[H.N.S.C. No. 104–52]

HEARING ON HR 2754, LEGISLATION TO IMPLEMENT THE OECD SHIPBUILDING TRADE AGREEMENT AND RELATED ISSUES

BEFORE THE

SPECIAL OVERSIGHT PANEL ON THE MERCHANT MARINE

OF THE

COMMITTEE ON NATIONAL SECURITY
HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

SECOND SESSION

HEARING HELD
MAY 22, 1996

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104TH CONGRESS
1ST SESSION

H. R. 2754

To approve and implement the OECD Shipbuilding Trade Agreement.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 11, 1995

MR. CRANE (for himself, Mr. GIBBONS, and Ms. DUNN of Washington) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on National Security, 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 approve and implement the OECD Shipbuilding Trade Agreement.

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 "Shipbuilding Trade Agreement Act".

SEC. 2. APPROVAL OF THE SHIPBUILDING AGREEMENT.

The Congress approves The Agreement Respecting Normal Competitive Conditions in the Commercial Shipbuilding and Repair Industry (hereafter in this Act referred to as the "Shipbuilding Agreement"), a reciprocal trade agreement which resulted from negotiations under the auspices of the Organization for Economic Cooperation and Development, and was entered into on December 21, 1994.

SEC. 3. EFFECTIVE DATE.

This Act and the amendments made by this Act take effect on the date that the Shipbuilding Agreement enters into force with respect to the United States.

TITLE I—INJURIOUS PRICING AND COUNTERMEASURES

SEC. 101. INJURIOUS PRICING AND COUNTERMEASURES PROCEEDINGS.

The Tariff Act of 1930 is amended by adding at the end the following new title:

"TITLE VIII—INJURIOUS PRICING AND COUNTERMEASURES RELATING TO SHIPBUILDING

"Subtitle A—Injurious Pricing Charge and Countermeasures

"Subtitle A—Injurious Pricing Charge and Countermeasures

"SEC. 801. INJURIOUS PRICING CHARGE.

"(a) BASIS FOR CHARGE.—If—

"(1) the administering authority determines that a foreign vessel has been sold directly or indirectly to one or more United States buyers at less than its fair value, and

"(2) the Commission determines that—

"(A) an industry in the United States—

"(i) is or has been materially injured, or

"(ii) is threatened with material injury, or

"(B) the establishment of an industry in the United States is or has been materially retarded,

by reason of the sale of such vessel, then there shall be imposed upon the foreign producer of the subject vessel an injurious pricing charge, in an amount equal to the amount by which the normal value exceeds the export price for the vessel. For purposes of this subsection and section 805(b)(1), a reference to the sale of a foreign vessel includes the creation or transfer of an ownership interest in the vessel, except for an ownership interest created or acquired solely for the purpose of providing security for a normal commercial loan.

"(b) FOREIGN VESSELS NOT MERCHANDISE.—No foreign vessel may be considered to be, or to be part of, a class or kind of merchandise for purposes of subtitle B of title VII.

"SEC. 802. PROCEDURES FOR INITIATING AN INJURIOUS PRICING INVESTIGATION.

"(a) INITIATION BY ADMINISTERING AUTHORITY.—

"(1) GENERAL RULE.—Except in the case in which subsection (d)(6) applies, an injurious pricing investigation shall be initiated whenever the administering authority determines, from information available to it, that a formal investigation is warranted into the question of whether the elements necessary for the imposition of a charge under section 801(a) exist, and whether a producer described in section 861(17)(C) would meet the criteria of subsection (b)(1)(B) for a petitioner.

"(2) TIME FOR INITIATION BY ADMINISTERING AUTHORITY.—An investigation may only be initiated under paragraph (1) within 6 months after the time the administering authority first knew or should have known of the sale of the vessel. Any period in which subsection (d)(6)(A) applies shall not be included in calculating that 6-month period.

"(b) INITIATION BY PETITION.—

"(1) PETITION REQUIREMENTS.—(A) Except in a case in which subsection (d)(6) applies, an injurious pricing proceeding shall be initiated whenever an interested party, as defined in subparagraph (C), (D), (E), or (F) of section 861(17), files a petition with the administering authority, on behalf of an industry, which alleges the elements necessary for the imposition of an injurious pricing charge under section 801(a) and the elements required under subparagraph (B), (C), (D), or (E) of this paragraph, and which is accompanied by information reason-

ably available to the petitioner supporting those allegations and identifying the transaction concerned.

"(B)(i) If the petitioner is a producer described in section 861(17)(C), and—

"(I) if the vessel was sold through a broad multiple bid, the petition shall include information indicating that the petitioner was invited to tender a bid on the contract at issue, the petitioner actually did so, and the bid of the petitioner substantially met the delivery date and technical requirements of the bid,

"(II) if the vessel was sold through any bidding process other than a broad multiple bid and the petitioner was invited to tender a bid on the contract at issue, the petition shall include information indicating that the petitioner actually did so and the bid of the petitioner substantially met the delivery date and technical requirements of the bid, or

"(III) except in a case in which the vessel was sold through a broad multiple bid, if there is no invitation to tender a bid, the petition shall include information indicating that the petitioner was capable of building the vessel concerned and, if the petitioner knew or should have known of the proposed purchase, it made demonstrable efforts to conclude a sale with the United States buyer consistent with the delivery date and technical requirements of the buyer.

"(ii) For purposes of clause (i)(III), there is a rebuttable presumption that the petitioner knew or should have known of the proposed purchase if it is demonstrated that—

"(I) the majority of the producers in the industry have made efforts with the United States buyer to conclude a sale of the subject vessel, or

"(II) general information on the sale was available from brokers, financiers, classification societies, charterers, trade associations, or other entities normally involved in shipbuilding transactions with whom the petitioner had regular contacts or dealings.

"(C) If the petitioner is an interested party described in section 861(17)(D), the petition shall include information indicating that members of the union or group of workers described in that section are employed by a producer that meets the requirements of subparagraph (B) of this paragraph.

"(D) If the petitioner is an interested party described in section 861(17)(E), the petition shall include information indicating that a member of the association described in that section is a producer that meets the requirements of subparagraph (B) of this paragraph.

"(E) If the petitioner is an interested party described in section 861(17)(F), the petition shall include information indicating that a member of the association described in that section meets the requirements of subparagraph (C) or (D) of this paragraph.

"(F) The petition may be amended at such time, and upon such conditions, as the administering authority and the Commission may permit.

"(2) SIMULTANEOUS FILING WITH COMMISSION.—The petitioner shall file a copy of the petition with the Commission on the same day as it is filed with the administering authority.

"(3) DEADLINE FOR FILING PETITION.—

"(A) DEADLINE.—(i) A petitioner to which paragraph (1)(B) (i) or (ii) applies shall file the petition no later than the earlier of—

"(I) 6 months after the time that the petitioner first knew or should have known of the sale of the subject vessel, or

"(II) 6 months after delivery of the subject vessel.

"(ii) A petitioner to which paragraph (1)(B)(iii) applies shall—

"(I) file the petition no later than the earlier of 9 months after the time that the petitioner first knew or should have known of the sale of the subject vessel, or 6 months after delivery of the subject vessel, and

"(II) submit to the administering authority a notice of intent to file a petition no later than 6 months after the time that the petitioner first knew or should have known of the sale (unless the petition itself is filed within that 6-month period).

"(B) PRESUMPTION OF KNOWLEDGE.—For purposes of this paragraph, if the existence of the sale, together with general information concerning the vessel, is published in the international trade press, there is a rebuttable presumption that the petitioner knew or should have known of the sale of the vessel from the date of that publication.

"(c) ACTIONS BEFORE INITIATING INVESTIGATIONS.—

"(1) NOTIFICATION OF GOVERNMENTS.—Before initiating an investigation under either subsection (a) or (b), the administering authority shall notify the government of the exporting country of the investigation. In the case of the initiation of an investigation under subsection (b), such notification shall include a public version of the petition.

"(2) ACCEPTANCE OF COMMUNICATIONS.—The administering authority shall not accept any unsolicited oral or written communication from any person other than an interested party described in section 861(17)(C), (D), (E), or (F) before the administering authority makes its decision whether to initiate an investigation pursuant to a petition, except for inquiries regarding the status of the administering authority's consideration of the petition or a request for consultation by the government of the exporting country.

"(3) NONDISCLOSURE OF CERTAIN INFORMATION.—The administering authority and the Commission shall not disclose information with regard to any draft petition submitted for review and comment before it is filed under subsection (b)(1).

"(d) PETITION DETERMINATION.—

"(1) TIME FOR INITIAL DETERMINATION.—(A) Within 45 days after the date on which a petition is filed under subsection (b), the administering authority shall, after examining, on the basis of sources readily available to the administering authority, the accuracy and adequacy of the evidence provided in the petition, determine whether the petition—

"(i) alleges the elements necessary for the imposition of an injurious pricing charge under section 801(a) and the elements required under subsection (b)(1)(B), (C), (D), or (E), and contains information reasonably available to the petitioner supporting the allegations; and

"(ii) determine if the petition has been filed by or on behalf of the industry.

"(B) Any period in which paragraph (6)(A) applies shall not be included in calculating the 45-day period described in subparagraph (A).

"(2) AFFIRMATIVE DETERMINATIONS.—If the determinations under clauses (i) and (ii) of paragraph (1)(A) are affirmative, the administering authority shall initiate an investigation to determine whether the vessel was sold at less than fair value, unless paragraph (6) applies.

"(3) NEGATIVE DETERMINATIONS.—If—

"(A) the determination under clause (i) or (ii) of paragraph (1)(A) is negative, or

"(B) paragraph (6)(B) applies,

the administering authority shall dismiss the petition, terminate the proceeding, and notify the petitioner in writing of the reasons for the determination.

"(4) DETERMINATION OF INDUSTRY SUPPORT.—

"(A) GENERAL RULE.—For purposes of this subsection, the administering authority shall determine that the petition has been filed by or on behalf of the domestic industry, if—

"(i) the domestic producers or workers who support the petition collectively account for at least 25 percent of the total capacity of domestic producers capable of producing a like vessel, and

"(ii) the domestic producers or workers who support the petition collectively account for more than 50 percent of the total capacity to produce a like vessel of that portion of the domestic industry expressing support for or opposition to the petition.

"(B) CERTAIN POSITIONS DISREGARDED.—In determining industry support under subparagraph (A), the administering authority shall disregard the position of domestic producers who oppose the petition, if such producers are related to the foreign producer or United States buyer of the subject vessel, or the domestic producer is itself the United States buyer, unless such domestic producers demonstrate that their interests as domestic producers would be adversely affected by the imposition of an injurious pricing charge.

"(C) POLLING THE INDUSTRY.—If the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total capacity to produce a like vessel—

"(i) the administering authority shall poll the industry or rely on other information in order to determine if there is support for the petition as required by subparagraph (A), or

"(ii) if there is a large number of producers in the industry, the administering authority may determine industry support for the petition by using any statistically valid sampling method to poll the industry.

"(D) COMMENTS BY INTERESTED PARTIES.—Before the administering authority makes a determination with respect to initiating an investigation, any person who would qualify as an interested party under section 861(17) if an investigation were initiated, may submit comments or information on the issue of industry support. After the administering authority makes a determination with respect to initiating an investigation, the determination regarding industry support shall not be reconsidered.

"(5) DEFINITION OF DOMESTIC PRODUCERS OR WORKERS.—For purposes of this subsection, the term 'domestic producers or workers' means interested parties as defined in section 861(17)(C), (D), (E), or (F).

"(6) PROCEEDINGS BY WTO MEMBERS.—The administering authority shall not initiate an investigation under this section if, with respect to the vessel sale at issue, an antidumping proceeding conducted by a WTO member who is not a Shipbuilding Agreement Party—

"(A) has been initiated and has been pending for not more than one year, or

"(B) has been completed and resulted in the imposition of antidumping measures or a negative determination with respect to whether the sale was at less than fair value or with respect to injury.

"(e) NOTIFICATION TO COMMISSION OF DETERMINATION.—The administering authority shall—

"(1) notify the Commission immediately of any determination it makes under subsection (a) or (d), and

"(2) if the determination is affirmative, make available to the Commission such information as it may have relating to the matter under investigation, under such procedures as the administering authority and the Commission may establish to prevent disclosure, other than with the consent of the party providing it or under protective order, of any information to which confidential treatment has been given by the administering authority.

"SEC. 803. PRELIMINARY DETERMINATIONS.

"(a) DETERMINATION BY COMMISSION OF REASONABLE INDICATION OF INJURY.—

"(1) GENERAL RULE.—Except in the case of a petition dismissed by the administering authority under section 802(d)(3), the Commission, within the time specified in paragraph (2), shall determine, based on the information available to it at the time of the determination, whether there is a reasonable indication that—

"(A) an industry in the United States—

"(i) is or has been materially injured, or

"(ii) is threatened with material injury, or

"(B) the establishment of an industry in the United States is or has been materially retarded,

by reason of the sale of the subject vessel. If the Commission makes a negative determination under this paragraph, the investigation shall be terminated.

"(2) TIME FOR COMMISSION DETERMINATION.—The Commission shall make the determination described in paragraph (1) within 90 days after the date on which the petition is filed or, in the case of an investigation initiated under section 802(a), within 90 days after the date on which the Commission receives notice from the administering authority that the investigation has been initiated.

"(b) PRELIMINARY DETERMINATION BY ADMINISTERING AUTHORITY.—

"(1) PERIOD OF INJURIOUS PRICING INVESTIGATION.—(A) The administering authority shall make a determination, based upon the information available to it at the time of the determination, of whether there is a reasonable basis to believe or suspect that the subject vessel was sold at less than fair value.

"(B) If cost data is required to determine normal value on the basis of a sale of a foreign like vessel that has not been delivered on or before the date on which the administering authority initiates the investigation, the administering authority shall make its determination within 160 days after the date of delivery of the foreign like vessel.

"(C) If normal value is to be determined on the basis of constructed value, the administering authority shall make its determination within 160 days after the date of delivery of the subject vessel.

"(D) In cases in which subparagraph (B) or (C) does not apply, the administering authority shall make its determination within 160 days after the date on which the administering authority initiates the investigation under section 802.

"(E) In no event shall the administering authority make its determination before an affirmative determination is made by the Commission under subsection (a).

"(2) DE MINIMIS INJURIOUS PRICING MARGIN.—In making a determination under this subsection, the administering authority shall disregard any injurious pricing margin that is de minimis. For purposes of the preceding sentence, an injurious pricing margin is de minimis if the administering authority determines that the margin is less than 2 percent of the export price.

"(c) EXTENSION OF PERIOD IN EXTRAORDINARILY COMPLICATED CASES OR FOR GOOD CAUSE.—

"(1) IN GENERAL.—If—

"(A) the administering authority concludes that the parties concerned are cooperating and determines that—

"(i) the case is extraordinarily complicated by reason of—

"(I) the novelty of the issues presented, or

"(II) the nature and extent of the information required, and

"(ii) additional time is necessary to make the preliminary determination, or

"(B) a party to the investigation requests an extension and demonstrates good cause for the extension,

then the administering authority may postpone the time for making its preliminary determination.

"(2) LENGTH OF POSTPONEMENT.—The preliminary determination may be postponed under paragraph (1)(A) or (B) until not later than the 190th day after—

"(A) the date of delivery of the foreign like vessel, if subsection (b)(1)(B) applies,

"(B) the date of delivery of the subject vessel, if subsection (b)(1)(C) applies, or

"(C) the date on which the administering authority initiates an investigation under section 802, in a case in which subsection (b)(1)(D) applies.

"(3) NOTICE OF POSTPONEMENT.—The administering authority shall notify the parties to the investigation, not later than 20 days before the date on which the preliminary determination would otherwise be required under subsection (b)(1), if it intends to postpone making the preliminary determination under paragraph (1). The notification shall include an explanation of the reasons for the postponement, and notice of the postponement shall be published in the Federal Register.

"(d) EFFECT OF DETERMINATION BY THE ADMINISTERING AUTHORITY.—If the preliminary determination of the administering authority under subsection (b) is affirmative, the administering authority shall—

"(1) determine an estimated injurious pricing margin, and

"(2) make available to the Commission all information upon which its determination was based and which the Commission considers relevant to its injury determination, under such procedures as the administering authority and the Commission may establish to prevent disclosure, other than with the consent of the party providing it or under protective order, of any information to which confidential treatment has been given by the administering authority.

"(e) NOTICE OF DETERMINATION.—Whenever the Commission or the administering authority makes a determination under this section, the Commission or the administering authority, as the case may be, shall notify the petitioner, and other parties to the investigation, and the Commission or the administering authority (whichever is appropriate) of its determination. The administering authority shall include with such notification the facts and conclusions on which its determination is based. Not later than 5 days after the date on which the determination is required to be made under subsection (a)(2), the Commission shall transmit to the administering authority the facts and conclusions on which its determination is based.

"SEC. 804. TERMINATION OR SUSPENSION OF INVESTIGATION.

"(a) TERMINATION OF INVESTIGATION UPON WITHDRAWAL OF PETITION.—

"(1) IN GENERAL.—Except as provided in paragraph (2), an investigation under this subtitle may be terminated by either the administering authority or the Commission, after notice to all parties to the investigation, upon withdrawal of the petition by the petitioner.

"(2) LIMITATION ON TERMINATION BY COMMISSION.—The Commission may not terminate an investigation under paragraph (1) before a preliminary determination is made by the administering authority under section 803(b).

"(b) TERMINATION OF INVESTIGATIONS INITIATED BY ADMINISTERING AUTHORITY.—The administering authority may terminate any investigation initiated by the administering authority under section 802(a) after providing notice of such termination to all parties to the investigation.

"(c) ALTERNATE EQUIVALENT REMEDY.—The criteria set forth in subparagraphs (A) through (D) of section 806(e)(1) shall apply to any agreement that forms the basis for termination of an investigation under subsection (a) or (b).

"(d) PROCEEDINGS BY WTO MEMBERS.—

"(1) SUSPENSION OF INVESTIGATION.—The administering authority and the Commission shall suspend an investigation under this section if a WTO member that is not a Shipbuilding Agreement Party initiates an antidumping proceeding described in section 861(29)(A) with respect to the sale of the subject vessel.

"(2) TERMINATION OF INVESTIGATION.—If an antidumping proceeding described in paragraph (1) is concluded by—

"(A) the imposition of antidumping measures, or

"(B) a negative determination with respect to whether the sale is at less than fair value or with respect to injury,

the administering authority and the Commission shall terminate the investigation under this section.

"(3) CONTINUATION OF INVESTIGATION.—(A) If such a proceeding—

"(i) is concluded by a result other than a result described in paragraph (2), or

"(ii) is not concluded within one year from the date of the initiation of the proceeding,

then the administering authority and the Commission shall terminate the suspension and continue the investigation. The period in which the investigation was suspended shall not be included in calculating deadlines applicable with respect to the investigation.

"(B) Notwithstanding subparagraph (A)(ii), if the proceeding is concluded by a result described in paragraph (2)(A), the administering authority and the Commission shall terminate the investigation under this section.

"SEC. 805. FINAL DETERMINATIONS.

"(a) DETERMINATIONS BY ADMINISTERING AUTHORITY.—

"(1) IN GENERAL.—Within 75 days after the date of its preliminary determination under section 803(b), the administering authority shall make a final determination of whether the vessel which is the subject of the investigation has been sold in the United States at less than its fair value.

"(2) EXTENSION OF PERIOD FOR DETERMINATION.—(A) The administering authority may postpone making the final determination under paragraph (1) until not later than 290 days after—

"(i) the date of delivery of the foreign like vessel, in an investigation to which section 803(b)(1)(B) applies,

"(ii) the date of delivery of the subject vessel, in an investigation to which section 803(b)(1)(C) applies, or

"(iii) the date on which the administering authority initiates the investigation under section 802, in an investigation to which section 803(b)(1)(D) applies.

"(B) The administering authority may apply subparagraph (A) if a request in writing is made by—

"(i) the producer of the subject vessel, in a proceeding in which the preliminary determination by the administering authority under section 803(b) was affirmative, or

"(ii) the petitioner, in a proceeding in which the preliminary determination by the administering authority under section 803(b) was negative.

"(3) DE MINIMIS INJURIOUS PRICING MARGIN.—In making a determination under this subsection, the administering authority shall disregard any injurious pricing margin that is de minimis as defined in section 803(b)(2).

"(b) FINAL DETERMINATION BY COMMISSION.—

"(1) IN GENERAL.—The Commission shall make a final determination of whether—

"(A) an industry in the United States—

"(i) is or has been materially injured, or

"(ii) is threatened with material injury, or

"(B) the establishment of an industry in the United States is or has been materially retarded,

by reason of the sale of the vessel with respect to which the administering authority has made an affirmative determination under subsection (a)(1).

"(2) PERIOD FOR INJURY DETERMINATION FOLLOWING AFFIRMATIVE PRELIMINARY DETERMINATION BY ADMINISTERING AUTHORITY.—If the preliminary determination by the administering authority under section 803(b) is affirmative, then the

Commission shall make the determination required by paragraph (1) before the later of—

"(A) the 120th day after the day on which the administering authority makes its affirmative preliminary determination under section 803(b), or

"(B) the 45th day after the day on which the administering authority makes its affirmative final determination under subsection (a).

"(3) PERIOD FOR INJURY DETERMINATION FOLLOWING NEGATIVE PRELIMINARY DETERMINATION BY ADMINISTERING AUTHORITY.—If the preliminary determination by the administering authority under section 803(b) is negative, and its final determination under subsection (a) is affirmative, then the final determination by the Commission under this subsection shall be made within 75 days after the date of that affirmative final determination.

"(c) EFFECT OF FINAL DETERMINATIONS.—

"(1) EFFECT OF AFFIRMATIVE DETERMINATION BY THE ADMINISTERING AUTHORITY.—If the determination of the administering authority under subsection (a) is affirmative, then the administering authority shall—

"(A) make available to the Commission all information upon which such determination was based and which the Commission considers relevant to its determination, under such procedures as the administering authority and the Commission may establish to prevent disclosure, other than with the consent of the party providing it or under protective order, of any information to which confidential treatment has been given by the administering authority, and

"(B) calculate an injurious pricing charge in an amount equal to the amount by which the normal value exceeds the export price of the subject vessel.

"(2) ISSUANCE OF ORDER; EFFECT OF NEGATIVE DETERMINATION.—If the determinations of the administering authority and the Commission under subsections (a)(1) and (b)(1) are affirmative, then the administering authority shall issue an injurious pricing order under section 806. If either of such determinations is negative, the investigation shall be terminated upon the publication of notice of that negative determination.

"(d) PUBLICATION OF NOTICE OF DETERMINATIONS.—Whenever the administering authority or the Commission makes a determination under this section, it shall notify the petitioner, other parties to the investigation, and the other agency of its determination and of the facts and conclusions of law upon which the determination is based, and it shall publish notice of its determination in the Federal Register.

"(e) CORRECTION OF MINISTERIAL ERRORS.—The administering authority shall establish procedures for the correction of ministerial errors in final determinations within a reasonable time after the determinations are issued under this section. Such procedures shall ensure opportunity for interested parties to present their views regarding any such errors. As used in this subsection, the term 'ministerial error' includes errors in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the administering authority considers ministerial.

"SEC. 806. IMPOSITION AND COLLECTION OF INJURIOUS PRICING CHARGE.

"(a) IN GENERAL.—Within 10 days after being notified by the Commission of an affirmative determination under section 805(b), the administering authority shall publish an order imposing an injurious pricing charge on the foreign producer of the subject vessel which—

"(1) directs the foreign producer of the subject vessel to pay to the Secretary of the Treasury, or the designee of the Secretary, within 180 days from the date of publication of the order, an injurious pricing charge in an amount equal to the amount by which the normal value exceeds the export price of the subject vessel,

"(2) includes the identity and location of the foreign producer and a description of the subject vessel, in such detail as the administering authority deems necessary, and

"(3) informs the foreign producer that—

"(A) failure to pay the injurious pricing charge in a timely fashion may result in the imposition of countermeasures with respect to that producer under section 807,

"(B) payment made after the deadline described in paragraph (1) shall be subject to interest charges at the Commercial Interest Reference Rate (CIRR), and

"(C) the foreign producer may request an extension of the due date for payment under subsection (b).

"(b) EXTENSION OF DUE DATE FOR PAYMENT IN EXTRAORDINARY CIRCUMSTANCES.—

"(1) EXTENSION.—Upon request, the administering authority may amend the order under subsection (a) to set a due date for payment or payments later than the date that is 180 days from the date of publication of the order, if the administering authority determines that full payment in 180 days would render the producer insolvent or would be incompatible with a judicially supervised reorganization. When an extended payment schedule provides for a series of partial payments, the administering authority shall specify the circumstances under which default on one or more payments will result in the imposition of countermeasures.

"(2) INTEREST CHARGES.—If a request is granted under paragraph (1), payments made after the date that is 180 days from the publication of the order shall be subject to interest charges at the CIRR.

"(c) NOTIFICATION OF ORDER.—The administering authority shall deliver a copy of the order requesting payment to the foreign producer of the subject vessel and to an appropriate representative of the government of the exporting country.

"(d) REVOCATION OF ORDER.—The administering authority—

"(1) may revoke an injurious pricing order if the administering authority determines that producers accounting for substantially all of the capacity to produce a domestic like vessel have expressed a lack of interest in the order, and

"(2) shall revoke an injurious pricing order—

"(A) if the sale of the vessel that was the subject of the injurious pricing determination is voided,

"(B) if the injurious pricing charge is paid in full, including any interest accrued for late payment,

"(C) upon full implementation of an alternative equivalent remedy described in subsection (e), or

"(D) if, with respect to the vessel sale that was at issue in the investigation that resulted in the injurious pricing order, an antidumping proceeding conducted by a WTO member who is not a Shipbuilding Agreement Party has been completed and resulted in the imposition of antidumping measures.

"(e) ALTERNATIVE EQUIVALENT REMEDY.—

"(1) AGREEMENT FOR ALTERNATE REMEDY.—The administering authority may suspend an injurious pricing order if the administering authority enters into an agreement with the foreign producer subject to the order on an alternative equivalent remedy, that the administering authority determines—

"(A) is at least as effective a remedy as the injurious pricing charge,

"(B) is in the public interest,

"(C) can be effectively monitored and enforced, and

"(D) is otherwise consistent with the domestic law and international obligations of the United States.

"(2) PRIOR CONSULTATIONS AND SUBMISSION OF COMMENTS.—Before entering into an agreement under paragraph (1), the administering authority shall consult with the industry, and provide for the submission of comments by interested parties, with respect to the agreement.

"(3) MATERIAL VIOLATIONS OF AGREEMENT.—If the injurious pricing order has been suspended under paragraph (1), and the administering authority determines that the foreign producer concerned has materially violated the terms of the agreement under paragraph (1), the administering authority shall terminate the suspension.

"SEC. 807. IMPOSITION OF COUNTERMEASURES.

"(a) GENERAL RULE.—

"(1) ISSUANCE OF ORDER IMPOSING COUNTERMEASURES.—Unless an injurious pricing order is revoked or suspended under section 806 (d) or (e), the administering authority shall issue an order imposing countermeasures.

"(2) CONTENTS OF ORDER.—The countermeasure order shall—

"(A) state that, as provided in section 468, a permit to lade or unlade passengers or merchandise may not be issued with respect to vessels contracted to be built by the foreign producer of the vessel with respect to which an injurious pricing order was issued under section 806, and

"(B) specify the scope and duration of the prohibition on the issuance of a permit to lade or unlade passengers or merchandise.

"(b) NOTICE OF INTENT TO IMPOSE COUNTERMEASURES.—

"(1) GENERAL RULE.—The administering authority shall issue a notice of intent to impose countermeasures not later than 30 days before the expiration of

the time for payment specified in the injurious pricing order (or extended payment provided for under section 806(b)), and shall publish the notice in the Federal Register within 7 days after issuing the notice.

"(2) ELEMENTS OF THE NOTICE OF INTENT.—The notice of intent shall contain at least the following elements:

"(A) SCOPE.—A permit to lade or unlade passengers or merchandise may not be issued with respect to any vessel—

"(i) built by the foreign producer subject to the proposed countermeasures, and

"(ii) with respect to which the material terms of sale are established within a period of 4 consecutive years beginning on the date that is 30 days after publication in the Fedeal Register of the notice of intent described in paragraph (1).

"(B) DURATION.—For each vessel described in subparagraph (A), a permit to lade or unlade passengers or merchandise may not be issued for a period of 4 years after the date of delivery of the vessel.

"(c) DETERMINATION TO IMPOSE COUNTERMEASURES; ORDER.—

"(1) GENERAL RULE.—The administering authority shall, within the time specified in paragraph (2), issue a determination and order imposing countermeasures.

"(2) TIME FOR DETERMINATION.—The determination shall be issued within 90 days after the date on which the notice of intent to impose countermeasures under subsection (b) is published in the Federal Register. The administering authority shall publish the determination, and the order described in paragraph (4), in the Federal Register within 7 days after issuing the final determination, and shall provide a copy of the determination and order to the Customs Service.

"(3) CONTENT OF THE DETERMINATION.—In the determination imposing countermeasures, the administering authority shall determine whether, in light of all of the circumstances, an interested party has demonstrated that the scope or duration of the countermeasures described in subsection (b)(2) should be narrower or shorter than the scope or duration set forth in the notice of intent to impose countermeasures.

"(4) ORDER.—At the same time it issues its determination, the administering authority shall issue an order imposing countermeasures, consistent with its determination.

"(d) ADMINISTRATIVE REVIEW OF DETERMINATION TO IMPOSE COUNTERMEASURES.—

"(1) REQUEST FOR REVIEW.—Each year, in the anniversary month of the issuance of the order imposing countermeasures under subsection (c), the administering authority shall publish in the Federal Register a notice providing that interested parties may request—

"(A) a review of the scope or duration of the countermeasures determined under subsection (c)(3), and

"(B) a hearing in connection with such a review.

"(2) REVIEW.—If a proper request has been received under paragraph (1), the administering authority shall—

"(A) publish notice of initiation of a review in the Federal Register not later than 15 days after the end of the anniversary month of the issuance of the order imposing countermeasures, and

"(B) review and determine whether the requesting party has demonstrated that the scope or duration of the countermeasures is excessive in light of all of the circumstances.

"(3) TIME FOR REVIEW.—The administering authority shall make its determination under paragraph (2)(B) within 90 days after the date on which the notice of initiation of the review is published. If the determination under paragraph (2)(B) is affirmative, the administering authority shall amend the order accordingly. The administering authority shall promptly publish the determination and any amendment to the order in the Federal Register, and shall provide a copy of any amended order to the Customs Service. In extraordinary circumstances, the administering authority may extend the time for its determination under paragraph (2)(B) to not later than 150 days after the date on which the notice of initiation of the review is published.

"(e) EXTENSION OF COUNTERMEASURES.—

"(1) REQUEST FOR EXTENSION.—Within the time described in paragraph (2), an interested party may file with the administering authority a request that the scope or duration of countermeasures be extended.

"(2) DEADLINE FOR REQUEST FOR EXTENSION.—

"(A) REQUEST FOR EXTENSION BEYOND 4 YEARS.—If the request seeks an extension that would cause the scope or duration of countermeasures to exceed 4 years, including any prior extensions, the request for extension under paragraph (1) shall be filed not earlier than the date that is 15 months, and not later than the date that is 12 months, before the date that marks the end of the period that specifies the vessels that fall within the scope of the order by virtue of the establishment of material terms of sale within that period.

"(B) OTHER REQUESTS.—If the request seeks an extension under paragraph (1) other than one described in subparagraph (A), the request shall be filed not earlier than the date that is 6 months, and not later than a date that is 3 months, before the date that marks the end of the period referred to in subparagraph (A).

"(3) DETERMINATION.—

"(A) NOTICE OF REQUEST FOR EXTENSION.—If a proper request has been received under paragraph (1), the administering authority shall publish notice of initiation of an extension proceeding in the Federal Register not later than 15 days after the applicable deadline in paragraph (2) for requesting the extension.

"(B) PROCEDURES.—

"(i) REQUESTS FOR EXTENSION BEYOND 4 YEARS.—If paragraph (2)(A) applies to the request, the administering authority shall consult with the Trade Representative under paragraph (4).

"(ii) OTHER REQUESTS.—If paragraph (2)(B) applies to the request, the administering authority shall determine, within 90 days after the date on which the notice of initiation of the proceeding is published, whether the requesting party has demonstrated that the scope or duration of the countermeasures is inadequate in light of all of the circumstances. If the administering authority determines that an extension is warranted, it shall amend the countermeasure order accordingly. The administering authority shall promptly publish the determination and any amendment to the order in the Federal Register, and shall provide a copy of any amended order to the Customs Service.

"(4) CONSULTATION WITH TRADE REPRESENTATIVE.—If paragraph (3)(B)(i) applies, the administering authority shall consult with the Trade Representative concerning whether it would be appropriate to request establishment of a dispute settlement panel under the Shipbuilding Agreement for the purpose of seeking authorization to extend the scope or duration of countermeasures for a period in excess of 4 years.

"(5) DECISION NOT TO REQUEST PANEL.—If, based on consultations under paragraph (4), the Trade Representative decides not to request establishment of a panel, the Trade Representative shall inform the party requesting the extension of the countermeasures of the reasons for its decision in writing. The decision shall not be subject to judicial review.

"(6) PANEL PROCEEDINGS.—If, based on consultations under paragraph (4), the Trade Representative requests the establishment of a panel under the Shipbuilding Agreement to authorize an extension of the period of countermeasures, and the panel authorizes such an extension, the administering authority shall promptly amend the countermeasure order. The administering authority shall publish notice of the amendment in the Federal Register.

"(f) LIST OF VESSELS SUBJECT TO COUNTERMEASURES.—

"(1) GENERAL RULE.—At least once during each 12-month period beginning on the anniversary date of a determination to impose countermeasures under this section, the administering authority shall publish in the Federal Register a list of all delivered vessels subject to countermeasures under the determination.

"(2) CONTENT OF LIST.—The list under paragraph (1) shall include the following information for each vessel, to the extent the information is available:

"(A) The name and general description of the vessel.

"(B) The vessel identification number.

"(C) The shipyard where the vessel was constructed.

"(D) The last-known registry of the vessel.

"(E) The name and address of the last-known owner of the vessel.

"(F) The delivery date of the vessel.

"(G) The remaining duration of countermeasures on the vessel.

"(H) Any other identifying information available.

"(3) AMENDMENT OF LIST.—The administering authority may amend the list from time to time to reflect new information that comes to its attention and shall publish any amendments in the Federal Register.

"(4) SERVICE OF LIST AND AMENDMENTS.—(A) The administering authority shall serve a copy of the list described in paragraph (1) on—

"(i) the petitioner under section 802(b),

"(ii) the United States Customs Service,

"(iii) the Secretariat of the Organization for Economic Cooperation and Development,

"(iv) the owners of vessels on the list,

"(v) the shipyards on the list, and

"(vi) the government of the country in which a shipyard on the list is located.

"(B) The administering authority shall serve a copy of any amendments to the list under paragraph (3) or subsection (g)(3) on—

"(i) the parties listed in clauses (i), (ii), and (iii) of subparagraph (A), and,

"(ii) if the amendment affects their interests, the parties listed in clauses (iv), (v), and (vi) of subparagraph (A).

"(g) ADMINISTRATIVE REVIEW OF LIST OF VESSELS SUBJECT TO COUNTERMEASURES.—

"(1) REQUEST FOR REVIEW.—(A) An interested party may request in writing a review of the list described in subsection (f)(1), including any amendments thereto, to determine whether—

"(i) a vessel included in the list does not fall within the scope of the applicable countermeasure order and should be deleted, or

"(ii) a vessel not included in the list falls within the scope of the applicable countermeasure order and should be added.

"(B) Any request seeking a determination described in subparagraph (A)(i) shall be made within 90 days after the date of publication of the applicable list.

"(2) REVIEW.—If a proper request for review has been received, the administering authority shall—

"(A) publish notice of initiation of a review in the Federal Register—

"(i) not later than 15 days after the request is received, or

"(ii) if the request seeks a determination described in paragraph (1)(A)(i), not later than 15 days after the deadline described in paragraph (1)(B), and

"(B) review and determine whether the requesting party has demonstrated that—

"(i) a vessel included in the list does not qualify for such inclusion, or

"(ii) a vessel not included in the list qualifies for inclusion.

"(3) TIME FOR DETERMINATION.—The administering authority shall make its determination under paragraph (2)(B) within 90 days after the date on which the notice of initiation of such review is published. If the administering authority determines that a vessel should be added or deleted from the list, the administering authority shall amend the list accordingly. The administering authority shall promptly publish in the Federal Register the determination and any such amendment to the list.

"(h) EXPIRATION OF COUNTERMEASURES.—Upon expiration of a countermeasure order imposed under this section, the administering authority shall promptly publish a notice of the expiration in the Federal Register.

"(i) SUSPENSION OR TERMINATION OF PROCEEDINGS OR COUNTERMEASURES; TEMPORARY REDUCTION OF COUNTERMEASURES.—

"(1) IF INJURIOUS PRICING ORDER REVOKED OR SUSPENDED.—If an injurious pricing order has been revoked or suspended under section 806(d) or (e), the administering authority shall, as appropriate, suspend or terminate proceedings under this section with respect to that order, or suspend or revoke a countermeasure order issued with respect to that injurious pricing order.

"(2) IF PAYMENT DATE AMENDED.—(A) Subject to subparagraph (C), if the payment date under an injurious pricing order is amended under section 845, the administering authority shall, as appropriate, suspend proceedings or modify deadlines under this section, or suspend or amend a countermeasure order issued with respect to that injurious pricing order.

"(B) In taking action under subparagraph (A), the administering authority shall ensure that countermeasures are not applied before the date that is 30 days after publication in the Federal Register of the amended payment date.

"(C) If—

"(i) a countermeasure order is issued under subsection (c) before an amendment is made under section 845 to the payment date of the injurious pricing order to which the countermeasure order applies, and

"(ii) the administering authority determines that the period of time between the original payment date and the amended payment date is significant for purposes of determining the appropriate scope or duration of countermeasures,

the administering authority may, in lieu of acting under subparagraph (A), reinstitute proceedings under subsection (c) for purposes of issuing a new determination under that subsection.

"(j) COMMENT AND HEARING.—In the course of any proceeding under subsection (c), (d), (e), or (g), the administering authority—

"(1) shall solicit comments from interested parties, and

"(2)(A) in a proceeding under subsection (c) or (d), upon the request of an interested party, shall hold a hearing in accordance with section 841(b) in connection with that proceeding, or

"(B) in a proceeding under subsection (e) or (g), upon the request of an interested party, may hold a hearing in accordance with section 841(b) in connection with that proceeding.

"SEC. 808. INJURIOUS PRICING PETITIONS BY THIRD COUNTRIES.

"(a) FILING OF PETITION.—The government of a Shipbuilding Agreement Party may file with the Trade Representative a petition requesting that an investigation be conducted to determine if—

"(1) a vessel from another Shipbuilding Agreement Party has been sold in the United States at less than fair value, and

"(2) an industry, in the petitioning country, producing or capable of producing a like vessel is materially injured by reason of such sale.

"(b) INITIATION.—The Trade Representative, after consultation with the administering authority and the Commission and obtaining the approval of the Parties Group under the Shipbuilding Agreement, shall determine whether to initiate an investigation described in subsection (a).

"(c) DETERMINATIONS.—Upon initiation of an investigation under subsection (a), the Trade Representative shall request the following determinations be made in accordance with substantive and procedural requirements specified by the Trade Representative, notwithstanding any other provision of this title:

"(1) The administering authority shall determine whether the subject vessel has been sold at less than fair value.

"(2) The Commission shall determine whether an industry in the petitioning country is materially injured by reason of the sale of the subject vessel in the United States.

"(d) PUBLIC COMMENT.—An opportunity for public comment shall be provided, as appropriate—

"(1) by the Trade Representative, in making the determinations required by subsection (b), and

"(2) by the administering authority and the Commission, in making the determinations required by subsection (c).

"(e) ISSUANCE OF ORDER.—If the administering authority makes an affirmative determination under paragraph (1) of subsection (c), and the Commission makes an affirmative determination under paragraph (2) of subsection (c), the administering authority shall—

"(1) order an injurious pricing charge in accordance with section 806, and

"(2) make such determinations and take such other actions as are required by sections 806 and 807, as if affirmative determinations had been made under subsections (a) and (b) of section 805.

"(f) REVIEWS OF DETERMINATIONS.—For purposes of review under section 516B, if an order is issued under subsection (e)—

"(1) the final determinations of the administering authority and the Commission under subsection (c) shall be treated as final determinations made under section 805, and

"(2) determinations of the administering authority under subsection (e)(2) shall be treated as determinations made under section 806 or 807, as the case may be.

"(g) ACCESS TO INFORMATION.—Section 843 shall apply to investigations under this section, to the extent specified by the Trade Representative, after consultation with the administering authority and the Commission.

"Subtitle B—Special Rules

"SEC. 821. EXPORT PRICE.

"(a) EXPORT PRICE.—For purposes of this title, the term 'export price' means the price at which the subject vessel is first sold (or agreed to be sold) by or for the account of the foreign producer of the subject vessel to an unaffiliated United States buyer. The term 'sold (or agreed to be sold) by or for the account of the foreign producer' includes any transfer of an ownership interest, including by way of lease or long-term bareboat charter, in conjunction with the original transfer from the producer, either directly or indirectly, to a United States buyer.

"(b) ADJUSTMENTS TO EXPORT PRICE.—The price used to establish export price shall be—

"(1) increased by the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject vessel, and

"(2) reduced by—

"(A) the amount, if any, included in such price, attributable to any additional costs, charges, or expenses which are incident to bringing the subject vessel from the shipyard in the exporting country to the place of delivery,

"(B) the amount, if included in such price, of any export tax, duty, or other charge imposed by the exporting country on the exportation of the subject vessel, and

"(C) all other expenses incidental to placing the vessel in condition for delivery to the buyer.

"SEC. 822. NORMAL VALUE.

"(a) DETERMINATION.—In determining under this title whether a subject vessel has been sold at less than fair value, a fair comparison shall be made between the export price and normal value of the subject vessel. In order to achieve a fair comparison with the export price, normal value shall be determined as follows:

"(1) DETERMINATION OF NORMAL VALUE.—

"(A) IN GENERAL.—The normal value of the subject vessel shall be the price described in subparagraph (B), at a time reasonably corresponding to the time of the sale used to determine the export price under section 821(a).

"(B) PRICE.—The price referred to in subparagraph (A) is—

"(i) the price at which a foreign like vessel is first sold in the exporting country, in the ordinary course of trade and, to the extent practicable, at the same level of trade, or

"(ii) in a case to which subparagraph (C) applies, the price at which a foreign like vessel is so sold for consumption in a country other than the exporting country or the United States, if—

"(I) such price is representative, and

"(II) the administering authority does not determine that the particular market situation in such other country prevents a proper comparison with the export price.

"(C) THIRD COUNTRY SALES.—This subparagraph applies when—

"(i) a foreign like vessel is not sold in the exporting country as described in subparagraph (B)(i), or

"(ii) the particular market situation in the exporting country does not permit a proper comparison with the export price.

"(D) CONTEMPORANEOUS SALE.—For purposes of subparagraph (A), 'a time reasonably corresponding to the time of the sale' means within 3 months before or after the sale of the subject vessel or, in the absence of such sales, such longer period as the administering authority determines would be appropriate.

"(2) FICTITIOUS MARKETS.—No pretended sale, and no sale intended to establish a fictitious market, shall be taken into account in determining normal value.

"(3) USE OF CONSTRUCTED VALUE.—If the administering authority determines that the normal value of the subject vessel cannot be determined under paragraph (1)(B) or (1)(C), then the normal value of the subject vessel shall be the constructed value of that vessel, as determined under subsection (e).

"(4) INDIRECT SALES.—If a foreign like vessel is sold through an affiliated party, the price at which the foreign like vessel is sold by such affiliated party may be used in determining normal value.

"(5) ADJUSTMENTS.—The price described in paragraph (1)(B) shall be—

"(A) reduced by—

"(i) the amount, if any, included in the price described in paragraph (1)(B), attributable to any costs, charges, and expenses incident to bringing the foreign like vessel from the shipyard to the place of delivery to the purchaser,

"(ii) the amount of any taxes imposed directly upon the foreign like vessel or components thereof which have been rebated, or which have not been collected, on the subject vessel, but only to the extent that such taxes are added to or included in the price of the foreign like vessel, and

"(iii) the amount of all other expenses incidental to placing the foreign like vessel in condition for delivery to the buyer, and

"(B) increased or decreased by the amount of any difference (or lack thereof) between the export price and the price described in paragraph (1)(B) (other than a difference for which allowance is otherwise provided under this section) that is established to the satisfaction of the administering authority to be wholly or partly due to—

"(i) physical differences between the subject vessel and the vessel used in determining normal value, or

"(ii) other differences in the circumstances of sale.

"(6) ADJUSTMENTS FOR LEVEL OF TRADE.—The price described in paragraph (1)(B) shall also be increased or decreased to make due allowance for any difference (or lack thereof) between the export price and the price described in paragraph (1)(B) (other than a difference for which allowance is otherwise made under this section) that is shown to be wholly or partly due to a difference in level of trade between the export price and normal value, if the difference in level of trade—

"(A) involves the performance of different selling activities, and

"(B) is demonstrated to affect price comparability, based on a pattern of consistent price differences between sales at different levels of trade in the country in which normal value is determined.

In a case described in the preceding sentence, the amount of the adjustment shall be based on the price differences between the two levels of trade in the country in which normal value is determined.

"(7) ADJUSTMENTS TO CONSTRUCTED VALUE.—Constructed value as determined under subsection (d) may be adjusted, as appropriate, pursuant to this subsection.

"(b) SALES AT LESS THAN COST OF PRODUCTION.—

"(1) DETERMINATION; SALES DISREGARDED.—Whenever the administering authority has reasonable grounds to believe or suspect that the sale of the foreign like vessel under consideration for the determination of normal value has been made at a price which represents less than the cost of production of the foreign like vessel, the administering authority shall determine whether, in fact, such sale was made at less than the cost of production. If the administering authority determines that the sale was made at less than the cost of production and was not at a price which permits recovery of all costs within 5 years, such sale may be disregarded in the determination of normal value. Whenever such a sale is disregarded, normal value shall be based on another sale of a foreign like vessel in the ordinary course of trade. If no sales made in the ordinary course of trade remain, the normal value shall be based on the constructed value of the subject vessel.

"(2) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection:

"(A) REASONABLE GROUNDS TO BELIEVE OR SUSPECT.—There are reasonable grounds to believe or suspect that the sale of a foreign like vessel was made at a price that is less than the cost of production of the vessel, if an interested party described in subparagraph (C), (D), (E), or (F) of section 861(17) provides information, based upon observed prices or constructed prices or costs, that the sale of the foreign like vessel under consideration for the determination of normal value has been made at a price which represents less than the cost of production of the vessel.

"(B) RECOVERY OF COSTS.—If the price is below the cost of production at the time of sale but is above the weighted average cost of production for the period of investigation, such price shall be considered to provide for recovery of costs within 5 years.

"(3) CALCULATION OF COST OF PRODUCTION.—For purposes of this section, the cost of production shall be an amount equal to the sum of—

"(A) the cost of materials and of fabrication or other processing of any kind employed in producing the foreign like vessel, during a period which

would ordinarily permit the production of that vessel in the ordinary course of business, and

"(B) an amount for selling, general, and administrative expenses based on actual data pertaining to the production and sale of the foreign like vessel by the producer in question.

For purposes of subparagraph (A), if the normal value is based on the price of the foreign like vessel sold in a country other than the exporting country, the cost of materials shall be determined without regard to any internal tax in the exporting country imposed on such materials or on their disposition which are remitted or refunded upon exportation.

"(c) NONMARKET ECONOMY COUNTRIES.—

"(1) IN GENERAL.—If—

"(A) the subject vessel is produced in a nonmarket economy country, and

"(B) the administering authority finds that available information does not permit the normal value of the subject vessel to be determined under subsection (a),

the administering authority shall determine the normal value of the subject vessel on the basis of the value of the factors of production utilized in producing the vessel and to which shall be added an amount for general expenses and profit plus the cost of expenses incidental to placing the vessel in a condition for delivery to the buyer. Except as provided in paragraph (2), the valuation of the factors of production shall be based on the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate by the administering authority.

"(2) EXCEPTION.—If the administering authority finds that the available information is inadequate for purposes of determining the normal value of the subject vessel under paragraph (1), the administering authority shall determine the normal value on the basis of the price at which a vessel that is—

"(A) comparable to the subject vessel, and

"(B) produced in one or more market economy countries that are at a level of economic development comparable to that of the nonmarket economy country,

is sold in other countries, including the United States.

"(3) FACTORS OF PRODUCTION.—For purposes of paragraph (1), the factors of production utilized in producing the vessel include, but are not limited to—

"(A) hours of labor required,

"(B) quantities of raw materials employed,

"(C) amounts of energy and other utilities consumed, and

"(D) representative capital cost, including depreciation.

"(4) VALUATION OF FACTORS OF PRODUCTION.—The administering authority, in valuing factors of production under paragraph (1), shall utilize, to the extent possible, the prices or costs of factors of production in one or more market economy countries that are—

"(A) at a level of economic development comparable to that of the nonmarket economy country, and

"(B) significant producers of comparable vessels.

"(d) SPECIAL RULE FOR CERTAIN MULTINATIONAL CORPORATIONS.—Whenever, in the course of an investigation under this title, the administering authority determines that—

"(1) the subject vessel was produced in facilities which are owned or controlled, directly or indirectly, by a person, firm, or corporation which also owns or controls, directly or indirectly, other facilities for the production of a foreign like vessel which are located in another country or countries,

"(2) subsection (a)(1)(C) applies, and

"(3) the normal value of a foreign like vessel produced in one or more of the facilities outside the exporting country is higher than the normal value of the foreign like vessel produced in the facilities located in the exporting country,

the administering authority shall determine the normal value of the subject vessel by reference to the normal value at which a foreign like vessel is sold from one or more facilities outside the exporting country. The administering authority, in making any determination under this subsection, shall make adjustments for the difference between the costs of production (including taxes, labor, materials, and overhead) of the foreign like vessel produced in facilities outside the exporting country and costs of production of the foreign like vessel produced in facilities in the exporting country, if such differences are demonstrated to its satisfaction.

"(e) CONSTRUCTED VALUE.—

"(1) IN GENERAL.—For purposes of this title, the constructed value of a subject vessel shall be an amount equal to the sum of—

"(A) the cost of materials and fabrication or other processing of any kind employed in producing the subject vessel, during a period which would ordinarily permit the production of the vessel in the ordinary course of business, and

"(B)(i) the actual amounts incurred and realized by the foreign producer of the subject vessel for selling, general, and administrative expenses, and for profits, in connection with the production and sale of a foreign like vessel, in the ordinary course of trade, in the domestic market of the country of origin of the subject vessel, or

"(ii) if actual data are not available with respect to the amounts described in clause (i), then—

"(I) the actual amounts incurred and realized by the foreign producer of the subject vessel for selling, general, and administrative expenses, and for profits, in connection with the production and sale of the same general category of vessel in the domestic market of the country of origin of the subject vessel,

"(II) the weighted average of the actual amounts incurred and realized by producers in the country of origin of the subject vessel (other than the producer of the subject vessel) for selling, general, and administrative expenses, and for profits, in connection with the production and sale of a foreign like vessel, in the ordinary course of trade, in the domestic market, or

"(III) if data is not available under subclause (I) or (II), the amounts incurred and realized for selling, general, and administrative expenses, and for profits, based on any other reasonable method, except that the amount allowed for profit may not exceed the amount normally realized by foreign producers (other than the producer of the subject vessel) in connection with the sale of vessels in the same general category of vessel as the subject vessel in the domestic market of the country of origin of the subject vessel.

The profit shall, for purposes of this paragraph, be based on the average profit realized over a reasonable period of time before and after the sale of the subject vessel and shall reflect a reasonable profit at the time of such sale. For purposes of the preceding sentence, a 'reasonable period of time' shall not, except where otherwise appropriate, exceed 6 months before, or 6 months after, the sale of the subject vessel. In calculating profit under this paragraph, any distortion which would result in other than a profit which is reasonable at the time of the sale shall be eliminated.

"(2) COSTS AND PROFITS BASED ON OTHER REASONABLE METHODS.—When costs and profits are determined under paragraph (1)(B)(ii)(III), such determination shall, except where otherwise appropriate, be based on appropriate export sales by the producer of the subject vessel or, absent such sales, to export sales by other producers of a foreign like vessel or the same general category of vessel as the subject vessel in the country of origin of the subject vessel.

"(3) COSTS OF MATERIALS.—For purposes of paragraph (1)(A), the cost of materials shall be determined without regard to any internal tax in the exporting country imposed on such materials or their disposition which are remitted or refunded upon exportation of the subject vessel produced from such materials.

"(f) SPECIAL RULES FOR CALCULATION OF COST OF PRODUCTION AND FOR CALCULATION OF CONSTRUCTED VALUE.—For purposes of subsections (b) and (e)—

"(1) COSTS.—

"(A) IN GENERAL.—Costs shall normally be calculated based on the records of the foreign producer of the subject vessel, if such records are kept 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. The administering authority shall consider all available evidence on proper allocation of costs, including that which is made available by the foreign producer on a timely basis, if such allocations have been historically used by the foreign producer, in particular for establishing appropriate amortization and depreciation periods, and allowances for capital expenditures and other development costs.

"(B) NONRECURRING COSTS.—Costs shall be adjusted appropriately for those nonrecurring costs that benefit current or future production, or both.

"(C) STARTUP COSTS.—

"(i) IN GENERAL.—Costs shall be adjusted appropriately for circumstances in which costs incurred during the time period covered by the investigation are affected by startup operations.

"(ii) STARTUP OPERATIONS.—Adjustments shall be made for startup operations only where—

"(I) a producer is using new production facilities or producing a new type of vessel that requires substantial additional investment, and

"(II) production levels are limited by technical factors associated with the initial phase of commercial production.

For purposes of subclause (II), the initial phase of commercial production ends at the end of the startup period. In determining whether commercial production levels have been achieved, the administering authority shall consider factors unrelated to startup operations that might affect the volume of production processed, such as demand, seasonality, or business cycles.

"(iii) ADJUSTMENT FOR STARTUP OPERATIONS.—The adjustment for startup operations shall be made by substituting the unit production costs incurred with respect to the vessel at the end of the startup period for the unit production costs incurred during the startup period. If the startup period extends beyond the period of the investigation under this title, the administering authority shall use the most recent cost of production data that it reasonably can obtain, analyze, and verify without delaying the timely completion of the investigation. For purposes of this subparagraph, the startup period ends at the point at which the level of commercial production that is characteristic of the vessel, the producer, or the industry is achieved.

"(D) COSTS DUE TO EXTRAORDINARY CIRCUMSTANCES NOT INCLUDED.—Costs shall not include actual costs which are due to extraordinary circumstances (including, but not limited to, labor disputes, fire, and natural disasters) and which are significantly over the cost increase which the shipbuilder could have reasonably anticipated and taken into account at the time of sale.

"(2) TRANSACTIONS DISREGARDED.—A transaction directly or indirectly between affiliated persons may be disregarded if, in the case of any element of value required to be considered, the amount representing that element does not fairly reflect the amount usually reflected in sales of a like vessel in the market under consideration. If a transaction is disregarded under the preceding sentence and no other transactions are available for consideration, the determination of the amount shall be based on the information available as to what the amount would have been if the transaction had occurred between persons who are not affiliated.

"(3) MAJOR INPUT RULE.—If, in the case of a transaction between affiliated persons involving the production by one of such persons of a major input to the subject vessel, the administering authority has reasonable grounds to believe or suspect that an amount represented as the value of such input is less than the cost of production of such input, then the administering authority may determine the value of the major input on the basis of the information available regarding such cost of production, if such cost is greater than the amount that would be determined for such input under paragraph (2).

"SEC. 823. CURRENCY CONVERSION.

"(a) IN GENERAL.—In an injurious pricing proceeding under this title, the administering authority shall convert foreign currencies into United States dollars using the exchange rate in effect on the date of sale of the subject vessel, except that if it is established that a currency transaction on forward markets is directly linked to a sale under consideration, the exchange rate specified with respect to such foreign currency in the forward sale agreement shall be used to convert the foreign currency.

"(b) DATE OF SALE.—For purposes of this section, 'date of sale' means the date of the contract of sale or, where appropriate, the date on which the material terms of sale are otherwise established. If the material terms of sale are significantly changed after such date, the date of sale is the date of such change. In the case of such a change in the date of sale, the administering authority shall make appropriate adjustments to take into account any unreasonable effect on the injurious pricing margin due only to fluctuations in the exchange rate between the original date of sale and the new date of sale.

"Subtitle C—Procedures

"SEC. 841. HEARINGS.

"(a) UPON REQUEST.—The administering authority and the Commission shall each hold a hearing in the course of an investigation under this title, upon the request of any party to the investigation, before making a final determination under section 805.

"(b) PROCEDURES.—Any hearing required or permitted under this title shall be conducted after notice published in the Federal Register, and a transcript of the hearing shall be prepared and made available to the public. The hearing shall not be subject to the provisions of subchapter II of chapter 5 of title 5, United States Code, or to section 702 of such title.

"SEC. 842. DETERMINATIONS ON THE BASIS OF THE FACTS AVAILABLE.

"(a) IN GENERAL.—If—

"(1) necessary information is not available on the record, or

"(2) an interested party or any other person—

"(A) withholds information that has been requested by the administering authority or the Commission under this title,

"(B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (b)(1) and (d) of section 844,

"(C) significantly impedes a proceeding under this title, or

"(D) provides such information but the information cannot be verified as provided in section 844(g),

the administering authority and the Commission shall, subject to section 844(c), use the facts otherwise available in reaching the applicable determination under this title.

"(b) ADVERSE INFERENCES.—If the administering authority or the Commission (as the case may be) finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority or the Commission, the administering authority or the Commission (as the case may be), in reaching the applicable determination under this title, may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available. Such adverse inference may include reliance on information derived from—

"(1) the petition, or

"(2) any other information placed on the record.

"(c) CORROBORATION OF SECONDARY INFORMATION.—When the administering authority or the Commission relies on secondary information rather than on information obtained in the course of an investigation under this title, the administering authority and the Commission, as the case may be, shall, to the extent practicable, corroborate that information from independent sources that are reasonably at their disposal.

"SEC. 843. ACCESS TO INFORMATION.

"(a) INFORMATION GENERALLY MADE AVAILABLE.—

"(1) PROGRESS OF INVESTIGATION REPORTS.—The administering authority and the Commission shall, from time to time upon request, inform the parties to an investigation under this title of the progress of that investigation.

"(2) EX PARTE MEETINGS.—The administering authority and the Commission shall maintain a record of any ex parte meeting between—

"(A) interested parties or other persons providing factual information in connection with a proceeding under this title, and

"(B) the person charged with making the determination, or any person charged with making a final recommendation to that person, in connection with that proceeding,

if information relating to that proceeding was presented or discussed at such meeting. The record of such an ex parte meeting shall include the identity of the persons present at the meeting, the date, time, and place of the meeting, and a summary of the matters discussed or submitted. The record of the ex parte meeting shall be included in the record of the proceeding.

"(3) SUMMARIES; NON-PROPRIETARY SUBMISSIONS.—The administering authority and the Commission shall disclose—

"(A) any proprietary information received in the course of a proceeding under this title if it is disclosed in a form which cannot be associated with, or otherwise be used to identify, operations of a particular person, and

"(B) any information submitted in connection with a proceeding which is not designated as proprietary by the person submitting it.

"(4) MAINTENANCE OF PUBLIC RECORD.—The administering authority and the Commission shall maintain and make available for public inspection and copying a record of all information which is obtained by the administering authority or the Commission, as the case may be, in a proceeding under this title to the extent that public disclosure of the information is not prohibited under this chapter or exempt from disclosure under section 552 of title 5, United States Code.

"(b) PROPRIETARY INFORMATION.—

"(1) PROPRIETARY STATUS MAINTAINED.—

"(A) IN GENERAL.—Except as provided in subsection (a)(4) and subsection (c), information submitted to the administering authority or the Commission which is designated as proprietary by the person submitting the information shall not be disclosed to any person without the consent of the person submitting the information, other than—

"(i) to an officer or employee of the administering authority or the Commission who is directly concerned with carrying out the investigation in connection with which the information is submitted or any other proceeding under this title covering the same subject vessel, or

"(ii) to an officer or employee of the United States Customs Service who is directly involved in conducting an investigation regarding fraud under this title.

"(B) ADDITIONAL REQUIREMENTS.—The administering authority and the Commission shall require that information for which proprietary treatment is requested be accompanied by—

"(i) either—

"(I) a nonproprietary summary in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence, or

"(II) a statement that the information is not susceptible to summary, accompanied by a statement of the reasons in support of the contention, and

"(ii) either—

"(I) a statement which permits the administering authority or the Commission to release under administrative protective order, in accordance with subsection (c), the information submitted in confidence, or

"(II) a statement to the administering authority or the Commission that the business proprietary information is of a type that should not be released under administrative protective order.

"(2) UNWARRANTED DESIGNATION.—If the administering authority or the Commission determines, on the basis of the nature and extent of the information or its availability from public sources, that designation of any information as proprietary is unwarranted, then it shall notify the person who submitted it and ask for an explanation of the reasons for the designation. Unless that person persuades the administering authority or the Commission that the designation is warranted, or withdraws the designation, the administering authority or the Commission, as the case may be, shall return it to the party submitting it. In a case in which the administering authority or the Commission returns the information to the person submitting it, the person may thereafter submit other material concerning the subject matter of the returned information if the submission is made within the time otherwise provided for submitting such material.

"(c) LIMITED DISCLOSURE OF CERTAIN PROPRIETARY INFORMATION UNDER PROTECTIVE ORDER.—

"(1) DISCLOSURE BY ADMINISTERING AUTHORITY OR COMMISSION.—

"(A) IN GENERAL.—Upon receipt of an application (before or after receipt of the information requested) which describes in general terms the information requested and sets forth the reasons for the request, the administering authority or the Commission shall make all business proprietary information presented to, or obtained by it, during a proceeding under this title (except privileged information, classified information, and specific information of a type for which there is a clear and compelling need to withhold from disclosure) available to all interested parties who are parties to the proceeding under a protective order described in subparagraph (B), regardless of when the information is submitted during the proceeding. Customer names (other than the name of the United States buyer of the subject vessel) ob-

tained during any investigation which requires a determination under section 805(b) may not be disclosed by the administering authority under protective order until either an order is published under section 806(a) as a result of the investigation or the investigation is suspended or terminated. The Commission may delay disclosure of customer names (other than the name of the United States buyer of the subject vessel) under protective order during any such investigation until a reasonable time before any hearing provided under section 841 is held.

"(B) PROTECTIVE ORDER.—The protective order under which information is made available shall contain such requirements as the administering authority or the Commission may determine by regulation to be appropriate. The administering authority and the Commission shall provide by regulation for such sanctions as the administering authority and the Commission determine to be appropriate, including disbarment from practice before the agency.

"(C) TIME LIMITATIONS ON DETERMINATIONS.—The administering authority or the Commission, as the case may be, shall determine whether to make information available under this paragraph—

"(i) not later than 14 days (7 days if the submission pertains to a proceeding under section 803(a)) after the date on which the information is submitted, or

"(ii) if—

"(I) the person submitting the information raises objection to its release, or

"(II) the information is unusually voluminous or complex,

not later than 30 days (10 days if the submission pertains to a proceeding under section 803(a)) after the date on which the information is submitted.

"(D) AVAILABILITY AFTER DETERMINATION.—If the determination under subparagraph (C) is affirmative, then—

"(i) the business proprietary information submitted to the administering authority or the Commission on or before the date of the determination shall be made available, subject to the terms and conditions of the protective order, on such date, and

"(ii) the business proprietary information submitted to the administering authority or the Commission after the date of the determination shall be served as required by subsection (d).

"(E) FAILURE TO DISCLOSE.—If a person submitting information to the administering authority refuses to disclose business proprietary information which the administering authority determines should be released under a protective order described in subparagraph (B), the administering authority shall return the information, and any nonconfidential summary thereof, to the person submitting the information and summary and shall not consider either.

"(2) DISCLOSURE UNDER COURT ORDER.—If the administering authority or the Commission denies a request for information under paragraph (1), then application may be made to the United States Court of International Trade for an order directing the administering authority or the Commission, as the case may be, to make the information available. After notification of all parties to the investigation and after an opportunity for a hearing on the record, the court may issue an order, under such conditions as the court deems appropriate, which shall not have the effect of stopping or suspending the investigation, directing the administering authority or the Commission to make all or a portion of the requested information described in the preceding sentence available under a protective order and setting forth sanctions for violation of such order if the court finds that, under the standards applicable in proceedings of the court, such an order is warranted, and that—

"(A) the administering authority or the Commission has denied access to the information under subsection (b)(1),

"(B) the person on whose behalf the information is requested is an interested party who is a party to the investigation in connection with which the information was obtained or developed, and

(C) the party which submitted the information to which the request relates has been notified, in advance of the hearing, of the request made under this section and of its right to appear and be heard.

"(d) SERVICE.—Any party submitting written information, including business proprietary information, to the administering authority or the Commission during a proceeding shall, at the same time, serve the information upon all interested parties

who are parties to the proceeding, if the information is covered by a protective order. The administering authority or the Commission shall not accept any such information that is not accompanied by a certificate of service and a copy of the protective order version of the document containing the information. Business proprietary information shall only be served upon interested parties who are parties to the proceeding that are subject to protective order, except that a nonconfidential summary thereof shall be served upon all other interested parties who are parties to the proceeding.

"(e) INFORMATION RELATING TO VIOLATIONS OF PROTECTIVE ORDERS AND SANCTIONS.—The administering authority and the Commission may withhold from disclosure any correspondence, private letters of reprimand, settlement agreements, and documents and files compiled in relation to investigations and actions involving a violation or possible violation of a protective order issued under subsection (c), and such information shall be treated as information described in section 552(b)(3) of title 5, United States Code.

"(f) OPPORTUNITY FOR COMMENT BY VESSEL BUYERS.—The administering authority and the Commission shall provide an opportunity for buyers of subject vessels to submit relevant information to the administering authority concerning a sale at less than fair value or countermeasures, and to the Commission concerning material injury by reason of the sale of a vessel at less than fair value.

"(g) PUBLICATION OF DETERMINATIONS; REQUIREMENTS FOR FINAL DETERMINATIONS.—

"(1) IN GENERAL.—Whenever the administering authority makes a determination under section 802 whether to initiate an investigation, or the administering authority or the Commission makes a preliminary determination under section 803, a final determination under section 805, a determination under subsection (b), (c), (d), (e)(3)(B)(ii), (g), or (i) of section 807, or a determination to suspend an investigation under this title, the administering authority or the Commission, as the case may be, shall publish the facts and conclusions supporting that determination, and shall publish notice of that determination in the Federal Register.

"(2) CONTENTS OF NOTICE OR DETERMINATION.—The notice or determination published under paragraph (1) shall include, to the extent applicable—

"(A) in the case of a determination of the administering authority—

"(i) the names of the foreign producer and the country of origin of the subject vessel,

"(ii) a description sufficient to identify the subject vessel,

"(iii) with respect to an injurious pricing charge, the injurious pricing margin established and a full explanation of the methodology used in establishing such margin,

"(iv) with respect to countermeasures, the scope and duration of countermeasures and, if applicable, any changes thereto, and

"(v) the primary reasons for the determination, and

"(B) in the case of a determination of the Commission—

"(i) considerations relevant to the determination of injury, and

"(ii) the primary reasons for the determination.

"(3) ADDITIONAL REQUIREMENTS FOR FINAL DETERMINATIONS.—In addition to the requirements set forth in paragraph (2)—

"(A) the administering authority shall include in a final determination under section 805 or 807(c) an explanation of the basis for its determination that addresses relevant arguments, made by interested parties who are parties to the investigation, concerning the establishment of the injurious pricing charge with respect to which the determination is made, and

"(B) the Commission shall include in a final determination of injury an explanation of the basis for its determination that addresses relevant arguments that are made by interested parties who are parties to the investigation concerning the effects and impact on the industry of the sale of the subject vessel.

"SEC. 844. CONDUCT OF INVESTIGATIONS.

"(a) CERTIFICATION OF SUBMISSIONS.—Any person providing factual information to the administering authority or the Commission in connection with a proceeding under this title on behalf of the petitioner or any other interested party shall certify that such information is accurate and complete to the best of that person's knowledge.

"(b) DIFFICULTIES IN MEETING REQUIREMENTS.—

"(1) NOTIFICATION BY INTERESTED PARTY.—If an interested party, promptly after receiving a request from the administering authority or the Commission

for information, notifies the administering authority or the Commission (as the case may be) that such party is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative forms in which such party is able to submit the information, the administering authority or the Commission (as the case may be) shall consider the ability of the interested party to submit the information in the requested form and manner and may modify such requirements to the extent necessary to avoid imposing an unreasonable burden on that party.

"(2) ASSISTANCE TO INTERESTED PARTIES.—The administering authority and the Commission shall take into account any difficulties experienced by interested parties, particularly small companies, in supplying information requested by the administering authority or the Commission in connection with investigations under this title, and shall provide to such interested parties any assistance that is practicable in supplying such information.

"(c) DEFICIENT SUBMISSIONS.—If the administering authority or the Commission determines that a response to a request for information under this title does not comply with the request, the administering authority or the Commission (as the case may be) shall promptly inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person with an opportunity to remedy or explain the deficiency in light of the time limits established for the completion of investigations or reviews under this title. If that person submits further information in response to such deficiency and either—

"(1) the administering authority or the Commission (as the case may be) finds that such response is not satisfactory, or

"(2) such response is not submitted within the applicable time limits,

then the administering authority or the Commission (as the case may be) may, subject to subsection (d), disregard all or part of the original and subsequent responses.

"(d) USE OF CERTAIN INFORMATION.—In reaching a determination under section 803, 805, or 807, the administering authority and the Commission shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority or the Commission if—

"(1) the information is submitted by the deadline established for its submission,

"(2) the information can be verified,

"(3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination,

"(4) the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the administering authority or the Commission with respect to the information, and

"(5) the information can be used without undue difficulties.

"(e) NONACCEPTANCE OF SUBMISSIONS.—If the administering authority or the Commission declines to accept into the record any information submitted in an investigation under this title, it shall, to the extent practicable, provide to the person submitting the information a written explanation of the reasons for not accepting the information.

"(f) PUBLIC COMMENT ON INFORMATION.—Information that is submitted on a timely basis to the administering authority or the Commission during the course of a proceeding under this title shall be subject to comment by other parties within such reasonable time as the administering authority or the Commission shall provide. The administering authority and the Commission, before making a final determination under section 805 or 807, shall cease collecting information and shall provide the parties with a final opportunity to comment on the information obtained by the administering authority or the Commission (as the case may be) upon which the parties have not previously had an opportunity to comment. Comments containing new factual information shall be disregarded.

"(g) VERIFICATION.—The administering authority shall verify all information relied upon in making a final determination under section 805.

"SEC. 845. ADMINISTRATIVE ACTION FOLLOWING SHIPBUILDING AGREEMENT PANEL REPORTS.

"(a) ACTION BY UNITED STATES INTERNATIONAL TRADE COMMISSION.—

"(1) ADVISORY REPORT.—If a dispute settlement panel under the Shipbuilding Agreement finds in a report that an action by the Commission in connection with a particular proceeding under this title is not in conformity with the obligations of the United States under the Shipbuilding Agreement, the Trade Representative may request the Commission to issue an advisory report on whether

this title permits the Commission to take steps in connection with the particular proceeding that would render its action not inconsistent with the findings of the panel concerning those obligations. The Trade Representative shall notify the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate of such request.

"(2) TIME LIMITS FOR REPORT.—The Commission shall transmit its report under paragraph (1) to the Trade Representative within 30 calendar days after the Trade Representative requests the report.

"(3) CONSULTATIONS ON REQUEST FOR COMMISSION DETERMINATION.—If a majority of the Commissioners issues an affirmative report under paragraph (1), the Trade Representatives shall consult with the congressional committees listed in paragraph (1) concerning the matter.

"(4) COMMISSION DETERMINATION.—Notwithstanding any other provision of this title, if a majority of the Commissioners issues an affirmative report under paragraph (1), the Commission, upon the written request of the Trade Representative, shall issue a determination in connection with the particular proceeding that would render the Commission's action described in paragraph (1) not inconsistent with the findings of the panel. The Commission shall issue its determination not later than 120 calendar days after the request from the Trade Representative is made.

"(5) CONSULTATIONS ON IMPLEMENTATION OF COMMISSION DETERMINATION.—The Trade Representative shall consult with the congressional committees listed in paragraph (1) before the Commission's determination under paragraph (4) is implemented.

"(6) REVOCATION OF ORDER.—If, by virtue of the Commission's determination under paragraph (4), an injurious pricing order is no longer supported by an affirmative Commission determination under this title, the Trade Representative may, after consulting with the congressional committees under paragraph (5), direct the administering authority to revoke the injurious pricing order.

"(b) ACTION BY ADMINISTERING AUTHORITY.—

"(1) CONSULTATIONS WITH ADMINISTERING AUTHORITY AND CONGRESSIONAL COMMITTEES.—Promptly after a report or other determination by a dispute settlement panel under the Shipbuilding Agreement is issued that contains findings that—

"(A) an action by the administering authority in a proceeding under this title is not in conformity with the obligations of the United States under the Shipbuilding Agreement,

"(B) the due date for payment of an injurious pricing charge contained in an order issued under section 806 should be amended,

"(C) countermeasures provided for in an order issued under section 807 should be provisionally suspended or reduced pending the final decision of the panel, or

"(D) the scope or duration of countermeasures imposed under section 807 should be narrowed or shortened,

the Trade Representative shall consult with the administering authority and the congressional committees listed in subsection (a)(1) on the matter.

"(2) DETERMINATION BY ADMINISTERING AUTHORITY.—Notwithstanding any other provision of this title, the administering authority shall, in response to a written request from the Trade Representative, issue a determination, or an amendment to or suspension of an injurious pricing or countermeasure order, as the case may be, in connection with the particular proceeding that would render the administering authority's action described in paragraph (1) not inconsistent with the findings of the panel.

"(3) TIME LIMITS FOR DETERMINATIONS.—The administering authority shall issue its determination, amendment, or suspension under paragraph (2)—

"(A) with respect to a matter described in subparagraph (A) of paragraph (1), within 180 calendar days after the request from the Trade Representative is made, and

"(B) with respect to a matter described in subparagraph (B), (C), or (D) of paragraph (1), within 15 calendar days after the request from the Trade Representative is made.

"(4) CONSULTATIONS BEFORE IMPLEMENTATION.—Before the administering authority implements any determination, amendment, or suspension under paragraph (2), the Trade Representative shall consult with the administering authority and the congressional committees listed in subsection (a)(1) with respect to such determination, amendment, or suspension.

"(5) IMPLEMENTATION OF DETERMINATION.—The Trade Representative may, after consulting with the administering authority and the congressional commit-

tees under paragraph (4), direct the administering authority to implement, in whole or in part, the determination, amendment, or suspension made under paragraph (2).

"(6) IMPLEMENTATION OF DETERMINATION; NOTICE OF IMPLEMENTATION.—The administering authority shall implement the determination, amendment, or suspension under paragraph (2)—

"(A) with respect to a matter described in subparagraph (A) of paragraph (1), only if the injurious pricing margin determined under paragraph (2) differs from the injurious pricing margin in the determination reviewed by the panel, and

"(B) with respect to a matter described in subparagraph (B), (C), or (D) of paragraph (1), upon issuance of the determination, amendment, or suspension under paragraph (2).

The administering authority shall publish notice of such implementation in the Federal Register.

"(c) OPPORTUNITY FOR COMMENT BY INTERESTED PARTIES.—Before issuing a determination, amendment, or suspension, the administering authority, in a matter described in subsection (b)(1)(A), or the Commission, in a matter described in subsection (a)(1), as the case may be, shall provide interested parties with an opportunity to submit written comments and, in appropriate cases, may hold a hearing, with respect to the determination.

"Subtitle D—Definitions

"SEC. 861. DEFINITIONS.

"For purposes of this title:

"(1) ADMINISTERING AUTHORITY.—The term 'administering authority' means the Secretary of Commerce, or any other officer of the United States to whom the responsibility for carrying out the duties of the administering authority under this title are transferred by law.

"(2) COMMISSION.—The term 'Commission' means the United States International Trade Commission.

"(3) COUNTRY.—The term 'country' means a foreign country, a political subdivision, dependent territory, or possession of a foreign country and, except as provided in paragraph (16)(E)(iii), may not include an association of 2 or more foreign countries, political subdivisions, dependent territories, or possessions of countries into a customs union outside the United States.

"(4) INDUSTRY.—

"(A) IN GENERAL.—Except as used in section 808, the term 'industry' means the producers as a whole of a domestic like vessel, or those producers whose collective capability to produce a domestic like vessel constitutes a major proportion of the total domestic capability to produce a domestic like vessel.

"(B) PRODUCER.—A 'producer' of a domestic like vessel includes an entity that is producing the domestic like vessel and an entity with the capability to produce the domestic like vessel.

"(C) CAPABILITY TO PRODUCE A DOMESTIC LIKE VESSEL.—A producer has the 'capability to produce a domestic like vessel' if it is capable of producing a domestic like vessel with its present facilities or could adapt its facilities in a timely manner to produce a domestic like vessel.

"(D) RELATED PARTIES.—(i) In an investigation under this title, if a producer of a domestic like vessel and the foreign producer, seller (other than the foreign producer), or United States buyer of the subject vessel are related parties, or if a producer of a domestic like vessel is also a United States buyer of the subject vessel, the domestic producer may, in appropriate circumstances, be excluded from the industry.

"(ii) For purposes of clause (i), a domestic producer and the foreign producer, seller, or United States buyer shall be considered to be related parties, if—

"(I) the domestic producer directly or indirectly controls the foreign producer, seller or United States buyer,

"(II) the foreign producer, seller, or United States buyer directly or indirectly controls the domestic producer,

"(III) a third party directly or indirectly controls the domestic producer and the foreign producer, seller, or United States buyer, or

"(IV) the domestic producer and the foreign producer, seller, or United States buyer directly or indirectly control a third party and there

is reason to believe that the relationship causes the producer to act differently than a nonrelated producer.

For purposes of this subparagraph, a party shall be considered to directly or indirectly control another party if the party is legally or operationally in a position to exercise restraint or direction over the other party.

"(E) PRODUCT LINES.—In an investigation under this title, the effect of the sale of the subject vessel shall be assessed in relation to the United States production (or production capability) of a domestic like vessel if available data permit the separate identification of production (or production capability) in terms of such criteria as the production process or the producer's profits. If the domestic production (or production capability) of a domestic like vessel has no separate identity in terms of such criteria, then the effect of the sale shall be assessed by the examination of the production (or production capability) of the narrowest group or range of vessels, which includes a domestic like vessel, for which the necessary information can be provided.

"(5) BUYER.—The term 'buyer' means any person who acquires an ownership interest in a vessel, including by way of lease or long-term bareboat charter, in conjunction with the original transfer from the producer, either directly or indirectly, including an individual or company which owns or controls a buyer. There may be more than one buyer of any one vessel.

"(6) UNITED STATES BUYER.—The term 'United States buyer' means a buyer that is any of the following:

"(A) A United States citizen.

"(B) A juridical entity, including any corporation, company, association, or other organization, that is legally constituted under the laws and regulations of the United States or a political subdivision thereof, regardless of whether the entity is organized for pecuniary gain, privately or government owned, or organized with limited or unlimited liability.

"(C) A juridical entity that is owned or controlled by nationals or entities described in subparagraphs (A) and (B). For the purposes of this subparagraph—

"(i) the term 'own' means having more than a 50 percent interest, and

"(ii) the term 'control' means the actual ability to have substantial influence on corporate behavior, and control is presumed to exist where there is at least a 25 percent interest.

If ownership of a company is established under clause (i), other control is presumed not to exist unless it is otherwise established.

"(7) OWNERSHIP INTEREST.—An 'ownership interest' in a vessel includes 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 administering authority shall consider—

"(A) the terms and circumstances of the transaction which conveys the interest,

"(B) commercial practice,

"(C) whether the vessel subject to the transaction is integrated into the operations of the beneficiary or beneficiaries, and

"(D) 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.

"(8) VESSEL.—

"(A) IN GENERAL.—Except as otherwise specifically provided under international agreements, the term 'vessel' means—

"(i) a self-propelled seagoing vessel of 100 gross tons or more used for transportation of goods or persons or for performance of a specialized service (including, but not limited to, ice breakers and dredgers), and

"(ii) a tug of 365 kilowatts or more,

that is produced in a Shipbuilding Agreement Party or a country that is not a Shipbuilding Agreement Party and not a WTO member.

"(B) EXCLUSIONS.—The term 'vessel' does not include—

"(i) any fishing vessel destined for the fishing fleet of the country in which the vessel is built,

"(ii) any military vessel, and

"(iii) any vessel sold before the date that the Shipbuilding Agreement enters into force with respect to the United States, except that any ves-

sel sold after December 21, 1994, for delivery more than 5 years after the date of the contract of sale shall be a 'vessel' for purposes of this title unless the shipbuilder demonstrates to the administering authority that the extended delivery date was for normal commercial reasons and not to avoid applicability of this title.

"(C) SELF-PROPELLED SEAGOING VESSEL.—A vessel is 'self-propelled seagoing' if its permanent propulsion and steering provide it all the characteristics of self-navigability in the high seas.

"(D) MILITARY VESSEL.—A 'military vessel' is a vessel which, according to its basic structural characteristics and ability, is intended to be used exclusively for military purposes.

"(9) LIKE VESSEL.—The term "like vessel" means a vessel of the same type, same purpose, and approximate size as the subject vessel and possessing characteristics closely resembling those of the subject vessel.

"(10) DOMESTIC LIKE VESSEL.—The term 'domestic like vessel' means a like vessel produced in the United States.

"(11) FOREIGN LIKE VESSEL.—Except as used in section 822(e)(1)(B)(ii)(II), the term 'foreign like vessel' means a like vessel produced by the foreign producer of the subject vessel for sale in the producer's domestic market or in a third country.

"(12) SAME GENERAL CATEGORY OF VESSEL.—The term 'same general category of vessel' means a vessel of the same type and purpose as the subject vessel, but of a significantly different size.

"(13) SUBJECT VESSEL.—The term 'subject vessel' means a vessel subject to investigation under section 801 or 808.

"(14) FOREIGN PRODUCER.—The term 'foreign producer' means the producer or producers of the subject vessel.

"(15) EXPORTING COUNTRY.—The term 'exporting country' means the country in which the subject vessel was built.

"(16) MATERIAL INJURY.—

"(A) IN GENERAL.—The term 'material injury' means harm which is not inconsequential, immaterial, or unimportant.

"(B) SALE AND CONSEQUENT IMPACT.—In making determinations under sections 803(a) and 805(b), the Commission in each case—

"(i) shall consider—

"(I) the sale of the subject vessel,

"(II) the effect of the sale of the subject vessel on prices in the United States for a domestic like vessel, and

"(III) the impact of the sale of the subject vessel on domestic producers of the domestic like vessel, but only in the context of production operations within the United States, and

"(ii) may consider such other economic factors as are relevant to the determination regarding whether there is or has been material injury by reason of the sale of the subject vessel.

In the notification required under section 805(d), the Commission shall explain its analysis of each factor considered under clause (i), and identify each factor considered under clause (ii) and explain in full its relevance to the determination.

"(C) EVALUATION OF RELEVANT FACTORS.—For purposes of subparagraph (B)—

"(i) SALE OF THE SUBJECT VESSEL.—In evaluating the sale of the subject vessel, the Commission shall consider whether the sale, either in absolute terms or relative to production or demand in the United States, in terms of either volume or value, is or has been significant.

"(ii) PRICE.—In evaluating the effect of the sale of the subject vessel on prices, the Commission shall consider whether—

"(I) there has been significant price underselling of the subject vessel as compared with the price of a domestic like vessel, and

"(II) the effect of the sale of the subject vessel otherwise depresses or has depressed prices to a significant degree or prevents or has prevented price increases, which otherwise would have occurred, to a significant degree.

"(iii) IMPACT ON AFFECTED DOMESTIC INDUSTRY.—In examining the impact required to be considered under subparagraph (B)(i)(III), the Commission shall evaluate all relevant economic factors which have a bearing on the state of the industry in the United States, including, but not limited to—

"(I) actual and potential decline in output, sales, market share, profits, productivity, return on investments, and utilization of capacity,

"(II) factors affecting domestic prices, including with regard to sales,

"(III) actual and potential negative effects on cash flow, employment, wages, growth, ability to raise capital, and investment,

"(IV) actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of a domestic like vessel, and

"(V) the magnitude of the injurious pricing margin.

The Commission shall evaluate all relevant economic factors described in this clause within the context of the business cycle and conditions of competition that are distinctive to the affected industry.

"(D) STANDARD FOR DETERMINATION.—The presence or absence of any factor which the Commission is required to evaluate under subparagraph (C) shall not necessarily give decisive guidance with respect to the determination by the Commission of material injury.

"(E) THREAT OF MATERIAL INJURY.—

"(i) IN GENERAL.—In determining whether an industry in the United States is threatened with material injury by reason of the sale of the subject vessel, the Commission shall consider, among other relevant economic factors—

"(I) any existing unused production capacity or imminent, substantial increase in production capacity in the exporting country indicating the likelihood of substantially increased sales of a foreign like vessel to United States buyers, taking into account the availability of other export markets to absorb any additional exports,

"(II) whether the sale of a foreign like vessel or other factors indicate the likelihood of significant additional sales to United States buyers,

"(III) whether sale of the subject vessel or sale of a foreign like vessel by the foreign producer are at prices that are likely to have a significant depressing or suppressing effect on domestic prices, and are likely to increase demand for further sales,

"(IV) the potential for product-shifting if production facilities in the exporting country, which can presently be used to produce a foreign like vessel or could be adapted in a timely manner to produce a foreign like vessel, are currently being used to produce other types of vessels,

"(V) the actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of a domestic like vessel, and

"(VI) any other demonstrable adverse trends that indicate the probability that there is likely to be material injury by reason of the sale of the subject vessel.

"(ii) BASIS FOR DETERMINATION.—The Commission shall consider the factors set forth in clause (i) as a whole. The presence or absence of any factor which the Commission is required to consider under clause (i) shall not necessarily give decisive guidance with respect to the determination. Such a determination may not be made on the basis of mere conjecture or supposition.

"(iii) EFFECT OF INJURIOUS PRICING IN THIRD-COUNTRY MARKETS.—

"(I) IN GENERAL.—The Commission shall consider whether injurious pricing in the markets of foreign countries (as evidenced by injurious pricing findings or injurious pricing remedies of other Shipbuilding Agreement Parties, or antidumping determinations of, or measures imposed by, other countries, against a like vessel produced by the producer under investigation) suggests a threat of material injury to the domestic industry. In the course of its investigation, the Commission shall request information from the foreign producer or United States buyer concerning this issue.

"(II) EUROPEAN COMMUNITIES.—For purposes of this clause, the European Communities as a whole shall be treated as a single foreign country.

"(F) CUMULATION FOR DETERMINING MATERIAL INJURY.—

"(i) IN GENERAL.—For purposes of clauses (i) and (ii) of subparagraph (C), and subject to clause (ii) of this subparagraph, the Commission shall cumulatively assess the effects of sales of foreign like vessels from all foreign producers with respect to which—

"(I) petitions were filed under section 802(b) on the same day,

"(II) investigations were initiated under section 802(a) on the same day, or

"(III) petitions were filed under section 802(b) and investigations were initiated under section 802(a) on the same day,

if, with respect to such vessels, the foreign producers compete with each other and with producers of a domestic like vessel in the United States market.

"(ii) EXCEPTIONS.—The Commission shall not cumulatively assess the effects of sales under clause (i)—

"(I) with respect to which the administering authority has made a preliminary negative determination, unless the administering authority subsequently made a final affirmative determination with respect to those sales before the Commission's final determination is made, or

"(II) from any producer with respect to which the investigation has been terminated.

"(iii) RECORDS IN FINAL INVESTIGATIONS.—In each final determination in which it cumulatively assesses the effects of sales under clause (i), the Commission may make its determinations based on the record compiled in the first investigation in which it makes a final determination, except that when the administering authority issues its final determination in a subsequently completed investigation, the Commission shall permit the parties in the subsequent investigation to submit comments concerning the significance of the administering authority's final determination, and shall include such comments and the administering authority's final determination in the record for the subsequent investigation.

"(G) CUMULATION FOR DETERMINING THREAT OF MATERIAL INJURY.—To the extent practicable and subject to subparagraph (F)(ii), for purposes of clause (i) (II) and (III) of subparagraph (E), the Commission may cumulatively assess the effects of sales of like vessels from all countries with respect to which—

"(i) petitions were filed under section 802(b) on the same day,

"(ii) investigations were initiated under section 802(a) on the same day, or

"(iii) petitions were filed under section 802(b) and investigations were initiated under section 802(a) on the same day,

if, with respect to such vessels, the foreign producers compete with each other and with producers of a domestic like vessel in the United States market.

"(17) INTERESTED PARTY.—The term 'interested party' means, in a proceeding under this title—

"(A)(i) the foreign producer, seller (other than the foreign producer), and the United States buyer of the subject vessel, or

"(ii) a trade or business association a majority of the members of which are the foreign producer, seller, or United States buyer of the subject vessel,

"(B) the government of the country in which the subject vessel is produced or manufactured,

"(C) a producer that is a member of an industry,

"(D) a certified union or recognized union or group of workers which is representative of an industry,

"(E) a trade or business association a majority of whose members are producers in an industry,

"(F) an association, a majority of whose members is composed of interested parties described in subparagraph (C), (D), or (E), and

"(G) for purposes of section 807, a purchaser who, after the effective date of an order issued under that section, entered into a contract of sale with the foreign producer that is subject to the order.

"(18) AFFIRMATIVE DETERMINATIONS BY DIVIDED COMMISSION.—If the Commissioners voting on a determination by the Commission are evenly divided as to whether the determination should be affirmative or negative, the Commission shall be deemed to have made an affirmative determination. For the purpose

of applying this paragraph when the issue before the Commission is to determine whether there is or has been—

"(A) material injury to an industry in the United States,

"(B) threat of material injury to such an industry, or

"(C) material retardation of the establishment of an industry in the United States,

by reason of the sale of the subject vessel, an affirmative vote on any of the issues shall be treated as a vote that the determination should be affirmative.

"(19) ORDINARY COURSE OF TRADE.—The term 'ordinary course of trade' means the conditions and practices which, for a reasonable time before the sale of the subject vessel, have been normal in the shipbuilding industry with respect to a like vessel. The administering authority shall consider the following sales and transactions, among others, to be outside the ordinary course of trade:

"(A) Sales disregarded under section 822(b)(1).

"(B) Transactions disregarded under section 822(f)(2).

"(20) NONMARKET ECONOMY COUNTRY.—

"(A) IN GENERAL.—The term 'nonmarket economy country' means any foreign country that the administering authority determines does not operate on market principles of cost or pricing structures, so that sales of vessels in such country do not reflect the fair value of the vessels.

"(B) FACTORS TO BE CONSIDERED.—In making determinations under subparagraph (A) the administering authority shall take into account—

"(i) the extent to which the currency of the foreign country is convertible into the currency of other countries,

"(ii) the extent to which wage rates in the foreign country are determined by free bargaining between labor and management,

"(iii) the extent to which joint ventures or other investments by firms of other foreign countries are permitted in the foreign country,

"(iv) the extent of government ownership or control of the means of production,

"(v) the extent of government control over the allocation of resources and over the price and output decisions of enterprises, and

"(vi) such other factors as the administering authority considers appropriate.

"(C) DETERMINATION IN EFFECT.—

"(i) Any determination that a foreign country is a nonmarket economy country shall remain in effect until revoked by the administering authority.

"(ii) The administering authority may make a determination under subparagraph (A) with respect to any foreign country at any time.

"(D) DETERMINATIONS NOT IN ISSUE.—Notwithstanding any other provision of law, any determination made by the administering authority under subparagraph (A) shall not be subject to judicial review in any investigation conducted under subtitle A.

"(21) SHIPBUILDING AGREEMENT.—The term 'Shipbuilding Agreement' means The Agreement Respecting Normal Competitive Conditions in the Commercial Shipbuilding and Repair Industry, resulting from negotiations under the auspices of the Organization for Economic Cooperation and Development, and entered into on December 21, 1994.

"(22) SHIPBUILDING AGREEMENT PARTY.—The term 'Shipbuilding Agreement Party' means a state or separate customs territory that is a Party to the Shipbuilding Agreement, and with respect to which the United States applies the Shipbuilding Agreement.

"(23) WTO AGREEMENT.—The term 'WTO Agreement' means the Agreement defined in section 2(9) of the Uruguay Round Agreements Act.

"(24) WTO MEMBER.—The term 'WTO member' means a state, or separate customs territory (within the meaning of Article XII of the WTO Agreement), with respect to which the United States applies the WTO Agreement.

"(25) TRADE REPRESENTATIVE.—The term 'Trade Representative' means the United States Trade Representative.

"(26) AFFILIATED PERSONS.—The following persons shall be considered to be 'affiliated' or 'affiliated persons':

"(A) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.

"(B) Any officer or director of an organization and such organization.

"(C) Partners.

"(D) Employer and employee.

"(E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization, and such organization.

"(F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.

"(G) Any person who controls any other person, and such other person. For purposes of this paragraph, a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person.

"(27) INJURIOUS PRICING.—The term 'injurious pricing' refers to the sale of a vessel at less than fair value.

"(28) INJURIOUS PRICING MARGIN.—

"(A) IN GENERAL.—The term 'injurious pricing margin' means the amount by which the normal value exceeds the export price of the subject vessel.

"(B) MAGNITUDE OF THE INJURIOUS PRICING MARGIN.—The magnitude of the injurious pricing margin used by the Commission shall be—

"(i) in making a preliminary determination under section 803(a) in an investigation (including any investigation in which the Commission cumulatively assesses the effect of sales under paragraph (16)(F)(i)), the injurious pricing margin or margins published by the administering authority in its notice of initiation of the investigation; and

"(ii) in making a final determination under section 805(b), the injurious pricing margin or margins most recently published by the administering authority before the closing of the Commission's administrative record.

"(29) COMMERCIAL INTEREST REFERENCE RATE.—The term 'Commercial Interest Reference Rate' or 'CIRR' means an interest rate that the administering authority determines to be consistent with Annex III, and appendices and notes thereto, of the Understanding on Export Credits for Ships, resulting from negotiations under the auspices of the Organization for Economic Cooperation, and entered into on December 21, 1994.

"(30) ANTIDUMPING.—

"(A) WTO MEMBERS.—In the case of a WTO member, the term 'antidumping' refers to action taken pursuant to the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994.

"(B) OTHER CASES.—In the case of any country that is not a WTO member, the term 'antidumping' refers to action taken by the country against the sale of a vessel at less than fair value that is comparable to action described in subparagraph (A).

"(31) BROAD MULTIPLE BID.—The term 'broad multiple bid' means a bid in which the proposed buyer extends an invitation to at least all the producers in the industry known by the buyer to be capable of building the subject vessel.".

SEC. 102. ENFORCEMENT OF COUNTERMEASURES.

Part II of title IV of the Tariff Act of 1930 is amended by adding at the end the following:

"SEC. 468. SHIPBUILDING AGREEMENT COUNTERMEASURES.

"(a) IN GENERAL.—Notwithstanding any other provision of law, upon receiving from the Secretary of Commerce a list of vessels subject to countermeasures under section 807, the Customs Service shall deny any request for a permit to lade or unlade passengers, merchandise, or baggage from or onto those vessels so listed.

"(b) EXCEPTIONS.—Subsection (a) shall not be applied to deny a permit for the following:

"(1) To unlade any United States citizen or permanent legal resident alien from a vessel included in the list described in subsection (a), or to unlade any refugee or any alien who would otherwise be eligible to apply for asylum and withholding of deportation under the Immigration and Nationality Act.

"(2) To lade or unlade any crewmember of such vessel.

"(3) To lade or unlade coal and other fuel supplies (for the operation of the listed vessel), ships' stores, sea stores, and the legitimate equipment of such vessel.

"(4) To lade or unlade supplies for the use or sale on such vessel.

"(5) To lade or unlade such other merchandise, baggage, or passenger as the Customs Service shall determine necessary to protect the immediate health, safety, or welfare of a human being.

"(c) CORRECTION OF MINISTERIAL OR CLERICAL ERRORS.—

"(1) PETITION FOR CORRECTION.—If the master of any vessel whose application for a permit to lade or unlade has been denied under this section believes that

such denial resulted from a ministerial or clerical error, not amounting to a mistake of law, committed by any Customs officer, the master may petition the Customs Service for correction of such error, as provided by regulation.

"(2) INAPPLICABILITY OF SECTIONS 514 AND 520.—Notwithstanding paragraph (1), imposition of countermeasures under this section shall not be deemed an exclusion or other protestable decision under section 514, and shall not be subject to correction under section 520.

"(3) PETITIONS SEEKING ADMINISTRATIVE REVIEW.—Any petition seeking administrative review of any matter regarding the Secretary of Commerce's decision to list a vessel under section 807 must be brought under that section.

"(d) PENALTIES.—In addition to any other provision of law, the Customs Service may impose a civil penalty of not to exceed $10,000 against the master of any vessel—

"(1) who submits false information in requesting any permit to lade or unlade; or

"(2) who attempts to, or actually does, lade or unlade in violation of any denial of such permit under this section.".

SEC. 103. JUDICIAL REVIEW IN INJURIOUS PRICING AND COUNTERMEASURE PROCEEDINGS.

(a) JUDICIAL REVIEW.—Part III of title IV of the Tariff Act of 1930 is amended by inserting after section 516A the following:

"SEC. 516B. JUDICIAL REVIEW IN INJURIOUS PRICING AND COUNTERMEASURE PROCEEDINGS.

"(a) REVIEW OF DETERMINATION.—

"(1) IN GENERAL.—Within 30 days after the date of publication in the Federal Register of—

"(A)(i) a determination by the administering authority under section 802(c) not to initiate an investigation,

"(ii) a negative determination by the Commission under section 803(a) as to whether there is or has been reasonable indication of material injury, threat of material injury, or material retardation,

"(iii) a determination by the administering authority to suspend or revoke an injurious pricing order under section 806(d) or (e),

"(iv) a determination by the administering authority under section 807(c),

"(v) a determination by the administering authority in a review under section 807(d),

"(vi) a determination by the administering authority concerning whether to extend the scope or duration of a countermeasure order under section 807(e)(3)(B)(ii),

"(vii) a determination by the administering authority to amend a countermeasure order under section 807(e)(6),

"(viii) a determination by the administering authority in a review under section 807(g),

"(ix) a determination by the administering authority under section 807(i) to terminate proceedings, or to amend or revoke a countermeasure order,

"(x) a determination by the administering authority under section 845(b), with respect to a matter described in paragraph (1)(D) of that section, or

"(B)(i) an injurious pricing order based on a determination described in subparagraph (A) of paragraph (2),

"(ii) notice of a determination described in subparagraph (B) of paragraph (2),

"(iii) notice of implementation of a determination described in subparagraph (C) of paragraph (2), or

"(iv) notice of revocation of an injurious pricing order based on a determination described in subparagraph (D) of paragraph (2),

an interested party who is a party to the proceeding in connection with which the matter arises may commence an action in the United States Court of International Trade by filing concurrently a summons and complaint, each with the content and in the form, manner, and style prescribed by the rules of that court, contesting any factual findings or legal conclusions upon which the determination is based.

"(2) REVIEWABLE DETERMINATIONS.—The determinations referred to in paragraph (1)(B) are—

"(A) a final affirmative determination by the administering authority or by the Commission under section 805, including any negative part of such a determination (other than a part referred to in subparagraph (B)),

"(B) a final negative determination by the administering authority or the Commission under section 805,

"(C) a determination by the administering authority under section 845(b), with respect to a matter described in paragraph (1)(A) of that section, and

"(D) a determination by the Commission under section 845(a) that results in the revocation of an injurious pricing order.

"(3) EXCEPTION.—Notwithstanding the 30-day limitation imposed by paragraph (1) with regard to an order described in paragraph (1)(B)(i), a final affirmative determination by the administering authority under section 805 may be contested by commencing an action, in accordance with the provisions of paragraph (1), within 30 days after the date of publication in the Federal Register of a final negative determination by the Commission under section 805.

"(4) PROCEDURES AND FEES.—The procedures and fees set forth in chapter 169 of title 28, United States Code, apply to an action under this section.

"(b) STANDARDS OF REVIEW.—

"(1) REMEDY.—The court shall hold unlawful any determination, finding, or conclusion found—

"(A) in an action brought under subparagraph (A) of subsection (a)(1), to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, or

"(B) in an action brought under subparagraph (B) of subsection (a)(1), to be unsupported by substantial evidence on the record, or otherwise not in accordance with law.

"(2) RECORD FOR REVIEW.—

"(A) IN GENERAL.—For purposes of this subsection, the record, unless otherwise stipulated by the parties, shall consist of—

"(i) a copy of all information presented to or obtained by the administering authority or the Commission during the course of the administrative proceeding, including all governmental memoranda pertaining to the case and the record of ex parte meetings required to be kept by section 843(a)(2); and

"(ii) a copy of the determination, all transcripts or records of conferences or hearings, and all notices published in the Federal Register.

"(B) CONFIDENTIAL OR PRIVILEGED MATERIAL.—The confidential or privileged status accorded to any documents, comments, or information shall be preserved in any action under this section. Notwithstanding the preceding sentence, the court may examine, in camera, the confidential or privileged material, and may disclose such material under such terms and conditions as it may order.

"(c) STANDING.—Any interested party who was a party to the proceeding under title VIII shall have the right to appear and be heard as a party in interest before the United States Court of International Trade in an action under this section. The party filing the action shall notify all such interested parties of the filing of an action under this section, in the form, manner, and within the time prescribed by rules of the court.

"(d) DEFINITIONS.—For purposes of this section:

"(1) ADMINISTERING AUTHORITY.—The term 'administering authority' has the meaning given that term in section 861(1).

"(2) COMMISSION.—The term 'Commission' means the United States International Trade Commission.

"(3) INTERESTED PARTY.—The term 'interested party' means any person described in section 861(17).".

(b) CONFORMING AMENDMENTS.—

(1) JURISDICTION OF THE COURT.—Section 1581(c) of title 28, United States Code, is amended by inserting "or 516B" after "section 516A".

(2) RELIEF.—Section 2643 of title 28, United States Code, is amended—

(A) in subsection (c)(1) by striking "and (5)" and inserting "(5), and (6)"; and

(B) in subsection (c) by adding at the end the following new paragraph:

"(6) In any civil action under section 516B of the Tariff Act of 1930, the Court of International Trade may not issue injunctions or any other form of equitable relief, except with regard to implementation of a countermeasure order under section 468 of that Act, upon a proper showing that such relief is warranted.".

TITLE II—OTHER PROVISIONS

SEC. 201. EQUIPMENT AND REPAIR OF VESSELS.

Section 466 of the Tariff Act of 1930 (19 U.S.C. 1466), is amended by adding at the end the following new subsection:

"(i) The duty imposed by subsection (a) shall not apply with respect to activities occurring in a Shipbuilding Agreement Party, as defined in section 861(22), with respect to—

"(1) self-propelled seagoing vessels of 100 gross tons or more that are used for transportation of goods or persons or for performance of a specialized service (including, but not limited to, ice breakers and dredges), and

"(2) tugs of 365 kilowatts or more.

A vessel shall be considered 'self-propelled seagoing' if its permanent propulsion and steering provide it all the characteristics of self-navigability in the high seas.".

SEC. 202. EFFECT OF AGREEMENT WITH RESPECT TO PRIVATE REMEDIES.

No person other than the United States—

(1) shall have any cause of action or defense under the Shipbuilding Agreement or by virtue of congressional approval of the agreement, or

(2) may challenge, in any action brought under any provision of law, any action or inaction by any department, agency, or other instrumentality of the United States, the District of Columbia, any State, any political subdivision of a State, or any territory or possession of the United States on the ground that such action or inaction is inconsistent with such agreement.

SEC. 203. IMPLEMENTING REGULATIONS.

After the date of the enactment of this Act, the heads of agencies with functions under this Act and the amendments made by this Act may issue such regulations as may be necessary to ensure that this Act is appropriately implemented on the date the Shipbuilding Agreement enters into force with respect to the United States.

SEC. 204. AMENDMENTS TO THE MERCHANT MARINE ACT, 1936.

The Merchant Marine Act, 1936, is amended as follows:

(1) Section 511(a)(2) (46 App. U.S.C. 1161(a)(2)) is amended by inserting after "1939," the following: "or, if the vessel is a Shipbuilding Agreement vessel, constructed in a Shipbuilding Agreement Party, but only with regard to moneys deposited, on or after the date on which the Shipbuilding Trade Agreement Act takes effect, into a construction reserve fund established under subsection (b)".

(2) Section 601(a) (46 App. U.S.C. 1171(a)) is amended by striking ", and that such vessel or vessels were built in the United States, or have been documented under the laws of the United States not later than February 1, 1928, or actually ordered and under construction for the account of citizens of the United States prior to such date," and inserting "and that such vessel or vessels were built in the United States, or, if the vessel or vessels are Shipbuilding Agreement vessels, in a Shipbuilding Agreement Party".

(3) Section 606(6) (46 App. U.S.C. 1176(6)) is amended by inserting "or, if the vessel is a Shipbuilding Agreement vessel, in a Shipbuilding Agreement Party or in the United States, before ", except in an emergency.".

(4) Section 607 (46 App. U.S.C. 1177) is amended as follows:

(A) Subsection (a) is amended by inserting "or, if the vessel is a Shipbuilding Agreement vessel, in a Shipbuilding Agreement Party," after "built in the United States".

(B) Subsection (k) is amended as follows:

(i) Paragraph (1) is amended by striking subparagraph (A) and inserting the following:

"(A)(i) constructed in the United States and, if reconstructed, reconstructed in the United States or in a Shipbuilding Agreement Party, or

"(ii) that is a Shipbuilding Agreement vessel and is constructed in a Shipbuilding Agreement Party and, if reconstructed, is reconstructed in a Shipbuilding Agreement Party or in the United States,".

(ii) Paragraph (2)(A) is amended to read as follows:

"(A)(i) constructed in the United States and, if reconstructed, reconstructed in the United States or in a Shipbuilding Agreement Party, or

"(ii) that is a Shipbuilding Agreement vessel and is constructed in a Shipbuilding Agreement Party and, if reconstructed, is reconstructed in a Shipbuilding Agreement Party or in the United States, but only with regard to moneys deposited into the fund on or after the date on which the Shipbuilding Trade Agreement Act takes effect.".

(5) Section 610 (46 App. U.S.C. 1180) is amended by striking "shall be built in a domestic yard or shall have been documented under the laws of the United States not later than February 1, 1928, or actually ordered and under construction for the account of citizens of the United States prior to such date," and inserting "shall be built in the United States or, if the vessel is a Shipbuilding Agreement vessel, in a Shipbuilding Agreement Party,".

(6) Section 901(b)(1) (46 App. U.S.C. 1241(b)(1)) is amended by striking the third sentence and inserting the following:

"For purposes of this section, the term 'privately owned United States-flag commercial vessels' shall be deemed to include—

"(A) any privately owned United States-flag commercial vessel constructed in the United States, and if rebuilt, rebuilt in the United States or in a Shipbuilding Agreement Party on or after the date on which the Shipbuilding Trade Agreement Act takes effect, and

"(B) any privately owned vessel constructed in a Shipbuilding Agreement Party on or after the date on which the Shipbuilding Trade Agreement Act takes effect, and if rebuilt, rebuilt in a Shipbuilding Agreement Party or in the United States, that is documented pursuant to chapter 121 of title 46, United States Code.

The term 'privately owned United States-flag commercial vessels' shall also be deemed to include any cargo vessel that so qualified pursuant to section 615 of this Act or this paragraph before the date on which the Shipbuilding Trade Agreement Act takes effect. The term 'privately owned United States-flag commercial vessels' shall not be deemed to include any liquid bulk cargo vessel that does not meet the requirements of section 3703a of title 46, United States Code.".

(7) Section 905 (46 App. U.S.C. 1244) is amended by adding at the end the following:

"(h) The term 'Shipbuilding Agreement' means the Agreement Respecting Normal Competitive Conditions in the Commercial Shipbuilding and Repair Industry, which resulted from negotiations under the auspices of the Organization for Economic Cooperation and Development, and was entered into on December 21, 1994.

"(i) The term 'Shipbuilding Agreement Party' means a state or separate customs territory that is a Party to the Shipbuilding Agreement, and with respect to which the United States applies the Shipbuilding Agreement.

"(j) The term 'Shipbuilding Agreement vessel' means a vessel to which the Secretary determines Article 2.1 of the Shipbuilding Agreement applies.

"(k) The term 'Export Credit Understanding' means the Understanding on Export Credits for Ships which resulted from negotiations under the auspices of the Organization for Economic Cooperation and Development and was entered into on December 21, 1994.

"(l) The term 'Export Credit Understanding vessel' means a vessel to which the Secretary determines the Export Credit Understanding applies.".

(8) Section 1104A (46 App. U.S.C. 1274) is amended as follows:

(A) Paragraph (5) of subsection (b) is amended to read as follows:

"(5) shall bear interest (exclusive of charges for the guarantee and service charges, if any) at rates not to exceed such percent per annum on the unpaid principal as the Secretary determines to be reasonable, taking into account the range of interest rates prevailing in the private market for similar loans and the risks assumed by the Secretary, except that, with respect to Export Credit Understanding vessels, and Shipbuilding Agreement vessels, the obligations shall bear interest at a rate the Secretary determines to be consistent with obligations of the United States under the Export Credit Understanding or the Shipbuilding Agreement, as the case may be;".

(B) Subsection (i) is amended to read as follows:

"(i)(1) Except as provided in paragraph (2), the Secretary may not, with respect to—

"(A) the general 75 percent or less limitation contained in subsection (b)(2),

"(B) the 87½ percent or less limitation contained in the 1st, 2nd, 4th, or 5th proviso to subsection (b)(2) or in section 1112(b), or

"(C) the 80 percent or less limitation in the 3rd proviso to such subsection, establish by rule, regulation, or procedure any percentage within any such limitation that is, or is intended to be, applied uniformly to all guarantees or commitments to guarantee made under this section that are subject to the limitation.

"(2) With respect to Export Credit Understanding vessels and Shipbuilding Agreement vessels, the Secretary may establish by rule, regulation, or procedure a uniform percentage that the Secretary determines to be consistent with obligations of the United States under the Export Credit Understanding or the Shipbuilding Agreement, as the case may be.".

(C) Section 1104B(b) (46 App. U.S.C. 1274a(b)) is amended by striking the period at the end and inserting the following:

", except that, with respect to Export Credit Understanding vessels and Shipbuilding Agreement vessels, the Secretary may establish by rule, regulation, or procedure a uniform percentage that the Secretary determines to be consistent with obliga-

tions of the United States under the Export Credit Understanding or the Shipbuilding Agreement, as the case may be.".

HEARING ON H.R. 2754, LEGISLATION TO IMPLEMENT THE OECD SHIPBUILDING TRADE AGREEMENT, AND RELATED ISSUES

HOUSE OF REPRESENTATIVES,
COMMITTEE ON NATIONAL SECURITY,
SPECIAL OVERSIGHT PANEL ON THE MERCHANT MARINE,
Washington, DC, Wednesday, May 22, 1996.

The panel met, pursuant to call, at 10 a.m. in room 2118, Rayburn House Office Building, Hon. Herbert H. Bateman (chairman of the panel) presiding.

OPENING STATEMENT OF HON. HERBERT H. BATEMAN, A REPRESENTATIVE FROM VIRGINIA, CHAIRMAN, SPECIAL OVERSIGHT PANEL ON THE MERCHANT MARINE

Mr. BATEMAN. The hearing will come to order.

We have a number of witnesses today and therefore I will keep my opening remarks very brief. First, I would like to extend a warm welcome to the witnesses who agreed to appear before the panel today.

It is well known that I have some concerns about the agreement that is before us for implementation. My concerns, as I have expressed on a number of occasions, are more with the timing of the agreement than the contents of the agreement. I have no philosophical dispute over the long-term benefits of subsidizing any particular industry. My specific concerns relate primarily to the fact that we have given our large shipyards very little, if any, opportunity to make the transition from 100 percent naval work to a combination commercial and navy work. Of course, the one which I am most familiar with has done perhaps as good a job in transitioning as any. For a number of reasons, they appear to be succeeding, not the least of which is a viable title XI program which was revitalized by this committee in the fiscal year 1994 Defense Authorization Act. Speaking of the Navy and defense contracts, we are once again facing a decline of Navy shipbuilding. While Bath, Newport News, Ingalls, Avondale, National Steel and Shipbuilding Co. [NASCO], and Electric Boat have Navy contracts in place, no large shipbuilder can feel secure that the Navy alone will keep them busy, profitable, or even in business. Perhaps my views are somewhat slanted by the fact I believe these yards and others are absolutely essential to the maintenance of our industrial base and in turn to our national security. It is this view that requires me to oppose this agreement in its present form. It is not an issue as to whether subsidies are in the long run good or bad, it is the fact that the provisions which many of us worked so hard to get in the fiscal year 1994 Defense Act were simply, in my opin-

ion, cast to the wind with little or no regard to this committee's interest in assuring that more than one or two yards capable of building large combatants survived.

For two of these shipyards, Newport News and Avondale, title XI, as modified by this committee in fiscal year 1994, is the one U.S. program that has allowed these yards to begin the transition to commercial work. As a Congress and as a nation, we will have failed miserably if only these two yards make the transition.

The transition is important not only because we have an identifiable market for commercial vessels, but in the long run we will be able to spread the overhead to the commercial sector and not just to the Navy. To go from building the best and most sophisticated naval vessels in the world to building price competitive product tankers takes more than a year or two to retool. Perhaps I would feel differently if our foreign competitors had not received what is by all accounts billions in government aid annually to build commercial vessels, while we had not had a commercial shipbuilding assistance program since 1981. And to add to our plight, we now appear to have left in place, in conformity with the terms of the agreement, literally millions of dollars in additional aid for our competitors.

While I have a number of other concerns including the treatment of the Jones Act, it is the lack of any rational approach to the transition rules with respect to the title XI loan guarantee program that are most problematic.

That concludes my opening remarks. I recognize the gentleman from Mississippi, the Honorable Gene Taylor, for any comments he wishes to make.

Mr. TAYLOR. Mr. Chairman, thank you for holding this hearing and giving both the opponents and the proponents of this measure an opportunity to state their case.

I personally think this is a very bad thing for our country. I think, once again, if this becomes law we will suffer from what is called the law of unintended consequences. I remember the proponents just a couple of years ago of North American Free Trade Agreement [NAFTA] saying how it was going to help our trade deficit, and last month we had once again a record trade deficit. The proponents say it would increase jobs but fail to tell the American people that those jobs would be created south of the border.

Just this morning I heard some of my colleagues say that the reason that they could not support raising wages for the least fortunate Americans is because it would now, because of NAFTA, drive those jobs south of the border, three bad things, the law of unintended consequences.

I see the same thing that you so eloquently spoke about now giving away what is left of our shipbuilding. So many people on this committee at different times championed the cause of revitalizing our shipyards, including every person on this panel today at one time led the charge to save title XI to get this country back into the shipbuilding business, because in each of our lifetimes our Nation used to be the very best at it and we got to a point where we weren't building any commercial ships and now we are just getting back into it and we are competitive internationally.

And yet here comes another measure designed not only to help Americans but actually to hurt our ability to compete in the international marketplace because they want to take a program that we know is working and change the provisions of it so it cannot possibly work.

So Mr. Chairman, we want to give the benefit of the doubt to those who we want to speak in favor of this, but having seen the record of this Congress on trade agreements and seen how our foreign competitors are taking advantage of us in almost every instance, I got to tell you they have some powerful explaining to do if they want me to think that this in some way is going to help the American economy and the American shipbuilding industry.

Mr. HUNTER. Would the gentleman yield? Is the gentleman suggesting maybe we should pass this agreement as soon as NAFTA registers a surplus?

Mr. TAYLOR. If my friend would offer that as an amendment, he can count on my support.

Mr. BATEMAN. Are there other members who wish to make an opening statement?

Mr. Cunningham.

Mr. CUNNINGHAM. Just briefly, and I think this is mostly for Mr. Gibbons, that the person that created title XI is sitting here, Rusty. When I was a freshman and then a sophomore, we had a chairman that passed away and Hon. Gerry Studds took over the committee, and Rusty came to me and said, hey, Duke, title XI with all the issues that of a foreign subsidy, we need to help our shipbuilders. We then pushed the bill. This was during George Bush's presidency.

We had a major Republican holding up our title XI funds named Dick Darman. Dick Darman was also holding up a lot of other things which we thought for the President. At the same time, there was a speech on the floor about how many people would accept Dick Darman.

I personally called Mr. Darman and told him if he wanted to keep his job he was going to let title XI and my bill go through. He refused to call back until he got the second message which I just gave you. We then pushed through the committee—Jack Murtha, who is a very close friend of mine, came to me and said, you are a Republican; a bill this big; we can't let a Republican take credit for it so we are going to pass it under the Democrats and we are going to make sure you get your name on it, and at that point being a sophomore I didn't give a damn who passed it as long as we passed it.

This legislation is very important for American shipbuilding. I disagree with the gentleman on NAFTA, but I do support the legislation and the timing, and the concerns of the chairman are very important to shipbuilders of this country and we need to protect them, because other countries are not. If you think this agreement is going to protect them, you are inhaling.

I yield back.

Mr. BATEMAN. Mr. Saxton.

Mr. SAXTON. Mr. Chairman, I would like to echo the concerns of the members that have spoken before me. I have to say that I originally became a member of this panel primarily because I was con-

cerned about our defense shipbuilding capability. However, in dealing with this issue under your very able leadership, certainly the commercial aspects have become very important.

This agreement it seems to me between the parties, unless there is something that I haven't seen, I believe for a variety of reasons puts us not at an advantage, but it seems to me that there are certain aspects of this that put us at a disadvantage, not the least of which has been the process that we have been through over the last 5 years where we hoped to get a quick agreement and did not. During the ensuing time, if my information is correct, foreign shipyards have gone out of their way to modernize through government subsidies, which has put us in a position which is very difficult and contrary to the intent of what we started out to do.

And, second, as Mr. Taylor correctly pointed out I believe, the program that we put in place to help foster a commercial shipbuilding industry in our country, this does major surgery on it. For those reasons—I hope I am wrong—I hope that there is an international agreement that has been struck here between the Bush and Clinton administrations and the other parties that I can support, but at this time I have very serious questions and wanted to express them at this time so that witnesses may have a chance to address them.

Thank you.

Mr. BATEMAN. Any further opening statements?

If not, it is my pleasure to welcome to the committee and receive the testimony of the Honorable Phil Crane, the chairman of the Trade Subcommittee on the Ways and Means Committee.

STATEMENT OF HON. PHILIP M. CRANE, A REPRESENTATIVE FROM ILLINOIS

Mr. CRANE. Thank you, Mr. Chairman, and thank you for giving me an opportunity to participate in this hearing on the implementation of the Organization for Economic Cooperation and Development [OECD] shipbuilding agreement. As you know, I sponsored H.R. 2754, along with my colleagues Mr. Gibbons and Ms. Dunn, and I am pleased to be here today to share my views. Ways and Means favorably reported this legislation by an overwhelming bipartisan vote of 27 to 4.

I strongly believe that this agreement will open up trade shipbuilding by eliminating distortive government subsidies around the world and creating equitable terms of competition in the international shipbuilding market for U.S. shipbuilders. In addition, the agreement and implementing bill would provide a new remedy to U.S. shipyards that have been injured by unfair pricing.

Under this remedy, offending shipyards will have to pay a charge in the amount of injurious pricing or face restrictions on their ability to load or unload in the United States. The agreement should help achieve an international environment that gives the U.S. shipbuilding industry the best chance to compete in world markets that are undistorted by subsidization. It would eliminate virtually all subsidies granted either directly to shipbuilders or indirectly through ship operators.

Of course, any international agreement must be fair and balanced, and I understand from our negotiators that the agreement

is truly symmetrical and that no special deals were cut to the detriment of the U.S. shipping industry.

The simple fact is that if we do not implement this agreement out of fear of having to scale back on our title XI and other programs, we will permit our trading partners to increase the level of subsidies that they provide to their industries and the U.S. industry will not be able to compete under those circumstances.

Let's face facts. It is highly unlikely that Congress will vote to increase subsidies for the U.S. shipbuilding industry to make it more competitive with highly subsidized foreign shipyards. As a result, the only way our industry can be competitive is to force its competitors to give up their subsidies and their ability to engage in unfair pricing practices. That is what this agreement does.

Nor can we, at this point, simply reject the agreement we have and return to the negotiating table in an attempt to cut an even better deal for our industry. The agreement took 5 years to conclude and was the product of hard bargaining and concessions on all sides. Our trading partners are giving up far more than we are. The proof of this point is the fact that our trading partners have told us that if we do not implement this agreement in a timely manner, support for the agreement in their countries will erode and vanish, and 5 years of work will be wasted.

With the shipbuilding agreement in force, U.S. shipbuilders can and will penetrate the global market. The result will be thousands of new American jobs, not just in the shipbuilding industry directly, but also in related industries such as steel and manufacturing equipment. Accordingly, I urge you to support the agreement in H.R. 2754.

Thank you for giving me the opportunity to come and testify before you today.

Mr. BATEMAN. Thank you.

[The prepared statement of Mr. Crane follows:]

CHAIRMAN PHILIP CRANE TESTIMONY BEFORE THE NATIONAL SECURITY MERCHANT MARINE PANEL ON H.R. 2754

MAY 22, 1996

Mr. Chairman, thank you for giving me an opportunity to participate in this hearing on the implementation of the OECD Shipbuilding Agreement. As you know, I sponsored H.R. 2754, along with my colleagues Mr. Gibbons and Ms. Dunn, and I am pleased to be here today to share my views. Ways and Means favorably reported this legislation by an overwhelming bipartisan vote of 27-4.

I strongly believe that this Agreement will open up trade in shipbuilding by eliminating distortive government subsidies around the world and creating equitable terms of competition in the international shipbuilding market for U.S. shipbuilders. In addition, the Agreement and implementing bill would provide a new remedy to U.S. shipyards that have been injured by unfair pricing.

Under this remedy, offending shipyards will have to pay a charge in the amount of injurious pricing or face restrictions on their ability to load or unload in the United States. The Agreement should help achieve an international environment that gives the U.S. shipbuilding industry the best chance to compete in world markets that are undistorted by subsidization. It would eliminate virtually all subsidies granted either directly to shipbuilders or indirectly through ship operators.

Of course, any international agreement must be fair and balanced, and I understand from our negotiators that the agreement is truly symmetrical and that no special deals were cut to the detriment of the U.S. shipping industry.

The simple fact is that if we do not implement this Agreement out of fear of having to scale back on our Title XI and other programs, we will permit our trading partners to increase the level of subsidies that they provide to their industries -- and the U.S. industry will not be able to compete under those circumstances.

Let's face facts: it is highly unlikely that Congress will vote to increase subsidies for the U.S. shipbuilding industry to make it more competitive with highly subsidized foreign shipyards. As a result, the only way our industry can be competitive is to force its competitors to give up their subsidies and their ability to engage in unfair pricing practices. That's what this Agreement does.

Nor can we, at this point, simply reject the Agreement we have and return to the negotiating table in an attempt to cut an even better deal for our industry. The agreement took five years to conclude and was the product of hard bargaining and concessions on all sides. Our trading partners are giving up far more than we are. The proof of this point is the fact that our trading partners have told us that if we do not implement this Agreement in a timely manner, support for the Agreement in their countries will erode and vanish, and five years of work will be wasted.

With the Shipbuilding Agreement in force, U.S. shipbuilders can and will penetrate the global market. The result will be thousands of new American jobs, not just in the shipbuilding industry directly, but also in related industries such as steel and manufacturing equipment. Accordingly, I urge you to support the Agreement and H.R. 2754. Thank you.

Mr. BATEMAN. The gentleman from Florida, the ranking member of the Trade Subcommittee of the Ways and Means Committee, the Honorable Sam Gibbons.

STATEMENT OF HON. SAM M. GIBBONS, A REPRESENTATIVE FROM FLORIDA

Mr. GIBBONS. Thank you, Mr. Chairman. I have a formal statement that I ask to be put in the record. Let me try to answer some concerns that were raised by members of the committee. I think I can answer every one of them, and, if not, I will be glad to submit to questions to try to answer them.

One, I voted for title XI, but title XI is a financing subsidy, that it has a temporary world advantage for domestic shipbuilders because of the agreement that you all don't want to agree to. As soon as America signals that they don't want to agree to this worldwide agreement, title XI vanishes, just like that. The advantage that title XI gives vanishes. Why? Because the other signatories to the agreement agreed to stand still on all of their subsidies, and at that time we had a very temporary title XI advantage.

Now when the other countries can match title XI, believe me, history proves that they will, and title XI becomes useless other than it is just another meaningless subsidy that we give to an industry and other nations around the world will begin to subsidize their purchase price of their commercial ships that will outdo title XI and there will be a constant escalation of trying to outdo each other, which has been the history of shipbuilding since time immemorial. This agreement puts an end to those kinds of things.

You know, the United States in 1981, in 1981 agreed not to further subsidize any shipbuilding. We haven't subsidized any commercial ships, except the title XI standstill agreement that we have since 1981. That was in the Republican substitute for the Budget Act of 1981 known as Gramm-Latta. Mr. Frenzel and some of the others who were very big on getting rid of subsidies put an end to it, so ever since then the United States has not been able to subsidize, exempt except this minor title XI subsidy which is only temporary.

And we are at a horrible disadvantage. Practically all of our commercial shipbuilding has vanished. If you hold up this agreement, title XI will be useless because the rest of the countries will say the standstill no longer counts, we will subsidize, and there go our shipbuilding contracts.

So you are between a rock and a hard place. I understand it. I have been there, too. If you think it is the trade agreements that we have executed that have been the reason for our balance of payments, let me do a little lobbying right now that I plan to do next year on my own behalf as a citizen that you have to understand. Let me use my glasses as an illustration.

If you manufacture these glasses in the United States and try to sell them overseas, tax-wise here is what happens. When these glasses leave the United States, they carry with them the full cost to the U.S. Government and that, as you know, is quite some cost. When they get in the foreign country, their consumption tax intercepts these glasses so when they go to the consumer these glasses

have two costs of governments, the U.S. cost and the foreign cost of governments.

But if you manufacture these glasses overseas and ship them here to be sold, when they get to the foreign border they scrape their taxes off and when they come into the U.S. trade area, we have got no taxes that intercept these glasses. So when they go to the American consumer they have got no cost of government in them. The foreign cost was shifted off here, we have nothing to intercept them on our side, so the glasses are sold in this country with no cost of government in them. The glasses are sold in a foreign country with two costs of government in them.

Where would you locate your glasses manufacturing plants? Certainly not in the United States.

That is a tax problem. It is caused by the fact that we insist on hanging onto an antiquated income tax and the other countries have all gone to consumption taxes, and consumption taxes can be adjusted at the border but income taxes cannot be adjusted at the border.

As soon as the Congress and America catches on to that, our crazy, convoluted income tax and payroll tax is going to go out the window and we are going to get a modern consumption tax. That is what I will be saying to you next year, but I won't catch this many of you together again and I want to say it now.

It affects our shipbuilding, it affects everything we do as far as trade is concerned. But unless we get rid of the shipbuilding subsidies, and America has not had an appetite—I won't say that nothing will ever happen on shipbuilding subsidies again, but many of the Republicans here in Congress took away all the shipbuilding subsidies in 1981. You are not about to bring them back, and I don't think the Democrats have any stomach for bringing them back. Your title XI is going to vanish just like that, its advantage that it now has, as soon as the other countries get the signal that we are not going to ratify this agreement. That is where we are. We have no choice.

July or June 15 is the effective date of this agreement, this year. If we signal to the other countries by June 15 that we aren't going to approve this agreement, the first thing they will do is match and beat title XI and we are back in the soup again with all kinds of subsidies, and we just can't do that.

I am sure there are some questions about what I have said, so may I submit to questions now, Mr. Bateman?

Mr. BATEMAN. Thank you very much, Mr. Gibbons.

[The prepared statement of Mr. Gibbons follows:]

**STATEMENT OF THE HONORABLE SAM M. GIBBONS,
RANKING DEMOCRAT, COMMITTEE ON WAYS AND MEANS,
TO THE SPECIAL OVERSIGHT PANEL ON THE MERCHANT MARINE,
HOUSE NATIONAL SECURITY COMMITTEE,
ON H.R. 2754,
THE OECD SHIPBUILDING TRADE AGREEMENT ACT
MAY 22, 1996**

Thank you, Mr. Chairman, for allowing me to testify today before your panel on H.R. 2754, legislation to implement the OECD Agreement on Shipbuilding. This legislation was favorably reported by the Ways and Means Committee on March 21, 1996, by a strong bipartisan vote of 27-4, and is strongly supported by the Administration. Similar legislation in the Senate was favorably reported by the Senate Finance Committee on May 8, 1996.

As you know, this is an issue on which I have spent considerable time in recent years. I hope that this panel, after carefully reviewing this legislation and the agreement it implements, will agree with me that this legislation should be enacted into law expeditiously.

Before turning to the agreement and the implementing legislation itself, I would like to review briefly for the panel how we got to where we are today. This history is important so that we can put this agreement and the implementing legislation in the proper perspective.

A Brief Historical Perspective

On June 8, 1989, the Shipbuilders Council of America (SCA) filed a petition under section 301 of the Trade Act of 1974, seeking action by the U.S. Trade Representative (USTR) against the shipbuilding subsidies of Japan, South Korea, Germany, and Norway. The U.S. shipbuilding industry had seen the last of its subsidy programs terminated in 1981, and believed that it would be impossible to reenter the world commercial shipbuilding market unless their foreign competitors ceased receiving massive government assistance. The U.S. industry had virtually abandoned this market in the 1980s as it concentrated on building naval ships in response to the U.S. defense buildup. However, as the industry looked to the future in the late 1980s, it was becoming increasingly evident that defense budgets would shrink and U.S. shipbuilders would have to shift capacity to the commercial marketplace in order to survive.

After consultations between then-USTR Carla Hills and the SCA, it was agreed that the 301 petition would be withdrawn, without prejudice, while USTR pursued in the Organization for Economic Cooperation and Development (OECD) or the Uruguay Round of GATT negotiations a multilateral agreement to end shipbuilding subsidies. Unfortunately, but not surprisingly, progress was painfully slow in the OECD discussions because the United States lacked any real leverage in the negotiations. After all, the United States was asking the other shipbuilding nations to eliminate those types of subsidies that the United States had unilaterally terminated nearly a decade earlier.

Given the slow pace of the negotiations, I chaired a hearing of the Subcommittee on Trade on March 21, 1991, to review the status of the OECD negotiations and to explore available options to deal with the problem. After that hearing, I concluded that one option would be to pursue legislation that would provide, under U.S. law, unilateral trade remedies to U.S. shipbuilders against foreign subsidized commercial ships. In my view, absent an international agreement, such legislation was necessary due to the lack of adequate protection under U.S. antidumping and countervailing duty laws against unfair foreign trade practices. Traditional U.S. trade law lacked such protection because ships engaged in international commerce are not considered to be imported goods, since they literally stop at water's edge and do not enter the United States as articles of commerce.

My legislation, known as the "Shipbuilding Trade Reform Act of 1991," was passed by the House of Representatives by a vote of 339-78 on May 13, 1992. However, the Senate failed to pass comparable legislation before the end of the 102nd Congress. Although my legislation failed to achieve final passage in the 102nd Congress, it set off alarm bells in foreign capitals and succeeded in giving much needed impetus to the international negotiating process. Therefore, in order to keep the pressure on the international negotiators, I introduced the legislation again at the beginning of the 103rd Congress. The Subcommittee on Trade approved an amended version of my "Shipbuilding Reform Act of 1993" on November 9, 1993. Fortunately,

it was not necessary to move the legislation beyond this point because, by this time, the OECD talks had continued to gather momentum, which ultimately resulted in the agreement we are considering today.

The OECD Agreement - The Key Elements

Generally speaking, the OECD agreement contains four major elements:

-- The elimination of virtually all subsidies granted either directly to shipbuilders or indirectly through ship operators.

-- An injurious pricing code designed to prevent dumping in the shipbuilding industry.

-- A comprehensive discipline on government financing for exports and domestic ship sales designed to avoid trade-distortive financing.

-- An effective, and binding, dispute settlement mechanism. Dispute settlement panels will be established, as necessary, in order to determine whether subsidy or other government measures are consistent with the agreement, and to ensure that the injurious pricing code is being properly implemented. Failure to comply with a panel's finding may result in the imposition of sanctions, i.e., the withdrawal of World Trade Organization (WTO)/General Agreement on Tariffs and Trade (GATT) concessions or the denial of off-loading privileges.

There are certain exceptions to the agreement's prohibition of subsidies and other distortive government practices:

-- Government support is permitted for worker retirement, severance, or retraining associated with the closure or downsizing of shipyards.

-- Government assistance for research and development is allowed under certain conditions, provided it is granted in accordance with the terms of the agreement.

-- Certain restructuring assistance programs for Belgium, Portugal, and Spain, intended to address the social cost of downsizing or closing shipyards, will be allowed to continue for a limited time after entry into force of the agreement.

-- The agreement exempts "build in U.S." requirements contained in the Jones Act and other U.S. coastwise (cabotage) maritime laws, a critical provision from the U.S. industry's perspective.

H.R. 2754 - The Key Elements

As reported by the Ways and Means Committee, H.R. 2754 would implement the OECD Agreement on Shipbuilding under U.S. law. By enacting H.R. 2754 into law, Congress would approve the agreement and make the necessary statutory changes to conform U.S. law to the agreement.

Title I of H.R. 2754 would establish a new Title VIII to the Tariff Act of 1930, as amended, in order to create an injurious-pricing mechanism applicable to shipbuilding. This mechanism would be analogous to current U.S. antidumping law, revised where necessary to take into account differences between the Shipbuilding Agreement and the World Trade Organization (WTO) antidumping agreement and differences due to the unique nature of ocean-going vessels. A vessel would be subject to the injurious-pricing provisions if it is from any country that is a party to the agreement or from any country not party to the agreement that is also not a WTO member.

Title II would eliminate the current 50-percent repair duty for repairs made to U.S.-flag vessels repaired in a country party to the agreement. Title II would also amend certain provisions of the Merchant Marine Act of 1936 to bring U.S. law into conformity with the agreement. In this regard, Title II would amend the Operational Differential Subsidies, Capital Construction Fund, Capital Reserve Fund, and Cargo Preference programs so that such programs would be available both to U.S.-built vessels as well as vessels built in countries party to the agreement. Title II would also amend the Title XI loan guarantee program to bring its terms into conformity with the agreement.

Why H.R. 2754 and the OECD Agreement Should Be Approved

The OECD Shipbuilding Agreement successfully addresses the destructive pattern of heavy government subsidies and chronic predatory pricing that has long characterized the global commercial shipbuilding industry. It is the most far-reaching international agreement ever negotiated to deal with subsidies and other distortive trade practices in any commodity, service, or industry sector.

For example, with respect to subsidies, the agreement extends far beyond the subsidy rules of the WTO. It requires other countries to give up the substantial support to their shipyards, in return for modest changes in U.S. programs (as well as no changes in the Jones Act). For instance, the European Union (EU) will have to eliminate government grants to shipyards currently amounting to around 9 percent of contract value, as well as equity infusions inconsistent with normal provision of risk capital.

The agreement establishes, for the first time in history, a strict mechanism for protecting the international shipbuilding market from dumping practices. As I noted previously, until this agreement, there has been no way to deal with predatory pricing since traditional antidumping law is not applicable to ships.

The agreement establishes a separate discipline governing government export credit and tied-aid programs much tougher than what exists today.

The binding enforcement mechanism against subsidies and dumping is tougher than what exists in the WTO or in other international agreements.

In sum, this agreement is in the best interest of the United States and should be approved and implemented by the United States Congress. H.R. 2754 and the agreement have the support of the Administration and a broad cross-section of economic interests in this country. You will be hearing testimony from them today, and I urge you to listen carefully to it.

Responding to Criticisms of the Agreement

At the same time, I am deeply troubled by the fact that there are a number of shipyards in this country who have spoken out in opposition to this agreement. I am also troubled that a number of Members of Congress, including some on this panel, have declared their opposition to the agreement. As I understand it, this opposition is based primarily on the fact that it contains unreasonable transition provisions that will permit continued subsidization by foreign shipbuilders until January 1, 1999, and that it will require modifications in certain U.S. maritime programs, particularly Title XI ship loan guarantees. While some changes to U.S. maritime law will indeed be required, I urge opponents to reconsider their position on the basis of one very compelling factor. The OECD Shipbuilding Agreement is the best chance we have to create unsubsidized competition and equitable conditions of trade in the global commercial shipbuilding market.

If we reject this agreement and H.R. 2754, we will be right back where we started in 1989. Our trading partners will undoubtedly continue their subsidizing ways, will respond in kind to any favorable financing or other programs we might be able to provide under Title XI, and will continue to engage in predatory-pricing practices with impunity. In today's budgetary climate, we will certainly continue to lose a subsidy war with our trading partners. Moreover, our ability to pursue other legislative options in Congress (such as my earlier legislation) for dealing with this issue, in the absence of the OECD Agreement, are, at best, uncertain. Finally, I am not persuaded that renegotiation of the agreement, as some are advocating, is a viable option. After all, this agreement took five years to conclude, and was the product of hard bargaining and concessions on all sides. We should be under no illusion that we can simply go back to the negotiating table and modify the agreement to allow those practices we want to keep, while prohibiting those of our trading partners that we want to eliminate.

Conclusion

The OECD Agreement on Shipbuilding, like every other trade agreement into which we have ever entered, is not a perfect instrument that achieves all the objectives of all who have an interest in it. However, it is a sound, balanced agreement that will substantially level the playing field for the U.S. shipbuilding industry in the international shipbuilding market for many years to come.

I urge this panel and the National Security Committee to report favorably H.R. 2754 to implement this Agreement and stand willing to assist you in any way that I can to make this happen.

Mr. BATEMAN. You are a very powerful advocate and we wish you well in your——

Mr. GIBBONS. You will have to listen to me. I will be here exercising my first amendment rights next year.

Mr. BATEMAN. We will look forward to hearing from you at any time on any subject. As one who is between that rock and a hard place, I appreciate that figure of speech.

Are there members who have a question of either Mr. Gibbons or Mr. Crane?

Mr. HUNTER. Yes, thank you, Mr. Chairman. To my very good friends, Mr. Crane, one of the brightest Members of this body for so many years, and the same for Sam, Sam is an old airborne trooper, you are still carrying the flag.

Let me ask you a question. I thought your glasses illustration was quite good. Are you suggesting that perhaps one of the things we ought to do with our shipbuilding industry is to scrape off all of the taxes whether they are corporate income taxes or other taxes on ships built for export? It would seem that that is your suggestion, to make American ships——

Mr. GIBBONS. We have tried in the Congress ever since I have been on the Ways and Means Committee, and that goes back 27 years, to adjust our tax system so that we could do something with it at the border, and every time we have tried it we have failed because it creates in other countries a right of action that they can retaliate against us when we grant special exceptions like that.

There are a lot of reasons why we ought to go to a value added consumption type tax. Trade is one of them but, frankly, we have not been successful in trying to adjust our tax system at the international border because we have agreed with all the other countries that no country can adjust its income tax system at the international border. That has been the law of the world since 1947. After World War II, we imposed that law on the rest of the world and the rest of the world caught on quicker than we did and they changed their system so they could adjust their taxes at their border, but we just haven't. It is a part of our American complaisance.

Mr. HUNTER. Your suggestion is that that would be helpful to the American shipbuilding industry if you could do that?

Mr. GIBBONS. I guess it would, yes. Any time you can completely forgive taxes it is all right, but we have tried that in the Ways and Means Committee for years and every time we do we run afoul of the international right to retaliate against us.

Mr. BATEMAN. Further questions for the members? Mr. Saxton.

Mr. SAXTON. Thank you, Mr. Chairman.

I wanted to explore with you the ingredients of this agreement as they apply, Sam and Phil, to subsidy programs which will continue to exist in Japan and Korea and the European partners to this agreement. I understand that there will be some subsidies that will be permitted under the agreement particularly as it relates to workers and labor. Is that correct? If so, can you describe it?

Mr. GIBBONS. I can describe it and Mr. Crane may remember them better than I do.

In the agreement, every country was seeking concessions. We had the Jones Act. We wanted a concession there. The Europeans have agreed for some time that they got to get out of the subsidy

business because they just can't afford it. They are trying to downsize their yards and their system is much more socialized than ours and they wanted to have some authority to go into worker retraining programs, to do all those kinds of things that you need to do when you are downsizing a business, and so there are some temporary windows in there which they can downsize their shipbuilding business in a humanitarian way.

Let me say that the Europeans have probably been more humane in downsizing their industries to the extent that they have downsized them than we have. That is because they have a tradition of socialization that we don't have. But Japan and Korea, who have been big subsidizers, don't get any special favors in any of this. The subsidies that are less to downsize will not help the countries expand or subsidize their new shipbuilding contracts.

Mr. SAXTON. It certainly would either on a temporary basis or perhaps on a more permanent basis if our shipbuilding workers are paid strictly on a private basis, and theirs are paid partly on a private basis, but to some extent on a socialized basis as you put it, it seems to me that that offers an advantage that our shipbuilders don't have.

Mr. GIBBONS. Europe has been partially socialized for a hundred years. It is a tough addiction to get over. They are trying to get over it.

Japan claims that they have never had any subsidies but the Japanese are always making claims like that. We think they do. They have agreed to get rid of them and we are satisfied with that. The Koreans have copied Japan and Europe so they have had some unhealthy practices, but they have agreed to get rid of them.

We got to all move as a world and get rid of these subsidies. It doesn't make sense to take money out of my pocket and others' pockets to subsidize one particular industry.

We have been the leader in the world in trying to get rid of that. We have extremely complicated and very effective laws in getting rid of subsidies, and this brings shipbuilding under the same types of laws that we have for other things in getting rid of subsidies.

Mr. BATEMAN. Mr. Taylor.

Mr. TAYLOR. Mr. Chairman, if you don't mind, Mr. Pickett sought recognition first.

Mr. BATEMAN. Mr. Pickett.

Mr. PICKETT. Thank you, Mr. Chairman.

I want to welcome our distinguished witnesses this morning.

Sam, the notion seems to be here that I keep hearing is that somehow this is a bad deal, and yet there are—a bad deal for the country, and yet there is a clear division between the group that supports this legislation, those people who utilize the transportation industry, and then those who are opposing the legislation.

Can you tell us anything that can help resolve that conflict, about whether it is a good deal, and how the two groups see this in a different light?

Mr. GIBBONS. I have to repeat some of the things I have just said, because fundamentally the advantage that the United States has, and it is a small advantage, is one that is temporary because it is—it will cease to exist as soon as the other countries say we are not going to stand still on our subsidies anymore.

When this agreement was entered into, as is customary in agreements of this type, all countries agreed not to increase their subsidies, but America, because of title XI, was slightly ahead in the subsidization of the purchase price, the financing, and the other countries were caught with our being slightly ahead in that.

The standstill that they have honored has given our country a slight advantage, but this will evaporate as soon as the other countries say, well, the United States is not going to approve this agreement which they have harassed us for years to enter into, and we are going to go back into the subsidy business and ignore the standstill agreement. And bingo, they can enact a subsidy much quicker than we can, and they will be back and top title XI by a few points, and the whole escalation of here we go again will start on a world basis.

So I feel sorry for Herb and Gene. They have two big shipyards. They are doing a hell of a job trying to make a transition into commercial and Navy shipbuilding. But you know, it isn't going to work. It isn't going to work, Mr. Pickett.

Mr. PICKETT. Assuming that the United States goes ahead and gets into this agreement, what provisions are there for the United States to get out of it?

Mr. GIBBONS. All agreements we can renounce and get out of—I have forgotten the exact details of this one. I think it is 6 months' notice. The Congress is still sovereign. The Congress can still change its mind and get out of practically any damn time it wants to. We thrash around on these things, but we can get out of this agreement.

Mr. PICKETT. You have been working this issue for a long, long time, and I am sure that you followed the negotiations of this agreement, and the ups and downs, and ins and outs, and what was included and excluded. Based on your judgment of the competing issues here, are you convinced that the United States has gotten as good a deal as it can get out of this negotiation?

Mr. GIBBONS. Yes, sir. We wore out three or four negotiators negotiating with the Europeans. One time I went there and met with the Europeans and raised hell, like I am able to do sometimes.

We finally got an agreement. It took 5 years of negotiation on this damned thing. And the negotiators would come back and say, we can't get them to budge on anything. They won't agree to anything. All the time we sat here with no subsidies. The Congress had abolished the subsidy. Our shipbuilding was going down the drain. The only ones that survived were the ones that had enough Navy contracts to get through.

God knows, I want a good strong Navy. I don't want to repeat all the hell we have gone through in the last 50 years defending this country. The Navy is a good, strong part of it. I realize you have to have specialized yards to do this heavy and specialized construction that they carryout, and I wish all of you who have Navy yards in your district well. They ought to convert to as much commercial construction as they have time for.

But the temporary advantage of title XI—my message is real simple. It will just disappear as soon as the other countries realize that we are not going to ratify this agreement, because they are just caught by their own signature on the paper saying we will

stand still during the ratification process. We won't increase our subsidies during the ratification process. When they see the ratification process has not been consummated, bingo; they will beat you before the end of the summer. They will have higher subsidies.

Mr. PICKETT. Thank you very much.

Mr. BATEMAN. Mr. Cunningham.

Mr. CUNNINGHAM. Thank you, Mr. Chairman, and Sam and Phil.

I am sorry—we have a bipartisan special education bill that is going to come out, and I was meeting with Dale Kildee on that and unable to hear you.

Let me tell you some of the real concerns I have, and I laud you for the 5 years of work you have done on this. I think I go along with the chairman, it is the timing of it, and any time you want to kill anything around here, you delay it or have a hearing or a testimony or pilot program. I understand that. I am not trying to do that to you. But the problem that we have is a peace through strength, and we have only one, Sam, only one on the entire West Coast shipbuilding industry——

Mr. GIBBONS. I am very aware of that.

Mr. CUNNINGHAM [continuing]. And only a couple on the East Coast.

Mr. GIBBONS. I am well aware of that.

Mr. CUNNINGHAM. If OECD doesn't work, we hazard what we have left in this country not only for national security, but for building dual hull tankers and the rest.

My concern is that Japan—when you say we are ahead, another factor is that they are building so many ships now. If you build 10 ships in your yard versus one, then it is a lot cheaper, so they are already ahead as far as the cheapness that they can produce those ships when we are not producing any.

The last civilian ship was a ship out of Hawaii on the West Coast, and to regear that up, the initial costs are so much higher, so there is already a built-in subsidy until we catch up. My fear is that if we operate this, those ships are already in great numbers in the foreign ports. They are going to be offered at a cheaper rate. There is going to be a timing that is going to happen that our ships are so high in cost, labor cost, that it is still going to cut us out of the market. That is the real concern, although I agree with what you are trying to do.

Mr. GIBBONS. Let me answer that. Unsubsidized, the labor costs in the United States are cheaper than in most places on Earth. Unsubsidized, our labor costs are cheaper. They are certainly cheaper than Japan. Japan has excellent shipyards. I have visited Japanese shipyards. They have some God-awful shipyards over there, but so do we. We can beat them as long as we are playing under fair rules and a level playing field. That is because of the value of our currency in the international marketplace.

As you know, the yen is way up there now; 104 yen to the dollar. General Motors and Ford chief executive officers [CEO's] told me we can compete against Japan if we could ever get the yen down to 180 to the dollar. It is 104 to the dollar now, and we can clean their scooters on that thing. We have got good, competitive American labor. We have good, competitive American know-how. We just can't compete against the damned subsidies. That is our problem.

Mr. CUNNINGHAM. I agree. You give the American worker a chance to compete, and we have always kicked the other patooski.

Mr. GIBBONS. Sure.

Mr. CUNNINGHAM. But there is the other concern that they have so many future orders that it is a displacement to us. It is just a factor. If you are building 10 ships, it is cheaper to build one. Is there anything in the agreement that neutralizes that advantage?

Mr. GIBBONS. Sure. They can't subsidize.

Mr. CUNNINGHAM. They can't subsidize, but they already have those ships on orders. Their ships are running, they are hiring and shipping and building right now.

Mr. GIBBONS. These people back here tell me we can compete.

Mr. CUNNINGHAM. If you took brand new orders, and one company has got 10 ships and the other has got one, the company with 10 ships is much, much cheaper per ship than it is for the company that has one or two or three.

Mr. GIBBONS. These people behind me are smart, and they tell me we can compete if we get rid of the subsidies. They would like as much help as we can give them directly and indirectly to get up to speed. I figure you are going to help them with their Navy contracts and all that, but they can compete if we could get rid of subsidies.

The dollar is priced right for world competition. It makes our labor cost cheaper in the United States than in most of the other markets of the world, and there is a hell of a lot of obsolescence coming along in commercial ships. There will be a lot more commercial ships that will have to be replaced in the world market in just a few years than there have been in the past because of a sort of block obsolescence in the commercial ship area, and we have a real advantage here if you would turn this thing loose and let us go.

Mr. CUNNINGHAM. Sam, I think most of us do want to turn you loose and turn this thing loose. It is just that there is for an interim time, even though we agree that, A, if it doesn't work, and, B, there are other advantages that those yards have over our workers, even though we can compete, I would rather start at zero to zero with the tipoff instead of zero to 10, spotting the other guys 10 points. Let's balance it to zero–zero at tipoff and then——

Mr. GIBBONS. That is what we have been trying to do. That is what I think this agreement does. I think we are—unfortunately because of my age, I probably won't see a revival of the shipbuilding industry in the United States, but you are younger, and you will see a hell of a revival if we can get on with American know-how and the fact that we have got the dollar priced right.

Mr. BATEMAN. Mr. Taylor.

Mr. TAYLOR. Thank you, Mr. Chairman.

For those of you who don't know, I am the gentleman on the other side of the issue. I think it takes an incredible act of courage to jump out of an airplane under any circumstances. It takes even more to do so in the middle of the night with well-armed angry Germans awaiting you, and Mr. Gibbons jumped into Normandy, France the night before D-day and for that, for what he did and for what his colleagues did, this Nation always needs to be grateful. So Mr. Sam, if I take rather strong exception to you, please

know I feel grateful for what you have done and this is just an honest disagreement——

Mr. GIBBONS. Thank you. But I have always been grateful for what the Congress did. They gave the American soldier the best arms, the most arms, the best training, and the best support, this Congress did, for all of us who participated in these events. And I sometimes hope that we have the wisdom and have the courage to do what those Congresses did then.

They raised the money. They waived the rules. They put together a magnificent industrial complex. They built ships by people who never had their feet wet before. And you know, they got us across the oceans, and one time about 10 days after D-day, I finally got myself back to the beach, and I looked out there. You have never seen so many ships in your life as were out there on the horizon, ships parked on the beach; not only military craft, but all the commercial crafts. Not many Germans got to see that because they had mostly been run out of that area by this time, but to an American soldier it was an inspiration to see all those American ships there backing us up.

Mr. TAYLOR. Mr. Sam, you have given me the greatest slow pitch at just the right height. You have rewarded me for my kind words because you know those ships and shipyards in many instances came to be, as much as I like Rusty, he is not the father of title XI. Former President Franklin Delano Roosevelt [FDR] was. Prior to World War II, he saw a serious industrial deficiency in this Nation and he saw a lack of merchant marine and he saw World War II was coming, and he knew the day would be coming when people like you and other brave young people would have to get shipped over there, and we had to way to do it. That is how title XI got started. The ship you went over there on was either built by title XI or built at a shipyard that had benefitted from title XI.

Mr. GIBBONS. No, I went over on a British ship. Queen Elizabeth.

Mr. TAYLOR. If I may, Mr. Sam——

Mr. GIBBONS. That was probably subsidized, too.

Mr. TAYLOR. Mr. Sam, everything you said is exactly true. We have to have those shipyards because there is always a next time, and we are to the point where we have gone from the world's greatest shipbuilder shortly after World War II to a Nation that in 1990 didn't build any commercial ships. We are slowly getting back into the business. We now have 13 ships on order when we had none just a few years as a result of title XI.

Let me tell you what tremendous leveraging we have done versus what our foreign competitors are doing. The Koreans have already subsidized their yards by $2.4 billion; the Germans, $2.3 billion; the Japanese at least $1.9 billion. So with $50 million leveraged through the title XI program, we are finally back in the game.

Unfortunately some dumb things that happened in the 1980's, the construction differential subsidy got us out of the game. If I read what saying is, we are going to take away that small advantage we have. As you said, the American shipyard workers work less than their German or Japanese counterparts. So we have a program that is working. Why take it away?

Mr. GIBBONS. I am not going to take it away, Gene. It is Parliaments in Europe and Parliaments in Japan and Korea are going

to take it away from you. The only reason you have any advantage from title XI is because of the standstill arrangement that is in this agreement. As soon as the standstill or this agreement, evaporates, the standstill agreement is of no force and effect. The other Parliaments around the world will go right back to subsidizing. Bingo; the advantage you have under title XI evaporates.

Mr. TAYLOR. Let me point to a specific. I keep hearing that if we do away with all the subsidies, the world will be milk and honey. The chances of getting everybody on this sheet to cooperate with totally doing away with subsidies are about the chances of my becoming a Benedictine monk. It is not going to happen.

Mr. GIBBONS. They have agreed to it. And if they don't live up to it, we can walk away too.

Mr. TAYLOR. Then we are presuming that none of the people in this will go to a third party country like the Ukraine and like Poland and build their ships there. They will do an end-around on us. We know what has happened in the $10 billion cruise ship industry where we said, you will have equal access with the Americans, but you won't have to pay the cost.

Just as you so eloquently said in your opening statements, if you tell the Americans they have to live by all the rules and pay all the costs, and tell the foreigners they don't have to live by the rules and pay any of the costs and have equal access to our markets, you know who wins every time? They win. Ninety percent of the people in the world who get on a cruise ship will be Americans, and 99 percent of the time they will get on a foreign ship leaving our ports. It doesn't work Mr. Sam.

One of the things that the Founding Fathers did wisely was reserve coastwise commerce for Americans because it does cost more to participate and to live by our rules. We ought to at least turn around and say if you are going to pay more, we are going to give you this market. We ought to at least say to our shipyards, if we are cutting off your lifeline of defense work, we are going to have a small program out there to help you make the transition back to the private sector, and it is working, and I just don't think it makes sense to take it away. Thank you, Mr. Chairman.

Mr. GIBBONS. I am not going to take it away, but if you don't agree to this agreement, you are going to take it away because it won't last any time Mr. Taylor. The only reason we have an advantage from title XI is the simple fact that the other countries signed the agreement and are living up to it. They said, during the time in which we are ratifying this agreement, all of the signatories will stand still; we won't increase any of our subsidies during that time. But as soon as the standstill evaporates, they are going to increase their subsidy, and title XI is eclipsed.

This Congress is not going to go into any heavy shipbuilding subsidy or any other kind of subsidy. These folks have all agreed to get government out of the private marketplace as much as possible. Hell, most of us Democrats agree with that, too, but not as vociferously as these folks do over here.

I lived through this in 1981. I remember Bill Frenzel and some of the others beating us over the head over the shipbuilding subsidies that we had then, and they took them all away in Gramm-Latta when they voted down the previous question and amended

the budget resolution. All of our shipbuilding subsidies went zip, like that, and we have been dying on the vine ever since then, and we are going to die on the vine again if you don't agree to this agreement.

Mr. BATEMAN. Let me suggest to the members of the panel that we will have ample opportunity to debate the issues, and we should confine ourselves more to a questioning mode than to a debating mode, or otherwise we will never get to our witnesses.

Mr. GIBBONS. Don't slow them down too much. This may be my swan song.

Mr. BATEMAN. We need to make progress.

The Chair recognizes Mr. Hunter.

Mr. HUNTER. Thank you, Mr. Chairman. I have appreciated listening to the give and take. I think it has been good.

Sam and Phil, if you look at this thing in the broad context, and you apply it to the Japanese strategy of the 1950's, I see some similarities between our shipbuilding industry and their then extremely small automobile and electronics industries. They embargoed—at that point they realized that they couldn't go against the Americans, and they asked us, and basically we complied, with a total embargo on American-made goods in terms of automobiles and electronic equipment—televisions, for example—to Japan so they could build their home market.

They had a strategy of building this little incipient home market and home industry in automobiles to the point where they had enough strength and enough industrial momentum to then go out and take us on in our own market and to go into other markets. They did that because they realized that capital is important, that size is important, as Mr. Cunningham said, when you have a major industry, and you have big assembly lines, you have good tooling, and you have billions of dollars invested as the United States then had in our dominant automobile industry.

The last thing in the world that the Japanese needed, and I think they were correct, is a policy in which they said we have this little tiny threadbare automobile industry, but we are going to open our market for General Motors and Ford and other big American companies to come in here, and we think we can compete with them. They knew they couldn't compete because of the size of the American industry and the modern tooling and capital and the other things, which together amount to what I would call industrial momentum.

Over the years, while it is true that these other countries are willing now to cutoff, at least ostensibly to trim back on these subsidies, the investment of dozens of years of these subsidies amount to billions of dollars of ready resources in their industrial shipbuilding machine ready to pour out ships, and we can't match that.

I would just ask you to comment on whether we are asking our industry to do exactly the opposite of the Japanese strategy in the 1950's, which is the equivalent of asking the people in this room to take on General Motors and build their own little car companies, and God be with you. You might wish them all well and give them a copy of Adam Smith, some of his writings, but you wouldn't want to invest any of your money with them.

So my question is, are we not embarking on a strategy that they have already gamed out, and they figure that their momentum that they have in the world shipbuilding industry will easily carry them into a penetration of this small remnant of the world market that the United States now holds, and they will be able to dominate us because of past investments, not future investments?

Mr. GIBBONS. The reason why the Japanese were able to take advantage of the world market really is tied up with, to a great extent, our own international policy during those years. Shortly after World War II, we were confronted with two realities. We had one-fifth of the Earth's population, mainly the Chinese, going Communist. They had a huge army and they were very expansionist. We had Korea, and everybody remembers the Korean war, and the fact that we nearly lost that, we were at the southern end of the peninsula and ready to jump in the sea when we were able to turn the tide, America's might and ingenuity was able to turn the tide in Korea. All the time we were using Japan as a floating supply base and aircraft carrier to carry on our defensive position in the western end of the Pacific. Then up comes Vietnam with all of its horrors.

In the meantime, Japan was getting very preferential treatment. We didn't have any allies out there, we had lost China, we were threatened in Korea, and we were having a hell of a time in Vietnam, and the Japanese were able to capitalize on the fact that we were willing to turn our back on all their commercial endeavors.

Now, the automobile industry was not one of the anointed industries in Japan, but it survived and did damn well without any government subsidy. America has never been able to prove——

Mr. HUNTER. Except American cars were kept out. That was their subsidy.

Mr. GIBBONS. Let me correct you. My authority is the present chairman of the board of General Motors and of Ford. They came to my office in the Rayburn Building here, same place I am now, and sat on the couch there, and we talked it over. They said, Mr. Gibbons, the strategy of General Motors and Ford is to manufacture a car as close to the consumer as possible, because once you get a car manufactured, you got a lot of air space in the doggoned thing, and it is very expensive to transfer. So our corporate strategy is to manufacture as close to the consumer as possible. You can look around the United States and see that they have done that. They say we would rather invest in the Japanese automobile industry in their country, and that is what they did. They went in and bought minority interests in all of the Japanese automobile industries.

That was their strategy. They never—you know, the Japanese drive down the left-hand side of the road. They said, we know that. We can't manufacture in the United States and ship to the Japanese country enough cars to justify us changing our assembly lines to do all that for that small market. So the market strategy of General Motors and Ford has always been to invest in Japan, to buy into their companies.

Chrysler had a sort of an ambiguous policy. Chrysler was busted at the time, and they continued, and they were the first to begin to penetrate. But you know, it wasn't through any benevolence of

ours that the Japanese got the real jump on us except that it fit into our national security strategy to let them get away with those things without challenging them.

Mr. BATEMAN. The gentlelady from California, Ms. Harman.

Ms. HARMAN. Thank you, Mr. Chairman. Mr. Gibbons, you will be missed in the 105th Congress.

Mr. GIBBONS. I am going to miss it, too.

Ms. HARMAN. Change your mind.

Mr. GIBBONS. Thank you. It is too late. I have four good candidates running in my district.

Ms. HARMAN. This testimony and the questions have been very interesting. I was sitting here thinking that we are the Maritime Security Panel, and the point of our inquiry here is to assure that when your grandson comes up on a beach in a future war or your granddaughter flies over it in military aircraft, that there is enough of a maritime fleet offshore to protect them and our interests in that war there.

And we have discussed title XI a lot. I would like to shift the discussion to the treatment of the Jones Act in this agreement, because I think that is another way that we either will or won't assure that there will be enough U.S.-flag vessels in some future war.

My understanding is that many in the shipbuilding industry are very concerned with the specific treatment and the references to the Jones Act in the agreement. As you know, in the first 3 years of the agreement, deliveries of up to 200,000 gross tons of Jones Act tonnage is specifically permitted, but after that the agreement contains a rebuttable presumption that the domestic build requirements violate the agreement and it also calls for a review of the Jones Act exemption after 3 years.

My question is, what do you think of this treatment of the Jones Act, and how will this affect how many U.S.-flag vessels we will build and have for our future?

Mr. GIBBONS. Well, most industrialized countries, shipbuilding countries, have something similar to the Jones Act, for their own coastal transformation of the Jones Act is not unique. But the Jones Act was one of the foreign targets in all of this negotiation, and I believe that we did the best we could to defend our own Jones Act, considering that everybody else has Jones Acts around the world for their coastal shipping.

I think that we can do all right, it is my judgment. I am not so sure that we can do anything today that will protect us way out in the future except agree to have a level playing field, and I think we do come out with a level playing field in this agreement.

Ms. HARMAN. Right.

Mr. Crane, do you have something to add to that?

Mr. CRANE. No; I just wanted to inject one thing here.

I have a conflict, Mr. Chairman, and I have got to leave. But before I do, I want to commend all of you for the outstanding contribution that you have traditionally made, and I also want to share your assessment of our distinguished ranking member here, who will be a major, major loss because of Sam's experience and understanding of trade issues. And I have mentioned many times that the Democrats historically were the free traders and we were the protectionists. After World War II, we kind of switched roles.

But Sam is an old Grover Cleveland Democrat, and I salute him for the leadership and expertise he has provided, and he is going to be sorely missed.

We anticipate though, Sam, that you will be around to counsel us even if you are not doing that in the capacity as a Congressman.

Mr. GIBBONS. Mr. Crane and I have been in this same position, either chairman or ranking member on this committee and other committees for almost 20 years now, and we have always had in any committee that I have worked on with Phil Crane, we have had bipartisanship in the highest level of its meaning.

Ms. HARMAN. Mr. Chairman, I don't have another question, but I can't let this moment pass. I think bipartisanship is the key to good governance around this place, and I am just happy in my question I precipitated it. I wish we could bottle it and use it for the next months until we adjourn this Congress.

Mr. BATEMAN. Before I recognize Mr. Longley, let me interject a comment here. This panel, of course, has a deserved reputation for being genuinely bipartisan, and we all definitely commend that attribute, and certainly it is my hope that it will continue. As long as I chair the panel, nothing will be done to make it more difficult for it to continue.

Mr. CRANE. Good.

Mr. BATEMAN. The other thing I would like to comment on: The gentlelady is absolutely right, we wouldn't be having this decision except for the national security implications of this, which is the charge of this particular panel, in the way that is different from strictly trade implications of the issue.

The other comment I must make is with reference to your Jones Act question. It is one of the things which is deeply disturbing to me about the text of this agreement. It is an anomaly to me that the American Jones Act has specifically dealt with, and I think adversely dealt with, under the terms of this agreement. But nobody else is—of the Jones Act is even mentioned. I think that is significant.

Mr. Longley.

STATEMENT OF JAMES LONGLEY, A REPRESENTATIVE FROM MAINE

Mr. LONGLEY. Thank you, Mr. Chairman.

I suspect if the hearings get any more syrupy the witness will be wondering if he is going to leave the room with his wallet.

I, too, want to follow in the theme and particularly pick up on Mr. Taylor's comment, sir, how much I respect your record and experience in this body and certainly before.

I have to be frank, though, with all due respect, and I appreciate your lengthy explanation of the difficulties faced by the European countries in their own subsidy problem, and I guess I would distinguish that or focus on the fact that yes, that is a problem for them and, to some extent, a problem for us. But the real focus here is, what is the problem for us?

And my sense, sir, is that we entered into these negotiations in good faith and with the intention of actively seeking some levelization of the playing field and, in particular, the six major shipyards in the United States that were producing 95 percent of

our ship—or maintaining 95 percent of our shipbuilding capability, we are very concerned to make this agreement work, and yet what we have ended up with is an agreement that protects programs in Belgium, Portugal, France, Spain, Korea, Germany, other countries.

We have reached accommodations to each of the particulars of each of the different countries around the world, with the net result that we have an agreement, but now the yards that represent 95 percent of our capability have grave misgivings, if not outright opposition to it.

I would pickup on the point that you made with respect to Mr. Taylor and Mr. Bateman, that you respected the fact that their yards were looking at a transition, but when their capacity is now, or their market penetration, less than 2 percent, when we are looking at countries like—or like Europe, which are producing 20 percent of the world's ships; or Japan, 40 percent of the world market; Korea, 17 percent of the world market, that there is only one way this transition appears to be going.

And where I am coming from is, very frankly, the recognition or the realization that the agreement is actually not going to deal with the problem we went into the agreement to solve. We are at a point of extreme vulnerability when you combine the ridiculously low American penetration of the world shipbuilding market with the fact that now, 2 years along, we have been given by the administration the lowest shipbuilding—naval shipbuilding procurement request in the 60 years where you even put on a uniform.

And I have got to say to myself, where are we going here? And have we reached a point where we are compromising and rationalizing to ourselves so extensively that we are missing the fact that this country owes its prominence in the world, in my opinion, to the fact that in late 1800's we came to the recognition that we were a Navy power, our power was based on naval and maritime supremacy.

When I look at what we are doing in the maritime area, where we have less than 2 percent of the world market, and when I look at that, we have now seen in two consecutive budgets from the Navy in terms of shipbuilding where we are edging down from a 600-ship Navy. We say we want a 346-ship Navy, but the procurement requests we are getting from the administration would barely allow us to sustain a 100-, 150-ship Navy.

I am making a statement, sir, but I would appreciate your comment.

Mr. GIBBONS. I voted for your bill that came on the floor a couple of weeks ago, or a week ago. I think if you go back, I voted for most of the defense bills—I guess all of them, because I really believe that I don't want to ever see my country as unprepared as it was when, 60 years ago, I first put on the uniform as a Reserve Officer Training Corps [ROTC] cadet.

By the way, you all ought to really beef up those programs. Those are good for schoolchildren, and they are good. They provided my military training that started 60 years ago in high school and also provided me with clothes to wear to high school every day. So I get a little lobbying in here. You ought to beef up those ROTC programs there.

Mr. LONGLEY. If I could just interject on this comment, I have high schools in my district that don't even allow military recruiters to come into the school. That is not unique to my State.

Mr. GIBBONS. That, unfortunately, is the result of the tragedy we call Vietnam. I saw that same thing develop in my high school. My high school that I lived just two blocks from no longer has ROTC. But it was a result of Vietnam. We can't undo that, but we will outlive it and go back to those junior ROTC's. They are doggone good.

Let me answer the concerns that you brought up without trying to be too repetitious. We have got problems in our shipbuilding industry now, for lots of reasons. Principally though, in current history, we did away with all shipbuilding subsidies. It was a part of Gramm-Latta in 1981, and we just got rid of all of them. Since that time, our yards have just not been able to compete.

Also during that time, we had a highly overvalued dollar because of the fiscal policies or monetary policies this Government was following at that time that made us further uncompetitive. No subsidies and an overvalued dollar.

I don't believe we will ever go back to subsidies, not in the foreseeable future. I don't think it is wise to do it. I think the wisest thing we can do is get the rest of the world to play on the same playing field we have been playing on since 1981, and that is no shipbuilding subsidies and no unfair—you know, we have been talking about subsidies, but there is more than just subsidies in this thing; it is unfair pricing, too.

Unfair pricing can be very—it is another form of subsidy. We call it antidumping, and all things like that. This agreement gets rid of all of those. So our shipbuilding industry, which has built the best ships in the world, the best ships in the world, the submarines and everything, all of this technology that we built up we can still subsidize in research and in development. We are not cutting out any of those. We are going to get an advantage.

We have got good programs going now or just gearing up now for research and development in this field, and I think America is poised on the edge of being another—for another time again the world's largest maritime building concern.

And you know, if we get some of our other laws straightened out, we can have a lot of American merchant ships out there. We have got some reforming to do here in the Congress on those things. I am very optimistic about the future. I think we have got a good agreement. I urge you all to agree to that.

Mr. BATEMAN. All members have had an opportunity to raise questions except Mr. Kennedy. I will recognize him if he wishes to be recognized. If not, I think, Sam, we are deeply grateful to you for your being here this morning and for the presentation you have made, and while we may not be in total accord, we are in totally respectful—

Mr. GIBBONS. You all have been very fair and diligent, and I see that each one of you is searching for the truth. That is all I ever ask.

Thank you.

Mr. BATEMAN. Thank you, Mr. Gibbons.

Mr. BATEMAN. I would ask Ambassador Jennifer Hillman, General Counsel from the Office of the U.S. Trade Representative; and the Honorable Donald Phillips, Assistant U.S. Trade Representative for Industry; if they would come to the table as our second panel.

Good morning, and thank you.

STATEMENTS OF JENNIFER HILLMAN, GENERAL COUNSEL, OFFICE OF THE U.S. TRADE REPRESENTATIVE; AND HON. DONALD PHILLIPS, ASSISTANT U.S. TRADE REPRESENTATIVE FOR INDUSTRY

Ms. HILLMAN. Thank you very much, Chairman Bateman and members of the committee. We very much appreciate the opportunity to present the administration's views on H.R. 2754, legislation to implement the OECD shipbuilding agreement.

As you have mentioned, I am accompanied today by Don Phillips, who is assistant U.S. Trade Representative and was the lead negotiator for the United States throughout the 5 long years that these negotiations were conducted.

This legislation before you was favorably reported out of the House Committee on Ways and Means on March 21 by a wide margin. It was subsequently referred to this committee for its maritime provisions. Similar legislation was favorably reported unanimously out of the Senate Finance Committee on May 8.

As mandated, U.S. Trade Representative [USTR] negotiated the OECD–U.S. shipbuilding agreement after receiving the advice of all of the interested elements of the shipbuilding community and the other interested U.S. Government agencies; in particular, the Department of Transportation on maritime issues and the Department of Commerce for the subsidy and injurious pricing matters.

I would note, the negotiations really stem from a section 301 petition that really laid out for us the substantial concerns that the U.S. shipbuilding industry felt they faced in looking at foreign subsidies abroad. The agreement very much addresses the subsidy practices that were alleged in that original petition.

The signing of this agreement in December 1994 by the European Union, Japan, Korea, Norway, and the United States, which are the countries that account for roughly 80 percent of the global shipbuilding market, marked the conclusion of nearly 5 years of negotiations under both Republican and Democrat administrations.

This agreement is a key element of the Shipyard Revitalization Plan which was announced in October 1993 to strengthen the competitiveness of America's shipyards. It has been the subject of numerous congressional hearings, including hearings in the House Merchant Marine Committee, the precursor to this committee, and the administration was urged to bring the negotiations to a conclusion as soon as possible.

We believe the agreement is sound, balanced, and achieves the basic objective of our shipbuilding industry and that of the Congress and the executive branch, which was the level the playing field for U.S. builders, by eliminating unfair foreign subsidies and other trade-distorting practices affecting the global market.

The agreement, while not perfect, is the only viable approach we see to deal with these practices. It will allow U.S. commercial ship-

builders, for the first time, to compete on equal terms with foreign shipbuilders and thus should result in new orders for U.S. shipbuilders and new employment opportunities in U.S. shipyards.

The shipbuilding agreement, as many of you know, was intended to enter into force on January 1, 1996, after ratification by all of the signatory parties. This did not occur because the United States and Japan failed to complete their respective ratification processes last year.

At this point, all of the agreement countries other than the United States have now completed their ratifications, with Japan expected to complete its ratifications by the end of this month. They are on track to do so. Therefore, unless the U.S. Congress acts promptly to enact this conforming, implementing legislation, we fear the agreement could unravel.

United States commercial shipbuilders have much to gain from the entry into force of the OECD shipbuilding agreement to eliminate trade-distorting practices in the world. At present, U.S. participation in the global shipbuilding market, which is currently estimated to be in the order of a $33 billion a year market, is only about 1 percent, because our efforts to penetrate the global commercial market have been severely hampered by heavy foreign government shipyard subsidies. The OECD agreement, by eliminating such subsidies, will create the environment for U.S. industry to compete for this growing market based on free market forces.

The agreement contains four basic elements: First, it calls for the elimination of virtually all subsidies granted either directly or indirectly to shipbuilders; second, it establishes an injurious pricing code designed to prevent dumping in the shipbuilding industry; third, it contains a comprehensive discipline on Government financing for exports and domestic ship sails intended to eliminate trade distorted financing; and, fourth, it contains an effective and binding dispute settlement mechanism to ensure we can enforce the terms of the agreement.

The agreement also contains a standstill provision that covers the period prior to its entry into force. The standstill allows Government programs that existed prior to the signing of the agreement to continue unchanged until the agreement enters into force, but it prohibits the introduction of any new subsidies or the increase in the subsidy elements of existing programs during the transition period before the agreement enters into force.

While this allows other countries to continue existing subsidy programs until the entry into force, it also temporarily allows us to operate the Title XI Credit Guaranty Program under existing terms and with no funding cap without being undercut by new foreign subsidies that would compete with title XI.

Although there have been a number of misleading reports to the contrary, there are only four very limited exceptions to the agreement's prohibition on subsidies. First, Government support is permitted for worker retraining, severance or other provisions associated with the closure or downsizing of a shipyard, so long as those benefits are exclusively for the benefit of workers, not for the benefit of a yard; they must be exclusively benefits for individual workers.

Second, Government assistance for research and development is allowed under certain conditions, provided it is granted in accordance with the terms of the agreement. I would note that this provision would allow for our innovative Maritech Program to continue.

Third, it allows certain restructuring programs for Belgium, Portugal, and Spain, primarily intended to address the social cost of the downsizing or closing of their shipyards, but it permits those only for a limited time, for a limited purpose, and in a limited amount of funds. So it does put very severe restrictions on those programs.

Fourth, the agreement exempts "build in America"requirements contained in the Jones Act and other U.S. coastwise trade laws. This is the only permanent exemption to the agreement's rules, and it was only granted for the United States. In other words, we can keep our Jones Act and we can keep our "home build" requirements in the Jones Act, but other countries who might have "home build" requirements would not be permitted to keep them.

These exemptions, we believe, are quite limited and, for the most part, benefit the United States as much or more than any other party to the agreement.

We believe the agreement will achieve several important goals. First, and most importantly, it will be good for the U.S. shipbuilding and repair industry because it will create an economically rational climate for international shipbuilding, it will give our shipyards the incentive to adapt to its requirements, and enable competitive U.S. yards to win contracts.

Second, it will benefit our maritime industry because it will avoid the eruption of damaging trade conflicts in the shipbuilding sector and the spillover distortive effects of shipbuilding subsidies into the sector.

Third, it is consistent with our broader trade and budgetary policies that aim to eliminate distortive government subsidies and avoid unnecessary spending.

In order for the agreement to enter into force, Congress must enact implementing legislation prior to June 15, 1996.

There are four key elements of the implementing legislation itself. First is the authorization to implement the injurious pricing or antidumping mechanism that is called for in the agreement; second is the elimination of the 50-percent ad valorem tariffs that are currently charged on ship repairs done abroad in other agreement countries; third, the bill provides for the modification of the "home build" requirements for certain maritime programs other than those pertaining to the U.S. coastwise trade laws—in other words, not Jones Act—to allow the eligibility of ships produced in other agreement countries; and, fourth, it modifies the Title XI Ship Financing Program to ensure that the terms and the conditions of that financing will be in accordance with the agreement.

It is the third and fourth items that I have just mentioned that involve maritime programs that are under the purview of this committee. The legislation is necessary to modify these programs to bring them into compliance with the agreement.

The modifications will affect the "home build" requirements of the Operating Differential Subsidy Program, the Cargo Preference Program, the Capital Construction Fund, and the Construction Re-

serve Fund. The "home build" aspects of these programs which currently limit their applicability to ships built in the United States will be changed to permit their eligibility to apply to ships in other OECD agreement countries.

In addition, the program makes—the legislation would make changes to the Title XI Loan Guaranty Program. We, like other agreement parties, must harmonize the terms of our ship financing programs to conform in the maximum terms allowed by the agreement.

In his October 1993 announcement to the Congress of his five-point program to strengthen America's shipyards, President Clinton clearly stated that if a multilateral agreement were reached and the conditions of the newly enhanced Title XI Loan Program were inconsistent with that agreement, they would need to be modified or eliminated, and that is exactly what this legislation would do.

To conform with the agreement and related understandings under it, we will have to alter the terms of our title XI guarantees for export and domestic financing. The financing that may be guaranteed will drop from 87.5 percent of the current ship sale price to 80 percent. So it changes the portion of the contract price that the loan guaranty can cover from 87.5 percent to 80 percent. And, second, it changes the duration the period of the loan guaranty from 25 years to 12 years. Obviously, similar requirements would be placed on any programs throughout the rest of the world.

In conclusion, we believe that the end of the Cold War and the rise of the global economy have created new challenges and opportunities for the U.S. commercial shipbuilding industry, but our industry in recent decades has been unable to compete effectively against unfair foreign subsidies of other nations and predatory pricing practices of foreign shipbuilders.

In today's budgetary climate, we do not believe we can compete in ever escalating subsidy wars with other shipbuilding nations. Our industry needs a level playing field where everyone competes by the same rules. The shipbuilding agreement allows the U.S. shipbuilding industry to compete by restoring fair, competitive conditions to the market. It benefits the U.S. maritime industry overall by avoiding trade confrontations on subsidy issues. A broad collection of interests supports the bill. They represent shipyards, suppliers to shipyards, ship operators, and State and municipal port authorities.

Mr. Chairman, there is growing foreign concern about the prospects for congressional approval of the legislation to implement this OECD shipbuilding agreement. It has been under consideration by our Congress for over a year. Further delays threaten the unraveling of the agreement. Moreover, the delays are already having serious adverse practical effects on our industry.

The EU—European Union—has extended its shipbuilding subsidy programs which allow for direct subsidies—something that we do not provide—of 9 percent of contract value. If the implementing legislation had been passed and entered into force as was originally projected at the end of last year, those subsidies would have already ended.

The agreement was originally intended to enter into force on January 1, 1996. It is now scheduled to enter into force on July 15, 1996, 30 days after its ratification date. At this point, time really is running out. We urge the Congress to enact shipbuilding legislation as quickly as possible.

While our trading partners understand some of the delays from last year in terms of the tremendous time and attention that the Congress needed to spend in 1995 on budget reconciliation, any further delay will call into serious question the sincerity of our efforts in negotiating this agreement.

I would note also, there are great social pressures building in some of the agreement countries—Spain, France, Germany, and Greece—to grant new subsidies to our shipbuilding industries. They have not done so solely because of the standstill provisions in this agreement.

We fear that unless Congress takes action within the next month to approve the legislation necessary to ratify the agreement, the agreement itself will unravel, thereby opening the doors to a return to unbridled subsidization of foreign shipyards and the chronic dumping that have characterized the global shipbuilding market in recent years. These are the same forces that motivated us to persevere throughout these negotiations to achieve what we perceive is a very good and fair result for the U.S. shipbuilding industry.

Congressman Bateman and members of the committee, we believe that the current OECD agreement provides the U.S. commercial shipbuilders with the best chance they will ever get to combat foreign subsidies and end the global market, and we strongly urge the Committee on National Security to take prompt action to favorably report H.R. 2754.

[The prepared statement of Ms. Hillman follows:]

TESTIMONY OF

AMBASSADOR JENNIFER HILLMAN
GENERAL COUNSEL

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

MAY 22, 1996

BEFORE THE
SPECIAL OVERSIGHT PANEL ON THE MERCHANT MARINE
COMMITTEE ON NATIONAL SECURITY
U.S. HOUSE OF REPRESENTATIVES

Thank you, Chairman Bateman, for providing this opportunity to present the Administration's views on H.R. 2754, legislation to implement the OECD Shipbuilding Agreement (technically known as "The Agreement Respecting Normal Competitive Conditions in the Commercial Shipbuilding and Repair Industry"). This legislation was reported favorably by the House Committee on Ways and Means on March 21 by a wide margin. It was subsequently referred to this Committee for review of its maritime provisions. Similar legislation was favorably reported unanimously by the Senate Finance Committee on May 8 by voice vote.

USTR is charged by statute with the negotiation of international trade agreements on behalf of the United States. As mandated, USTR negotiated the OECD Shipbuilding Agreement after receiving the advice of the other interested agencies -- in particular, that of the Department of Transportation on maritime issues and of the Department of Commerce for subsidy and injurious pricing matters. The signing of this Agreement in December 1994 by the European Union, Japan, Korea, Norway, and the United States -- countries accounting for roughly 80 percent of global shipbuilding -- marked the conclusion of nearly five years of negotiations under both Republican and Democratic Administrations.

This Agreement is a key element of the "Shipyard Revitalization Plan" announced by President Clinton in October 1993 to strengthen the competitiveness of America's shipyards. While the impetus for these negotiations came from the U.S. shipbuilding industry itself, Congress demonstrated a high level of interest in and support for the conclusion of an agreement. Multiple Congressional Hearings were held in the 1991-94 period -- by the Trade Subcommittee of the House Ways and Means Committee, and the Trade Subcommittee of the Senate Finance Committee -- where Congress displayed firm support for the OECD shipbuilding negotiations. Hearings were also held by the precursor of this panel -- the Merchant Marine Subcommittee of

the House Merchant Marine and Fisheries Committee -- on February 19, 1992 and June 30, 1993 and the Administration was urged by Members to bring the negotiations to a successful conclusion as soon as possible.

We believe the Agreement is sound, balanced, and achieves the basic objective of our shipbuilding industry, Congress, and the Executive Branch -- which was to level the playing field for U.S. builders by eliminating unfair foreign subsidies and other trade distorting practices affecting the global shipbuilding market. The Agreement, while not perfect, is the only viable approach to dealing with these practices. It will allow U.S. commercial shipbuilders, for the first time, to compete on equal terms with foreign shipbuilders and, thus, should result in new orders for U.S. shipbuilders and new employment opportunities in U. S. shipyards. We believe it will strengthen and expand our commercial shipbuilding industrial base by allowing our shipbuilders access to the large and growing international market. By creating new commercial opportunities for those defense-oriented shipbuilders that are willing and able to compete in the commercial shipbuilding market, it should also have a positive impact on our defense shipbuilding industrial base as well.

The Shipbuilding Agreement was intended to enter into force on January 1, 1996, after ratification by all signatory Parties. This did not occur because the United States and Japan failed to complete their respective ratification processes last year. The Government of Japan has indicated that its delay was purely procedural and expects to complete its process later this month. Consequently, the Parties to the Agreement agreed to extend the ratification date to June 15, 1996, and the date for entry into force to July 15, 1996. U.S. ratification is dependent on the passage of implementing legislation, H.R. 2754 and its Senate counterpart, that will bring U.S. programs into compliance with the Agreement. It is critical that such legislation be enacted by the June 15 ratification date.

Unless the U.S. Congress acts promptly to enact this conforming implementing legislation, we fear the Agreement will unravel. Several European Union States -- France, Germany, Greece and Spain -- are presently encountering considerable social pressure to introduce new shipbuilding subsidies. We believe the consequences of the loss of the strong disciplines contained in this Agreement will be disastrous for the U.S. shipbuilding industry. The opportunity for our commercial shipbuilders to compete on a level playing field will be lost. Other Parties will not only maintain their substantial shipbuilding subsidies, which the United States does not have, but they will also move quickly to offset or exceed our modest assistance programs, such as our Title XI credit guarantee program, which has been temporarily protected by the Agreement's "standstill" provision. Under such circumstances, the market opportunities for the U.S. shipbuilding industry will be severely diminished.

History of the Negotiations

Prior to 1981, the U.S. Government granted Construction Differential Subsidies (CDS) to U.S. shipbuilders to offset both higher U.S. construction costs and the effects of foreign subsidies. At

their peak, grants of up to 50 percent of the value of a vessel were offered. Congress ended the CDS program in 1981. After that time, few commercial ships were built in the United States -- most of these were for the coastwise trade. Military contracts kept most of the industry busy during the 1980's. Unfortunately, during this same period, foreign governments continued their subsidy programs, making it virtually impossible for U.S. shipbuilders to participate in the global commercial market.

With the end of the Cold War and resultant shrinkage in demand for military ships, U.S. shipbuilders realized they must take steps to compete in the global commercial shipbuilding market in order to survive. In 1989, the Shipbuilders Council of America (SCA) petitioned the U.S. Government under Section 301 to take action against the foreign subsidy practices of Korea, Japan, Germany and Norway. With the strong support of SCA and numerous Members of Congress, the Bush Administration subsequently acted to initiate multilateral negotiations in the OECD designed to reduce or eliminate the trade distorting practices of the most important shipbuilding nations. These negotiations were extremely difficult; they even broke down for an entire year. Throughout the negotiations, we consulted closely with representatives of all segments of our maritime industry and negotiated steadfastly to meet their objectives.

Due to strong Congressional interest in an Agreement and the resolve of President Clinton to implement an effective program to strengthen the competitiveness of our industry, negotiations were revived in June 1993 and the agreement was reached in July 1994. Legislation to implement that agreement is currently before this Committee.

Favorable Prospects for U.S. Industry

U.S. commercial shipbuilders have much to gain from the entry into force of the OECD Agreement to eliminate trade distorting practices in the world shipbuilding industry.

Growth in demand for U.S. military and commercial vessels is expected to be small, but significant growth is projected for the highly competitive international shipbuilding market. International trade is expanding more than twice as quickly as global output, which creates a need for more ships. A recent study, conducted by Drewry Shipping Consultants, estimates that annual demand for new cargo and passenger ships will increase from an estimated 18.4 million gross tons costing $25 billion in 1996 to 22.5 million gross tons valued at some $33 billion in the year 2000. Both the Shipbuilders Association of Japan and the Association of West European Shipbuilders predict an average annual global shipbuilding market of about 20 million gross tons for the period 1995-2005 versus an average annual global market of about 16 million gross tons for the 1980-94 period.

At present, U.S. participation in this market is minimal -- about 1 percent -- because our efforts to penetrate the global commercial market have been severely hampered by heavy foreign government shipyard subsidies. The OECD Agreement, by eliminating such subsidies, will create the environment for U.S. industry to compete for this growing market based on free

market forces. And we believe U.S. shipbuilders can -- and will -- compete successfully in such a global environment. There are a number of competitive factors favoring U.S. commercially-oriented shipyards, including: competitive wage rates; competitive steel pricing; the value of the dollar in relation to the currencies of most other major shipbuilding nations; strong technological capabilities; a narrowing cost gap with the most competitive shipyards; and good production facilities.

Throughout the OECD negotiating process, our industry steadfastly asserted that, if the problem of foreign subsidies were effectively dealt with, they could make good use of these advantages to compete successfully.

Basic elements of the OECD Shipbuilding Agreement

The Agreement contains four major elements:

- The elimination of virtually all subsidies granted either directly or indirectly to shipbuilders. The discipline imposed on such subsidies is much more specific and tighter than that imposed on any other sector and than that provided in more general disciplines of the World Trade Organization's (WTO) Subsidy Agreement.

- An injurious pricing code designed to prevent dumping in the shipbuilding industry. At this time, there is no remedy for dumping in the shipbuilding sector. Since ships are generally not viewed as imports, it is impractical to use our antidumping laws. Thus, there has been no means of discouraging or dealing with dumping in the shipbuilding sector.

- A comprehensive discipline on government financing for exports and domestic ship sales intended to eliminate trade-distortive financing. Existing international rules on export credits and tied aid for ships are weaker and less effective than for other products. The Agreement will greatly improve this situation.

- An effective and binding dispute settlement mechanism. Dispute settlement panels will be established, as necessary, to determine whether subsidies or other government measures are consistent with the Agreement and to ensure that the injurious pricing code is being properly implemented. Failure to comply with a panel's finding may result in the imposition of sanctions. For example, concessions made under the General Agreement on Tariffs and Trade (GATT) may be withdrawn by the complaining party in the event of failure to comply with a panel finding that a signatory government has bestowed prohibited subsidies.

The Agreement also includes a "standstill" provision that covers the period prior to its entry into force. The standstill allows government programs existing or approved prior to the signing of

the Agreement to continue unchanged until its entry into force, now scheduled for July 15, 1996, but prohibits the introduction of new subsidies and the increase in the subsidy element of existing subsidies during the transition period. While this allows other countries to continue existing subsidy programs until entry into force, it also temporarily allows us to continue to operate our Title XI credit guarantee under existing terms, and with no funding cap, without being undercut by new foreign credit programs.

Although there have been a number of misleading reports to the contrary, there are only four specific, limited exceptions to the Agreement's prohibition of subsidies and other distortive government practices.

- Government support is permitted for worker retirement, severance, or retraining associated with the closure or downsizing of shipyards. This assistance must be strictly limited to the exclusive benefit of workers.

- Government assistance for research and development is allowed under certain conditions, provided it is granted in accordance with the terms of the Agreement.

- Certain restructuring assistance programs for Belgium, Portugal and Spain, primarily intended to address the social cost of downsizing or closing shipyards will be allowed to continue for a limited time after entry into force of the Agreement. Frankly, we would have preferred not to accept these programs, but they were already in operation prior to conclusion of the negotiations and would have no doubt continued, unrestrained, absent an Agreement. We believe we are better served by incorporating them into the Agreement, which limits their duration, amount and purpose.

- The Agreement exempts "build in America" requirements contained in the Jones Act and other U.S. coastwise trade laws. This is the only permanent exemption to the Agreement's rules.

These exemptions are quite limited and, for the most part, benefit the U.S. as much as any other party. Combined with the new disciplines on subsidies and dumping contained in the Agreement, we believe a fair and balanced deal has been reached that will be greatly beneficial to U.S. industry. Under the Agreement, other countries are required to give up their much more substantial support to their shipyards, while only modest changes will be required to U.S. programs -- a reasonable price to pay for the tough and comprehensive disciplines the Agreement will impose on the far more extensive government subsidy programs of our trading partners.

For example, the European Union (EU) will have to eliminate government grants to shipyards based on ship contract or ship operation, which amount to a percentage of contract value. In the past, so-called contract aid has been as high as 28 percent of contract value. (It is now 9 percent.) Except for the few temporarily "grandfathered" programs mentioned above,

restructuring support, including debt forgiveness -- which has been common in Europe, Korea and Japan -- will not be allowed other than for worker assistance tied to shipyard closures or capacity. I reiterate, there are no other subsidy programs permitted, as sometimes asserted.

We believe the Agreement will achieve several goals:

-- First, and most importantly, it will be good for the U.S. shipbuilding and repair industry because it will create an economically rational climate for international shipbuilding that will give our shipyards the incentive to adapt to its requirements and enable competitive U.S. yards to win contracts.

-- Second, it will benefit our maritime industry because it will avoid the eruption of damaging trade conflicts in the shipbuilding sector and the spillover of the distortive effects of shipbuilding subsidies into the shipping sector.

-- Third, it is consistent with broader trade and budgetary policies that aim to eliminate distortive government subsidies and avoid unnecessary government spending.

Required Legislation

In order for the Agreement to enter into force, Congress must enact implementing legislation prior to June 15, 1996.

The four key elements of implementing legislation are:

- First, authorization to implement the injurious pricing (antidumping) mechanism contained in the Agreement. This is the longest and technically most complex portion of the legislation. The provisions on injurious pricing track those adopted last year to implement the WTO Antidumping Agreement but are modified to address the special features of the Shipbuilding Agreement, which reflect the unique nature of ship transactions.

- Second, elimination of the 50 percent ad valorem tariff for ship repairs done abroad in other Agreement countries.

- Third, the bill provides for the modification of "home build" requirements, for certain maritime programs other than those pertaining to the U.S. coastwise trade laws, to allow for the eligibility of ships produced in other Agreement countries.

- Fourth, modification of the Title XI ship financing program to ensure that the terms and conditions of such financing will be in accordance with Agreement. rules.

The third and fourth items involve maritime programs within the purview of this Committee. Legislation is necessary to modify them to bring them into compliance with the Agreement. The modification of the home build requirements will affect the Operating Differential Subsidy (ODS), Cargo Preference, Capital Construction Fund (CCF) and the Construction Reserve Fund (CRF). The home-build aspects of these programs, which currently limit their applicability to ships built in the U.S., would be changed to permit eligibility of ships built in other OECD Agreement countries. Other aspects of these programs will not be changed by the legislation. Moreover, the home-build requirements of the U.S. coastwise trade laws (Jones Act) will not be modified.

These programs, discussed below, are primarily for the benefit of the U.S. flag fleet. Such benefits will remain intact. Moreover, we believe the proposed changes will have only a minimal impact on U.S. shipyards. We believe the changes required in these programs are a modest price to pay for the reduction of much more substantial foreign government support programs for shipyards.

Operating Differential Subsidy. The Maritime Administration (MARAD) anticipates that this program will be phased-out; most ODS contracts expire by 1997. The ODS home-build requirement has not been of any practical benefit to U.S. shipyards since the Construction Differential Subsidy (CDS) program was terminated in 1981. The only vessels acquired by U.S. operators since then have been foreign-built; they were obtained under a special statutory provision allowing an exception to the U.S.-build requirement (subject to MARAD approval) for a limited period of time in the early 1980's. This program will be replaced by the Administration's new Maritime Security Program.

Cargo Preference

This would eliminate the three year waiting rule after U.S.flagging for vessels built in other OECD Agreement countries to be eligible to carry preference cargoes. This change should make little practical difference to U.S. yards since even current law does not ban outright foreign-built vessels from eventually becoming eligible for cargo preference. Liberalization of access to foreign-built vessels will give U.S. flag operators more flexibility.

Capital Construction Fund

The CCF is designed to provide tax benefits to U.S. flag vessel operators. It will continue to do so after the home build requirement is modified because the requirements that CCF eligible vessels be U.S. owned and U.S. flagged will remain in place, thereby promoting the national interest of maintaining a flag fleet. The only effect of the change is that funds put in the CCF program after entry into force of the Agreement can be used by ship operators to buy vessels built in OECD Agreement countries as well as the U.S. This is not inconsistent with some of our past activities under other maritime programs and with modifications proposed as a result of our new maritime reform program. For example, in the past much of our Ready Reserve Fleet was

procured from abroad as a method of cost control. Some foreign built U.S. flagged vessels received permission to participate in the ODS program, and under H.R. 1350, now approved by the House and pending in the Senate, foreign built ships would be eligible for operating subsidies.

Construction Reserve Fund

Because the CRF benefits are less advantageous than those of the CCF, funds in this small program are being used primarily to purchase vessels used in domestic trade. Thus, the construction of CRF vessels is almost entirely limited to domestic yards, as required by the Jones Act. Lifting the CRF home-build requirement will have virtually no practical effect.

Title XI Loan Guarantee Program

The legislation would also modify the terms of our Title XI loan guarantee program. We, like other Agreement Parties, must harmonize the terms of our ship financing programs to conform with the maximum terms allowed by the Agreement.

In his October 1, 1993 announcement to Congress of his five point program to strengthen America's shipyards, President Clinton stated that if a multilateral agreement were reached, any conditions of the newly enhanced Title XI loan program that were inconsistent with the Agreement would have to be modified or eliminated

To conform with the Agreement and the related Understanding on Export Credits for Ships, we will have to alter the terms of our Title XI guarantees for export and domestic financing. The financing that may be guaranteed will drop from 87.5 to 80 percent of a ship's sales price, and the maximum duration of government guarantees will drop from 25 years to 12 years.

The current terms offered for Title XI guarantees are popular with U.S. shipbuilders and have helped them to begin selling ships to foreign customers. However, it should be emphasized that the temporary effectiveness of this program results largely from the Agreement's "standstill" provision, which has over the two years prevented other signatory countries from matching these terms. Moreover, when the Agreement enters into force the much larger direct subsidies available to many of our competitors will end. Thus, we believe that our industry will in fact be in a more advantageous competitive position when the Agreement enters into force; alternatively, in the absence of an Agreement, their competitive position will be untenable.

Entry into force of the Shipbuilding Agreement's export credit rules will also improve the competitiveness of U.S. builders by reining in foreign financing arrangements. Current OECD export credit rules are less stringent for the shipbuilding sector than for other sectors. For example, they allow export credit rates well below market rates in some countries (e.g., Spain and Italy). Shipbuilding Agreement rules require the use of market rates and establish better rules to deal with tied aid transactions.

MARITECH Program

During the negotiations, the United States supported a limited exception from the Agreement's subsidy discipline for research and development aid. This exception is consistent with our desire to maintain a strong and innovative MARITECH program. The MARITECH program will have to be administered to ensure that government assistance is provided as a percentage of the cost of a project and is limited to amounts set out in the Agreement -- 50 percent for basic industrial research, 35 percent for applied research, and 25 percent for development projects. No legislative changes will be required. These same terms will also apply to other Agreement Parties.

Conclusions

The end of the Cold War and the rise of the global economy have created new challenges and opportunities for the U.S. commercial shipbuilding industry. But our shipbuilding industry has been unable to compete effectively against unfair foreign subsidies of other nations and predatory pricing practices of foreign shipbuilders. In today's harsh budgetary climate, the United States cannot participate in the game of ever-escalating subsidy wars with other shipbuilding nations. Our industry needs a level playing field where everyone competes by the same rules. The Shipbuilding Agreement allows the U.S. shipbuilding industry to compete by restoring fair competitive conditions to the market. It benefits the U.S. maritime industry overall by avoiding trade confrontations on subsidy issues. A broad coalition of interests support this bill. They represent shipyards, suppliers to shipyards, ship operators, and state and municipal port authorities.

Mr. Chairman, there is growing foreign concern about the prospects for Congressional approval of legislation to implement the OECD Shipbuilding Agreement. The OECD Agreement has been under consideration by our Congress for over a year. Further delay threatens an unraveling of the Agreement. Moreover, this delay is already having serious adverse practical effects on our industry. The EU has extended its shipbuilding subsidy programs, which allow for direct subsidies of 9 percent of contract value. If the implementing legislation had been passed and entry into force of the Agreement secured as scheduled, these subsidies would have terminated at the end of 1995.

The Agreement was originally scheduled to enter into force on January 1, 1996, after ratification by all signatories. It is now scheduled to enter into force July 15 -- 30 days after its ratification deadline of June 15. At this point, time is running out. We urge the Congress to enact shipbuilding legislation as quickly as possible. While our trading partners understand that the Congress focused the major part of its time and efforts in 1995 on budget reconciliation, any further delay will call into serious question the sincerity of efforts.

There are great social pressures building in some Agreement countries -- Spain, France, Germany and Greece -- to grant new subsidies to their shipbuilding industries. We fear that unless

Congress takes action within the next month to approve the legislation necessary to ratify this Agreement, it will unravel-- thereby opening the doors to a return to the unbridled subsidization of foreign shipyards and the chronic dumping that have characterized the global shipbuilding market in recent decades -- the same forces that motivated us to persevere through five long years of difficult negotiations to achieve an agreement. The "standstill" aspect of the Agreement would then terminate and competitor nations would be likely to act quickly to extend and increase their subsidies. In such an environment, we fear that the modest tools at our industry's disposal, such as Title XI, would quickly be overwhelmed. At that point, our five-year negotiating effort will be lost and our industry will be facing a more precarious competitive environment than ever.

Chairman Bateman and members of the Committee, the current OECD Agreement provides U.S. commercial shipbuilders with the best chance they will ever get to combat foreign subsidies and enter the global market. I urge the Committee on National Security to take prompt action to favorably report H.R. 2754.

Mr. BATEMAN. Thank you, Ambassador Hillman.

Mr. Phillips, do you have a statement you wish to submit for the record? Let me thank you for appearing and sharing with us your views.

There are a couple of comments I think would be in order. On behalf of the committee and the Congress, we did not delay. We are not seeking to delay action on this bill. I waited with keen anticipation almost all of the year 1995 for the administration to send up an implementing bill. They didn't do it. I don't even know if they sent it down this year. I don't know where it came from, but ultimately in the spring of this year we got the bill. So we have not delayed action on the legislation to implement the treaty.

The other observation I think I should make is that I agree with you in very, very large measure with the fact that the international shipbuilding community should move away from Government subsidies. My concern is that, as you point out, you can see on the horizon a very large substantial emerging commercial shipbuilding market, without transition provisions for the American shipyards, which are most capable of penetrating that market, to have an opportunity to get on that level playing field. While the very agreement that we are dealing with allows transition provisions for other countries, we didn't even seek any for our country, for our shipbuilders. I think that is a tragic mistake, one that could easily have been corrected, but one that was not even undertaken.

I continue to have my concerns about the complications of this agreement, what is in it with respect to the Jones Act. I simply do not understand the way that Jones Act implication is just brushed aside. I think it is a very seriously concerned about disagreement.

Unfortunately I have something that requires that I go to my office for a few minutes. I am going to ask Mr. Cunningham as vice chairman if he would preside, and I will return as quickly as I can. And the specific questions I would like to raise I will raise upon my return, if possible. If that is impractical, we will submit them for the record.

Before leaving, let me ask unanimous consent that the statement of Honorable Gerry Studds, the former chairman of the Merchant Marine and Fisheries, be submitted into the record.

[The information referred to follows:]

STATEMENT OF THE HONORABLE
GERRY E. STUDDS

BEFORE THE COMMITTEE ON NATIONAL SECURITY
ON
H.R. 2754, IMPLEMENTING THE OECD SHIPBUILDING AGREEMENT

MAY 22, 1996

MR. CHAIRMAN, it is particularly fitting that this Committee is reviewing legislation to implement an international agreement to end shipbuilding subsidies worldwide because it was the Armed Services Committee and the Merchant Marine and Fisheries Committee that worked so well together in launching the National Shipbuilding Initiative in 1993.

As you recall, our goal then was to provide limited government assistance, in the form of Title XI loan guarantees for ship construction as well as shipyard modernization, to assist our yards in converting from defense to commercial shipbuilding. We believed that if we could give our shipyards a helping hand, after ignoring them for almost a decade, they could become competitive in the world commercial shipbuilding marketplace. I believe that thinking is as sound today as it was three years ago.

Mr. Chairman, I support the goals of the international agreement because the United States will never and should never enter into a subsidy war with other major shipbuilding nations. However, I am deeply concerned about the impact of two aspects of the agreement on the revitalization of the Fore River Shipyard in Quincy, Massachusetts.

As you are aware, I was deeply involved in efforts to revitalize the Quincy yard even before the 1993 legislation. Key members of this Committee--Herb Bateman, Gene Taylor, Owen Pickett and Duke Cunningham, who also served with distinction on the Merchant Marine Committee--knew that to keep any one yard, we needed a new national shipbuilding policy to ease the conversion from defense to commercial ship construction. By expanding the Title XI program to include shipyard modernization and giving MARAD the ability to issue loan guarantees with favorable terms, we believed that our yards would respond.

As a result of this new national priority, American shipbuilding is experiencing a major turnaround. Orders for commercial ships are the highest they have been in over 15 years and our yards are beginning to compete head to head with foreign yards.

This turnaround also has exciting implications for Quincy. In response to the 1993 National Shipbuilding Initiative, state and local officials as well as civic and labor groups embarked on a worldwide search for a qualified shipbuilder to revitalize the

Quincy yard. Ships had been built in Quincy for 300 years, starting in 1696 with the launching of the ketch UNITY. During World War I, we built 71 destroyers alone and over 350 ships of all classes and types were built at the yard during both World Wars. Between 1963 and 1986, over 50 ships were constructed by General Dynamics. Unfortunately, that period represents that last time major shipbuilding occurred at the yard.

Shipbuilding is woven into the historical fabric of Quincy. Throughout the City, one hears stories about grandfathers, uncles and friends who "used" to work at the yard. A Goliath crane, the largest in North America, towers over the yard as a graphic reminder of this proud heritage and of the fact that the yard now stands idle.

In January of this year, Massachusetts Heavy Industries (MHI) submitted a Title XI loan guarantee application for modernizing the yard and constructing 6 double hull tankers for export. This is precisely the type of project we hoped for back in 1993.

Because the OECD Agreement limits MARAD's ability to issue favorable term loan guarantees, we have been working around the clock to perfect the applications and to respond to technical and financial questions from MARAD. We are very close, Mr. Chairman, but MARAD can not tell us with certainty that we will make the deadline.

It is my understanding that MARAD is precluded under the Agreement from offering favorable term loan guarantees once the OECD Agreement goes into effect on July 15. The success of the Quincy project depends on the availability of these types of guarantees. I can not exaggerate how important these terms are to the success of the project and ask you, Mr. Chairman, to do everything you can to help us. If you agree that we should clarify this in the implementing legislation, I would be pleased to work closely with you.

A second troubling aspect of the Agreement is the so-called delivery date window. As initially negotiated, the Agreement allowed all shipyards a full three years to deliver subsidized ships. The Agreement considers ships built with favorable term, title XI loan guarantees as subsidized. Although the Agreement is not yet in effect, the delivery date has stayed the same--which means that American shipyards will have two and one-half years to deliver ships. For Quincy, this would be particularly devastating. Because we must modernize the yard before ship construction begins, we must have at least a full three years from the effective date of the Agreement to deliver our ships.

I am aware that the USTR is attempting to roll back the delivery date to accommodate our shipyards. Given the delay this year in enacting the Agreement, I request that you support a provision in the implementing legislation to assure American shipyards adequate delivery time.

We have made great progress in revitalizing commercial shipbuilding in the United States. In the long run, we need an international agreement to end subsidies But we must not sacrifice the progress we have made to satisfy some inflexible deadline. I would be pleased to work with this Committee to ensure that the deficiencies of the Agreement and the implementing legislation are remedied.

Thank you.

Mr. BATEMAN. With that I would ask to be excused briefly.

Mr. CUNNINGHAM [presiding]. I like being chairman because you always get to ask questions first, but I will not, and I will defer to Mr. Taylor.

Mr. TAYLOR. Thank you, Mr. Chairman.

Ms. Hillman, I am seeing somewhat inconsistent behavior on the part of our administration. Two years ago I was invited to the White House by a local shipbuilder, who was one of several what we referred to as second tier shipbuilders, when the President signed the expansion to the title XI program, which for the first time dipped into the Department of Defense funds to back these loans, a mechanism that has taken this country from building no commercial ships in the international market to at least 13, with others on order.

Now I hear the administration saying, we want to give it up. And don't say that, because there are a heck of a lot of people that can finance a house over 25 years if so much of it—a large percentage of it is guaranteed in the loan. If you change the terms down to I think they said 12 years and 80 percent, you have rewritten the entire contract. You have taken what was a program that was viable and intentionally made it something that no one will ever apply for because there are actually better deals in the commercial sector. So the only people who are going to apply for these loans are the folks that can't get a loan commercially, which means the taxpayer will get stuck with the bill or a ship we don't need. That is No. 1.

No. 2 is I cannot believe, as Mr. Bateman said, you are just brushing off the implications of the Jones Act. The Jones Act is based on Capitise laws, which are laws which go back to the 1790's that reserved all commerce for American-made, American-owned, American-crewed vessels.

The one time we have flirted with changing the Capitise laws have been some very bad Customs rulings that allow foreign ships to operate out of our ports with foreign-made vessels that don't pay American taxes, with foreign crews.

They have stolen the cruise ship market from us. Ninety percent of all the people get on a cruise ship to America, 99 percent of those people get on a foreign ship out of our ports.

It doesn't make any sense that this administration that is supposed to be pro-people is turning and taking one of the few remaining heavy industries in America and trying to give it away. And I would like you to explain this.

We are trying to get this back. Great nations have always been great maritime powers. We have lost ours. We are trying to get it back. Why would we want to preclude the ability for this Nation to become a great maritime power again?

Ms. HILLMAN. On the title XI issue, the concern here stems from what are we looking at in our competitive environment. Fundamentally the problem that we are facing is the total value of the title XI program is on the order of perhaps $50 million. The level of foreign subsidies out there available for foreign shipbuilders is on the order of—and we could debate the numbers, and I think there is some debate about it, but certainly in the billions, somewhere in excess of $2 billion of foreign subsidies out competing against our

title XI program. What the OECD Shipbuilding Agreement does is say both of those are going to come down to zero.

Clearly all the foreign producers are giving up much more in the way of subsidies and government support in their shipbuilding industries than we are for ours. They are bringing a very small level of subsidies down to zero, whereas we are bringing a very small program down to zero. In all of that we are therefore continuing to create a level playing field which would allow our producers to compete on a much more level playing field.

This entire negotiation really stemmed from the fact that our shipbuilding industry came to us and said the major problem, the major problem that they faced in competing in the world marketplace was foreign subsidies. That was the real problem that they saw as the problem for them entering in a major way the global marketplace. What this agreement fundamentally does is get rid of those subsidies, and that was by far the major goal of our entire shipbuilding community.

The title XI program right now has somewhat of a competitive advantage against other subsidy programs, but the only reason it has a competitive advantage is because of the standstill requirements of this agreement. If the standstill agreement—if the standstill requirements are eliminated because we do not enter into this OECD Shipbuilding Agreement, the other countries are certainly going to match the terms of the title XI program, if not exceed it, in which case the competitive advantage for the United States goes away, and we are still then faced with our $50 million program, and they are getting subsidies at the level of billions of dollars. Part of it we see from a competitive position.

Second, on the Jones Act, I would say to the contrary we worked very, very hard to protect the Jones Act. It is a clear exception. Everyone else has to get rid of any home build requirements that they have or pledge to never enact home build requirements. We are the one exception where we said we simply would not make changes to the Jones Act. We have retained the Jones Act provisions.

The only clear implication for the Jones Act is the ability for another country to raise the question of whether or not Jones Act production has risen to a sufficiently high level that it is creating a competitive disadvantage and distorting the balance of rights and obligations under this agreement, which means they would both have to show a very substantial level of Jones Act production, probably in excess of what we would expect anytime in the near term, and then have to show that was upsetting the sense of rights and balances within that agreement.

And even if they could make that showing, which we think is highly, highly unlikely given the facts, the remedies would only be remedies against that small portion of production that qualifies under the Jones Act. So we think it is highly unlikely that a showing could ever be made that Jones Act production that is protected by this agreement is upsetting the rights of balances and obligations.

Mr. TAYLOR. Ms. Hillman, you just corrected yourself. In your opening statement you said this would not affect the Jones Act. You just came back and admitted that there were limits on the Jones Act. Why put any limits on our people at all?

I heard many of these same arguments 2 years ago in defense of NAFTA. Our trade deficit has gone up. We have gone from a trade surplus with Mexico to a trade deficit. I heard some others talk 2 years ago, and they said there would be government assistance for worker training in the unlikely event that we lose any jobs.

I would like you to visit five empty factories just in the 1/435th of this Nation that I represent, and I would also like to take you to a place like Neely, MS. What good does it do to retrain in Neely, MS, because there is no other place to go? There is no other factory in Neely, MS. How can we cavalierly write off certain aspects of our society including from a national defense aspect one of the most important industries in our country? It just doesn't make any sense at all. As a Democrat I am appalled that a Democratic administration would be a party to this.

Thank you, Mr. Chairman.

Mr. BATEMAN. I will recognize Mr. Hunter, and I just have one real quick question. If this OECD agreement is so fantastic, why are all of our major shipbuilding and ship repair people against it that represent 95 percent of the labor force—and most of those are union. Why are they so dead set against this and afraid of it, in your opinion, Ms. Hillman?

Ms. HILLMAN. My understanding is that the legislation has a fair number of very strong supporters as well as those that oppose it. It would certainly be supported by most of the Jones Act operators, a number of the American Waterway Shipbuilding Conference, the Shipbuilders Council of America, most ship operators. So there is, I think, very substantial support for this legislation.

To the extent that there is opposition, there clearly is opposition, and it comes, I think, largely from the members of the American Shipbuilding Association, which encompasses many of our defense-oriented yards.

My understanding is that they have basically three or four concerns that they consistently raise in noting their opposition. The first would be, I think, their concern about whether or not this agreement really does effectively subsidize, and when does it stop them?

I think there has been misinformation out there. I think it should be clear that the agreement says the subsidies stop upon entry into force of the agreement, July 15, 1996. They do not continue; the subsidies stop. There is not a grandfather. The subsidies stop as of July 15, 1996, other than these four specific areas that I noted in my testimony.

Second, there seems to be an interpretation that the standstill agreement right now is not working. I have seen stories in the paper or allegations that, in fact, during the standstill time the Europeans and others have been enacting and putting into place new subsidies. That is not the case. It is the case we fear it would happen if the agreement unravels, but it is not the case now that new subsidies or expanded subsidies have been put in place during this standstill period.

I think third, there is a substantial concern about the title XI program. I don't think we would say anything other than that. I

think there is very substantial concern. I think our argument goes back to something Mr. Taylor was raising.

Obviously the Clinton administration believes in helping our industry become competitive. We want those jobs here in the United States. We want to see commercial ships built here in the United States. That is clearly our goal. That was the President's goal in announcing the shipyard revitalization plan.

We see the only way to allow our shipyards to do that kind of commercial business is to get rid of the foreign subsidies that are an unfair level of competition. We cannot compete with $2 or $3 or $4 billion in foreign subsidies from other countries around the world when we have a very limited title XI program.

So the emphasis for us is to keep those jobs here and keep our shipyards busy, but that is going to require leveling the playing field and getting rid of the foreign subsidies that have been the primary reason our shipyards have indicated they have not been able to compete previously in the world marketplace.

Mr. BATEMAN. Thank you, and we will be interested to hear the next panel. But we have seen the President's goals in effect, too, when he says he wants a strong military against the Joint Chiefs of Staff and Admiral Boorda, who just passed, and balance budgets and welfare reform and the rest of it.

So when you talk about misinformation, our side of the aisle was well aware of misinformation.

I recognize Mr. Hunter.

Mr. HUNTER. Thank you, Mr. Chairman.

Ambassador, what are the Japanese negotiators telling their shipbuilding industry this will do for them?

Mr. PHILLIPS. Let me attempt to answer that.

Well, I couldn't say for sure what they are telling them, but let me give you my interpretation of what it would do. First of all, for the interest of Japan, it will eliminate subsidies around the world and eliminate European subsidies. That has been a concern of theirs.

I think the other thing they told them was that this agreement was necessary to avoid a trade policy confrontation, because we put very strong pressure on the Japanese and Koreans and Europeans throughout this negotiation to reach an agreement.

And third, they would be telling them as part of this agreement they have to accept an injurious pricing mechanism that does work against dumping. It may work against or for them, but I think they advised them they need to accept the existence of the antidumping mechanism in the sector, which hasn't been the case before.

Mr. HUNTER. They are saying that the acceptance of the antidumping mechanism will occur to the benefit of Japanese shipbuilders? If you are a Japanese negotiator, and you are trying to explain to your shipbuilding industry what you have done to them in the agreement, what would you say?

Mr. PHILLIPS. I think they would probably see that as a negative, because the Japanese——

Mr. HUNTER. They will tell me what—what is your argument to the Japanese shipbuilders about what this is going to do for them?

Mr. PHILLIPS. It does establish an international environment where subsidies are prohibited that is in the interest of all coun-

tries, and in the case of Japan, they obviously have been concerned about European subsidies.

But I think, second, was the other point I raised that they were told, I think, that this avoided a trade policy conflict with the United States because we put a tremendous amount of effort into negotiating this agreement and into getting the Japanese, the Koreans, and the Europeans to sign up.

Mr. HUNTER. You think the main positive thing they can tell the Japanese shipbuilders is this gets rid of European subsidies which have kept you out of their markets, kept you from penetrating their markets?

Mr. PHILLIPS. Which had distorted market——

Mr. HUNTER. What do you think the shipbuilders are telling the shipbuilding industry they are getting out of this agreement?

Mr. PHILLIPS. The European governments have been trying to move away from subsidies, and this creates an overall mechanism which ensures that everyone will get rid of their subsidies.

Mr. HUNTER. I understand what are they telling—everybody can try to make their shipbuilding industry happy. Just like we are trying to explain how this is going to help our shipbuilding industry, what are your counterparts in Europe telling their shipbuilding industry they are going to get?

Mr. PHILLIPS. The big selling point for them is the injurious dumping—excuse me, injurious pricing code, which for the first time created an antidumping mechanism.

Mr. HUNTER. Who was used by—against the Europeans?

Mr. PHILLIPS. The Europeans saw this would help provide them with a remedy against dumping primarily by the Asian countries.

Mr. HUNTER. I guess what I am getting to, then, is you have mentioned, Ambassador Hillman, predatory pricing and other things that trading competitors have used. So the question, I think, first rises why do the predators like this?

And, Mr. Phillips, you haven't really—you have given a couple of reasons why the predators should like this Japanese deal; that they are going to get a bigger penetration of the European market because of the elimination of subsidies, and the Europeans think they are going to get elimination of the antidumping markets.

So if both those entities, which are two primary competitors, which account for, according to our fax here, of 22 percent of the total shipbuilding production in the European Union and 42 percent of the total shipbuilding production coming from Japan—both those countries intend to expand or expect to expand their percentage of the world market. That leaves us in—assuming Korea is one of the Asian countries that benefits from that also, that leaves us going to about negative 1 percent to negative 10 percent of the world market since we have about 1 percent right now.

My point being that if this truly advantages the Europeans and the Asian ship producers, there isn't anything left for the United States. And I think that the instinctive reaction of most Members of Congress who lived through the NAFTA debate that Mr. Taylor referred to were great images and promises of surpluses. Trade surpluses for the United States were conjured up by folks just like you. In fact, maybe they have got some of the same folks working on this trade deal. When the smoke cleared, we went from the $3

billion trade surplus over in Mexico to a $15 billion trade deficit, and NAFTA has turned out to be a wonderful trade deal for Mexico, not for the United States.

My point is this isn't something that is supposed to be a win-win situation all around. The European and Asians have strategized this thing. They think they are going to get more of the American market and keep us out of the world market by doing this. They think it is going to be to their benefit. They don't think it is going to result in the United States taking away 42 percent of the world market that Japan has right now.

It is naive for us to think the predators you have described have turned into philanthropic characters who want to do everything they can for the United States. It looks to me like you haven't really examined carefully the advantages that the European and Asian strategists feel that will accrue to their benefit as a result of this agreement.

So you can understand why we are a little gun-shy, given the enormous industrial base, and you may have heard me mention that to Mr. Gibbons. They have an enormous industrialization that has been completed with subsidies. Their manufacturing base is built. It is done. It is over. It is ready to roll. It is ready to build ships. We have a fledgling industry, which I think could be compared fairly accurately to Japan's automobile industry after World War II. It is very small and fragile. They apparently think they can wedge us with this business deal. You haven't really given us any good reasons why we should think otherwise.

Mr. PHILLIPS. Could I just make one more comment on this? You asked how the governments would rationalize to our industry, and I tried to give you an answer on that or my views on that. But I think it would be a mistake to say that the shipbuilding industries in these other countries like this agreement. I think it was accepted by them and their governments. It wasn't that they liked it. In the end they accepted it, and in reaching agreement, as I said, we put quite a bit of pressure on these governments. And as you recall, there was legislation in Congress which would have imposed retaliatory actions against foreign subsidizing countries. So there was a lot of pressure brought to bear, and in the end I think they accepted this. But as you are probably aware, shipbuilding representatives in Europe and in other countries have not been very keen on the agreement and probably would prefer not to be subject to the disciplines of the agreement.

Mr. BATEMAN. Mr. Hunter has asked unanimous consent for another half minute, and the Chair would be inclined to indulge that.

Mr. HUNTER. Thank you Mr. Chairman.

I think I have part of the answer to my own question here. The European Commission—and it's entitled The European Community—ratifies the OECD Shipbuilding Agreement. And one of the advantages they think they got, it says this: "Limit the scope of the U.S. Jones Act." One of the union's key negotiating priorities was to achieve binding limitation on legislation protecting domestic U.S. shipping. The Jones Act currently reserves a U.S. domestic market to U.S.-built boats, thereby ensuring only these vessels built in U.S. yards and flying U.S. flags can ply trade between one U.S. port to another.

The Jones Act has already been grandfathered under the Uruguay Round. But the new OECD Agreement will severely limit its scope in the following way: During the first 3 years of the agreement, shipyards that enjoy the benefits of the Jones Act will be exposed to, quote, "responsive measures by the participants on the ships they seek to deliver once the threshold of 200,000 gross tons a year has been exceeded." This is a single threshold which applies to all U.S. shipyards which in that specific year have orders taken under the Jones Act.

For example, a shipyard benefiting from the Jones Act could face a surcharge when bidding for a contract put out to tender by a foreign country, and after 3 years this 200,000-ton threshold would no longer apply, meaning that all companies benefiting from the Jones Act could become exposed, the countermeasures under the assumption that their production undermines the balance of the agreement. In the same way a country could withdraw the U.S. GATT-related tariff concessions on other products up to an equivalent level.

Our exchange, Mr. Phillips—you didn't even mention this aspect, which is very important to the Europeans—reminds me of Will Rogers' own statement made in the 1930's that the United States never lost a war and never won a negotiation.

Mr. PHILLIPS. Could I just respond? We saw that statement also, and we regarded it as a gross misinterpretation of the agreement and advised the Europeans of that. Specifically there is one thing that is totally erroneous, which is a motion they can withdraw GATT concessions.

Mr. HUNTER. Mr. Chairman, I would like to put this response in the record, if we could.

Mr. BATEMAN. Without objection it will be done.

If I may, let me, having been able to return, raise a couple of questions before I turn to Mr. Pickett.

Reference had been made at some point in the hearing this morning to this being a worldwide agreement, but it is not, in fact, a worldwide agreement. There are major shipbuilding countries who are not parties to the agreement, in particular the Ukraine, the Russians, the Taiwanese, all of whom have significant shipbuilding capacity.

I have some concerns as to how the framework of this agreement has been operated in an international marketplace where major producers are totally unconstrained by the agreement, and especially if you take the case of Ukraine and the Russians, where there is a strong tradition of government ownership, subsidization and control of the industry because of their perceived industrial desire. That is the troubling aspect of the agreement.

It is said throughout that the other governments involved in the agreement want to end subsidization. If indeed they do, why would they not be amenable to freezing in place for a somewhat longer period of time the standstill provisions in order that American shipbuilders get at least some opportunity to get on a level playing field that would thereafter occur?

Ms. HILLMAN. Let me try to respond to both the questions that you have raised. First, on the issue of the countries that may not be members of the agreement, as I noted in my testimony, the cur-

rent agreement countries constitute approximately 80 percent of shipbuilding production in the world. So we think it is a very high percentage of the total coverage that would now be under these disciplines.

But at the same time we currently recognize they are somewhat outside of this agreement, and I would say that already contacts have been made with a number of those countries to try to begin discussions with them to bring them under the auspices of the agreement.

Obviously there is some reluctance of countries to go very far down the road before they know whether the agreement is going to come into effect or not. That really is the question that falls on the United States in terms of whether we are going to complete our ratification processes by June 15 or not, but clearly we are hopeful that if we ratify the agreement, the discussions that have already been preliminarily begun with a number of countries—and I would mention they are being pursued right now with Russia, Romania, Ukraine, and China to try to urge greater participation in the agreement.

In addition, the OECD is in the process of also monitoring shipbuilding production in both countries that are parties to the agreement and those that are not, so we have a very good handle on where production is and which countries need to be addressed in terms of trying to get them to be members. But we think the 80-percent coverage really does represent a very important and substantial discipline on subsidies in the world that would not be available if we don't ratify the agreement.

Mr. BATEMAN. The other question referred to the asserted eagerness of the other governments, the OECD nations, to end subsidies, and if that be the case, if that is such a palatable and attractive object for them, would they be unwilling to accept an extension of the standstill provisions?

Ms. HILLMAN. As it turned out, I think there is already considerable pressure building within many of the countries in Europe, if the agreement were to unravel, to begin once again building up their subsidy programs. So my sense is that there is such strong pressure that if the United States is not able to ratify this agreement on time, the agreement will unravel, and the Europeans will begin increasing ever more their subsidies for their shipbuilding industry.

There is a lot of pressure building within the European Union to do that. It is solely this agreement and the standstill agreement that is preventing them from doing it right now. They have clearly indicated if we are not able to ratify this agreement, that they would no longer have to abide by the standby agreement, and the pressures will build for them to increase their subsidies, and that would be very much to the detriment of U.S. shipyards.

Mr. BATEMAN. Turning to the transition provisions that are in the agreement with respect to Spain, Portugal, Belgium, the—South Korea, and the mystery that still surrounds what happened vis-a-vis the French, who apparently got additional restructuring concessions even after the agreement had been signed by the signatory parties. What information do we have with respect to what shipyards in any of these countries or in any of the nations who

are part of OECD have disappeared, been closed; how much downsizing has, in fact, taken place? How much do we know about the 1.4 billion in restructuring aid for Spain and the specifics of it, and if you have any specifics of it, we would like you to furnish it for the record.

Mr. PHILLIPS. I will try to address that, Mr. Chairman.

We do have, I think, a fair amount of information on downsizing of yards in Spain and France and other areas. We will furnish some of that information for the record. We will furnish all that we have for the record.

With respect to the subsidy programs in those countries, with respect to Belgium and Spain and Portugal, the conditions and parameters of those subsidies are laid out pretty clearly in the agreement, so we think there are very clear rules governing those subsidies.

We also have some information on how much has been disbursed at this time and for what purposes. We can furnish that.

[The information referred to was not submitted for the record.]

With respect to France, I want to make clear that there is no exemption from the rules for France. In the case of France, the Commission approved in principle certain programs for France on the basis that they would be consistent with the agreement, and that is to say they would fall into research and development, worker retraining or other measures consistent with the agreement. Part of it also fell into the subsidies that are allowed until the agreement enters into force.

For the most part, these programs have not been approved in detail by the European Commission. They have to be approved by the European Commission. We have recent information that indicates there have been requests submitted by France, but at this time they have not been approved. France is obligated and is bound by the rules of the agreement, so they are not in any position to provide support that is inconsistent with the agreement.

There is no exemption for South Korea.

Mr. BATEMAN. It seems strange to me that these negotiations and discussions are taking place in the context of the European Community and the French. We are parties to this agreement, but are not parties to those negotiations. Does that strike you as strange?

Mr. PHILLIPS. No, because it is a matter of the laws of the European Community. They are saying France has to abide by the agreement and subsidy rules set by the Community. We are interested in this issue and we have been in constant contact with the Commission to try to monitor the situation.

So we would agree that we have a role in it, but in the first instance, it is up to them to decide on the legitimacy of a program within the Community. If we think it is inconsistent with the rules, we would have a right under the agreement to pursue it in dispute settlement of the agreement.

Mr. BATEMAN. Well, notwithstanding efforts that I initiated early last year to get some background information on what was ensuing between the European Community and the French with reference to the Community, our Ambassador to the OECD had no knowledge of anything that was going on and said that he would seek

to obtain such information and furnish it, but it has never been furnished.

Mr. PHILLIPS. We have had the same problem. There has been a very long delay in terms of the French actually submitting anything to the European Commission. But we have an indication there have been requests now.

Mr. BATEMAN. I will withhold future questions and recognize Mr. Pickett.

Mr. PICKETT. Thank you, Mr. Chairman.

What is the response to the shipbuilders in the United States who expressed concern about the impact of this agreement on their operations and their future? Is this a legitimate concern on their part? Do they have a right to be alarmed at what the potential consequences are? Can you elaborate on this, please?

Ms. HILLMAN. Sure. I would start by saying this entire agreement was done initially, throughout, at the behest of our shipbuilding industry. It started with a section 301 petition in which they laid out their primary concerns about competing in the world market with the unfair subsidies and the predatory pricing of their foreign competitors. They have been closely consulted throughout the entire conduct of these negotiations and have always maintained that the primary problem they face is the issue of foreign subsidies.

The agreement has addressed that problem very specifically, very directly and very completely by saying we will all together agree to eliminate these foreign subsidies that are the primary problems that the U.S. shipbuilding industry has indicated makes it difficult for them to compete in the world marketplace.

We went back and looked at every allegation they made in terms of every subsidy practice in their original 301 petition and whether or not this agreement does address and get rid of the subsidies that were alleged by the industry as causing their competitive problems. What we find is that the agreement addresses every single practice that was outlined in their petition and was what the industry has complained about with two exceptions, one relating to domestic fishing vessels and the other relating to this worker adjustment kind of program. So by and large, all the practices that the industry said were problems for them, were creating a competitive disadvantage for them, were ones that are addressed and are eliminated as a result of this OECD shipbuilding agreement.

We recognize that there are remaining some degrees of opposition, and specifically they focus on a couple of things. One is the issue of some skepticism or questions about when will the subsidies end and whether they will really end under the terms of the agreement; that is, as I stated very clearly, the subsidies end when the agreement enters into force.

July 15, 1996, is the ending date for the subsidies that are causing this unfair competition. So there should be no ambiguity about that. The subsidies must come to an end if the agreement enters into force.

The second issue that has caused this degree of concern stems from title XI and a sense that right now title XI is providing some degree of advantage in this one aspect for U.S. shipbuilders in terms of their loan guarantee. The length of time of the loan guarantee and the percentage of a loan contract that can be guaranteed

under title XI is currently a better deal than the similar loan guarantee programs available in the rest of the world. Right now they clearly have an advantage in this loan guarantee program.

The question is, what would happen in the future, either with the agreement or in the absence of the agreement. In the absence of an agreement, our sense is the other countries will match or exceed the title XI program and therefore its competitive advantage goes away. With the agreement, we can maintain the title XI program, but only so far as it is in compliance with the agreement, which means the length of time and percentage of financing would be changed, but everyone would have to comply with the same restrictions as we will.

So everybody's loan guaranty programs would be on an equal footing, so that our title XI program would be at least as good as everyone else's in the world's programs.

We think fundamentally that will leave our shipbuilders in a more competitive position. If all other subsidies are eliminated, our title XI program remains equally competitive with any programs in the rest of the world. That leaves us in a much better position than we are today.

We have to remember that, today, subsidies in the rest of the world are $2 or $3 or $4 billion. Subsidies through the title XI program in the United States are only $50 million. That is the competitive disadvantage that we want to get rid of by implementing this agreement.

Mr. PICKETT. Time is always an important factor in any consideration of this kind, the outlook toward industry. How do you respond to the contention that there is a strong likelihood here that the other countries are not going to honor the commitment implicit in the agreement, that they are going to find ways to circumvent the provisions of the agreement and that any remedy is going to be long and drawn out, and by the time the remedy is presumably given effect that the impact of it will long since that have played out anyway.

Ms. HILLMAN. We think the disciplines in this agreement are faster and better than any parts of the agreement or the GATT. Particularly in the subsidies area, I would note that under normal subsidy practices you have sort of a two-step process. One is actually proving that a subsidy was granted and the other is an injury determination that shows that the subsidy caused an injury here in the United States to a U.S. producer.

In the shipbuilding agreement, there is no requirement for an injury finding, which means that the process will be faster and much more likely to result to the benefit of U.S. shipbuilders than any other subsidy mechanism. We believe the disciplines in the agreement are tight and specifically drawn, and the dispute settlement mechanism is a very good one that will result in fairly quick justice if countries were to engage in subsidies that would be in violation of the agreement itself. We think the disciplines are quite good and better than in other international trade agreements.

Mr. PICKETT. Thank you.

Mr. BATEMAN. Mr. Longley.

Mr. LONGLEY. Ambassador, I have to acknowledge on the record that you have probably forgotten more about the details of this issue than some of us have ever learned.

As I have listened to the testimony, I have had to assess the extent to which you are right or not right. With all due respect, you avoided a question that Congressman Cunningham asked you, which was, how could it be that the six yards that represented 95 percent of the work force, the jobs in shipbuilding, that those yards were strongly against the agreement. I want to put that in more perspective because, to me, that was a very significant question.

You answered by listing everybody else who was involved but without focusing on the fact that of the six major yards who employ 95 percent of the shipbuilders in this country, the ones who stepped up to the plate to get these negotiations going to begin with, have done a complete about-face and are now strongly against it.

I have to weigh what you are saying, and I respect the fact that you know the ins and outs of all the language and the details of the agreement, versus the six companies that hire 95 percent of the workers and what they know about shipbuilding; and I have to evaluate that against what you appear to know about shipbuilding.

You made a reference in your testimony to the shipyard revitalization plan and another comment about how we want these jobs in the United States. So when you didn't answer the question that related to those 95 percent of the shipbuilding jobs, that got my attention.

But something else got my attention and I don't mean to personalize it, because this goes beyond you and your office, but if we are going to look at what is really going to produce jobs, it is steel on the water, it is what are we going to produce in terms of ships in this country. If I have to measure the real commitment, if you will, of this administration to maritime shipbuilding, then I have got no choice but to evaluate it against its commitment to naval shipbuilding. As I said earlier, we have been presented with two shipbuilding budgets last year and this year that represent the lowest level of shipbuilding of any budget in 60 years.

You mention in your testimony growth and demand for U.S. military commercial vessels is expected to be small. I will focus, for instance, on the growth and demand for U.S. military vessels and the fact that we again received a budget calling for three ships when any conservative estimate recognizes that we need at least 8 to 10 new ships a year just to maintain the reduced level of force that has been called for in the Bottom-Up Review, 346 ships.

I have to say for the record that if I look at what the administration says and compare it to what it does, then I have to say that I think the six American Shipbuilding Association [ASA] yards who employ 95 percent of the workers are entirely justified in their serious misgivings about whether or not this agreement is going to do what it says it is going to do. I think that is the way we have to evaluate it in terms of whether you really mean what you are saying.

When I look at it in terms of steel on the water, I have to say this administration has zero commitment to the issues of shipbuilding.

Ms. HILLMAN. If I could try to answer as much as I can in terms of your concerns, first, I would note that it should be very clear that this agreement does not affect any vessels that are produced for military purposes. It has no relationship to and does not affect——

Mr. LONGLEY. If I could interject, I am saying that if the Administration is truly committed to shipbuilding and if it really knows what it is doing, not just the public relations [PR] and news conferences, but what it takes to get ships built, to get steel on the water—and I look at the naval shipbuilding budget, not only do we see a 60-year low in terms of administration requests, and I measure this in terms of what the administration says it wants to see—if it says it wants to see shipbuilding jobs and ships on the water, why would we not only be given the request we are being given, No. 1, but No. 2 is, we go through the process a week or two ago where we have private meetings with the administration to basically tell us how to add to their budget because they haven't given us what they need, requests for what they need.

Ms. HILLMAN. I guess in commenting I would note that this agreement does not affect military vessels. To the extent that it affects commercial vessels, approximately 90 percent of the commercial vessels are produced in yards other than the six naval-oriented yards, so the agreement is really directed at commercial shipbuilding. The vast majority of that shipbuilding production is currently done in yards other than those specific six. So the trade, and those are the kinds of commercial shipyards that I referred to that are in support of this agreement and are in support of this legislation would be those producing the majority of the commercial ships.

Mr. LONGLEY. I ask unanimous consent for another 30 seconds.

That may be well and good, but we are advised that 95 percent of the jobs are in those six yards.

Ms. HILLMAN. Obviously, I understand; and those are largely related to the production of military vessels which this agreement is not intended to address and does not address.

Mr. BATEMAN. But it is not without significance that these six of the larger major shipbuilding entities are the only entities that build naval combatants and that is what this discussion and this national security implication is about.

Mr. Taylor.

Mr. TAYLOR. Thank you, Mr. Chairman.

Ms. Hillman, I have heard you say at least twice that this does not affect the Department of Defense [DOD] as if the administration has been a champion of American shipyards building American ships for the fleet. I would like to remind you that this Congress had to pass language to the Fleet Modernization Act that required ships to be built in America over the objections of the President. I would also remind you that this Congress, particularly this committee, has had to pass language in the defense authorization bill every year to require that those ships that are in the budget are made in America. So please do not try to lead anyone to believe that the administration has been supportive of American shipyards.

As Mr. Longley pointed out, the folks you pretend to be helping with this legislation, that represent 90 percent of all the shipyard

workers and therefore 90 percent of all the suppliers and therefore 90 percent of all the people in America affected by this, are against what you are trying to do. I want that stated for the record.

I also want to clear up for the record that you have not been a friend of the DOD because we have had to pass language to the contrary to keep you from outsourcing ships that are paid for with American tax dollars, including one that in all probability will be named after the late Commerce Secretary Brown.

Mr. BATEMAN. Mrs. Fowler.

Mrs. FOWLER. I want to reiterate what Mr. Pickett asked you, that July 15, 1996, if all this is approved, is the date upon which these unfair foreign subsidies will be terminated; and therefore you can begin to see impact there. Is that correct?

Ms. HILLMAN. That is correct.

Mrs. FOWLER. There seem to be strong differences of opinion whether this is a good or bad agreement. All agreements are products of compromise, so I don't think anyone can expect to have a perfect agreement; but how did this agreement stack up against other international rules governing subsidies, the shipbuilding industry's objectives going into and during these negotiations, and what exactly are the enforcement mechanisms for monitoring and making sure that these countries are going to terminate their foreign subsidies?

That is a three-part question.

Ms. HILLMAN. First, let me respond on the issue of subsidy disciplines.

We believe that this agreement provides the most comprehensive subsidy discipline that has ever been negotiated for any particular product sector. It is tougher than the World Trade Organization [WTO] subsidy agreement, which requires a finding of material injury as well as a finding of a specific subsidy. Under the shipbuilding agreement, if approved, the mere existence of a subsidy is sufficient to raise a complaint under the dispute settlement mechanism and apply the sanctions if there has been a subsidy verified. So the disciplines on subsidies are very, very rough and enforcement mechanisms are very good.

Second, on the issue of how well did we do in terms of meeting objectives of the industry, as I mentioned, the entire negotiation was conducted with constant consultations with our industry and really stemmed from their very specific allegations laid out in a section 301 petition in which they very precisely outlined all of the subsidy practices of all of the foreign governments that are major shipbuilders, that they felt were causing them to be at an unfair competitive advantage. They very specifically said these subsidies were what was causing them their problems. And we have compared where we did end up with this agreement versus where were their complaints.

That analysis shows very clearly that the agreement gets rid of every subsidy complained about by the industry in its petition with the exception of two, and those were a subsidy for domestic fishing fleets and a worker assistance program that is exclusively for the benefit of redundant workers.

With those two exceptions, two out of a very long list, we were able to achieve the elimination of all of the other subsidies that the shipbuilding industry complained about.

Our bottom line comes down to, at the end of the day, is this a good trade for us and will it result in a more competitive U.S. shipbuilding industry and more opportunities for our U.S. shipbuilding industry to compete abroad? We think clearly the answer is yes.

Right now our subsidies are at a level of $50 million. The rest of the world's are up to $2 or $3 or $4 billion. If all of us are coming down to nothing, we are giving up far, far less than the rest of the world is giving up in terms of how much they subsidize their production; and it is those subsidies that our industry has said are the problem, preventing them from being competitive in the world market.

So if we can get rid of those subsidies we believe we will leave our shipbuilding industry in a much better position in order to compete and gain market share in the world marketplace.

Mrs. FOWLER. On total enforcement and the discipline, so July 15 they are supposed to end their foreign subsidies; you discover on September 1 that some have not. If there is a long process, during that time they can continue subsidizing while you go through hearing after hearing and determining what to do; meantime they are subsidizing their shipyards while we do our part and cut down.

I am a little concerned with that sort of balance because we sometimes get into these procedures whereby they can be ongoing for a long time.

Ms. HILLMAN. No. The way the agreement is structured would allow much swifter justice, if you will, than we have been able to achieve by any other method, in part because of the lack of the entire process on the material injury end and in part because of the way the dispute settlement provisions were written. It was intended to address your concern, to make sure that there was not a long, drawn out procedure during which the other side subsidized unfairly.

We think the dispute settlement mechanism will be both quicker and more effective than any discipline procedure we have been able to negotiate previously.

Mrs. FOWLER. Thank you.

Thank you, Mr. Chairman.

Mr. BATEMAN. Thank you. The agreement, like the Lord, giveth and taketh.

One of the things you extolled it giveth is the dispute settlement mechanism, the enforcement provisions. That becomes heartening on one hand, but not in the context of the Jones Act. If the dispute resolution and the disciplines and the sanctions are so immediate and can be put in place, then the agreement, by its terms, makes the Jones Act after 2 or 3 years a presumptive violation of the agreement.

It seems to me that we have gotten ourselves into the soup if we care about the Jones Act.

Mr. PHILLIPS. Thank you. I will try to address those concerns.

First, I would reiterate that the Jones Act home build requirements are exempted from the agreement, so there is no way that you can find that this results in a violation of the agreement. In

that sense, the Jones Act would not be subject to the normal dispute settlement procedures under the agreement.

There is a special procedure that is set up which was aimed at dealing with the concerns of others that the Jones Act production and deliveries might be such as to undermine the agreement; but in those instances, the worst that can be done is that the complaining country might be authorized to set aside some portion of its own markets and not allow Jones Act shipbuilders to sell to that market. But there can be no finding that there is a violation and no obligation to change the Jones Act under the agreement.

I would add that we are only talking in terms of home build. The agreement has no implications whatsoever for the other aspects of the Jones Act, the cabotage laws.

Thank you.

Mr. BATEMAN. With that, I think we had best suspend in order to hear the members of the third panel. We thank you very much for being here and we may have specific questions to raise for the record.

Ms. HILLMAN. We would be delighted to answer them Mr. Chairman. Thank you for this opportunity to appear before you.

Mr. BATEMAN. Thank you.

The remaining panel consists of R.T.E. Bowler III, president of the American Shipbuilders Association; Mr. Albert Bossier, president and CEO, Avondale Industries; Mr. Thomas P. Jones, vice president of Atlantic Marine; Mr. George R. Duclos, president of Gladding-Hearn; Mr. Ande Abbott, director, Washington Operations, International Brotherhood of Boiler Makers; and Mr. Peter J. Finnerty, vice president, Public Affairs of Sea-Land Services, Inc.

Welcome, and thank you for being here. I have been advised that Mr. Bossier has an early plane, and to accommodate him I will ask that he provide us with his statement first, and then we will proceed in the order that I originally introduced the panel.

STATEMENT OF ALBERT BOSSIER, PRESIDENT AND CEO, AVONDALE INDUSTRIES, INC.

Mr. BOSSIER. Thank you, Mr. Chairman for your consideration, and members of the panel. As president and chief executive officer of Avondale Industries of New Orleans, LA, I appreciate this opportunity to state my very strong objections to this OECD shipbuilding agreement and to its implementing legislation.

Avondale Industries was founded in 1938. We are an employee-owned company, and we are the largest private employer in the State of Louisiana. The livelihood of more than 6,000 men and women and their families depends directly upon Avondale Industries. In these times of scarce Navy shipbuilding opportunities, it is essential for Avondale to win commercial contracts to sustain our current work force, the very work force needed to meet present and future Navy shipbuilding demands.

Our company has made tremendous strides in improving its commercial shipbuilding competitiveness. We have made major facility investments in the last 2 years, we have improved our manufacturing techniques, and we are aggressively pursuing commercial contracts. Our company actions combined with those of this committee

and Congress as a whole have made possible a rebirth in commercial shipbuilding in this country.

In fiscal year 1994, this committee enacted the National Shipbuilding Initiative. The cornerstone of this legislation was a revitalized and amended title XI Ship Loan Guarantee Program. As you know, title XI is a government loan guarantee for commercial ships built in the United States for domestic coastwise trade and export markets. The guarantee covers 87½ percent of a 25-year loan commitment. This program was key to enabling American heavy lift shipping companies to secure the needed financing for the construction of four double-hulled forebody tankers in our shipyards. This work represents as many as 1,000 jobs for our employees. In fact, today, this past week, we launched the first of those four vessels, and we have in excess of 980 employees working on that contract at this time.

In addition to the direct people working at Avondale Shipyards, this contract has generated an additional 2,500 to 3,000 jobs throughout our economy. The American heavy lift tankers will serve the U.S. coastal trade very shortly.

Title XI in its present form is also the key for other construction potentials we are currently discussing with other shipping companies. In fact, we have signed a contract with another major shipper to produce four 42,000-ton double-hulled product tankers by the year 2000. Construction will begin on them in early 1998.

In 1994, we had no commercial work whatsoever. After the enactment of the National Shipbuilding Initiative in 1995, we contracted for almost $400 million of Jones Act-type work, which would not have been possible had the title XI loan guarantee program not been modified.

Another act of Congress that has contributed to the rebirth of U.S. commercial shipbuilding was the passage of the Oil Pollution Act of 1990. This law requires that all oil tankers calling in U.S. waters have environmentally safe double hulls by the year 2015. It also requires that U.S. single-hulled tankers be retired on an annual phaseout schedule between 1995 and the year 2010. Oil Pollution Act [OPA] 90 has created a double-hull construction market for U.S. shipbuilders, especially for tankers serving our domestic coastwise trade called the Jones Act. Under the act these ships must be built in the United States and owned and operated by U.S. citizens.

United States shipowners, however, cannot meet the double hull requirements of this law without the ability to secure financing for their customers. This is where title XI is absolutely essential in its current form. Our American Heavy Lift contract was a direct result of the Oil Pollution Act of 1990 and the title XI financing with the 25-year amortization.

This OECD agreement guts the title XI program and will also lead to repeal of the Jones Act through market forces, if not by the terms of the agreement itself. Without the ability for shipowners to secure financing for double-hulled ship construction in the United States, there will not be sufficient U.S.-built, U.S.-operated double-hulled tankers in the year 2000 time frame to meet our domestic oil transportation demands.

When demand exceeds supply, I seriously doubt Congress will repeal the OPA–90 law requiring environmentally safe double hulls. Politics as they are, the more logical action would be for Congress to waive or repeal the U.S.-build and U.S.-operating requirements for double-hulled ships in our domestic trades.

Let me give an example of what this means for our country. If it were not for U.S. shipyards working around the clock to activate mothballed old ships in our Ready Reserve Force, and if it were not for the trained mariners who are employed in the Jones Act trade to man these ships, we never would have been able to get our heavy mechanized armored divisions to the Persian Gulf in 6 months. Even though 6 months is too long a time, could you imagine what the outcome of the Persian Gulf war could have been if we did not have the Jones Act as a safety net for meeting this war sealift operation?

Tom Bowler will speak shortly to specific restrictions placed on the Jones Act in this trade agreement, and I will not cover these at this time.

In summation, let me state that the National Security Committee and Congress has a vested interest in seeing this trade agreement renegotiated. It will not end foreign government subsidies. It will, however, kill Avondale's and other U.S. shipbuilders' recent success in the commercial shipbuilding market. This, combined with the loss of the Jones Act, will have grave implications on the future defense security of the country. The U.S. cannot afford to lose another major shipbuilder and still have the capacity to meet the future and current Navy shipbuilding needs. Yet Navy shipbuilding alone cannot sustain our already diminished shipbuilding industrial base throughout its cyclical lows and highs.

I plead with each of you to look beyond the philosophical rhetoric extolling the virtues of each and every trade agreement. I plead with you to recognize just how serious this agreement is for the future of not only our industry, but our country.

Thank you very much.

Mr. BATEMAN. Thank you, Mr. Bossier. We appreciate your willingness to be here and to present your point of view.

[The prepared statement of Mr. Bossier follows:]

TESTIMONY OF MR. ALBERT L. BOSSIER, JR.

PRESIDENT & CEO, AVONDALE INDUSTRIES, INC.

ON H.R. 2754

LEGISLATION IMPLEMENTING OECD SHIPBUILDING AGREEMENT

May 22, 1996

Thank you, Mr. Chairman, and members of the Panel. As President and CEO of Avondale Industries of New Orleans, Louisiana, I appreciate this opportunity to state my strong objections to this OECD shipbuilding agreement and to its implementing legislation.

Avondale Industries was founded in 1938. We are an employee-owned company, and we are the largest private employer in the state of Louisiana. The livelihood of more than 6,000 men and women, and their families, depends directly on Avondale. In these times of scarce Navy shipbuilding opportunities, it is essential for Avondale to win commercial contracts to sustain our current work force -- the very work force needed to meet present and future Navy shipbuilding demands.

My company has made tremendous strides in improving its commercial shipbuilding competitiveness. We have made major facility investments, we have improved our manufacturing techniques, and we are aggressively pursuing

commercial contracts. My company's actions, combined with those of this Committee, and Congress as a whole, have made possible a rebirth in commercial shipbuilding in this country.

In fiscal year 1994, this Committee enacted the National Shipbuilding Initiative. The cornerstone of this legislation was a revitalized and amended Title XI Ship Loan Guarantee Program. Title XI is a government loan guarantee for commercial ships built in the U.S. for the domestic coastwise trade and the export market. The guarantee covers 87.5 percent of a 25-year commercial loan. This program was key to enabling American Heavy Lift Shipping Company to secure financing for the construction of double-hulled forebodies for four tankers in my shipyard. This work represents as many as one thousand jobs for our employees, and it will generate an additional 2500 to 3000 jobs throughout the economy. These American Heavy Lift tankers will serve the U.S. coastwise trade.

Title XI, in its present form, is also the key for other construction potentials we are currently discussing with other shipping companies.

Another Act of Congress that has contributed to the rebirth of U.S. commercial shipbuilding is passage of the Oil Pollution Act of 1990 (OPA-90). This law requires that all oil tankers calling in U.S. waters have environmentally

safe double hulls by the year 2015. It also requires that U.S. single-hulled tankers be retired on an annual phase-out schedule between 1995 and the year 2010. OPA-90 has created a double-hull construction market for U.S. shipbuilders -- especially for tankers serving our domestic coastwise trade, called the Jones Act. Under the Jones Act, these ships must be built in the United States and owned and operated by U.S. citizens.

U.S. shipowners, however, cannot meet the double hull requirement of this law without the ability to secure financing. That is where Title XI is absolutely essential. Our American Heavy Lift contract was the result of both OPA-90 and Title XI.

This OECD agreement guts the Title XI program. It will also lead to the repeal of the Jones Act through market forces, if not by the terms of the agreement itself. Without the ability for shipowners to secure financing for double hull ship construction in the United States, there will not be sufficient U.S.-built, U.S.-operated double-hulled tankers in the year 2000 time frame to meet our domestic oil transportation demands. When demand exceeds supply, I seriously doubt Congress will repeal the OPA-90 law requiring environmentally safe double hulls. Politics as they are, the more logical action would be for Congress to waive or repeal the U.S.-build and U.S.-operating requirement for

double-hulled ships in our domestic trades.

Let me give an example of just what this may mean for our country. If it were not for U.S. shipyards, working around the clock to activate mothballed old ships in our Ready Reserve Force, and if it were not for the trained mariner pool employed in the Jones Act trade to man these ships, we would never had been able to get our heavy mechanized Army divisions to the Persian Gulf in six months. Six months is far too long. Can you imagine what the outcome of the Persian Gulf War could have been if we did not have the Jones Act as a safety net for meeting this war sealift operation?

Tom Bowler has already spoken to the specific restrictions placed on the Jones Act in this trade agreement, and to the deficiencies of this agreement in disciplining foreign shipbuilding subsidy practices. I will not repeat these shortcomings, but will echo my concerns of those voiced by Mr. Bowler.

In summation, let me state that the National Security Committee, and Congress, has a vested interest in seeing this trade agreement renegotiated. It will not end foreign government subsidies. It will, however, kill Avondale's, and other U.S. shipbuilders', recent successes in the commercial shipbuilding market. This, combined with the loss of the Jones Act, will have grave and irreversible implications on the future defense security of our country. The U.S. cannot

afford to lose another major shipbuilder and still have the capacity to meet Navy shipbuilding needs. Yet, Navy shipbuilding alone cannot sustain our already diminished shipbuilding industrial base throughout its cyclical lows and highs.

I plead with each of you to look beyond the philosophical rhetoric extolling the virtues of each and every trade agreement. I plead with you to recognize just how serious this agreement is for the future of not only our industry, but our country. Thank you.

Mr. BATEMAN. At this time I recognize Mr. R.T.E. Bowler, president, American Shipbuilders Association.

STATEMENT OF R.T.E. BOWLER III, PRESIDENT, AMERICAN SHIPBUILDERS ASSOCIATION

Mr. BOWLER. I appreciate this opportunity to testify on behalf of the American Shipbuilding Association. ASA is the national trade association representing the six largest U.S. shipbuilders, employing over 90 percent of the U.S. workers engaged in shipbuilding, and that is based on Maritime Administration [MARAD] figures at the end of 1995. Our industry accounts for 300,000 American jobs in the shipyards and the industries that supply them. Ninety-eight percent of the Navy shipbuilding budget is expended on ships built in these six shipyards.

It is with a degree of irony I am representing these six shipyards, and these six shipyards are the ones that financed and filed the original section 301 trade petition, and it is these shipyards that now stand in opposition.

This agreement is not called the OECD ship operators agreement, the OECD port operators agreement, the OECD second tier shipyard agreement. It is the OECD shipbuilding agreement, and the shipbuilders that wanted it are now the ones that oppose it.

Up until 1981, ASA shipbuilders had a long and proud history in building commercial ships. From the 1950's to the 1970's, U.S. shipyards delivered an average of 19 commercial ships per year and 20 Navy ships per year. This combination of commercial and Navy shipbuilding helped offset the cyclical balance in both markets and keep this core industrial capability in existence.

As we said, we clearly and strongly oppose the enactment of H.R. 2754 as reported by the House Ways and Means Committee. We have a twofold objection. First, this agreement fails to meet the objective of eliminating foreign shipbuilding subsidies, and it will bring to a screeching halt the recent resurgence of commercial shipbuilding in this country.

We have talked about foreign governments using a restructuring loophole in the agreement to justify large subsidies to their shipyards. Many of those have been touched on. I will touch on one.

Spain was, of course, granted $1.4 billion for supposedly worker retraining restructuring. They publicly announced that half of that, $723 million, was meant to modernize its existing shipyards with no closure of facilities. Mr. Chairman, you have touched on the lack of information about the French $480 million deal. We, too, wait anxiously for that long-term action item to be answered.

We have talked about the injurious pricing mechanism. We feel the injurious pricing mechanism, which is meant to discipline the selling of ships below their cost of production, will be ineffective in stopping the dumping practices of South Korea and Japan. These two countries build 60 percent of the world's ships. Under this provision U.S. shipbuilders would only have standing to file an antidumping case if the ship were purchased by a U.S. citizen. Since the number of U.S. shipowners has been declining rapidly over the past 20 years, U.S. shipbuilders would have no recourse against dumping of the vast majority of the ships on the market. Even Eu-

ropean shipbuilders acknowledge that the agreement is essentially meaningless in that area.

Attached to my statement is an article from Lloyd's List citing shipbuilders' feeling about the injurious pricing mechanism.

We have also touched on another glaring loophole in the agreement: The absence of China as a party to this agreement. China is now targeting shipbuilding, just as Japan did in the 1960's, South Korea did in the 1970's. Japan in the past 5 years has soared from 0 percent to 4 percent of the shipbuilding market, and some Korean yards are now linking up with Chinese yards, we feel, to bypass the agreement.

While ineffective in stopping foreign subsidies, this agreement will terminate with prejudice the recent resurgence of commercial shipbuilding in this country. ASA shipbuilders are once again building large oceangoing commercial ships for export. Newport News Shipbuilding is building four double-hulled oil tankers for a Greek shipping company, the first U.S. ship export order in more than 35 years. We are also building environmentally safe double-hulled oil tankers for the domestic market in accordance with the Oil Pollution Act of 1990. Currently nine ships are on order, and that would not have happened without the title XI Ship Loan Guarantee Program as amended by this committee in fiscal year 1994.

Mr. Bossier talked about the change in the terms, and believe me, if you talk to the shipbuilders that signed these deals, that would not have happened without the current terms of title XI.

Also attached to my statement is a letter from Navy Assistant Secretary John Douglass confirming the benefit of the title XI program in securing commercial shipbuilding orders and the contribution of this work in maintaining an essential Naval shipbuilding industrial base.

Perhaps most troublesome is the impact this agreement may have on defense shipbuilding programs. We heard Ambassador Hillman say that this was not meant for military programs. Apparently the Department disagrees. As Mr. Taylor said, this committee has supported commercial ships being built in the United States with national defense features for DOD sealift. The National Defense Features [NDF] program is designed to provide DOD with a fleet of active dual-use fully-manned ships to meet surge sealift requirements in an emergency. According to the DOD, an NDF program is two to three times more cost-effective for the government than operating and maintaining a fleet of ships in a layup status. In April of this year, the Military Sealift Command issued this presolicitation request to industry. It states that this defense program must not violate the OECD shipbuilding agreement.

In our view, it is an extremely dangerous precedent to allow potential defense procurements to be subjected to commercial trade agreements. An NDF program, much like the Marine Corps prepositioning ship program of the mid-1980's, will allow DOD to maximize commercial procurement practices by contracting with commercial ship operators to minimize military specifications, optimize cost-effectiveness of ship operations, while meeting the Navy's noncombatant ship requirements.

A 1996 report by the Marine Board of the National Research Council, which was just published 2 weeks ago, entitled "Shipbuilding Technology and Education," recommends that the single most important step the U.S. Government could take to help the U.S. shipbuilding industry to return to commercial shipbuilding would be to use these very procurement approaches for cost-effectively acquiring noncombatant ships for DOD. No one in this association thinks that this Government is going to give direct subsidies to the shipbuilding industry, but here is a way, by meeting cost-effectively DOD requirements, but yet building commercial ships, that is the kind of transition period this industry needs, and this agreement will impede DOD's ability to use these creative and cost-effective approaches, just as we saw in this presolicitation request.

This agreement also jeopardizes the Jones Act. We have talked a lot about that today. The only thing I will say on that is there is a 200,000-ton limit, and some have said this industry will never achieve that in the Jones Act. Some say in 1998 alone Newport News shipbuilding will deliver five double-hulled oil tankers for the Jones Act trade. Those five ships will total 142,000 gross tons. In all likelihood, the rest of our industry will, in fact, make up the rest of the 50,000 tons, and we will breach that cap.

But as the Trade Representative said, by 1999 the tonnage caps are taken off anyway, and we feel that this does put the Jones Act at risk, and certainly to the extent that these shipbuilders are going to be successful in commercial shipbuilding in the international market is the extent that the Jones Act will be put at risk. If we never build another ship for export, we will never hear another word about it.

U.S. trade negotiators also agreed to retain the Capital Construction Fund with the caveat that the moneys deposited into these funds prospectively could be used to construct ships in foreign shipyards. The Capital Construction Fund [CCF] is a program which allows U.S. citizen shipowners to accrue tax-deferred savings provided the moneys is used for the construction of ships in the United States. H.R. 2754 would retain the CCF, but would repeal the U.S. build requirement. This agreement will in effect put the U.S. taxpayer in the business of subsidizing ship construction in foreign yards, which will continue to be subsidized by their own governments under the terms of this agreement. What is wrong with this picture?

Our industry continues to support the goal of a meaningful and effective international agreement that truly eliminates foreign subsidies. Such an agreement, however, cannot drive a stake into the heart of a resurgent commercial shipbuilding in this country. If ASA shipbuilders are denied the opportunity to build commercial ships, the defense industrial base of this country will suffer irreparable harm. This country cannot afford, as Mr. Bossier said, to lose any more of its already diminished shipbuilding industrial base and still meet future Navy shipbuilding and contingency requirements.

In closing, this agreement is a bad deal for the U.S. taxpayer, for the U.S. shipbuilder, and for the national defense of the United States. I am confident that this committee, which is tasked with the oversight of our Nation's security, will recognize the inadequacy

of this agreement and its implications to the future of our industry and this Nation. We look to your leadership in rejecting this agreement.

I have attached several recommended amendments for the committee's consideration. These should provide U.S. trade negotiators with sufficient latitude and leverage to bring home a more equitable agreement for U.S. shipbuilders.

Thank you for you time and consideration for this legislation, which will determine the fate of commercial shipbuilding in our country.

Mr. BATEMAN. Thank you.

[The prepared statement of Mr. Bowler follows:]

TESTIMONY OF MR. TOM BOWLER

PRESIDENT, AMERICAN SHIPBUILDING ASSOCIATION

BEFORE HOUSE NATIONAL SECURITY COMMITTEE

ON H.R. 2754

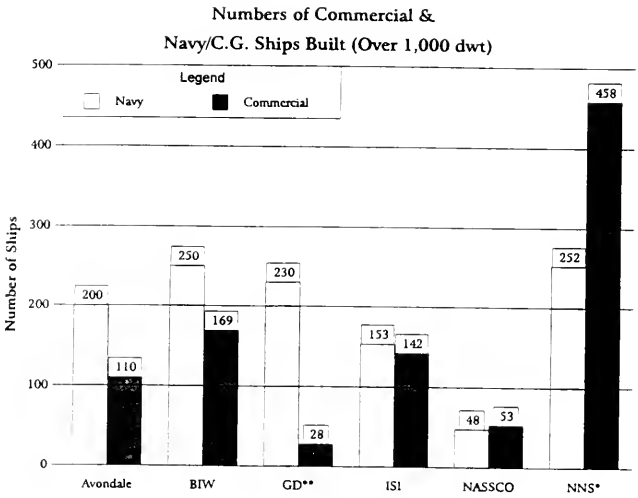
IMPLEMENTING OECD SHIPBUILDING AGREEMENT

May 22, 1996

Mr. Chairman, Members of the Panel, thank you for this opportunity to testify on behalf of the American Shipbuilding Association (ASA) on legislation implementing an OECD Shipbuilding Trade Agreement. ASA is the national trade association representing the six largest U.S. shipbuilders employing over 90 percent of the U.S. workers engaged in shipbuilding, and the largest private employers in five states. Our industry accounts for over 300 thousand American jobs in the shipyards and in the industries which supply them. Ninety eight percent of the Navy shipbuilding budget is expended in these six shipyards.

ASA shipbuilders also share a long and proud history of building large, commercial oceangoing ships. The combination of Navy and commercial ship construction, through the cyclical highs and lows of both markets, has sustained this core shipbuilding industrial capability. The following chart depicts the number of commercial and Navy ships built by every ASA shipyard throughout

their history.



** Includes General Dynamics Quincy Shipyard

* Includes 240 ships built at North Carolina Shipbuilding

ASA strongly opposes enactment of H.R. 2754 as reported by the House Ways and Means Committee. Our industry's opposition to this agreement is twofold. First, it fails to meet the objective of eliminating foreign government shipbuilding subsidies, and secondly, it will bring to a screeching halt the recent resurgence in commercial shipbuilding in our shipyards.

Foreign governments are using a "restructuring" loophole in the agreement to justify large subsidies to their industries, particularly in the area of shipyard modernization. For example, Spain is spending $723 million to modernize its existing shipyards -- with no closure of facilities. France would not sign the agreement until it was granted "restructuring" authority for a $480 million program. West German shipyards, such as Bremer Vulkan, have been accused of skimming hundreds of million in subsidies grandfathered under the agreement for former East German shipyards for building ships in West German yards.

The "injurious pricing" mechanism, intended to discipline the selling of ships below their cost of production, will be ineffective in stopping the dumping practices of South Korea and Japan. These two countries build 60 percent of the world's ships. Under this provision, U.S. shipbuilders would only have standing to file an anti-dumping case if the ship were purchased by a U.S. citizen. Since the number of U.S. shipowners has been declining rapidly over the past 20 years, U.S. shipbuilders would have no recourse against dumping of the vast majority of ships on the market. Even European shipbuilders acknowledge that the agreement is essentially meaningless in this area. (Attached to my statement is a LLOYD'S LIST article on this subject)

Another glaring loophole is the absence of China as a party to this

agreement. China is now targeting shipbuilding as a means to develop its industrial economy, just as Japan and South Korea did in the late 1960's and late 1970's, respectively. In the past five years, China has soared from zero to a four percent market share.

While ineffective in stopping foreign subsidies, this agreement will terminate the recent resurgence of commercial shipbuilding in this country. ASA shipbuilders are once again building large oceangoing commercial ships for export. Newport News Shipbuilding, for example, is building four double-hulled oil tankers for a Greek shipping company -- the first U.S. ship export order in more than 35 years. We are also building environmentally safe double-hulled oil tankers for the domestic market in compliance with the Oil Pollution Act of 1990. These orders, totaling 13 ships, would not have happened without the Title XI Ship Loan Guarantee Program as amended by this Committee in FY'94. This agreement guts this program. It changes the terms from a 25-year guarantee covering 87.5 percent of the loan to a 12-year guarantee of 80 percent of the loan. Attached to my statement is a letter from Navy Assistant Secretary John Douglass confirming the benefit of the Title XI program in securing commercial shipbuilding orders and the contribution of this work in maintaining the essential Navy shipbuilding industrial base.

Equally troublesome is the impact this agreement may have on defense shipbuilding programs. This committee has supported commercial ships being built in the U.S. with national defense features (NDF) for DOD sealift. The NDF program is designed to provide DOD with a fleet of active dual-use, fully manned ships to meet surge sealift requirements in an emergency. According to DOD, an NDF program is two to three times more cost-effective for the government than owning and maintaining a fleet of ships in lay-up status. In April of this year, the Military Sealift Command issued an NDF pre-solicitation to industry. This pre-solicitation states that this defense program must be structured in such a fashion as to **not violate this OECD shipbuilding agreement**.

It is an extremely dangerous precedent to allow potential defense procurements to be subjected to commercial trade agreements. A NDF program, like the Marine Corps prepositioning ship program of the mid-1980's, will allow the Navy to maximize commercial procurement practices by contracting with commercial ship operators to minimize military specifications, optimize cost-effectiveness of ship operations, while meeting the Navy's non-combatant ship requirements. A 1996 report by the Marine Board of the National Research Council recommended that the most important step the U.S. government could

take to help the U.S. shipbuilding industry to return to commercial shipbuilding would be to use these very procurement approaches for cost-effectively acquiring non-combatant ships for DOD. This agreement will impede DOD's ability to use these creative and cost-effective procurement approaches.

This agreement also jeopardizes the Jones Act. The Jones Act requires that ships carrying cargo between two U.S. ports be U.S. -built, -owned, and -crewed. The U.S. Trade Representative maintains that this agreement has no impact on the Jones Act. The chief European Union trade negotiator says otherwise -- and I quote:

> "One of the Union's key negotiating priorities was to achieve binding limitations on legislation protecting domestic US shipping. ...The Jones Act has already been 'grandfathered' under the Uruguay Round, but the new OECD agreement will severely limit its scope, in the following way: During the first three years of the agreement, US shipyards enjoying the benefits of the Jones Act will be exposed to "responsive measures" by other participants on ships they seek to deliver once the threshold of 200,000 gross tonnes a year has been exceeded. This is a single threshold which applies to all US shipyards which in that specific year have taken orders under the Jones Act. For example, a shipyard benefiting from the

Jones Act could face a surcharge when bidding for a contract put out to tender by a foreign country.

After three years, this 200,000-tonne threshold would no longer apply, meaning that all companies benefiting from the Jones Act could become exposed to countermeasures under the assumption that their production undermines the balance of the agreement. In the same way a country could withdraw the US GATT related tariff concessions on **other products up to an equivalent level."**

In 1998 Newport News Shipbuilding will deliver five double-hulled tankers, totaling 142,000 gross tons, for the Jones Act trade. This delivery, combined with others for self-propelled vessels over 100 tons, will in all likelihood result in a breach of the cap in 1998. By 1999, it won't matter how many tons are delivered before penalties, including GATT concessions, can be levied on U.S. shipbuilders and other industries. Such countermeasures will create large constituencies seeking repeal of the Jones Act. Mr. Bossier will address the Jones Act further in his testimony and its ramifications to our Nation's security.

The U.S. negotiators also agreed to retain the Capital Construction Fund (CCF) with the caveat that monies deposited into these funds prospectively could be used to construct ships in foreign shipyards. The CCF is a program which allows U.S. citizen shipowners to accrue tax-deferred savings provided the monies are used for the construction of ships in the United States. H.R. 2754 would retain the CCF, but repeal the U.S. build requirement. This agreement will in effect put the U.S. taxpayer in the business of subsidizing ship construction in foreign yards, which will continue to be subsidized by their own governments under the terms of this agreement.

Our industry continues to support the goal of a meaningful and effective international agreement that truly eliminates foreign subsidies. Such an agreement, however, cannot drive a stake into the heart of resurgent commercial shipbuilding in this country. If ASA shipbuilders are denied the opportunity to build commercial ships, the defense industrial base of this country will suffer irreparable harm. This country cannot afford to lose any more of its already diminished shipbuilding industrial base, and still meet future Navy shipbuilding and contingency requirements.

This agreement is a bad deal for the U.S. taxpayer, for the U.S. shipbuilder, and for the national defense of the United States. I am confident

that this committee, which is tasked with the oversight of our Nation's security, will recognize the inadequacies of this agreement and its implications to the future of our industry and this nation. We look to your leadership in rejecting this agreement. I have attached several recommended amendments for the Committee's consideration. These should provide U.S. trade negotiators with sufficient latitude and leverage to bring home a more equitable agreement for U.S. shipbuilders. Thank you for your time and consideration of this legislation which will determine the fate of commercial shipbuilding for this country.

THE ASSISTANT SECRETARY OF THE NAVY
Research Development and Acquisition
1000 Navy Pentagon
Washington DC 20350-1000

MAY 0 2 1996

The Honorable Trent Lott
Seapower Subcommittee
Committee on Armed Services
United States Senate
Washington, DC 20510

Dear Senator Lott:

During the recent Senate Armed Services Committee Seapower Subcommittee hearing on Navy Surface Ship Programs, you requested a review from the Navy on the pending Maritime Reform and Security Act legislation. I have reviewed this bill, and strongly support the establishment of an active fleet of militarily useful, privately owned, U.S.-flagged vessels for our nation's defense, and provisions that strengthen our vital U.S. maritime industrial base and Merchant Marine.

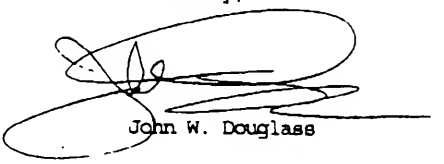
This bill is important in helping the U.S. maintain a strong and responsive defense posture. Through the Emergency Preparedness Program, the Navy will have access to vessels during times of war or national emergency thereby enhancing the readiness of our seagoing forces.

I also view the Maritime Reform and Security Act as important legislation in supporting U.S. shipbuilders. First, the bill's preference for including U.S.-built ships and the requirement to notify U.S. shipbuilders of the intent to contract for new construction work should help to promote the stability of shipbuilders supporting the Navy. Second, the vessel eligibility provision setting limits on the age of vessels in the fleet will contribute to new construction orders and maintain a younger, safer fleet. Third, the bill's provisions that facilitate use of Title XI loan guarantees is also important to U.S. shipbuilders.

It is paramount that U.S. shipbuilders capture a share of the world shipbuilding market to help sustain the viability of this important industry for the Navy's future and to benefit the Navy by reducing new construction costs. The success of U.S. shipbuilders in commercial markets is inextricably linked to programs such as Title XI.

I appreciate the opportunity to provide you with comments on this important maritime legislation. A similar letter has been sent, as a courtesy, to Senator Pressler, Chairman of the Committee on Commerce, Science, and Transportation. As always, if I can be of any further assistance, please let me know.

Sincerely,



John W. Douglass

Yard aid penalties are flawed, says AWES

By Tony Gray

EUROPEAN shipbuilders have expressed concern that the penalty clauses of the OECD pact to eliminate shipbuilding subsidies may prove to be ineffectual.

Jose Esteban Perez, director of the Association of European Shipbuilders (AWES), believes the injurious pricing mechanism of the agreement is flawed because "you have to go through the product not the producer"

He told Lloyd's List: "It is true that the agreement covers 80% of shipbuilding in the world. However, the contribution of injurious pricing is not through shipbuilders but ships.

"If the ship has a flag that is not party to the agreement you can do nothing."

Mr Perez feared another drawback to the injurious pricing mechanism may be the length of time it takes to investigate a complaint.

"The time consumed is longer than the building time of the vessel."

Even if a complainant is proved correct, the company "may have disappeared" by the time the verdict is delivered.

Mr Perez said a major problem with the OECD agreement was that it failed to tackle the capacity issue.

South Korea was doubling capacity "knowing the market cannot bear it".

He continued: "Most shipbuilding in future will be replacement. The reality is that with the capacity in the market now it is impossible to secure a balance of supply and demand in the next few years."

If the OECD pact was flawed as far as European shipbuilders are concerned, this did not mean that they would abstain from employing the agreement for their own ends.

"We want to use it the instant it is in force to see if it is valid," said.

Mr Perez admitted he was hard-pressed to find a way of improving the pact, given the complexity of the issues and the number of parties involved.

"I honestly am not sure what the solution is. In general, we have supported the agreement.

"It is better than nothing. If it can stop the subsidies race maybe that is enough."

It still remained to be seen when the OECD pact to abolish shipbuilding subsidies would enter into force as Japan and the US had still to ratify it. Mr Perez believed Japan would ratify the agreement if everyone else did and accepted the Japanese government currently had a genuine problem fitting the issue into a busy schedule.

In the US, the issue was more complicated. Big shipyards were opposed to the pact and there was a battle in Congress over its progress. Prospects for ratification were made more cloudy by the fact that it is an election year in the US.

"If the agreement is not ratified," Mr Perez said, "none of the participants will dismantle their protection measures. The US will not touch Title XI or the Jones Act.

"Clearly, it is not logical for the European Union to dismantle its own small and transparent system."

Lloyds List
May 1 1996

RECOMMENDED AMENDMENTS TO H.R. 2754

- Retain Title XI Ship Loan Guarantee Program at its present terms and conditions.
- Remove any applicability of this agreement on the Jones Act.
- Retain U.S.-build requirement of the Capital Construction Fund (CCF).
- Amend definition of military vessel to ensure that DOD non-combatant ships and active reserve vessels are excluded from this agreement.

Mr. BATEMAN. Mr. Bossier, we hate to rush you out, but whenever you need to leave, we will understand.

Mr. BATEMAN. With that, the Chair recognizes Mr. Jones.

STATEMENT OF THOMAS P. JONES, VICE PRESIDENT, ATLANTIC MARINE, INC.

Mr. JONES. Thank you very much, Mr. Chairman.

I am here today representing my company, Atlantic Marine Holding Co. Also, I am chairman of the Shipbuilders Council of America, and I represent the 37 member companies of the Shipbuilders Council, including 17 shipyards which build and repair military and commercial vessels in the United States in a total of 44 facilities in 13 States. And between our representation and American Waterways Operations [AWO], American Waterways Operations Small Shipbuilders Council [AWSC] shipyards, we represent about 56,000 shipyard workers in America, both repair and new construction, and this agreement, if it is put into effect, will affect subsidies for repair shipyards around the world as well as new construction.

It is important to note that Shipbuilders Council yards are an essential element of our national security. Shipbuilders Council of America [SCA] yards have the capability, the infrastructure and the experience to perform virtually all repair, modernizations and alterations to all conventionally powered Navy ships. In addition, our membership yards have the capacity to meet virtually all of the Navy's nonnuclear new construction needs. Many of the SCA shipyards have in the past or are currently building Navy vessels in addition to commercial vessels. SCA yards, therefore, represent not only the capability to support our commercial maritime needs, but also the capability to strongly support our Navy's needs. This agreement will strengthen our yards and thereby support national security requirements as well as economic security requirements of this country since we produce most of the vessels that deal with our inland waterway and internal communications or internal transportation requirements. I have attached to my testimony a list of our member companies.

I am also here representing the OECD shipbuilding agreement, which includes a vast array of companies and trade associations spanning virtually the entire spectrum of the maritime industry, including vessel owners, operators, exporters, importers, ports, and most commercial shipyards. A list of our membership is attached to my testimony.

Mr. Chairman, before I provide the committee with the background of this issue, I want to point to a Journal of Commerce article dated May 20, 1996, in which it is reported the European Union plans to ask for an extension of their shipbuilding subsidies if the United States does not ratify the OECD agreement soon. As I have said many times in the past, the United States cannot win a subsidy war. This article makes it perfectly clear that we will begin one if we don't get on with this agreement.

The commercial shipbuilding and repair industry that I represent is a strong industry, and it is growing. Many of their yards are at or near capacity, producing, modernizing, repairing the vessels essential to our Nation's economic and military strength. Capacity ex-

pansion and modernization of production facilities are underway in many of our yards.

Our yards have competed successfully in the international arena for many years, producing both simple and sophisticated ocean-going ships up to about 350 feet in length for foreign customers. We have been unable to expand our markets and capture a share of the international market for large ships not because of inefficiency or lack of capability, but solely due to foreign subsidies.

Thus the stage is set for the U.S. Congress to decide if there will be an agreement to end shipbuilding subsidies, or if there will in the future be a system of subsidies and profound market distortions around the world which will continue to bar us and other U.S. yards from reentering the worldwide commercial marketplace.

As I indicated in my opening comments, this agreement enjoys broad support from many industry sectors as well as the administration, including the DOD. I would ask that you include in the record a copy of correspondence between Secretary of Defense William Perry and Senator John Breaux confirming the Defense Department's opposition to shipyard subsidies and support for the OECD shipbuilding agreement.

With all this broad support, it is fair to ask why would anyone oppose this agreement? In point of fact, only a few shipyards, albeit large shipyards, and their labor unions, which have heretofore done the majority of ship construction for the U.S. Navy, vigorously oppose the agreement, and they do so on the following factually incorrect grounds:

Complaint No. 1, the agreement allows unabated subsidies to foreign yards for almost 4 more years. The fact is, if the Congress passes this legislation in a timely fashion in the spring, no subsidies will be allowed on ship construction contracts signed after the effective date of July 15, 1996. Article 1, clause 1 of the agreement expressly requires all party nations to eliminate all existing subsidy measures or practices upon entry into force. For any ships for which subsidies were committed prior to entry into force, clause 3, subparagraph 3 of the standstill provision of the agreement sets a delivery deadline of December 31, 1998. This provision protects against foreign countries undermining the agreement by front-loading a large number of subsidy commitments for ship construction extending far into the future.

Complaint No. 2, restructuring exemptions have been granted to various countries in the amount of $2 billion. In fact, it is true that exemptions have been allowed for restructuring programs in Spain, Portugal, and Belgium, but I believe that the opposition has factually distorted the nature of the restructuring exemptions, which, in fact, are payments to reduce capacity in those countries rather than a continuation of subsidized ship production. In fact, these payments aid U.S. reentry into the marketplace through the reduction of excess capacity in those countries that have subsidized their shipyards for decades, and the transparency and enforcement provisions of this agreement provide a high confidence that these subsidies will be used only for the limited and specific purposes provided for in the agreement.

Complaint No. 3, continued subsidies to foreign component suppliers are allowed. This is factually incorrect. Section B(2)(e) of

annex 1 to the agreement, which enumerates those indirect subsidies provided by the agreement, specifically includes, any assistance to suppliers of goods and services, that is, components, to the shipbuilding and repair industry if such assistance specifically provides benefits to that industry of a country.

Complaint No. 4, this has been discussed at length today. The OECD agreement puts the Jones Act into serious jeopardy. My belief is there is no scenario under this agreement by which the United States would be required to change a single word of the Jones Act law. Annex II, section B of the agreement provides that if the annual construction of self-propelled seagoing Jones Act vessels of 100 tons or more exceeds a certain tonnage threshold, and if any OECD party nation actually believes that this tonnage is disrupting the global market and can convince all other OECD signatory nations of the same, then the only consequence of the agreement is that the aggrieved nation may be able to impose restrictions on Jones Act shipbuilders of an equivalent nature and magnitude in their own nation. In other words, they have given up their equivalent Jones Act. If they believe our Jones Act is disrupting the world market, they can reinstitute a small portion of their own Jones Act in order to protect that marketplace. That is the only penalty that is allowed. So there is no limit on the amount of Jones Act tonnage that may be constructed in any year. Since future Jones Act tonnage is not expected to exceed 200,000 tons, give or take, per year, while annual global construction tonnage is measured in the tens of millions of tons, the actual impact of such a restriction is nil for all practical purposes.

I would also note that the leading Jones Act carriers and many, many Jones Act shipbuilders, including myself, are among the most strident supporters of this agreement.

I would also point out that merely 5 weeks before this shipbuilding agreement was negotiated, this Jones Act provision that is in the final agreement was brought by the trade representatives to the Shipbuilders Council of America, which was then dominated by the big six yards. The Jones Act provision was presented to the board of directors, of which I was a member, and we were basically given a veto over that provision. The Trade Representative said that in order to get an agreement, we would have to have this Jones Act provision in, was it acceptable to the Shipbuilders Council, and without objection, without objection, a mere 5 weeks before this agreement was signed, the Shipbuilders Council of America, including the big six yards, agreed that it was an acceptable provision. I wonder what changed within those 5 weeks to make them change their mind.

Complaint No. 5, the agreement guts the title XI Loan Guarantee Program. My view is the standstill provisions of the agreement provided the U.S. commercial shipbuilding industry with a temporary financing advantage to partially, but only partially, offset the value of some foreign subsidies. In reality, had the agreement not been signed along with the standstill provisions, other nations would have been free to meet or beat the favorable title XI export terms, and most of those nations have meet or beat laws on the books which are in suspension because of the standstill agreement.

Likewise, if the agreement does not enter into force through the U.S. failure to ratify, the same result will quickly occur. The U.S. title XI advantage will be lost. If the agreement goes into effect, the present title XI coverage of 87½ percent for 25 years would be changed at the OECD level of 12 years for covered vessels. Covered vessels include only self-propelled seagoing vessels of 100 gross tons, and many Jones Act vessels would be unaffected by this change.

Complaint No. 6, the agreement is a bad agreement and needs to be renegotiated. The shipbuilders council filed a section 301 complaint, which precipitated the negotiation of the trade agreement. The six yards that currently oppose the agreement were the dominant members of the Shipbuilders Council and actively supported the initiative to negotiate a trade agreement. In point of fact, the negotiated agreement addresses 52 of the 54 issues that were the subject of the 301 complaint, and it extends the scope of those issues to 18 additional countries. We only had four countries in the initial 301 complaint, Korea, Japan, West Germany, and Norway, and now there is an additional 18 countries who have to comply with these rules that have been negotiated.

I have a scorecard here of these issues and would ask that this scorecard, which was prepared by the Office of the U.S. Trade Representative, be included for the record. It shows the 301 trade petition and how this agreement complies.

[The information referred to is contained in Mr. Jones prepared statement.]

Mr. JONES. Mr. Chairman, only if this agreement is ratified do U.S. shipyards have any chance of reentering the worldwide commercial marketplace without heavy continuing and increasing subsidy payments. We also believe that the U.S. Congress and the many millions of American taxpayers they represent will not want to engage in a multibillion-dollar subsidy war with other nations.

We firmly believe that failure to take advantage of this opportunity will ensure that no subsidy controls will be imposed on other nations for many years. The longer we delay the process, the harder it will be for U.S. yards to reenter a subsidized marketplace.

Every day of delay is costing us contracts and U.S. jobs. I have spoken before about the job that our company lost to a Spanish yard that received a 20-percent subsidy on a contract. That happened this year. We lost 300 to 400 jobs in our shipyard alone. We lost thousands of jobs throughout the United States in steel companies and others. We lost that contract because the Spanish yard received a $5.2 million subsidy on the contract. The subsidy value that our customer applied to the title XI advantage was a mere $500,000. They received 10 times the subsidy that our customer valued the title XI financing, $5.2 million. I can't compete.

Let's get rid of those subsidies. I would have been building those ships had this agreement been in effect on January 1 this year. I have another contract I am bidding now, same country. I am going to be faced with the same problem for four cruise ships to be built in the United States. Let's bring those jobs home. Let's get rid of these foreign subsidies now.

I would like to respond to questions some of the members' brought up earlier. Congressman Cunningham asked about the

level playing field given that foreign yards are already building a series of ships and they have had these subsidies for years and how can we get to a level playing field.

In my Alabama yard, which is one of the largest shipyards in America, inside my borders I can put Avondale, Bath Ironworks, and my Jacksonville yard, NASCO, give them all more deep water waterfront than they have now. It is a very large facility. It has an enormous capability. It employed 40,000 people during World War II building ships. I don't expect to get back to that level, but I expect to do a lot better than I am doing now if I can have this agreement.

In that yard, I am currently bidding ships that I want in competition with a Spanish yard who had already built several of the ships in question and had received a Spanish subsidy. This is a shipyard that is receiving possibly as high as 20-percent subsidies that I competed against. They had built these ships before and I beat them. The customer used title XI but stated that the reason he built those ships in America was because we were the low bidder. We are well into that contract, and I expect to make a profit on their ships. We can do it in this country. We have the best workers in the world. We need to give them facilities and the means to be productive, and I think we have done that in Alabama and we will be building ships for the world market.

I would like to reiterate one thing I said earlier, that all other Jones Act-type laws are prohibited by this agreement. The United States has the only exception. I would also like to point out that there are 200 ships in the Jones Act fleet now. There are 80,000 ships in the world market. I want a piece of that 80,000 ships. I don't want U.S. shipyards fighting over a lousy five or six Jones Act ships that might be built every year. I want to fight over the 80,000, replacements of those 80,000 ships out in the world market; 2000 of those are built every year for replacement and addons. That is what we ought to be targeting.

I would also point out that worker separation payments and Research and Development [R&D] provisions are available to the United States as well as to Spain, Belgium, and Portugal should the United States Congress decide to fund those kinds of programs.

Congressman Hunter, you asked the question, what do Europeans get out of this agreement?

Mr. HUNTER. And the Asians?

Mr. JONES. I have had personal experience talking to European shipyard leaders. Shipyard leaders do not want this agreement. The government leaders do want this agreement, they intend to comply with it, because it will give them the political cover that they need to undo years and years of social programs and subsidies. When that happens, we are going to kick their butt or clean their clocks, whatever the phraseology was, we are going to do it. Congressman Longley wants steel on the water. I will give him that if you will give me this agreement.

I am sorry to be so long winded. I will cut to the chase and tell you what the agreement is all about.

After we have cut through all the details, all the rhetoric, what I am asking for, what our group is asking for, what the people who support this agreement are asking for, is for opportunity. This

agreement gives us that opportunity to challenge the world, take them on and to win. We will win, no doubt about it.

On the other hand, if this agreement goes away I will be back and I will be asking for welfare, because that is what I will need. That welfare may be in the form of subsidies, protectionism, or in the form of some trade rules or whatever but it is going to be welfare, it is going to cost the American taxpayer, and I don't need it. What I need and what I ask you to give me is opportunity.

Thank you for the generous opportunity to talk so long on this subject. I apologize for taking so much time.

Mr. BATEMAN. Thank you, Mr. Jones. The issue is clearly drawn.

[The prepared statement of Mr. Jones follows:]

Shipbuilders Council of America
Suite 204
901 N. Washington Street
Alexandria, Virginia 22314
Tel: 703-548-SHIP (7447) Fax: 703-518-0276

STATEMENT BY

THOMAS P. JONES, JR.

VICE PRESIDENT, ATLANTIC MARINE, INC.

CHAIRMAN, SHIPBUILDERS COUNCIL OF AMERICA

BEFORE THE

MERCHANT MARINE PANEL

OF THE

COMMITTEE ON NATIONAL SECURITY

RE: H.R. 2754

IMPLEMENTING LEGISLATION FOR AN

AGREEMENT TO END SHIPBUILDING SUBSIDIES

RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, D. C. 20515

MAY 22, 1996

Mr. Chairman and Members of the Panel, thank you very much for the opportunity to appear before you today. I am Thomas P. Jones, Jr., Vice President of Atlantic Marine Holding Co. and Chairman of the Shipbuilders Council of America (SCA). SCA was founded in 1920 to promote the establishment of the Merchant Marine Act of 1920, in particular, the Jones Act. As a matter of fact, Mr. Chairman, I am attaching, for the record, the minutes of the SCA Board meeting from December 30, 1920, in which Mr. Joseph Powell of Bethlehem Shipbuilding Corporation, discusses the importance of the shipbuilding industry with Senator Jones, the sponsor of the Jones Act. I am also pleased to be testifying before you on this important day, National Maritime Day. It is fitting that today we are discussing legislation which will allow the U.S. shipbuilding industry to once again compete in the international marketplace.

I am here today representing the 37 member companies of the Shipbuilders Council of America, including 17 shipyards which build and repair military and commercial vessels in the U.S. in a total of 44 facilities in 13 states and employ thousands of Americans.

It is important to note, Mr. Chairman, that the SCA yards are an essential

element of our national security. SCA yards have the capability, infrastructure and experience to perform virtually all repair, modernizations and alterations to all conventionally powered Navy ships. In addition, our member shipyards have the capacity to meet virtually all of the Navy's non-nuclear new construction needs. Many of the SCA shipyards have in the past, or are currently, building Navy vessels in addition to commercial vessels. SCA yards therefore represent not only the capability to support our commercial maritime needs, but also strongly support our Navy's needs. This Agreement will strengthen these yards and thereby support our national security requirements. A list of our member companies is attached.

I am also here representing the Coalition in Support of the OECD Shipbuilding Agreement which includes a vast array of companies and trade associations spanning virtually the entire spectrum of the maritime industry including vessel owners and operators, exporters, importers, ports and most commercial shipyards. A list of our Coalition's membership is attached to my testimony.

Mr. Chairman, before I provide the Committee with the background of this issue, I want to point to a Journal of Commerce article dated just two days ago, on May 20, 1996, in which it is reported that the European Union plans to ask for an extension of their shipbuilding subsidies if the United States does not ratify the OECD Agreement soon. As I have said in the past, the U.S. cannot win a subsidy

war -- this article makes that perfectly clear. As we sit here today, it is very unfortunate to have to say that the U.S. is the only country where ratification is in question. Mr. Chairman, the United States began these negotiations almost seven years ago -- is it not time to finish what we started?

Mr. Chairman, we are here today as a result of a decision made in 1988 by the member companies of the Shipbuilders Council of America to press forward with a "Shipyard Revitalization Program." That program had as its goal a return of U.S. shipyards to the construction of commercial ships for both national and international markets and included four elements:

a. Elimination of foreign shipbuilding subsidies;

b. Series construction of sealift ships;

c. Title XI loan guarantees revitalized and extended to offshore owners; and

d. A commercially oriented research and development program.

Thanks to firm support from Congress, including the National Security Committee of the House of Representatives, we have a strong Sealift Construction and Conversion Program; a revitalized Title XI Loan Guarantee Program, extended to foreign owners; and Maritech, a commercially oriented R&D program funded through the Department of Defense. It is important to both our national security and the strength of our shipyards that the Title XI and Maritech programs

be continued and fully funded. In particular, I am concerned about recent proposals to eliminate Title XI funding and about a proposed $13 million reduction in Maritech funding for FY 1997. Your support to maintain Title XI and a fully funded Maritech is essential so that these programs can continue.

The U.S. commercial shipbuilding and repair industry that I represent is strong and growing. Many of our yards are at or near capacity, producing, modernizing and repairing the vessels essential to our nations economic and military strength. Capacity expansion and modernization of production facilities are underway in many of our yards. Our yards have competed successfully in the international arena for many years, producing both simple and sophisticated ocean-going ships up to about 350' for foreign customers. We have been unable to expand our markets and capture a share of the international market for large ships not because of inefficiency or lack of capability but solely due to foreign subsidies.

Thus, the one remaining element of the SCA's "Shipyard Revitalization Program", the elimination of foreign subsidies, is essential to our future. Today, you are considering legislation which would implement the Agreement reached under the aegis of the Organization for Economic Cooperation and Development (OECD) to end shipbuilding subsidies among the major ship producing nations of the world. The European Union, Sweden, Finland and Korea have already deposited documents of ratification with the OECD secretariat. Only Japan and the United States have not done so. The implementing legislation has passed the

Japanese Diet and we are assured that they will complete the implementation process by the end of this month.

Thus, the stage is set for the U.S. Congress to decide if there will be an Agreement to end shipbuilding subsidies or if there will, in the future, be a system of subsidies and profound market distortions around the world which will continue to bar U.S. yards from re-entering the worldwide commercial marketplace.

Two committees of the Congress have already voiced their strong approval of the Agreement and this enabling legislation. On March 21, 1996 the House Ways and Means Committee reported out the Bill before you today, H.R. 2754, by an overwhelming vote of 27 to 4. In the Senate, on May 8, 1996, the Senate Finance Committee in a unanimous voice vote (11 Senators present and voting) approved a companion bill.

As I indicated in my opening comments, this Agreement enjoys broad support from many industry sectors as well as the Administration, including the Department of Defense. I would ask that you include in the record a copy of correspondence between the Secretary of Defense William Perry and Senator John Breaux confirming the Defense Department's opposition to shipyard subsidies and support for the OECD Shipbuilding Agreement.

With all of this broad support, is it fair to ask, why would anyone oppose this Agreement? In point of fact, only a few shipyards and their labor unions which heretofore have done the majority of ship construction for the United States

Navy vigorously oppose the Agreement, and they do so on the following factually incorrect grounds:

a. Complaint 1. The Agreement allows unabated subsidies to foreign yards for almost four more years.

The Fact. If the Congress passes this legislation in a timely fashion this spring, no subsidies will be allowed on ship construction contracts signed after the effective date of July 15, 1996. Article 1, Clause 1, of the Agreement expressly requires all party nations to "eliminate all existing [subsidy] measures or practices" upon entry into force. For any ships for which subsidies were committed prior to entry into force, Clause 3 (iii) of the "Standstill provisions" of the Agreement sets a delivery deadline of December 31, 1998. This provision protects against foreign countries undermining the Agreement by front loading a large number of subsidy commitments for ship construction extending far into the future.

b. Complaint 2. Restructuring exemptions have been granted to various countries in the amount of $2 billion.

The Fact. It is true that exemptions have been allowed

for restructuring programs in Spain, Portugal and Belgium. But the opposition has factually distorted the nature of the restructuring exemptions, which in fact are payments to reduce capacity in those countries, rather than a continuation of subsidized ship production. In fact, these restructuring payments aid U.S. re-entry into the marketplace through the reduction of excess capacity in those countries that have subsidized their shipyards for decades, and the transparency and enforcement provisions of the Agreement provide high confidence that these subsidies will be used only for the limited, specific purposes provided for in the Agreement.

c. Complaint 3. Continued subsidies to foreign component suppliers are allowed.

The Fact. This is not correct. Section B(2)(e) of Annex I to the Agreement, which enumerates those indirect subsidies prohibited by the Agreement, specifically includes "any assistance to suppliers of goods and services [i.e. components] to the shipbuilding and repair industry if such assistance specifically provides benefits to that industry of a country."

d. Complaint 4. The OECD Agreement puts the Jones Act into serious jeopardy.

The Fact. There is absolutely no scenario under the Agreement by which the U.S. would be required to change a single word of the Jones Act law. Annex II, Section B of the Agreement provides that (1) if the annual construction of self-propelled seagoing Jones Act vessels of 100 gross tons or more exceeds a certain tonnage threshold, and (2) if any OECD party nation actually believes that this tonnage is disrupting the global market and can convince all other OECD signatory nations of the same, then the only consequence of the Agreement is that the aggrieved nation can impose restrictions on U.S. Jones Act shipbuilders of an equivalent nature and magnitude in their own nation. In other words, the only thing a foreign country can do is, under the limited circumstances described above, impose countermeasures equivalent to the loss of market opportunities by the complaining country. There is absolutely no limit on the amount of Jones Act tonnage that may be constructed in any year. And, since future

Jones Act tonnage is not expected to exceed 200,000 tons per year, while annual global construction tonnage is measured in the tens of millions of tons, the actual impact of such a restriction is nil for all practical purposes. I would also note that the leading U.S. Jones Act carriers and many, many Jones Act shipbuilders--including myself-- are among the most strident supporters of this Agreement.

e. Complaint 5. The Agreement guts the Title XI Loan Guarantee Program.

The Fact. The "Standstill Provisions" of the Agreement provided U.S. commercial shipbuilding industry with a temporary financing advantage that partially, but only partially, offset the value of some foreign subsidies. In reality, had the Agreement not been signed along with the Standstill Provisions, other nations would have been free to "meet or beat" the favorable Title XI export terms. Likewise, if the Agreement does not enter into force due to a U.S. failure to ratify, the same result will quickly occur--the U.S. Title XI advantage would be lost. That is the way things are in a subsidy war.

If the Agreement goes into effect, the present Title XI coverage of 87-1/2 percent for 25 years would be changed to the OECD level of 80 percent for 12 years for covered vessels. Covered vessels include only self-propelled seagoing of more than 100 gross tons and many Jones Act vessel would be unaffected by this change.

If the Agreement is not ratified and the U.S. policy remains unchanged, other nations will not only continue to provide the present level of subsidies, but they will also meet or exceed U.S. Title XI financing terms.

f. Complaint 6. The Agreement is a bad Agreement and needs to be renegotiated.

The Fact. At the time the Shipbuilders Council filed its section 301 complaint, which precipitated the negotiation of the trade Agreement, the six yards that currently oppose the Agreement were the dominant members of the Shipbuilders Council and actively supported the initiative to negotiate a trade Agreement. In point of fact, the negotiated Agreement addresses 52 of the 54 issues that were the subject of the Section 301 complaint and

extends the scope of those issues to 18 additional countries. I ask that this "scorecard" prepared by the Office of the U.S. Trade Representative be included for the record.

Only if the Agreement is ratified do U.S. shipyards have any chance of re-entering the worldwide commercial marketplace. We also believe that the U.S. Congress and the many millions of taxpaying Americans they represent will not want to engage in a multi-billion dollar shipbuilding subsidy war with other nations. We firmly believe that failure to take advantage of this opportunity will insure that no subsidy controls will be imposed on other nations for many years. The longer we delay the process, the harder it will be for U.S. yards to re-enter a subsidized marketplace. Every day of delay is costing us contracts and U.S. jobs. As an example, my company, Atlantic Marine, recently lost a sizable contract to Spain because of a 20 percent subsidy that they received. The subsidy is composed of the 9 percent subsidy authorized by the European Community and and an additional interest rate buy-down, permitted by the current lax export credit rules for ships not covered by the EC terms, that is worth approximately 10 to 11 percent of the contract value. This interest rate buy-down subsidy is paid directly, in cash, to the shipyard. This subsidy would not be allowed when the new Agreement rules enter into force. In this particular case, the price submitted by Atlantic Marine was in the $25-30 million range. The effective price submitted by

the European shipyard was approximately $500,000 less. **Had the 20% total subsidy not been provided to the European shipyard, their price would have been over $30 million for these tankers.** This is concrete example of why the OECD Agreement is so essential to U.S. Commercial shipbuilders.

We urge rapid passage of H.R. 2574 and your support for this Agreement. Thank you for your time and your attention to this issue.

COUNCIL OF AMERICAN SHIPBUILDERS, INC.

Meeting of Board of Directors

December 30, 1920

A special meeting of the Board of Directors of the Council of American Shipbuilders, Inc., was held at 11 o'clock in the forenoon of the above date, at the office of the Bethlehem Shipbuilding Corporation, at 115 Broadway, Borough of Manhattan, New York City.

There were present:

Joseph W. Powell
C. W. Cuthell
Representing Mr. Duthie
A. C. Pessano
R. G. Bickford, Counsel

The Secretary presented the resignation of Mr. J. W. Mason as a Director.

On motion duly made, and seconded, the resignation of Mr. Mason was accepted with regret.

To fill the vacancy caused by the resignation of Mr. Mason, the following Resolution was duly moved, seconded and unanimously adopted:

> RESOLVED: That George F. Arms be, and he hereby is elected a Director of the Council of American Shipbuilders, Inc., to succeed Mr. J. W. Mason who has resigned.

The subject of increasing the membership of the Council was discussed and Mr. Powell agreed to confer with several of the shipbuilding corporations, including the Merchant

Shipbuilding Corporation and the New York Shipbuilding Company, for the purpose of inducing them to become members of the Council.

The Secretary undertook to solicit the representative repair yards, to induce them to become members.

The By-Laws provide for associate members, but it was deemed advisable to delay soliciting associate members until more shipbuilders had become active members.

Mr. Powell reported an interview had by him with Senator Jones, in regard to the Merchant Marine Act. He had stated that the Merchant Marine Act should be carried out, and if its operation developed that amendments were necessary such amendments could be adopted when their necessity had been proven.

It appeared to be the opinion of the Board that the Council could not properly function until it became more representative of the shipbuilding industry.

The meeting adjourned, after discussing ways and means of increasing the membership of the Council.

Shipbuilders Council of America
Suite 204
901 N. Washington Street
Alexandria, Virginia 22314
Tel: 703-548-SHIP (7447) Fax: 703-518-0276

May 1996

SHIPYARD MEMBERS

Atlantic Marine, Inc.
8500 Heckscher Drive
Jacksonville, FL 32226

Bay Shipbuilding Company
605 North Third Avenue
Sturgeon Bay, WI 54235

Bender Shipbuilding &
Repair Company, Inc.
Post Office Box 42
265 S. Water Street
Mobile, AL 36601

Bethlehem Steel Corporation
Bethlehem, PA 18016
Port Arthur, TX
Sparrows Point, MD

Bollinger Shipyards, Inc.
Post Office Box 250
Lockport, LA 70374

Cascade General, Inc.
Post Office Box 4367
Portland, OR 97208

Colonna's Shipyard
400 East Indian River Road
Norfolk, VA 23523

Edison Chouest Offshore
North American Shipbuilding, Inc.
East 118th Street
Galliano, LA 70354

General Ship Corporation
400 Border Street
East Boston, MA 02128

Halter Marine, Inc.
13085 Industrial Seaway Road
Gulfport, MS 39505

Marinette Marine Corporation
Ely Street
Marinette, WI 54143

McDermott Incorporated
Post Office Box 60035
1010 Common Street
New Orleans, LA 70160

Metro Machine Corporation
Box 1860
Norfolk, VA 23501

Norfolk Shipbuilding &
Drydock Corporation
Post Office Box 2100
Norfolk, VA 23501

Peterson Builders, Inc.
101 Pennsylvania Street
Post Office Box 47
Sturgeon Bay, WI 54235

Southwest Marine, Inc.
Foot of Sampson Street
Post Office Box 13308
San Diego, CA 92113
San Francisco & San Pedro, CA

Todd Pacific Shipyards Corporation
1801 16th Avenue SW
Seattle, WA 98134

The national trade association for U.S. shipbuilders, ship repairers, and shipyard suppliers.
Founded in 1920

ALLIED INDUSTRIES MEMBERS

General Electric Company
1331 Pennsylvania Avenue, NW
Washington, DC 20004

Hopeman Brothers, Inc.
Post Office Box 820
Waynesboro, VA 22980

Jamestown Metal Marine Sales, Inc.
4710 Northwest Second Avenue
Boca Raton, FL 33431

Jered Brown Brothers, Inc.
1608 Newcastle Street - Post Office Box 904
Brunswick, GA 31521

Kockums Computer Systems, Inc.
201 Defense Highway
Suite 202
Annapolis, MD 21401

Lips Propellers, Inc.
3617 Koppens Way
Chesapeake, VA 23323

Northrop Grumman Corporation
Hendy Avenue
Sunnyvale, CA 94088

Triumph Controls, Inc.
205 Church Road
North Wales, PA 19454

Unisys Government Systems Group
8201 Greensboro Drive
Suite 1000
McLean, VA 22102

Wartsila Diesel, Inc.
201 Defense Highway
Annapolis, MD 21401

York International Corporation
631 South Richland Avenue
York, PA 17405

AFFILIATE MEMBERS

Bastianelli, Brown & Touhey
2828 Pennsylvania Avenue, NW
Washington, DC 20007

Colton & Company
1700 North Moore Street
Suite 1805
Arlington, VA 22209

Fort & Schlefer
1401 New York Avenue, NW
Washington, DC 20005

International Marketing & Business, Inc.
5108 52nd Street, NW
Washington, DC 20016

Kvaerner Masa Marine, Inc.
Power Technology Center
201 Defense Highway - Suite 202
Annapolis, MD 21401

McNabb Expositions
34 Spruce Street
Rockport, ME 04856

TTS, Inc.
813 Forrest Drive - Suite A
Newport News, VA 23606-3403

NAVAL ARCHITECT MEMBER

Rosenblatt & Son, Inc.
350 Broadway
New York, NY 10013

ASSOCIATION MEMBER

South Tidewater Association
of Ship Repairers, Inc.
Post Office Box 2341
Norfolk, VA 23501-2341

COALITION IN SUPPORT OF THE OECD SHIPBUILDING AGREEMENT

1. American Association of Port Authorities
2. American Institute of Merchant Shipping (AIMS)
3. American President Lines
4. American Waterways Operators
5. American Waterways Shipyard Conference
6. Atlantic Marine, Inc.
7. CENSA
8. Central Gulf Lines, Inc.
9. Crowley Maritime Corporation
10. Federation of American Controlled Shipping
11. International Shipholding Corporation
12. Labor Management Maritime Committee
13. Maersk Lines
14. McDermott, Inc.
15. Shippers for Competitive Ocean Transportation
16. Sea-Land Service, Inc./CSX Corporation
17. Shipbuilders Council of America
18. Totem Ocean Trailer Express, Inc.
19. Trinity Marine
20. Waterman Steamship Corporation

JOURNAL OF COMMERCE
May 20, 1996

EU ministers set to make decision on yard subsidies

JOURNAL OF COMMERCE STAFF

BRUSSELS — European Union industry ministers will be asked today to extend shipbuilding subsidies if the United States does not soon sign a global accord outlawing government handouts.

The United States is the only country still to sign the agreement that is scheduled to come into force on July 1, six months later than planned.

Washington has said it will ratify the accord by mid-June, but EU officials are increasingly worried about slippage that could fatally undermine the deal that took more than seven years to negotiate in the Organization for Economic Cooperation and Development.

Karel Van Miert, the European competition commissioner, will outline a contingency plan today to revive the EU's shipbuilding subsidy regime if the United States fails to ratify.

The accord, which outlaws all direct shipbuilding aids, has already been signed by Japan, South Korea and Norway, as well as the 15-nation EU. Together with the United States, the signatories account for 80% of world shipbuilding output.

The EU's shipbuilding industry has shrunk since the OECD agreement was reached in July 1994 and the sector has become less politically sensitive. The most recent bankruptcies involved Bremer Vulkan, Germany's biggest shipbuilding group, and Burmeister & Wain, the Copenhagen yard.

ASSISTANT SECRETARY OF DEFENSE
3300 DEFENSE PENTAGON
WASHINGTON DC 20301-3300

ECONOMIC SECURITY

March 16, 1995

Honorable John Breaux
United States Senate
Washington, DC 20510

Dear Senator Breaux:

Your letter to Secretary Perry regarding the Department's views on proposals for the Department of Defense to fund commercial shipbuilding subsidies was referred to my office.

We have not seen the proposal you mention, but would be unlikely to support it. As you know, the OECD agreement to end commercial shipbuilding subsidies is a centerpiece of the President's shipbuilding plan. Only by eliminating foreign shipbuilding subsidies will our shipyards be able to compete on a level international playing field. The Department of Defense could not support a proposal to provide subsidies for commercial shipbuilding that would be in violation of the OECD agreement.

We would certainly be opposed to funding any such program out of the defense budget. U.S. shipyards lead the world in the construction of naval vessels, and we will certainly act to maintain our edge in this area. However, we neither need, nor can we afford, to spend scarce defense dollars on programs that are not essential to our national security.

Sincerely,

Joshua Gotbaum

Joshua Gotbaum

JOHN BREAUX
LOUISIANA

MAJORITY
CHIEF DEPUTY WHIP

COMMITTEES

COMMERCE SCIENCE AND TRANSPORTATION

FINANCE

SPECIAL COMMITTEE ON AGING

WASHINGTON OFFICE
(202) 224-4623
TDD (202) 224-1988

United States Senate
WASHINGTON, DC 20510

February 9, 1995

STATE OFFICES

ONE AMERICAN PLACE SUITE 2030
BATON ROUGE LA 70825
(504) 382-2050

THE FEDERAL BUILDING
705 JEFFERSON STREET ROOM 103
LAFAYETTE LA 70501
(318) 262-6671

WASHINGTON SQUARE ARMES BUILDING
211 NORTH 3RD STREET, ROOM 102A
MONROE LA 71201
(318) 323-3320

HALE BOGGS FEDERAL BUILDING
501 MAGAZINE STREET SUITE 1005
NEW ORLEANS LA 70130
(504) 589-2531

CENTRAL LOUISIANA
(318) 487-5445

Honorable William J. Perry
Secretary
Department of Defense
The Pentagon
Washington, D.C. 20301-1000

Dear Mr. Secretary:

On December 21, 1994, the United States, European Union, Norway, Japan, and South Korea signed an agreement to end market distorting commercial shipbuilding subsidies. While the essence of the accord is trade-related, its implementation may impact or involve the Department of Defense.

The parties negotiated this compact under the auspices of the Organization for Economic Cooperation and Development (O.E.C.D.). The accord will eliminate the massive shipbuilding subsidies provided by the governments of Europe, Japan, and South Korea that have effectively excluded U.S. shipyards from the large and growing international commercial shipbuilding market. Not only will this agreement finally "level the playing field" and ensure a competitive future for U.S. shipbuilders, it is also the centerpiece of President Clinton's national shipbuilding initiative.

Nevertheless, an alternative proposal is being discussed in the Congress which involves government subsidies to U.S. shipyards through the Department of Defense. This proposal may contravene the O.E.C.D. agreement and ruin chances for international implementation of the agreement. Given that the Department of Defense has been identified as the proposed source of these funds, I would appreciate receiving your comments and position on both the funding and substance of this proposal.

I thank you in advance for your assistance.

Sincerely,

John Breaux

JOHN BREAUX
United States Senator

JB/mja

Mr. BATEMAN. The next witness is George R. Duclos, president of the Gladding-Hearn.

STATEMENT OF GEORGE R. DUCLOS, PRESIDENT, GLADDING-HEARN

Mr. DUCLOS. Thank you very much.

I am George Duclos. I am the president and chief executive officer [CEO] of Gladding-Hearn Shipbuilding. We are from Massachusetts and have been in business for 41 years. Principally, we build smaller craft, ferry boats, and the business is now owned by my family.

We started out together with two other partners in 1955. We have done 300 vessels in this period of time of 41 years. Recently, in 1984, 1985, we got a license to build fast ferry boats. It turned our company around. These are in use throughout all of America now, on the west coast, New York, San Francisco, et cetera.

We have a lot of opportunities out there. One of our major customers is New York Waterway, which is the largest privately owned ferry company in the United States. They move 30,000 people a day across the Hudson River. It is a family owned business.

One of the problems they are having is financing. I have two title XI problems here. The first one is New York Waterway. That is a $21 million contract for us to build 8 to 10 ferries. Presently they have five MARAD-financed ferry boats. I am building the fifth one now. This is what they are operating now. These are 100 foot, 400 passenger ferry boats. Their plans are to go to faster ferry boats and probably expand into the upper reaches of the Hudson River and East River and La Guardia Airport. That would take this Australian designed Catamaran which will do over 30 knots. Title XI financing is what they need. Sure, there is another alternative, but this is ideal for them in its present form. We have begun to propose that and work on that.

The other project we are working on is in Indonesia. We have a letter from the Indonesian Government right here now. It is ironic because we got a funding to do the sales in Indonesia for probably $50 million worth of ferry boats, which we will share with our partner yard in this license on the west coast, Nichols Brothers Boat Building, and with that we could sell about $50 million worth of ferry boats in Indonesia. Otherwise we can't be competitive. That is the crux of our problem. We need to have this to get this business, and it makes us very competitive with this financing the way it is. I don't think it would work any other way.

I have a statement we will turn in. We have two letters, one from New York Waterway and one from the Indonesian Government. I won't read these pages of fluff here. That is basically the problem. The financing is very vital to our type of business.

Thank you for letting me speak here today.

Mr. BATEMAN. Thank you for coming and your complete statement will be made a part of the record, as will those of all the witnesses.

[The prepared statement of Mr. Duclos follows:]

TESTIMONY OF MR. GEORGE R. DUCLOS

PRESIDENT & CEO, GLADDING-HEARN SHIPBUILDING
SOMERSET, MASSACHUSETTS

ON H.R. 2754 -- LEGISLATION IMPLEMENTING OECD
SHIPBUILDING AGREEMENT

Mr. Chairman, Members of the House National Security Committee Panel, I am pleased to appear before you today to discuss the impact which United States' adoption of the Organization for Economic Cooperation and Development ("OECD") Shipbuilding Agreement will have upon Gladding-Hearn Shipbuilding's business.

1. Gladding-Hearn Shipbuilding.

My name is George R. Duclos. I am the President and chief executive officer of Gladding-Hearn Shipbuilding. We are located in Somerset, Massachusetts, and employ approximately 100 full-time workers, most of whom are residents of Somerset or local communities. We have principal subcontractors and suppliers located in Massachusetts, Connecticut and Rhode Island.

Gladding-Hearn commenced operations in 1955, with Mr. Gladding, Mr. Hearn and myself, at a site on the Taunton River where ships have been built for the past 150 years. In our 40 years of operation we have built over 300 commercial vessels -- tugs, fishing trawlers, dredges, pilot boats, and passenger and car ferries of mono-hull and catamaran design.

In recent years the vessel mix has been approximately 50% fast ferries, 30% pilot boats and 20% other craft such as research vessels and patrol craft. Our most recent delivery was a 30 meter 90 passenger catamaran for the Hyannis Nantucket run. Next week we

will be delivering a 34 meter 400 passenger catamaran. I have brought along a picture of one of our catamarans which is operated by TNT Express from New Jersey's Bayshore area to New York City.

2. Recent History.

When Mr. Hearn retired in 1983, the firm became a Duclos family operation, and my wife, Pauline, and my two sons, John (Kings Point Academy and University of Michigan, Masters in Naval Architecture) and Peter (University of Massachusetts), work with me.

In 1984 we obtained a license from Hercus Marine Design of Australia to build INCAT Catamaran designs. These INCAT designs are the best fast ferry designs in the world.

In 1987 we launched our first INCAT design high-speed catamaran ferry for Arnold Transit at Mackinaw Island, Michigan.

In 1992, after riding on our INCAT ferry Arthur E. Imperatore (who has been the single person most responsible for the revitalization of passenger ferry commuting from New Jersey to Manhattan) contracted for the first of what have become a five vessel series of passenger ferries for cross Hudson service (where Mr. Imperatore's company, NY Waterway, now carries almost 25,000 passengers a day). All of these vessels will have been Title XI financed. Gladding-Hearn has hopes for a new eight vessel series with Mr. Imperatore which I will discuss in a moment.

In 1994, responding to your Committee's 1993 National Shipbuilding Initiative, a co-venturer shipyard, Nichols Brothers Boat Builders, Inc., and Gladding-Hearn, initiated discussions with the Advanced Research Projects Agency ("ARPA").

In 1995 ARPA selected our two yard consortium as a contracting party to develop U.S. manufacturing capability for high speed INCAT design ferries for domestic and foreign sales markets. Nichols and Gladding-Hearn retained a highly qualified international sales person with whom we began to began to explore the possibility of Title XI financed sales opportunities in Denmark and the Baltic, and in the Eastern Provinces of Indonesia.

This year, 1996, our consortium received a second ARPA contract award to aid in the development of composite usage (in substitution for aluminum) in our fast ferry manufacturing. Last Sunday we launched our 13th INCAT hull, a 400 passenger catamaran for Bar Harbor Whale Watch. Next week we will be starting construction on our 14th and 15th INCATs for a U.S. harbor Commuter Service.

Today, as a result of the availability of the National Shipbuilding Initiative MARAD and ARPA program benefits, and our hard work, we are an increasingly efficient shipyard, prepared for domestic and international contract competition.

For the future, our two most important business prospects involve INCAT design fast ferry opportunities for Jones Act construction for NY Waterway, and export sales to the Eastern Provinces of Indonesia.

Success in each of these opportunities depends upon the continued availability of the MARAD Title XI program in its present 25 year 87.5 percent form.

3. Current Opportunities.

A. N Y WATERWAY.- Our client NY Waterway is currently involved in discussions with the City of New York and the Port Authority of New York & New Jersey

regarding the construction of a fleet of eight new high speed catamaran ferries to serve commuter traffic between (i) upper Manhattan and the Financial District and (ii) Manhattan and La Guardia Airport. Vessel costs are estimated at $20 million. The ferry vessels are expected to be in service for 25 or more years, and the project has been developed on the basis that MARAD 87.5%, 25 year financing would be available. NY Waterway's president has advised me that if financing were to be redone on the OECD terms it would require an almost 30 percent increase in fares, and that the project will almost certainly have to be abandoned.

B. INDONESIA. -- Working under our first ARPA contract, in the fall of last year Nichols and Gladding-Hearn set out to explore the opportunities for which might be available in the Eastern, less developed parts of the Indonesian archipelago.

Now six months later, with business visits to Indonesia (and from Indonesia to Australia) totaling over seven weeks, and fax and courier transmissions too numerous to mention, Nichols and Gladding-Hearn have in hand letters of intent for 10 fast ferry catamarans, with a total purchase price of slightly over $50 million. We believe that these contracts represent merely an opening wedge for our companies in one of the most exciting fast ferry markets of the coming decade.

These contracts are all expressly conditional upon the availabilty of Title XI financing under the current regime. They will be forfeit should the OECD 12 year 80 percent limitations come to govern the MARAD Title XI program.

Let me read to you from the report which I received last Saturday, May 18th, from our international sales manager:

> "[I]t is essential that Gladding-Hearn and Nichols can offer the MARAD finance guarantee. This is the competitive edge that they need to get these first

sales under their respective belts. Indonesians have a history of being loyal customers if they are happy with the product and the service back-up and they will continue to buy from the same source even though the price and loan terms may alter . . . ."

5. Summary.

Mr. Arthur Imperatore's efforts to reintroduce passenger ferry carriage to Manhattan have provided Gladding-Hearn with the single best customer we have ever had. Our National Shipbuilding Initiative, ARPA sponsored, work in Indonesia holds the promise of equally or more important future business.

I am told by my best customer that he will be cancelling a new $20 million, eight vessel, program, if the OECD rules of which he has just learned are adopted. Having proceeded in a major effort under the National Shipbuilding Initiative to develop a $50 million ten vessel program in Indonesia, I am advised by my foreign sales agent that these contracts will be cancelled if the MARAD program is subjected to the OECD limitations.

The MARAD Title XI program is important to Gladding-Hearn in its present form. Adoption of the OECD limits will serve to deprive our shipyard of the two of most important shipbuilding opportunities we have ever had. We are opposed to the adoption of this OECD Agreement.

Thank you for your attention.

Mr. BATEMAN. Mr. Abbott.

STATEMENT OF ANDE ABBOTT, DIRECTOR, WASHINGTON OPERATIONS, INTERNATIONAL BROTHERHOOD OF BOILERMAKERS

Mr. ABBOTT. Thank you very much, Mr. Chairman. Thank you for allowing me to come testify today on behalf of the International Brotherhood of Boilermakers and our members who work in the shipyards.

We have 30,000 people that are involved directly and indirectly in the shipbuilding business, a number of people that are working in supplier industries. We got into shipbuilding in 1881, and I don't know that there is another union in the United States that can talk about shipbuilding to the degree that we can. We have a lot of experience. We have I think some of the best craftsmen in the world working within the United States' shipyards in this country today.

We also work very closely with the Maritime Trades Department at American Federation of Labor-Congress of Industrial Organization [AFL–CIO]. They are also opposed to the agreement. It is my understanding they are going to be submitting a letter for the record. The AFL–CIO itself is on record opposing this agreement, and all of the shipbuilding unions that I know of, the 21 members of the metal trades department of the AFL–CIO is also opposed to this agreement as it is currently written.

Mr. Chairman, it is not easy coming here under these circumstances. We have people on both sides of the issues. We have yards that support this agreement and we have yards that oppose it, but at the same time some of the yards that we have supporting this agreement also have applications in for title XI loan guarantees right now. I don't really understand it because that is the program we are getting work off. We are going to get work off those things. A number of yards already have, if some of the applications are approved, and I don't think they will be until this issue is resolved but we do expect to be getting work because of that loan guarantee program.

We don't oppose agreements that would truly end foreign subsidies. Every member of this committee I think, every Member of Congress I think that was here in the 102d Congress, 103d Congress know that the boilermakers was one of the organizations that was beating the halls working for Sam Gibbons' bill, H.R. 2056. We also worked diligently trying to get a serious transition program in that will kind of take up the slack that the Europeans and the Asian yards have—they are already way, way ahead and that was a temporary program that would help us get started.

But both H.R. 2056 and the STP program were opposed by the U.S. Trade Representative's [USTR's] office and we think effectively sunk it because of their opposition talking about how it was going to affect this agreement. All during the negotiations while the members were working in Paris on trying to put together this agreement, we were getting back little bits of information. We were very encouraged. I predicted that it could never happen to get as far as what we had been told. Then, however, as the agreement concluded and we finally had the debriefing by the USTR's office,

we sat down and we heard the specifics on this agreement. I was truly disappointed. I told the USTR's representative that met with us at that time, how can you bring back something this bad? My heart sunk. I felt terribly disappointed and, very frankly, I felt that to a degree that we had been betrayed.

Mr. Chairman, we strongly support ending the foreign subsidies. I am envious of those countries who have received the support from their governments, recognizing the needs of their workers and the need for the plant modernization and the other types of programs that they have been able to get. We are so far behind right now with the U.S. shipbuilding industry and our ship repair industry that it is going to be very, very difficult if this passes for us to ever catch up and I don't suppose that we ever will.

The problem is that the United States is the only one that is living by the rules and if there are loopholes they are going to be used. And despite all the rhetoric of international agreements, I have seen very few that have worked recently to our advantage. As mentioned on NAFTA, we worked very hard on that issue and lost, and we do appreciate those members that stood with us on that. We think that that is going to continue to atrophy and we will continue to lose jobs to these countries primarily because we are the only ones that continue to play by the rules.

Mr. Chairman, there was one of the issues also that we had asked the USTR's office very, very strongly that they had to deal with, the issues that dealt with some of the non-OECD countries. Five years ago, we predicted that China was going to emerge as a major shipbuilding country. The Eastern Bloc countries had just begun to break up and we were looking at Poland, Russia, the Ukraine, all of these countries sitting there beside OECD countries. It doesn't take much of a genius to look around and say these people are already coproducing, there is already money being invested in the Chinese yards by both the Koreans and the Japanese and there is money being invested in Poland now by the Germans. They are going to coproduce. Those member countries do not have to be a part of the OECD. Those countries are going to produce their ships in the yards that they have subsidized but they are going to come back and they are going to do the value added in their own yards.

Unless we start coproducing in Mexico or Cuba or some other country in this part of the world, which again does away with the whole reason why we want to end the subsidies to begin with, if we are going to send the jobs down there, let's just send the jobs down and forget about all the fluff.

Mr. Chairman, I won't read my statement but I just think that we have to really look at these things realistically.

I will say in closing, and Mr. Gibbons was given the ability to lobby for next year's agenda, it still makes a heck of a lot of sense under current conditions and under the economic conditions in this country that according to Office of Management and Budget [OMB] small subsidies can really help a lot of people and bring things back. If you can subsidize to the tune of $1 billion and create 20,000 jobs, the Treasury, according to OMB, would break even. If you can spend a billion dollars and put 80,000 people to work, the Treasury literally makes money. We keep hearing about govern-

ment wanting to operate like a business. They can really start looking at this. I don't believe, and I am speaking only for the International Brotherhood of Boilermakers, I don't believe that all subsidies are bad and I think that as far as spurring the economy and getting jobs back and protecting industries and protecting the construction of vessels that we have really got the ability to focus Federal funds on to some of this. That is lobbying for next year, Mr. Chairman.

Thank you for the time.

Mr. BATEMAN. Thank you, Mr. Abbott. Your full statement will be made a part of the record.

[The prepared statement of Mr. Abbott follows:]

International Brotherhood of

BOILERMAKERS • IRON SHIP BUILDERS BLACKSMITHS • FORGERS & HELPERS

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Before the U.S. House of Representatives
National Security Committee

Comments of the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers
In Opposition to H.R. 2754

May 22, 1996

Mr. Chairman, members of the Committee, thank you for this opportunity to testify on behalf of the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO. This proud labor union began organizing shipyard workers in 1881. Today this union represents the interests of approximately 30,000 workers in the shipbuilding and repair industry. These workers are employed in 43 shipyards throughout the country. On behalf of our members I strongly oppose the enactment of H.R. 2754, the OECD Shipbuilding Agreement.

The U.S. shipbuilding industrial base has been maintained throughout our nation's history through a combination of large ocean-going commercial and naval vessel construction. Without the ability to build both, our industrial base will diminish to the point that it will be incapable of meeting either our nation's defense or commercial economic interests.

This OECD Shipbuilding Agreement is not an effective mechanism to end foreign shipbuilding subsidies as sought by American shipbuilders and labor. This grossly flawed agreement is riddled with loopholes that will ensure continuation of foreign shipbuilding subsidies while permanently locking U.S. shipbuilders out of the commercial market.

European countries are effectively using the Agreement's "restructuring" loophole to justify massive shipyard modernization projects with no closure of facilities. For example: Spain is spending $723 million to modernize its existing shipyards; France is spending $480 million for similar purposes and is planning to implement a $260 million per year tax incentive plan for building ships in France, and; The European Union auditors have turned a blind eye to Germany's Bremer Vulcan shipyard's illegal skimming of $560 million in subsidies from former East

German shipyards for its own use. According to the office of the U.S. Trade Representative, these practices are not a violation of the agreement.

The Agreement does not apply to China, or Poland -- two countries which are targeting shipbuilding for their industrial development and countries where German, Japanese, and S. Korean shipbuilders are now investing in shipbuilding to avoid any subsidy scrutiny whatsoever.

If these sorts of subsidy practices are permitted by the Agreement, and if major shipbuilding countries are not covered by the Agreement, then what purpose does this Agreement serve?

The answer to that question is that it is a very effective agreement in eliminating recent growth in construction of large ocean-going commercial ships in the U.S. for the international and domestic markets.

In FY'94, Congress enacted the National Shipbuilding Initiative (NSI) as part of the National Defense Authorization Act. The NSI revived and amended the Title XI Ship Loan Guarantee Program that had been dormant since the mid-1980's. Once again, the government could guarantee 25-year commercial loans for the construction of commercial ships for U.S. citizens, but more importantly, for the first time in our nation's history, these loan guarantees were also available for the construction of ships in U.S. shipyards for export customers. As a result, U.S. shipbuilders are once again building large ocean-going ships for the export market and for the domestic commerce of the United States. Over a two-year period, this program has generated over $1.6 billion in commercial ship construction in the United States at no cost to the U.S. taxpayer. This Agreement will eviscerate this highly successful job creation and defense industrial base program.

The existence of this agreement has placed at least $1.1 billion in new construction orders in jeopardy. Because of terms of this agreement, MARAD has been reluctant to release Title XI loan guarantees on ship construction projects that would not be completed within the specified time limits of the OECD agreement.

This Agreement also places the Jones Act at risk. After three years, regardless of tonnage built for the domestic trades, U.S. shipbuilders can be denied international market access and foreign governments can levy tariffs on other U.S. export products commensurate with domestic shipbuilding orders won by U.S. yards. Also, without Title XI loan guarantees, shipowners will be unable to build double-hulled oil tankers in the United States in compliance with the Oil Pollution Act of 1990. The Jones Act will face repeal if there are insufficient U.S.-built, U.S.-operated double hulls to meet our domestic oil transportation demands.

Not only does this Agreement do little to discipline foreign shipbuilding subsidies, it also puts the U. S. taxpayer in the business of subsidizing ship construction in foreign subsidized shipyards. A tax-deferred savings account for

U.S. shipowners, known as the Capitol Construction Fund (CCF), which was created to facilitate the replacement and expansion of U.S.-owned and registered merchant fleets through the construction of ships in U.S. shipyards, may now be available for construction of ships in foreign subsidized shipyards. U.S. tax dollars spent to create U.S. jobs and additional U.S. tax revenues, benefit the U.S. taxpayer. U.S. tax dollars spent to create foreign manufacturing jobs and foreign tax revenues, injure the U.S. taxpayer and U.S. workers.

Mr. Chairman the OECD Shipbuilding agreement also eliminates *ad valorem* duties on ship non-emergency repairs performed on U.S. flag vessels in OECD nations. Repairs on the U.S. flag ships engaged in the Alaskan oil trade have been a mainstay of the ship repair business in the Northwest. I am deeply concerned about the survival of those repair yards that rely on U. S. flag repair work.

During the five years that the agreement was being negotiated, foreign governments were pouring billions of dollars into their shipyards to modernize and position themselves firmly in the world shipbuilding market. Though our negotiators knew of the enormous foreign subsidies there was no language permitting the U.S. yards to catch up, yet it contained a four and one half year phase out for those already subsidizing, in addition to transition subsidies.

There will shortly be a need for up to 7000 vessels to fill the world shipbuilding needs. If the U.S. is to compete for the construction of any of these ships with the great disadvantages already in place, our shipyards need the Title XI loan guarantee program.

Since the United States ended shipyard subsidies, American shipyard workers and their unions have worked closely with management to improve their competitive position. Significant gains have been achieved through a variety of measures, including radically different work rules. Labor related cost savings can generate a limited reduction, however, they can not replace the role of government incentives such as Title XI or the protective provisions of the Jones Act.

This Agreement is bad for American workers and the American taxpayer. It will lead to more job loss in our industry while rewarding foreign shipbuilders who have benefited from years of massive subsidies from their governments. On behalf of our members, I urge you to reject H.R. 2754 in its present form.

Thank you, Mr. Chairman for this opportunity to present our views before the House National Security Committee.

Mr. BATEMAN. The last witness, Mr. Peter Finnerty, vice president, public affairs, Sea-Land Services.

STATEMENT OF PETER J. FINNERTY, VICE PRESIDENT, PUBLIC AFFAIRS, SEA-LAND SERVICES, INC.

Mr. FINNERTY. Thank you. I will summarize my statement. I ask that my full statement be included in the record.

Mr. BATEMAN. Without objection.

Mr. FINNERTY. I very much appreciate the opportunity to appear today and am privileged to represent the coalition in support of H.R. 2754 to implement the OECD agreement, including the American Institute of Merchant Shipping.

The coalition supporting this implementing legislation extends across the country and encompasses every sector of the maritime and international trade communities, including United States and foreign flag vessel operators, the vast majority of commercial shipbuilding interests, U.S. exporters, U.S. importers, and the ports handling the commerce of our country. This compares very favorably with the six opposing military shipyards with over 90 percent of their activity being worked for the DOD.

The U.S. Trade Representative, and Don Phillips in particular, are to be highly commended we believe for succeeding after 5 difficult years of negotiations in bringing home a multilateral OECD agreement to end billions in foreign subsidies. We believe it is a good agreement, not a perfect agreement, but the best that could be achieved and that it will benefit the United States, including U.S. commercial shipbuilders.

A multilateral agreement is the best means of controlling shipbuilding subsidies because it will provide a uniform and structured regime. This will allow U.S. commercial shipyards to compete in the world market while avoiding disruption and litigation in world trade due to shipbuilding subsidy arguments.

There are several points which merit attention, some of which have been raised by the opponents and all of which require clarification. I will try to touch on them briefly in the few minutes available.

First of all, the Jones Act. Our company is the largest Jones Act carrier in the United States. We operate 17 oceangoing container ships serving the noncontiguous trades of our country. We can say without any doubt whatsoever there is absolutely no change in the Jones Act required as a consequence of this OECD agreement. It is not a cap. There is nothing in the agreement that will create or suggest a difficulty to the Jones Act. To claim otherwise is a distortion.

There are many, many billions of dollars invested in Jones Act vessels in the United States. Sea-land's most recent Jones action construction program consisted of three modern Jones Act container ships that presently serve the State of Alaska. They were constructed in the late 1980's at a cost of over $200 million, and we also have substantial investments in the trades to Hawaii, Guam, and Puerto Rico. We certainly would be very concerned if this agreement threatened that investment in any way.

With respect to title XI, I think the point has been amply made but let me repeat that at present title XI is serving U.S. ship-

builders well, and of course the maritime industry owes a debt of gratitude to this panel for the work that it has done on the title XI program. It is a program that will be capable of continuing under the agreement, but of course its terms will have to be altered to bring them into conformity with a new level playing field.

The only reason title XI at present is in an advantageous position is that its terms exceed what would be perceived as a level playing field as a consequence of the standstill agreement that was put in place when this OECD agreement was signed. To think that such an advantage would continue without this agreement, and to think that our shipyards would be able to win a subsidy battle over time is not a valid assumption.

U.S. flagship operators and the American Merchant Marine have long labored under the burden of a 50-percent duty that applies when we choose to have work performed in foreign shipyards for maintenance or repair of our vessels. In this day and age when quite a large number of foreign flag vessels are having their maintenance work performed here in U.S. facilities, and when we have succeeded in phasing out the application of this 50-percent duty in the context of Canada and Mexico, it is indeed overdue to eliminate this 50-percent duty.

With respect to the Capital Construction Fund, the Capital Construction Fund is a key competitive tax element for U.S. flagship operators, and of course it is ship operators and owners that make deposits and withdrawals from these funds. The CCF is needed to put them on a level playing field with their foreign flag competitors and should be retained.

I would point finally, Mr. Chairman, that in no way does this agreement limit or constrict any support or assistance that the Department of Defense would wish to continue to give to its military shipyards in the future, including assistance for installation of defense features. We respectfully urge the panel to support implementation of H.R. 2754 and its timely enactment.

Thank you. I would be anxious to respond to your questions.

Mr. BATEMAN. Thank you.

[The prepared statement of Mr. Finnerty follows:]

STATEMENT OF PETER J. FINNERTY
VICE-PRESIDENT, PUBLIC AFFAIRS
SEA-LAND SERVICE, INC., AND
VICE-PRESIDENT, MARITIME AFFAIRS
CSX CORPORATION
ON BEHALF OF
THE AMERICAN INSTITUTE OF MERCHANT SHIPPING (AIMS)
AND
THE COALITION IN SUPPORT OF THE OECD
COMMERCIAL SHIPBUILDING AGREEMENT
BEFORE THE
MERCHANT MARINE PANEL
OF THE
NATIONAL SECURITY COMMITTEE
THE HOUSE OF REPRESENTATIVES
ON H.R. 2754
TO APPROVE AND IMPLEMENT THE
"ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT
SHIPBUILDING TRADE AGREEMENT"
MAY 22, 1996

Sea-Land Service is a global container transportation company with more than 100 containerships (37 U.S.-flag), 190,000 containers, providing service between over 100 ports in 80 countries with 1995 gross revenues of $4 billion. It is a unit of CSX Corporation, with rail, barge and intermodal transportation revenues of $10 billion in 1995.

For the record, our broad coalition strongly supports the implementation of the OECD shipbuilding agreement to eliminate subsidies for commercial shipbuilding. After five years of difficult negotiations, it embodies the multilateral compromise that U.S. shipbuilding, ship operating and international trade interests asked USTR to achieve.

The multilateral OECD agreement offers the best chance of disciplining commercial shipbuilding subsidies worldwide. The few opponents of the OECD agreement claim that it would be better to have no agreement at all than to implement this Agreement. Although we do not claim that the OECD agreement is perfect, we are convinced that implementing it now would be far better for U.S. commercial shipbuilding and trading than to maintain the status quo (heavy subsidization by competing foreign shipbuilding countries) or to attempt some type of unilateral action here in the United States. Without the OECD agreement, foreign commercial shipbuilding subsidies will continue to out pace the United States and the situation may worsen.

The multilateral OECD agreement is the best means of controlling commercial shipbuilding subsidies because it will provide a uniform and structured regime among the key commercial shipbuilding nations. If each country were to determine individually the definition of a subsidy and the limitations on its subsidy reform, the likely result would be a chaotic and ineffective system. Moreover, it is very likely that the biggest shipbuilding nations abroad would continue to subsidize their yards and U.S. international trade would be disrupted.

From the perspective of the owners and operators of U.S.-flag vessels, one of the most significant and beneficial results of implementing the OECD agreement will be the repeal of the 50% ad valorem duty currently levied on the cost of maintenance and repair of U.S.-flag vessels in foreign shipyards. A large number of foreign-flag vessels are now maintained and repaired in U.S. yards. It is unreasonable to continue a 50% duty on U.S.-flag vessels repaired abroad when no such competitive handicap applies to our foreign-flag competition which carries the vast majority of U.S. foreign commerce. Importantly, only about half of the revenue collected in recent years is from repairs done in OECD agreement signatory countries. The duty will continue for other countries until they become signatories.

The small loss of tax revenues resulting from the repeal of the ad valorem duty has been provided for through proper enforcement of existing tax law against foreign corporations that claim exemption from U.S. tax for income derived from the international operation of ships, but fail to satisfy the filing requirement for claiming such an exemption. A penalty would be assessed for such failure applicable to foreign source shipping income attributable to a fixed place of business in the U.S.

The only amendment of the Capital Construction Fund (CCF) required by the OECD agreement is repeal of the "U.S. build" requirement. Competitive tax policy is very important to U.S.-flag vessel operators and the CCF program should be retained, with the deletion of the "U.S. build" requirement. Only U.S.-flag vessels, including those in the maritime security program, would be eligible to participate in the CCF program.

The few opponents of the Agreement continue to raise concerns that the Agreement has a negative impact on the cabotage provisions of the Jones Act. The cabotage provisions of the Jones Act require vessels engaged in the coastwise trades of the U.S. to be U.S.-built, U.S.-flagged and U.S.-manned. The Act represents a cornerstone of U.S. maritime policy. Sea-Land Service, Inc. is the largest Jones Act operator and we would certainly not support the OECD agreement if it had a negative impact on the domestic Jones Act trade.

Under the Agreement, there is absolutely no scenario under which the U.S. would be required to change a word of the Jones Act. The Agreement merely provides for monitoring the volume of Jones Act ship construction in the U.S. with an eye toward resolving whether this category of ship construction might distort the global commercial shipbuilding market. U.S. shipbuilders will continue to build 100% of Jones Act vessels. Furthermore, the agreement does not prohibit the Department of Defense from funding special defense features on commercial vessels.

Finally, this Agreement offers the best chance of ensuring that operators of U.S.-flag vessels will be able to acquire and repair their vessels on the world market at internationally competitive prices. It is also the only politically and economically practical means to assist U.S. commercial shipyards to become more competitive in the international arena. Because of the delay in enacting implementing legislation on the part of the U.S. and Japan, the European Union has recently stated that its members can continue to pay subsidies on shipbuilding contracts until October 1, 1996, nine months beyond the originally agreed upon stop date of January 1, 1996. If the U.S. does not act soon, we risk a complete unraveling of this vitally important international accord. Consequently, we urge the National Security Committee to approve legislation implementing this urgently needed international commercial agreement.

STATEMENT OF

PETER J. FINNERTY

VICE-PRESIDENT, PUBLIC AFFAIRS

SEA-LAND SERVICE, INC.,

AND

VICE-PRESIDENT, MARITIME AFFAIRS

CSX CORPORATION

ON BEHALF OF

THE AMERICAN INSTITUTE OF MERCHANT SHIPPING (AIMS)

AND

THE COALITION IN SUPPORT OF
THE OECD COMMERCIAL SHIPBUILDING AGREEMENT

BEFORE THE

MERCHANT MARINE PANEL

OF THE

NATIONAL SECURITY COMMITTEE

THE HOUSE OF REPRESENTATIVES

ON H.R. 2754

TO APPROVE AND IMPLEMENT THE

"ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT

SHIPBUILDING TRADE AGREEMENT"

MAY 22, 1996

INTRODUCTION

I am Peter J. Finnerty, Vice-President, Public Affairs, Sea-Land Service, Inc. and Vice-President, Maritime Affairs, CSX Corporation. Thank you for this opportunity to present testimony in support of the OECD Shipbuilding Agreement to eliminate subsidies for commercial shipbuilding.

Sea-Land Service is a global container transportation company with over 100 containerships (37 U.S.-flag), 190,000 containers, providing service between over 100 ports in 80 countries and 1995 gross revenues of $4 billion. It is a unit of CSX Corporation, with rail, barge and intermodal transportation revenues of $10 billion in 1995.

I am testifying on behalf of the American Institute of Merchant Shipping (AIMS) and the Coalition in Support of the OECD Commercial Shipbuilding Agreement. AIMS is a national trade association representing 22 U.S.-flag ocean shipping companies which own or operate approximately ten million deadweight tons of tankers, dry bulk carriers, containerships, and other oceangoing vessels engaged in the domestic and international trades of the United States. AIMS represents a majority of U.S.-flag tanker and liner tonnage.

The Coalition encompasses virtually every sector of the maritime industry including both liner and tank vessel owners and operators, exporters, importers, ports, and a majority of U.S. commercial shipyards (with the exception of the six shipyards which recently left the Shipbuilders Council of America (SCA) to form their own group). Several members of this Coalition personally attended the long running negotiations in Paris and participated actively in the debate over the elimination of commercial shipyard subsidies in the U.S. I can assure you that we are all vitally interested in this issue and this multilateral solution.

A list of AIMS member companies, as well as a list of organizations comprising the Coalition, is attached.

BACKGROUND OF THE AGREEMENT

On July 17, 1994, an agreement among the key commercial shipbuilding nations was reached which, when implemented, will establish a multinational shipbuilding accord to eliminate commercial shipbuilding subsidies and other trade distortive practices. The Agreement, negotiated under the auspices of the OECD, was signed by Japan, Korea, Norway, the United States, and the European Union consisting of the United Kingdom, Germany, France, Italy, Spain, Ireland, the Netherlands, Belgium, Luxembourg, Greece, Portugal, Denmark, Austria, Sweden and Finland. It applies to the construction and repair of self-propelled commercial seagoing vessels of 100 gross tons and above. The participating countries account for almost 80% of world commercial shipyard production.

The official signing of the Agreement on December 21, 1994, marked the end of nearly five years of negotiations which began in 1989 after the SCA withdrew its Sec. 301 unfair trade complaint against foreign shipbuilding subsidies in favor of pursuing a multilateral agreement.

During the long period of negotiations, two bills (H.R. 1402 by Rep. Sam Gibbons (D-FL) and S. 990 by Sen. John Breaux (D-LA)) were introduced in an attempt to expedite the international negotiations through unilateral action on the part of the United States. Our Coalition opposed such unilateral action on this issue and, as my testimony will explain, we believe that a multinational approach is the only reasonable method of opening worldwide commercial shipbuilding markets for U.S. shipbuilders and avoiding trade disruptions.

On July 18, 1995, the Subcommittee on Trade of the House Committee on Ways and Means held a hearing on the OECD Shipbuilding Agreement during which members of the Subcommittee, including Chairman Philip Crane and Rep. Sam Gibbons, Ranking Member of the full Committee, expressed support for implementing the Agreement. Chairman Bill Archer has also expressed his support for the Agreement in a November 14, 1995, letter. H.R. 2754, To Approve and Implement the OECD Shipbuilding Trade Agreement, was introduced on December 11, 1995, and favorably reported out of the House Ways and Means Committee on March 22, 1996. The Senate Finance Committee held a hearing on its version of the bill, S. 1354, on December 5, 1995, then favorably reported the bill on May 8, 1996, as part of a larger trade package, H.R. 3074.

The Agreement concluded by USTR is more than adequate to provide for the elimination of subsidies and the enforcement of the Agreement's terms. In this regard, the OECD Agreement has four key elements:

1. Language to eliminate virtually all commercial subsidies, direct and indirect.

2. An injurious pricing code designed to prevent dumping in the commercial shipbuilding industry.

3. A comprehensive discipline on government financing for exports and domestic ship sales designed to avoid trade distorting effects.

4. A dispute settlement mechanism.

The Agreement also contains a "standstill agreement" providing that the subsidy levels under existing programs will not be increased and that no new subsidy programs will be introduced while the signatory nations are implementing the Agreement. Importantly, the Agreement specifically grants the U.S. a derogation which allows it to maintain the home build provisions of the Jones Act (46 U.S.C. Sec. 883). This statute imposes a strict U.S. build requirement which provides U.S. shipbuilders with complete and absolute protection against imports of any foreign-made vessel for use in the domestic trade of the U.S.

DISCIPLINING COMMERCIAL SHIPBUILDING SUBSIDIES IS BEST ACHIEVED BY INTERNATIONAL AGREEMENT

The multilateral OECD agreement offers the best chance of disciplining commercial shipbuilding subsidies worldwide. The few opponents of the OECD agreement claim that it would be better to have no agreement at all than to implement this Agreement. Although we do not claim that the OECD agreement is perfect, we are convinced that implementing it would be far better for U.S. commercial shipbuilding and trade than to maintain the status quo (heavy subsidization by competing foreign shipbuilding countries) or to attempt some type of unilateral action.

Foreign shipbuilding nations are heavily subsidizing their shipyards. Without the OECD agreement foreign subsidies will continue and the situation may worsen for U.S. shipyards. In order to become competitive with their foreign counterparts in the absence of the OECD agreement, U.S. shipyards would require massive subsidies to offset higher U.S. construction costs and the effect of foreign subsidies. Given the current climate of Congress, under which no federal agency or program is immune from the budget axe, it is highly unlikely that any meaningful subsidy program would be funded.

The other equally undesirable alternative is for the U.S. to attempt some kind of unilateral action. This would be disastrous. The USTR testified before the Ways and Means Trade Subcommittee in March 1991 that, of the available options, a multilateral agreement "is the only reasonable one . . . based on a solid, rational analysis of the commercial needs of the industry." A few months later, on July 9, 1991, then Ambassador S. Linn Williams testified before the Ways and Means Trade Subcommittee on attempts by the U.S. Congress to pass legislation to address the problem unilaterally. The Ambassador stated that such action "would not be an effective means of eliminating trade distorting practices in the shipbuilding sector . . . and might actually result in less favorable conditions for U.S. shipbuilders than an international agreement."

Furthermore, the multilateral OECD agreement is a far superior means of controlling commercial shipbuilding subsidies because it will provide a uniform and structured regime. If each country were to determine individually the definition of a subsidy and the limitations on its subsidy reform, the likely result would be a chaotic and ineffective system. Moreover, it is very likely that the biggest shipbuilding nations would continue to subsidize their yards.

Clearly, of the alternatives available to assist U.S. commercial shipyards to become more competitive, the only one politically and economically practical is the implementation of the multilateral OECD agreement.

REPEAL OF THE 50% AD VALOREM DUTY ON U.S.-FLAG SHIP REPAIRS

From the perspective of the owners and operators of U.S.-flag vessels, one of the most significant and beneficial results of implementing the OECD agreement will be the repeal of the 50% ad valorem duty currently levied on maintenance and repair of U.S.-flag vessels in foreign shipyards. It is no secret that the U.S.-flag fleet is under intense competition. The vessel repair duty, which is only levied on U.S.-flag vessels, has burdened U.S. shipowners and trade for 120 years. The time has come to eliminate this duty. As the U.S.-flag fleet continues its contraction this onerous duty cannot be justified. U.S. operators are already burdened with many costly requirements to which their foreign-flag competitors are not subject. U.S.-flag vessels must be able to perform repairs wherever it is most convenient and cost-effective, just as their foreign-flag competitors do. A large number of foreign-flag vessels are now maintained and repaired in U.S. yards. It is unreasonable to impose the 50% duty on U.S.-flag vessels repaired abroad. Importantly, only about half of the revenue collected in recent years is from repairs done in OECD agreement signatory countries. The duty will continue for other countries until they become signatories.

The small loss of tax revenues resulting from the repeal of the ad valorem duty has been provided for through proper enforcement of existing tax law against foreign corporations that claim exemption from U.S. tax for income derived from the international operation of ships, but fail to satisfy the filing requirement for claiming such an exemption. A penalty would be assessed for such failure applicable to foreign source shipping income attributable to a fixed place of business in the U.S.

CAPITAL CONSTRUCTION FUND (CCF)

The CCF program, set forth in Sec. 607 of the Merchant Marine Act of 1936, is designed to encourage U.S. ship operators to construct, reconstruct, and acquire U.S.-flag vessels. U.S. operators enter into binding contracts with the government which allows them to defer income tax on amounts deposited in a CCF to be used for an approved U.S.-flag shipbuilding program. The deferred tax is later recouped by Treasury because the tax basis of the U.S.-flag vessels purchased with the CCF funds is reduced dollar for dollar to compensate for the tax deferral. This program should be maintained. It is sorely needed by U.S.-flag ship operators.

ESTIMATE OF REVENUE IMPACT OF REPEAL OF "U.S.-BUILD" REQUIREMENT FROM CAPITAL CONSTRUCTION FUND PROVISIONS UNDER OECD SHIPBUILDING AGREEMENT

Elimination of the "U.S.-build" requirement for the CCF program will not result in a revenue loss to the government. As described below, the U.S.-flag fleet engaged in foreign commerce is shrinking dramatically due to unrelated circumstances. The repeal of the U.S.-build requirement for the CCF will not alter that trend.

U.S.-flag carriers in domestic (Jones Act) service will continue to build all vessels in the U.S. in compliance with the statutory requirement in Sec. 27 of the Shipping Act of 1920. There will be few Jones Act ships constructed in the near future because the existing fleet is adequate for many years of service.

As this Committee is aware, U.S.-flag vessels in export-import commerce are rapidly decreasing in number. Many U.S.-flag liner ships are leaving service due to scrapping at the end of their useful lives. In addition, new U.S.-flag liner ships are being flagged to foreign registry due to competitive pressures. Sea-Land reflagged five large containerships to Marshall Islands registry early in 1995.

The two largest U.S. carriers are now bringing fifteen new containerships into service. American President Lines has built six large (4,000 TEU) new ships; Sea-Land has built five large (4,000 TEU) ships; and Sea-Land has four more (4,000 TEU) ships under construction. All fifteen of these newest additions to their fleets will be registered in the Marshall Islands. These companies cannot justify the substantial added expense of U.S. registry for liner vessel operations unless the MSP program is enacted. U.S. registry means higher labor costs and higher regulatory compliance costs, making U.S.-flag vessels noncompetitive with foreign competition in international commerce.

The remaining U.S.-flag fleet is expected to experience added reflagging in the next few years, absent enactment and funding of a new Maritime Security Program (MSP). Yet, if the MSP is enacted, it will assure only about 47 ships.

U.S.-flag tankers operate mainly in the Jones Act trade and will experience a sharp drop in numbers due to the strict regulatory requirements imposed by OPA 90. Alaskan oil is declining in volume and will result in fewer tankers.

The combination of these factors will result in a sharp reduction in the size of the U.S.-flag fleet. Consequently, there will not be a revenue loss resulting from the repeal of the "U.S.-build" requirement for the CCF.

TITLE XI PROGRAM

Critics of the OECD Agreement have complained that the Title XI vessel mortgage insurance program would be amended and future contracts would not contain financing terms that are as advantageous as those available today. It is important to understand why approval of the OECD Agreement is in the best interest of U.S. commercial shipbuilders and vessel operators, even with the necessary changes to the Title XI program.

At present, the only reason the U.S. Title XI program enjoys terms more advantageous than competing foreign ship financing programs is the "standstill" entered into by signatory governments when the OECD Agreement was reached in 1994. If this Agreement is not implemented by the U.S., other countries would then be free to match or greatly exceed the U.S. financing terms and the advantage of the American program would evaporate overnight.

Under the revised terms called for by the OECD Agreement, the U.S. shipbuilders and vessel operators will be on a level playing field with competing nations. This is an additional reason why implementing the OECD Agreement is sound public policy.

THE JONES ACT IS NOT AFFECTED

The few opponents of the Agreement continue to raise concerns that the Agreement has a negative impact on the cabotage provisions of the Jones Act. The cabotage provisions of the Jones Act require vessels engaged in the coastwise trades of the U.S. to be U.S.-built, U.S.-flagged and U.S.-manned. It represents a cornerstone of U.S. maritime policy.

To our knowledge, three arguments have been raised with respect to the Jones Act:

1. that the Agreement would force a change in U.S. Jones Act law itself;

2. that the Agreement would place a cap on U.S. Jones Act production; and

3. that the Agreement will cause uncertainty in the Jones Act marketplace thereby disrupting Jones Act construction.

These arguments are complete nonsense.

First, throughout the OECD agreement negotiations the U.S. position was to ensure the complete continuation of the Jones Act law. And, in fact, U.S. negotiators achieved that goal. Under the Agreement, there is absolutely no scenario under which the U.S. would be

required to change a word of the Jones Act. The Agreement provides for the monitoring of the volume of Jones Act ship construction in the U.S. with an eye toward resolving whether this category of ship construction is distorting the global commercial shipbuilding market.

The Agreement provides that (1) if Jones Act tonnage exceeds a certain threshold, and (2) if an OECD party nation actually believes that this tonnage is disrupting the global market and can convince the other OECD parties of the same, then the only consequence of the Agreement is that the aggrieved nation can impose restrictions on U.S. Jones Act shipbuilders of an equivalent nature and magnitude in the foreign nation. There is absolutely no limit on the amount of Jones Act tonnage that may be constructed in any year. And, since future Jones Act tonnage is expected to be only on the order of 200,000-300,000 tons per year, while annual global construction tonnage is measured in the tens of millions of tons, the impact of such a restriction is really nil.

To the charge that the Agreement will cause uncertainty in the Jones Act marketplace, I would simply respond that Sea-Land is the largest Jones Act operator and we are among the most ardent supporters of the Agreement. **Certainly, Mr. Chairman, we would not support this Agreement if it had a negative impact on the Jones Act.** Sea-Land and the other members of AIMS, collectively with our colleagues from the American Waterways Operators (AWO) represent virtually the entire market for Jones Act ships. In addition, the Shipbuilders Council of America and the American Waterways Shipyard Conference, who are active members of our Coalition, represent nearly the entire Jones Act-related commercial shipbuilding industry. Clearly, there is no uncertainty in the Jones Act market or supply industries concerning this Agreement.

It is our belief that the Jones Act-related provisions of the Agreement represent an adequate and satisfactory compromise. In fact, the Agreement has no practical effect on the Jones Act. This is the multilateral compromise that U.S. shipbuilding, ship operating, and international trading interests asked USTR to achieve.

In our opinion, attacks on the Agreement based on the Jones Act are frivolous arguments that represent nothing more than a misleading attempt to block the Agreement and seek renewed direct subsidies.

MILITARY "DEFENSE FEATURES" PROGRAM IS NOT AFFECTED

The OECD Agreement eliminates COMMERCIAL shipbuilding subsidies. It does not affect military shipbuilding programs. As such, the Department of Defense program to fund the addition of special defense features in commercial ships is permissible under the terms of the agreement. Even though the money is being used on a commercial vessel, it is not considered a commercial shipbuilding subsidy under this agreement to the extent that the funds are only used for the "defense features" (such as reinforced decks).

CONCLUSION

Implementing this long-awaited international OECD agreement offers the best chance of ensuring that operators of U.S.-flag vessels will be able to acquire and repair their vessels on the world market at internationally competitive prices -- just as their foreign competitors do. By repealing the duty on foreign ship repairs, a significant cost

disadvantage borne by U.S.-flag vessel operators will be eliminated. More importantly, it will allow U.S. commercial shipyards to become more competitive in the international arena.

This Agreement is widely supported by the full spectrum of the U.S. maritime community because it is the only economically and politically feasible means to eliminate commercial shipbuilding subsidies. However, time is of the essence. During a recent trip to Washington, Ambassador Olberg, Chairman of the OECD Working Party Six on Shipbuilding, and Mr. Wolfgang Hubner, Head of the Maritime Transport and Shipbuilding Division of the OECD, met with several members of Congress, USTR officials, and industry members to emphasize the need for action. Although the Ambassador assured us that the other parties to the OECD Shipbuilding Agreement are still committed to its enactment, he also stated that if the U.S., as the originator of the negotiations, fails to implement the agreement, the other nations would quickly return to heavy subsidization. Due to delay by the U.S., the European Union has stated that its members may continue to pay subsidies on shipbuilding contracts until October 1, 1996, nine months after the originally agreed upon stop-date of January 1, 1996. This change could be reversed if the U.S. promptly implements the Agreement.

In light of these facts, we urge this Committee and Congress to act now to bring the product of five years of tough negotiations to fruition. Prompt action will benefit U.S. commercial shipbuilders, U.S.-flag vessel operators and U.S. international trade.

Thank you for this opportunity to testify. I am anxious to respond to any questions.

AMERICAN INSTITUTE OF MERCHANT SHIPPING (AIMS) MEMBER COMPANIES

AMERADA HESS CORPORATION

AMERICAN OVERSEAS MARINE CORPORATION

AMOCO TRANSPORT COMPANY

ARCO MARINE, INC.

BP OIL SHIPPING COMPANY, U.S.A.

CHEVRON SHIPPING COMPANY

COSCOL MARINE CORPORATION

CROWLEY MARITIME CORPORATION

FARRELL LINES INCORPORATED

HVIDE MARINE INCORPORATED

INTEROCEAN UGLAND MANAGEMENT CORPORATION

MAERSK LINE, LIMITED

MOBIL OIL CORPORATION

MORMAC MARINE TRANSPORT, INC.

OMI CORP.

OSG BULK SHIPS, INC.

PHILLIPS PETROLEUM COMPANY

SEA-LAND SERVICE, INC.

SEARIVER MARITIME, INC.

SUN TRANSPORT, INC.

TEXACO

76 PRODUCTS COMPANY-- MARINE DEPARTMENT

COALITION IN SUPPORT
OF THE
OECD SHIPBUILDING AGREEMENT

AMERICAN ASSOCIATION OF PORT AUTHORITIES

AMERICAN INSTITUTE OF MERCHANT SHIPPING (AIMS)

AMERICAN PRESIDENT LINES

AMERICAN WATERWAYS OPERATORS

AMERICAN WATERWAYS SHIPYARD CONFERENCE

ATLANTIC MARINE INC.

CENSA

CENTRAL GULF LINES, INC.

CROWLEY MARITIME CORPORATION

FEDERATION OF AMERICAN CONTROLLED SHIPPING

INTERNATIONAL SHIPHOLDING CORPORATION

LABOR MANAGEMENT MARITIME COMMITTEE

MAERSK LINES

MCDERMOTT, INC.

SHIPPERS FOR COMPETITIVE OCEAN TRANSPORTATION

SEA-LAND SERVICE, INC./CSX CORPORATION

SHIPBUILDERS COUNCIL OF AMERICA

TOTEM OCEAN TRAILER EXPRESS, INC.

TRINITY MARINE

WATERMAN STEAMSHIP CORPORATION

Mr. BATEMAN. I thank all members of the panel for being here and sharing your views. It is deeply troubling to this member of the panel, and I am sure the others, to have good friends who are not in agreement with one another and we have to wrestle with what is the best course of action that we can press upon our colleagues with respect to this very important and troubling issue.

One of the things that occurs to me is that under the status quo with the standstill provisions of our title XI terms, which were crafted in the main by people on this panel, have brought us the first opportunity to penetrate the international shipbuilding market, to my shipyard in Newport News, the first commercial contract with a foreign vessel operator in 35 years because of title XI. If we could preserve the status quo for a period of time, but—would not that represent the best opportunity for American shipbuilding?

Mr. JONES. Certainly that is an attractive option. But what we found out and what we are finding out every day in competing in the international arena is that the value of the title XI subsidy can be reduced to a dollar value by the customer. He subtracts that dollar value from our bid to arrive at his final price. That title XI value can be for some customers up to 7 or 8 or possibly even 10 percent of the contract price. That 10 percent can offset the 20 and 30 percent subsidies that some of these foreign countries are managing to weasel into their contracts. So it can be valuable for certain contracts, but for most contracts that we are competing against we find that the title XI subsidy does not overcome the ability of the foreign countries to subsidize.

In the case of the one contract, we received the second contract, international contract for large oceangoing ships, two chemical carriers for a Danish company that are now under construction in our Alabama yard. We got that contract according to the owner because we were the low bidder, not because of title XI, although he certainly took advantage of title XI because it gives him a better deal.

Title XI is a good program. A 25-year program is a good program. It cannot overcome foreign subsidies, and I firmly believe that if we do away with this agreement or we signal that we are not going to put this agreement into force, the other countries who are competing will match it in a heartbeat.

In the past they have a history of providing loans, balloon payment loans, no interest payment or no principal payment loans, interest only loans. They know how to do it. They have the laws on their books. They will implement that in a heartbeat if this agreement goes down the tubes. It is a fairly cheap program for them to do. Title XI has a lot of leverage behind it.

Mr. BOWLER. If I might comment and take the other side of the question. Clearly title XI, the USTR talked about the wonderful standstill provision. Basically standstill has meant that other countries who continue to subsidize and whether you say $3, $5, $8 billion, you pick the figure, we essentially had title XI at about $50 million a year for a couple of years. That has generated as Vice Admiral Herber testified in front of this committee a little over a month ago, in less than 2 years, $1.6 billion of commercial shipbuilding in this country. Now if title XI remains as is and the other subsidies remain as is why do we think that is going to change?

Mr. Jones and I met about 2 months ago with Mr. Intonini, who is chairman of Fin Contieri, the largest shipbuilder in Italy, and he basically said that if title XI remains in effect the Europeans could not just match title XI. Their financial markets are not structured, are not nearly as sophisticated as the U.S. financial markets are, particularly in covering 25-year loans, which is the strength of title XI. Our shipbuilders will say that is the difference, that will continue to be the difference, and as long as we keep title XI we will keep generating commercial shipbuilding jobs in this country. Thank you.

Mr. BATEMAN. Anyone else?

Mr. DUCLOS. I would like to say in the craft that we would be offering in Indonesia there is sufficient sophistication and design and construction, that Third World countries probably could not build them, and American dollars and title XI, all combined, would make us quite competitive in these vessels.

Mr. BATEMAN. Let me ask a question. We have heard repeatedly today that the Jones Act is either adversely affected and some say it is not. To those of you who say that the Jones Act is not affected in any way, there are no adverse implications whatsoever as to the Jones Act, what would be wrong with our structuring what we report to the floor of the House to make it abundantly clear and resolve any dispute in the context of this implementation agreement is totally completely without prejudice to the efficacy now and in the future of the Jones Act?

Mr. FINNERTY. I would be happy to start, Mr. Chairman. I certainly think that it would probably help the process or perhaps clarify any misgivings that people might have on this question. I, too, had brought to my attention some of these press clippings from overseas where claims were made by certain of the governments abroad going home to their constituents and claiming that they had accomplished this or that kind of a restriction on the Jones Act. The Trade Representative and our attorneys studied the matter and assure us it does not in any way harm the Jones Act. To the extent that the panel can underscore or bolster that clear impression, we certainly would support you.

Mr. JONES. Mr. Chairman, I believe it would be appropriate to have a sense of Congress resolution saying that these Jones Act provisions don't undermine in any way the Jones Act. I think that would help the process along.

I also point out that when this Jones Act provision that is in the agreement now came before the Shipbuilders Council Board that all those that now object to it were members of the board. So I don't understand why now they are objecting to something that they had approved when they had the opportunity at that point to veto it.

Mr. BATEMAN. I take your point and do not challenge the accuracy of what you just said, but the more important point is whether they were right or whether they were wrong, either then or now, and that is the judgment we have to make now.

Mr. JONES. On title XI, if you look at the current Maritime Administration list of pending applications, there are about six pending applications for large oceangoing ships. Five of those are for yards that support this agreement. Of the 25 total pending applica-

tions for all kinds of vessels, 11 are for 15 years or less, so that the 25-year provision is not critical in all cases for the kinds of good works that title XI has done over the years.

Mr. BATEMAN. Mr. Taylor.

Mr. TAYLOR. Thank you, Mr. Chairman.

As you know, this is the first of three panels where you have some pros and cons. If I could just get a kind of nodding of the head. Is it fairly accurate to say that we have asked our negotiators of two different administrations to solve a problem regarding foreign subsidies of shipbuilding but that they came up with the wrong solution to solve the problem?

Mr. BOWLER. Correct.

Mr. JONES. Wrong.

Mr. BOWLER. Head moving in vertical plane.

Mr. TAYLOR. I do want to point out a couple of things, though, that I think are fairly safe to say. I will proudly say that our second tiered shipyards, as they are referred to, are doing very well both domestically and internationally and we are proud of that. They are an important part of our economy.

I think it is also safe to say that with the downturn in the DOD budget, the six major shipyards have serious problems. The question is, A, can all six of them survive and, B, if they do survive, in what shape will they be there if we need them again, and we will need them again; I can't predict when.

Going back to the fact that the second tier yards are doing good, but that the bigger yards have a problem and are downsizing significantly, doesn't it make sense that this Nation since we have to have those big yards in time of war take some steps to see to it that they survive?

Second, since we don't have a heck of a lot of money to throw around, doesn't it make sense that we continue to make small investments like the title XI program to help them survive?

And, third, since you are doing okay and they are not, wouldn't it make sense to heed their warnings of an impending treaty that is going to hurt them even worse, and I am directing that to you because I have both types of shipyards in my district.

Mr. JONES. I appreciate that and appreciate your concern about these issues because they are important issues. May I ask you to repeat the questions?

Mr. TAYLOR. The point is, second tier yards are doing good.

Mr. JONES. We are. The other yards are also doing very good right now. We have multibillion-dollar backlogs in each one of those yards, multibillion-dollar backlogs.

Mr. TAYLOR. Big yards?

Mr. JONES. Yes, sir.

Mr. TAYLOR. No, sir, that is not accurate?

Mr. JONES. Avondale said they had the biggest backlog in their history.

Mr. TAYLOR. And I hope the Navy was listening for when they award the LPD 17 contract, because there are some other folks who are doing some serious downsizing.

Mr. JONES. I agree, there will be downsizing but nevertheless the yards are doing reasonably well. They have a huge backlog.

Newport News' bottom line profit last year, after everything, was more than my entire revenue, and yet I have the money and the capacity and the will to invest my money into becoming commercially competitive. I think those other yards can do the same. I think they already have. I think they are competitive.

Avondale Shipyards, Mr. Bossier was quoted in Armed Forces Journal, May 1996. Mr. Bossier—I assume it was the same one who was sitting next to me. The picture looks the same. We are making inroads into the international market. If the OECD agreement is, in fact, ratified by the participating nations, I think you will see us contracting for international ships on a competitive basis within the next 10 to 12 months. I think we are getting close to being in a position if the OECD agreement comes to pass that there will be a decent piece of international business for us.

I know that yard pretty well. They are competitive and this will come to pass if this agreement goes into effect.

Mr. TAYLOR. Prior to the title XI revitalization in 1994, how many commercial ships was Avondale building?

Mr. JONES. I have no idea.

Mr. TAYLOR. Prior to the title XI revitalization in 1994, how many commercial ships was Newport News building? Why do we want to arbitrarily give up a program that is working?

Mr. JONES. We have had a 2-year title XI advantage. In that 2 years, there have been exactly two international contracts signed. I don't consider that success.

Mr. TAYLOR. Do you know what we as a Nation were doing prior to that? It is a change in the right direction.

Mr. JONES. It is a step in the right direction and was needed because it will establish us as being able to build ships. Newport News is going to do a wonderful job on those ships and they will deliver them on time. That is going to start to establish a reputation of the United States as a shipbuilding country again.

We have not built in this country a large commercial oceangoing ship over 350 feet that was not either subsidized or protected in over 50 years. We don't have a product; we don't have a marketplace. We were not in the marketplace. This gets us back in. But we are in now. We have to demonstrate that we can produce these ships so we can earn the confidence of international shipbuilders.

Every commercial ship that was built in this country was built either with construction differential funds, subsidies or under the protection of the Jones Act. That goes on for the last 50 years. We had not built anything for the international marketplace. When you get into the smaller ships we do quite well, because for some reason the effect of the international subsidies doesn't kick in.

My company has built 220 ships since 1964, when we went into business. Thirty percent of those would fall under this agreement and were sold to international customers without subsidy. We have tried to break through the size ceiling and we find it is kind of like a glass ceiling. Every time we have bid on a larger ship, we pop up against foreign subsidies.

In 1985, I lost my first contract on a large international-flagged oceangoing ship to a foreign shipyard after the bids were in. A European company came in and put an additional subsidy in their shipyard's hands, which enabled them to beat my bid. I was the

low bidder in 1985 with no subsidies from the U.S. Government, no title I, no nothing except my ingenuity, my competitiveness and the competitiveness of that shipyard and the ability of the American worker to produce at low cost. We can do that again today. We have just got to decide to do it, and I have decided to do it.

Mr. TAYLOR. Mr. Jones, I am not going to argue with anything you just said because I agree. What I disagree on is when the administration, both Democrat and Republican, were asked to solve the problem of the subsidies, they came up with the wrong solution and rather than admitting that they came up with the wrong solution, they tried to sanctify a bad solution. I am of the opinion that we can do better than this, that there has to be a better solution than the one they came up with.

Mr. Finnerty, I have to tell you, I just cannot believe that this agreement is going to allow companies such as yours to set aside money in the capital construction fund that has traditionally been set aside, tax deferred, tax exempt, and understanding that they would eventually use that money to build a ship in this country. I don't think it makes any sense to continue to give you that benefit when you are not going to turn around and build the next ship in this country. That is not fair.

Mr. FINNERTY. Mr. Taylor, I have heard certain individuals indicate in the past——

Mr. TAYLOR. And your company is not alone. It is a program that anybody can take advantage of, but I am using you as an example since you are here.

Mr. FINNERTY. A great many of the ship operators today do not take advantage of the program and basically deposits are not made in the program for the most part because there is no expectation that the money can be withdrawn and successfully used in the future. If we do not have competitive tax treatment for U.S.-flagged vessels, and it is only U.S.-flagged vessels that would be able to use the CCF if it is amended as the agreement requires, then they would be forced in the future to still make a purchase as the market dictates, but they would probably then flag the vessel overseas.

If the money comes from a Capital Construction Fund and tax deferral is bestowed as a consequence, then they must flag the vessel in the United States. If the policy decision, and that is certainly something that the Congress and the Government can do, if the policy decision is that you do not want to provide competitive tax treatment to U.S.-flag vessel operators using their own money—this is not money that belongs to the Government and it is not money that belongs to shipyards. It is our earnings in the international marketplace or in the Jones Act marketplace which we then reinvest in U.S. flag and today U.S.-built vessels.

That is a decision, of course, that is in the hands of the policymakers. We think it is more than fair because what it provides is competitive tax treatment versus the foreign-flag vessels which today are carrying 96 percent of the imports and exports of this country, and they pay no tax.

Mr. TAYLOR. Mr. Finnerty, isn't it also fair to say that unless a vessel has an American flag on the stern it does not get any operating differential subsidy, and when that American vessel puts the American flag on the stern it has the full faith, trust, and con-

fidence of this great Nation to bail it out when an American vessel is attacked by foreign entities at sea. So with privileges come responsibilities.

My point is, when you have the privilege of a Capital Construction Fund, I think you have a responsibility to the people of this country to build that ship in the country. It is a two-way street, as you just said.

Mr. FINNERTY. Mr. Taylor, as I understand the intention of the existing Capital Construction Fund moneys that are in the fund today that were deposited in the context of a requirement that those funds be used only for U.S. building, I believe that is what the present legislation would require. That is what I had been advised. The change would only be prospective, as I understand it.

Mr. TAYLOR. Everything we do affects the future. I think one of the problems with maritime policy is that this Congress has not been looking past its nose very often. I think it is time we started to do that.

Mr. FINNERTY. One of the shortcomings that I have been at a loss to comprehend for decades in this country is that today, although the preponderance of our U.S.-flag fleet is foreign built, U.S.-flagged, foreign built, we cannot deposit any earnings from those ships into the CCF even to build a ship in the United States because the provisions do not allow it, and we certainly cannot deposit any earnings from our foreign flag fleet because the policy does not allow it. These are handicaps that we have placed on ourselves for decades.

Mr. TAYLOR. Thank you for bringing that to our attention. That is something that needs to be addressed. Thank you, Mr. Chairman.

Mr. BATEMAN. Mr. Longley.

Mr. LONGLEY. Thank you, Mr. Chairman. I want to follow up on Mr. Taylor's line of questioning. I want to be careful the way I use this language because I imply maybe only a distinction of scale as opposed to value, that very clearly there appears to be aspects of this agreement that benefit the so-called tier II yards.

Mr. Jones, from reading your testimony and from hearing that, but by the same token, it is also clear that there is a different class of yard along the tier I or what is referred to as the heavier industrial shipbuilding base of the country that feels very threatened by it. I am just wondering to what extent there are aspects of this that can be carved out, and more to the point, Mr. Jones, you alluded to this in your comments, that there were aspects of the overseas subsidies that weren't affecting you or you were in a position to come in under the radar screen to the extent that there were markets that you had access to that enabled you to succeed very well.

The point that I want to make is that we are 100-percent supportive of everything that we can do in this country to build up a maritime industrial base, and that includes all shipyards. We are not focused necessarily on any one component of the shipbuilding industry. But I am very concerned that we have an agreement for the sake of an agreement because it seems to make sense from a publicity standpoint, and we are not dealing substantively with the major issues that must be addressed.

I just take a recent example. I was advised last week that at the big terrorism task force meeting that was held in Egypt there were 4 hours of opening statements by the heads of State present and 40 minutes of discussion, and the press availability exceeded the amount of time available for any discussion whatsoever of the terrorism issues involved. I guess the question is this, and I would ask it of Mr. Bowler as well as Mr. Jones and any other panelist who would like to chime in.

Do we have an opportunity here to potentially refocus some of these negotiations on different aspects of the subsidy question as opposed to the tax and regulatory issues that benefit the different components of the industrial base differently? Mr. Bowler and Mr. Jones.

Mr. BOWLER. Yes, sir, and certainly in asking you to consider the agreement we have pointed out what we think are some things that are certainly going to be detrimental to our industry. One of the things I talked about was, in fact, creative programs, and again, when we went in front of the Ways and Means Committee for this hearing, the large yards were somehow painted as being here with our tin cup out looking for direct subsidies. That is absolutely not true.

However, if there are in fact programs in which the U.S. Government can cost effectively meet, for instance, sealift needs as was suggested in this book, cheaper than we are now, at the same time building commercial ships in this country and the only way you are going to get back into this business is do it, it is not an academic exercise.

Clearly, anything that can be done in terms of your consideration of this agreement that will make it crystal clear that programs that the Congress has advocated like national defense features should be off limits, clearly the DOD doesn't think that or they would not have put out that presolicitation like that. So there are things like that that would not result in any direct subsidies that could strengthen this agreement and help our industry get back into commercial shipbuilding. That is one example.

Mr. JONES. In response, the agreement is perfectly clear on this matter, perfectly clear, and I will read it. The agreement excludes 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 favor of commercial shipbuilding and repair and consistent with this agreement.

What that says is a national defense features program, if it is genuinely for national defense features for military purposes, is exempted from this agreement. You can do it. This Congress can do it.

Mr. LONGLEY. I appreciate what you are saying, but that is not the question. I respect the fact, and I am not asking you to arbitrate the differences. I am trying to say there are aspects of this agreement that are of particular benefit to the shipyards that you represent as opposed to aspects of the agreement that are particularly threatening to the shipyards that you don't represent, and I

am trying to carve out the distinction in terms of what areas are impacting differently. That was the point of my question.

Mr. JONES. I really can't identify anything in this agreement that wouldn't benefit all shipyards. They don't believe that. Mr. Bowler apparently believes it from his statement in the Armed Forces Journal, but I think this agreement allows everybody to have the opportunity to become competitive in the world market.

There is no guarantee in this agreement that I will ever get another contract. I may fall flat on my face. But I believe I am competitive right now and I believe other shipyards, including Avondale, are competitive right now, not for all segments of the market, not for every shipyard that is out there, and not for every type of ship, but we can find our niche markets and build ships in our country.

In terms of building up this country to great shipbuilding status again, you have to understand that we have less than 2 percent of the world's shipbuilding capacities in this country, less than 2 percent. Even if we weren't doing any Navy work, and all the world's yards were at full capacity and we were at full capacity, we would only be 2 percent of the world tonnage, a little less than 2 percent, and even with the improvements that are going on in yards to increase capacity we are not going to increase that by the year 2000.

Mr. LONGLEY. That is exactly the issue.

Mr. BOSSIER. I think if Mr. Bowler were here he would tell you that he was misquoted in that article. Perhaps that has happened to others in the room. He would be glad to tell you that he is dead set against this agreement in its present form.

Mr. ABBOTT. Mr. Longley, the issue of the restructuring and the foreign shipyard's ability to go in and still provide subsidies into shipyards for restructuring—in the face of a standstill agreement that is currently in place, the Germans still put $5.8 billion in subsidy; in place of the standstill agreement the subsidies are still taking place.

If these are not violations of a standstill agreement are they going to be found wrong under the agreement? I have a real problem with this. It seems to me like there are too many loopholes here. If they are going to do it for restructuring, and again, we seem to be the only ones playing by the rules, I really have major concerns.

Mr. BATEMAN. The gentlelady from Florida, Mrs. Fowler.

Mrs. FOWLER. Thank you, Mr. Chairman. Mr. Jones, I want to get back to an issue in Mr. Longley's questions that came up on the defense aspects. Some argue that this agreement is contrary to our national security interest, but you and Mr. Perry, from letters he has written, seem to feel the opposite. Do you think this agreement is a positive or a negative contribution to our national security interest?

Mr. JONES. I think it is absolutely positive. It completely exempts military construction so we can build hopefully as many ships as this committee wants, not as many ships as perhaps the administration might ask for. That is one thing you can do. It is completely unlimited under this agreement. The second thing you can do is have a national defense features program. You can build maritime prepositioning ships for the Marines, build those in U.S. yards,

without prohibition, and thereby meet the Marine Corps as well as the Army's maritime prepositioning needs. That is perfectly allowable under this agreement, and so we have an unlimited opportunity to continue to strengthen our naval forces.

We can use national defense features programs, we can build all the Navy military-oriented ships we want. The only thing we can't do is use that as a guise to subsidize commercial shipping and that is something that we as a country should support.

One of the things that—go ahead if you have another question.

Mrs. FOWLER. When you mentioned the Marine Corps Maritime Prepositioning Program, Mr. Bowler, in reading his testimony, he mentioned that and I was sure he didn't mean to suggest that that program would not be allowed under the OECD agreement. I wanted to make sure I got that clarified here.

Mr. BOWLER. I would say clearly the current Marine Corps prepositioned ships, the 13 ships, we know they are trying to get three more. We would like to see new construction, and there are some other folks who think differently. So three programs which I think could meet military needs with commercial ships, it is the recapitalization of the 13 existing Maritime Preposition Force [MPF] ships, the National Defense Features Program, which Congress has authorized last year, and also we have had meetings with the U.S. Navy who are looking at recapitalizing their auxiliary fleet using commercial ships.

The first, if you will, solicitation that came out from DOD, and I have a copy here, on national defense features says right in there, and we have met with DOD and it is the first thing out of their mouth all the time is this can't violate the OECD shipbuilding agreement. I know the agreement says military ships, and I know most of the people and probably Tom Jones means haze, gray and underway.

In this case these are ships like the current MPS, which are commercially built, but meet strict military needs. Clearly, the DOD feels that there is an area of ambiguity or they would not be putting it in their solicitations.

Mrs. FOWLER. I am sure DOD will clarify that so we can get the ships we need for our defense needs, so I am not too worried about that. But I wanted to make sure that you didn't think the MPF program didn't qualify under this.

Mr. Finnerty, your statement noted that the capital construction fund was an important tax provision for our U.S.-flag ship operators. Does your company view CCF and would U.S. ocean carriers use it in the future?

Mr. FINNERTY. Yes, we do. We have had a capital construction fund for, I would guess, 10 or 15 years now, probably closer to 15 years. We used that fund for the construction of the three modern container ships that we operate in the Alaska trade. We have used the fund for other vessels that we operate in the domestic and foreign commerce. We wish that we could use it a whole lot more.

It is at present, as you know, tied to construction in the United States and once, hopefully, under this new agreement the construction in the United States would be more competitive due to the elimination of foreign subsidies, we would hope, and I think that extends to other carriers as well, we would hope to be able to use

this competitive tax treatment for capital formation that would enable us to expand the U.S.-flag fleet.

Mrs. FOWLER. Your U.S.-flag ships are both international and domestic Jones Act trade. Does the repeal of the 50 percent duty benefit both Jones Act ships and vessels in foreign commerce?

Mr. FINNERTY. Yes, ma'am. The elimination of the 50 percent duty would extend to all U.S.-flag vessels to the extent that they have any repair work or maintenance work done overseas. We at present have a substantial amount of maintenance and repair work done in the United States on our Jones Act vessels by including the ones that call at Jacksonville.

Some of the other vessels have work done overseas as a matter of course but it depends to a great extent on the operational timing of the work that needs to be done coincident with Coast Guard inspection.

Mrs. FOWLER. Mr. Jones, I know, as you state, you are a current chairman and past member of the Shipbuilders Council. I am concerned that as we are getting shipbuilders for and against it, do you think that the shipbuilding industry was adequately briefed and consulted on the content of this agreement during the negotiations? Did they understand the substantive content of it before the agreement was reached and did they have any opportunity to reject any part of the agreement it did not favor before it got finalized?

Mr. JONES. The answer is, yes, to all your questions. We were consulted every step of the way. We had a representative, the president of the Shipbuilders Council of America, attend most of the negotiating sessions and acted, in effect, as an assistant negotiator. He informed the board of every development for the 5-year period.

The board of the council continued throughout that period to continue to support a continuation of negotiations and basically was given an opportunity to review the status, the items that were being negotiated and to give their approval or disapproval, and our positions were taken into account and factored into the agreements up to and including the Jones Act proceedings that is now in this agreement and was agreed to by our board a mere 5 weeks before the signing of our agreement.

The board was headed at the time by the CEO at Newport News and the executive committee consisted of that CEO plus CEO's of other yards. We participated in negotiations every step of the way and we supported the negotiations and virtually every provision that was in that final agreement was passed by us for our approval, and to the best of my knowledge and belief, there was no substantive objection to anything that is in the final agreement.

Mrs. FOWLER. Thank you, Mr. Chairman.

Mr. BATEMAN. I don't want to extend this, but I think there is a different point of view with regard to the accuracy, thoroughness and completeness of the discussions and briefings that took place and whether or not when the shipyards who are now complaining learned more about what was in this agreement that they had any support for it and were not virtually almost in a state of shock. Maybe they were wrong in being shocked. Maybe whoever signed off on it may have been right, but I don't want anyone to leave here thinking there is only one side of that proposition.

With that, I recognize Mr. Pickett.

Mr. PICKETT. Thank you, Mr. Chairman. We still seem confronted with this issue of how to resolve the issue of the fact that beauty often lies in the eye of the beholder and we have people that looked at the same thing here and see something entirely different.

I think everybody here is genuinely concerned that we will take a move or make a move that would be detrimental to the industry as a whole, and further drag down the maritime industry in the country. This would be a case of aiming to do something better than and, in effect, hitting a target of doing something that is bad for the industry. I would like to hear more as to how there can be such a divergence of views about how this agreement is going to impact on the maritime industry as a whole.

Mr. BOWLER. I will just start off. For one thing, when this agreement went in, what was being targeted here are subsidies for large oceangoing commercial ships, and the big producers of these in the country, in the world, are Korea, Japan, and in Europe in terms of big market shares.

A lot of the smaller ships of which, as Mr. Taylor said, are very competitive right now internationally, tugs, oceangoing tugs, barges, but this agreement is focused at the large end of the spectrum and that is what historically in this country the large shipyards have built. That is one reason there is a difference in terms of what, in our opinion, that this was focused at the high end of the markets in terms of ship size.

Other reasons, clearly, we feel that the real country that everyone is worried about right now other than China coming up is Korea. We feel, and I know the Europeans even more strongly feel that this agreement really didn't do anything to deal with capacity.

For instance, the steel agreement that we have signed up to deals with the capacity of the steel mills in various countries. This doesn't deal with it and Korea, in the last 3 years, has doubled its capacity, and basically Korea and Japan have essentially said this is a good agreement. We really don't have to do anything different than we are doing right now. That is why we feel that this agreement is going to continue to erode both the European and, more importantly, it will prevent us from regaining any significant commercial market share.

Mr. BATEMAN. I would like to give the gentleman from Hawaii an opportunity to ask a quick question or make some observations. We have a vote. We are running out of time. It is a series of three votes, I think.

Mr. Abercrombie, if I might ask you to make any comments you might like to for the record.

Mr. PICKETT. Mr. Chairman, I would like to have a response from each of the witnesses to my question. If they care to offer a response to the committee, if you would make one in writing, I would appreciate it.

Mr. BATEMAN. We would welcome a response from any of you.

Mr. ABERCROMBIE. Thank you, Mr. Chairman. I know you are going to have to end the hearing.

Let me make a statement and if anybody cares to respond in writing, as Mr. Pickett suggested, I would be grateful. I hope you just don't think this is a pejorative commentary taking advantage of the fact that we are ending, but I have been following closely other aspects; for example, within the European Union the movement of agricultural goods just across borders, and in our other National Security Committee work with respect to China in particular, and other nations, as to whether or not their version of what constitutes a subsidy is our version of what constitutes a subsidy and whether they are going to live up to agreements or not.

China may only have 4 percent or so of the market now, but that is not the way it will end up being. I have sympathy for Mr. Finnerty's position. I think Sea-Land has been driven, too. As a result of some of the missteps we have made for a number of years, decades probably is closer to it, American shipbuilding and shippers and the whole maritime industry has been driven into circumstances that they probably wish they hadn't been.

I have empathy for Mr. Jones's feistiness with respect to his belief, which I am sure is sincerely held as to our competitive abilities. But I must say, and I am sorry to say, I wish I had more time to go into especially Mr. Finnerty's closely reasoned testimony, that I would have to see evidence, Mr. Chairman, and members of the panel, I would have to see more evidence that there will not be sub rosa subsidies going on, that there will not be favoritism shown through foreign versions of vertical integration the way we call it here, monopoly sweetheart agreements internally. I can't see from at least the testimony presented that we would be able to compete, that these countries would give us an even playing field in which our competition; that is, our desire to be able to compete with them would be recognized by them in any substantial way other than by a nod and a wink.

Oh, sure, once we are on the same field we are going to let you have the ball, too, on an even basis. I am sorry, Mr. Jones. I can see you want to answer, but we are at the 10-minute mark.

Mr. JONES. This is like a poker game. There is a big pot in the middle of the table and there are 10 players around the table. Everybody has a very strong interest in ensuring that the other guy ain't cheating. That is what you are going to see as far as enforcement mechanisms on this agreement. Everybody is going to be watching everybody else. The Koreans will be watching the Japanese like hawks and vice versa.

Mr. ABERCROMBIE. We do that right now with China. I have watched it on shipping. They violate their shipping agreements with impunity. They play us for suckers and saps over and over again. Perhaps it is a nationalism on my part, but I believe we have to ensure the health of the Merchant Marine industry as a whole in this country first and foremost. That is my duty and obligation under the Constitution, and if that requires us to do certain things by way of investment, I don't call it welfare. I call it an investment in our people.

Mr. BATEMAN. Not by design but by virtue of necessity, Mr. Abercrombie gets the last word. We will have to adjourn now with our thanks to the panel.

Mr. ABERCROMBIE. You are very kind to listen to me on that side. I appreciate it.

[Whereupon, at 2:10 p.m., the panel was adjourned.]

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