

Calendar No. 293

105TH CONGRESS }
1st Session }

SENATE

{ REPORT
105-154

OECD SHIPBUILDING TRADE AGREEMENT

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 1216



NOVEMBER 10, 1997.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED FIFTH CONGRESS

FIRST SESSION

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NOVEMBER 10, 1997.—Ordered to be printed

Mr. MCCAIN, from the Committee on Commerce, Science, and
Transportation, submitted the following

REPORT

[To accompany S. 1216]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 1216) “A Bill to approve and implement the OECD Shipbuilding Trade Agreement”, having considered the same, reports favorably thereon with amendments and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

S. 1216, as reported, would approve and implement the Agreement Respecting Normal Competitive Conditions in the Commercial Shipbuilding and Repair Industry (hereinafter referred to as the “Shipbuilding Agreement”). The Shipbuilding Agreement resulted from negotiations conducted under the auspices of the Organization for Economic Cooperation and Development (OECD).

BACKGROUND AND NEEDS

In December, 1994, after five years of negotiations under the auspices of the OECD, the Shipbuilding Agreement was signed by the United States, the European Community (on behalf of the twelve European member countries), Norway, South Korea, and Japan. Negotiations leading to this agreement were initiated by the United States following complaints by United States shipbuilding companies that foreign shipbuilders had been engaging in unfair competitive practices.

The Shipbuilding Agreement was scheduled to enter into force January 1, 1996. However, because the Shipbuilding Agreement had not been ratified by the United States and Japan by that date,

the signatory countries agreed to extend the ratification deadline until June 15, 1996. On June 14, 1996, representatives of Japan deposited that country's instrument of ratification with the OECD Secretariat.

LEGISLATIVE HISTORY

In the Senate, Senator Breaux introduced S. 1354 on October 23, 1995. S. 1354 reflected the Administration's proposed implementation legislation. On May 8, 1996, the Finance Committee reported H.R. 3074, which contained legislation to implement the Shipbuilding Agreement. On December 11, 1997, a companion bill to S. 1354, H.R. 2754, was introduced in the House of Representatives by Representative Crane. On June 13, 1996, the House of Representatives adopted H.R. 2754 with an amendment offered during floor debate by Representative Bateman. No further action was taken on Shipbuilding Agreement implementing legislation during the 104th Congress, and efforts to approve implementing legislation resumed in the 105th Congress.

On April 22, 1997, Senator Breaux introduced S. 629, which was referred to the Commerce Committee. S. 629 included several changes to the Administration's legislation proposal in an attempt to address the concerns reflected by Mr. Bateman's amendment to H.R. 2754 the previous year in a manner consistent with the Shipbuilding Agreement. On April 30, 1997, the Commerce Committee held a hearing on international trade issues, including the Shipbuilding Agreement. On June 11, 1997, the Commerce Committee held a hearing specifically on the Shipbuilding Agreement. During these hearings, testimony was heard from supporters and opponents of the Shipbuilding Agreement.

On September 11, 1997, the Finance Committee adopted an original bill, which was designated as S. 1216 upon the filing of the Finance Committee report (Senate Report 105-84) on September 24, 1997. On September 22, 1997, the Chairmen and ranking members of the Finance and Commerce Committees agreed that S. 1216 should be sequentially referred to the Commerce Committee for a period not to exceed 10 days to enable the Commerce Committee to consider those sections of the bill under the jurisdiction of the Commerce Committee. On September 26, 1997, the Chairmen and ranking members of the Commerce Committee and the Finance Committee agreed that S. 629 should be discharged from the Commerce Committee and referred to the Finance Committee. S. 629 was referred to the Finance Committee on November 9, 1997.

On November 4, 1997, the Committee considered S. 1216 and agreed that, when and if S. 1216 was referred to the Committee, it be reported as considered by the Committee. The Committee also adopted amendments offered by Senators Lott and Breaux that amended sections 115, 117, 120, and 121 of S. 1216. S. 1216 was referred to the Committee on November 9, 1997, and, pursuant to the Committee's action on November 4, the amended bill was ordered reported by the Committee.

SUMMARY OF MAJOR PROVISIONS

For a summary of the major provisions, see Senate Report 105-84.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the budgetary impact of S. 1216 is discussed in Senate Report 105-84.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the regulatory impact of S. 1216 is discussed in Senate Report 105-84.

SECTION-BY-SECTION ANALYSIS

The bill consists of two titles. Title I of the bill consists of three subtitles. Senate Report 105-84 provides the section-by-section analysis of Subtitle A of Title I of the bill; sections 111, 112, 113, 116, 118, 119, certain definitions within section 121, and 122 of Subtitle B of Title I of the bill; Subtitle C of Title I of the bill; and Title II of the bill. This report provides the section-by-section analysis of sections 114, 115, 117, 120, and certain definitions within section 121 of Subtitle B of Title I of the bill.

Section 114. Amendments to the Merchant Marine Act, 1936.

Section 114 makes several changes to the Merchant Marine Act, 1936 (the 1936 Act). The 1936 Act includes tax and subsidy programs that provide benefits limited to vessels constructed in the United States. These programs are: (1) construction reserve funds (CRF); (2) operating differential subsidies (ODS); and (3) capital construction funds (CCF). In addition, under the 1936 Act, vessels built or rebuilt outside the United States must wait three years after being documented as a U.S. vessel before being permitted to carry government-impelled cargoes under certain cargo preference provisions.

In addition, Title XI of the 1936 Act authorizes the Secretary of Transportation to provide a U.S. government guarantee for certain types of financing for the construction, reconstruction, or reconditioning of U.S.-built vessels. Loan guarantees may apply to financing of up to 87.5 percent of the vessel cost (with up to a 25 year loan repayment period), at an interest rate determined by the Secretary to be reasonable.

Section 114 would amend the 1936 Act to provide the same treatment under the CRF, ODS, and CCF programs as is currently accorded U.S.-built vessels for vessels covered by the Shipbuilding Agreement that are constructed in Shipbuilding Agreement signatory countries and documented in the United States. The changes to the CRF and CCF would apply only with respect to monies deposited on or after the date on which the Shipbuilding Agreement enters into force with respect to the United States. Section 114 would also eliminate the general requirement that vessels enrolled in the ODS program be built and repaired in a United States ship-

yard. The provision of parity for Shipbuilding Agreement signatory country shipyards in this section should in no way be considered as authorization for the Department of Transportation to continue the ODS program beyond its current expiration date. A new, more cost-effective Maritime Security Program was enacted in 1996 to replace the expiring ODS program. The changes to the cargo preference provision would apply to vessels built, or rebuilt, in a Shipbuilding Agreement signatory country on or after the date on which the Shipbuilding Agreement enters into force with respect to the United States. In all cases concerning the CRF, ODS, CCF, and cargo preference programs, the requirement that the vessels be documented in the United States remains.

Section 114 also provides that, with respect to vessels covered by the Shipbuilding Agreement and the related OECD Understanding on Export Credits for Ships (the "Export Credit Understanding"), and integrated tug-barges, the Secretary of Transportation shall extend loan guarantees under the 1936 Act Title XI program on terms consistent with the Shipbuilding Agreement and the Export Credit Understanding. Among other things, the Shipbuilding Agreement and the Export Credit Understanding limit guaranteed financing to 80 percent of the vessel's cost (with a repayment period of not more than 12 years) and provide, with certain exceptions in the first two years, that the interest rate not be lower than the Commercial Interest Reference Rate (CIRR) of the currency of credit.

Section 115. Applicability of title XI amendments.

Section 115(a) provides that, notwithstanding any provision of the Shipbuilding Agreement or the Export Credit Understanding, the amendments made under section 114 of the OECD Shipbuilding Trade Agreement Act to Title XI of the 1936 Act shall not apply to any commitment made before January 1, 2001, to provide a government loan guarantee under the Title XI program with respect to a vessel (1) delivered before January 1, 2004, or (2) in unusual circumstances, vessels delivered as soon after December 31, 2003, as is practicable. Section 115 defines unusual circumstances as an act of God (other than ordinary storms or inclement weather conditions), labor strikes, acts of sabotage, explosions, fires, or vandalism, and similar circumstances beyond the control of the parties concerned, which prevent delivery of a vessel before January 1, 2004. The bill, as it was referred to the Committee, originally applied the Title XI amendments to loan guarantee commitments made on or after January 1, 2000, and with respect to vessels delivered on or after January 1, 2003. The Lott-Breaux amendments adopted by the Committee amended these effective dates by delaying them for an additional year.

The delay in the implementation date for the changes to Title XI of the 1936 Act, is critical to the ability of those shipyards which were formerly building exclusively naval vessels for the last 20 years to transition to building a combination of naval and commercial vessels. If the provisions of the existing Title XI loan guarantee program were to be reduced abruptly, some U.S. shipyards that had been dependent on defense business could lose their ability to remain viable commercial concerns. In light of the numerous exceptions and exemptions granted to foreign shipyards under the OECD

Agreement and the so-called standstill agreement, the Committee believes the modest exception made by section 115 is reasonable and appropriate.

Section 115(b) also clarifies that the changes made in section 114 shall not prevent the Secretary of Transportation from employing Title XI of the 1936 Act in a manner consistent with clause 8 and Annex II of the Export Credit Understanding, to assist U.S. shipyards in meeting unfair competition by shipyards in countries that are not Shipbuilding Agreement parties.

Section 117. Jones Act and related laws not affected.

Section 117(a) provides that nothing in the Shipbuilding Agreement shall be construed to amend, alter, or modify in any manner the Merchant Marine Act, 1920 (46 App. U.S.C. 861 et seq.), the Act of June 19, 1886 (46 App. U.S.C. 289), or any other provision of law set forth in Accompanying Note 2 to Annex II of the Shipbuilding Agreement (referred to collectively as the coastwise trade laws of the United States). Furthermore, nothing in the Shipbuilding Agreement shall undermine the operation or administration of the coastwise trade laws of the United States or impede their objectives.

Section 117(b) provides that nothing in the Shipbuilding Agreement shall be construed to provide any mechanism for withdrawal of concessions under GATT 1994 any World Trade Organization (WTO) agreement by another Shipbuilding Agreement party because of construction of vessels by U.S. shipbuilders for operation in the U.S. coastwise trade. The bill, as referred to the Committee, originally covered only concessions under GATT 1994. The Lott-Breaux amendments adopted by the Committee amended this section to also include any WTO agreement.

Section 117(c) provides for an annual review of the Shipbuilding Agreement as part of the annual review of all trade agreements conducted by the United States Trade Representative (USTR). This review shall assess the impact, if any, of the Shipbuilding Agreement on the operation or implementation of the coastwise trade laws of the United States. In making this assessment, the USTR shall consult with the Secretary of Transportation, the Secretary of Defense, U.S. industry, labor groups, and other interested parties. The USTR shall report the results of the review to the President, the Senate Committees on Commerce, Science, and Transportation and Finance, and the House Committees on National Security and Ways and Means.

Section 120. Protection of United States security interests.

Section 120 provides that nothing in the Shipbuilding Agreement shall be construed to prevent the United States from taking any action which it considers necessary for the protection of its essential security interest, including invoking its sovereign authority to define, for the purposes of excluding from coverage under the Shipbuilding Agreement, "military vessels", "military reserve vessels", or "essential security interest" on a case-by-case basis, as determined by the Secretary of Defense. The Committee believes it necessary and appropriate that U.S. sovereign authority to set its security requirements should not be eliminated through trade-related actions by other countries.

The bill, as referred to the Committee, originally required the President to determine whether it is necessary for the protection of the United States' essential security interest to exclude military vessels and military reserve vessels from coverage under the Shipbuilding Agreement. It also authorized the Secretary of Defense, after this determination was made by the President, to designate the vessels to be excluded. The Lott-Breaux amendments adopted by the Committee amended this section to provide the Secretary of Defense with the authority to determine the military vessels and military reserve vessels to be excluded and the essential security interest of the United States that triggers these exclusions.

Section 121. Definitions.

Section 121 defines several terms used in subtitle B of the OECD Shipbuilding Trade Agreement Act. The terms "military vessel" and "military reserve vessel", as used in new section 861 of the Tariff Act of 1930, as added by section 102 of the OECD Shipbuilding Trade Agreement Act, are identical in meaning to those same terms that would be defined in this subtitle.

The term "a committee of either House to which a joint resolution has been referred" means the Senate Committees on Commerce, Science, and Transportation and Finance, and the House Committees on National Security and Ways and Means.

The term "military vessel" means a vessel, that according to its basic structural characteristics and ability, is intended to be used exclusively for military purposes. The Committee intends that any self-propelled seagoing vessel of 100 gross tons or more and any tug of 365 kilowatts or more that is owned by one of the United States Armed Forces for the purposes of executing one or more missions of that Armed Force should be designated as a military vessel and excluded from actions taken under the Shipbuilding Agreement (smaller self-propelled vessels, less powerful tugs, and non self-propelled vessels are already excluded from coverage under the Shipbuilding Agreement).

The term "military reserve vessel" means a vessel, other than a military vessel, that has been constructed with national defense features and characteristics required by the Secretary of Defense for the purpose of supporting the United States Armed Forces in a contingency, if the vessel (without regard to such features and characteristics) is otherwise subject to the terms and conditions of the Shipbuilding Agreement. The term "military reserve vessel" clarifies that national defense features and characteristics required for sealift, or other purposes, by the Secretary of Defense and included in privately owned vessels are excluded from coverage under the Shipbuilding Agreement. The construction of the remainder of the vessel is subject to the Shipbuilding Agreement.

The bill, as referred to the Committee, originally did not include a definition of the term "a committee of either House to which a joint resolution has been referred." The Lott-Breaux amendments adopted by the Committee amended this section to include that definition.

VOTES IN COMMITTEE

ROLLCALL VOTES IN COMMITTEE

In accordance with paragraph 7(c) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following description of the record votes during its consideration of S. 1216:

Senator Lott offered amendments (for himself and Mr. Breaux). By rollcall vote of 14 yeas and 6 nays as follows, the amendments were agreed to:

YEAS—14—	NAYS—6
Mr. McCain	Ms. Snowe
Mr. Stevens	Mr. Hollings
Mr. Burns—	Mr. Inouye
Mr. Gorton—	Mr. Ford ¹
Mr. Lott ¹ –	Mr. Dorgan
Mrs. Hutchison—	Mr. Wyden
Mr. Ashcroft—	
Mr. Frist ¹ —	
Mr. Abraham	
Mr. Brownback	
Mr. Rockefeller	
Mr. Kerry ¹	
Mr. Breaux	
Mr. Bryan ¹	

¹By proxy

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, Senate Report 105-84 discusses the changes in existing law that would result from the bill.