

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

A BILL

To approve and implement the OECD Shipbuilding Trade Agreement.

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 Agreement Act”.

6 **SEC. 2. APPROVAL OF THE SHIPBUILDING AGREEMENT.**

7 The Congress approves The Agreement Respecting
8 Normal Competitive Conditions in the Commercial Ship-
9 building and Repair Industry (hereafter in this Act re-

1 ferred to as the “Shipbuilding Agreement”), a reciprocal
 2 trade agreement which resulted from negotiations under
 3 the auspices of the Organization for Economic Coopera-
 4 tion and Development, and was entered into on December
 5 21, 1994.

6 **SEC. 3. EFFECTIVE DATE.**

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

10 **TITLE I—INJURIOUS PRICING**
 11 **AND COUNTERMEASURES**

12 **SEC. 101. INJURIOUS PRICING AND COUNTERMEASURES**
 13 **PROCEEDINGS.**

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

16 **“TITLE VIII—INJURIOUS PRIC-**
 17 **ING AND COUNTERMEASURES**
 18 **RELATING TO SHIPBUILDING**

“Subtitle A—Injurious Pricing Charge and Countermeasures

- “Sec. 801. Injurious pricing charge.
- “Sec. 802. Procedures for initiating an injurious pricing investigation.
- “Sec. 803. Preliminary determinations.
- “Sec. 804. Termination or suspension of investigation.
- “Sec. 805. Final determinations.
- “Sec. 806. Imposition and collection of injurious pricing charge.
- “Sec. 807. Imposition of countermeasures.
- “Sec. 808. Injurious pricing petitions by third countries.

“Subtitle B—Special Rules

- “Sec. 821. Export price.
- “Sec. 822. Normal value.

“Sec. 823. Currency conversion.

“Subtitle C—Procedures

“Sec. 841. Hearings.

“Sec. 842. Determinations on the basis of the facts available.

“Sec. 843. Access to information.

“Sec. 844. Conduct of investigations.

“Sec. 845. Administrative action following shipbuilding agreement panel reports.

“Subtitle D—Definitions

“Sec. 861. Definitions.

1 **“Subtitle A—Injurious Pricing**
 2 **Charge and Countermeasures**

3 **“SEC. 801. INJURIOUS PRICING CHARGE.**

4 “(a) BASIS FOR CHARGE.—If—

5 “(1) the administering authority determines
 6 that a foreign vessel has been sold directly or indi-
 7 rectly to one or more United States buyers at less
 8 than its fair value, and

9 “(2) the Commission determines that—

10 “(A) an industry in the United States—

11 “(i) is or has been materially injured,

12 or

13 “(ii) is threatened with material in-
 14 jury, or

15 “(B) the establishment of an industry in
 16 the United States is or has been materially re-
 17 tarded,

18 by reason of the sale of such vessel, then there shall
 19 be imposed upon the foreign producer of the subject

1 vessel an injurious pricing charge, in an amount
2 equal to the amount by which the normal value ex-
3 ceeds the export price for the vessel. For purposes
4 of this subsection and section 805(b)(1), a reference
5 to the sale of a foreign vessel includes the creation
6 or transfer of an ownership interest in the vessel, ex-
7 cept for an ownership interest created or acquired
8 solely for the purpose of providing security for a
9 normal commercial loan.

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

14 **“SEC. 802. PROCEDURES FOR INITIATING AN INJURIOUS**
15 **PRICING INVESTIGATION.**

16 “(a) INITIATION BY ADMINISTERING AUTHORITY.—

17 “(1) GENERAL RULE.—Except in the case in
18 which subsection (d)(6) applies, an injurious pricing
19 investigation shall be initiated whenever the admin-
20 istering authority determines, from information
21 available to it, that a formal investigation is war-
22 ranted into the question of whether the elements
23 necessary for the imposition of a charge under sec-
24 tion 801(a) exist, and whether a producer described

1 in section 861(17)(C) would meet the criteria of sub-
2 section (b)(1)(B) for a petitioner.

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

10 “(b) INITIATION BY PETITION.—

11 “(1) PETITION REQUIREMENTS.—(A) Except in
12 a case in which subsection (d)(6) applies, an injuri-
13 ous pricing proceeding shall be initiated whenever an
14 interested party, as defined in subparagraph (C),
15 (D), (E), or (F) of section 861(17), files a petition
16 with the administering authority, on behalf of an in-
17 dustry, which alleges the elements necessary for the
18 imposition of an injurious pricing charge under sec-
19 tion 801(a) and the elements required under sub-
20 paragraph (B), (C), (D), or (E) of this paragraph,
21 and which is accompanied by information reasonably
22 available to the petitioner supporting those allega-
23 tions and identifying the transaction concerned.

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

1 “(I) if the vessel was sold through a broad
2 multiple bid, the petition shall include informa-
3 tion indicating that the petitioner was invited to
4 tender a bid on the contract at issue, the peti-
5 tioner actually did so, and the bid of the peti-
6 tioner substantially met the delivery date and
7 technical requirements of the bid,

8 “(II) if the vessel was sold through any
9 bidding process other than a broad multiple bid
10 and the petitioner was invited to tender a bid
11 on the contract at issue, the petition shall in-
12 clude information indicating that the petitioner
13 actually did so and the bid of the petitioner
14 substantially met the delivery date and tech-
15 nical requirements of the bid, or

16 “(III) except in a case in which the vessel
17 was sold through a broad multiple bid, if there
18 is no invitation to tender a bid, the petition
19 shall include information indicating that the pe-
20 titioner was capable of building the vessel con-
21 cerned and, if the petitioner knew or should
22 have known of the proposed purchase, it made
23 demonstrable efforts to conclude a sale with the
24 United States buyer consistent with the delivery
25 date and technical requirements of the buyer.

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

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

9 “(II) general information on the sale was
10 available from brokers, financiers, classification
11 societies, charterers, trade associations, or other
12 entities normally involved in shipbuilding trans-
13 actions with whom the petitioner had regular
14 contacts or dealings.

15 “(C) If the petitioner is an interested party de-
16 scribed in section 861(17)(D), the petition shall in-
17 clude information indicating that members of the
18 union or group of workers described in that section
19 are employed by a producer that meets the require-
20 ments of subparagraph (B) of this paragraph.

21 “(D) If the petitioner is an interested party de-
22 scribed in section 861(17)(E), the petition shall in-
23 clude information indicating that a member of the
24 association described in that section is a producer

1 that meets the requirements of subparagraph (B) of
2 this paragraph.

3 “(E) If the petitioner is an interested party de-
4 scribed in section 861(17)(F), the petition shall in-
5 clude information indicating that a member of the
6 association described in that section meets the re-
7 quirements of subparagraph (C) or (D) of this para-
8 graph.

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

12 “(2) SIMULTANEOUS FILING WITH COMMIS-
13 SION.—The petitioner shall file a copy of the peti-
14 tion with the Commission on the same day as it is
15 filed with the administering authority.

16 “(3) DEADLINE FOR FILING PETITION.—

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

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

23 “(II) 6 months after delivery of the
24 subject vessel.

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

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

9 “(II) submit to the administering au-
10 thority a notice of intent to file a petition
11 no later than 6 months after the time that
12 the petitioner first knew or should have
13 known of the sale (unless the petition itself
14 is filed within that 6-month period).

15 “(B) PRESUMPTION OF KNOWLEDGE.—
16 For purposes of this paragraph, if the existence
17 of the sale, together with general information
18 concerning the vessel, is published in the inter-
19 national trade press, there is a rebuttable pre-
20 sumption that the petitioner knew or should
21 have known of the sale of the vessel from the
22 date of that publication.

23 “(c) ACTIONS BEFORE INITIATING INVESTIGA-
24 TIONS.—

1 “(1) NOTIFICATION OF GOVERNMENTS.—Before
2 initiating an investigation under either subsection
3 (a) or (b), the administering authority shall notify
4 the government of the exporting country of the in-
5 vestigation. In the case of the initiation of an inves-
6 tigation under subsection (b), such notification shall
7 include a public version of the petition.

8 “(2) ACCEPTANCE OF COMMUNICATIONS.—The
9 administering authority shall not accept any unsolic-
10 ited oral or written communication from any person
11 other than an interested party described in section
12 861(17)(C), (D), (E), or (F) before the administer-
13 ing authority makes its decision whether to initiate
14 an investigation pursuant to a petition, except for
15 inquiries regarding the status of the administering
16 authority’s consideration of the petition or a request
17 for consultation by the government of the exporting
18 country.

19 “(3) NONDISCLOSURE OF CERTAIN INFORMA-
20 TION.—The administering authority and the Com-
21 mission shall not disclose information with regard to
22 any draft petition submitted for review and comment
23 before it is filed under subsection (b)(1).

24 “(d) PETITION DETERMINATION.—

1 “(1) TIME FOR INITIAL DETERMINATION.—(A)
2 Within 45 days after the date on which a petition
3 is filed under subsection (b), the administering au-
4 thority shall, after examining, on the basis of
5 sources readily available to the administering au-
6 thority, the accuracy and adequacy of the evidence
7 provided in the petition, determine whether the peti-
8 tion—

9 “(i) alleges the elements necessary for the
10 imposition of an injurious pricing charge under
11 section 801(a) and the elements required under
12 subsection (b)(1)(B), (C), (D), or (E), and con-
13 tains information reasonably available to the pe-
14 titioner supporting the allegations; and

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

17 “(B) Any period in which paragraph (6)(A) ap-
18 plies shall not be included in calculating the 45-day
19 period described in subparagraph (A).

20 “(2) AFFIRMATIVE DETERMINATIONS.—If the
21 determinations under clauses (i) and (ii) of para-
22 graph (1)(A) are affirmative, the administering au-
23 thority shall initiate an investigation to determine
24 whether the vessel was sold at less than fair value,
25 unless paragraph (6) applies.

1 “(3) NEGATIVE DETERMINATIONS.—If—

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

4 “(B) paragraph (6)(B) applies,

5 the administering authority shall dismiss the peti-
6 tion, terminate the proceeding, and notify the peti-
7 tioner in writing of the reasons for the determina-
8 tion.

9 “(4) DETERMINATION OF INDUSTRY SUP-
10 PORT.—

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

15 “(i) the domestic producers or work-
16 ers who support the petition collectively ac-
17 count for at least 25 percent of the total
18 capacity of domestic producers capable of
19 producing a like vessel, and

20 “(ii) the domestic producers or work-
21 ers who support the petition collectively ac-
22 count for more than 50 percent of the total
23 capacity to produce a like vessel of that
24 portion of the domestic industry expressing
25 support for or opposition to the petition.

1 “(B) CERTAIN POSITIONS DIS-
2 REGARDED.—In determining industry support
3 under subparagraph (A), the administering au-
4 thority shall disregard the position of domestic
5 producers who oppose the petition, if such pro-
6 ducers are related to the foreign producer or
7 United States buyer of the subject vessel, or the
8 domestic producer is itself the United States
9 buyer, unless such domestic producers dem-
10 onstrate that their interests as domestic pro-
11 ducers would be adversely affected by the impo-
12 sition of an injurious pricing charge.

13 “(C) POLLING THE INDUSTRY.—If the pe-
14 tition does not establish support of domestic
15 producers or workers accounting for more than
16 50 percent of the total capacity to produce a
17 like vessel—

18 “(i) the administering authority shall
19 poll the industry or rely on other informa-
20 tion in order to determine if there is sup-
21 port for the petition as required by sub-
22 paragraph (A), or

23 “(ii) if there is a large number of pro-
24 ducers in the industry, the administering
25 authority may determine industry support

1 for the petition by using any statistically
2 valid sampling method to poll the industry.

3 “(D) COMMENTS BY INTERESTED PAR-
4 TIES.—Before the administering authority
5 makes a determination with respect to initiating
6 an investigation, any person who would qualify
7 as an interested party under section 861(17) if
8 an investigation were initiated, may submit
9 comments or information on the issue of indus-
10 try support. After the administering authority
11 makes a determination with respect to initiating
12 an investigation, the determination regarding
13 industry support shall not be reconsidered.

14 “(5) DEFINITION OF DOMESTIC PRODUCERS OR
15 WORKERS.—For purposes of this subsection, the
16 term ‘domestic producers or workers’ means inter-
17 ested parties as defined in section 861(17)(C), (D),
18 (E), or (F).

19 “(6) PROCEEDINGS BY WTO MEMBERS.—The
20 administering authority shall not initiate an inves-
21 tigation under this section if, with respect to the ves-
22 sel sale at issue, an antidumping proceeding con-
23 ducted by a WTO member who is not a Shipbuilding
24 Agreement Party—

1 “(A) has been initiated and has been pend-
2 ing for not more than one year, or

3 “(B) has been completed and resulted in
4 the imposition of antidumping measures or a
5 negative determination with respect to whether
6 the sale was at less than fair value or with re-
7 spect to injury.

8 “(e) NOTIFICATION TO COMMISSION OF DETERMINA-
9 TION.—The administering authority shall—

10 “(1) notify the Commission immediately of any
11 determination it makes under subsection (a) or (d),
12 and

13 “(2) if the determination is affirmative, make
14 available to the Commission such information as it
15 may have relating to the matter under investigation,
16 under such procedures as the administering author-
17 ity and the Commission may establish to prevent
18 disclosure, other than with the consent of the party
19 providing it or under protective order, of any infor-
20 mation to which confidential treatment has been
21 given by the administering authority.

22 **“SEC. 803. PRELIMINARY DETERMINATIONS.**

23 “(a) DETERMINATION BY COMMISSION OF REASON-
24 ABLE INDICATION OF INJURY.—

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

8 “(A) an industry in the United States—

9 “(i) is or has been materially injured,

10 or

11 “(ii) is threatened with material in-
12 jury, or

13 “(B) the establishment of an industry in
14 the United States is or has been materially re-
15 tarded,

16 by reason of the sale of the subject vessel. If the
17 Commission makes a negative determination under
18 this paragraph, the investigation shall be termi-
19 nated.

20 “(2) TIME FOR COMMISSION DETERMINA-
21 TION.—The Commission shall make the determina-
22 tion described in paragraph (1) within 90 days after
23 the date on which the petition is filed or, in the case
24 of an investigation initiated under section 802(a),
25 within 90 days after the date on which the Commis-

1 sion receives notice from the administering authority
2 that the investigation has been initiated.

3 “(b) PRELIMINARY DETERMINATION BY ADMIN-
4 ISTERING AUTHORITY.—

5 “(1) PERIOD OF INJURIOUS PRICING INVES-
6 TIGATION.—(A) The administering authority shall
7 make a determination, based upon the information
8 available to it at the time of the determination, of
9 whether there is a reasonable basis to believe or sus-
10 pect that the subject vessel was sold at less than fair
11 value.

12 “(B) If cost data is required to determine nor-
13 mal value on the basis of a sale of a foreign like ves-
14 sel that has not been delivered on or before the date
15 on which the administering authority initiates the
16 investigation, the administering authority shall make
17 its determination within 160 days after the date of
18 delivery of the foreign like vessel.

19 “(C) If normal value is to be determined on the
20 basis of constructed value, the administering author-
21 ity shall make its determination within 160 days
22 after the date of delivery of the subject vessel.

23 “(D) In cases in which subparagraph (B) or
24 (C) does not apply, the administering authority shall
25 make its determination within 160 days after the

1 date on which the administering authority initiates
2 the investigation under section 802.

3 “(E) In no event shall the administering au-
4 thority make its determination before an affirmative
5 determination is made by the Commission under
6 subsection (a).

7 “(2) DE MINIMIS INJURIOUS PRICING MAR-
8 GIN.—In making a determination under this sub-
9 section, the administering authority shall disregard
10 any injurious pricing margin that is de minimis. For
11 purposes of the preceding sentence, an injurious
12 pricing margin is de minimis if the administering
13 authority determines that the margin is less than 2
14 percent of the export price.

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

17 “(1) IN GENERAL.—If—

18 “(A) the administering authority concludes
19 that the parties concerned are cooperating and
20 determines that—

21 “(i) the case is extraordinarily com-
22 plicated by reason of—

23 “(I) the novelty of the issues pre-
24 sented, or

1 “(II) the nature and extent of
2 the information required, and

3 “(ii) additional time is necessary to
4 make the preliminary determination, or

5 “(B) a party to the investigation requests
6 an extension and demonstrates good cause for
7 the extension,

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

10 “(2) LENGTH OF POSTPONEMENT.—The pre-
11 liminary determination may be postponed under
12 paragraph (1)(A) or (B) until not later than the
13 190th day after—

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

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

18 “(C) the date on which the administering
19 authority initiates an investigation under sec-
20 tion 802, in a case in which subsection
21 (b)(1)(D) applies.

22 “(3) NOTICE OF POSTPONEMENT.—The admin-
23 istering authority shall notify the parties to the in-
24 vestigation, not later than 20 days before the date
25 on which the preliminary determination would other-

1 wise be required under subsection (b)(1), if it in-
2 tends to postpone making the preliminary deter-
3 mination under paragraph (1). The notification shall
4 include an explanation of the reasons for the post-
5 ponement, and notice of the postponement shall be
6 published in the Federal Register.

7 “(d) EFFECT OF DETERMINATION BY THE ADMIN-
8 ISTERING AUTHORITY.—If the preliminary determination
9 of the administering authority under subsection (b) is af-
10 firmative, the administering authority shall—

11 “(1) determine an estimated injurious pricing
12 margin, and

13 “(2) make available to the Commission all in-
14 formation upon which its determination was based
15 and which the Commission considers relevant to its
16 injury determination, under such procedures as the
17 administering authority and the Commission may es-
18 tablish to prevent disclosure, other than with the
19 consent of the party providing it or under protective
20 order, of any information to which confidential treat-
21 ment has been given by the administering authority.

22 “(e) NOTICE OF DETERMINATION.—Whenever the
23 Commission or the administering authority makes a deter-
24 mination under this section, the Commission or the admin-
25 istering authority, as the case may be, shall notify the pe-

1 petitioner, and other parties to the investigation, and the
2 Commission or the administering authority (whichever is
3 appropriate) of its determination. The administering au-
4 thority shall include with such notification the facts and
5 conclusions on which its determination is based. Not later
6 than 5 days after the date on which the determination is
7 required to be made under subsection (a)(2), the Commis-
8 sion shall transmit to the administering authority the facts
9 and conclusions on which its determination is based.

10 **“SEC. 804. TERMINATION OR SUSPENSION OF INVESTIGA-**
11 **TION.**

12 “(a) TERMINATION OF INVESTIGATION UPON WITH-
13 DRAWAL OF PETITION.—

14 “(1) IN GENERAL.—Except as provided in para-
15 graph (2), an investigation under this subtitle may
16 be terminated by either the administering authority
17 or the Commission, after notice to all parties to the
18 investigation, upon withdrawal of the petition by the
19 petitioner.

20 “(2) LIMITATION ON TERMINATION BY COMMIS-
21 SION.—The Commission may not terminate an in-
22 vestigation under paragraph (1) before a preliminary
23 determination is made by the administering author-
24 ity under section 803(b).

1 “(b) TERMINATION OF INVESTIGATIONS INITIATED
2 BY ADMINISTERING AUTHORITY.—The administering au-
3 thority may terminate any investigation initiated by the
4 administering authority under section 802(a) after provid-
5 ing notice of such termination to all parties to the inves-
6 tigation.

7 “(c) ALTERNATE EQUIVALENT REMEDY.—The cri-
8 teria set forth in subparagraphs (A) through (D) of sec-
9 tion 806(e)(1) shall apply to any agreement that forms
10 the basis for termination of an investigation under sub-
11 section (a) or (b).

12 “(d) PROCEEDINGS BY WTO MEMBERS.—

13 “(1) SUSPENSION OF INVESTIGATION.—The ad-
14 ministering authority and the Commission shall sus-
15 pend an investigation under this section if a WTO
16 member that is not a Shipbuilding Agreement Party
17 initiates an antidumping proceeding described in sec-
18 tion 861(29)(A) with respect to the sale of the sub-
19 ject vessel.

20 “(2) TERMINATION OF INVESTIGATION.—If an
21 antidumping proceeding described in paragraph (1)
22 is concluded by—

23 “(A) the imposition of antidumping meas-
24 ures, or

1 “(B) a negative determination with respect
2 to whether the sale is at less than fair value or
3 with respect to injury,
4 the administering authority and the Commission
5 shall terminate the investigation under this section.

6 “(3) CONTINUATION OF INVESTIGATION.—(A)
7 If such a proceeding—

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

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

12 then the administering authority and the Commis-
13 sion shall terminate the suspension and continue the
14 investigation. The period in which the investigation
15 was suspended shall not be included in calculating
16 deadlines applicable with respect to the investigation.

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

22 **“SEC. 805. FINAL DETERMINATIONS.**

23 “(a) DETERMINATIONS BY ADMINISTERING AUTHOR-
24 ITY.—

1 “(1) IN GENERAL.—Within 75 days after the
2 date of its preliminary determination under section
3 803(b), the administering authority shall make a
4 final determination of whether the vessel which is
5 the subject of the investigation has been sold in the
6 United States at less than its fair value.

7 “(2) EXTENSION OF PERIOD FOR DETERMINA-
8 TION.—(A) The administering authority may post-
9 pone making the final determination under para-
10 graph (1) until not later than 290 days after—

11 “(i) the date of delivery of the foreign like
12 vessel, in an investigation to which section
13 803(b)(1)(B) applies,

14 “(ii) the date of delivery of the subject ves-
15 sel, in an investigation to which section
16 803(b)(1)(C) applies, or

17 “(iii) the date on which the administering
18 authority initiates the investigation under sec-
19 tion 802, in an investigation to which section
20 803(b)(1)(D) applies.

21 “(B) The administering authority may apply
22 subparagraph (A) if a request in writing is made
23 by—

24 “(i) the producer of the subject vessel, in
25 a proceeding in which the preliminary deter-

1 mination by the administering authority under
2 section 803(b) was affirmative, or

3 “(ii) the petitioner, in a proceeding in
4 which the preliminary determination by the ad-
5 ministering authority under section 803(b) was
6 negative.

7 “(3) DE MINIMIS INJURIOUS PRICING MAR-
8 GIN.—In making a determination under this sub-
9 section, the administering authority shall disregard
10 any injurious pricing margin that is de minimis as
11 defined in section 803(b)(2).

12 “(b) FINAL DETERMINATION BY COMMISSION.—

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

15 “(A) an industry in the United States—

16 “(i) is or has been materially injured,

17 or

18 “(ii) is threatened with material in-

19 jury, or

20 “(B) the establishment of an industry in

21 the United States is or has been materially re-

22 tarded,

23 by reason of the sale of the vessel with respect to

24 which the administering authority has made an af-

25 firmative determination under subsection (a)(1).

1 “(2) PERIOD FOR INJURY DETERMINATION
2 FOLLOWING AFFIRMATIVE PRELIMINARY DETER-
3 MINATION BY ADMINISTERING AUTHORITY.—If the
4 preliminary determination by the administering au-
5 thority under section 803(b) is affirmative, then the
6 Commission shall make the determination required
7 by paragraph (1) before the later of—

8 “(A) the 120th day after the day on which
9 the administering authority makes its affirma-
10 tive preliminary determination under section
11 803(b), or

12 “(B) the 45th day after the day on which
13 the administering authority makes its affirma-
14 tive final determination under subsection (a).

15 “(3) PERIOD FOR INJURY DETERMINATION
16 FOLLOWING NEGATIVE PRELIMINARY DETERMINA-
17 TION BY ADMINISTERING AUTHORITY.—If the pre-
18 liminary determination by the administering author-
19 ity under section 803(b) is negative, and its final de-
20 termination under subsection (a) is affirmative, then
21 the final determination by the Commission under
22 this subsection shall be made within 75 days after
23 the date of that affirmative final determination.

24 “(c) EFFECT OF FINAL DETERMINATIONS.—

1 “(1) EFFECT OF AFFIRMATIVE DETERMINATION
2 BY THE ADMINISTERING AUTHORITY.—If the deter-
3 mination of the administering authority under sub-
4 section (a) is affirmative, then the administering au-
5 thority shall—

6 “(A) make available to the Commission all
7 information upon which such determination was
8 based and which the Commission considers rel-
9 evant to its determination, under such proce-
10 dures as the administering authority and the
11 Commission may establish to prevent disclosure,
12 other than with the consent of the party provid-
13 ing it or under protective order, of any informa-
14 tion to which confidential treatment has been
15 given by the administering authority, and

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

20 “(2) ISSUANCE OF ORDER; EFFECT OF NEGA-
21 TIVE DETERMINATION.—If the determinations of the
22 administering authority and the Commission under
23 subsections (a)(1) and (b)(1) are affirmative, then
24 the administering authority shall issue an injurious
25 pricing order under section 806. If either of such de-

1 terminations is negative, the investigation shall be
2 terminated upon the publication of notice of that
3 negative determination.

4 “(d) PUBLICATION OF NOTICE OF DETERMINA-
5 TIONS.—Whenever the administering authority or the
6 Commission makes a determination under this section, it
7 shall notify the petitioner, other parties to the investiga-
8 tion, and the other agency of its determination and of the
9 facts and conclusions of law upon which the determination
10 is based, and it shall publish notice of its determination
11 in the Federal Register.

12 “(e) CORRECTION OF MINISTERIAL ERRORS.—The
13 administering authority shall establish procedures for the
14 correction of ministerial errors in final determinations
15 within a reasonable time after the determinations are is-
16 sued under this section. Such procedures shall ensure op-
17 portunity for interested parties to present their views re-
18 garding any such errors. As used in this subsection, the
19 term ‘ministerial error’ includes errors in addition, sub-
20 traction, or other arithmetic function, clerical errors re-
21 sulting from inaccurate copying, duplication, or the like,
22 and any other type of unintentional error which the ad-
23 ministering authority considers ministerial.

1 **“SEC. 806. IMPOSITION AND COLLECTION OF INJURIOUS**
2 **PRICING CHARGE.**

3 “(a) IN GENERAL.—Within 10 days after being noti-
4 fied by the Commission of an affirmative determination
5 under section 805(b), the administering authority shall
6 publish an order imposing an injurious pricing charge on
7 the foreign producer of the subject vessel which—

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

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

19 “(3) informs the foreign producer that—

20 “(A) failure to pay the injurious pricing
21 charge in a timely fashion may result in the im-
22 position of countermeasures with respect to that
23 producer under section 807,

24 “(B) payment made after the deadline de-
25 scribed in paragraph (1) shall be subject to in-

1 terest charges at the Commercial Interest Ref-
2 erence Rate (CIRR), and

3 “(C) the foreign producer may request an
4 extension of the due date for payment under
5 subsection (b).

6 “(b) EXTENSION OF DUE DATE FOR PAYMENT IN
7 EXTRAORDINARY CIRCUMSTANCES.—

8 “(1) EXTENSION.—Upon request, the admin-
9 istering authority may amend the order under sub-
10 section (a) to set a due date for payment or pay-
11 ments later than the date that is 180 days from the
12 date of publication of the order, if the administering
13 authority determines that full payment in 180 days
14 would render the producer insolvent or would be in-
15 compatible with a judicially supervised reorganiza-
16 tion. When an extended payment schedule provides
17 for a series of partial payments, the administering
18 authority shall specify the circumstances under
19 which default on one or more payments will result
20 in the imposition of countermeasures.

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

1 “(c) NOTIFICATION OF ORDER.—The administering
2 authority shall deliver a copy of the order requesting pay-
3 ment to the foreign producer of the subject vessel and to
4 an appropriate representative of the government of the ex-
5 porting country.

6 “(d) REVOCATION OF ORDER.—The administering
7 authority—

8 “(1) may revoke an injurious pricing order if
9 the administering authority determines that produc-
10 ers accounting for substantially all of the capacity to
11 produce a domestic like vessel have expressed a lack
12 of interest in the order, and

13 “(2) shall revoke an injurious pricing order—

14 “(A) if the sale of the vessel that was the
15 subject of the injurious pricing determination is
16 voided,

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

20 “(C) upon full implementation of an alter-
21 native equivalent remedy described in sub-
22 section (e), or

23 “(D) if, with respect to the vessel sale that
24 was at issue in the investigation that resulted
25 in the injurious pricing order, an antidumping

1 proceeding conducted by a WTO member who
2 is not a Shipbuilding Agreement Party has been
3 completed and resulted in the imposition of
4 antidumping measures.

5 “(e) ALTERNATIVE EQUIVALENT REMEDY.—

6 “(1) AGREEMENT FOR ALTERNATE REMEDY.—

7 The administering authority may suspend an injuri-
8 ous pricing order if the administering authority en-
9 ters into an agreement with the foreign producer
10 subject to the order on an alternative equivalent
11 remedy, that the administering authority deter-
12 mines—

13 “(A) is at least as effective a remedy as
14 the injurious pricing charge,

15 “(B) is in the public interest,

16 “(C) can be effectively monitored and en-
17 forced, and

18 “(D) is otherwise consistent with the do-
19 mestic law and international obligations of the
20 United States.

21 “(2) PRIOR CONSULTATIONS AND SUBMISSION
22 OF COMMENTS.—Before entering into an agreement
23 under paragraph (1), the administering authority
24 shall consult with the industry, and provide for the

1 submission of comments by interested parties, with
2 respect to the agreement.

3 “(3) MATERIAL VIOLATIONS OF AGREEMENT.—

4 If the injurious pricing order has been suspended
5 under paragraph (1), and the administering author-
6 ity determines that the foreign producer concerned
7 has materially violated the terms of the agreement
8 under paragraph (1), the administering authority
9 shall terminate the suspension.

10 **“SEC. 807. IMPOSITION OF COUNTERMEASURES.**

11 “(a) GENERAL RULE.—

12 “(1) ISSUANCE OF ORDER IMPOSING COUNTER-
13 MEASURES.—Unless an injurious pricing order is re-
14 voked or suspended under section 806 (d) or (e), the
15 administering authority shall issue an order impos-
16 ing countermeasures.

17 “(2) CONTENTS OF ORDER.—The counter-
18 measure order shall—

19 “(A) state that, as provided in section 468,
20 a permit to lade or unlade passengers or mer-
21 chandise may not be issued with respect to ves-
22 sels contracted to be built by the foreign pro-
23 ducer of the vessel with respect to which an in-
24 jurious pricing order was issued under section
25 806, and

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

4 “(b) NOTICE OF INTENT TO IMPOSE COUNTER-
5 MEASURES.—

6 “(1) GENERAL RULE.—The administering au-
7 thority shall issue a notice of intent to impose coun-
8 termeasures not later than 30 days before the expi-
9 ration of the time for payment specified in the inju-
10 rious pricing order (or extended payment provided
11 for under section 806(b)), and shall publish the no-
12 tice in the Federal Register within 7 days after issu-
13 ing the notice.

14 “(2) ELEMENTS OF THE NOTICE OF INTENT.—
15 The notice of intent shall contain at least the follow-
16 ing elements:

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

20 “(i) built by the foreign producer sub-
21 ject to the proposed countermeasures, and

22 “(ii) with respect to which the mate-
23 rial terms of sale are established within a
24 period of 4 consecutive years beginning on
25 the date that is 30 days after publication

1 in the Federal Register of the notice of in-
2 tent described in paragraph (1).

3 “(B) DURATION.—For each vessel de-
4 scribed in subparagraph (A), a permit to lade
5 or unlade passengers or merchandise may not
6 be issued for a period of 4 years after the date
7 of delivery of the vessel.

8 “(c) DETERMINATION TO IMPOSE COUNTER-
9 MEASURES; ORDER.—

10 “(1) GENERAL RULE.—The administering au-
11 thority shall, within the time specified in paragraph
12 (2), issue a determination and order imposing coun-
13 termeasures.

14 “(2) TIME FOR DETERMINATION.—The deter-
15 mination shall be issued within 90 days after the
16 date on which the notice of intent to impose counter-
17 measures under subsection (b) is published in the
18 Federal Register. The administering authority shall
19 publish the determination, and the order described
20 in paragraph (4), in the Federal Register within 7
21 days after issuing the final determination, and shall
22 provide a copy of the determination and order to the
23 Customs Service.

24 “(3) CONTENT OF THE DETERMINATION.—In
25 the determination imposing countermeasures, the

1 administering authority shall determine whether, in
2 light of all of the circumstances, an interested party
3 has demonstrated that the scope or duration of the
4 countermeasures described in subsection (b)(2)
5 should be narrower or shorter than the scope or du-
6 ration set forth in the notice of intent to impose
7 countermeasures.

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

12 “(d) ADMINISTRATIVE REVIEW OF DETERMINATION
13 TO IMPOSE COUNTERMEASURES.—

14 “(1) REQUEST FOR REVIEW.—Each year, in the
15 anniversary month of the issuance of the order im-
16 posing countermeasures under subsection (c), the
17 administering authority shall publish in the Federal
18 Register a notice providing that interested parties
19 may request—

20 “(A) a review of the scope or duration of
21 the countermeasures determined under sub-
22 section (c)(3), and

23 “(B) a hearing in connection with such a
24 review.

1 “(2) REVIEW.—If a proper request has been re-
2 ceived under paragraph (1), the administering au-
3 thority shall—

4 “(A) publish notice of initiation of a review
5 in the Federal Register not later than 15 days
6 after the end of the anniversary month of the
7 issuance of the order imposing counter-
8 measures, and

9 “(B) review and determine whether the re-
10 questing party has demonstrated that the scope
11 or duration of the countermeasures is excessive
12 in light of all of the circumstances.

13 “(3) TIME FOR REVIEW.—The administering
14 authority shall make its determination under para-
15 graph (2)(B) within 90 days after the date on which
16 the notice of initiation of the review is published. If
17 the determination under paragraph (2)(B) is affirm-
18 ative, the administering authority shall amend the
19 order accordingly. The administering authority shall
20 promptly publish the determination and any amend-
21 ment to the order in the Federal Register, and shall
22 provide a copy of any amended order to the Customs
23 Service. In extraordinary circumstances, the admin-
24 istering authority may extend the time for its deter-
25 mination under paragraph (2)(B) to not later than

1 150 days after the date on which the notice of initi-
2 ation of the review is published.

3 “(e) EXTENSION OF COUNTERMEASURES.—

4 “(1) REQUEST FOR EXTENSION.—Within the
5 time described in paragraph (2), an interested party
6 may file with the administering authority a request
7 that the scope or duration of countermeasures be ex-
8 tended.

9 “(2) DEADLINE FOR REQUEST FOR EXTEN-
10 SION.—

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

23 “(B) OTHER REQUESTS.—If the request
24 seeks an extension under paragraph (1) other
25 than one described in subparagraph (A), the re-

1 quest shall be filed not earlier than the date
2 that is 6 months, and not later than a date that
3 is 3 months, before the date that marks the end
4 of the period referred to in subparagraph (A).

5 “(3) DETERMINATION.—

6 “(A) NOTICE OF REQUEST FOR EXTEN-
7 SION.—If a proper request has been received
8 under paragraph (1), the administering author-
9 ity shall publish notice of initiation of an exten-
10 sion proceeding in the Federal Register not
11 later than 15 days after the applicable deadline
12 in paragraph (2) for requesting the extension.

13 “(B) PROCEDURES.—

14 “(i) REQUESTS FOR EXTENSION BE-
15 YOND 4 YEARS.—If paragraph (2)(A) ap-
16 plies to the request, the administering au-
17 thority shall consult with the Trade Rep-
18 resentative under paragraph (4).

19 “(ii) OTHER REQUESTS.—If para-
20 graph (2)(B) applies to the request, the
21 administering authority shall determine,
22 within 90 days after the date on which the
23 notice of initiation of the proceeding is
24 published, whether the requesting party
25 has demonstrated that the scope or dura-

1 tion of the countermeasures is inadequate
2 in light of all of the circumstances. If the
3 administering authority determines that an
4 extension is warranted, it shall amend the
5 countermeasure order accordingly. The ad-
6 ministering authority shall promptly pub-
7 lish the determination and any amendment
8 to the order in the Federal Register, and
9 shall provide a copy of any amended order
10 to the Customs Service.

11 “(4) CONSULTATION WITH TRADE REPRESENT-
12 ATIVE.—If paragraph (3)(B)(i) applies, the admin-
13 istering authority shall consult with the Trade Rep-
14 resentative concerning whether it would be appro-
15 priate to request establishment of a dispute settle-
16 ment panel under the Shipbuilding Agreement for
17 the purpose of seeking authorization to extend the
18 scope or duration of countermeasures for a period in
19 excess of 4 years.

20 “(5) DECISION NOT TO REQUEST PANEL.—If,
21 based on consultations under paragraph (4), the
22 Trade Representative decides not to request estab-
23 lishment of a panel, the Trade Representative shall
24 inform the party requesting the extension of the
25 countermeasures of the reasons for its decision in

1 writing. The decision shall not be subject to judicial
2 review.

3 “(6) PANEL PROCEEDINGS.—If, based on con-
4 sultations under paragraph (4), the Trade Rep-
5 resentative requests the establishment of a panel
6 under the Shipbuilding Agreement to authorize an
7 extension of the period of countermeasures, and the
8 panel authorizes such an extension, the administer-
9 ing authority shall promptly amend the counter-
10 measure order. The administering authority shall
11 publish notice of the amendment in the Federal Reg-
12 ister.

13 “(f) LIST OF VESSELS SUBJECT TO COUNTER-
14 MEASURES.—

15 “(1) GENERAL RULE.—At least once during
16 each 12-month period beginning on the anniversary
17 date of a determination to impose countermeasures
18 under this section, the administering authority shall
19 publish in the Federal Register a list of all delivered
20 vessels subject to countermeasures under the deter-
21 mination.

22 “(2) CONTENT OF LIST.—The list under para-
23 graph (1) shall include the following information for
24 each vessel, to the extent the information is avail-
25 able:

1 “(A) The name and general description of
2 the vessel.

3 “(B) The vessel identification number.

4 “(C) The shipyard where the vessel was
5 constructed.

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

7 “(E) The name and address of the last-
8 known owner of the vessel.

9 “(F) The delivery date of the vessel.

10 “(G) The remaining duration of counter-
11 measures on the vessel.

12 “(H) Any other identifying information
13 available.

14 “(3) AMENDMENT OF LIST.—The administer-
15 ing authority may amend the list from time to time
16 to reflect new information that comes to its atten-
17 tion and shall publish any amendments in the Fed-
18 eral Register.

19 “(4) SERVICE OF LIST AND AMENDMENTS.—

20 (A) The administering authority shall serve a copy
21 of the list described in paragraph (1) on—

22 “(i) the petitioner under section 802(b),

23 “(ii) the United States Customs Service,

24 “(iii) the Secretariat of the Organization
25 for Economic Cooperation and Development,

1 “(iv) the owners of vessels on the list,

2 “(v) the shipyards on the list, and

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

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

8 “(i) the parties listed in clauses (i), (ii),
9 and (iii) of subparagraph (A), and,

10 “(ii) if the amendment affects their inter-
11 ests, the parties listed in clauses (iv), (v), and
12 (vi) of subparagraph (A).

13 “(g) ADMINISTRATIVE REVIEW OF LIST OF VESSELS
14 SUBJECT TO COUNTERMEASURES.—

15 “(1) REQUEST FOR REVIEW.—(A) An inter-
16 ested party may request in writing a review of the
17 list described in subsection (f)(1), including any
18 amendments thereto, to determine whether—

19 “(i) a vessel included in the list does not
20 fall within the scope of the applicable counter-
21 measure order and should be deleted, or

22 “(ii) a vessel not included in the list falls
23 within the scope of the applicable counter-
24 measure order and should be added.

1 “(B) Any request seeking a determination de-
2 scribed in subparagraph (A)(i) shall be made within
3 90 days after the date of publication of the applica-
4 ble list.

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

8 “(A) publish notice of initiation of a review
9 in the Federal Register—

10 “(i) not later than 15 days after the
11 request is received, or

12 “(ii) if the request seeks a determina-
13 tion described in paragraph (1)(A)(i), not
14 later than 15 days after the deadline de-
15 scribed in paragraph (1)(B), and

16 “(B) review and determine whether the re-
17 questing party has demonstrated that—

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

20 “(ii) a vessel not included in the list
21 qualifies for inclusion.

22 “(3) TIME FOR DETERMINATION.—The admin-
23 istering authority shall make its determination under
24 paragraph (2)(B) within 90 days after the date on
25 which the notice of initiation of such review is pub-

1 lished. If the administering authority determines
2 that a vessel should be added or deleted from the
3 list, the administering authority shall amend the list
4 accordingly. The administering authority shall
5 promptly publish in the Federal Register the deter-
6 mination and any such amendment to the list.

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

11 “(i) SUSPENSION OR TERMINATION OF PROCEED-
12 INGS OR COUNTERMEASURES; TEMPORARY REDUCTION
13 OF COUNTERMEASURES.—

14 “(1) IF INJURIOUS PRICING ORDER REVOKED
15 OR SUSPENDED.—If an injurious pricing order has
16 been revoked or suspended under section 806(d) or
17 (e), the administering authority shall, as appro-
18 priate, suspend or terminate proceedings under this
19 section with respect to that order, or suspend or re-
20 voke a countermeasure order issued with respect to
21 that injurious pricing order.

22 “(2) IF PAYMENT DATE AMENDED.—(A) Sub-
23 ject to subparagraph (C), if the payment date under
24 an injurious pricing order is amended under section
25 845, the administering authority shall, as appro-

1 appropriate, suspend proceedings or modify deadlines
2 under this section, or suspend or amend a counter-
3 measure order issued with respect to that injurious
4 pricing order.

5 “(B) In taking action under subparagraph (A),
6 the administering authority shall ensure that counter-
7 measures are not applied before the date that is
8 30 days after publication in the Federal Register of
9 the amended payment date.

10 “(C) If—

11 “(i) a countermeasure order is issued
12 under subsection (c) before an amendment is
13 made under section 845 to the payment date of
14 the injurious pricing order to which the coun-
15 termeasure order applies, and

16 “(ii) the administering authority deter-
17 mines that the period of time between the origi-
18 nal payment date and the amended payment
19 date is significant for purposes of determining
20 the appropriate scope or duration of counter-
21 measures,

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

1 “(j) COMMENT AND HEARING.—In the course of any
2 proceeding under subsection (c), (d), (e), or (g), the ad-
3 ministering authority—

4 “(1) shall solicit comments from interested par-
5 ties, and

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

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

14 **“SEC. 808. INJURIOUS PRICING PETITIONS BY THIRD COUN-**
15 **TRIES.**

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

20 “(1) a vessel from another Shipbuilding Agree-
21 ment Party has been sold in the United States at
22 less than fair value, and

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

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

7 “(c) DETERMINATIONS.—Upon initiation of an inves-
8 tigation under subsection (a), the Trade Representative
9 shall request the following determinations be made in ac-
10 cordance with substantive and procedural requirements
11 specified by the Trade Representative, notwithstanding
12 any other provision of this title:

13 “(1) The administering authority shall deter-
14 mine whether the subject vessel has been sold at less
15 than fair value.

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

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

22 “(1) by the Trade Representative, in making
23 the determinations required by subsection (b), and

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

4 “(e) ISSUANCE OF ORDER.—If the administering au-
5 thority makes an affirmative determination under para-
6 graph (1) of subsection (c), and the Commission makes
7 an affirmative determination under paragraph (2) of sub-
8 section (c), the administering authority shall—

9 “(1) order an injurious pricing charge in ac-
10 cordance with section 806, and

11 “(2) make such determinations and take such
12 other actions as are required by sections 806 and
13 807, as if affirmative determinations had been made
14 under subsections (a) and (b) of section 805.

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

18 “(1) the final determinations of the administer-
19 ing authority and the Commission under subsection
20 (c) shall be treated as final determinations made
21 under section 805, and

22 “(2) determinations of the administering au-
23 thority under subsection (e)(2) shall be treated as
24 determinations made under section 806 or 807, as
25 the case may be.

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

5 **“Subtitle B—Special Rules**

6 **“SEC. 821. EXPORT PRICE.**

7 “(a) EXPORT PRICE.—For purposes of this title, the
8 term ‘export price’ means the price at which the subject
9 vessel is first sold (or agreed to be sold) by or for the
10 account of the foreign producer of the subject vessel to
11 an unaffiliated United States buyer. The term ‘sold (or
12 agreed to be sold) by or for the account of the foreign
13 producer’ includes any transfer of an ownership interest,
14 including by way of lease or long-term bareboat charter,
15 in conjunction with the original transfer from the pro-
16 ducer, either directly or indirectly, to a United States
17 buyer.

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

20 “(1) increased by the amount of any import du-
21 ties imposed by the country of exportation which
22 have been rebated, or which have not been collected,
23 by reason of the exportation of the subject vessel,
24 and

25 “(2) reduced by—

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

6 “(B) the amount, if included in such price,
7 of any export tax, duty, or other charge im-
8 posed by the exporting country on the expor-
9 tation of the subject vessel, and

10 “(C) all other expenses incidental to plac-
11 ing the vessel in condition for delivery to the
12 buyer.

13 **“SEC. 822. NORMAL VALUE.**

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

20 “(1) DETERMINATION OF NORMAL VALUE.—

21 “(A) IN GENERAL.—The normal value of
22 the subject vessel shall be the price described in
23 subparagraph (B), at a time reasonably cor-
24 responding to the time of the sale used to deter-
25 mine the export price under section 821(a).

1 “(B) PRICE.—The price referred to in sub-
2 paragraph (A) is—

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

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

13 “(I) such price is representative,
14 and

15 “(II) the administering authority
16 does not determine that the particular
17 market situation in such other coun-
18 try prevents a proper comparison with
19 the export price.

20 “(C) THIRD COUNTRY SALES.—This sub-
21 paragraph applies when—

22 “(i) a foreign like vessel is not sold in
23 the exporting country as described in sub-
24 paragraph (B)(i), or

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

4 “(D) CONTEMPORANEOUS SALE.—For
5 purposes of subparagraph (A), ‘a time reason-
6 ably corresponding to the time of the sale’
7 means within 3 months before or after the sale
8 of the subject vessel or, in the absence of such
9 sales, such longer period as the administering
10 authority determines would be appropriate.

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

15 “(3) USE OF CONSTRUCTED VALUE.—If the ad-
16 ministering authority determines that the normal
17 value of the subject vessel cannot be determined
18 under paragraph (1)(B) or (1)(C), then the normal
19 value of the subject vessel shall be the constructed
20 value of that vessel, as determined under subsection
21 (e).

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

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

3 “(A) reduced by—

4 “(i) the amount, if any, included in
5 the price described in paragraph (1)(B),
6 attributable to any costs, charges, and ex-
7 penses incident to bringing the foreign like
8 vessel from the shipyard to the place of de-
9 livery to the purchaser,

10 “(ii) the amount of any taxes imposed
11 directly upon the foreign like vessel or
12 components thereof which have been re-
13 bated, or which have not been collected, on
14 the subject vessel, but only to the extent
15 that such taxes are added to or included in
16 the price of the foreign like vessel, and

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

20 “(B) increased or decreased by the amount
21 of any difference (or lack thereof) between the
22 export price and the price described in para-
23 graph (1)(B) (other than a difference for which
24 allowance is otherwise provided under this sec-
25 tion) that is established to the satisfaction of

1 the administering authority to be wholly or
2 partly due to—

3 “(i) physical differences between the
4 subject vessel and the vessel used in deter-
5 mining normal value, or

6 “(ii) other differences in the cir-
7 cumstances of sale.

8 “(6) ADJUSTMENTS FOR LEVEL OF TRADE.—

9 The price described in paragraph (1)(B) shall also
10 be increased or decreased to make due allowance for
11 any difference (or lack thereof) between the export
12 price and the price described in paragraph (1)(B)
13 (other than a difference for which allowance is oth-
14 erwise made under this section) that is shown to be
15 wholly or partly due to a difference in level of trade
16 between the export price and normal value, if the
17 difference in level of trade—

18 “(A) involves the performance of different
19 selling activities, and

20 “(B) is demonstrated to affect price com-
21 parability, based on a pattern of consistent
22 price differences between sales at different lev-
23 els of trade in the country in which normal
24 value is determined.

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

5 “(7) ADJUSTMENTS TO CONSTRUCTED
6 VALUE.—Constructed value as determined under
7 subsection (d) may be adjusted, as appropriate, pur-
8 suant to this subsection.

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

10 “(1) DETERMINATION; SALES DISREGARDED.—
11 Whenever the administering authority has reason-
12 able grounds to believe or suspect that the sale of
13 the foreign like vessel under consideration for the
14 determination of normal value has been made at a
15 price which represents less than the cost of produc-
16 tion of the foreign like vessel, the administering au-
17 thority shall determine whether, in fact, such sale
18 was made at less than the cost of production. If the
19 administering authority determines that the sale was
20 made at less than the cost of production and was
21 not at a price which permits recovery of all costs
22 within 5 years, such sale may be disregarded in the
23 determination of normal value. Whenever such a sale
24 is disregarded, normal value shall be based on an-
25 other sale of a foreign like vessel in the ordinary

1 course of trade. If no sales made in the ordinary
2 course of trade remain, the normal value shall be
3 based on the constructed value of the subject vessel.

4 “(2) DEFINITIONS AND SPECIAL RULES.—For
5 purposes of this subsection:

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

19 “(B) RECOVERY OF COSTS.—If the price is
20 below the cost of production at the time of sale
21 but is above the weighted average cost of pro-
22 duction for the period of investigation, such
23 price shall be considered to provide for recovery
24 of costs within 5 years.

1 “(3) CALCULATION OF COST OF PRODUC-
2 TION.—For purposes of this section, the cost of pro-
3 duction shall be an amount equal to the sum of—

4 “(A) the cost of materials and of fabrica-
5 tion or other processing of any kind employed
6 in producing the foreign like vessel, during a
7 period which would ordinarily permit the pro-
8 duction of that vessel in the ordinary course of
9 business, and

10 “(B) an amount for selling, general, and
11 administrative expenses based on actual data
12 pertaining to the production and sale of the for-
13 eign like vessel by the producer in question.

14 For purposes of subparagraph (A), if the normal
15 value is based on the price of the foreign like vessel
16 sold in a country other than the exporting country,
17 the cost of materials shall be determined without re-
18 gard to any internal tax in the exporting country im-
19 posed on such materials or on their disposition
20 which are remitted or refunded upon exportation.

21 “(c) NONMARKET ECONOMY COUNTRIES.—

22 “(1) IN GENERAL.—If—

23 “(A) the subject vessel is produced in a
24 nonmarket economy country, and

1 “(B) the administering authority finds that
2 available information does not permit the nor-
3 mal value of the subject vessel to be determined
4 under subsection (a),
5 the administering authority shall determine the nor-
6 mal value of the subject vessel on the basis of the
7 value of the factors of production utilized in produc-
8 ing the vessel and to which shall be added an
9 amount for general expenses and profit plus the cost
10 of expenses incidental to placing the vessel in a con-
11 dition for delivery to the buyer. Except as provided
12 in paragraph (2), the valuation of the factors of pro-
13 duction shall be based on the best available informa-
14 tion regarding the values of such factors in a market
15 economy country or countries considered to be ap-
16 propriate by the administering authority.

17 “(2) EXCEPTION.—If the administering author-
18 ity finds that the available information is inadequate
19 for purposes of determining the normal value of the
20 subject vessel under paragraph (1), the administer-
21 ing authority shall determine the normal value on
22 the basis of the price at which a vessel that is—

23 “(A) comparable to the subject vessel, and

24 “(B) produced in one or more market
25 economy countries that are at a level of eco-

1 nomic development comparable to that of the
2 nonmarket economy country,
3 is sold in other countries, including the United
4 States.

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

9 “(A) hours of labor required,

10 “(B) quantities of raw materials employed,

11 “(C) amounts of energy and other utilities
12 consumed, and

13 “(D) representative capital cost, including
14 depreciation.

15 “(4) VALUATION OF FACTORS OF PRODUC-
16 TION.—The administering authority, in valuing fac-
17 tors of production under paragraph (1), shall utilize,
18 to the extent possible, the prices or costs of factors
19 of production in one or more market economy coun-
20 tries that are—

21 “(A) at a level of economic development
22 comparable to that of the nonmarket economy
23 country, and

24 “(B) significant producers of comparable
25 vessels.

1 “(d) SPECIAL RULE FOR CERTAIN MULTINATIONAL
2 CORPORATIONS.—Whenever, in the course of an investiga-
3 tion under this title, the administering authority deter-
4 mines that—

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

11 “(2) subsection (a)(1)(C) applies, and

12 “(3) the normal value of a foreign like vessel
13 produced in one or more of the facilities outside the
14 exporting country is higher than the normal value of
15 the foreign like vessel produced in the facilities lo-
16 cated in the exporting country,

17 the administering authority shall determine the normal
18 value of the subject vessel by reference to the normal value
19 at which a foreign like vessel is sold from one or more
20 facilities outside the exporting country. The administering
21 authority, in making any determination under this sub-
22 section, shall make adjustments for the difference between
23 the costs of production (including taxes, labor, materials,
24 and overhead) of the foreign like vessel produced in facili-
25 ties outside the exporting country and costs of production

1 of the foreign like vessel produced in facilities in the ex-
2 porting country, if such differences are demonstrated to
3 its satisfaction.

4 “(e) CONSTRUCTED VALUE.—

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

8 “(A) the cost of materials and fabrication
9 or other processing of any kind employed in
10 producing the subject vessel, during a period
11 which would ordinarily permit the production of
12 the vessel in the ordinary course of business,
13 and

14 “(B)(i) the actual amounts incurred and
15 realized by the foreign producer of the subject
16 vessel for selling, general, and administrative
17 expenses, and for profits, in connection with the
18 production and sale of a foreign like vessel, in
19 the ordinary course of trade, in the domestic
20 market of the country of origin of the subject
21 vessel, or

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

1 “(I) the actual amounts incurred and
2 realized by the foreign producer of the sub-
3 ject vessel for selling, general, and admin-
4 istrative expenses, and for profits, in con-
5 nection with the production and sale of the
6 same general category of vessel in the do-
7 mestic market of the country of origin of
8 the subject vessel,

9 “(II) the weighted average of the ac-
10 tual amounts incurred and realized by pro-
11 ducers in the country of origin of the sub-
12 ject vessel (other than the producer of the
13 subject vessel) for selling, general, and ad-
14 ministrative expenses, and for profits, in
15 connection with the production and sale of
16 a foreign like vessel, in the ordinary course
17 of trade, in the domestic market, or

18 “(III) if data is not available under
19 subclause (I) or (II), the amounts incurred
20 and realized for selling, general, and ad-
21 ministrative expenses, and for profits,
22 based on any other reasonable method, ex-
23 cept that the amount allowed for profit
24 may not exceed the amount normally real-
25 ized by foreign producers (other than the

1 producer of the subject vessel) in connec-
2 tion with the sale of vessels in the same
3 general category of vessel as the subject
4 vessel in the domestic market of the coun-
5 try of origin of the subject vessel.

6 The profit shall, for purposes of this paragraph, be
7 based on the average profit realized over a reason-
8 able period of time before and after the sale of the
9 subject vessel and shall reflect a reasonable profit at
10 the time of such sale. For purposes of the preceding
11 sentence, a ‘reasonable period of time’ shall not, ex-
12 cept where otherwise appropriate, exceed 6 months
13 before, or 6 months after, the sale of the subject ves-
14 sel. In calculating profit under this paragraph, any
15 distortion which would result in other than a profit
16 which is reasonable at the time of the sale shall be
17 eliminated.

18 “(2) COSTS AND PROFITS BASED ON OTHER
19 REASONABLE METHODS.—When costs and profits
20 are determined under paragraph (1)(B)(ii)(III), such
21 determination shall, except where otherwise appro-
22 priate, be based on appropriate export sales by the
23 producer of the subject vessel or, absent such sales,
24 to export sales by other producers of a foreign like
25 vessel or the same general category of vessel as the

1 subject vessel in the country of origin of the subject
2 vessel.

3 “(3) COSTS OF MATERIALS.—For purposes of
4 paragraph (1)(A), the cost of materials shall be de-
5 termined without regard to any internal tax in the
6 exporting country imposed on such materials or their
7 disposition which are remitted or refunded upon ex-
8 portation of the subject vessel produced from such
9 materials.

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

13 “(1) COSTS.—

14 “(A) IN GENERAL.—Costs shall normally
15 be calculated based on the records of the for-
16 eign producer of the subject vessel, if such
17 records are kept in accordance with the gen-
18 erally accepted accounting principles of the ex-
19 porting country and reasonably reflect the costs
20 associated with the production and sale of the
21 vessel. The administering authority shall con-
22 sider all available evidence on proper allocation
23 of costs, including that which is made available
24 by the foreign producer on a timely basis, if
25 such allocations have been historically used by

1 the foreign producer, in particular for establish-
2 ing appropriate amortization and depreciation
3 periods, and allowances for capital expenditures
4 and other development costs.

5 “(B) NONRECURRING COSTS.—Costs shall
6 be adjusted appropriately for those non-
7 recurring costs that benefit current or future
8 production, or both.

9 “(C) STARTUP COSTS.—

10 “(i) IN GENERAL.—Costs shall be ad-
11 justed appropriately for circumstances in
12 which costs incurred during the time pe-
13 riod covered by the investigation are af-
14 fected by startup operations.

15 “(ii) STARTUP OPERATIONS.—Adjust-
16 ments shall be made for startup operations
17 only where—

18 “(I) a producer is using new pro-
19 duction facilities or producing a new
20 type of vessel that requires substantial
21 additional investment, and

22 “(II) production levels are limited
23 by technical factors associated with
24 the initial phase of commercial pro-
25 duction.

1 For purposes of subclause (II), the initial
2 phase of commercial production ends at
3 the end of the startup period. In determin-
4 ing whether commercial production levels
5 have been achieved, the administering au-
6 thority shall consider factors unrelated to
7 startup operations that might affect the
8 volume of production processed, such as
9 demand, seasonality, or business cycles.

10 “(iii) ADJUSTMENT FOR STARTUP OP-
11 ERATIONS.—The adjustment for startup
12 operations shall be made by substituting
13 the unit production costs incurred with re-
14 spect to the vessel at the end of the start-
15 up period for the unit production costs in-
16 curred during the startup period. If the
17 startup period extends beyond the period
18 of the investigation under this title, the ad-
19 ministering authority shall use the most
20 recent cost of production data that it rea-
21 sonably can obtain, analyze, and verify
22 without delaying the timely completion of
23 the investigation. For purposes of this sub-
24 paragraph, the startup period ends at the
25 point at which the level of commercial pro-

1 duction that is characteristic of the vessel,
2 the producer, or the industry is achieved.

3 “(D) COSTS DUE TO EXTRAORDINARY CIR-
4 CUMSTANCES NOT INCLUDED.—Costs shall not
5 include actual costs which are due to extraor-
6 dinary circumstances (including, but not limited
7 to, labor disputes, fire, and natural disasters)
8 and which are significantly over the cost in-
9 crease which the shipbuilder could have reason-
10 ably anticipated and taken into account at the
11 time of sale.

12 “(2) TRANSACTIONS DISREGARDED.—A trans-
13 action directly or indirectly between affiliated per-
14 sons may be disregarded if, in the case of any ele-
15 ment of value required to be considered, the amount
16 representing that element does not fairly reflect the
17 amount usually reflected in sales of a like vessel in
18 the market under consideration. If a transaction is
19 disregarded under the preceding sentence and no
20 other transactions are available for consideration,
21 the determination of the amount shall be based on
22 the information available as to what the amount
23 would have been if the transaction had occurred be-
24 tween persons who are not affiliated.

1 “(3) MAJOR INPUT RULE.—If, in the case of a
2 transaction between affiliated persons involving the
3 production by one of such persons of a major input
4 to the subject vessel, the administering authority has
5 reasonable grounds to believe or suspect that an
6 amount represented as the value of such input is
7 less than the cost of production of such input, then
8 the administering authority may determine the value
9 of the major input on the basis of the information
10 available regarding such cost of production, if such
11 cost is greater than the amount that would be deter-
12 mined for such input under paragraph (2).

13 **“SEC. 823. CURRENCY CONVERSION.**

14 “(a) IN GENERAL.—In an injurious pricing proceed-
15 ing under this title, the administering authority shall con-
16 vert foreign currencies into United States dollars using the
17 exchange rate in effect on the date of sale of the subject
18 vessel, except that if it is established that a currency
19 transaction on forward markets is directly linked to a sale
20 under consideration, the exchange rate specified with re-
21 spect to such foreign currency in the forward sale agree-
22 ment shall be used to convert the foreign currency.

23 “(b) DATE OF SALE.—For purposes of this section,
24 ‘date of sale’ means the date of the contract of sale or,
25 where appropriate, the date on which the material terms

1 of sale are otherwise established. If the material terms of
2 sale are significantly changed after such date, the date of
3 sale is the date of such change. In the case of such a
4 change in the date of sale, the administering authority
5 shall make appropriate adjustments to take into account
6 any unreasonable effect on the injurious pricing margin
7 due only to fluctuations in the exchange rate between the
8 original date of sale and the new date of sale.

9 **“Subtitle C—Procedures**

10 **“SEC. 841. HEARINGS.**

11 “(a) UPON REQUEST.—The administering authority
12 and the Commission shall each hold a hearing in the
13 course of an investigation under this title, upon the re-
14 quest of any party to the investigation, before making a
15 final determination under section 805.

16 “(b) PROCEDURES.—Any hearing required or per-
17 mitted under this title shall be conducted after notice pub-
18 lished in the Federal Register, and a transcript of the
19 hearing shall be prepared and made available to the public.
20 The hearing shall not be subject to the provisions of sub-
21 chapter II of chapter 5 of title 5, United States Code, or
22 to section 702 of such title.

23 **“SEC. 842. DETERMINATIONS ON THE BASIS OF THE FACTS** 24 **AVAILABLE.**

25 “(a) IN GENERAL.—If—

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

3 “(2) an interested party or any other person—

4 “(A) withholds information that has been
5 requested by the administering authority or the
6 Commission under this title,

7 “(B) fails to provide such information by
8 the deadlines for the submission of the informa-
9 tion or in the form and manner requested, sub-
10 ject to subsections (b)(1) and (d) of section
11 844,

12 “(C) significantly impedes a proceeding
13 under this title, or

14 “(D) provides such information but the in-
15 formation cannot be verified as provided in sec-
16 tion 844(g),

17 the administering authority and the Commission
18 shall, subject to section 844(c), use the facts other-
19 wise available in reaching the applicable determina-
20 tion under this title.

21 “(b) ADVERSE INFERENCES.—If the administering
22 authority or the Commission (as the case may be) finds
23 that an interested party has failed to cooperate by not act-
24 ing to the best of its ability to comply with a request for
25 information from the administering authority or the Com-

1 mission, the administering authority or the Commission
2 (as the case may be), in reaching the applicable determina-
3 tion under this title, may use an inference that is adverse
4 to the interests of that party in selecting from among the
5 facts otherwise available. Such adverse inference may in-
6 clude reliance on information derived from—

7 “(1) the petition, or

8 “(2) any other information placed on the
9 record.

10 “(c) CORROBORATION OF SECONDARY INFORMA-
11 TION.—When the administering authority or the Commis-
12 sion relies on secondary information rather than on infor-
13 mation obtained in the course of an investigation under
14 this title, the administering authority and the Commis-
15 sion, as the case may be, shall, to the extent practicable,
16 corroborate that information from independent sources
17 that are reasonably at their disposal.

18 **“SEC. 843. ACCESS TO INFORMATION.**

19 “(a) INFORMATION GENERALLY MADE AVAIL-
20 ABLE.—

21 “(1) PROGRESS OF INVESTIGATION REPORTS.—

22 The administering authority and the Commission
23 shall, from time to time upon request, inform the
24 parties to an investigation under this title of the
25 progress of that investigation.

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

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

7 “(B) the person charged with making the
8 determination, or any person charged with mak-
9 ing a final recommendation to that person, in
10 connection with that proceeding,

11 if information relating to that proceeding was pre-
12 sented or discussed at such meeting. The record of
13 such an ex parte meeting shall include the identity
14 of the persons present at the meeting, the date,
15 time, and place of the meeting, and a summary of
16 the matters discussed or submitted. The record of
17 the ex parte meeting shall be included in the record
18 of the proceeding.

19 “(3) SUMMARIES; NON-PROPRIETARY SUBMIS-
20 SIONS.—The administering authority and the Com-
21 mission shall disclose—

22 “(A) any proprietary information received
23 in the course of a proceeding under this title if
24 it is disclosed in a form which cannot be associ-

1 ated with, or otherwise be used to identify, op-
2 erations of a particular person, and

3 “(B) any information submitted in connec-
4 tion with a proceeding which is not designated
5 as proprietary by the person submitting it.

6 “(4) MAINTENANCE OF PUBLIC RECORD.—The
7 administering authority and the Commission shall
8 maintain and make available for public inspection
9 and copying a record of all information which is ob-
10 tained by the administering authority or the Com-
11 mission, as the case may be, in a proceeding under
12 this title to the extent that public disclosure of the
13 information is not prohibited under this chapter or
14 exempt from disclosure under section 552 of title 5,
15 United States Code.

16 “(b) PROPRIETARY INFORMATION.—

17 “(1) PROPRIETARY STATUS MAINTAINED.—

18 “(A) IN GENERAL.—Except as provided in
19 subsection (a)(4) and subsection (c), informa-
20 tion submitted to the administering authority or
21 the Commission which is designated as propri-
22 etary by the person submitting the information
23 shall not be disclosed to any person without the
24 consent of the person submitting the informa-
25 tion, other than—

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

8 “(ii) to an officer or employee of the
9 United States Customs Service who is di-
10 rectly involved in conducting an investiga-
11 tion regarding fraud under this title.

12 “(B) ADDITIONAL REQUIREMENTS.—The
13 administering authority and the Commission
14 shall require that information for which propri-
15 etary treatment is requested be accompanied
16 by—

17 “(i) either—

18 “(I) a nonproprietary summary
19 in sufficient detail to permit a reason-
20 able understanding of the substance
21 of the information submitted in con-
22 fidence, or

23 “(II) a statement that the infor-
24 mation is not susceptible to summary,
25 accompanied by a statement of the

1 reasons in support of the contention,
2 and

3 “(ii) either—

4 “(I) a statement which permits
5 the administering authority or the
6 Commission to release under adminis-
7 trative protective order, in accordance
8 with subsection (c), the information
9 submitted in confidence, or

10 “(II) a statement to the admin-
11 istering authority or the Commission
12 that the business proprietary informa-
13 tion is of a type that should not be re-
14 leased under administrative protective
15 order.

16 “(2) UNWARRANTED DESIGNATION.—If the ad-
17 ministering authority or the Commission determines,
18 on the basis of the nature and extent of the informa-
19 tion or its availability from public sources, that des-
20 ignation of any information as proprietary is unwar-
21 ranted, then it shall notify the person who submitted
22 it and ask for an explanation of the reasons for the
23 designation. Unless that person persuades the ad-
24 ministering authority or the Commission that the
25 designation is warranted, or withdraws the designa-

1 tion, the administering authority or the Commission,
2 as the case may be, shall return it to the party sub-
3 mitting it. In a case in which the administering au-
4 thority or the Commission returns the information
5 to the person submitting it, the person may there-
6 after submit other material concerning the subject
7 matter of the returned information if the submission
8 is made within the time otherwise provided for sub-
9 mitting such material.

10 “(c) LIMITED DISCLOSURE OF CERTAIN PROPRI-
11 ETARY INFORMATION UNDER PROTECTIVE ORDER.—

12 “(1) DISCLOSURE BY ADMINISTERING AUTHOR-
13 ITY OR COMMISSION.—

14 “(A) IN GENERAL.—Upon receipt of an
15 application (before or after receipt of the infor-
16 mation requested) which describes in general
17 terms the information requested and sets forth
18 the reasons for the request, the administering
19 authority or the Commission shall make all
20 business proprietary information presented to,
21 or obtained by it, during a proceeding under
22 this title (except privileged information, classi-
23 fied information, and specific information of a
24 type for which there is a clear and compelling
25 need to withhold from disclosure) available to

1 all interested parties who are parties to the pro-
2 ceeding under a protective order described in
3 subparagraph (B), regardless of when the infor-
4 mation is submitted during the proceeding.
5 Customer names (other than the name of the
6 United States buyer of the subject vessel) ob-
7 tained during any investigation which requires
8 a determination under section 805(b) may not
9 be disclosed by the administering authority
10 under protective order until either an order is
11 published under section 806(a) as a result of
12 the investigation or the investigation is sus-
13 pended or terminated. The Commission may
14 delay disclosure of customer names (other than
15 the name of the United States buyer of the sub-
16 ject vessel) under protective order during any
17 such investigation until a reasonable time be-
18 fore any hearing provided under section 841 is
19 held.

20 “(B) PROTECTIVE ORDER.—The protective
21 order under which information is made avail-
22 able shall contain such requirements as the ad-
23 ministering authority or the Commission may
24 determine by regulation to be appropriate. The
25 administering authority and the Commission

1 shall provide by regulation for such sanctions as
2 the administering authority and the Commis-
3 sion determine to be appropriate, including dis-
4 barment from practice before the agency.

5 “(C) TIME LIMITATIONS ON DETERMINA-
6 TIONS.—The administering authority or the
7 Commission, as the case may be, shall deter-
8 mine whether to make information available
9 under this paragraph—

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

14 “(ii) if—

15 “(I) the person submitting the
16 information raises objection to its re-
17 lease, or

18 “(II) the information is unusu-
19 ally voluminous or complex,
20 not later than 30 days (10 days if the sub-
21 mission pertains to a proceeding under sec-
22 tion 803(a)) after the date on which the
23 information is submitted.

1 “(D) AVAILABILITY AFTER DETERMINA-
2 TION.—If the determination under subpara-
3 graph (C) is affirmative, then—

4 “(i) the business proprietary informa-
5 tion submitted to the administering au-
6 thority or the Commission on or before the
7 date of the determination shall be made
8 available, subject to the terms and condi-
9 tions of the protective order, on such date,
10 and

11 “(ii) the business proprietary informa-
12 tion submitted to the administering au-
13 thority or the Commission after the date of
14 the determination shall be served as re-
15 quired by subsection (d).

16 “(E) FAILURE TO DISCLOSE.—If a person
17 submitting information to the administering au-
18 thority refuses to disclose business proprietary
19 information which the administering authority
20 determines should be released under a protec-
21 tive order described in subparagraph (B), the
22 administering authority shall return the infor-
23 mation, and any nonconfidential summary
24 thereof, to the person submitting the informa-
25 tion and summary and shall not consider either.

1 “(2) DISCLOSURE UNDER COURT ORDER.—If
2 the administering authority or the Commission de-
3 nies a request for information under paragraph (1),
4 then application may be made to the United States
5 Court of International Trade for an order directing
6 the administering authority or the Commission, as
7 the case may be, to make the information available.
8 After notification of all parties to the investigation
9 and after an opportunity for a hearing on the
10 record, the court may issue an order, under such
11 conditions as the court deems appropriate, which
12 shall not have the effect of stopping or suspending
13 the investigation, directing the administering author-
14 ity or the Commission to make all or a portion of
15 the requested information described in the preceding
16 sentence available under a protective order and set-
17 ting forth sanctions for violation of such order if the
18 court finds that, under the standards applicable in
19 proceedings of the court, such an order is warranted,
20 and that—

21 “(A) the administering authority or the
22 Commission has denied access to the informa-
23 tion under subsection (b)(1),

24 “(B) the person on whose behalf the infor-
25 mation is requested is an interested party who

1 is a party to the investigation in connection
2 with which the information was obtained or de-
3 veloped, and

4 (C) the party which submitted the infor-
5 mation to which the request relates has been
6 notified, in advance of the hearing, of the re-
7 quest made under this section and of its right
8 to appear and be heard.

9 “(d) SERVICE.—Any party submitting written infor-
10 mation, including business proprietary information, to the
11 administering authority or the Commission during a pro-
12 ceeding shall, at the same time, serve the information
13 upon all interested parties who are parties to the proceed-
14 ing, if the information is covered by a protective order.
15 The administering authority or the Commission shall not
16 accept any such information that is not accompanied by
17 a certificate of service and a copy of the protective order
18 version of the document containing the information. Busi-
19 ness proprietary information shall only be served upon in-
20 terested parties who are parties to the proceeding that are
21 subject to protective order, except that a nonconfidential
22 summary thereof shall be served upon all other interested
23 parties who are parties to the proceeding.

24 “(e) INFORMATION RELATING TO VIOLATIONS OF
25 PROTECTIVE ORDERS AND SANCTIONS.—The administer-

1 ing authority and the Commission may withhold from dis-
2 closure any correspondence, private letters of reprimand,
3 settlement agreements, and documents and files compiled
4 in relation to investigations and actions involving a viola-
5 tion or possible violation of a protective order issued under
6 subsection (c), and such information shall be treated as
7 information described in section 552(b)(3) of title 5, Unit-
8 ed States Code.

9 “(f) OPPORTUNITY FOR COMMENT BY VESSEL BUY-
10 ERS.—The administering authority and the Commission
11 shall provide an opportunity for buyers of subject vessels
12 to submit relevant information to the administering au-
13 thority concerning a sale at less than fair value or counter-
14 measures, and to the Commission concerning material in-
15 jury by reason of the sale of a vessel at less than fair
16 value.

17 “(g) PUBLICATION OF DETERMINATIONS; REQUIRE-
18 MENTS FOR FINAL DETERMINATIONS.—

19 “(1) IN GENERAL.—Whenever the administer-
20 ing authority makes a determination under section
21 802 whether to initiate an investigation, or the ad-
22 ministering authority or the Commission makes a
23 preliminary determination under section 803, a final
24 determination under section 805, a determination
25 under subsection (b), (c), (d), (e)(3)(B)(ii), (g), or

1 (i) of section 807, or a determination to suspend an
2 investigation under this title, the administering au-
3 thority or the Commission, as the case may be, shall
4 publish the facts and conclusions supporting that de-
5 termination, and shall publish notice of that deter-
6 mination in the Federal Register.

7 “(2) CONTENTS OF NOTICE OR DETERMINA-
8 TION.—The notice or determination published under
9 paragraph (1) shall include, to the extent applica-
10 ble—

11 “(A) in the case of a determination of the
12 administering authority—

13 “(i) the names of the foreign producer
14 and the country of origin of the subject
15 vessel,

16 “(ii) a description sufficient to iden-
17 tify the subject vessel,

18 “(iii) with respect to an injurious pric-
19 ing charge, the injurious pricing margin
20 established and a full explanation of the
21 methodology used in establishing such
22 margin,

23 “(iv) with respect to countermeasures,
24 the scope and duration of countermeasures

1 and, if applicable, any changes thereto,
2 and

3 “(v) the primary reasons for the de-
4 termination, and

5 “(B) in the case of a determination of the
6 Commission—

7 “(i) considerations relevant to the de-
8 termination of injury, and

9 “(ii) the primary reasons for the de-
10 termination.

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

14 “(A) the administering authority shall in-
15 clude in a final determination under section 805
16 or 807(c) an explanation of the basis for its de-
17 termination that addresses relevant arguments,
18 made by interested parties who are parties to
19 the investigation, concerning the establishment
20 of the injurious pricing charge with respect to
21 which the determination is made, and

22 “(B) the Commission shall include in a
23 final determination of injury an explanation of
24 the basis for its determination that addresses
25 relevant arguments that are made by interested

1 parties who are parties to the investigation con-
2 cerning the effects and impact on the industry
3 of the sale of the subject vessel.

4 **“SEC. 844. CONDUCT OF INVESTIGATIONS.**

5 “(a) CERTIFICATION OF SUBMISSIONS.—Any person
6 providing factual information to the administering author-
7 ity or the Commission in connection with a proceeding
8 under this title on behalf of the petitioner or any other
9 interested party shall certify that such information is ac-
10 curate and complete to the best of that person’s knowl-
11 edge.

12 “(b) DIFFICULTIES IN MEETING REQUIREMENTS.—

13 “(1) NOTIFICATION BY INTERESTED PARTY.—

14 If an interested party, promptly after receiving a re-
15 quest from the administering authority or the Com-
16 mission for information, notifies the administering
17 authority or the Commission (as the case may be)
18 that such party is unable to submit the information
19 requested in the requested form and manner, to-
20 gether with a full explanation and suggested alter-
21 native forms in which such party is able to submit
22 the information, the administering authority or the
23 Commission (as the case may be) shall consider the
24 ability of the interested party to submit the informa-
25 tion in the requested form and manner and may

1 modify such requirements to the extent necessary to
2 avoid imposing an unreasonable burden on that
3 party.

4 “(2) ASSISTANCE TO INTERESTED PARTIES.—
5 The administering authority and the Commission
6 shall take into account any difficulties experienced
7 by interested parties, particularly small companies,
8 in supplying information requested by the admin-
9 istering authority or the Commission in connection
10 with investigations under this title, and shall provide
11 to such interested parties any assistance that is
12 practicable in supplying such information.

13 “(c) DEFICIENT SUBMISSIONS.—If the administering
14 authority or the Commission determines that a response
15 to a request for information under this title does not com-
16 ply with the request, the administering authority or the
17 Commission (as the case may be) shall promptly inform
18 the person submitting the response of the nature of the
19 deficiency and shall, to the extent practicable, provide that
20 person with an opportunity to remedy or explain the defi-
21 ciency in light of the time limits established for the com-
22 pletion of investigations or reviews under this title. If that
23 person submits further information in response to such
24 deficiency and either—

1 “(1) the administering authority or the Com-
2 mission (as the case may be) finds that such re-
3 sponse is not satisfactory, or

4 “(2) such response is not submitted within the
5 applicable time limits,

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

9 “(d) USE OF CERTAIN INFORMATION.—In reaching
10 a determination under section 803, 805, or 807, the ad-
11 ministering authority and the Commission shall not de-
12 cline to consider information that is submitted by an inter-
13 ested party and is necessary to the determination but does
14 not meet all the applicable requirements established by the
15 administering authority or the Commission if—

16 “(1) the information is submitted by the dead-
17 line established for its submission,

18 “(2) the information can be verified,

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

22 “(4) the interested party has demonstrated that
23 it acted to the best of its ability in providing the in-
24 formation and meeting the requirements established

1 by the administering authority or the Commission
2 with respect to the information, and

3 “(5) the information can be used without undue
4 difficulties.

5 “(e) NONACCEPTANCE OF SUBMISSIONS.—If the ad-
6 ministering authority or the Commission declines to accept
7 into the record any information submitted in an investiga-
8 tion under this title, it shall, to the extent practicable, pro-
9 vide to the person submitting the information a written
10 explanation of the reasons for not accepting the informa-
11 tion.

12 “(f) PUBLIC COMMENT ON INFORMATION.—Informa-
13 tion that is submitted on a timely basis to the administer-
14 ing authority or the Commission during the course of a
15 proceeding under this title shall be subject to comment
16 by other parties within such reasonable time as the admin-
17 istering authority or the Commission shall provide. The
18 administering authority and the Commission, before mak-
19 ing a final determination under section 805 or 807, shall
20 cease collecting information and shall provide the parties
21 with a final opportunity to comment on the information
22 obtained by the administering authority or the Commis-
23 sion (as the case may be) upon which the parties have
24 not previously had an opportunity to comment. Comments
25 containing new factual information shall be disregarded.

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

4 **“SEC. 845. ADMINISTRATIVE ACTION FOLLOWING SHIP-**
5 **BUILDING AGREEMENT PANEL REPORTS.**

6 “(a) ACTION BY UNITED STATES INTERNATIONAL
7 TRADE COMMISSION.—

8 “(1) ADVISORY REPORT.—If a dispute settle-
9 ment panel under the Shipbuilding Agreement finds
10 in a report that an action by the Commission in con-
11 nection with a particular proceeding under this title
12 is not in conformity with the obligations of the Unit-
13 ed States under the Shipbuilding Agreement, the
14 Trade Representative may request the Commission
15 to issue an advisory report on whether this title per-
16 mits the Commission to take steps in connection
17 with the particular proceeding that would render its
18 action not inconsistent with the findings of the panel
19 concerning those obligations. The Trade Representa-
20 tive shall notify the Committee on Ways and Means
21 of the House of Representatives and the Committee
22 on Finance of the Senate of such request.

23 “(2) TIME LIMITS FOR REPORT.—The Commis-
24 sion shall transmit its report under paragraph (1) to

1 the Trade Representative within 30 calendar days
2 after the Trade Representative requests the report.

3 “(3) CONSULTATIONS ON REQUEST FOR COM-
4 MISSION DETERMINATION.—If a majority of the
5 Commissioners issues an affirmative report under
6 paragraph (1), the Trade Representatives shall con-
7 sult with the congressional committees listed in
8 paragraph (1) concerning the matter.

9 “(4) COMMISSION DETERMINATION.—Notwith-
10 standing any other provision of this title, if a major-
11 ity of the Commissioners issues an affirmative report
12 under paragraph (1), the Commission, upon the
13 written request of the Trade Representative, shall
14 issue a determination in connection with the particu-
15 lar proceeding that would render the Commission’s
16 action described in paragraph (1) not inconsistent
17 with the findings of the panel. The Commission shall
18 issue its determination not later than 120 calendar
19 days after the request from the Trade Representa-
20 tive is made.

21 “(5) CONSULTATIONS ON IMPLEMENTATION OF
22 COMMISSION DETERMINATION.—The Trade Rep-
23 resentative shall consult with the congressional com-
24 mittees listed in paragraph (1) before the Commis-

1 sion’s determination under paragraph (4) is imple-
2 mented.

3 “(6) REVOCATION OF ORDER.—If, by virtue of
4 the Commission’s determination under paragraph
5 (4), an injurious pricing order is no longer sup-
6 ported by an affirmative Commission determination
7 under this title, the Trade Representative may, after
8 consulting with the congressional committees under
9 paragraph (5), direct the administering authority to
10 revoke the injurious pricing order.

11 “(b) ACTION BY ADMINISTERING AUTHORITY.—

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

17 “(A) an action by the administering au-
18 thority in a proceeding under this title is not in
19 conformity with the obligations of the United
20 States under the Shipbuilding Agreement,

21 “(B) the due date for payment of an inju-
22 rious pricing charge contained in an order is-
23 sued under section 806 should be amended,

24 “(C) countermeasures provided for in an
25 order issued under section 807 should be provi-

1 sionally suspended or reduced pending the final
2 decision of the panel, or

3 “(D) the scope or duration of counter-
4 measures imposed under section 807 should be
5 narrowed or shortened,

6 the Trade Representative shall consult with the ad-
7 ministering authority and the congressional commit-
8 tees listed in subsection (a)(1) on the matter.

9 “(2) DETERMINATION BY ADMINISTERING AU-
10 THORITY.—Notwithstanding any other provision of
11 this title, the administering authority shall, in re-
12 sponse to a written request from the Trade Rep-
13 resentative, issue a determination, or an amendment
14 to or suspension of an injurious pricing or counter-
15 measure order, as the case may be, in connection
16 with the particular proceeding that would render the
17 administering authority’s action described in para-
18 graph (1) not inconsistent with the findings of the
19 panel.

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

23 “(A) with respect to a matter described in
24 subparagraph (A) of paragraph (1), within 180

1 calendar days after the request from the Trade
2 Representative is made, and

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

7 “(4) CONSULTATIONS BEFORE IMPLEMENTA-
8 TION.—Before the administering authority imple-
9 ments any determination, amendment, or suspension
10 under paragraph (2), the Trade Representative shall
11 consult with the administering authority and the
12 congressional committees listed in subsection (a)(1)
13 with respect to such determination, amendment, or
14 suspension.

15 “(5) IMPLEMENTATION OF DETERMINATION.—
16 The Trade Representative may, after consulting with
17 the administering authority and the congressional
18 committees under paragraph (4), direct the admin-
19 istering authority to implement, in whole or in part,
20 the determination, amendment, or suspension made
21 under paragraph (2).

22 “(6) IMPLEMENTATION OF DETERMINATION;
23 NOTICE OF IMPLEMENTATION.—The administering
24 authority shall implement the determination, amend-
25 ment, or suspension under paragraph (2)—

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

7 “(B) with respect to a matter described in
8 subparagraph (B), (C), or (D) of paragraph
9 (1), upon issuance of the determination, amend-
10 ment, or suspension under paragraph (2).

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

13 “(c) OPPORTUNITY FOR COMMENT BY INTERESTED
14 PARTIES.—Before issuing a determination, amendment,
15 or suspension, the administering authority, in a matter de-
16 scribed in subsection (b)(1)(A), or the Commission, in a
17 matter described in subsection (a)(1), as the case may be,
18 shall provide interested parties with an opportunity to sub-
19 mit written comments and, in appropriate cases, may hold
20 a hearing, with respect to the determination.

21 **“Subtitle D—Definitions**

22 **“SEC. 861. DEFINITIONS.**

23 “For purposes of this title:

24 “(1) ADMINISTERING AUTHORITY.—The term
25 ‘administering authority’ means the Secretary of

1 Commerce, or any other officer of the United States
2 to whom the responsibility for carrying out the du-
3 ties of the administering authority under this title
4 are transferred by law.

5 “(2) COMMISSION.—The term ‘Commission’
6 means the United States International Trade Com-
7 mission.

8 “(3) COUNTRY.—The term ‘country’ means a
9 foreign country, a political subdivision, dependent
10 territory, or possession of a foreign country and, ex-
11 cept as provided in paragraph (16)(E)(iii), may not
12 include an association of 2 or more foreign coun-
13 tries, political subdivisions, dependent territories, or
14 possessions of countries into a customs union out-
15 side the United States.

16 “(4) INDUSTRY.—

17 “(A) IN GENERAL.—Except as used in sec-
18 tion 808, the term ‘industry’ means the produc-
19 ers as a whole of a domestic like vessel, or those
20 producers whose collective capability to produce
21 a domestic like vessel constitutes a major pro-
22 portion of the total domestic capability to
23 produce a domestic like vessel.

24 “(B) PRODUCER.—A ‘producer’ of a do-
25 mestic like vessel includes an entity that is pro-

1 ducing the domestic like vessel and an entity
2 with the capability to produce the domestic like
3 vessel.

4 “(C) CAPABILITY TO PRODUCE A DOMES-
5 TIC LIKE VESSEL.—A producer has the ‘capa-
6 bility to produce a domestic like vessel’ if it is
7 capable of producing a domestic like vessel with
8 its present facilities or could adapt its facilities
9 in a timely manner to produce a domestic like
10 vessel.

11 “(D) RELATED PARTIES.—(i) In an inves-
12 tigation under this title, if a producer of a do-
13 mestic like vessel and the foreign producer, sell-
14 er (other than the foreign producer), or United
15 States buyer of the subject vessel are related
16 parties, or if a producer of a domestic like ves-
17 sel is also a United States buyer of the subject
18 vessel, the domestic producer may, in appro-
19 priate circumstances, be excluded from the in-
20 dustry.

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

1 “(I) the domestic producer directly or
2 indirectly controls the foreign producer,
3 seller or United States buyer,

4 “(II) the foreign producer, seller, or
5 United States buyer directly or indirectly
6 controls the domestic producer,

7 “(III) a third party directly or indi-
8 rectly controls the domestic producer and
9 the foreign producer, seller, or United
10 States buyer, or

11 “(IV) the domestic producer and the
12 foreign producer, seller, or United States
13 buyer directly or indirectly control a third
14 party and there is reason to believe that
15 the relationship causes the producer to act
16 differently than a nonrelated producer.

17 For purposes of this subparagraph, a party
18 shall be considered to directly or indirectly con-
19 trol another party if the party is legally or oper-
20 ationally in a position to exercise restraint or
21 direction over the other party.

22 “(E) PRODUCT LINES.—In an investiga-
23 tion under this title, the effect of the sale of the
24 subject vessel shall be assessed in relation to
25 the United States production (or production ca-

1 pability) of a domestic like vessel if available
2 data permit the separate identification of pro-
3 duction (or production capability) in terms of
4 such criteria as the production process or the
5 producer's profits. If the domestic production
6 (or production capability) of a domestic like
7 vessel has no separate identity in terms of such
8 criteria, then the effect of the sale shall be as-
9 sessed by the examination of the production (or
10 production capability) of the narrowest group or
11 range of vessels, which includes a domestic like
12 vessel, for which the necessary information can
13 be provided.

14 “(5) BUYER.—The term ‘buyer’ means any per-
15 son who acquires an ownership interest in a vessel,
16 including by way of lease or long-term bareboat
17 charter, in conjunction with the original transfer
18 from the producer, either directly or indirectly, in-
19 cluding an individual or company which owns or con-
20 trols a buyer. There may be more than one buyer of
21 any one vessel.

22 “(6) UNITED STATES BUYER.—The term ‘Unit-
23 ed States buyer’ means a buyer that is any of the
24 following:

25 “(A) A United States citizen.

1 “(B) A juridical entity, including any cor-
2 poration, company, association, or other organi-
3 zation, that is legally constituted under the laws
4 and regulations of the United States or a politi-
5 cal subdivision thereof, regardless of whether
6 the entity is organized for pecuniary gain, pri-
7 vately or government owned, or organized with
8 limited or unlimited liability.

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

13 “(i) the term ‘own’ means having
14 more than a 50 percent interest, and

15 “(ii) the term ‘control’ means the ac-
16 tual ability to have substantial influence on
17 corporate behavior, and control is pre-
18 sumed to exist where there is at least a 25
19 percent interest.

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

23 “(7) OWNERSHIP INTEREST.—An ‘ownership
24 interest’ in a vessel includes any contractual or pro-
25 prietary interest which allows the beneficiary or

1 beneficiaries of such interest to take advantage of
2 the operation of the vessel in a manner substantially
3 comparable to the way in which an owner may bene-
4 fit from the operation of the vessel. In determining
5 whether such substantial comparability exists, the
6 administering authority shall consider—

7 “(A) the terms and circumstances of the
8 transaction which conveys the interest,

9 “(B) commercial practice,

10 “(C) whether the vessel subject to the
11 transaction is integrated into the operations of
12 the beneficiary or beneficiaries, and

13 “(D) whether in practice there is a likeli-
14 hood that the beneficiary or beneficiaries of
15 such interests will take advantage of and the
16 risk for the operation of the vessel for a signifi-
17 cant part of the life-time of the vessel.

18 “(8) VESSEL.—

19 “(A) IN GENERAL.—Except as otherwise
20 specifically provided under international agree-
21 ments, the term ‘vessel’ means—

22 “(i) a self-propelled seagoing vessel of
23 100 gross tons or more used for transpor-
24 tation of goods or persons or for perform-
25 ance of a specialized service (including, but

1 not limited to, ice breakers and dredgers),
2 and

3 “(ii) a tug of 365 kilowatts or more,
4 that is produced in a Shipbuilding Agreement
5 Party or a country that is not a Shipbuilding
6 Agreement Party and not a WTO member.

7 “(B) EXCLUSIONS.—The term ‘vessel’ does
8 not include—

9 “(i) any fishing vessel destined for the
10 fishing fleet of the country in which the
11 vessel is built,

12 “(ii) any military vessel, and

13 “(iii) any vessel sold before the date
14 that the Shipbuilding Agreement enters
15 into force with respect to the United
16 States, except that any vessel sold after
17 December 21, 1994, for delivery more than
18 5 years after the date of the contract of
19 sale shall be a ‘vessel’ for purposes of this
20 title unless the shipbuilder demonstrates to
21 the administering authority that the ex-
22 tended delivery date was for normal com-
23 mercial reasons and not to avoid applica-
24 bility of this title.

1 “(C) SELF-PROPELLED SEAGOING VES-
2 SEL.—A vessel is ‘self-propelled seagoing’ if its
3 permanent propulsion and steering provide it all
4 the characteristics of self-navigability in the
5 high seas.

6 “(D) MILITARY VESSEL.—A ‘military ves-
7 sel’ is a vessel which, according to its basic
8 structural characteristics and ability, is in-
9 tended to be used exclusively for military pur-
10 poses.

11 “(9) LIKE VESSEL.—The term ‘like vessel’
12 means a vessel of the same type, same purpose, and
13 approximate size as the subject vessel and possessing
14 characteristics closely resembling those of the sub-
15 ject vessel.

16 “(10) DOMESTIC LIKE VESSEL.—The term ‘do-
17 mestic like vessel’ means a like vessel produced in
18 the United States.

19 “(11) FOREIGN LIKE VESSEL.—Except as used
20 in section 822(e)(1)(B)(ii)(II), the term ‘foreign like
21 vessel’ means a like vessel produced by the foreign
22 producer of the subject vessel for sale in the produc-
23 er’s domestic market or in a third country.

24 “(12) SAME GENERAL CATEGORY OF VESSEL.—
25 The term ‘same general category of vessel’ means a

1 vessel of the same type and purpose as the subject
2 vessel, but of a significantly different size.

3 “(13) SUBJECT VESSEL.—The term ‘subject
4 vessel’ means a vessel subject to investigation under
5 section 801 or 808.

6 “(14) FOREIGN PRODUCER.—The term ‘foreign
7 producer’ means the producer or producers of the
8 subject vessel.

9 “(15) EXPORTING COUNTRY.—The term ‘ex-
10 porting country’ means the country in which the
11 subject vessel was built.

12 “(16) MATERIAL INJURY.—

13 “(A) IN GENERAL.—The term ‘material in-
14 jury’ means harm which is not inconsequential,
15 immaterial, or unimportant.

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

19 “(i) shall consider—

20 “(I) the sale of the subject vessel,

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

24 “(III) the impact of the sale of
25 the subject vessel on domestic produc-

1 ers of the domestic like vessel, but
2 only in the context of production oper-
3 ations within the United States, and

4 “(ii) may consider such other eco-
5 nomic factors as are relevant to the deter-
6 mination regarding whether there is or has
7 been material injury by reason of the sale
8 of the subject vessel.

9 In the notification required under section
10 805(d), the Commission shall explain its analy-
11 sis of each factor considered under clause (i),
12 and identify each factor considered under clause
13 (ii) and explain in full its relevance to the deter-
14 mination.

15 “(C) EVALUATION OF RELEVANT FAC-
16 TORS.—For purposes of subparagraph (B)—

17 “(i) SALE OF THE SUBJECT VES-
18 SEL.—In evaluating the sale of the subject
19 vessel, the Commission shall consider
20 whether the sale, either in absolute terms
21 or relative to production or demand in the
22 United States, in terms of either volume or
23 value, is or has been significant.

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

4 “(I) there has been significant
5 price underselling of the subject vessel
6 as compared with the price of a do-
7 mestic like vessel, and

8 “(II) the effect of the sale of the
9 subject vessel otherwise depresses or
10 has depressed prices to a significant
11 degree or prevents or has prevented
12 price increases, which otherwise would
13 have occurred, to a significant degree.

14 “(iii) IMPACT ON AFFECTED DOMES-
15 TIC INDUSTRY.—In examining the impact
16 required to be considered under subpara-
17 graph (B)(i)(III), the Commission shall
18 evaluate all relevant economic factors
19 which have a bearing on the state of the
20 industry in the United States, including,
21 but not limited to—

22 “(I) actual and potential decline
23 in output, sales, market share, profits,
24 productivity, return on investments,
25 and utilization of capacity,

1 “(II) factors affecting domestic
2 prices, including with regard to sales,

3 “(III) actual and potential nega-
4 tive effects on cash flow, employment,
5 wages, growth, ability to raise capital,
6 and investment,

7 “(IV) actual and potential nega-
8 tive effects on the existing develop-
9 ment and production efforts of the do-
10 mestic industry, including efforts to
11 develop a derivative or more advanced
12 version of a domestic like vessel, and

13 “(V) the magnitude of the injuri-
14 ous pricing margin.

15 The Commission shall evaluate all relevant
16 economic factors described in this clause
17 within the context of the business cycle
18 and conditions of competition that are dis-
19 tinctive to the affected industry.

20 “(D) STANDARD FOR DETERMINATION.—

21 The presence or absence of any factor which the
22 Commission is required to evaluate under sub-
23 paragraph (C) shall not necessarily give decisive
24 guidance with respect to the determination by
25 the Commission of material injury.

1 “(E) THREAT OF MATERIAL INJURY.—

2 “(i) IN GENERAL.—In determining
3 whether an industry in the United States
4 is threatened with material injury by rea-
5 son of the sale of the subject vessel, the
6 Commission shall consider, among other
7 relevant economic factors—

8 “(I) any existing unused produc-
9 tion capacity or imminent, substantial
10 increase in production capacity in the
11 exporting country indicating the likeli-
12 hood of substantially increased sales
13 of a foreign like vessel to United
14 States buyers, taking into account the
15 availability of other export markets to
16 absorb any additional exports,

17 “(II) whether the sale of a for-
18 eign like vessel or other factors indi-
19 cate the likelihood of significant addi-
20 tional sales to United States buyers,

21 “(III) whether sale of the subject
22 vessel or sale of a foreign like vessel
23 by the foreign producer are at prices
24 that are likely to have a significant
25 depressing or suppressing effect on

1 domestic prices, and are likely to in-
2 crease demand for further sales,

3 “(IV) the potential for product-
4 shifting if production facilities in the
5 exporting country, which can pres-
6 ently be used to produce a foreign like
7 vessel or could be adapted in a timely
8 manner to produce a foreign like ves-
9 sel, are currently being used to
10 produce other types of vessels,

11 “(V) the actual and potential
12 negative effects on the existing devel-
13 opment and production efforts of the
14 domestic industry, including efforts to
15 develop a derivative or more advanced
16 version of a domestic like vessel, and

17 “(VI) any other demonstrable ad-
18 verse trends that indicate the prob-
19 ability that there is likely to be mate-
20 rial injury by reason of the sale of the
21 subject vessel.

22 “(ii) BASIS FOR DETERMINATION.—

23 The Commission shall consider the factors
24 set forth in clause (i) as a whole. The pres-
25 ence or absence of any factor which the

1 Commission is required to consider under
2 clause (i) shall not necessarily give decisive
3 guidance with respect to the determination.
4 Such a determination may not be made on
5 the basis of mere conjecture or suppo-
6 sition.

7 “(iii) EFFECT OF INJURIOUS PRICING
8 IN THIRD-COUNTRY MARKETS.—

9 “(I) IN GENERAL.—The Commis-
10 sion shall consider whether injurious
11 pricing in the markets of foreign
12 countries (as evidenced by injurious
13 pricing findings or injurious pricing
14 remedies of other Shipbuilding Agree-
15 ment Parties, or antidumping deter-
16 minations of, or measures imposed by,
17 other countries, against a like vessel
18 produced by the producer under inves-
19 tigation) suggests a threat of material
20 injury to the domestic industry. In the
21 course of its investigation, the Com-
22 mission shall request information
23 from the foreign producer or United
24 States buyer concerning this issue.

1 “(II) EUROPEAN COMMUN-
2 NITIES.—For purposes of this clause,
3 the European Communities as a whole
4 shall be treated as a single foreign
5 country.

6 “(F) CUMULATION FOR DETERMINING MA-
7 TERIAL INJURY.—

8 “(i) IN GENERAL.—For purposes of
9 clauses (i) and (ii) of subparagraph (C),
10 and subject to clause (ii) of this subpara-
11 graph, the Commission shall cumulatively
12 assess the effects of sales of foreign like
13 vessels from all foreign producers with re-
14 spect to which—

15 “(I) petitions were filed under
16 section 802(b) on the same day,

17 “(II) investigations were initiated
18 under section 802(a) on the same day,
19 or

20 “(III) petitions were filed under
21 section 802(b) and investigations were
22 initiated under section 802(a) on the
23 same day,

24 if, with respect to such vessels, the foreign
25 producers compete with each other and

1 with producers of a domestic like vessel in
2 the United States market.

3 “(ii) EXCEPTIONS.—The Commission
4 shall not cumulatively assess the effects of
5 sales under clause (i)—

6 “(I) with respect to which the ad-
7 ministering authority has made a pre-
8 liminary negative determination, un-
9 less the administering authority sub-
10 sequently made a final affirmative de-
11 termination with respect to those sales
12 before the Commission’s final deter-
13 mination is made, or

14 “(II) from any producer with re-
15 spect to which the investigation has
16 been terminated.

17 “(iii) RECORDS IN FINAL INVESTIGA-
18 TIONS.—In each final determination in
19 which it cumulatively assesses the effects
20 of sales under clause (i), the Commission
21 may make its determinations based on the
22 record compiled in the first investigation in
23 which it makes a final determination, ex-
24 cept that when the administering authority
25 issues its final determination in a subse-

1 frequently completed investigation, the Com-
2 mission shall permit the parties in the sub-
3 sequent investigation to submit comments
4 concerning the significance of the admin-
5 istering authority's final determination,
6 and shall include such comments and the
7 administering authority's final determina-
8 tion in the record for the subsequent inves-
9 tigation.

10 “(G) CUMULATION FOR DETERMINING
11 THREAT OF MATERIAL INJURY.—To the extent
12 practicable and subject to subparagraph (F)(ii),
13 for purposes of clause (i) (II) and (III) of sub-
14 paragraph (E), the Commission may cumula-
15 tively assess the effects of sales of like vessels
16 from all countries with respect to which—

17 “(i) petitions were filed under section
18 802(b) on the same day,

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

21 “(iii) petitions were filed under sec-
22 tion 802(b) and investigations were initi-
23 ated under section 802(a) on the same
24 day,

1 if, with respect to such vessels, the foreign pro-
2 ducers compete with each other and with pro-
3 ducers of a domestic like vessel in the United
4 States market.

5 “(17) INTERESTED PARTY.—The term ‘inter-
6 ested party’ means, in a proceeding under this
7 title—

8 “(A)(i) the foreign producer, seller (other
9 than the foreign producer), and the United
10 States buyer of the subject vessel, or

11 “(ii) a trade or business association a ma-
12 jority of the members of which are the foreign
13 producer, seller, or United States buyer of the
14 subject vessel,

15 “(B) the government of the country in
16 which the subject vessel is produced or manu-
17 factured,

18 “(C) a producer that is a member of an in-
19 dustry,

20 “(D) a certified union or recognized union
21 or group of workers which is representative of
22 an industry,

23 “(E) a trade or business association a ma-
24 jority of whose members are producers in an in-
25 dustry,

1 “(F) an association, a majority of whose
2 members is composed of interested parties de-
3 scribed in subparagraph (C), (D), or (E), and

4 “(G) for purposes of section 807, a pur-
5 chaser who, after the effective date of an order
6 issued under that section, entered into a con-
7 tract of sale with the foreign producer that is
8 subject to the order.

9 “(18) AFFIRMATIVE DETERMINATIONS BY DI-
10 VIDED COMMISSION.—If the Commissioners voting
11 on a determination by the Commission are evenly di-
12 vided as to whether the determination should be af-
13 firmative or negative, the Commission shall be
14 deemed to have made an affirmative determination.
15 For the purpose of applying this paragraph when
16 the issue before the Commission is to determine
17 whether there is or has been—

18 “(A) material injury to an industry in the
19 United States,

20 “(B) threat of material injury to such an
21 industry, or

22 “(C) material retardation of the establish-
23 ment of an industry in the United States,

1 by reason of the sale of the subject vessel, an affirm-
2 ative vote on any of the issues shall be treated as
3 a vote that the determination should be affirmative.

4 “(19) ORDINARY COURSE OF TRADE.—The
5 term ‘ordinary course of trade’ means the conditions
6 and practices which, for a reasonable time before the
7 sale of the subject vessel, have been normal in the
8 shipbuilding industry with respect to a like vessel.
9 The administering authority shall consider the fol-
10 lowing sales and transactions, among others, to be
11 outside the ordinary course of trade:

12 “(A) Sales disregarded under section
13 822(b)(1).

14 “(B) Transactions disregarded under sec-
15 tion 822(f)(2).

16 “(20) NONMARKET ECONOMY COUNTRY.—

17 “(A) IN GENERAL.—The term ‘nonmarket
18 economy country’ means any foreign country
19 that the administering authority determines
20 does not operate on market principles of cost or
21 pricing structures, so that sales of vessels in
22 such country do not reflect the fair value of the
23 vessels.

24 “(B) FACTORS TO BE CONSIDERED.—In
25 making determinations under subparagraph (A)

1 the administering authority shall take into ac-
2 count—

3 “(i) the extent to which the currency
4 of the foreign country is convertible into
5 the currency of other countries,

6 “(ii) the extent to which wage rates in
7 the foreign country are determined by free
8 bargaining between labor and manage-
9 ment,

10 “(iii) the extent to which joint ven-
11 tures or other investments by firms of
12 other foreign countries are permitted in
13 the foreign country,

14 “(iv) the extent of government owner-
15 ship or control of the means of production,

16 “(v) the extent of government control
17 over the allocation of resources and over
18 the price and output decisions of enter-
19 prises, and

20 “(vi) such other factors as the admin-
21 istering authority considers appropriate.

22 “(C) DETERMINATION IN EFFECT.—

23 “(i) Any determination that a foreign
24 country is a nonmarket economy country

1 shall remain in effect until revoked by the
2 administering authority.

3 “(ii) The administering authority may
4 make a determination under subparagraph
5 (A) with respect to any foreign country at
6 any time.

7 “(D) DETERMINATIONS NOT IN ISSUE.—
8 Notwithstanding any other provision of law, any
9 determination made by the administering au-
10 thority under subparagraph (A) shall not be
11 subject to judicial review in any investigation
12 conducted under subtitle A.

13 “(21) SHIPBUILDING AGREEMENT.—The term
14 ‘Shipbuilding Agreement’ means The Agreement Re-
15 specting Normal Competitive Conditions in the Com-
16 mercial Shipbuilding and Repair Industry, resulting
17 from negotiations under the auspices of the Organi-
18 zation for Economic Cooperation and Development,
19 and entered into on December 21, 1994.

20 “(22) SHIPBUILDING AGREEMENT PARTY.—The
21 term ‘Shipbuilding Agreement Party’ means a state
22 or separate customs territory that is a Party to the
23 Shipbuilding Agreement, and with respect to which
24 the United States applies the Shipbuilding Agree-
25 ment.

1 “(23) WTO AGREEMENT.—The term ‘WTO
2 Agreement’ means the Agreement defined in section
3 2(9) of the Uruguay Round Agreements Act.

4 “(24) WTO MEMBER.—The term ‘WTO mem-
5 ber’ means a state, or separate customs territory
6 (within the meaning of Article XII of the WTO
7 Agreement), with respect to which the United States
8 applies the WTO Agreement.

9 “(25) TRADE REPRESENTATIVE.—The term
10 ‘Trade Representative’ means the United States
11 Trade Representative.

12 “(26) AFFILIATED PERSONS.—The following
13 persons shall be considered to be ‘affiliated’ or ‘af-
14 filiated persons’:

15 “(A) Members of a family, including broth-
16 ers and sisters (whether by the whole or half
17 blood), spouse, ancestors, and lineal descend-
18 ants.

19 “(B) Any officer or director of an organi-
20 zation and such organization.

21 “(C) Partners.

22 “(D) Employer and employee.

23 “(E) Any person directly or indirectly own-
24 ing, controlling, or holding with power to vote,
25 5 percent or more of the outstanding voting

1 stock or shares of any organization, and such
2 organization.

3 “(F) Two or more persons directly or indi-
4 rectly controlling, controlled by, or under com-
5 mon control with, any person.

6 “(G) Any person who controls any other
7 person, and such other person.

8 For purposes of this paragraph, a person shall be
9 considered to control another person if the person is
10 legally or operationally in a position to exercise re-
11 straint or direction over the other person.

12 “(27) INJURIOUS PRICING.—The term ‘inju-
13 rious pricing’ refers to the sale of a vessel at less than
14 fair value.

15 “(28) INJURIOUS PRICING MARGIN.—

16 “(A) IN GENERAL.—The term ‘injurious
17 pricing margin’ means the amount by which the
18 normal value exceeds the export price of the
19 subject vessel.

20 “(B) MAGNITUDE OF THE INJURIOUS
21 PRICING MARGIN.—The magnitude of the inju-
22 rious pricing margin used by the Commission
23 shall be—

24 “(i) in making a preliminary deter-
25 mination under section 803(a) in an inves-

1 tigation (including any investigation in
2 which the Commission cumulatively as-
3 sesses the effect of sales under paragraph
4 (16)(F)(i)), the injurious pricing margin or
5 margins published by the administering
6 authority in its notice of initiation of the
7 investigation; and

8 “(ii) in making a final determination
9 under section 805(b), the injurious pricing
10 margin or margins most recently published
11 by the administering authority before the
12 closing of the Commission’s administrative
13 record.

14 “(29) COMMERCIAL INTEREST REFERENCE
15 RATE.—The term ‘Commercial Interest Reference
16 Rate’ or ‘CIRR’ means an interest rate that the ad-
17 ministering authority determines to be consistent
18 with Annex III, and appendices and notes thereto, of
19 the Understanding on Export Credits for Ships, re-
20 sulting from negotiations under the auspices of the
21 Organization for Economic Cooperation, and entered
22 into on December 21, 1994.

23 “(30) ANTIDUMPING.—

24 “(A) WTO MEMBERS.—In the case of a
25 WTO member, the term ‘antidumping’ refers to

1 action taken pursuant to the Agreement on Im-
2 plementation of Article VI of the General
3 Agreement on Tariffs and Trade 1994.

4 “(B) OTHER CASES.—In the case of any
5 country that is not a WTO member, the term
6 ‘antidumping’ refers to action taken by the
7 country against the sale of a vessel at less than
8 fair value that is comparable to action described
9 in subparagraph (A).

10 “(31) BROAD MULTIPLE BID.—The term ‘broad
11 multiple bid’ means a bid in which the proposed
12 buyer extends an invitation to at least all the pro-
13 ducers in the industry known by the buyer to be ca-
14 pable of building the subject vessel.”.

15 **SEC. 102. ENFORCEMENT OF COUNTERMEASURES.**

16 Part II of title IV of the Tariff Act of 1930 is amend-
17 ed by adding at the end the following:

18 **“SEC. 468. SHIPBUILDING AGREEMENT COUNTER-**
19 **MEASURES.**

20 “(a) IN GENERAL.—Notwithstanding any other pro-
21 vision of law, upon receiving from the Secretary of Com-
22 merce a list of vessels subject to countermeasures under
23 section 807, the Customs Service shall deny any request
24 for a permit to lade or unlade passengers, merchandise,
25 or baggage from or onto those vessels so listed.

1 “(b) EXCEPTIONS.—Subsection (a) shall not be ap-
2 plied to deny a permit for the following:

3 “(1) To unlade any United States citizen or
4 permanent legal resident alien from a vessel included
5 in the list described in subsection (a), or to unlade
6 any refugee or any alien who would otherwise be eli-
7 gible to apply for asylum and withholding of depor-
8 tation under the Immigration and Nationality Act.

9 “(2) To lade or unlade any crewmember of such
10 vessel.

11 “(3) To lade or unlade coal and other fuel sup-
12 plies (for the operation of the listed vessel), ships’
13 stores, sea stores, and the legitimate equipment of
14 such vessel.

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

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

21 “(c) CORRECTION OF MINISTERIAL OR CLERICAL
22 ERRORS.—

23 “(1) PETITION FOR CORRECTION.—If the mas-
24 ter of any vessel whose application for a permit to
25 lade or unlade has been denied under this section be-

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

6 “(2) INAPPLICABILITY OF SECTIONS 514 AND
7 520.—Notwithstanding paragraph (1), imposition of
8 countermeasures under this section shall not be
9 deemed an exclusion or other protestable decision
10 under section 514, and shall not be subject to cor-
11 rection under section 520.

12 “(3) PETITIONS SEEKING ADMINISTRATIVE RE-
13 VIEW.—Any petition seeking administrative review
14 of any matter regarding the Secretary of Com-
15 merce’s decision to list a vessel under section 807
16 must be brought under that section.

17 “(d) PENALTIES.—In addition to any other provision
18 of law, the Customs Service may impose a civil penalty
19 of not to exceed \$10,000 against the master of any ves-
20 sel—

21 “(1) who submits false information in request-
22 ing any permit to lade or unlade; or

23 “(2) who attempts to, or actually does, lade or
24 unlade in violation of any denial of such permit
25 under this section.”.

1 **SEC. 103. JUDICIAL REVIEW IN INJURIOUS PRICING AND**
2 **COUNTERMEASURE PROCEEDINGS.**

3 (a) JUDICIAL REVIEW.—Part III of title IV of the
4 Tariff Act of 1930 is amended by inserting after section
5 516A the following:

6 **“SEC. 516B. JUDICIAL REVIEW IN INJURIOUS PRICING AND**
7 **COUNTERMEASURE PROCEEDINGS.**

8 “(a) REVIEW OF DETERMINATION.—

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

11 “(A)(i) a determination by the administer-
12 ing authority under section 802(c) not to initi-
13 ate an investigation,

14 “(ii) a negative determination by the Com-
15 mission under section 803(a) as to whether
16 there is or has been reasonable indication of
17 material injury, threat of material injury, or
18 material retardation,

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

22 “(iv) a determination by the administering
23 authority under section 807(c),

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

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

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

8 “(viii) a determination by the administer-
9 ing authority in a review under section 807(g),

10 “(ix) a determination by the administering
11 authority under section 807(i) to terminate pro-
12 ceedings, or to amend or revoke a counter-
13 measure order,

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

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

21 “(ii) notice of a determination described in
22 subparagraph (B) of paragraph (2),

23 “(iii) notice of implementation of a deter-
24 mination described in subparagraph (C) of
25 paragraph (2), or

1 “(iv) notice of revocation of an injurious
2 pricing order based on a determination de-
3 scribed in subparagraph (D) of paragraph (2),
4 an interested party who is a party to the proceeding
5 in connection with which the matter arises may com-
6 mence an action in the United States Court of Inter-
7 national Trade by filing concurrently a summons
8 and complaint, each with the content and in the
9 form, manner, and style prescribed by the rules of
10 that court, contesting any factual findings or legal
11 conclusions upon which the determination is based.

12 “(2) REVIEWABLE DETERMINATIONS.—The de-
13 terminations referred to in paragraph (1)(B) are—

14 “(A) a final affirmative determination by
15 the administering authority or by the Commis-
16 sion under section 805, including any negative
17 part of such a determination (other than a part
18 referred to in subparagraph (B)),

19 “(B) a final negative determination by the
20 administering authority or the Commission
21 under section 805,

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

1 “(D) a determination by the Commission
2 under section 845(a) that results in the revoca-
3 tion of an injurious pricing order.

4 “(3) EXCEPTION.—Notwithstanding the 30-day
5 limitation imposed by paragraph (1) with regard to
6 an order described in paragraph (1)(B)(i), a final af-
7 firmative determination by the administering author-
8 ity under section 805 may be contested by commene-
9 ing an action, in accordance with the provisions of
10 paragraph (1), within 30 days after the date of pub-
11 lication in the Federal Register of a final negative
12 determination by the Commission under section 805.

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

16 “(b) STANDARDS OF REVIEW.—

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

19 “(A) in an action brought under subpara-
20 graph (A) of subsection (a)(1), to be arbitrary,
21 capricious, an abuse of discretion, or otherwise
22 not in accordance with law, or

23 “(B) in an action brought under subpara-
24 graph (B) of subsection (a)(1), to be un-sup-

1 ported by substantial evidence on the record, or
2 otherwise not in accordance with law.

3 “(2) RECORD FOR REVIEW.—

4 “(A) IN GENERAL.—For purposes of this
5 subsection, the record, unless otherwise stipu-
6 lated by the parties, shall consist of—

7 “(i) a copy of all information pre-
8 sented to or obtained by the administering
9 authority or the Commission during the
10 course of the administrative proceeding, in-
11 cluding all governmental memoranda per-
12 taining to the case and the record of ex
13 parte meetings required to be kept by sec-
14 tion 843(a)(2); and

15 “(ii) a copy of the determination, all
16 transcripts or records of conferences or
17 hearings, and all notices published in the
18 Federal Register.

19 “(B) CONFIDENTIAL OR PRIVILEGED MA-
20 TERIAL.—The confidential or privileged status
21 accorded to any documents, comments, or infor-
22 mation shall be preserved in any action under
23 this section. Notwithstanding the preceding sen-
24 tence, the court may examine, in camera, the
25 confidential or privileged material, and may dis-

1 close such material under such terms and con-
2 ditions as it may order.

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

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

12 “(1) ADMINISTERING AUTHORITY.—The term
13 ‘administering authority’ has the meaning given that
14 term in section 861(1).

15 “(2) COMMISSION.—The term ‘Commission’
16 means the United States International Trade Com-
17 mission.

18 “(3) INTERESTED PARTY.—The term ‘inter-
19 ested party’ means any person described in section
20 861(17).”.

21 (b) CONFORMING AMENDMENTS.—

22 (1) JURISDICTION OF THE COURT.—Section
23 1581(e) of title 28, United States Code, is amended
24 by inserting “or 516B” after “section 516A”.

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

3 (A) in subsection (c)(1) by striking “and
4 (5)” and inserting “(5), and (6)”; and

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

7 “(6) In any civil action under section 516B of the
8 Tariff Act of 1930, the Court of International Trade may
9 not issue injunctions or any other form of equitable relief,
10 except with regard to implementation of a countermeasure
11 order under section 468 of that Act, upon a proper show-
12 ing that such relief is warranted.”.

13 **TITLE II—OTHER PROVISIONS**

14 **SEC. 201. EQUIPMENT AND REPAIR OF VESSELS.**

15 Section 466 of the Tariff Act of 1930 (19 U.S.C.
16 1466), is amended by adding at the end the following new
17 subsection:

18 “(i) The duty imposed by subsection (a) shall not
19 apply with respect to activities occurring in a Shipbuilding
20 Agreement Party, as defined in section 861(22), with re-
21 spect to—

22 “(1) self-propelled seagoing vessels of 100 gross
23 tons or more that are used for transportation of
24 goods or persons or for performance of a specialized

1 service (including, but not limited to, ice breakers
2 and dredges), and

3 “(2) tugs of 365 kilowatts or more.

4 A vessel shall be considered ‘self-propelled seagoing’ if its
5 permanent propulsion and steering provide it all the char-
6 acteristics of self-navigability in the high seas.”.

7 **SEC. 202. EFFECT OF AGREEMENT WITH RESPECT TO PRI-**
8 **VATE REMEDIES.**

9 No person other than the United States—

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

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

21 **SEC. 203. IMPLEMENTING REGULATIONS.**

22 After the date of the enactment of this Act, the heads
23 of agencies with functions under this Act and the amend-
24 ments made by this Act may issue such regulations as may
25 be necessary to ensure that this Act is appropriately im-

1 plemented on the date the Shipbuilding Agreement enters
2 into force with respect to the United States.

3 **SEC. 204. AMENDMENTS TO THE MERCHANT MARINE ACT,**

4 **1936.**

5 The Merchant Marine Act, 1936, is amended as fol-
6 lows:

7 (1) Section 511(a)(2) (46 App. U.S.C.
8 1161(a)(2)) is amended by inserting after “1939,”
9 the following: “or, if the vessel is a Shipbuilding
10 Agreement vessel, constructed in a Shipbuilding
11 Agreement Party, but only with regard to moneys
12 deposited, on or after the date on which the Ship-
13 building Trade Agreement Act takes effect, into a
14 construction reserve fund established under sub-
15 section (b)”.

16 (2) Section 601(a) (46 App. U.S.C. 1171(a)) is
17 amended by striking “, and that such vessel or ves-
18 sels were built in the United States, or have been
19 documented under the laws of the United States not
20 later than February 1, 1928, or actually ordered and
21 under construction for the account of citizens of the
22 United States prior to such date,” and inserting
23 “and that such vessel or vessels were built in the
24 United States, or, if the vessel or vessels are Ship-

1 building Agreement vessels, in a Shipbuilding Agree-
2 ment Party”.

3 (3) Section 606(6) (46 App. U.S.C. 1176(6)) is
4 amended by inserting “or, if the vessel is a Ship-
5 building Agreement vessel, in a Shipbuilding Agree-
6 ment Party or in the United States, before “, except
7 in an emergency.”.

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

10 (A) Subsection (a) is amended by inserting
11 “or, if the vessel is a Shipbuilding Agreement
12 vessel, in a Shipbuilding Agreement Party,”
13 after “built in the United States”.

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

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

18 “(A)(i) constructed in the United States
19 and, if reconstructed, reconstructed in the
20 United States or in a Shipbuilding Agreement
21 Party, or

22 “(ii) that is a Shipbuilding Agreement ves-
23 sel and is constructed in a Shipbuilding Agree-
24 ment Party and, if reconstructed, is recon-

1 structured in a Shipbuilding Agreement Party or
2 in the United States,”.

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

5 “(A)(i) constructed in the United States
6 and, if reconstructed, reconstructed in the Unit-
7 ed States or in a Shipbuilding Agreement
8 Party, or

9 “(ii) that is a Shipbuilding Agreement ves-
10 sel and is constructed in a Shipbuilding Agree-
11 ment Party and, if reconstructed, is recon-
12 structed in a Shipbuilding Agreement Party or
13 in the United States, but only with regard to
14 moneys deposited into the fund on or after the
15 date on which the Shipbuilding Trade Agree-
16 ment Act takes effect.”.

17 (5) Section 610 (46 App. U.S.C. 1180) is
18 amended by striking “shall be built in a domestic
19 yard or shall have been documented under the laws
20 of the United States not later than February 1,
21 1928, or actually ordered and under construction for
22 the account of citizens of the United States prior to
23 such date,” and inserting “shall be built in the Unit-
24 ed States or, if the vessel is a Shipbuilding Agree-
25 ment vessel, in a Shipbuilding Agreement Party,”.

1 (6) Section 901(b)(1) (46 App. U.S.C.
2 1241(b)(1)) is amended by striking the third sen-
3 tence and inserting the following:

4 “For purposes of this section, the term ‘privately owned
5 United States-flag commercial vessels’ shall be deemed to
6 include—

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

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

20 The term ‘privately owned United States-flag commercial
21 vessels’ shall also be deemed to include any cargo vessel
22 that so qualified pursuant to section 615 of this Act or
23 this paragraph before the date on which the Shipbuilding
24 Trade Agreement Act takes effect. The term ‘privately
25 owned United States-flag commercial vessels’ shall not be

1 deemed to include any liquid bulk cargo vessel that does
2 not meet the requirements of section 3703a of title 46,
3 United States Code.”.

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

6 “(h) The term ‘Shipbuilding Agreement’ means the
7 Agreement Respecting Normal Competitive Conditions in
8 the Commercial Shipbuilding and Repair Industry, which
9 resulted from negotiations under the auspices of the Orga-
10 nization for Economic Cooperation and Development, and
11 was entered into on December 21, 1994.

12 “(i) The term ‘Shipbuilding Agreement Party’ means
13 a state or separate customs territory that is a Party to
14 the Shipbuilding Agreement, and with respect to which the
15 United States applies the Shipbuilding Agreement.

16 “(j) The term ‘Shipbuilding Agreement vessel’ means
17 a vessel to which the Secretary determines Article 2.1 of
18 the Shipbuilding Agreement applies.

19 “(k) The term ‘Export Credit Understanding’ means
20 the Understanding on Export Credits for Ships which re-
21 sulted from negotiations under the auspices of the Organi-
22 zation for Economic Cooperation and Development and
23 was entered into on December 21, 1994.

1 “(1) The term ‘Export Credit Understanding vessel’
2 means a vessel to which the Secretary determines the Ex-
3 port Credit Understanding applies.”.

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

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

8 “(5) shall bear interest (exclusive of charges for
9 the guarantee and service charges, if any) at rates
10 not to exceed such percent per annum on the unpaid
11 principal as the Secretary determines to be reason-
12 able, taking into account the range of interest rates
13 prevailing in the private market for similar loans
14 and the risks assumed by the Secretary, except that,
15 with respect to Export Credit Understanding vessels,
16 and Shipbuilding Agreement vessels, the obligations
17 shall bear interest at a rate the Secretary determines
18 to be consistent with obligations of the United
19 States under the Export Credit Understanding or
20 the Shipbuilding Agreement, as the case may be;”.

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

23 “(i)(1) Except as provided in paragraph (2), the Sec-
24 retary may not, with respect to—

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

3 “(B) the 87½ percent or less limitation con-
4 tained in the 1st, 2nd, 4th, or 5th proviso to sub-
5 section (b)(2) or in section 1112(b), or

6 “(C) the 80 percent or less limitation in the 3rd
7 proviso to such subsection,

8 establish by rule, regulation, or procedure any percentage
9 within any such limitation that is, or is intended to be,
10 applied uniformly to all guarantees or commitments to
11 guarantee made under this section that are subject to the
12 limitation.

13 “(2) With respect to Export Credit Understanding
14 vessels and Shipbuilding Agreement vessels, the Secretary
15 may establish by rule, regulation, or procedure a uniform
16 percentage that the Secretary determines to be consistent
17 with obligations of the United States under the Export
18 Credit Understanding or the Shipbuilding Agreement, as
19 the case may be.”.

20 (C) Section 1104B(b) (46 App. U.S.C.
21 1274a(b)) is amended by striking the period at
22 the end and inserting the following:

23 “, except that, with respect to Export Credit Understand-
24 ing vessels and Shipbuilding Agreement vessels, the Sec-
25 retary may establish by rule, regulation, or procedure a

1 uniform percentage that the Secretary determines to be
2 consistent with obligations of the United States under the
3 Export Credit Understanding or the Shipbuilding Agree-
4 ment, as the case may be.”.

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