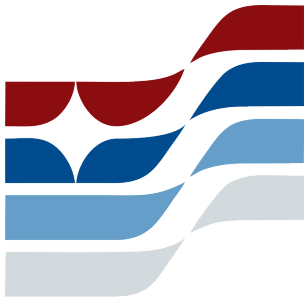




SMI INSIGHT

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CONGRESS ACTS TO MODIFY RESTRICTIONS ON THE USE OF FOREIGN SHIPYARDS FOR NAVY SHIPBUILDING

By Jeremy Steslicki, Senior Vice President

KEY POINTS

- The House and Senate Armed Services Committees have each included language in their respective versions of the National Defense Authorization Act (NDAA) to modify current restrictions on the use of foreign shipyards to build naval vessels.
- The Senate bill would amend current law to strike existing Presidential national security interest waiver authority to permit foreign shipyards to build naval vessels. It would be replaced by a provision granting the Pentagon limited authority to use treaty allies' shipyards to build non-combatant ships – provided that several conditions are met.
- The House NDAA includes a provision that would prohibit any funding in the FY27 bill from being used to contract for the procurement of a battle force ship in a foreign shipyard.
- The House is expected to take up its version of the bill before the July 4th recess. The Senate will move its version later this summer.

The recently released text for the Senate Armed Services Committee's (SASC) FY 2027 National Defense Authorization Act (NDAA) includes a new highly controversial provision to loosen current limitations on the construction of naval vessels in foreign shipyards.

Under current law, there is a general prohibition on the construction of such vessels in foreign shipyards absent a Presidential waiver on the basis of U.S. national security interests. However, there appears to be no record of that waiver authority ever being used.

The Senate NDAA provision, which would crack the door open to naval vessel construction in foreign shipyards, arrives at a moment when the White House has expressed interest in utilizing Japanese and Korean shipyards to construct naval vessels. Indeed, the Department of War's FY 2027 budget request includes \$1.85 billion "to investigate a full spectrum of procurement options to attract more shipbuilding capacity into domestic shipyards and bring additional ships into the fleet – *including studies of the ability of allied shipbuilding companies to build ships or components*" (emphasis added). To be clear, that level of funding is unlikely to be merely for studies. It almost certainly includes some level of procurement.

Senate NDAA provision

The Senate NDAA would strike the President's waiver authority and instead replace it with a conditional set of terms by which a limited amount of construction of U.S. non-combatant naval vessels could be constructed in the shipyards of allied nations. It would permit construction of up to two vessels for each "class of covered vessels," which includes bulk fuel vessels for the carriage of liquid fuels and strategic sealift vessels with a roll-on/roll-off configuration.

Such construction in an allied shipyard would be contingent upon the Secretary of Defense determining that several conditions had been met. First, the Secretary would need to find that relying on a foreign shipyard(s) is in the "national security interest of the United States, supported by the evidence, for purposes of interoperability with allies and partners, forward logistics support, or accelerating achievement of fleet capacity requirements." Second, as noted above, construction could only occur in the shipyards of treaty allies, and those allies would need to be found to have adequate capacity to produce the vessel(s). And third, any such activity would need to be concurrent with



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“direct capital investments in the maritime industrial base of the United States” so that by the fourth vessel of a covered class, the Department will have onshored its construction and supply chain. The provision appears to have an inconsistency regarding the timeline for transitioning to U.S. construction—in one case, noted above, by the fourth ship, in another case, by the third ship. This is a significant difference that will need to be resolved.

Within 30 days of the Secretary’s determination, the Pentagon would transmit a report to congressional defense committees certifying that the three aforementioned conditions were met, identifying the types of vessels to be constructed abroad as well as the allied nation(s) where the construction would take place, describing “the enforceable provisions that [would] govern the protection of classified information and controlled unclassified information... during construction,” and explaining the “sourcing plan and schedule to onshore the supply chain and the plan for construction of the third and subsequent vessels of the class of covered vessels in a shipyard in the United States.”

The bill would also require the Secretary to ensure that all sensitive parts of the construction – critical mission systems, command and control equipment, and secure communication systems – would be installed in the United States “or at a secure allied facility,” the “vessels are projected to be constructed and delivered faster” than they would be at a U.S. shipyard or that some other material benefit would result from their construction in a foreign shipyard, the “software and hardware related to all machinery control systems, cargo and ballast control systems, power and electrical systems, and safety systems are secure,” and “a lifecycle sustainment plan is approved by the Secretary for the class of covered vessels, including class-standard repair parts.” However, under the bill, these additional conditions are *not* required to be among the Department’s certifications to Congress.

The SASC is placing a lot of trust in the current and future administrations relative to implementation and enforcement of these conditions, which aim to mitigate harm to the U.S. shipbuilding industry. A stronger legislative approach would force the Navy to incorporate key limitations – like those regarding foreign direct investment into U.S. shipbuilding infrastructure and committing to a U.S. supplier base – into contractual requirements. Furthermore, Congress could require contractual incentives intended to maximize U.S. shipboard content as soon as possible. Congress has a difficult task balancing the dual needs of rapidly getting more assets into the fleet and strengthening the U.S. shipbuilding industrial base. It should move deliberately on this topic, ensuring any legislation contains enforceable oversight.

House NDAA amendment

During the House Armed Services Committee’s mark-up of its version of the NDAA, Rep. Jared Golden (D-ME) was successful in adding an amendment prohibiting, in fiscal year 2027, any Navy funding “for the procurement of a battle force ship to be built [in] a foreign shipyard that is to be commissioned” a U.S. warship. Note that this prohibition does not conflict with the SASC provision because the latter’s covered vessels are not counted as part of the Battle Force inventory.

What’s next?

The House is expected to take up its version of the NDAA before the July 4th congressional recess. The Senate’s version is expected to advance to the floor later this summer. Regarding the proposed \$1.85 billion for “studies,” those funds were requested by the Administration to be included in a reconciliation package this year. However, the timing of such a bill is still very much in question as it is not yet entirely clear that the legislative calendar will permit another reconciliation bill nor is it obvious that sufficient political will is present on Capitol Hill at the moment to move it before the midterm elections.