

103D CONGRESS
1ST SESSION

S. 990

To promote fair trade for the United States shipbuilding and repair industry.

IN THE SENATE OF THE UNITED STATES

MAY 19 (legislative day, APRIL 19), 1993

Mr. BREAUX (for himself, Ms. MIKULSKI, Mr. LOTT, Mr. MITCHELL, Mr. WARNER, Mrs. FEINSTEIN, Mr. COHEN, Mr. WOFFORD, Mr. ROCKEFELLER, Mr. LIEBERMAN, Mr. SARBANES, Mr. SPECTER, Mr. COCHRAN, Mr. ROBB, Mr. JOHNSTON, Mr. SIMON, Mr. RIEGLE, Mr. PELL, Mr. HEFLIN, and Mr. DODD) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To promote fair trade for the United States shipbuilding
and repair industry.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Shipbuilding Trade
5 Reform Act of 1993”.

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 (a) FINDINGS.—The Congress finds that—

8 (1) in 1981, the United States Government ter-
9 minated funding for the construction-differential

1 subsidy program, thereby ending direct subsidization
2 of commercial shipbuilding in the United States;

3 (2) since 1981, the international market for
4 ship construction has been distorted by a wide array
5 of subsidies and other anticompetitive practices by
6 foreign countries, including but not limited to the
7 member countries of Working Party 6 of the Organi-
8 zation for Economic Cooperation and Development;

9 (3) such subsidies and anticompetitive practices
10 include, but are not limited to, direct grants, pref-
11 erential refinancing, equity infusions, research and
12 development assistance, restructuring aid, special
13 tax concessions, debt forgiveness, and other forms of
14 direct and indirect assistance;

15 (4) foreign countries that directly or indirectly
16 provide subsidies or other forms of anticompetitive
17 assistance for the construction or repair of vessels
18 are engaging in unjustifiable, unreasonable, and dis-
19 criminatory trade practices which—

20 (A) burden and restrict United States
21 commerce;

22 (B) materially injure the United States
23 ship construction and repair industry; and

24 (C) create general or special conditions un-
25 favorable to the ability of United States ship-

1 builders to engage in the construction of vessels
2 for international commerce;

3 (5) foreign shipbuilding subsidies have caused,
4 and threaten to cause, material injury to the United
5 States shipbuilding and ship repair industry, as evi-
6 denced by—

7 (A) the closure of more than forty major
8 shipyards and the loss of over one hundred-
9 twenty thousand jobs in shipyards and their
10 supplier base since 1981;

11 (B) the potential loss of another one hun-
12 dred-eighty thousand jobs by 1998 if foreign
13 subsidies are not eliminated;

14 (C) the decline in the United States share
15 of the international commercial vessel construc-
16 tion market from 7.9 percent in 1979 to less
17 than 1 percent in 1991;

18 (D) the substantial reduction in shipyard
19 profitability and the industry's difficulty in rais-
20 ing capital;

21 (E) the dramatic decline in the capacity
22 utilization of United States shipyards and the
23 lost opportunities for technological advance-
24 ment; and

1 (F) the significant price underselling by
2 foreign shipyards;

3 (6) existing United States trade laws and trade
4 agreements provide limited redress to domestic pro-
5 ducers of ships for the trade-distorting subsidies and
6 dumping practices of foreign shipbuilders;

7 (7) a strong, effective multilateral agreement
8 among shipbuilding nations to eliminate trade-dis-
9 torting practices in the ship construction industry is
10 the best means of providing for fair international
11 competition; however, absent such an agreement,
12 greater redress under United States law against un-
13 fair and unreasonable foreign trade practices in
14 commercial ship construction is necessary;

15 (8) a viable United States ship construction and
16 repair industry is necessary to achieve the national
17 defense and economic security interests of the
18 United States; and

19 (9) United States shipyards, which have become
20 almost exclusive defense contractors, are positioning
21 themselves to make those investments in commercial
22 facilities, ship designs, manufacturing process, and
23 structural reorganization that are necessary for their
24 conversion to compete in the international commer-
25 cial ship construction and repair market and thereby

1 ensure a viable United States industry which can re-
2 spond to the Nation's future national security re-
3 quirements; however, this conversion to the commer-
4 cial market cannot be achieved unless the massive
5 subsidies provided by foreign governments for the
6 construction and repair of commercial ships are
7 eliminated.

8 (b) PURPOSE.—It is the purpose of this Act to ensure
9 fair trade in the commercial shipbuilding and repair indus-
10 try by providing for additional trade remedies against un-
11 fair foreign competition.

12 **SEC. 3. DEFINITIONS.**

13 As used in this Act—

14 (1) The term “conditions unfavorable to the
15 ability of any United States shipbuilder to engage in
16 the construction or repair of vessels for international
17 commerce” includes, but is not limited to, any condi-
18 tions available to, and favorable for, foreign ship-
19 builders which are not reciprocally available to and
20 favorable for United States shipbuilders and
21 which—

22 (A) provide any disincentive to investment
23 in facilities, equipment, and technology for the
24 construction or repair of vessels in the United
25 States;

1 (B) contribute to any reduction in the
2 competitiveness of any United States ship-
3 builder to engage in the construction or repair
4 of vessels for international commerce; or

5 (C) otherwise contribute to any distortion
6 of the international market for the construction
7 or repair of vessels.

8 (2) The term “construction” includes recon-
9 struction.

10 (3) The term “interested party” means—

11 (A) a person that engages in the construc-
12 tion or repair of vessels in the United States;

13 (B) a certified union or recognized union
14 or group of workers which is representative of
15 workers in an industry that engages in the con-
16 struction or repair of vessels in the United
17 States;

18 (C) a trade or business association whose
19 members include firms, partnerships, or other
20 entities, which engage in the construction or re-
21 pair of vessels in the United States; and

22 (D) an association, a majority of whose
23 members is composed of interested parties de-
24 scribed in subparagraphs (A), (B), and (C)
25 that, respectively, engage in vessel construction,

1 represent workers in an industry that engages
2 in vessel construction, and have members that
3 engage in vessel construction.

4 (4) The term “Secretary” means the Secretary
5 of Commerce.

6 (5) The term “subsidizing country list” and
7 “list” mean the list established under section 4(a).

8 (6) The term “subsidy” includes, but is not lim-
9 ited to, any of the following:

10 (A) Officially supported export credits and
11 development assistance.

12 (B) Direct official operating support to the
13 vessel construction and repair industry, or to a
14 related entity that favors the operation of vessel
15 construction and repair, including—

16 (i) grants;

17 (ii) loans and loan guarantees other
18 than those available on the commercial
19 market;

20 (iii) forgiveness of debt;

21 (iv) equity infusions on terms incon-
22 sistent with commercially reasonable in-
23 vestment practices;

24 (v) preferential provision of goods and
25 services; and

1 (vi) public sector ownership of com-
2 mercial shipyards on terms inconsistent
3 with commercially reasonable investment
4 practices.

5 (C) Direct official support for investment
6 in the vessel construction and repair industry,
7 or to a related entity that favors the operation
8 of vessel construction and repair, including the
9 kinds of support listed in clauses (i) through (v)
10 of subparagraph (B), and any restructuring
11 support, except public support for social pur-
12 poses directly and effectively linked to shipyard
13 closures.

14 (D) Assistance in the form of grants, pref-
15 erential loans, preferential tax treatment, or
16 otherwise, that benefits or is directly related to
17 vessel construction and repair for purposes of
18 research and development that is not equally
19 open to domestic and foreign enterprises.

20 (E) Tax policies and practices that favor
21 the vessel construction and repair industry, di-
22 rectly or indirectly, such as tax credits, deduc-
23 tions, exemptions, and preferences, including
24 accelerated depreciation, if the benefits are not

1 generally available to persons or firms not en-
2 gaged in vessel construction or repair.

3 (F) Any official regulation or practice that
4 authorizes or encourages persons or firms en-
5 gaged in vessel construction or repair to enter
6 into anticompetitive arrangements.

7 (G) Any indirect support directly related,
8 in law or in fact, to vessel construction and re-
9 pair at national yards, including any public as-
10 sistance favoring vessel owners with an indirect
11 effect on vessel construction or repair activities,
12 and any assistance provided to suppliers to sig-
13 nificant inputs to vessel construction, which re-
14 sults in benefits to domestic shipbuilders.

15 (H) Any export subsidy identified in the Il-
16 lustrative List of Export Subsidies in the Annex
17 to the Agreement on Interpretation and Appli-
18 cation of Articles VI, XVI, and XXIII of the
19 General Agreement on Tariffs and Trade or
20 any other export subsidy that may be prohibited
21 as a result of the Uruguay Round of trade
22 negotiations.

23 (7) The term “vessel” means any self-propelled,
24 seagoing vessel—

1 (A) of not less than one hundred gross
2 tons, as measured under the International Con-
3 vention on Tonnage Measurement of Ships,
4 1969; and

5 (B) not exempt from entry under section
6 441 of the Tariff Act of 1930 (19 U.S.C.
7 1441).

8 **SEC. 4. LISTING OF SUBSIDIZING COUNTRIES.**

9 (a) ESTABLISHMENT OF LIST.—The Secretary shall
10 establish and maintain a subsidizing country list that shall
11 contain the name of each foreign country that is placed
12 on the list under subsection (b), subsection (d), or sub-
13 section (e) of this section, under section 5(a), or under
14 section 6(c). The Secretary shall revise the list on the
15 basis of the requirements of this Act and shall, on at least
16 a biannual basis, publish in the Federal Register the most
17 current list.

18 (b) STATUTORY LISTING.—

19 (1) IN GENERAL.—Unless the Secretary deter-
20 mines, based on clear and convincing evidence, that
21 a foreign country that was a party to negotiating a
22 multilateral agreement for the elimination of ship-
23 building subsidies in Working Party 6 of the Organi-
24 zation for Economic Cooperation and Development
25 on October 16, 1991, does not provide, directly or

1 indirectly, any subsidy for the construction or repair
2 of vessels, the Secretary shall, on the date of enact-
3 ment of this Act—

4 (A) place the foreign country on the subsidi-
5 zing country list;

6 (B) notify the foreign country of its inclu-
7 sion on the list; and

8 (C) publish notice of the listing in the
9 Federal Register.

10 (2) DURATION OF LISTING.—Each foreign
11 country listed under subsection (a) as a result of
12 this subsection shall remain on the subsidizing coun-
13 try list until such time as the foreign country signs
14 a trade agreement with the United States that pro-
15 vides for the immediate elimination of subsidies for
16 the construction and repair of vessels (including the
17 elimination of continuing benefits from prior subsidy
18 programs).

19 (c) INVESTIGATIONS.—

20 (1) INITIATION OF INVESTIGATIONS.—The Sec-
21 retary shall initiate an investigation into the prac-
22 tices of any foreign country (other than a country
23 listed under subsection (b)) within twenty days after
24 receipt of a petition for such an investigation from
25 an interested party or whenever the Secretary has

1 reasonable cause to believe that such country pro-
2 vides, directly or indirectly, any subsidy for the con-
3 struction or repair of vessels.

4 (2) ADMINISTRATIVE PROCEDURE FOR INVES-
5 TIGATIONS; PRELIMINARY DETERMINATIONS.—

6 (A) NOTICE.—Within seven days after ini-
7 tiating an investigation under paragraph (1),
8 the Secretary shall publish in the Federal Reg-
9 ister a notice of such investigation, together
10 with a request for public comments.

11 (B) PUBLIC COMMENTS.—The Secretary
12 shall—

13 (i) receive public comments during the
14 thirty-day period that begins on the date
15 on which notice is published under sub-
16 paragraph (A); and

17 (ii) subject to section 7(a), make such
18 comments available to the general public
19 upon request.

20 (C) PRELIMINARY DETERMINATION.—
21 Within thirty days after the close of the public
22 comment period referred to in subparagraph
23 (B), the Secretary, on the basis of the informa-
24 tion contained in the record, shall make a pre-
25 liminary determination regarding whether the

1 foreign country provides, directly or indirectly,
2 any subsidy for the construction or repair of
3 vessels.

4 (D) NOTICE OF PRELIMINARY DETERMINA-
5 TION.—Within seven days after the date on
6 which a preliminary determination is made
7 under subparagraph (C), the Secretary shall
8 published in the Federal Register a notice of
9 the preliminary determination, together with—

10 (i) an explanation of the determina-
11 tion, including the nature and extent of
12 any subsidy identified as the basis for the
13 preliminary determination; and

14 (ii) a request for public comment re-
15 garding the preliminary determination.

16 (E) PUBLIC COMMENTS ON PRELIMINARY
17 DETERMINATION.—The Secretary shall—

18 (i) receive public comments on such
19 preliminary determination, during the thir-
20 ty-day period that begins on the date on
21 which notice is published under subpara-
22 graph (D); and

23 (ii) subject to section 7(a), make such
24 comments available to the general public
25 upon request.

1 (d) EMERGENCY LISTING.—If at any time the Sec-
2 retary determines that information provided by any inter-
3 ested party presents a prima facie case that a foreign
4 country is providing any subsidy for the construction or
5 repair of vessels, the Secretary shall, within seven days
6 after receiving such evidence, place that country on the
7 subsidizing country list. Within seven days after making
8 an emergency listing under this subsection, the Secretary
9 shall—

10 (1) notify the affected foreign country thereof;

11 (2) published in the Federal Register a notice
12 of the determination and the emergency listing, to-
13 gether with a request for public comment and a
14 schedule for an investigation into the alleged sub-
15 sidy; and

16 (3) initiate an investigation into the alleged
17 subsidy. An investigation initiated under paragraph
18 (3) shall be concluded by the Secretary within sixty
19 days after the date of initiation. Upon completion of
20 the investigation, the Secretary shall make a final
21 determination under subsection (e).

22 (e) FINAL DETERMINATION.—

23 (1) IN GENERAL.—Within—

24 (A) Thirty days after the close of the pub-
25 lic comment period referred to in subsection

1 (c)(2)(E)(i), in case of an investigation initiated
2 under subsection (c)(1); or

3 (B) Thirty days after the completion of an
4 investigation regarding an emergency listing
5 under subsection (d);

6 the Secretary shall make a final determination re-
7 garding whether a foreign country provides, directly
8 or indirectly, any subsidy for the construction or re-
9 pair of vessels. Any determination made by the Sec-
10 retary under this subsection shall be based solely
11 upon information contained in the record, including
12 that information which is otherwise treated as pro-
13 prietary under section 7(a).

14 (2) NOTIFICATION AND PUBLICATION OF LIST-
15 ING.—If the Secretary determines under paragraph
16 (1) that a foreign country provides, directly or indi-
17 rectly, any subsidy for the construction or repair of
18 vessels, the Secretary shall, within seven days after
19 the date of the determination—

20 (A) place the foreign country on the subsi-
21 dizing country list;

22 (B) notify the foreign country of its inclu-
23 sion on the list; and

24 (C) publish in the Federal Register a no-
25 tice of the determination and listing, together

1 with a full explanation of the determination, in-
2 cluding the nature and extent of any subsidy
3 identified as the basis for the determination.

4 (f) RECONSIDERATION AND REMOVAL OF LIST-
5 INGS.—

6 (1) RECONSIDERATION.—A final determination
7 under subsection (e) that results in the placement of
8 a foreign country on the subsidizing country list may
9 be reconsidered by the Secretary if—

10 (A) after receiving an application for re-
11 consideration from such foreign country, the
12 application alleges material error in the deter-
13 mination or alleges changed circumstances con-
14 cerning the elimination by the foreign country
15 of its subsidy practices and the Secretary con-
16 siders the allegations sufficient to warrant a re-
17 consideration; or

18 (B) the Secretary receives information con-
19 cerning the signing of an agreement between
20 the United States Government and such foreign
21 country that provides for the immediate elimi-
22 nation by such country of construction and re-
23 pair subsidies for vessels.

24 (2) RESTRICTION ON RECONSIDERATION.—A
25 foreign country may not make more than one appli-

1 cation for reconsideration under this subsection in
2 any calendar year.

3 (3) BURDEN OF PERSUASION.—In any recon-
4 sideration under paragraph (1)(A), the burden of
5 persuasion is on the applicant, regarding whether
6 material error exists or whether there are changed
7 circumstances sufficient to warrant a determination
8 that the foreign country should be removed from the
9 list.

10 (4) REMOVAL FROM LIST.—The Secretary may
11 remove a foreign country from the list only if the
12 Secretary determines—

13 (A) based solely on the information con-
14 tained in the record, including that information
15 which is otherwise treated as proprietary under
16 section 7(a), that the foreign country does not
17 provide any subsidy, directly or indirectly, for
18 the construction or repair of vessels (including
19 any continuing benefit from any prior subsidy
20 program); or

21 (B) that there is a signed agreement be-
22 tween the United States Government and the
23 foreign country that provides for the immediate
24 elimination of subsidies for the construction and
25 repair of vessels.

1 (5) ADMINISTRATIVE PROCEDURES FOR RECON-
2 SIDERATION.—

3 (A) NOTICE AND COMMENT.—After receiv-
4 ing an application for reconsideration under
5 paragraph (1) from a foreign country, the Sec-
6 retary shall—

7 (i) within seven days publish in the
8 Federal Register the text of the applica-
9 tion, together with a request for public
10 comments; and

11 (ii) receive comments from the public
12 for a period of sixty days after the date of
13 publication and, subject to section 7(a),
14 make such comments available to the gen-
15 eral public upon request.

16 (B) REVIEW AND DETERMINATION.—With-
17 in ninety days after receiving an application for
18 reconsideration under paragraph (1), the Sec-
19 retary shall—

20 (i) review the comments received
21 under subparagraph (A) and issue a final
22 affirmative or negative determination re-
23 garding the removal of the foreign country
24 from the list; and

1 (ii) publish notice in the Federal Reg-
2 ister of the determination, together with a
3 full explanation thereof.

4 (g) JUDICIAL REVIEW.—

5 (1) REVIEW OF DETERMINATION.—Within thir-
6 ty days after the date of publication in the Federal
7 Register of a final determination of the Secretary
8 made under subsection (e) or (f)(5)(B), any inter-
9 ested party may commence an action in the United
10 States Court of International Trade by filing concur-
11 rently a summons and complaint, each with the con-
12 tent and in the form, manner, and style prescribed
13 by the rules of that court, contesting any factual
14 findings or legal conclusions upon which the deter-
15 mination is based.

16 (2) PROCEDURES AND FEES.—The procedures
17 and fees set forth in chapter 169 of title 28, United
18 States Code, apply to an action under this sub-
19 section.

20 (3) STANDARD OF REVIEW.—The court shall
21 hold unlawful any determination, finding, or conclu-
22 sion found to be unsupported by substantial evidence
23 on the record, or otherwise not in accordance with
24 law.

1 (4) RECORD OF REVIEW.—The record for re-
2 view shall consist of a copy of all information pre-
3 sented to or obtained by the Secretary during the
4 course of the administrative proceeding, including all
5 governmental memoranda pertaining to the case and
6 the record of ex parte meetings, as well as a copy
7 of the determination, all transcripts or records of
8 conferences and hearings, and all notices published
9 in the Federal Register.

10 (5) STANDING.—Any person who was a party
11 to the administrative proceedings described in this
12 section shall have the right to appear and be heard
13 as a party in interest before the United States Court
14 of International Trade under this subsection. The
15 party filing the action shall notify all such persons
16 of the filing of an action under this section, in the
17 form and manner, and within the time, prescribed
18 by the rules of the court.

19 (6) CONFORMING AMENDMENT.—Section 1581
20 of title 28, United States Code, is amended by add-
21 ing the following subsection:

22 “(k) The Court of International Trade shall have ex-
23 clusive jurisdiction of any civil action commenced under
24 section 4(g) of the Shipbuilding Trade Reform Act of
25 1993.”.

1 **SEC. 5. PENALTIES.**

2 (a) PENALTY FOR FALSE INFORMATION AND RE-
3 NEWAL OF SUBSIDIES.—

4 (1) IN GENERAL.—The Secretary shall place a
5 foreign country on the subsidizing country list for a
6 period of not less than five years if the Secretary—

7 (A) determines that a foreign country pro-
8 vided the Secretary with false or misleading in-
9 formation during any investigation or reconsid-
10 eration under section 4; or

11 (B) after making a final determination
12 under section 4(e) or 4(f) that the foreign coun-
13 try is not providing a subsidy, determines that
14 the foreign country provides, directly or indi-
15 rectly, any new construction or repair subsidy
16 (including the reinstatement of any benefit
17 under any prior subsidy program).

18 A listing required by this subsection shall be made
19 within thirty days after the date of the determina-
20 tion under subparagraph (A) or (B).

21 (2) TIME LIMITS FOR DETERMINATIONS.—The
22 Secretary shall complete action on a determination
23 under subparagraph (A) or (B) of paragraph (1)
24 within thirty days after the date on which the Sec-
25 retary receives information indicating a likelihood

1 that the foreign country concerned acted in the man-
2 ner described in that subparagraph.

3 (b) PENALTIES FOR FAILURE TO ELIMINATE SUB-
4 SIDIES.—

5 (1) BASIS FOR IMPOSITION OF PENALTIES.—

6 The Secretary shall take action under paragraphs
7 (2), (3), and (4) with respect to a foreign country
8 if—

9 (A) the Secretary determines that the for-
10 eign country has been notified of its inclusion
11 on the subsidizing country list and has failed,
12 within one hundred and eighty days after that
13 notification, to eliminate subsidies for the con-
14 struction and repair of vessels, or to enter into
15 an agreement that requires the immediate
16 elimination of such subsidies; or

17 (B) the Secretary places the foreign coun-
18 try on the subsidizing country list in accordance
19 with section 6(c).

20 (2) PENALTIES FOR NEW AFFECTED VES-
21 SELS.—The Secretary shall take one or more of the
22 following actions with respect to any new affected
23 vessel of such foreign country:

24 (A) Limit the sailings of the vessel to or
25 from the United States, or the amount of cargo

1 carried, by the vessel to not less than 50 per-
2 cent of the number of sailings, or the amount
3 of cargo carried, by the vessel during the imme-
4 diately preceding full calendar year.

5 (B) Impose on the vessel a fee of not less
6 than \$500,000 and not more than \$1,000,000
7 per voyage.

8 (C) Direct the appropriate customs officer
9 at any port or place of destination in the Unit-
10 ed States to refuse the clearance required by
11 section 4197 of the Revised Statutes (46 App.
12 U.S.C. 91) to the vessel.

13 (D) Direct the Secretary of the department
14 in which the Coast Guard is operating to deny
15 entry for purposes of oceanborne trade of the
16 vessel to any port or place in the United States
17 or the navigable waters of the United States.

18 (3) PENALTIES FOR EXISTING AFFECTED VES-
19 SELS.—The Secretary shall take either or both of
20 the actions described in subparagraphs (A) and (B)
21 of paragraph (2) with respect to an existing affected
22 vessel of such foreign country, if the Secretary finds
23 the existence of conditions unfavorable to the ability
24 of any United States shipbuilder to engage in the
25 construction or repair of vessels for international

1 commerce which arise out of, or result from a sub-
2 sidy provided by such country.

3 (4) CARGO DIVERSION.—The Secretary shall di-
4 rect the appropriate customs officer to deny entry of
5 cargo into the United States that has been trans-
6 ported on an affected vessel of such foreign country,
7 if that cargo has been transported to a port or place
8 in the United States through a foreign port or place
9 in a country contiguous to the United States.

10 (5) DURATION OF PENALTIES.—Any penalty
11 imposed on a foreign country under the subsection
12 shall remain in effect until such country is removed
13 from the subsidizing country list in accordance with
14 section 4(f).

15 (6) DEFINITIONS.—As used in this sub-
16 section—

17 (A) The term “affected vessel” means a
18 vessel—

19 (i) that is documented under the laws
20 of the foreign country concerned; or

21 (ii) the controlling interest in which is
22 held by a citizen or national of, or a legal
23 entity existing under the laws of, such for-
24 eign country, regardless of whether the

1 vessel is documented under the laws of
2 that country.

3 (B) The term “existing affected vessel”
4 means an affected vessel that is not a new
5 affected vessel.

6 (C) The term “new affected vessel” means
7 an affected vessel that was constructed after
8 the date of enactment of this Act, unless such
9 construction was completed within thirty
10 months after such date of enactment under a
11 contract entered into before such date of enact-
12 ment.

13 **SEC. 6. TRADE AGREEMENTS.**

14 (a) IN GENERAL.—Any negotiation, to which the
15 United States is a party, for the elimination of subsidies
16 for the construction or repair of vessels by foreign coun-
17 tries shall be conducted by the United States Government
18 in full consultation with the affected industries in the
19 United States.

20 (b) MONITORING.—The Secretary shall monitor the
21 compliance of each foreign country with any agreement
22 to which the United States and such country are parties,
23 requiring the elimination of subsidies for the construction
24 or repair of vessels. The Secretary shall publish annually
25 in the Federal Register the findings made by the Secretary

1 under this subsection, together with a request for public
2 comments.

3 (c) PENALTY FOR NONCOMPLIANCE.—If, based on
4 the findings made and the public comments received under
5 subsection (b), the Secretary determines (within ninety
6 days after the date of publication of the findings under
7 subsection (b)) that a foreign country is not in compliance
8 with the agreement being monitored, the Secretary shall,
9 within seven days after making such determination, place
10 such foreign country on the subsidizing country list.

11 **SEC. 7. GENERAL ADMINISTRATIVE PROVISIONS.**

12 (a) PROPRIETARY INFORMATION.—The procedures
13 set forth in section 777 of the Tariff Act of 1930 (19
14 U.S.C. 1677f) shall govern the rights of access to informa-
15 tion obtained by the Secretary during the course of any
16 investigation conducted under section 4.

17 (b) INFORMATION USED IN MAKING DETERMINA-
18 TIONS.—The Secretary shall, before making any final de-
19 termination under section 4, 5, or 6, verify all information
20 that will be relied upon in making that determination. If
21 the Secretary is unable to verify any information submit-
22 ted, the Secretary shall use the best information available
23 as the basis for action. Whenever a party refuses or is
24 unable to produce the information requested in a timely
25 manner and in the form provided, the Secretary shall use

1 the best information otherwise available. All information
2 presented to or obtained by the Secretary shall be part
3 of the record of the proceeding.

4 (c) PUBLIC AVAILABILITY OF DETERMINATIONS.—

5 The Secretary shall make available for public inspection
6 the text of all determinations made under section 4, 5,
7 or 6.

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