expertise in law, international trade and the subject matter of this Agreement generally, and unaffiliated with any government. The list of eligible

panellists shall be established by the Parties Group at its first meeting, and updated at its subsequent meetings, on the basis of nominations made by the Parties and actions taken under subparagraph (e) below:

a) Each Party may nominate up to four individuals who are qualified to serve as panellists.

b) Each nomination shall be submitted at least sixty days prior to consideration by the Parties Group and shall be accompanied by (i) biographical information stating the nominee's qualifications and (ii) disclosure of any past or current financial interest in or affiliation with the shipbuilding and repair industry or employment with or work performed for a Party.

c) Information provided in confidence under subparagraph (b)(ii), above, will be held in confidence by the recipients.

d) Each nominee will be included on the list upon a finding of eligibility by the Parties Group.

e) If a Party's nominee is not found to be eligible or withdraws, or is withdrawn by the nominating Party before or after being listed, the nominating Party may submit a new nomination, which shall be promptly considered by the Parties Group.

Section 7: Impartiality and Independence of the Panel

1. The Parties and the Participants shall respect the impartiality and independence of the Chairman and members of the Panel.

2. No panellist may have a financial interest in the matter, be employed by, or take instructions from, any party to the dispute.

3. No panellist may be a national of any party to the dispute or, in the case of the EC, a national of an EC Member State, unless the other parties agree.

4. The panellists shall avoid any conflict, or appearance of conflict of interest. Each panellist shall, upon appointment, certify in writing the absence of any conflict of interest and shall, at that time and throughout the proceedings, disclose any circumstances likely to give rise to justifiable doubts as to the panellist's impartiality or independence, including involvement in any matter known to be in dispute between Parties under the Agreement.

5. Any party to the dispute may, at any time, challenge any panellist on the basis of a justifiable doubt as to impartiality, independence, or conflict of interest. The challenge shall be decided within 15 days of receipt of notice of a challenge. The challenged panellist may withdraw or be withdrawn by the appointing authority under Section 6 without any implication of acceptance of the validity of the grounds for the challenge. If the challenged appointment is not so withdrawn, it shall be terminated if such challenge is considered well founded by a panellist other than one appointed by the challenging Party.

Section 8: Confidentiality

1. Unless the parties to the dispute and the Panel agree otherwise, only the Panel and, if the parties to the dispute have authorised it to engage assistants, such assistants may be present during deliberations of the Panel, which shall be confidential.

2. Confidential information submitted to the Panel shall not be disclosed without formal authorisation from the person or authority providing the information.

a) Upon request of the person or authority providing confidential information, the Panel may (i) make disclosure of the information subject to a non-disclosure agreement and (ii) limit disclosure to parties to the dispute, excluding any shipbuilder Participants and interested Parties.

b) Where such information is requested from the Panel by a Party or shipbuilder Participant, but release of such information by the Panel is not authorised, a non-confidential summary of the information, authorised by the authority or person providing the information, will be provided.

c) Confidential information may not be relied upon in support of any finding adverse to a Party or shipbuilder Participant whose representative was not given access to that information.

3. The Panel shall inquire into any allegation that a Party or Participant has failed to maintain the confidentiality of the proceeding and, if the Panel determines that the Party or Participant has failed to maintain confidentiality, the Panel may make adverse inferences against the Party or Participant in its decision.

4. The Chairman shall inquire into any allegation that another panellist has failed to maintain the confidentiality of the Panel proceeding and, if the Chairman determines that the panellist has failed to maintain confidentiality, the Chairman may remove the panellist, who shall be replaced in accordance with Section 6 of these Rules.

5. The other Panellists shall inquire into any allegation that the Chairman has failed to maintain the confidentiality of the proceeding and if they determine that the Chairman has failed to maintain confidentiality, they may remove the Chairman, who shall be replaced in accordance with Section 6 of these Rules.

6. Parties shall provide for effective legal measures against their nationals or other persons in their jurisdiction for improper disclosure of confidential information obtained through such persons' participation in Panel proceedings.

Section 9: Terms of Reference

The parties to the dispute shall, within sixty days of receipt of the request to establish the Panel, jointly submit to the Panel terms of reference briefly describing the issue or issues in dispute. If the parties are unable to agree to terms of reference, the Panel shall have the following terms of reference:

"To examine, in light of the relevant provisions of the Agreement Respecting Normal Competitive Conditions in the Commercial Shipbuilding and Repair Industry, the matter identified in the request by [name of Party] to establish a Panel of [date] and to make such decisions as are provided for in that Agreement."

Section 10: Written Submissions

1. The first written submission of each party to the dispute and other Participant shall include a statement of facts, argument and documentary evidence in support of its position. The requesting party's first submission shall also state any remedy it seeks.

a) The first written submissions of the requesting party or side including a shipbuilder Participant on that side of the dispute shall be made within thirty days after the selection of the Chairman, or after the submission of the Panel's terms of reference, whichever is later.

b) The first written submissions of the responding party or side including any shipbuilder Participant on that side of the dispute shall be made within 30 days after the first written submissions of the requesting party or side.

2. The second written submission of each party to the dispute and shipbuilder participant shall be made within twenty days of the first written submission of the responding Party or side. It shall be limited to rebuttal of the arguments and evidence presented by the other side and shall include any supplemental supporting evidence.

3. Written submissions of other interested Parties shall be made concurrently with those of the Party or side to which its position is closest.

4. Within twenty days after oral hearing under Section 12, the parties to the dispute and any shipbuilder Participant may provide supplementary submissions to the Panel, including responses to any questions or requests for additional information from the Panel.

Section 11: Provisional Suspension or Reduction of Countermeasures

1. A request under Article 8, paragraph 10.b.ii) of the Agreement shall set forth the evidence and argument pertaining to the likelihood of success on the merits and the irreparable harm that would be suffered by the shipbuilder absent the relief requested. Such request shall be served on the investigating Party in accordance with Section 3 of this Annex.

2. Within twenty days after the date of service, the investigating Party shall submit its response to the request for provisional relief.

3. Within twenty days after submission of the response, the Panel shall issue its decision on the request for provisional relief. The Panel's decision shall include factual findings and conclusions in accordance with Section 14 of this Annex.

4. Any provisional relief granted by the Panel shall terminate automatically when the Panel issues its decision in the underlying matter. If the Panel sustains imposition of countermeasures, the period of countermeasures established pursuant to Article 8, paragraph 10 of the Agreement will be deemed tolled during any period in which countermeasures were provisionally suspended. Nothing in this Section affects the Panel's authority under Article 8, paragraph 10 b) i) of the Agreement to consider claims concerning the imposition of countermeasures.

Section 12: Hearings

1. A hearing shall be held within twenty-one days after the second submissions are due.

2. All panellists shall attend the hearing.

3. The Secretariat shall give the Parties fourteen days notice of the place, date, and time of the hearing.

4. Each Party or side shall have equal time to present evidence and argument at any hearing. The amount of time allocated for the hearing shall be determined by the Panel in consultation with the parties or sides to the dispute. A shipbuilder Participant shall, subject to the consent of its Party, be entitled to present evidence and argument at the hearing within the time allocated to their side. The Panel, in consultation with the parties to the dispute, may provide an opportunity for other interested Parties to present argument.

Section 13: Evidence

1. If the dispute involves a measure of support in Annex I, or a countermeasure as provided under Article 8, paragraphs 9.b. and 10.b.i) of this Agreement, the following provisions apply:

a) The requesting Party or side shall present evidence sufficient to create a prima facie case in support of the allegations.

b) The responding Party shall be required to present evidence sufficient to prove that the allegations are without support in fact.

c) At any time during a Panel proceeding the Panel may require the Parties to produce documents, exhibits or other evidence within such time as the Panel shall determine.

d) If a Party or other Participant refuses to supply information requested by the Panel, the Panel shall use the best information available to it.

e) The Panel shall determine the admissibility, relevance, materiality and weight of the evidence offered.

f) In taking all appropriate steps to establish the facts, the Panel may, when necessary, request views of neutral experts.

g) If witnesses are to be heard, at least ten days before the hearing each party to the dispute and shipbuilder Participant shall communicate to the Panel and the other Party or side the names and addresses of any witnesses on behalf of the Party or Participant, and the subject upon which such witnesses will give their testimony.

h) Testimony of witnesses may also be presented in the form of written statements signed by them.

i) After the Panel has closed the hearing, no Party may present any further evidence.

2. If the dispute involves the levy by a Party of an injurious pricing charge under Annex III, the following provisions apply:

a) The levying Party shall preserve the record of the injurious pricing proceeding for the purposes of review by the Panel. Unless otherwise stipulated by the parties to the dispute, or by the shipbuilder and the Party levying the charge, the record shall consist of:

i) a copy of all information presented to or obtained by the authorities concerned during the course of the proceeding under Annex III, including all governmental memoranda that reflect the analysis of the law and the facts and are relied upon in the decision making process; and

ii) a copy of the determination and of all transcripts or records of conferences or hearings.

b) The levying Party shall submit a detailed index to the record and shall also make available the record to the other party or parties to the dispute, to any shipbuilder Participant and to the Panel, within 45 days of the request to establish a Panel. The record shall remain available throughout the Panel proceedings at a convenient site suitably equipped for the purposes of this Annex. Any party or Participating Shipbuilder shall be entitled to copy any portion of the record and may submit such record to the Panel. The levying Party shall submit any portion of the record requested by the Panel. If the lack of availability does not permit efficient Panel proceedings, the Panel shall consider the extension of any period set out in this Annex. This subparagraph is subject to Section 8 paragraph 2.

c) In accordance with Article 8, paragraph 6, of this Agreement, the Panel shall examine the matter on the basis of the facts made available in conformity with appropriate domestic procedures to the authorities of the investigating Party. If required by considerations of fairness, the Panel may send a matter back to the investigating authority for reconsideration in light of evidence not made available during the investigation, provided that the evidence was in existence at the time of the investigation but could not then, with due diligence, have been made available.

Section 14: Decisions

1. Any award or decision of the Panel shall be made by a majority of the panellists.

2. Any Panel decision shall include factual findings, conclusions, and reasons therefor.

3. The Panel shall give due weight to any advisory opinion and shall take as conclusive any final and binding opinion given by the Parties Group under Article 5, paragraph 2, of the Agreement.

4. Within thirty days from the closing of the hearing, the Panel shall present to the parties to the dispute and other Participants its preliminary decision.

5. Each Party or side and any shipbuilder Participant shall be afforded twenty days in which to submit written objection to any portion of the Panel's preliminary decision with which the Party, side or participant disagrees.

6. Upon receipt of any objections, the Panel may solicit additional written views of any Party or other Participant and shall consider its preliminary decision.

7. Within 180 days from the selection of the Chairman, the Panel shall submit its final written decision.

8. Unless the parties reach an alternative resolution to the dispute, the decision of the Panel shall be made public fifteen days after the Panel issues the decision.

Section 15: Costs

The parties to the dispute shall bear the costs of the proceedings, as allocated by the Panel.

Section 16: General Provisions

1. The Panel may supplement the rules governing its procedures, consistently with Article 8 of the Agreement and the other terms of this Annex.

2. There shall be no ex parte communications between the Panel and any Party, Participant, expert or witness.

3. A Panel which has issued a decision requiring action by a Party or a shipbuilder shall remain constituted until the decision has been complied with or for a reasonable period of time following the compliance deadline for purposes of disputes which may be submitted regarding compliance, including countermeasures.

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[1] "Measures or practices" include matters falling under Article 1, paragraphs 1 and 2, as well as under paragraph 3.

[2] For the purpose of this Agreement, the phrase "permissible interpretation" means "permissible method of implementation". In determining the permissibility of an implementation method, due regard shall be given to special characteristics of commercial shipbuilding and of the provisions of this Agreement relating to injurious pricing, including, particularly, its provision for payment of an injurious pricing charge by the concerned shipbuilder. Where the Panel finds that the relevant provision of this Agreement relating to injurious pricing admits more than one permissible method of implementation, the Parties Group shall, in order to prevent future disputes from arising, endeavour to reach a unified method of implementation and, if necessary, to make an amendment to the relevant provision.

[3] For a charge which has been brought before a Panel for examination, the applicable time limit is that set by the Panel for compliance.

[4] If Finland, Norway or Sweden becomes a Member of the European Community, its ratification of this Agreement will not be required for entry into force. Upon its entry into the European Community, it will adopt the same status with respect to this Agreement as the prior Members of the European Community. With their entry into the European Community on 1 January 1995, the ratification acceptance or approval by Finland and Sweden is no longer required.

[5] See Accompanying Note 1 to this Annex.

[6] Specificity shall be determined in accordance with the principles se out in Article 2 of the Agreement on Subsidies and Countervailing Measures.

[7] See Accompanying Note 3 to this Annex.

[8] This standard is met when the facts demonstrate that the granting of a subsidy, without having been legally contingent upon export performance, is in fact tied to actual or anticipated exportation or export earnings. The mere fact that a subsidy is accorded to enterprises which export shall not for that reason alone be considered to be an export subsidy within the meaning of this provision.

[9] Measures referred to in the Accompanying Note 8 to this Annex as not constituting export subsidies shall not be prohibited under this Agreement.

[10] See Accompanying Note 2 to this Annex.

[11] See Accompanying Note 3 to this Annex.

[12] See Accompanying Note 4 to this Annex.

[13] See Accompanying Note 5 to this Annex.

[14] See Accompanying Note 6 to this Annex.

[15] See Accompanying Note 7 to this Annex.

[16] The threshold for any given year may be increased by carrying over an unused amount of a maximum of 50,000 gt from the previous year and by borrowing 50,000 gt from the next year.

[17] For the purposes of this Annex:

a) The concept of "sale" covers the creation or transfer of an ownership interest in the vessel except for an ownership interest, as defined in this Annex, created or acquired solely for the purpose of providing security for a normal commercial loan.

b) An "ownership interest" shall include any contractual or proprietary interest which allows the beneficiary or beneficiaries of such interest to take advantage of the operation of the vessel in a manner substantially comparable to the way in which an owner may benefit from the operation of the vessel. In determining whether such substantial comparability exists, the investigating authorities shall consider the following factors:

   i) the terms and circumstances of the transaction;

   ii) commercial practice within the industry;

   iii) whether the vessel subject to the transaction is integrated into the operations of the beneficiary or beneficiaries; and

   iv) whether in practice there is a likelihood that the beneficiary or beneficiaries of such interests will take advantage of and the risk for the operation of the vessel for a significant part of the life-time of the vessel.

c) The term "buyer" means any person who acquires an ownership interest, including by way of lease or long-term bareboat charter, in conjunction with the original transfer from the shipbuilder, either directly or indirectly, including a national or company which owns or controls a buyer.

d) The terms "buyer" and "sale" shall be construed accordingly and it is understood that there may be more than one buyer of any one vessel.

[18] For purposes of this Annex, "company of a Party" means any kind of juridical entity, including any corporation, company, association, or other organisation, that is legally constituted under the laws and regulations of such country or a political subdivision thereof, regardless of whether or not the entity is organised for pecuniary gain, privately or governmentally owned, or organised with limited or unlimited liability.

[19] The term "owned" is defined as having more than a 50 per cent interest.

[20] The term "control" is defined as actual ability to have substantial influence on corporate behaviour, which is presumed at a 25 per cent interest. If ownership of a company is shown, a separate control of that company is presumed not to exist unless established otherwise.

[21] Under this Annex, a sale shall not be subject to injurious pricing investigation if an ownership interest is shown to exist in a buyer of the Party in which the vessel originates, unless it is established that the owner is acting under instruction from a "buyer", as defined in this Annex, of

another Party or rights and liabilities of the owner of the vessel are otherwise assumed by such a "buyer".

[22] The term "initiated" as used hereinafter means the procedural action by which a Party formally commences an investigation as provided in Article 5.

[23] a. "Sold to a buyer of the Party in which the vessel originates" means neither sold, within the meaning of this Annex directly or indirectly to nationals or companies of other countries nor to companies that are owned or controlled by such nationals or companies. b. Sales to buyers of the Party in which the vessel originates constitute "domestic sales" for purposes of this Annex, and their prices constitute "domestic prices".

[24] For purposes of this Annex, "export" means the sale of a vessel to a buyer other than a buyer of the Party in which the vessel originates.

[25] The term "ordinary course of trade" shall be given the same meaning throughout Article 2.

[26] When in this Code the term "authorities" is used, it shall be interpreted as meaning authorities at an appropriate senior level.

[27] For purposes of this Annex, a "reasonable period" of time shall be five years.

[28] The adjustment made for start-up operations shall reflect the costs at the end of the start-up period or, if that period extends beyond the period of investigation, the most recent costs which can reasonably be taken into account by the authorities during the investigation.

[29] Recourse to "any other reasonable method" should be had only absent appropriate domestic sales. In such case, reference will generally be made, under paragraph 2.2.2 (iii), to appropriate export sales of the shipbuilder in question or, absent such sales, to those of other shipbuilders of the country of origin.

[30] A "reasonable period of time" in this context shall refer to the shortest possible time, which should normally not exceed six months both prior to and after the sale under investigation.

[31] The burden of proof shall be placed on the shipbuilder.

[32] Sales "made at as nearly as possible the same time" normally would mean sales within three months prior to or after the sale under investigation, or, in the absence of such sales, such longer period as would be appropriate.

[33] It is understood that some of the above factors may overlap, and the authorities shall ensure that they do not duplicate adjustments that have been already made under this provision.

[34] Date of sale, for purposes of this provision, means the date on which the material terms of sale are established. That date is normally, for ship transactions, the date of contract. However, if the material terms of sale are significantly changed on another date, the rate of exchange on the date of the change should be applied. In such a case, the investigating authority shall make appropriate adjustments to take into account any unreasonable effect on the injurious pricing margin solely due to exchange rate fluctuations between the original date of sale and the date of this change.

[35] Under this Annex the term "injury" shall, unless otherwise specified, be taken to mean material injury to a domestic industry, threat of material injury to a domestic industry or material retardation of the establishment of such an industry and shall be interpreted in accordance with the provisions of this Article.

[36] For purposes of this Annex, "domestic producers of like vessels" shall encompass those shipyards capable of producing a like vessel with their present facilities or which can be adapted in a timely manner to produce a like vessel.

[37] One example, though not an exclusive one, is that there is convincing reason to believe that there will be, in the near future, substantially increased sales of such vessels at sale at less than normal value to buyers of the investigating Party.

[38] See footnote 36 above.

[39] For the purposes of this paragraph, producers shall be deemed to be related to exporters or domestic buyers only if (a) one of them directly or indirectly controls the other; or (b) both of them

are directly or indirectly controlled by a third person; or (c) together they directly or indirectly control a third person, provided that there are grounds for believing or suspecting that the effect of the relationship is such as to cause the producer concerned to behave differently from non-related producers. For the purpose of this paragraph, one shall be deemed to control the other when the former is legally or operationally in a position to exercise restraint or direction over the latter.

[40] There is a rebuttable presumption that a shipbuilder knew or should have known of the sale from the time of publication of the fact of the conclusion of the contract, along with very general information concerning the vessel, in the international trade press.

[41] This notice shall include information reasonably available to the applicant to identify the transaction concerned.

[42] Including evidence of the existence of a buyer who is a company or national of the investigating Party.

[43] For the purpose of this provision, a broad multiple bid shall be one in which the proposed buyer extends an invitation to bid to at least all the shipbuilders in the country of the buyer known to the buyer to be capable of building the vessel in question.

[44] It shall be rebuttably presumed that the applicant knew or should have known of the proposed purchase if it is demonstrated that:

i) the majority of the domestic industry in the country of the proposed buyer have made efforts with that buyer to conclude a sale of the vessel in question; or

ii) general information on the proposed purchase was available from brokers, financiers, classification societies, charterers, trade associations, or other entities normally involved in shipbuilding transactions with whom the shipbuilder had regular contacts or dealings.

[45] Parties are aware that in the territory of certain Parties, employees of domestic producers of the like product or representatives of those employees, may make or support an application for an investigation under paragraph 5.1.

[46] Such evidence may include the findings of any investigation into the matter made by the Party of the exporting shipbuilder, which will be considered by the investigating authority and made part of the investigation record.

[47] As a general rule, the time-limit for exporters shall be counted from the date of receipt of the questionnaire, which for this purpose shall be deemed to have been received one week from the day on which it was sent to the respondent or transmitted to the appropriate diplomatic representative of the exporting country.

[48] Parties are aware that in the territory of certain Parties, disclosure pursuant to a narrowly drawn protective order may be required.

[49] Parties agree that requests for confidentiality should not be arbitrarily rejected.

[50] An alleged buyer may provide information on whether he is in fact a buyer.

[51] Where authorities provide information and explanations under the provisions of this Article in a separate report, they shall ensure that such report is readily available to the public.

[52] Approval may be given by consensus minus the Party of the exporting shipbuilder.

About the OECD

The OECD is a unique forum where governments work together to address the economic, social and environmental challenges of globalisation. The OECD is also at the forefront of efforts to understand and to help governments respond to new developments and concerns, such as corporate governance, the information economy and the challenges of an ageing population. The Organisation provides a setting where governments can compare policy experiences, seek answers to common problems, identify good practice and work to co-ordinate domestic and international policies.

The OECD Member countries are: Australia, Austria, Belgium, Canada, Chile, Colombia, Costa Rica, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Latvia, Lithuania, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, the Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Türkiye, the United Kingdom and the United States. The European Union takes part in the work of the OECD.

OECD Legal Instruments

Since the creation of the OECD in 1961, more than 500 legal instruments have been developed within its framework. These include OECD Acts (i.e. the Decisions and Recommendations adopted by the OECD Council in accordance with the OECD Convention) and other legal instruments developed within the OECD framework (e.g. Declarations, international agreements).

All substantive OECD legal instruments, whether in force or abrogated, are listed in the online Compendium of OECD Legal Instruments. They are presented in five categories:

- **Decisions** are adopted by Council and are legally binding on all Members except those which abstain at the time of adoption. They set out specific rights and obligations and may contain monitoring mechanisms.

- **Recommendations** are adopted by Council and are not legally binding. They represent a political commitment to the principles they contain and entail an expectation that Adherents will do their best to implement them.

- **Substantive Outcome Documents** are adopted by the individual listed Adherents rather than by an OECD body, as the outcome of a ministerial, high-level or other meeting within the framework of the Organisation. They usually set general principles or long-term goals and have a solemn character.

- **International Agreements** are negotiated and concluded within the framework of the Organisation. They are legally binding on the Parties.

- **Arrangements, Understandings and Others**: several other types of substantive legal instruments have been developed within the OECD framework over time, such as the Arrangement on Officially Supported Export Credits, the International Understanding on Maritime Transport Principles and the Development Assistance Committee (DAC) Recommendations.

EXHIBIT 144

Shipping Jeans by Full Container loads or LCL?

Shipping denim and other clothing from Asia

Cheap jean production

Buy jeans online

Contact Page

How pants are Made

Washings

Your questions

Hot Item: Tight pants

Other interesting sites

measurements

care

Shipping Jeans

Insurance

Sexy Mini Skirt

further reading on garments

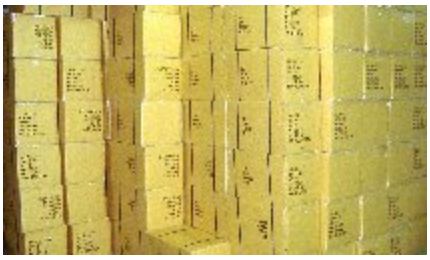
Find work in the Thai jeans business

So you have designed the latest fashion in denim pants or denim jackets styles, saved a bundle by having them made in Asia and now the garment factory asks you to which port they should deliver your order? Nobody told you that you also had to ship and import your own goods and from the looks of it, the process of importing and declaring goods to the customs department is a profession in itself. What to do next?

Our advice is: before you contact an international **freight forwarder** and / or an **customs broker**, make sure that you know some of the things that matter in the international cargo shipping arena.

On this page you will find some tips and indicative pricing on shipping garments from Asia to the USA and Europe.

Common Shipping Terminology:



Let's start with some common shipping terms: there is LCL which indicates a Less than Container Load and there is FCL, which indicates a Full Container Load. LCL shipments are normally charged by the number of cubic meters (CBM) that a shipment occupies. Sending something LCL adds some risk to the transport, as there are more shipments combined in a single container and your shipment might be affected by those other shipments in the same container.

Types of sea containers:

There are 3 types of containers that are most commonly used when shipping garments from Asia. First there is the 20 feet sea container. A 20 feet container can hold anywhere between 9500 jeans and 11000 jeans, depending on the type of packing that is used. Next, there is a 40 feet

Common Terms of sale:

Garments Factories or Clothing Exporters will quote prices with the following extensions:

EXW (Location of factory or warehouse): which stands for Ex-Work. The prices quoted are not inclusive of any form of transport. The buyer will need to arrange transport from the factory or a warehouse to the final location.

FOB (Name of City or Port of departure): which stands for Freight On Board. This basically means that the supplier will transport the goods to the vessel they will be loaded on, or that they will pay for the transportation of the container or LCL parcels to the nearest main seaport. Legally the FOB obligation ends when the goods pass the rail of the ship and all risks and costs will be transferred to the receiver / importer.

C&F or **CFR** (Name of Port of Arrival): which stands for Cost and Freight. C & F prices include all costs and freight involved in shipping the garments to their destination. Be aware that this does not mean they will deliver the goods to your doorstep! The seller or exporter is only required to arrange for transport to a main seaport near you or your client.

CiF (Name of Port of Arrival): As C&F only the seller is also responsible for insuring the shipment.

There are a few other "Terms of Sale" options, but the are hardly used in the fashion industry and are, therefore, not listed on this shipping and international transport page.

Packing:

For shipments to most western countries including, but not limited to, the USA and EU, the garments have to be packed in boxes with one or more

EXHIBIT 145

Contact Us

U.S. Department of Transportation
Maritime Administration
1200 New Jersey Avenue, SE
Washington, DC 20590
United States

Email:
marinefinancing@dot.gov
Phone: 202-366-5737
Business Hours:
9:00am-5:00pm ET, M-F

If you are deaf, hard of hearing, or have a speech disability, please dial 7-1-1 to access telecommunications relay services.

Federal Ship Financing Program (Title XI)

The Federal Ship Financing Program (commonly referred to as "Title XI" based on the part of the Merchant Marine Act of 1936 that established the program) provides long-term loans by the Maritime Administration (MARAD) to promote the growth and modernization of the U.S. Merchant Marine and U.S. shipyards. Through these loans, the Title XI Program encourages U.S. shipowners to obtain new vessels and recondition existing vessels with U.S. shipyards cost effectively. It also assists U.S. shipyards with modernizing, their facilities for building and repairing vessels. The repayment term allowed under the program generally is much longer with a higher funding level and lower interest rates than those available from the commercial lending market.

Since 2019, the Title XI Program has undergone several significant changes to align it with modern vessel financing and federal credit best practices. Federal Financing Bank (FFB) is now the “preferred lender” for all Title XI loans. MARAD monitors and services the loans, third-party trustees and financial institutions are no longer part of the program.

Summary of Program Benefits

- Repayment term for the lesser of up to 25 years or useful life of the asset;
- Below market interest rates (based on U.S. Treasury rates) fixed for the amortization period; and
- Up to 87.5 percent financing, subject to demonstration of sufficient project financial strength and minimum cash flow requirements.

Vessels of National Interest

MARAD is authorized by 46 USC 53703(d) to prioritize processing the applications for certain vessels that have been determined to be of importance for the support of US shipyards and the US Merchant Marine. As of June 21, 2022, and after consultation with other Bureau of Ocean Energy Management, MARAD designates the following as Vessels of National Interest:

Vessels that are constructed or reconstructed to be used for use primarily in:

Applications for Vessels of National Interest have priority for review and funding over applications for all other vessels except those considered suitable for service as a naval auxiliary vessel.

The above designation list is subject to review and update every four years and from time to time on an as-needed basis.

For additional information on whether a project would qualify or questions about processing applications with the Title XI program, please contact marinefinancing@dot.gov or 202.366.5737.

- Construction,
- Service; and/or
- Maintenance of offshore wind facilities.

Last updated: Monday, February 26, 2024

U.S. DEPARTMENT OF TRANSPORTATION

Maritime Administration

1200 NEW JERSEY AVENUE, SE

WASHINGTON, DC 20590

Related Links

- Supplemental Guidance
- Laws and Regulations
- List of U.S.-Flag Carriers
- List of U.S.-Flag Vessels

Contact Us

U.S. Department of Transportation
Maritime Administration
Office of Cargo & Commercial Sealift
MAR-620/Mail Stop 2
1200 New Jersey Avenue, SE
Washington, DC 20590
United States

Email:
cargo.marad@dot.gov
Phone: 202-366-4610
Fax: 202-366-5522
Business Hours:
9:00am-5:00pm ET, M-F

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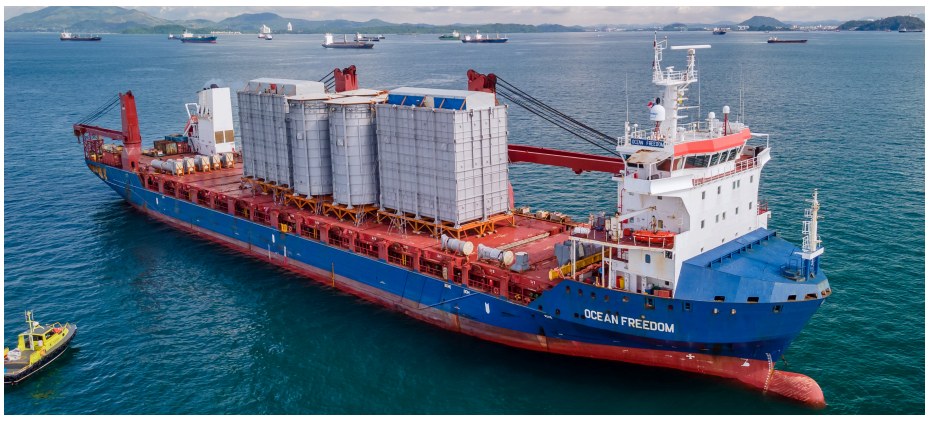
Cargo Preference



What is Cargo Preference?

Cargo Preference is the general term used to describe the U.S. laws, regulations and policies that require the use of U.S.-flag vessels in the movement of cargo that is owned, procured, furnished, or financed by the U.S. Government. It also includes cargo that is being shipped under an agreement of the U.S. Government, or as part of a Government program.

Over the years, Cargo Preference has been an effective shipping strategy in maintaining our Nation's presence and economic viability in the international shipping market. In short, certain percentages of cargo must be carried on vessels registered in the United States when the cargo is supported by U.S. Federal funding. Such cargo is commonly referred to as “government-impelled”, and is typically moving:

- as a direct result of Federal Government involvement, such as military transportation of supplies by sea;
- indirectly through financial sponsorship of a Federal program, such as USAID supported food aid; or
- in connection with a loan, grant, loan guarantee, or other financing provided by the Federal Government.

Who is Subject to Cargo Preference?

Any department, agency, contractor, or sub-contractor of the Federal Government, administering a program that directly or indirectly involves the transportation on ocean vessels of cargoes. Additionally, all members of the supply chain must comply with Cargo Preference.

To help ensure compliance, the regulations make one entity, the prime contractor, the responsible party for ensuring U.S.-flag vessels are used throughout the supply chain. The prime contractor will be deemed to have violated its U.S.-flag requirements if any person or entity in its supply chain - including sub-contractors, vendors, suppliers, freight forwarders, and shipping companies - do not meet the requirements. The Federal Contracting Officer is the official enforcement authority and can impose financial assessments against the prime contractor if the U.S.-flag vessel use requirements are not met by any member of the supply chain.

Furthermore, foreign countries that are recipients of U.S. assistance through foreign military financed programs are also required by law to use U.S.-flag vessels.

Why is Cargo Preference Necessary?

Just as many other seafaring nations have learned, history has taught us that Cargo Preference, the reservation of certain cargoes to U.S.-flag ships, is necessary for our national defense and a key driver of domestic and foreign commerce. This requires a U.S.-flag commercial merchant marine that can be called upon in times of war or national emergencies. Therefore, Congress has determined that the United States have a merchant marine —

- sufficient to carry the waterborne domestic commerce and a substantial part of the waterborne export and import foreign commerce of the United States,
- capable of serving as a naval and military auxiliary in time of war or national emergency;
- owned and operated as vessels of the United States by citizens of the United States;
- composed of the best-equipped, safest, and most suitable types of vessels constructed in the United States and manned with a trained and efficient citizen personnel; and
- supplemented by efficient facilities for building and repairing vessels.

It is the United States’ policy to encourage and aid the development of a merchant marine satisfying the above objectives. By requiring that U.S.-flag carriers ship U.S. Government impelled cargo, we ensure that this economic activity and defense capability benefits the United States.

What percent of cargo is required to be carried on U.S.-flag vessels?

- Military Cargo = 100%
- Civilian Agencies Cargo = at least 50%
- Agricultural Cargo = at least 50%
- Export Import Bank Cargo = 100% (for additional information refer to below PR-17 section)

Cargo Preference Laws and Regulations

The U.S. uses federal laws and regulations to regulate and protect its own cargo interests. Three primary pieces of legislation guide Cargo Preference requirements in the United States:

- The Military Cargo Preference Act of 1904 requires that 100% of cargoes "bought for the Army, Navy, Air Force, or Marine Corps" be carried on U.S.-flag vessels. Essentially, this means all military cargo.
- The Cargo Preference Act of 1954 requires that 50% of Civilian Agencies cargo and Agricultural Cargo be carried on U.S.-flag vessels.
- Public Resolution 17 (PR-17) was enacted in 1934 to address U.S. Flag shipping requirements for the U.S. Export-Import Bank of the United States and requires shipping on U.S.-flag vessels for the following EXIM Bank transactions:
  - Direct loans regardless of term or amount, and
  - Guarantees valued over USD 20,000,000 (excluding EXIM Bank exposure fee) or with repayment terms greater than seven years, unless the export qualifies for a longer repayment term under EXIM's Medical Equipment Initiative, Environmental Exports Program, or Transportation Security Program.

Compliance

The Maritime Administration's Office of Cargo and Commercial Sealift manages all MARAD Cargo Preference activities. The typical Cargo Preference disposition process is as follows:

1. Shipper/cargo interests identify a potential cargo move.

2. Shipper/cargo interests should identify cargo to be shipped to the extent possible (e.g., shipping dimensions and volume).
3. Shipper works in advance with potential U.S.-flag commercial carriers and Maritime Administration, and must solicit ocean service from U.S.-flag carriers.
4. Evaluate U.S.-flag carrier responses regarding availability.
5. Book cargo on a U.S.-flag vessel or contact the Maritime Administration for assistance (202-366-4610 or cargo.marad@dot.gov).
6. File required receipts for ocean shipping (rated master bill of lading only) with the Maritime Administration.

Submit rated master bill of lading documents (as required by the FAR or DFARS) either electronically to cargo.marad@dot.gov, or, hard copy mail to:

U.S. Department of Transportation

Maritime Administration

Office of Cargo and Commercial Sealift

MAR-640/Mail Stop 2

1200 New Jersey Avenue, SE

Washington, DC 20590

FAR 52.247-64 reporting requirements mandate that the contractor submit a copy of the rated master ocean bills of lading (MB/L) to our office within 20 working days from date of loading on all shipments loaded from the United States, and 30 working days for shipments loaded outside the United States. The reporting requirement applies whether cargo moves on a non-USF or USF vessel and is irrespective of cargo origin or destination (including foreign-to-foreign cargo movements).

Per DFARS, the Contractor shall, within 30 days after each shipment, provide MARAD one copy of the rated onboard vessel operating carrier's ocean bill of lading.

Subcontractor bills of lading shall be submitted through the Prime Contractor.

The Contractor Standard

The prime contractor has ultimate responsibility to ensure that they and all subcontractors comply with Cargo Preference regulations. This includes guaranteeing that Government-impelled cargo move via U.S.-flag vessels and sending the copy(s) of the rated onboard vessel operating carrier's ocean bill of lading for all shipments to the Government Contracting Officer and MARAD. These documents typically contain the carrier's commercial logo and the ocean freight ("rated"). The prime contractor is subject to penalties for any Cargo Preference violations.

Questions?

See our FAQ section for additional information. For specific questions about any aspect of MARAD's Cargo Preference program, contact the Office of Cargo and Commercial Sealift.

Last updated: Friday, March 31, 2023

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United States Marine Highway Program >

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Designated Marine Highway Routes

Route Designation Process

Small Shipyard Grants

Federal Ship Financing Program (Title XI) >

Construction Reserve Fund

Capital Construction Fund

Port Infrastructure Development Grants >

Made in America

Related Links

- Energy Independence and Security Act of 2007
- Coast Guard and Maritime Transportation Act of 2012
- National Defense Authorization Act for Fiscal Year 2016
- AMH Programmatic Environmental Assessment 2017
- United States Marine Highway Program Final Rule 2018
- National Defense Authorization Act for Fiscal Year 2020
- James M. Inhofe National Defense Authorization Act for Fiscal Year 2023

Contact Us

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United States

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mh@dot.gov
Phone: 202-366-1123
Business Hours:
9:00am-5:00pm ET, M-F

If you are deaf, hard of hearing, or have a speech disability, please dial 7-1-1 to access telecommunications relay services.

United States Marine Highway Program

The United States has a versatile and expansive network of navigable waterways, including rivers, bays, channels, coasts, the Great Lakes, open-ocean routes and the Saint Lawrence Seaway System. We like to think of this as “the United States' marine highway,” a network of maritime expressways having as many benefits (in some cases more) as the United States’ road network.

However, the United States’ waterways are underused. The benefits of using our marine waterways --such as reducing landside congestion and reducing system wear and tear -- are not perceived at the individual level. Using our waterways more consistently would create more public benefits and incentivize shippers to use these critical transportation channels.

Marine Highway Grant Program

The United States Marine Highway Program (USMHP) is a discretionary transportation grant program administered by the Maritime Administration. Funds for the USMHP are awarded on a competitive basis to projects that provide a coordinated and capable alternative to landside transportation or that promote marine highway transportation. Through the development and promotion of marine highway transportation, the program aims to relieve landside congestion, reduce air emissions, and generate other public benefits by increasing the efficiency of the surface transportation system. We work closely with public and private organizations to:

- Develop and broaden marine highway service options and facilitate their further integration into the current U.S. surface transportation system, especially where water-based transport is the most efficient, effective and sustainable option.
- Highlight the benefits, increase public awareness and promote waterways as a viable (in some cases a superior) alternative to “landside” shipping and transportation options.

We do not *directly* operate marine highway services. Instead, we promote their use, efficiency and public benefits.

For information about 2023 USMHP funding, see the Notice of Funding Opportunity. The application period for 2023 USMHP funding has closed and final awards were announced on September 21, 2023.

Marine Highway Routes and Grant Awards

U.S. Marine Highway Routes Map as of October 2023

U. S. Marine Highway Program Grant Award Map as of October 2023

U.S. Marine Highway Program Grant Awards: 2010 through 2023

U.S. Marine Highway Program Portal (NEW!!!)

The U.S. Marine Highway system currently includes 31 “Marine Highway Routes” that serve as extensions of the surface transportation system. Each all-water route is designated by the Secretary and offers relief to landside corridors suffering from traffic congestion, excessive air emissions or other environmental challenges. View Route Descriptions.

U.S. Marine Highway Program

Program Overview

MARAD's Marine Highway Program is a transportation grant program for projects that provide a coordinated and capable alternative to landside transportation or that promote marine highway transportation. Through the development and promotion of marine highway transportation, the program aims to relieve landside congestion, reduce air emissions, and generate other public benefits by increasing the efficiency of the surface transportation system. We work closely with public and private organizations to:

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- Highlight the benefits, increase public awareness and promote waterways as a viable (in some cases a superior) alternative to "landside" shipping and

So what are the benefits?

Public benefits include:

- Creating and sustaining jobs in U.S. vessels, ports and shipyards.
- Relieving landside congestion.
- Reducing maintenance costs and improving the U.S. transportation system's overall state of repair (wear and tear on roads and bridges).
- Driving the mandatory use of emerging engine technologies.
- Improving U.S. economic competitiveness by adding new cost-effective freight and passenger transportation capacities.
- Improving the environmental sustainability of the U.S. transportation system by using less energy and reducing air emissions (such as greenhouse gases) per passenger or ton-mile of freight moved.
- Improving public safety and security by providing alternatives for moving hazardous materials outside heavily populated areas.
- Improving transportation system resiliency and redundancy by providing transportation alternatives during times of disaster or national emergency.
- Improving national security by adding to the nation's strategic sealift resources.

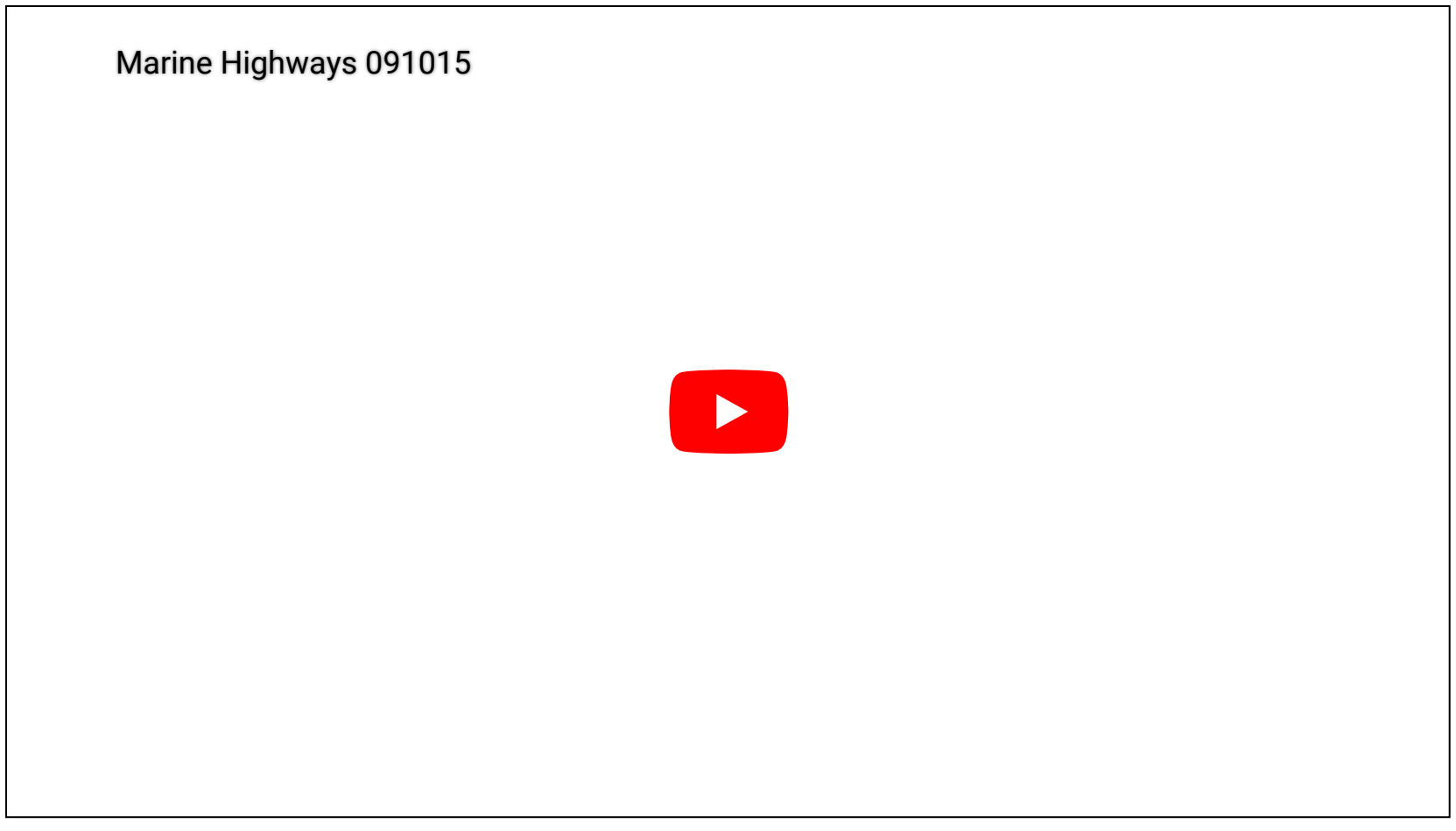
For a complete list and explanation of public benefits, see pages 11-37 of the America's Marine Highway Report to Congress (April 2011).

Port Planning and Investment Toolkit - Marine Highway Module

The American Association of Port Authorities (AAPA) and the U.S. Department of Transportation through the Maritime Administration organized a team of U.S. port industry experts to assist in the development of the Port Planning and Investment Toolkit - Marine Highway Module.

The Marine Highway Module was developed to highlight existing marine highway services that illustrate, in a practical way, the promise and extensive capacity of the domestic waterborne system and to integrate marine highways into the national, state, and local transportation planning process.

This module is intended to assist port owners, public agencies and private entities with the planning, evaluation, and financing of marine highway services that can alleviate landside transportation challenges. This module is currently being updated.



The Legislative History of the United States Marine Highway Program

The Marine Highway program was established by Section 1121 of the Energy Independence and Security Act of 2007 to reduce landside congestion through the designation of Marine Highway Routes.

Section 405 of the Coast Guard and Maritime Transportation Act of 2012 expanded the Program's scope to increase domestic freight or passenger transportation utilization and efficiency on Marine Highway Routes between U.S. ports.

The National Defense Authorization Act for Fiscal Year 2016 expanded the definition of short sea shipping to include freight vehicles carried aboard commuter ferry boats and cargo shipped in discrete units -- or packages that are handled individually, palletized or explicitly unitized for transport.

The National Defense Authorization Act for Fiscal Year 2020 changed the Program name from “Short Sea Shipping” to “Marine Highways.”

The James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 made the most significant changes to the Program. The most significant changes were to:

- Rename the Program from “America’s Marine Highway Program” to “United States Marine Highway Program.
- Expand the definition of marine highway transportation to include bulk, liquid, and loose cargo, as well as shipments from ports on Designated Marine Highway Routes to/from ports in Canada and Mexico.
- Remove the Project Designations as an eligibility requirement for USMHP grants.
- Allow Rural and Tribal applicants to request an increase in the federal share.

Last updated: Wednesday, February 28, 2024

U.S. DEPARTMENT OF TRANSPORTATION

Maritime Administration

1200 NEW JERSEY AVENUE, SE

WASHINGTON, DC 20590

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EXHIBIT 146

117TH CONGRESS
1ST SESSION

S. 1441

To appropriate an additional amount to improve the Navy shipyard infrastructure of the United States.

IN THE SENATE OF THE UNITED STATES

APRIL 28, 2021

Mr. WICKER (for himself, Mr. KAINE, Ms. COLLINS, Mr. KING, Mrs. SHAHEEN, Mr. COTTON, Mr. BLUMENTHAL, and Ms. HASSAN) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

---

A BILL

To appropriate an additional amount to improve the Navy shipyard infrastructure of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Supplying Help to Infrastructure in Ports, Yards, and America's Repair Docks Act of 2021'' or the ''SHIPYARD Act''.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) Since the beginning of our Nation, the four public shipyards that support the United States Navy have continued to be foundational cornerstones of the strategic infrastructure of the United States, and those shipyards will continue to be so in the future.

(2) Although originally built in the age of sailing ships, the shipyards have been incrementally updated overtime, but in 2021, are in need of a generational investment to modernize and upgrade the outdated facilities to ensure they can continue to repair the United States Navy for another 200 years. This Act would provide the necessary authorities and appropriations to make those strategic assets ready to meet the future demands of the United States, while securing and expanding domestic capabilities across many sectors of the economy critical to ensuring the independence of the United States from, and preventing over-reliance, on foreign commerce.

(3) On November 1, 1767, Andrew Sprowle, a merchant and ship owner, established Gosport Shipyard on the western shore of the Elizabeth River, in the Colony of Virginia, under the British flag. The shipyard developed and prospered as both a naval

and merchant shipyard, supporting the maritime industry that was critical to the survival of the early colonies and then to the fledgling United States. When the American Revolution began, the infrastructure resident at this former colonial shipyard became a nucleus in the Hampton Roads, Virginia, area for the United States Navy. For more than 230 years, the Norfolk Naval Shipyard has assisted the United States in winning nine major wars, putting an end to piracy, sending the Great White Fleet around the world, supporting scientific exploration of the Pacific, and opening Asia to United States trade. Today, the Norfolk Naval Shipyard conducts critical maintenance to the Nation's Nuclear Navy to include aircraft carriers, ballistic missile submarines, and fast attack submarines.

(4) On June 12, 1800, under the administration of President John Adams, the Portsmouth Naval Shipyard was established. The Portsmouth Naval Shipyard is the United States Navy's oldest continuously operating shipyard. In 1776, during the Revolutionary War, the USS *Raleigh* was built in Kittery, Maine, and became the first vessel to fly an American flag into battle. For more than 221 years, the Portsmouth Naval Shipyard has contributed to

the Nation's security and has been instrumental in United States diplomacy, when, in 1905, President Theodore Roosevelt selected the Portsmouth Naval Shipyard as the location to host the Treaty of Portsmouth, which ended the Russo-Japanese War. Today, the Portsmouth Naval Shipyard overhauls, refuels, and modernizes the Nation's fast attack submarine fleet.

(5) In 1889, Congress approved a budget to purchase land around Sinclair Inlet in Kitsap County, Washington. In 1892, additional land was added and the United States Navy broke ground for the construction of the first of six dry-docks that would form what is now the Puget Sound Naval Shipyard. Since that time, the shipyard was front and center in supporting the Nation's efforts in World War I, World War II, and the Korean War by constructing submarines, surface ships, and support vessels required to win those wars. In late 1965, the USS *Sculpin* (SSN 590) became the first nuclear-powered submarine worked on at the Puget Sound Naval Shipyard. The Shipyard site at Naval Base Kitsap-Bremerton provides longer-term, full-service maintenance and inactivation and recycling work on air-

craft carriers, surface ships, and submarines, utilizing six drydocks and adjacent piers.

(6) On May 13, 1908, Navy Yard Pearl Harbor was officially established on the Hawaiian Island of Oahu, and the Navy Yard has proven to be vital to the defense of the United States and its interests in the Asia-Pacific region. The shipyard has been instrumental in enabling the United States to secure sea-lanes of communication and commerce that has strengthened the Nation's ability to project power across the expansive Pacific and Indian Oceans. For generations, the shipyard has supported the global interests of the United States in a critical geographic region. On December 7, 1941, Pearl Harbor and the Navy Yard at Pearl Harbor were the scene of a devastating attack on the United States by the Imperial Japanese Navy. Despite the devastating attack, the shipyard and its workers were able to return ships damaged in the attack back into service and enabled the United States to win the Pacific War. For more than 113 years, the Pearl Harbor Naval Shipyard's strategic location in the Pacific has assured the safety and prosperity of the United States through the maintenance of Navy ships. Today the shipyard supports the maintenance of the

Navy's nuclear submarine fleet as well as surface ships.

(7) In April 2013, the Navy provided Congress a public shipyard investment plan, which identified investments needed to optimize, improve, and rebuild shipyard facilities, electrical infrastructure, environmental systems, and equipment, and needed to improve the timely return of ships and submarines back to the fleet following maintenance and modernization, to support the combat readiness of the United States. To this end, the Navy developed the Shipyard Infrastructure Optimization Program, which is a comprehensive, 20-year, $21,000,000,000 effort to modernize infrastructure at the four naval shipyards through—

(A) performing critical dry dock repairs;

(B) restoring and optimally placing shipyard facilities; and

(C) replacing aging and deteriorating capital equipment.

(8) In addition to the Nation's public shipyards, the United States continues to rely on the capacity and capabilities of private new construction and repair shipyards to meet the strategic maritime needs of the United States Navy, the United States Coast

Guard, and the Nation's maritime industry. Such shipyards, located on every coast of the United States, also require substantial recapitalization and reconfiguration in order to meet the construction and sustainment requirements of our maritime Nation. This Act recognizes the vital role such private shipyards play in the United States and accordingly authorizes and appropriates funds to ensure they are able to continue to provide those strategic capabilities in the future.

SEC. 3. NAVY SHIPYARD INFRASTRUCTURE IMPROVEMENT.

(a) APPROPRIATION.—

(1) IN GENERAL.—Out of any money in the Treasury of the United States not otherwise appropriated, there is appropriated, as an additional amount for ''Defense Production Act Purchases'', $25,000,000,000, to remain available until expended, to improve, in accordance with subsection (b) and using the authority provided by section 303(e) of the Defense Production Act of 1950 (50 U.S.C. 4533(e)), the Navy shipyard infrastructure of the United States.

(2) SUPPLEMENT NOT SUPPLANT.—Amounts appropriated under paragraph (1) shall supplement and not supplant other amounts appropriated or

otherwise made available for the purpose described in paragraph (1).

(3) WAIVER OF CERTAIN LIMITATIONS.—During the 20-year period beginning on the date of the enactment of this Act, the following requirements of the Defense Production Act of 1950 (50 U.S.C. 4501 et seq.) shall not apply to amounts appropriated under paragraph (1):

(A) The requirement for a determination of the President under section 303(e)(1) of that Act (50 U.S.C. 4533(e)(1)).

(B) The requirement under section 304(e) of that Act (50 U.S.C. 4534(e)) that amounts in the Defense Production Act Fund in excess of the amount specified in that subsection be paid into the general fund of the Treasury at the end of a fiscal year.

(4) EMERGENCY DESIGNATION.—The amount appropriated under paragraph (1) is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(b)(2)(A)(i)).

(b) USE OF FUNDS.—

(1) IN GENERAL.—As soon as practicable after the date of the enactment of this Act, the Secretary of Defense shall make the amounts appropriated under subsection (a) directly available to the Secretary of the Navy for obligation and expenditure.

(2) ALLOCATION OF FUNDS.—The Secretary of the Navy shall allocate the amounts appropriated under subsection (a) as follows:

(A) $21,000,000,000 for Navy public shipyard facilities, dock, dry dock, capital equipment improvements, and dredging efforts needed by such shipyards.

(B) $2,000,000,000 for Navy private new construction shipyard facilities, dock, dry dock, capital equipment improvements, and dredging efforts needed by such shipyards.

(C) $2,000,000,000 for Navy private repair shipyard facilities, dock, dry dock, capital equipment improvements, and dredging efforts needed by such shipyards.

(3) USE OF FUNDS FOR PROCUREMENT OF CERTAIN SERVICES.—Notwithstanding any provision of the Defense Production Act of 1950 (50 U.S.C. 4501 et seq.), amounts appropriated under subsection (a) may be used for the procurement of ar-

chitect-engineer and construction services at Navy public shipyards.

(4) PROJECTS IN ADDITION TO OTHER CONSTRUCTION PROJECTS.—Construction projects undertaken using amounts appropriated under subsection (a) shall be in addition to and separate from any military construction program authorized by any Act to authorize appropriations for a fiscal year for military activities of the Department of Defense and for military construction.

(c) DEFINITIONS.—In this section:

(1) NAVY PUBLIC SHIPYARD.—The term ''Navy public shipyard'' means the following:

(A) The Norfolk Naval Shipyard, Virginia.

(B) The Pearl Harbor Naval Shipyard, Hawaii.

(C) The Portsmouth Naval Shipyard, Maine.

(D) The Puget Sound Naval Shipyard, Washington.

(2) NAVY PRIVATE NEW CONSTRUCTION SHIPYARD.—The term ''Navy private new construction shipyard''—

(A) means any shipyard in which one or more combatant or support vessels included in

the most recent plan submitted under section 231 of title 10, United States Code, are being built or are planned to be built; and

(B) includes vendors and suppliers of the shipyard building or planning to build a combatant or support vessel.

(3) NAVY PRIVATE REPAIR SHIPYARD.—The term ''Navy private repair shipyard''—

(A) means any shipyard that performs or is planned to perform maintenance or modernization work on a combatant or support vessel included in the most recent plan submitted under section 231 of title 10, United States Code; and

(B) includes vendors and suppliers of the shipyard performing or planning to perform maintenance or modernization work on a combatant or support vessel.

○

EXHIBIT 147

JANUARY 25, 2021

Executive Order on Ensuring the Future Is Made in All of America by All of America's Workers

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. Policy. It is the policy of my Administration that the United States Government should, consistent with applicable law, use terms and conditions of Federal financial assistance awards and Federal procurements to maximize the use of goods, products, and materials produced in, and services offered in, the United States. The United States Government should, whenever possible, procure goods, products, materials, and services from sources that will help American businesses compete in strategic industries and help America's workers thrive. Additionally, to promote an accountable and transparent procurement policy, each agency should vest waiver issuance authority in senior agency leadership, where appropriate and consistent with applicable law.

Sec. 2. Definitions. (a) "Agency" means any authority of the United States that is an "agency" under section 3502(1) of title 44, United States Code, other than those considered to be independent regulatory agencies, as defined in section 3502(5) of title 44, United States Code.

(b) "Made in America Laws" means all statutes, regulations, rules, and Executive Orders relating to Federal financial assistance awards or Federal procurement, including those that refer to "Buy America" or "Buy American," that require, or provide a preference for, the purchase or acquisition of goods, products, or materials produced in the United States, including iron, steel, and manufactured goods offered in the United States. Made in America Laws include laws requiring domestic preference for maritime transport, including the Merchant Marine Act of 1920 (Public Law 66-261), also known as the Jones Act.

(c) "Waiver" means an exception from or waiver of Made in America Laws, or the procedures and conditions used by an agency in granting an exception from or waiver of Made in America Laws.

Sec. 3. Review of Agency Action Inconsistent with Administration Policy. (a) The head of each agency shall, as soon as practicable and as appropriate and consistent with applicable law, including the Administrative Procedure Act, consider suspending, revising, or rescinding those agency actions that are inconsistent with the policy set forth in section 1 of this order.

(b) The head of each agency shall, as soon as practicable and as appropriate and consistent with applicable law, including the Administrative Procedure Act, consider proposing any additional agency actions necessary to enforce the policy set forth in section 1 of this order.

Sec. 4. Updating and Centralizing the Made in America Waiver Process. (a) The Director of the Office of Management and Budget (OMB) shall establish within OMB the Made in America Office. The Made in America Office shall be headed by a Director of the Made in America Office (Made in America Director), who shall be appointed by the Director of OMB.

(b) Before an agency grants a waiver, and unless the OMB Director provides otherwise, the agency (granting agency) shall provide the Made in America Director with a description of its proposed waiver and a detailed justification for the use of goods, products, or materials that have not been mined, produced, or manufactured in the United States.

(i) Within 45 days of the date of the appointment of the Made in America Director, and as appropriate thereafter, the Director of OMB, through the Made in America Director, shall:

(1) publish a list of the information that granting agencies shall include when submitting such descriptions of proposed waivers and justifications to the Made in America Director; and

(2) publish a deadline, not to exceed 15 business days, by which the Director of OMB, through the Made in America Director, either will notify the head of the agency that the Director of OMB, through the Made in America Director,

has waived each review described in subsection (c) of this section or will notify the head of the agency in writing of the result of the review.

(ii) To the extent permitted by law and consistent with national security and executive branch confidentiality interests, descriptions of proposed waivers and justifications submitted to the Made in America Director by granting agencies shall be made publicly available on the website established pursuant to section 6 of this order.

(c) The Director of OMB, through the Made in America Director, shall review each proposed waiver submitted pursuant to subsection (b) of this section, except where such review has been waived as described in subsection (b)(i)(2) of this section.

(i) If the Director of OMB, through the Made in America Director, determines that issuing the proposed waiver would be consistent with applicable law and the policy set forth in section 1 of this order, the Director of OMB, through the Made in America Director, shall notify the granting agency of that determination in writing.

(ii) If the Director of OMB, through the Made in America Director, determines that issuing the proposed waiver would not be consistent with applicable law or the policy set forth in section 1 of this order, the Director of OMB, through the Made in America Director, shall notify the granting agency of the determination and shall return the proposed waiver to the head of the agency for further consideration, providing the granting agency with a written explanation for the determination.

(1) If the head of the agency disagrees with some or all of the bases for the determination and return, the head of the agency shall so inform the Made in America Director in writing.

(2) To the extent permitted by law, disagreements or conflicts between the Made in America Director and the head of any agency shall be resolved in accordance with procedures that parallel those set forth in section 7 of Executive Order 12866 of September 30, 1993 (Regulatory Planning and Review), with respect to the Director of the Office of Information and Regulatory Affairs within OMB.

(d) When a granting agency is obligated by law to act more quickly than the review procedures established in this section allow, the head of the agency shall notify the Made in America Director as soon as possible and, to the extent practicable, comply with the requirements set forth in this section. Nothing in this section shall be construed as displacing agencies' authorities or responsibilities under law.

Sec. 5. Accounting for Sources of Cost Advantage. To the extent permitted by law, before granting a waiver in the public interest, the relevant granting agency shall assess whether a significant portion of the cost advantage of a foreign-sourced product is the result of the use of dumped steel, iron, or manufactured goods or the use of injuriously subsidized steel, iron, or manufactured goods. The granting agency may consult with the International Trade Administration in making this assessment if the granting agency deems such consultation to be helpful. The granting agency shall integrate any findings from the assessment into its waiver determination as appropriate.

Sec. 6. Promoting Transparency in Federal Procurement. (a) The Administrator of General Services shall develop a public website that shall include information on all proposed waivers and whether those waivers have been granted. The website shall be designed to enable manufacturers and other interested parties to easily identify proposed waivers and whether those waivers have been granted. The website shall also provide publicly available contact information for each granting agency.

(b) The Director of OMB, through the Made in America Director, shall promptly report to the Administrator of General Services all proposed waivers, along with the associated descriptions and justifications discussed in section 4(b) of this order, and whether those waivers have been granted. Not later than 5 days after receiving this information, the Administrator of General Services shall, to the extent permitted by law and consistent with national security and executive branch confidentiality interests, make this information available to the public by posting it on the website established under this section.

Sec. 7. Supplier Scouting. To the extent appropriate and consistent with applicable law, agencies shall partner with the Hollings Manufacturing Extension Partnership (MEP), discussed in the Manufacturing Extension

Partnership Improvement Act (title V of Public Law 114-329), to conduct supplier scouting in order to identify American companies, including small- and medium-sized companies, that are able to produce goods, products, and materials in the United States that meet Federal procurement needs.

Sec. 8. Promoting Enforcement of the Buy American Act of 1933. (a) Within 180 days of the date of this order, the Federal Acquisition Regulatory Council (FAR Council) shall consider proposing for notice and public comment amendments to the applicable provisions in the Federal Acquisition Regulation (FAR), title 48, Code of Federal Regulations, consistent with applicable law, that would:

(i) replace the "component test" in Part 25 of the FAR that is used to identify domestic end products and domestic construction materials with a test under which domestic content is measured by the value that is added to the product through U.S.-based production or U.S. job-supporting economic activity;

(ii) increase the numerical threshold for domestic content requirements for end products and construction materials; and

(iii) increase the price preferences for domestic end products and domestic construction materials.

(b) The FAR Council shall consider and evaluate public comments on any regulations proposed pursuant to subsection (a) of this section and shall promptly issue a final rule, if appropriate and consistent with applicable law and the national security interests of the United States.

Sec. 9. Updates to the List of Nonavailable Articles. Before the FAR Council proposes any amendment to the FAR to update the list of domestically nonavailable articles at section 25.104(a) of the FAR, the Director of OMB, through the Administrator of the Office of Federal Procurement Policy (OFPP), shall review the amendment in consultation with the Secretary of Commerce and the Made in America Director, paying particular attention to economic analyses of relevant markets and available market research, to determine whether there is a reasonable basis to conclude that the article, material, or supply is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities

and of a satisfactory quality. The Director of OMB, through the Administrator of OFPP, shall make these findings available to the FAR Council for consideration.

Sec. 10. Report on Information Technology That Is a Commercial Item. The FAR Council shall promptly review existing constraints on the extension of the requirements in Made in America Laws to information technology that is a commercial item and shall develop recommendations for lifting these constraints to further promote the policy set forth in section 1 of this order, as appropriate and consistent with applicable law.

Sec. 11. Report on Use of Made in America Laws. Within 180 days of the date of this order, the head of each agency shall submit to the Made in America Director a report on:

(a) the agency's implementation of, and compliance with, Made in America Laws;

(b) the agency's ongoing use of any longstanding or nationwide waivers of any Made in America Laws, with a written description of the consistency of such waivers with the policy set forth in section 1 of this order; and

(c) recommendations for how to further effectuate the policy set forth in section 1 of this order.

Sec. 12. Bi-Annual Report on Made in America Laws. Bi-annually following the initial submission described in section 11 of this order, the head of each agency shall submit to the Made in America Director a report on:

(a) the agency's ongoing implementation of, and compliance with, Made in America Laws;

(b) the agency's analysis of goods, products, materials, and services not subject to Made in America Laws or where requirements of the Made in America Laws have been waived;

(c) the agency's analysis of spending as a result of waivers issued pursuant to the Trade Agreements Act of 1979, as amended, 19 U.S.C. 2511, separated by country of origin; and

(d) recommendations for how to further effectuate the policy set forth in section 1 of this order.

Sec. 13. Ensuring Implementation of Administration Policy on Federal Government Property. Within 180 days of the date of this order, the Administrator of General Services shall submit to the Made in America Director recommendations for ensuring that products offered to the general public on Federal property are procured in accordance with the policy set forth in section 1 of this order.

Sec. 14. Revocation of Certain Presidential and Regulatory Actions. (a) Executive Order 13788 of April 18, 2017 (Buy American and Hire American), section 5 of Executive Order 13858 of January 31, 2019 (Strengthening Buy-American Preferences for Infrastructure Projects), and Executive Order 13975 of January 14, 2021 (Encouraging Buy American Policies for the United States Postal Service), are hereby revoked.

(b) Executive Order 10582 of December 17, 1954 (Prescribing Uniform Procedures for Certain Determinations Under the Buy-America Act), and Executive Order 13881 of July 15, 2019 (Maximizing Use of American-Made Goods, Products, and Materials), are superseded to the extent that they are inconsistent with this order.

Sec. 15. Severability. If any provision of this order, or the application of any provision to any person or circumstance, is held to be invalid, the remainder of this order and the application of its other provisions to any other persons or circumstances shall not be affected thereby.

Sec. 16. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

JOSEPH R. BIDEN JR.

THE WHITE HOUSE,

January 25, 2021.

EXHIBIT 148

I

118TH CONGRESS
1ST SESSION

H. R. 5991

To require the Commandant of the Coast Guard and the Commissioner of U.S. Customs and Border Protection to make certain determinations in enforcing the Jones Act, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 19, 2023

Mr. GARAMENDI introduced the following bill

OCTOBER 25, 2023

Referred to the Committee on Transportation and Infrastructure, and in addition to the Committee on Rules, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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A BILL

To require the Commandant of the Coast Guard and the Commissioner of U.S. Customs and Border Protection to make certain determinations in enforcing the Jones Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Close Agency Loopholes to the Jones Act of 2023''.

SEC. 2. FINDINGS.

Congress finds the following:

(1) In 1920, Congress enacted the Merchant Marine Act (chapters 121 and 551 of title 46, United States Code), commonly referred to as the ''Jones Act''.

(2) In 1953, Congress enacted the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) applying the Constitution, laws, and civil and political jurisdiction of the United States to the outer Continental Shelf.

(3) In 2020, Congress enacted section 9503 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Public Law 116–283) affirming that application of the Constitution, laws, and civil and political jurisdiction of the United States to the outer Continental Shelf also applies to non-mineral energy resources and exploring for, developing, producing, transporting, or transmitting such resources.

(4) Therefore, the Jones Act prohibits the use of a non-Jones Act qualified vessel for the provision of any coastwise transportation of merchandise to or from a port of the United States (including territories or possessions to which the coastwise laws apply) to any point on the outer Continental Shelf,

or between any two points on the outer Continental Shelf.

(5) U.S. Customs and Border Protection (hereinafter referred to as ''CBP'') is responsible for interpreting and enforcing the Jones Act. CBP has issued ruling letters and other interpretative guidance to requesting parties that provide the description of proposed activities.

(6) Unlike most federal agencies, CBP is required by section 625(c) of the Tariff Act of 1930 (19 U.S.C. 1625(c)) to follow its past interpretive guidance and treatments of ''substantially identical transactions,'' unless it institutes a public notice and comment process to modify or revoke that interpretative guidance. As a result, CBP and market participants treat as binding ruling letters and interpretative guidance in addressing whether and how the Jones Act applies in substantially identical factual situations.

(7) Thus, CBP's ruling letters—even if legally incorrect—have substantial impacts: When CBP purports to authorize a foreign vessel to transport merchandise between coastwise points, unless ordered by a Federal court to rescind such ruling letters, CBP does not take enforcement action against

other foreign vessels engaging in substantially identical transactions, and vessel operators accordingly rely on CBP's past ruling letters and guidance issued to other parties.

(8) Over several decades, CBP has purported to create an array of exemptions from the prohibitions of the Jones Act for the benefit of foreign vessels.

(9) On December 11, 2019, CBP published Customs Bulletin and Decisions, Vol. 53, No. 45 (hereinafter referred to as the ''2019 Decision'') revoking a handful of its interpretations, recognizing that the analyses employed therein were inconsistent with the Jones Act and original congressional intent, including by using statutory language ''out of context,'' having been superseded by amendments, or being predicated on CBP-created distinctions that had always been ''irrelevant'' under the Jones Act.

(10) However, the 2019 Decision still left in force many ruling letters inconsistent with the Jones Act and original congressional intent, espousing the same unlawful doctrines, revoked others that properly interpreted the Jones Act, and created several new loopholes that purport to immunize much of the same foreign vessel activities that are now, and have always been, prohibited under the Jones Act.

(11) Thus, CBP has created invalid exemptions from the prohibition embodied in the Jones Act, using a variety of new and old doctrines inconsistent with original congressional intent. In 2014, the Supreme Court of the United States found in Utility Air Regulatory Group v. Environmental Protection Agency (573 U.S. 302, 328) that it is a ''core administrative law principle that an agency may not rewrite clear statutory terms to suit its own sense of how the statute should operate''.

(12) These invalid, ultra vires doctrines, and their uses, include—

(A) an unlawfully broad interpretation of ''vessel equipment'' which conflicts with Congress' statutory description of ''merchandise,'' and the explicit, limited statutory exemption;

(B) the ''paid out not unladen'' doctrine, which provides that pipe or cable laying operations are not coastwise trade subject to the Jones Act—even when the pipe is laid between two coastwise points, and in spite of Congress' statutory prohibition against foreign vessels performing ''any part of the transportation by water'' of merchandise;

(C) the ''paid out not unladen'' doctrine is also used by foreign vessel operators to justify the transportation of merchandise attached to the paid out pipe or cable;

(D) the ''lifting operations'' exemption, which purports to permit self-propelled movements by a vessel when using a crane or like equipment to install or remove merchandise on or from offshore facilities or subsea infrastructure;

(E) the ''decommissioning activity'' exemption, which purports that merchandise transported as a result of decommissioning—i.e., the restoration of the sea-floor and the water surface by plugging and abandoning the well and removing the installation and facility—is not subject to the Jones Act;

(F) the ''offshore research vessel'' misapplications, which improperly extends the exclusion for oceanographic or limnological research vessels to commercial research activities that directly support the exploration for, or development, production, transportation, or transmission of, resources, on the outer Continental Shelf; and

(G) the ''pristine seabed'' exemption, where CBP has purported to hold that Outer Continental Shelf Lands Act's explicit application to the ''subsoil and seabed'' of the outer Continental Shelf does not include the ''pristine seabed''.

(13) If a ruling letter is contrary to the statute's plain text and the expressed intent of Congress, or found unpersuasive by a Federal court, it will be invalidated as arbitrary and capricious.

(14) Federal courts have not squarely addressed the interpretations contained in these CBP ruling letters and other guidance, and thus have never upheld these interpretations as valid and authoritative.

SEC. 3. PRECLUDING EXEMPTIONS FROM JONES ACT REQUIREMENTS FOR CERTAIN FOREIGN VESSELS.

The Secretary may not provide any exemption from the requirements of chapters 121 and 551 of title 46, United States Code (commonly referred to as the ''Jones Act''), to the owner of a foreign vessel engaging in commercial transportation services to directly support the exploration for, or development, production, transportation, or transmission of, resources, including non-mineral en-

ergy resources, from a planning or leasing area designated by the Secretary of the Interior under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.).

SEC. 4. OCEANOGRAPHIC RESEARCH VESSELS.

(a) IN GENERAL.—In enforcing chapter 551 of title 46, United States Code, the Secretary may not determine that a vessel engaging in commercial research activities to directly support the exploration for, or development, production, transportation, or transmission of, resources, including non-mineral energy resources, from a planning or leasing area designated by the Secretary of the Interior under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) is not engaged in trade or commerce under such chapter.

(b) OCEANOGRAPHIC RESEARCH VESSEL CLARIFICATION.—Section 50503 of title 46, United States Code is amended by inserting ‘‘, except that any vessel engaging in commercial research activities to directly support the exploration for, or development, production, transportation, or transmission of, resources, including non-mineral energy resources, from a planning or leasing area designated by the Secretary of the Interior under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) may be determined to be engaged in trade or commerce under this section’’ after ‘‘trade or commerce’’.

(c) DESIGNATION.—The Commandant of the Coast Guard shall deny any request from a foreign vessel to be designated as an oceanographic research vessel for any such vessel engaging in commercial research activities to directly support the exploration for, or development, production, transportation, or transmission of, resources, including non-mineral energy resources, from a planning or leasing area designated by the Secretary of the Interior under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.).

(d) REVOCATION OR MODIFICATION OF CERTAIN RULING LETTERS.—

(1) IN GENERAL.—The Secretary shall revoke or modify, as appropriate, the following headquarters ruling letters:

(A) HQ H216579 (May 15, 2012).

(B) HQ H205655 (March 20, 2012).

(C) HQ 112830 (August 12, 1993).

(D) HQ 110364 (September 29, 1989).

(2) SUBSTANTIALLY IDENTICAL TRANSATCIONS.—The Secretary shall revoke or modify, as appropriate, any treatments, including ruling letters, accorded by the Secretary to transactions that are substantially identical to the transactions

described in the ruling letters listed in paragraph (1).

SEC. 5. U.S. CUSTOMS AND BORDER PROTECTION RULINGS.

(a) VESSEL EQUIPMENT.—

(1) IN GENERAL.—In enforcing chapter 551 of title 46, United States Code, the Secretary may not apply an interpretation of the terms ''vessel equipment'' or ''equipment'' that conflicts with the definition of the term ''merchandise'' or sections 55105, 55106, 55107, 55108, 55110, 55113, and 55115 of such title.

(2) REVOCATION OR MODIFICATION OF CERTAIN RULING LETTERS.—

(A) IN GENERAL.—The Secretary shall revoke or modify, as appropriate, any ruling letters that apply an incorrect interpretation of the terms ''vessel equipment'' or ''equipment'' as described in paragraph (1), including the following headquarters ruling letters:

(i) HQ H032757 (July 28, 2008).

(ii) HQ H029417 (June 5, 2008).

(iii) HQ H004242 (December 22, 2006).

(iv) HQ 116078 (February 11, 2004).

(v) HQ 115938 (April 1, 2003).

(vi) HQ 115771 (August 19, 2002).

(vii) HQ 115333 (April 27, 2001).

(viii) HQ 115487 (November 20, 2001).

(ix) HQ 115381 (June 15, 2001).

(x) HQ 114435 (August 6, 1998).

(xi) HQ 114305 (March 31, 1998).

(xii) HQ 113841 (February 28, 1997).

(xiii) HQ 113137 (June 27, 1994).

(xiv) HQ 112218 (July 22, 1992).

(xv) HQ 111889 (February 11, 1992).

(xvi) HQ 111892 (September 16, 1991).

(xvii) HQ 110402 (August 18, 1989).

(xviii) HQ 108223 (March 13, 1986).

(xix) HQ 105644 (June 7, 1982).

(xx) HQ 101925 (October 7, 1976).

(B) SUBSTANTIALLY IDENTICAL TRANSACTIONS.—The Secretary shall revoke or modify, as appropriate, any treatments, including ruling letters, accorded by the Secretary to transactions that are substantially identical to

the transactions described in the ruling letters listed in subparagraph (A).

(b) PAID OUT NOT UNLADEN.—

(1) IN GENERAL.—In enforcing chapter 551 of title 46, United States Code, the Secretary may not determine that pipe or cable laying operations, including the transportation of merchandise attached to such pipe or cable, are not subject to such chapter because the vessel pays out the pipe or cable to a coastwise point.

(2) REVOCATION OR MODIFICATION OF CERTAIN RULING LETTERS.—

(A) IN GENERAL.—The Secretary shall revoke or modify, as appropriate, any ruling letters that apply an incorrect determination with respect to pipe or cable laying operations described in paragraph (1), including the following headquarters ruling letters:

(i) HQ 115522 (December 3, 2001).

(ii) HQ 115487 (November 20, 2001).

(iii) HQ 115311 (May 10, 2001).

(iv) HQ 115333 (April 27, 2001).

(v) HQ 114435 (August 6, 1998).

(vi) HQ 114305 (March 31, 1998).

(vii) HQ 105644 (June 7, 1982).

(viii) HQ 101925 (October 7, 1976) (also referred to as T.D. 78–387).

(B) SUBSTANTIALLY IDENTICAL TRANSACTIONS.—The Secretary shall revoke or modify, as appropriate, any treatments, including ruling letters, accorded by the Secretary to transactions that are substantially identical to the transactions described in the ruling letters listed in subparagraph (A).

(c) LIFTING OPERATIONS.—

(1) IN GENERAL.—In enforcing chapter 551 of title 46, United States Code, the Secretary may not exempt lifting operations from the requirements of such chapter.

(2) REVOCATION OR MODIFICATION OF CERTAIN AGENCY ACTIONS.—The Secretary shall—

(A) revoke or modify, as appropriate, any ruling letters that apply the exemption described in paragraph (1);

(B) modify the Customs Bulletin and Decision issued on December 11, 2019, titled ''Modification and revocation of ruling letters relating to CBP's application of the Jones Act to the transportation of certain merchandise and equipment between coastwise points'' (Cus-

toms Bulletin and Decisions, Vol. 53, No. 45) to be consistent with paragraph (1); and

(C) revoke or modify, as appropriate, any other treatments, including ruling letters, accorded by the Secretary to transactions that are substantially identical to the transactions described in this paragraph.

(3) REINSTATEMENT OF CERTAIN RULING LETTERS.—Upon revoking and modifying the agency actions under paragraph (2), the Secretary shall reinstate the following headquarters ruling letters (popularly known as the ''Koff rulings''):

(A) HQ H242466 (July 3, 2013).

(B) HQ H235242 (November 15, 2012).

(C) HQ H225102 (September 24, 2012).

(d) INSTALLATION ACTIVITIES.—

(1) IN GENERAL.—The Secretary shall revoke the following headquarters ruling letters in which the Secretary determined that certain installation activities do not involve transportation of merchandise between points in the United States for purposes of section 55102 of title 46, United States Code:

(A) HQ 115185 (November 20, 2000).

(B) HQ 115218 (November 30, 2000).

(C) HQ 113838 (February 25, 1997).

(D) HQ 108442 (August 13, 1986).

(2) SIMILAR RULING LETTERS.—The Secretary shall revoke or modify, as appropriate, any treatments, including ruling letters, accorded by the Secretary to transactions that are substantially identical to the transactions described in the ruling letters described in paragraph (1).

(e) DECOMMISSIONING.—

(1) IN GENERAL.—In enforcing chapter 551 of title 46, United States Code, the Secretary may not exempt merchandise transported as a result of decommissioning an installation or facility on the outer Continental Shelf from the requirements of such chapter.

(2) REVOCATION OR MODIFICATION OF CERTAIN RULING LETTERS.—The Secretary shall revoke or modify, as appropriate—

(A) any ruling letters that apply the exemption described in paragraph (1), including the headquarters ruling letter HQ H004242 (December 22, 2006); and

(B) any treatments, including ruling letters, accorded by the Secretary to transactions that are substantially identical to the trans-

actions described in the ruling letter described in subparagraph (A).

(f) SUBSOIL OR SEABED SAMPLES.—

(1) IN GENERAL.—In enforcing chapter 551 of title 46, United States Code, the Secretary may not determine that—

(A) subsoil or seabed samples are not merchandise for purposes of section 55102 of title 46, United States Code; or

(B) taking subsoil or seabed samples from the seabed is not considered an installation or other device for purposes of section 4(a)(1) of the Outer Continental Shelf Lands Act (43 U.S.C. 1333(a)(1)).

(2) REVOCATION OR MODIFICATION OF CERTAIN RULING LETTERS.—

(A) IN GENERAL.—The Secretary shall revoke or modify, as appropriate, any ruling letters that apply an incorrect determination described in paragraph (1), including the following headquarters ruling letters:

(i) HQ H317289 (March 25, 2021).

(ii) HQ 115799 (September 30, 2002).

(iii) HQ 116602 (January 30, 2006).

(iv) HQ 108442 (August 13, 1986).

(B) SUBSTANTIALLY IDENTICAL TRANSACTIONS.—The Secretary shall revoke or modify, as appropriate, any treatments, including ruling letters, accorded by the Secretary to transactions that are substantially identical to the transactions described in the ruling letters listed in subparagraph (A).

(g) PRISTINE SEABED.—

(1) IN GENERAL.—In enforcing chapter 551 of title 46, United States Code, the Secretary may not determine that such chapter does not apply to—

(A) the pristine seabed of the outer Continental Shelf; or

(B) articles or devices, including seismic nodes or rock, aggregate, or other scour protection materials, either temporarily or permanently placed onto or embedded into the seabed on the outer Continental Shelf.

(2) ATTACHED ARTICLES.—In enforcing chapter 551 of title 46, United States Code, the Secretary shall determine that any articles or devices described in paragraph (1)(B) that are attached to the seabed are merchandise for the purposes of section 55102 of such title.

(3) REVOCATION OF CERTAIN RULING LETTERS.—The Secretary shall revoke or modify, as appropriate, any ruling letters that apply an incorrect determination described in paragraph (1), including the following headquarters ruling letters:

(A) HQ H317289 (March 25, 2021).

(B) HQ 115799 (September 30, 2002).

(4) REINSTATEMENT OF RULING LETTER.—Upon revoking and modifying the agency actions under paragraph (3), the Secretary shall reinstate headquarters ruling letter HQ H309186 (January 27, 2021).

SEC. 6. PETITIONS BY DOMESTIC INTERESTED PARTIES.

(a) IN GENERAL.—Chapter 551 of title 46, United States Code, is amended by adding at the end the following:

"§ 55124. Petitions by domestic interested parties

''(a) REQUEST FOR INTERPRETIVE RULING.—The Secretary of Homeland Security shall, upon written request by an interested party, furnish, within 60 days, an interpretive ruling regarding a non-coastwise qualified vessel's activities and compliance with Federal laws in the internal waters of the United States, the territorial sea, and the waters of the outer Continental Shelf, including the vessel's compliance with this chapter and section

50503. If the interested party believes that the conclusion of such interpretive ruling, or any other interpretive ruling regarding the interpretation, application, or enforcement of the coastwise laws, is incorrect, such party may file a petition with the Secretary setting forth the following:

"(1) Such party's understanding of the factual scenario.

"(2) The outcome of the decision that such party believes to be proper in the provided factual scenario and the reasons supporting such party's belief.

"(b) DETERMINATION ON PETITION.—If, after receipt and consideration of a petition filed by such an interested party, the Secretary determines that the conclusion reached in the contested letter is not correct, the Secretary shall determine the proper outcome and notify the petitioner of the Secretary's determination within 60 days.

"(c) CONTEST BY PETITIONER.—If the Secretary determines that the contested interpretive ruling filed pursuant to subsection (a) is correct, the Secretary shall notify the petitioner within 30 days. If dissatisfied with the determination of the Secretary, the petitioner may file with the Secretary, not later than 30 days after the date of the notification, notice that it desires to contest the ruling. Upon receipt of notice from the petitioner, the Secretary

shall cause publication to be made within 7 days of the Secretary's determination as presented in the ruling letter.

"(d) REVIEW OF INTERPRETIVE RULING.—Not later than 90 days after the petitioner files the notice of a desire to contest a ruling under subparagraph (c), any interested party may commence an action in any district court of the United States, subject to the venue requirements of section 1391 of title 28, by filing concurrently a summons and complaint, each with the content and in the form, manner, and style prescribed by the rules of such court, contesting any legal conclusions of the Secretary.

"(e) RULEMAKING.—Not later than 60 days after the date of enactment of this section, the Secretary shall issue such regulations as are necessary to implement this section.

"(f) DEFINITIONS.—In this section:

"(1) COASTWISE QUALIFIED VESSEL.—The term 'coastwise qualified vessel' has the meaning given such term in section 55108(a).

"(2) INTERESTED PARTY.—The term 'interested party' means—

"(A) the owner or operator of a vessel engaged in coastwise trade;

"(B) a manufacturer of coastwise qualified vessels;

"(C) a certified union, recognized union, or group of workers or mariners which is representative of an industry engaged or employed in—

"(i) the coastwise trade; or

"(ii) construction of coastwise qualified vessels;

"(D) a trade or business association of which the majority of members are—

"(i) owners or operators of vessels engaged in coastwise trade; or

"(ii) manufacturers of coastwise qualified vessels; or

"(E) an association of which the majority of members are persons described in paragraphs (1) through (4).".

(b) RULEMAKING.—Not later than 60 days after the date of enactment of this Act, the Secretary shall issue such regulations as are necessary to implement the amendments made by subsection (a).

(c) CLERICAL AMENDMENT.—The analysis for chapter 551 of title 46, United States Code, is amended by adding at the end the following:

"55124. Petitions by domestic interested parties.".

SEC. 7. CONGRESSIONAL REVIEW ACT APPLICABILITY.

(a) IN GENERAL.—Notwithstanding section 804(3)(A) of title 5, United States Code, for purposes of the application of chapter 8 of such title to a covered ruling letter, the term ''rule'' shall be read to include such a covered ruling letter.

(b) DEFINITION.—In this subsection, the term ''covered ruling letter'' means a ruling letter issued after the date of enactment of this Act.

SEC. 8. NOTIFICATION.

(a) ADVANCE NOTIFICATION REQUIRED.—Prior to engaging in any activity or operations on the outer Continental Shelf, the operator of a foreign vessel used in such activity or operations shall file with the Secretary a notification describing all activities and operations to be performed on the outer Continental Shelf and an identification of applicable ruling letters issued by the Secretary that have approved the use of a foreign vessel in a substantially similar activity or operation.

(b) PUBLICATION OF NOTICES.—

(1) PUBLICATION.—The Secretary shall publish a notification under subsection (a) in the Customs Bulletin and Decisions within 14 days of receipt of such notification.

(2) CONFIDENTIAL INFORMATION.—The Secretary shall redact any information exempt from dis-

closure under section 552 of title 5, United States Code, in a notification published under paragraph (1).

SEC. 9. PUBLICATION OF FINES AND PENALTIES.

(a) IN GENERAL.—Section 55102 of title 46, United States Code, is amended by adding at the end the following:

''(d) PUBLICATION OF PENALTY.—

''(1) IN GENERAL.—Not later than 14 days after the issuance of a pre-penalty notice or a penalty, including a settlement, under subsection (c), the Secretary of Homeland Security shall publish such pre-penalty notice or a notification of such penalty in the Customs Bulletin and Decisions to the party impacted by the penalty.

''(2) CONTENTS.—A pre-penalty notice or penalty notification published under paragraph (1) shall include—

''(A) the name and the International Maritime Organization identification number of the vessel that is the subject of the penalty;

''(B) the name of the owner of the vessel that is the subject of the penalty;

''(C) the amount of the fine or value of merchandise seized; and

"(D) a summary of the alleged misconduct and justification for imposing a penalty.".

(b) RULEMAKING.—Not later than 90 days after the date of enactment of this Act, the Secretary shall issue such regulations as are necessary to implement the amendments made by subsection (a), including—

(1) regulations regarding the information to be contained in a penalty notification under section 55102(d) of title 46, United States Code (as amended by such subsection); and

(2) any changes to existing regulations relating to penalties issued by the Secretary.

SEC. 10. PREVAILING WAGE REQUIREMENT.

(a) IN GENERAL.—Chapter 81 of title 46, United States Code, is amended by adding at the end the following:

"§ 8108. Prevailing wage requirement

"(a) IN GENERAL.—The Secretary shall require the owner or operator of a covered facility to provide each individual who is manning or crewing the covered facility a prevailing wage (as such term is defined in section 3141 of title 40) as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40 (commonly referred to as the Davis-Bacon Act).

''(b) REVIEW OF COMPLIANCE.—The Secretary shall periodically, but not less than once annually, inspect each covered facility to verify that the owner or operator of such covered facility is in compliance with this section.

''(c) PENALTY.—The Secretary may impose on the owner or operator of a covered facility a civil penalty of $10,000 per day for each day the owner or operator is not in compliance with this section.

''(d) DEFINITION OF COVERED FACILITY.—In this section, the term 'covered facility' means any vessel, rig, platform, or other vehicle or structure, over 50 percent of which is owned by citizens of a foreign nation or with respect to which the citizens of a foreign nation have the right effectively to control and operates under section 302(a)(3) of the Outer Continental Shelf Lands Act (43 U.S.C. 1356(a)(3)).''.

(b) RULEMAKING.—Not later than 90 days after the date of the enactment of this Act, the Secretary shall, in consultation with the Secretary of Labor, promulgate regulations that specify the prevailing wage requirements under section 8108 of title 46, United States Code, as added by this section.

(c) EXISTING EXEMPTIONS.—

(1) EFFECT OF AMENDMENTS; TERMINATION.—Each exemption under section 30(c)(2) of

the Outer Continental Shelf Lands Act (43 U.S.C. 1356(c)(2)) issued before the date of the enactment of this Act—

(A) shall not be affected by the amendments made by this section during the 120-day period beginning on the date of the enactment of this Act; and

(B) shall not be effective after such period.

(2) NOTIFICATION TO HOLDERS.—Not later than 60 days after the date of the enactment of this Act, the Secretary shall notify all persons that hold an exemption described in paragraph (1) that such exemption will expire as provided in paragraph (1).

(d) RULE OF CONSTRUCTION.—The prevailing wage requirements under section 8108 of title 46, United States Code, as added by this section, shall not be construed to apply to collective bargaining agreements at ports, marine terminals, or similar facilities that are in effect as of the date of enactment of this Act.

(e) CLERICAL AMENDMENT.—The analysis for chapter 81 of title 46, United States Code, is amended by adding at the end the following:

''8108. Prevailing wage requirement.''.

SEC. 11. RULEMAKING ON GARAMENDI AMENDMENT.

Not later than 90 days after the date of enactment of this Act, the Commandant of the Coast Guard shall

issue such regulations as are necessary to implement the amendments to section 4(a)(1) of the Outer Continental Shelf Lands Act (43 U.S.C. 1333(a)(1)) made by section 9503 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Public Law 116–283).

SEC. 12. RULES OF CONSTRUCTION.

(a) OUTER CONTINENTAL SHELF LANDS ACT.—Nothing in this Act may be construed to nullify or supersede any other provision of law relating to the outer Continental Shelf (as such term is defined in section 2 of the Outer Continental Shelf Lands Act (43 U.S.C. 1331)).

(b) RULING LETTERS.—Nothing in this Act may be construed as congressional validation of a ruling letter, interpretative guidance, doctrine, or other action relating to the enforcement of chapters 121 and 551 of title 46, United States Code (commonly referred to as the ''Jones Act'') issued by the Secretary.

SEC. 13. DEFINITIONS.

In this Act:

(1) LIFTING OPERATIONS.—The term ''lifting operations'' means self-propelled movements by a vessel when using a crane, or other similar equipment, to install or remove merchandise on or from offshore facilities or subsea infrastructure.

(2) MERCHANDISE.—The term ''merchandise'' has the meaning given such term in section 55102(a) of title 46, United States Code.

(3) OCEANOGRAPHIC RESEARCH VESSEL.—The term ''oceanographic research vessel'' has the meaning given such term in section 2101 of title 46, United States Code.

(4) OUTER CONTINENTAL SHELF.—The term ''outer Continental Shelf'' has the meaning given such term in section 2 of the Outer Continental Shelf Lands Act (43 U.S.C. 1331).

(5) RULING LETTER.—The term ''ruling letter'' means any ruling letter or headquarters ruling letter relating to the enforcement of chapters 121 and 551 of title 46, United States Code (commonly referred to as the ''Jones Act''), issued by the Commissioner of U.S. Customs and Border Protection pursuant to sections 502(a) or 625 of the Tariff Act of 1930 (19 U.S.C. 1502(a) and 1625).

(6) SECRETARY.—The term ''Secretary'' means the Secretary of Homeland Security, acting through the Commissioner of U.S. Customs and Border Protection.

○

EXHIBIT 149

Asia Shipyards

Japan's parliament passes package of shipbuilding measures

Sam Chambers • May 14, 2021 3,752 1 minute read

The Diet, Japan's parliament, today passed a number of bills aimed at enhancing the competitiveness of local shipbuilders against rivals in China and South Korea.

Under the revised laws, shipbuilders can get tax breaks, subsidies and low interest loans if the ministrry of land, infrastructure, transport and tourism approves their business plans, such as those featuring restructuring measures or investment plans aimed at improving productivity.

The government will also offer financial assistance to local shipping companies that order ships built by firms with government approved business plans.

Japanese yards, hit hard by cheaper neighbouring countries, have embarked on another big round of mergers in a bid to drive economies of scale.

Japan was the largest shipbuilding nation at the start of the century but has seen its position eroded by China and South Korea over the last 20 years. Many yards in Japan are now at risk of closure.

"China and South Korea are gaining market share at Japan's expense, but all three regions are struggling to secure enough new orders to utilise their yard capacity," a report from Danish Ship Finance issued this week stated.

Two-thirds of the global orderbook is scheduled to be delivered before year-end 2022.

The front-loaded nature of the orderbook is most severe in Japan, where 95% of the orderbook is scheduled to be delivered in the period, compared with 73% in China and 60% in South Korea, according to Danish Ship Finance.

#Japan

EXHIBIT 150

South Korea Takes Steps to Support Shipbuilding Amidst Labor Shortage

Korea's shipbuilders are under pressure due to rising costs and labor shortages (file photo)

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The South Korean government has outlined a series of new steps it plans to take to further support the shipbuilding industry and maintain its competitive position. While the industry has reported strong growth in new orders, it is also facing new price pressures and rising costs as well as a mounting labor shortage.

South Korea's shipbuilding industry has been locked in tight competition with Chinese shipbuilders for leadership in new orders. Worldwide, ship orders last year were the highest since 2013 at 52.3 million compensated gross tons (CGT) helping the major Korean yards to all report that they exceeded their yearly targets for orders. In the first seven months of this year, Korean shipbuilders booked a further 11 million tons, a 46 percent increase over last year.

For much of 2022, the South Koreans have been maintaining a small lead over their Chinese competitors in large part due to the growth in orders for LNG carriers. The Chinese however have been working to build participation in the gas carrier segment as well as develop new technologies. The South Koreans have also found themselves facing rising costs primarily for steel and now reports of a growing steel shortage both of which have combined to impact the profitability of the shipyards.

Seeking to maintain its advantage in what it sees as high-value shipbuilding, the South Korean government announced a series of new steps to address the pressures on the shipbuilding industry. The government expressed concerns over the "intense belt-tightening moves," by countries around the world in the face of rising inflation and concerns for a recession. In response, the finance ministry said the government will invest approximately $100 million in 2023 to help the industry develop new technologies. The focus remains on eco-friendly ships and automation technology with the government setting a target for 75 percent market share for these ships by 2030. Also seeking to build on the expertise in gas carriers, the government set a goal of diversifying the orders to win floating storage (FSRU) business.

One of the industry's key concerns is a growing shortage of workers along with the aging of the workforce. The labor ministry for example reports that the percentage of workers in their 20s and 30s in the shipbuilding industry has fallen in just over five years from half to approximately a third of the workforce. Workers in their 60s doubled in the same period to more than six percent of the workforce.

The shipbuilding industry currently estimates a shortage of 7,500 workers to meet their current orderbooks. By the second quarter of next year, it expects the shortage of workers to exceed 10,000.

The government cites low wages as one of the key factors contributing to the shortage of workers as well as the strong competition from other industries. They further cite concerns over the growing use of subcontractors in the shipbuilding industry, who the government says only earn 50 to 70 percent of the wages of other shipyard workers. The issues of wages and working conditions lead to a prolonged strike starting in June 2022 at Daewoo Shipbuilding & Marine Engineering by the subcontractors that further stressed the financial condition of the company.

The finance ministry announced that it will "improve unfair agreements between contractors and subcontractors and revamp the existing wage system to take duties and skills into consideration." The government wants to reduce the industry's use of subcontractors by addressing the current labor shortage.

In response to pressure from the shipbuilding industry, the government said it is taking steps to make it easier to recruit and retain foreign workers and improve the working conditions to attract young Koreans to shipbuilding. The government is increasing the availability of visas and also making it possible for foreign workers to bring their families to Korea. They are also supporting new training programs and increasing the subsidy for vocational training to attract more Koreans to shipbuilding.

The goal is to meet the current order demands while also helping the industry transition to new "smart yard" technology to address the labor shortage and efficiency of the shipbuilders.

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