

Union Calendar No. 299

104TH CONGRESS
2^D SESSION

H. R. 2754

[Report No. 104-524, Parts I and II]

A BILL

To approve and implement the OECD Shipbuilding
Trade Agreement.

MAY 30, 1996

Reported from the Committee on National Security with
an amendment, committed to the Committee of the
Whole House on the State of the Union, and ordered
to be printed

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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

APRIL 18, 1996

Reported from the Committee on Ways and Means with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

APRIL 18, 1996

Referral to the Committee on National Security extended for a period ending not later than May 30, 1996.

MAY 30, 1996

Additional sponsors: Mr. LEVIN, Mr. CARDIN, and Mr. GENE GREEN of Texas

Deleted sponsor: Mr. QUILLEN (added December 21, 1995; deleted March 29, 1996)

MAY 30, 1996

Reported from the Committee on National Security with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in **bold face roman**]

[For text of introduced bill, see copy of bill as introduced on December 11, 1995]

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 Nor-*
8 *mal Competitive Conditions in the Commercial Shipbuild-*
9 *ing and Repair Industry (hereafter in this Act referred to*
10 *as the “Shipbuilding Agreement”), a reciprocal trade agree-*
11 *ment which resulted from negotiations under the auspices*
12 *of the Organization for Economic Cooperation and Develop-*
13 *ment, and was entered into on December 21, 1994.*

14 **SEC. 3. EFFECTIVE DATE.**

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

1 **TITLE I—INJURIOUS PRICING**
 2 **AND COUNTERMEASURES**

3 **SEC. 101. INJURIOUS PRICING AND COUNTERMEASURES**
 4 **PROCEEDINGS.**

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

7 **“TITLE VIII—INJURIOUS PRIC-**
 8 **ING AND COUNTERMEASURES**
 9 **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 re-*
ports.

“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 that*
6 *a foreign vessel has been sold directly or indirectly to*
7 *one or more United States buyers at less than its fair*
8 *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 the*

16 *United States is or has been materially retarded,*

17 *by reason of the sale of such vessel, then there shall*

18 *be imposed upon the foreign producer of the subject*

19 *vessel an injurious pricing charge, in an amount*

20 *equal to the amount by which the normal value ex-*

21 *ceeds the export price for the vessel. For purposes of*

22 *this subsection and section 805(b)(1), a reference to*

23 *the sale of a foreign vessel includes the creation or*

24 *transfer of an ownership interest in the vessel, except*

25 *for an ownership interest created or acquired solely*

1 *for the purpose of providing security for a normal*
2 *commercial loan.*

3 “(b) *FOREIGN VESSELS NOT MERCHANDISE.*—No for-
4 *eign vessel may be considered to be, or to be part of, a class*
5 *or kind of merchandise for purposes of subtitle B of title*
6 *VII.*

7 **“SEC. 802. PROCEDURES FOR INITIATING AN INJURIOUS**
8 **PRICING INVESTIGATION.**

9 “(a) *INITIATION BY ADMINISTERING AUTHORITY.*—

10 “(1) *GENERAL RULE.*—*Except in the case in*
11 *which subsection (d)(6) applies, an injurious pricing*
12 *investigation shall be initiated whenever the admin-*
13 *istering authority determines, from information*
14 *available to it, that a formal investigation is war-*
15 *ranted into the question of whether the elements nec-*
16 *essary for the imposition of a charge under section*
17 *801(a) exist, and whether a producer described in sec-*
18 *tion 861(17)(C) would meet the criteria of subsection*
19 *(b)(1)(B) for a petitioner.*

20 “(2) *TIME FOR INITIATION BY ADMINISTERING*
21 *AUTHORITY.*—*An investigation may only be initiated*
22 *under paragraph (1) within 6 months after the time*
23 *the administering authority first knew or should have*
24 *known of the sale of the vessel. Any period in which*

1 *subsection (d)(6)(A) applies shall not be included in*
2 *calculating that 6-month period.*

3 “(b) *INITIATION BY PETITION.*—

4 “(1) *PETITION REQUIREMENTS.*—(A) *Except in*
5 *a case in which subsection (d)(6) applies, an injuri-*
6 *ous pricing proceeding shall be initiated whenever an*
7 *interested party, as defined in subparagraph (C), (D),*
8 *(E), or (F) of section 861(17), files a petition with the*
9 *administering authority, on behalf of an industry,*
10 *which alleges the elements necessary for the imposi-*
11 *tion of an injurious pricing charge under section*
12 *801(a) and the elements required under subparagraph*
13 *(B), (C), (D), or (E) of this paragraph, and which is*
14 *accompanied by information reasonably available to*
15 *the petitioner supporting those allegations and identi-*
16 *fying the transaction concerned.*

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

19 “(I) *if the vessel was sold through a broad*
20 *multiple bid, the petition shall include informa-*
21 *tion indicating that the petitioner was invited to*
22 *tender a bid on the contract at issue, the peti-*
23 *tioner actually did so, and the bid of the peti-*
24 *tioner substantially met the delivery date and*
25 *technical requirements of the bid,*

1 “(II) if the vessel was sold through any bid-
2 ding process other than a broad multiple bid and
3 the petitioner was invited to tender a bid on the
4 contract at issue, the petition shall include infor-
5 mation indicating that the petitioner actually
6 did so and the bid of the petitioner substantially
7 met the delivery date and technical requirements
8 of the bid, or

9 “(III) except in a case in which the vessel
10 was sold through a broad multiple bid, if there
11 is no invitation to tender a bid, the petition
12 shall include information indicating that the pe-
13 titioner was capable of building the vessel con-
14 cerned and, if the petitioner knew or should have
15 known of the proposed purchase, it made demon-
16 strable efforts to conclude a sale with the United
17 States buyer consistent with the delivery date
18 and technical requirements of the buyer.

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

23 “(I) the majority of the producers in the in-
24 dustry have made efforts with the United States
25 buyer to conclude a sale of the subject vessel, or

1 “(II) general information on the sale was
2 available from brokers, financiers, classification
3 societies, charterers, trade associations, or other
4 entities normally involved in shipbuilding trans-
5 actions with whom the petitioner had regular
6 contacts or dealings.

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

13 “(D) If the petitioner is an interested party de-
14 scribed in section 861(17)(E), the petition shall in-
15 clude information indicating that a member of the as-
16 sociation described in that section is a producer that
17 meets the requirements of subparagraph (B) of this
18 paragraph.

19 “(E) If the petitioner is an interested party de-
20 scribed in section 861(17)(F), the petition shall in-
21 clude information indicating that a member of the as-
22 sociation described in that section meets the require-
23 ments of subparagraph (C) or (D) of this paragraph.

1 “(F) *The petition may be amended at such time,*
2 *and upon such conditions, as the administering au-*
3 *thority and the Commission may permit.*

4 “(2) *SIMULTANEOUS FILING WITH COMMIS-*
5 *SION.—The petitioner shall file a copy of the petition*
6 *with the Commission on the same day as it is filed*
7 *with the administering authority.*

8 “(3) *DEADLINE FOR FILING PETITION.—*

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

12 “(I) *6 months after the time that the*
13 *petitioner first knew or should have known*
14 *of the sale of the subject vessel, or*

15 “(II) *6 months after delivery of the*
16 *subject vessel.*

17 “(ii) *A petitioner to which paragraph*
18 *(1)(B)(iii) applies shall—*

19 “(I) *file the petition no later than the*
20 *earlier of 9 months after the time that the*
21 *petitioner first knew or should have known*
22 *of the sale of the subject vessel, or 6 months*
23 *after delivery of the subject vessel, and*

24 “(II) *submit to the administering au-*
25 *thority a notice of intent to file a petition*

1 *no later than 6 months after the time that*
2 *the petitioner first knew or should have*
3 *known of the sale (unless the petition itself*
4 *is filed within that 6-month period).*

5 “(B) *PRESUMPTION OF KNOWLEDGE.*—*For*
6 *purposes of this paragraph, if the existence of the*
7 *sale, together with general information concern-*
8 *ing the vessel, is published in the international*
9 *trade press, there is a rebuttable presumption*
10 *that the petitioner knew or should have known of*
11 *the sale of the vessel from the date of that publi-*
12 *cation.*

13 “(c) *ACTIONS BEFORE INITIATING INVESTIGATIONS.*—

14 “(1) *NOTIFICATION OF GOVERNMENTS.*—*Before*
15 *initiating an investigation under either subsection (a)*
16 *or (b), the administering authority shall notify the*
17 *government of the exporting country of the investiga-*
18 *tion. In the case of the initiation of an investigation*
19 *under subsection (b), such notification shall include a*
20 *public version of the petition.*

21 “(2) *ACCEPTANCE OF COMMUNICATIONS.*—*The*
22 *administering authority shall not accept any unsolic-*
23 *ited oral or written communication from any person*
24 *other than an interested party described in section*
25 *861(17)(C), (D), (E), or (F) before the administering*

1 *authority makes its decision whether to initiate an*
2 *investigation pursuant to a petition, except for in-*
3 *quiries regarding the status of the administering*
4 *authority's consideration of the petition or a request*
5 *for consultation by the government of the exporting*
6 *country.*

7 “(3) *NONDISCLOSURE OF CERTAIN INFORMA-*
8 *TION.—The administering authority and the Commis-*
9 *sion shall not disclose information with regard to any*
10 *draft petition submitted for review and comment be-*
11 *fore it is filed under subsection (b)(1).*

12 “(d) *PETITION DETERMINATION.—*

13 “(1) *TIME FOR INITIAL DETERMINATION.—(A)*
14 *Within 45 days after the date on which a petition is*
15 *filed under subsection (b), the administering author-*
16 *ity shall, after examining, on the basis of sources*
17 *readily available to the administering authority, the*
18 *accuracy and adequacy of the evidence provided in*
19 *the petition, determine whether the petition—*

20 “(i) *alleges the elements necessary for the*
21 *imposition of an injurious pricing charge under*
22 *section 801(a) and the elements required under*
23 *subsection (b)(1)(B), (C), (D), or (E), and con-*
24 *tains information reasonably available to the pe-*
25 *tioner supporting the allegations; and*

1 “(i) determine if the petition has been filed
2 by or on behalf of the industry.

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

6 “(2) *AFFIRMATIVE DETERMINATIONS.*—If the de-
7 terminations under clauses (i) and (ii) of paragraph
8 (1)(A) are affirmative, the administering authority
9 shall initiate an investigation to determine whether
10 the vessel was sold at less than fair value, unless
11 paragraph (6) applies.

12 “(3) *NEGATIVE DETERMINATIONS.*—If—
13 “(A) the determination under clause (i) or
14 (ii) of paragraph (1)(A) is negative, or
15 “(B) paragraph (6)(B) applies,
16 the administering authority shall dismiss the petition,
17 terminate the proceeding, and notify the petitioner in
18 writing of the reasons for the determination.

19 “(4) *DETERMINATION OF INDUSTRY SUPPORT.*—
20 “(A) *GENERAL RULE.*—For purposes of this
21 subsection, the administering authority shall de-
22 termine that the petition has been filed by or on
23 behalf of the domestic industry, if—

24 “(i) the domestic producers or workers
25 who support the petition collectively account

1 *for at least 25 percent of the total capacity*
2 *of domestic producers capable of producing*
3 *a like vessel, and*

4 “(ii) *the domestic producers or workers*
5 *who support the petition collectively account*
6 *for more than 50 percent of the total capac-*
7 *ity to produce a like vessel of that portion*
8 *of the domestic industry expressing support*
9 *for or opposition to the petition.*

10 “(B) *CERTAIN POSITIONS DISREGARDED.—*
11 *In determining industry support under subpara-*
12 *graph (A), the administering authority shall dis-*
13 *regard the position of domestic producers who*
14 *oppose the petition, if such producers are related*
15 *to the foreign producer or United States buyer of*
16 *the subject vessel, or the domestic producer is it-*
17 *self the United States buyer, unless such domestic*
18 *producers demonstrate that their interests as do-*
19 *mestic producers would be adversely affected by*
20 *the imposition of an injurious pricing charge.*

21 “(C) *POLLING THE INDUSTRY.—If the peti-*
22 *tion does not establish support of domestic pro-*
23 *ducers or workers accounting for more than 50*
24 *percent of the total capacity to produce a like*
25 *vessel—*

1 “(i) the administering authority shall
2 poll the industry or rely on other informa-
3 tion in order to determine if there is sup-
4 port for the petition as required by sub-
5 paragraph (A), or

6 “(ii) if there is a large number of pro-
7 ducers in the industry, the administering
8 authority may determine industry support
9 for the petition by using any statistically
10 valid sampling method to poll the industry.

11 “(D) COMMENTS BY INTERESTED PAR-
12 TIES.—Before the administering authority makes
13 a determination with respect to initiating an in-
14 vestigation, any person who would qualify as an
15 interested party under section 861(17) if an in-
16 vestigation were initiated, may submit comments
17 or information on the issue of industry support.
18 After the administering authority makes a deter-
19 mination with respect to initiating an investiga-
20 tion, the determination regarding industry sup-
21 port shall not be reconsidered.

22 “(5) DEFINITION OF DOMESTIC PRODUCERS OR
23 WORKERS.—For purposes of this subsection, the term
24 ‘domestic producers or workers’ means interested par-
25 ties as defined in section 861(17)(C), (D), (E), or (F).

1 “(6) *PROCEEDINGS BY WTO MEMBERS.*—*The ad-*
2 *ministering authority shall not initiate an investiga-*
3 *tion under this section if, with respect to the vessel*
4 *sale at issue, an antidumping proceeding conducted*
5 *by a WTO member who is not a Shipbuilding Agree-*
6 *ment Party—*

7 “(A) *has been initiated and has been pend-*
8 *ing for not more than one year, or*

9 “(B) *has been completed and resulted in the*
10 *imposition of antidumping measures or a nega-*
11 *tive determination with respect to whether the*
12 *sale was at less than fair value or with respect*
13 *to injury.*

14 “(e) *NOTIFICATION TO COMMISSION OF DETERMINA-*
15 *TION.*—*The administering authority shall—*

16 “(1) *notify the Commission immediately of any*
17 *determination it makes under subsection (a) or (d),*
18 *and*

19 “(2) *if the determination is affirmative, make*
20 *available to the Commission such information as it*
21 *may have relating to the matter under investigation,*
22 *under such procedures as the administering authority*
23 *and the Commission may establish to prevent disclo-*
24 *sure, other than with the consent of the party provid-*
25 *ing it or under protective order, of any information*

1 to which confidential treatment has been given by the
2 administering authority.

3 **“SEC. 803. PRELIMINARY DETERMINATIONS.**

4 “(a) *DETERMINATION BY COMMISSION OF REASON-*
5 *ABLE INDICATION OF INJURY.—*

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

13 “(A) *an industry in the United States—*

14 “(i) *is or has been materially injured,*

15 *or*

16 “(ii) *is threatened with material in-*
17 *jury, or*

18 “(B) *the establishment of an industry in the*
19 *United States is or has been materially retarded,*
20 *by reason of the sale of the subject vessel. If the Com-*
21 *mission makes a negative determination under this*
22 *paragraph, the investigation shall be terminated.*

23 “(2) *TIME FOR COMMISSION DETERMINATION.—*

24 *The Commission shall make the determination de-*
25 *scribed in paragraph (1) within 90 days after the*

1 *date on which the petition is filed or, in the case of*
2 *an investigation initiated under section 802(a), with-*
3 *in 90 days after the date on which the Commission*
4 *receives notice from the administering authority that*
5 *the investigation has been initiated.*

6 “(b) *PRELIMINARY DETERMINATION BY ADMINISTER-*
7 *ING AUTHORITY.—*

8 “(1) *PERIOD OF INJURIOUS PRICING INVESTIGA-*
9 *TION.—(A) The administering authority shall make a*
10 *determination, based upon the information available*
11 *to it at the time of the determination, of whether there*
12 *is a reasonable basis to believe or suspect that the sub-*
13 *ject vessel was sold at less than fair value.*

14 “(B) *If cost data is required to determine nor-*
15 *mal value on the basis of a sale of a foreign like vessel*
16 *that has not been delivered on or before the date on*
17 *which the administering authority initiates the inves-*
18 *tigation, the administering authority shall make its*
19 *determination within 160 days after the date of deliv-*
20 *ery of the foreign like vessel.*

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

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

6 “(E) *In no event shall the administering author-*
7 *ity make its determination before an affirmative de-*
8 *termination is made by the Commission under sub-*
9 *section (a).*

10 “(2) *DE MINIMIS INJURIOUS PRICING MARGIN.—*
11 *In making a determination under this subsection, the*
12 *administering authority shall disregard any injurious*
13 *pricing margin that is de minimis. For purposes of*
14 *the preceding sentence, an injurious pricing margin*
15 *is de minimis if the administering authority deter-*
16 *mines that the margin is less than 2 percent of the*
17 *export price.*

18 “(c) *EXTENSION OF PERIOD IN EXTRAORDINARILY*
19 *COMPLICATED CASES OR FOR GOOD CAUSE.—*

20 “(1) *IN GENERAL.—If—*

21 “(A) *the administering authority concludes*
22 *that the parties concerned are cooperating and*
23 *determines that—*

24 “(i) *the case is extraordinarily com-*
25 *plicated by reason of—*

1 “(I) the novelty of the issues pre-
2 sented, or

3 “(II) the nature and extent of the
4 information required, and

5 “(ii) additional time is necessary to
6 make the preliminary determination, or

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

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

12 “(2) LENGTH OF POSTPONEMENT.—The prelimi-
13 nary determination may be postponed under para-
14 graph (1)(A) or (B) until not later than the 190th
15 day after—

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

18 “(B) the date of delivery of the subject ves-
19 sel, if subsection (b)(1)(C) applies, or

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

24 “(3) NOTICE OF POSTPONEMENT.—The admin-
25 istering authority shall notify the parties to the inves-

1 *tigation, not later than 20 days before the date on*
2 *which the preliminary determination would otherwise*
3 *be required under subsection (b)(1), if it intends to*
4 *postpone making the preliminary determination*
5 *under paragraph (1). The notification shall include*
6 *an explanation of the reasons for the postponement,*
7 *and notice of the postponement shall be published in*
8 *the Federal Register.*

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

13 *“(1) determine an estimated injurious pricing*
14 *margin, and*

15 *“(2) make available to the Commission all infor-*
16 *mation upon which its determination was based and*
17 *which the Commission considers relevant to its injury*
18 *determination, under such procedures as the admin-*
19 *istering authority and the Commission may establish*
20 *to prevent disclosure, other than with the consent of*
21 *the party providing it or under protective order, of*
22 *any information to which confidential treatment has*
23 *been given by the administering authority.*

24 “(e) *NOTICE OF DETERMINATION.—Whenever the*
25 *Commission or the administering authority makes a deter-*

1 *mination under this section, the Commission or the admin-*
2 *istering authority, as the case may be, shall notify the peti-*
3 *tioner, and other parties to the investigation, and the Com-*
4 *mission or the administering authority (whichever is ap-*
5 *propriate) of its determination. The administering author-*
6 *ity shall include with such notification the facts and conclu-*
7 *sions on which its determination is based. Not later than*
8 *5 days after the date on which the determination is required*
9 *to be made under subsection (a)(2), the Commission shall*
10 *transmit to the administering authority the facts and con-*
11 *clusions on which its determination is based.*

12 **“SEC. 804. TERMINATION OR SUSPENSION OF INVESTIGA-**
13 **TION.**

14 *“(a) TERMINATION OF INVESTIGATION UPON WITH-*
15 *DRAWAL OF PETITION.—*

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

22 *“(2) LIMITATION ON TERMINATION BY COMMIS-*
23 *SION.—The Commission may not terminate an inves-*
24 *tigation under paragraph (1) before a preliminary*

1 *determination is made by the administering author-*
2 *ity under section 803(b).*

3 “(b) *TERMINATION OF INVESTIGATIONS INITIATED BY*
4 *ADMINISTERING AUTHORITY.—The administering author-*
5 *ity may terminate any investigation initiated by the ad-*
6 *ministering authority under section 802(a) after providing*
7 *notice of such termination to all parties to the investigation.*

8 “(c) *ALTERNATE EQUIVALENT REMEDY.—The criteria*
9 *set forth in subparagraphs (A) through (D) of section*
10 *806(e)(1) shall apply to any agreement that forms the basis*
11 *for termination of an investigation under subsection (a) or*
12 *(b).*

13 “(d) *PROCEEDINGS BY WTO MEMBERS.—*

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

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

24 “(A) *the imposition of antidumping meas-*
25 *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) If
7 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 Commission
13 shall terminate the suspension and continue the inves-
14 tigation. The period in which the investigation was
15 suspended shall not be included in calculating dead-
16 lines 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 the
5 subject of the investigation has been sold in the Unit-
6 ed 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 a
25 proceeding in which the preliminary determina-

1 tion by the administering authority under sec-
2 tion 803(b) was affirmative, or

3 “(i) 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 MARGIN.*—
8 In making a determination under this subsection, the
9 administering authority shall disregard any injurious
10 pricing margin that is *de minimis* as defined in sec-
11 tion 803(b)(2).

12 “(b) *FINAL DETERMINATION BY COMMISSION.*—

13 “(1) *IN GENERAL.*—The Commission shall make
14 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 the

21 United States is or has been materially retarded,

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

23 which the administering authority has made an af-

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

1 “(2) *PERIOD FOR INJURY DETERMINATION FOL-*
2 *LOWING AFFIRMATIVE PRELIMINARY DETERMINATION*
3 *BY ADMINISTERING AUTHORITY.—If the preliminary*
4 *determination by the administering authority under*
5 *section 803(b) is affirmative, then the Commission*
6 *shall make the determination required by paragraph*
7 *(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 FOL-*
16 *LOWING NEGATIVE PRELIMINARY DETERMINATION BY*
17 *ADMINISTERING AUTHORITY.—If the preliminary de-*
18 *termination by the administering authority under*
19 *section 803(b) is negative, and its final determination*
20 *under subsection (a) is affirmative, then the final de-*
21 *termination by the Commission under this subsection*
22 *shall be made within 75 days after the date of that*
23 *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 sub-*
19 *ject vessel.*

20 “(2) *ISSUANCE OF ORDER; EFFECT OF NEGATIVE*
21 *DETERMINATION.*—*If the determinations of the ad-*
22 *ministering authority and the Commission under sub-*
23 *sections (a)(1) and (b)(1) are affirmative, then the*
24 *administering authority shall issue an injurious pric-*
25 *ing order under section 806. If either of such deter-*

1 *minations is negative, the investigation shall be ter-*
2 *minated upon the publication of notice of that nega-*
3 *tive determination.*

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

12 *“(e) CORRECTION OF MINISTERIAL ERRORS.—The ad-*
13 *ministering authority shall establish procedures for the cor-*
14 *rection of ministerial errors in final determinations within*
15 *a reasonable time after the determinations are issued under*
16 *this section. Such procedures shall ensure opportunity for*
17 *interested parties to present their views regarding any such*
18 *errors. As used in this subsection, the term ‘ministerial*
19 *error’ includes errors in addition, subtraction, or other*
20 *arithmetic function, clerical errors resulting from inac-*
21 *curate copying, duplication, or the like, and any other type*
22 *of unintentional error which the administering authority*
23 *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 the*
10 *designee of the Secretary, within 180 days from the*
11 *date of publication of the order, an injurious pricing*
12 *charge in an amount equal to the amount by which*
13 *the normal value exceeds the export price of the sub-*
14 *ject vessel,*

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

1 *est charges at the Commercial Interest Reference*
2 *Rate (CIRR), and*

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

6 “(b) *EXTENSION OF DUE DATE FOR PAYMENT IN EX-*
7 *TRAORDINARY CIRCUMSTANCES.—*

8 “(1) *EXTENSION.—Upon request, the administer-*
9 *ing authority may amend the order under subsection*
10 *(a) to set a due date for payment or payments later*
11 *than the date that is 180 days from the date of publi-*
12 *cation of the order, if the administering authority de-*
13 *termines that full payment in 180 days would render*
14 *the producer insolvent or would be incompatible with*
15 *a judicially supervised reorganization. When an ex-*
16 *extended payment schedule provides for a series of par-*
17 *tial payments, the administering authority shall*
18 *specify the circumstances under which default on one*
19 *or more payments will result in the imposition of*
20 *countermeasures.*

21 “(2) *INTEREST CHARGES.—If a request is grant-*
22 *ed under paragraph (1), payments made after the*
23 *date that is 180 days from the publication of the*
24 *order shall be subject to interest charges at the 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 au-*
7 *thority—*

8 “(1) *may revoke an injurious pricing order if the*
9 *administering authority determines that producers*
10 *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 subsection*
22 *(e), or*

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

1 *proceeding conducted by a WTO member who is*
2 *not a Shipbuilding Agreement Party has been*
3 *completed and resulted in the imposition of anti-*
4 *dumping 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 sub-*
10 *ject to the order on an alternative equivalent remedy,*
11 *that the administering authority determines—*

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

14 “(B) *is in the public interest,*

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

17 “(D) *is otherwise consistent with the domes-*
18 *tic law and international obligations of the*
19 *United States.*

20 “(2) *PRIOR CONSULTATIONS AND SUBMISSION OF*

21 *COMMENTS.*—*Before entering into an agreement*
22 *under paragraph (1), the administering authority*
23 *shall consult with the industry, and provide for the*
24 *submission of comments by interested parties, with re-*
25 *spect to the agreement.*

1 “(3) *MATERIAL VIOLATIONS OF AGREEMENT.*—If
2 the injurious pricing order has been suspended under
3 paragraph (1), and the administering authority de-
4 termines that the foreign producer concerned has ma-
5 terially violated the terms of the agreement under
6 paragraph (1), the administering authority shall ter-
7 minate the suspension.

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

9 “(a) *GENERAL RULE.*—

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

15 “(2) *CONTENTS OF ORDER.*—The countermeasure
16 order shall—

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

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

1 “(b) NOTICE OF INTENT TO IMPOSE COUNTER-
2 MEASURES.—

3 “(1) GENERAL RULE.—The administering au-
4 thority shall issue a notice of intent to impose coun-
5 termeasures not later than 30 days before the expira-
6 tion of the time for payment specified in the injurious
7 pricing order (or extended payment provided for
8 under section 806(b)), and shall publish the notice in
9 the Federal Register within 7 days after issuing the
10 notice.

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

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

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

19 “(ii) with respect to which the material
20 terms of sale are established within a period
21 of 4 consecutive years beginning on the date
22 that is 30 days after publication in the
23 Fedcal Register of the notice of intent de-
24 scribed in paragraph (1).

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

6 “(c) *DETERMINATION TO IMPOSE COUNTERMEASURES;*
7 *ORDER.*—

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

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

22 “(3) *CONTENT OF THE DETERMINATION.*—*In the*
23 *determination imposing countermeasures, the admin-*
24 *istering authority shall determine whether, in light of*
25 *all of the circumstances, an interested party has dem-*

1 *onstrated that the scope or duration of the counter-*
2 *measures described in subsection (b)(2) should be nar-*
3 *rower or shorter than the scope or duration set forth*
4 *in the notice of intent to impose countermeasures.*

5 *“(4) ORDER.—At the same time it issues its de-*
6 *termination, the administering authority shall issue*
7 *an order imposing countermeasures, consistent with*
8 *its determination.*

9 *“(d) ADMINISTRATIVE REVIEW OF DETERMINATION TO*
10 *IMPOSE COUNTERMEASURES.—*

11 *“(1) REQUEST FOR REVIEW.—Each year, in the*
12 *anniversary month of the issuance of the order impos-*
13 *ing countermeasures under subsection (c), the admin-*
14 *istering authority shall publish in the Federal Reg-*
15 *ister a notice providing that interested parties may*
16 *request—*

17 *“(A) a review of the scope or duration of the*
18 *countermeasures determined under subsection*
19 *(c)(3), and*

20 *“(B) a hearing in connection with such a*
21 *review.*

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

1 “(A) publish notice of initiation of a review
2 in the *Federal Register* not later than 15 days
3 after the end of the anniversary month of the is-
4 suanace of the order imposing countermeasures,
5 and

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

10 “(3) *TIME FOR REVIEW.*—The administering au-
11 thority shall make its determination under paragraph
12 (2)(B) within 90 days after the date on which the no-
13 tice of initiation of the review is published. If the de-
14 termination under paragraph (2)(B) is affirmative,
15 the administering authority shall amend the order ac-
16 cordingly. The administering authority shall promptly
17 publish the determination and any amendment to
18 the order in the *Federal Register*, and shall provide
19 a copy of any amended order to the Customs Service.
20 In extraordinary circumstances, the administering
21 authority may extend the time for its determination
22 under paragraph (2)(B) to not later than 150 days
23 after the date on which the notice of initiation of the
24 review is published.

25 “(e) *EXTENSION OF COUNTERMEASURES.*—

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

6 “(2) *DEADLINE FOR REQUEST FOR EXTEN-*
7 *SION.*—

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

20 “(B) *OTHER REQUESTS.*—If the request
21 *seeks an extension under paragraph (1) other*
22 *than one described in subparagraph (A), the re-*
23 *quest shall be filed not earlier than the date that*
24 *is 6 months, and not later than a date that is*

1 3 months, before the date that marks the end of
2 the period referred to in subparagraph (A).

3 “(3) DETERMINATION.—

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

11 “(B) PROCEDURES.—

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

17 “(ii) OTHER REQUESTS.—If para-
18 graph (2)(B) applies to the request, the ad-
19 ministering authority shall determine, with-
20 in 90 days after the date on which the no-
21 tice of initiation of the proceeding is pub-
22 lished, whether the requesting party has
23 demonstrated that the scope or duration of
24 the countermeasures is inadequate in light
25 of all of the circumstances. If the admin-

1 *istering authority determines that an exten-*
2 *sion is warranted, it shall amend the coun-*
3 *termeasure order accordingly. The admin-*
4 *istering authority shall promptly publish*
5 *the determination and any amendment to*
6 *the order in the Federal Register, and shall*
7 *provide a copy of any amended order to the*
8 *Customs Service.*

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

18 “(5) *DECISION NOT TO REQUEST PANEL.—If,*
19 *based on consultations under paragraph (4), the*
20 *Trade Representative decides not to request establish-*
21 *ment of a panel, the Trade Representative shall in-*
22 *form the party requesting the extension of the counter-*
23 *measures of the reasons for its decision in writing.*
24 *The decision shall not be subject to judicial review.*

1 “(6) *PANEL PROCEEDINGS.*—If, based on con-
2 sultations under paragraph (4), the Trade Represent-
3 ative requests the establishment of a panel under the
4 Shipbuilding Agreement to authorize an extension of
5 the period of countermeasures, and the panel author-
6 izes such an extension, the administering authority
7 shall promptly amend the countermeasure order. The
8 administering authority shall publish notice of the
9 amendment in the Federal Register.

10 “(f) *LIST OF VESSELS SUBJECT TO COUNTER-*
11 *MEASURES.*—

12 “(1) *GENERAL RULE.*—At least once during each
13 12-month period beginning on the anniversary date of
14 a determination to impose countermeasures under
15 this section, the administering authority shall publish
16 in the Federal Register a list of all delivered vessels
17 subject to countermeasures under the determination.

18 “(2) *CONTENT OF LIST.*—The list under para-
19 graph (1) shall include the following information for
20 each vessel, to the extent the information is available:

21 “(A) The name and general description of
22 the vessel.

23 “(B) The vessel identification number.

24 “(C) The shipyard where the vessel was con-
25 structed.

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

2 “(E) *The name and address of the last-*
3 *known owner of the vessel.*

4 “(F) *The delivery date of the vessel.*

5 “(G) *The remaining duration of counter-*
6 *measures on the vessel.*

7 “(H) *Any other identifying information*
8 *available.*

9 “(3) *AMENDMENT OF LIST.—The administering*
10 *authority may amend the list from time to time to re-*
11 *flect new information that comes to its attention and*
12 *shall publish any amendments in the Federal Reg-*
13 *ister.*

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

17 “(i) *the petitioner under section 802(b),*

18 “(ii) *the United States Customs Service,*

19 “(iii) *the Secretariat of the Organization*
20 *for Economic Cooperation and Development,*

21 “(iv) *the owners of vessels on the list,*

22 “(v) *the shipyards on the list, and*

23 “(vi) *the government of the country in*
24 *which a shipyard on the list is located.*

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

4 “(i) *the parties listed in clauses (i), (ii),*
5 *and (iii) of subparagraph (A), and,*

6 “(ii) *if the amendment affects their inter-*
7 *ests, the parties listed in clauses (iv), (v), and*
8 *(vi) of subparagraph (A).*

9 “(g) *ADMINISTRATIVE REVIEW OF LIST OF VESSELS*
10 *SUBJECT TO COUNTERMEASURES.—*

11 “(1) *REQUEST FOR REVIEW.—(A) An interested*
12 *party may request in writing a review of the list de-*
13 *scribed in subsection (f)(1), including any amend-*
14 *ments thereto, to determine whether—*

15 “(i) *a vessel included in the list does not*
16 *fall within the scope of the applicable counter-*
17 *measure order and should be deleted, or*

18 “(ii) *a vessel not included in the list falls*
19 *within the scope of the applicable counter-*
20 *measure order and should be added.*

21 “(B) *Any request seeking a determination de-*
22 *scribed in subparagraph (A)(i) shall be made within*
23 *90 days after the date of publication of the applicable*
24 *list.*

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

3 “(A) publish notice of initiation of a review
4 in the *Federal Register*—

5 “(i) not later than 15 days after the re-
6 quest is received, or

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

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

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

15 “(ii) a vessel not included in the list
16 qualifies for inclusion.

17 “(3) *TIME FOR DETERMINATION.*—The admin-
18 istering authority shall make its determination under
19 paragraph (2)(B) within 90 days after the date on
20 which the notice of initiation of such review is pub-
21 lished. If the administering authority determines that
22 a vessel should be added or deleted from the list, the
23 administering authority shall amend the list accord-
24 ingly. The administering authority shall promptly

1 *publish in the Federal Register the determination and*
2 *any such amendment to the list.*

3 “(h) *EXPIRATION OF COUNTERMEASURES.*—*Upon ex-*
4 *piration of a countermeasure order imposed under this sec-*
5 *tion, the administering authority shall promptly publish a*
6 *notice of the expiration in the Federal Register.*

7 “(i) *SUSPENSION OR TERMINATION OF PROCEEDINGS*
8 *OR COUNTERMEASURES; TEMPORARY REDUCTION OF*
9 *COUNTERMEASURES.*—

10 “(1) *IF INJURIOUS PRICING ORDER REVOKED OR*
11 *SUSPENDED.*—*If an injurious pricing order has been*
12 *revoked or suspended under section 806(d) or (e), the*
13 *administering authority shall, as appropriate, sus-*
14 *pend or terminate proceedings under this section with*
15 *respect to that order, or suspend or revoke a counter-*
16 *measure order issued with respect to that injurious*
17 *pricing order.*

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

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

6 “(C) If—

7 “(i) a countermeasure order is issued under
8 subsection (c) before an amendment is made
9 under section 845 to the payment date of the in-
10 jurious pricing order to which the counter-
11 measure order applies, and

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

18 the administering authority may, in lieu of acting
19 under subparagraph (A), reinstitute proceedings
20 under subsection (c) for purposes of issuing a new de-
21 termination under that subsection.

22 “(j) COMMENT AND HEARING.—In the course of any
23 proceeding under subsection (c), (d), (e), or (g), the admin-
24 istering authority—

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

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

6
7 “(B) in a proceeding under subsection (e) or (g),
8 upon the request of an interested party, may hold a
9 hearing in accordance with section 841(b) in connection with that proceeding.

11 **“SEC. 808. INJURIOUS PRICING PETITIONS BY THIRD COUN-**
12 **TRIES.**

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

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

19
20 “(2) an industry, in the petitioning country,
21 producing or capable of producing a like vessel is materially injured by reason of such sale.

22
23 “(b) *INITIATION.*—The Trade Representative, after
24 consultation with the administering authority and the
25 Commission and obtaining the approval of the Parties

1 *Group under the Shipbuilding Agreement, shall determine*
2 *whether to initiate an investigation described in subsection*
3 *(a).*

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

10 “(1) *The administering authority shall deter-*
11 *mine whether the subject vessel has been sold at less*
12 *than fair value.*

13 “(2) *The Commission shall determine whether an*
14 *industry in the petitioning country is materially in-*
15 *jured by reason of the sale of the subject vessel in the*
16 *United States.*

17 “(d) *PUBLIC COMMENT.*—*An opportunity for public*
18 *comment shall be provided, as appropriate—*

19 “(1) *by the Trade Representative, in making the*
20 *determinations required by subsection (b), and*

21 “(2) *by the administering authority and the*
22 *Commission, in making the determinations required*
23 *by subsection (c).*

24 “(e) *ISSUANCE OF ORDER.*—*If the administering au-*
25 *thority makes an affirmative determination under para-*

1 *graph (1) of subsection (c), and the Commission makes an*
2 *affirmative determination under paragraph (2) of sub-*
3 *section (c), the administering authority shall—*

4 “(1) *order an injurious pricing charge in accord-*
5 *ance with section 806, and*

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

10 “(f) *REVIEWS OF DETERMINATIONS.—For purposes of*
11 *review under section 516B, if an order is issued under sub-*
12 *section (e)—*

13 “(1) *the final determinations of the administer-*
14 *ing authority and the Commission under subsection*
15 *(c) shall be treated as final determinations made*
16 *under section 805, and*

17 “(2) *determinations of the administering author-*
18 *ity under subsection (e)(2) shall be treated as deter-*
19 *minations made under section 806 or 807, as the case*
20 *may be.*

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

1 **“Subtitle B—Special Rules**

2 **“SEC. 821. EXPORT PRICE.**

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

13 “(b) *ADJUSTMENTS TO EXPORT PRICE.*—The price
14 used to establish export price shall be—

15 “(1) increased by the amount of any import du-
16 ties imposed by the country of exportation which have
17 been rebated, or which have not been collected, by rea-
18 son of the exportation of the subject vessel, and

19 “(2) reduced by—

20 “(A) the amount, if any, included in such
21 price, attributable to any additional costs,
22 charges, or expenses which are incident to bring-
23 ing the subject vessel from the shipyard in the ex-
24 porting country to the place of delivery,

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

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

7 **“SEC. 822. NORMAL VALUE.**

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

14 “(1) DETERMINATION OF NORMAL VALUE.—

15 “(A) IN GENERAL.—The normal value of the
16 subject vessel shall be the price described in sub-
17 paragraph (B), at a time reasonably correspond-
18 ing to the time of the sale used to determine the
19 export price under section 821(a).

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

22 “(i) the price at which a foreign like
23 vessel is first sold in the exporting country,
24 in the ordinary course of trade and, to the

1 *extent practicable, at the same level of*
2 *trade, or*

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

8 “(I) *such price is representative,*
9 *and*

10 “(II) *the administering authority*
11 *does not determine that the particular*
12 *market situation in such other country*
13 *prevents a proper comparison with the*
14 *export price.*

15 “(C) *THIRD COUNTRY SALES.—This sub-*
16 *paragraph applies when—*

17 “(i) *a foreign like vessel is not sold in*
18 *the exporting country as described in sub-*
19 *paragraph (B)(i), or*

20 “(ii) *the particular market situation*
21 *in the exporting country does not permit a*
22 *proper comparison with the export price.*

23 “(D) *CONTEMPORANEOUS SALE.—For pur-*
24 *poses of subparagraph (A), ‘a time reasonably*
25 *corresponding to the time of the sale’ means*

1 *within 3 months before or after the sale of the*
2 *subject vessel or, in the absence of such sales,*
3 *such longer period as the administering author-*
4 *ity determines would be appropriate.*

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

9 “(3) *USE OF CONSTRUCTED VALUE.*—*If the ad-*
10 *ministering authority determines that the normal*
11 *value of the subject vessel cannot be determined under*
12 *paragraph (1)(B) or (1)(C), then the normal value of*
13 *the subject vessel shall be the constructed value of that*
14 *vessel, as determined under subsection (e).*

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

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

21 “(A) *reduced by—*

22 “(i) *the amount, if any, included in*
23 *the price described in paragraph (1)(B), at-*
24 *tributable to any costs, charges, and ex-*
25 *penses incident to bringing the foreign like*

1 vessel from the shipyard to the place of de-
2 livery to the purchaser,

3 “(ii) the amount of any taxes imposed
4 directly upon the foreign like vessel or com-
5 ponents thereof which have been rebated, or
6 which have not been collected, on the subject
7 vessel, but only to the extent that such taxes
8 are added to or included in the price of the
9 foreign like vessel, and

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

13 “(B) increased or decreased by the amount
14 of any difference (or lack thereof) between the ex-
15 port price and the price described in paragraph
16 (1)(B) (other than a difference for which allow-
17 ance is otherwise provided under this section)
18 that is established to the satisfaction of the ad-
19 ministering authority to be wholly or partly due
20 to—

21 “(i) physical differences between the
22 subject vessel and the vessel used in deter-
23 mining normal value, or

24 “(ii) other differences in the cir-
25 cumstances of sale.

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

11 “(A) *involves the performance of different*
12 *selling activities, and*

13 “(B) *is demonstrated to affect price com-*
14 *parability, based on a pattern of consistent price*
15 *differences between sales at different levels of*
16 *trade in the country in which normal value is*
17 *determined.*

18 *In a case described in the preceding sentence, the*
19 *amount of the adjustment shall be based on the price*
20 *differences between the two levels of trade in the coun-*
21 *try in which normal value is determined.*

22 “(7) *ADJUSTMENTS TO CONSTRUCTED VALUE.*—
23 *Constructed value as determined under subsection (d)*
24 *may be adjusted, as appropriate, pursuant to this*
25 *subsection.*

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

2 “(1) *DETERMINATION; SALES DISREGARDED.*—

3 *Whenever the administering authority has reasonable*
4 *grounds to believe or suspect that the sale of the for-*
5 *ign like vessel under consideration for the determina-*
6 *tion of normal value has been made at a price which*
7 *represents less than the cost of production of the for-*
8 *ign like vessel, the administering authority shall de-*
9 *termine whether, in fact, such sale was made at less*
10 *than the cost of production. If the administering au-*
11 *thority determines that the sale was made at less than*
12 *the cost of production and was not at a price which*
13 *permits recovery of all costs within 5 years, such sale*
14 *may be disregarded in the determination of normal*
15 *value. Whenever such a sale is disregarded, normal*
16 *value shall be based on another sale of a foreign like*
17 *vessel in the ordinary course of trade. If no sales*
18 *made in the ordinary course of trade remain, the nor-*
19 *mal value shall be based on the constructed value of*
20 *the subject vessel.*

21 “(2) *DEFINITIONS AND SPECIAL RULES.*—*For*
22 *purposes of this subsection:*

23 “(A) *REASONABLE GROUNDS TO BELIEVE*
24 *OR SUSPECT.*—*There are reasonable grounds to*
25 *believe or suspect that the sale of a foreign like*

1 vessel was made at a price that is less than the
2 cost of production of the vessel, if an interested
3 party described in subparagraph (C), (D), (E),
4 or (F) of section 861(17) provides information,
5 based upon observed prices or constructed prices
6 or costs, that the sale of the foreign like vessel
7 under consideration for the determination of nor-
8 mal value has been made at a price which rep-
9 resents less than the cost of production of the ves-
10 sel.

11 “(B) RECOVERY OF COSTS.—If the price is
12 below the cost of production at the time of sale
13 but is above the weighted average cost of produc-
14 tion for the period of investigation, such price
15 shall be considered to provide for recovery of
16 costs within 5 years.

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

20 “(A) the cost of materials and of fabrication
21 or other processing of any kind employed in pro-
22 ducing the foreign like vessel, during a period
23 which would ordinarily permit the production of
24 that vessel in the ordinary course of business,
25 and

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

5 For purposes of subparagraph (A), if the normal
6 value is based on the price of the foreign like vessel
7 sold in a country other than the exporting country,
8 the cost of materials shall be determined without re-
9 gard to any internal tax in the exporting country im-
10 posed on such materials or on their disposition which
11 are remitted or refunded upon exportation.

12 “(c) *NONMARKET ECONOMY COUNTRIES.*—

13 “(1) *IN GENERAL.*—If—

14 “(A) the subject vessel is produced in a non-
15 market economy country, and

16 “(B) the administering authority finds that
17 available information does not permit the nor-
18 mal value of the subject vessel to be determined
19 under subsection (a),

20 the administering authority shall determine the nor-
21 mal value of the subject vessel on the basis of the value
22 of the factors of production utilized in producing the
23 vessel and to which shall be added an amount for gen-
24 eral expenses and profit plus the cost of expenses inci-
25 dental to placing the vessel in a condition for delivery

1 to the buyer. Except as provided in paragraph (2),
2 the valuation of the factors of production shall be
3 based on the best available information regarding the
4 values of such factors in a market economy country
5 or countries considered to be appropriate by the ad-
6 ministering authority.

7 “(2) *EXCEPTION.*—If the administering author-
8 ity finds that the available information is inadequate
9 for purposes of determining the normal value of the
10 subject vessel under paragraph (1), the administering
11 authority shall determine the normal value on the
12 basis of the price at which a vessel that is—

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

14 “(B) produced in one or more market econ-
15 omy countries that are at a level of economic de-
16 velopment comparable to that of the nonmarket
17 economy country,

18 is sold in other countries, including the United
19 States.

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

23 “(A) hours of labor required,

24 “(B) quantities of raw materials employed,

1 “(C) amounts of energy and other utilities
2 consumed, and

3 “(D) representative capital cost, including
4 depreciation.

5 “(4) VALUATION OF FACTORS OF PRODUCTION.—
6 The administering authority, in valuing factors of
7 production under paragraph (1), shall utilize, to the
8 extent possible, the prices or costs of factors of produc-
9 tion in one or more market economy countries that
10 are—

11 “(A) at a level of economic development
12 comparable to that of the nonmarket economy
13 country, and

14 “(B) significant producers of comparable
15 vessels.

16 “(d) SPECIAL RULE FOR CERTAIN MULTINATIONAL
17 CORPORATIONS.—Whenever, in the course of an investiga-
18 tion under this title, the administering authority deter-
19 mines that—

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

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

2 “(3) the normal value of a foreign like vessel pro-
3 duced in one or more of the facilities outside the ex-
4 porting country is higher than the normal value of
5 the foreign like vessel produced in the facilities located
6 in the exporting country,

7 the administering authority shall determine the normal
8 value of the subject vessel by reference to the normal value
9 at which a foreign like vessel is sold from one or more facili-
10 ties outside the exporting country. The administering au-
11 thority, in making any determination under this sub-
12 section, shall make adjustments for the difference between
13 the costs of production (including taxes, labor, materials,
14 and overhead) of the foreign like vessel produced in facilities
15 outside the exporting country and costs of production of the
16 foreign like vessel produced in facilities in the exporting
17 country, if such differences are demonstrated to its satisfac-
18 tion.

19 “(e) *CONSTRUCTED VALUE*.—

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

23 “(A) the cost of materials and fabrication or
24 other processing of any kind employed in pro-
25 ducing the subject vessel, during a period which

1 *would ordinarily permit the production of the*
2 *vessel in the ordinary course of business, and*

3 “(B)(i) *the actual amounts incurred and re-*
4 *alized by the foreign producer of the subject ves-*
5 *sel for selling, general, and administrative ex-*
6 *penses, and for profits, in connection with the*
7 *production and sale of a foreign like vessel, in*
8 *the ordinary course of trade, in the domestic*
9 *market of the country of origin of the subject ves-*
10 *sel, or*

11 “(i) *if actual data are not available with*
12 *respect to the amounts described in clause (i),*
13 *then—*

14 “(I) *the actual amounts incurred and*
15 *realized by the foreign producer of the sub-*
16 *ject vessel for selling, general, and adminis-*
17 *trative expenses, and for profits, in connec-*
18 *tion with the production and sale of the*
19 *same general category of vessel in the do-*
20 *mestic market of the country of origin of the*
21 *subject vessel,*

22 “(II) *the weighted average of the actual*
23 *amounts incurred and realized by producers*
24 *in the country of origin of the subject vessel*
25 *(other than the producer of the subject ves-*

1 *sel) for selling, general, and administrative*
2 *expenses, and for profits, in connection with*
3 *the production and sale of a foreign like*
4 *vessel, in the ordinary course of trade, in*
5 *the domestic market, or*

6 *“(III) if data is not available under*
7 *subclause (I) or (II), the amounts incurred*
8 *and realized for selling, general, and ad-*
9 *ministrative expenses, and for profits, based*
10 *on any other reasonable method, except that*
11 *the amount allowed for profit may not ex-*
12 *ceed the amount normally realized by for-*
13 *ign producers (other than the producer of*
14 *the subject vessel) in connection with the*
15 *sale of vessels in the same general category*
16 *of vessel as the subject vessel in the domestic*
17 *market of the country of origin of the sub-*
18 *ject vessel.*

19 *The profit shall, for purposes of this paragraph, be*
20 *based on the average profit realized over a reasonable*
21 *period of time before and after the sale of the subject*
22 *vessel and shall reflect a reasonable profit at the time*
23 *of such sale. For purposes of the preceding sentence,*
24 *a ‘reasonable period of time’ shall not, except where*
25 *otherwise appropriate, exceed 6 months before, or 6*

1 *months after, the sale of the subject vessel. In calculat-*
2 *ing profit under this paragraph, any distortion which*
3 *would result in other than a profit which is reason-*
4 *able at the time of the sale shall be eliminated.*

5 *“(2) COSTS AND PROFITS BASED ON OTHER REA-*
6 *SONABLE METHODS.—When costs and profits are de-*
7 *termined under paragraph (1)(B)(ii)(III), such deter-*
8 *mination shall, except where otherwise appropriate,*
9 *be based on appropriate export sales by the producer*
10 *of the subject vessel or, absent such sales, to export*
11 *sales by other producers of a foreign like vessel or the*
12 *same general category of vessel as the subject vessel in*
13 *the country of origin of the subject vessel.*

14 *“(3) COSTS OF MATERIALS.—For purposes of*
15 *paragraph (1)(A), the cost of materials shall be deter-*
16 *mined without regard to any internal tax in the ex-*
17 *porting country imposed on such materials or their*
18 *disposition which are remitted or refunded upon ex-*
19 *portation of the subject vessel produced from such ma-*
20 *terials.*

21 *“(f) SPECIAL RULES FOR CALCULATION OF COST OF*
22 *PRODUCTION AND FOR CALCULATION OF CONSTRUCTED*
23 *VALUE.—For purposes of subsections (b) and (e)—*

24 *“(1) COSTS.—*

1 “(A) *IN GENERAL.*—Costs shall normally be
2 *calculated based on the records of the foreign*
3 *producer of the subject vessel, if such records are*
4 *kept in accordance with the generally accepted*
5 *accounting principles of the exporting country*
6 *and reasonably reflect the costs associated with*
7 *the production and sale of the vessel. The admin-*
8 *istering authority shall consider all available*
9 *evidence on proper allocation of costs, including*
10 *that which is made available by the foreign pro-*
11 *ducer on a timely basis, if such allocations have*
12 *been historically used by the foreign producer, in*
13 *particular for establishing appropriate amortiza-*
14 *tion and depreciation periods, and allowances*
15 *for capital expenditures and other development*
16 *costs.*

17 “(B) *NONRECURRING COSTS.*—Costs shall be
18 *adjusted appropriately for those nonrecurring*
19 *costs that benefit current or future production, or*
20 *both.*

21 “(C) *STARTUP COSTS.*—

22 “(i) *IN GENERAL.*—Costs shall be ad-
23 *justed appropriately for circumstances in*
24 *which costs incurred during the time period*

1 covered by the investigation are affected by
2 startup operations.

3 “(ii) *STARTUP OPERATIONS.*—Adjust-
4 ments shall be made for startup operations
5 only where—

6 “(I) a producer is using new pro-
7 duction facilities or producing a new
8 type of vessel that requires substantial
9 additional investment, and

10 “(II) production levels are limited
11 by technical factors associated with the
12 initial phase of commercial produc-
13 tion.

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

23 “(iii) *ADJUSTMENT FOR STARTUP OP-*
24 *ERATIONS.*—The adjustment for startup op-
25 erations shall be made by substituting the

1 *unit production costs incurred with respect*
2 *to the vessel at the end of the startup period*
3 *for the unit production costs incurred dur-*
4 *ing the startup period. If the startup period*
5 *extends beyond the period of the investiga-*
6 *tion under this title, the administering au-*
7 *thority shall use the most recent cost of pro-*
8 *duction data that it reasonably can obtain,*
9 *analyze, and verify without delaying the*
10 *timely completion of the investigation. For*
11 *purposes of this subparagraph, the startup*
12 *period ends at the point at which the level*
13 *of commercial production that is char-*
14 *acteristic of the vessel, the producer, or the*
15 *industry is achieved.*

16 “(D) *COSTS DUE TO EXTRAORDINARY CIR-*
17 *CUMSTANCES NOT INCLUDED.*—*Costs shall not*
18 *include actual costs which are due to extraor-*
19 *dinary circumstances (including, but not limited*
20 *to, labor disputes, fire, and natural disasters)*
21 *and which are significantly over the cost in-*
22 *crease which the shipbuilder could have reason-*
23 *ably anticipated and taken into account at the*
24 *time of sale.*

1 “(2) *TRANSACTIONS DISREGARDED.*—A trans-
2 action directly or indirectly between affiliated persons
3 may be disregarded if, in the case of any element of
4 value required to be considered, the amount represent-
5 ing that element does not fairly reflect the amount
6 usually reflected in sales of a like vessel in the market
7 under consideration. If a transaction is disregarded
8 under the preceding sentence and no other trans-
9 actions are available for consideration, the determina-
10 tion of the amount shall be based on the information
11 available as to what the amount would have been if
12 the transaction had occurred between persons who are
13 not affiliated.

14 “(3) *MAJOR INPUT RULE.*—If, in the case of a
15 transaction between affiliated persons involving the
16 production by one of such persons of a major input
17 to the subject vessel, the administering authority has
18 reasonable grounds to believe or suspect that an
19 amount represented as the value of such input is less
20 than the cost of production of such input, then the ad-
21 ministering authority may determine the value of the
22 major input on the basis of the information available
23 regarding such cost of production, if such cost is
24 greater than the amount that would be determined for
25 such input under paragraph (2).

1 **“SEC. 823. CURRENCY CONVERSION.**

2 “(a) *IN GENERAL.*—*In an injurious pricing proceed-*
3 *ing under this title, the administering authority shall con-*
4 *vert foreign currencies into United States dollars using the*
5 *exchange rate in effect on the date of sale of the subject ves-*
6 *sel, except that if it is established that a currency trans-*
7 *action on forward markets is directly linked to a sale under*
8 *consideration, the exchange rate specified with respect to*
9 *such foreign currency in the forward sale agreement shall*
10 *be used to convert the foreign currency.*

11 “(b) *DATE OF SALE.*—*For purposes of this section,*
12 *‘date of sale’ means the date of the contract of sale or, where*
13 *appropriate, the date on which the material terms of sale*
14 *are otherwise established. If the material terms of sale are*
15 *significantly changed after such date, the date of sale is the*
16 *date of such change. In the case of such a change in the*
17 *date of sale, the administering authority shall make appro-*
18 *priate adjustments to take into account any unreasonable*
19 *effect on the injurious pricing margin due only to fluctua-*
20 *tions in the exchange rate between the original date of sale*
21 *and the new date of sale.*

22 **“Subtitle C—Procedures**

23 **“SEC. 841. HEARINGS.**

24 “(a) *UPON REQUEST.*—*The administering authority*
25 *and the Commission shall each hold a hearing in the course*
26 *of an investigation under this title, upon the request of any*

1 party to the investigation, before making a final determina-
2 tion under section 805.

3 “(b) *PROCEDURES.*—Any hearing required or per-
4 mitted under this title shall be conducted after notice pub-
5 lished in the *Federal Register*, and a transcript of the hear-
6 ing shall be prepared and made available to the public. The
7 hearing shall not be subject to the provisions of subchapter
8 II of chapter 5 of title 5, *United States Code*, or to section
9 702 of such title.

10 **“SEC. 842. DETERMINATIONS ON THE BASIS OF THE FACTS**

11 **AVAILABLE.**

12 “(a) *IN GENERAL.*—If—

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

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

16 “(A) withholds information that has been
17 requested by the administering authority or the
18 Commission under this title,

19 “(B) fails to provide such information by
20 the deadlines for the submission of the informa-
21 tion or in the form and manner requested, sub-
22 ject to subsections (b)(1) and (d) of section 844,

23 “(C) significantly impedes a proceeding
24 under this title, or

1 “(D) provides such information but the in-
2 formation cannot be verified as provided in sec-
3 tion 844(g),
4 the administering authority and the Commission
5 shall, subject to section 844(c), use the facts otherwise
6 available in reaching the applicable determination
7 under this title.

8 “(b) *ADVERSE INFERENCES*.—If the administering au-
9 thority or the Commission (as the case may be) finds that
10 an interested party has failed to cooperate by not acting
11 to the best of its ability to comply with a request for infor-
12 mation from the administering authority or the Commis-
13 sion, the administering authority or the Commission (as
14 the case may be), in reaching the applicable determination
15 under this title, may use an inference that is adverse to
16 the interests of that party in selecting from among the facts
17 otherwise available. Such adverse inference may include re-
18 liance on information derived from—

19 “(1) the petition, or

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

21 “(c) *CORROBORATION OF SECONDARY INFORMA-*
22 *TION*.—When the administering authority or the Commis-
23 sion relies on secondary information rather than on infor-
24 mation obtained in the course of an investigation under this
25 title, the administering authority and the Commission, as

1 *the case may be, shall, to the extent practicable, corroborate*
2 *that information from independent sources that are reason-*
3 *ably at their disposal.*

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

5 *“(a) INFORMATION GENERALLY MADE AVAILABLE.—*

6 *“(1) PROGRESS OF INVESTIGATION REPORTS.—*

7 *The administering authority and the Commission*
8 *shall, from time to time upon request, inform the par-*
9 *ties to an investigation under this title of the progress*
10 *of that investigation.*

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

14 *“(A) interested parties or other persons pro-*
15 *viding factual information in connection with a*
16 *proceeding under this title, and*

17 *“(B) the person charged with making the*
18 *determination, or any person charged with mak-*
19 *ing a final recommendation to that person, in*
20 *connection with that proceeding,*

21 *if information relating to that proceeding was pre-*
22 *sented or discussed at such meeting. The record of*
23 *such an ex parte meeting shall include the identity of*
24 *the persons present at the meeting, the date, time, and*
25 *place of the meeting, and a summary of the matters*

1 *discussed or submitted. The record of the ex parte*
2 *meeting shall be included in the record of the proceed-*
3 *ing.*

4 “(3) *SUMMARIES; NON-PROPRIETARY SUBMIS-*
5 *SIONS.—The administering authority and the Com-*
6 *mission shall disclose—*

7 “(A) *any proprietary information received*
8 *in the course of a proceeding under this title if*
9 *it is disclosed in a form which cannot be associ-*
10 *ated with, or otherwise be used to identify, oper-*
11 *ations of a particular person, and*

12 “(B) *any information submitted in connec-*
13 *tion with a proceeding which is not designated*
14 *as proprietary by the person submitting it.*

15 “(4) *MAINTENANCE OF PUBLIC RECORD.—The*
16 *administering authority and the Commission shall*
17 *maintain and make available for public inspection*
18 *and copying a record of all information which is ob-*
19 *tained by the administering authority or the Commis-*
20 *sion, as the case may be, in a proceeding under this*
21 *title to the extent that public disclosure of the infor-*
22 *mation is not prohibited under this chapter or exempt*
23 *from disclosure under section 552 of title 5, United*
24 *States Code.*

25 “(b) *PROPRIETARY INFORMATION.—*

1 “(1) *PROPRIETARY STATUS MAINTAINED.*—

2 “(A) *IN GENERAL.*—*Except as provided in*
3 *subsection (a)(4) and subsection (c), information*
4 *submitted to the administering authority or the*
5 *Commission which is designated as proprietary*
6 *by the person submitting the information shall*
7 *not be disclosed to any person without the con-*
8 *sent of the person submitting the information,*
9 *other than—*

10 “(i) *to an officer or employee of the ad-*
11 *ministering authority or the Commission*
12 *who is directly concerned with carrying out*
13 *the investigation in connection with which*
14 *the information is submitted or any other*
15 *proceeding under this title covering the*
16 *same subject vessel, or*

17 “(ii) *to an officer or employee of the*
18 *United States Customs Service who is di-*
19 *rectly involved in conducting an investiga-*
20 *tion regarding fraud under this title.*

21 “(B) *ADDITIONAL REQUIREMENTS.*—*The*
22 *administering authority and the Commission*
23 *shall require that information for which propri-*
24 *etary treatment is requested be accompanied*
25 *by—*

1 “(i) either—

2 “(I) a nonproprietary summary
3 in sufficient detail to permit a reason-
4 able understanding of the substance of
5 the information submitted in con-
6 fidence, or

7 “(II) a statement that the infor-
8 mation is not susceptible to summary,
9 accompanied by a statement of the rea-
10 sons in support of the contention, and

11 “(ii) either—

12 “(I) a statement which permits
13 the administering authority or the
14 Commission to release under adminis-
15 trative protective order, in accordance
16 with subsection (c), the information
17 submitted in confidence, or

18 “(II) a statement to the admin-
19 istering authority or the Commission
20 that the business proprietary informa-
21 tion is of a type that should not be re-
22 leased under administrative protective
23 order.

24 “(2) UNWARRANTED DESIGNATION.—If the ad-
25 ministering authority or the Commission determines,

1 *on the basis of the nature and extent of the informa-*
2 *tion or its availability from public sources, that des-*
3 *ignation of any information as proprietary is unwar-*
4 *ranted, then it shall notify the person who submitted*
5 *it and ask for an explanation of the reasons for the*
6 *designation. Unless that person persuades the admin-*
7 *istering authority or the Commission that the des-*
8 *ignation is warranted, or withdraws the designation,*
9 *the administering authority or the Commission, as*
10 *the case may be, shall return it to the party submit-*
11 *ting it. In a case in which the administering author-*
12 *ity or the Commission returns the information to the*
13 *person submitting it, the person may thereafter sub-*
14 *mit other material concerning the subject matter of*
15 *the returned information if the submission is made*
16 *within the time otherwise provided for submitting*
17 *such material.*

18 *“(c) LIMITED DISCLOSURE OF CERTAIN PROPRIETARY*
19 *INFORMATION UNDER PROTECTIVE ORDER.—*

20 *“(1) DISCLOSURE BY ADMINISTERING AUTHOR-*
21 *ITY OR COMMISSION.—*

22 *“(A) IN GENERAL.—Upon receipt of an ap-*
23 *plication (before or after receipt of the informa-*
24 *tion requested) which describes in general terms*
25 *the information requested and sets forth the rea-*

1 sons for the request, the administering authority
2 or the Commission shall make all business pro-
3 prietary information presented to, or obtained by
4 it, during a proceeding under this title (except
5 privileged information, classified information,
6 and specific information of a type for which
7 there is a clear and compelling need to withhold
8 from disclosure) available to all interested par-
9 ties who are parties to the proceeding under a
10 protective order described in subparagraph (B),
11 regardless of when the information is submitted
12 during the proceeding. Customer names (other
13 than the name of the United States buyer of the
14 subject vessel) obtained during any investigation
15 which requires a determination under section
16 805(b) may not be disclosed by the administering
17 authority under protective order until either an
18 order is published under section 806(a) as a re-
19 sult of the investigation or the investigation is
20 suspended or terminated. The Commission may
21 delay disclosure of customer names (other than
22 the name of the United States buyer of the sub-
23 ject vessel) under protective order during any
24 such investigation until a reasonable time before
25 any hearing provided under section 841 is held.

1 “(B) *PROTECTIVE ORDER.*—*The protective*
2 *order under which information is made available*
3 *shall contain such requirements as the admin-*
4 *istering authority or the Commission may deter-*
5 *mine by regulation to be appropriate. The ad-*
6 *ministering authority and the Commission shall*
7 *provide by regulation for such sanctions as the*
8 *administering authority and the Commission de-*
9 *termine to be appropriate, including disbarment*
10 *from practice before the agency.*

11 “(C) *TIME LIMITATIONS ON DETERMINA-*
12 *TIONS.*—*The administering authority or the*
13 *Commission, as the case may be, shall determine*
14 *whether to make information available under*
15 *this paragraph—*

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

20 “(ii) *if—*

21 “(I) *the person submitting the in-*
22 *formation raises objection to its release,*
23 *or*

24 “(II) *the information is unusually*
25 *voluminous or complex,*

1 *not later than 30 days (10 days if the sub-*
2 *mission pertains to a proceeding under sec-*
3 *tion 803(a)) after the date on which the in-*
4 *formation is submitted.*

5 “(D) *AVAILABILITY AFTER DETERMINA-*
6 *TION.—If the determination under subparagraph*
7 *(C) is affirmative, then—*

8 “(i) *the business proprietary informa-*
9 *tion submitted to the administering author-*
10 *ity or the Commission on or before the date*
11 *of the determination shall be made avail-*
12 *able, subject to the terms and conditions of*
13 *the protective order, on such date, and*

14 “(ii) *the business proprietary informa-*
15 *tion submitted to the administering author-*
16 *ity or the Commission after the date of the*
17 *determination shall be served as required by*
18 *subsection (d).*

19 “(E) *FAILURE TO DISCLOSE.—If a person*
20 *submitting information to the administering au-*
21 *thority refuses to disclose business proprietary*
22 *information which the administering authority*
23 *determines should be released under a protective*
24 *order described in subparagraph (B), the admin-*
25 *istering authority shall return the information,*

1 *and any nonconfidential summary thereof, to the*
2 *person submitting the information and summary*
3 *and shall not consider either.*

4 “(2) *DISCLOSURE UNDER COURT ORDER.*—*If the*
5 *administering authority or the Commission denies a*
6 *request for information under paragraph (1), then*
7 *application may be made to the United States Court*
8 *of International Trade for an order directing the ad-*
9 *ministering authority or the Commission, as the case*
10 *may be, to make the information available. After no-*
11 *tification of all parties to the investigation and after*
12 *an opportunity for a hearing on the record, the court*
13 *may issue an order, under such conditions as the*
14 *court deems appropriate, which shall not have the ef-*
15 *fect of stopping or suspending the investigation, di-*
16 *recting the administering authority or the Commis-*
17 *sion to make all or a portion of the requested infor-*
18 *mation described in the preceding sentence available*
19 *under a protective order and setting forth sanctions*
20 *for violation of such order if the court finds that,*
21 *under the standards applicable in proceedings of the*
22 *court, such an order is warranted, and that—*

23 “(A) *the administering authority or the*
24 *Commission has denied access to the information*
25 *under subsection (b)(1),*

1 “(B) the person on whose behalf the infor-
2 mation is requested is an interested party who is
3 a party to the investigation in connection with
4 which the information was obtained or devel-
5 oped, and

6 “(C) the party which submitted the infor-
7 mation to which the request relates has been no-
8 tified, in advance of the hearing, of the request
9 made under this section and of its right to ap-
10 pear and be heard.

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

1 “(e) *INFORMATION RELATING TO VIOLATIONS OF PRO-*
2 *TECTIVE ORDERS AND SANCTIONS.*—*The administering au-*
3 *thority and the Commission may withhold from disclosure*
4 *any correspondence, private letters of reprimand, settlement*
5 *agreements, and documents and files compiled in relation*
6 *to investigations and actions involving a violation or pos-*
7 *sible violation of a protective order issued under subsection*
8 *(c), and such information shall be treated as information*
9 *described in section 552(b)(3) of title 5, United States Code.*

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

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

19 “(1) *IN GENERAL.*—*Whenever the administering*
20 *authority makes a determination under section 802*
21 *whether to initiate an investigation, or the admin-*
22 *istering authority or the Commission makes a pre-*
23 *liminary determination under section 803, a final de-*
24 *termination under section 805, a determination under*
25 *subsection (b), (c), (d), (e)(3)(B)(ii), (g), or (i) of sec-*

1 *tion 807, or a determination to suspend an investiga-*
2 *tion under this title, the administering authority or*
3 *the Commission, as the case may be, shall publish the*
4 *facts and conclusions supporting that determination,*
5 *and shall publish notice of that determination in the*
6 *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 ves-*
15 *sel,*

16 “(ii) *a description sufficient to identify*
17 *the subject vessel,*

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

23 “(iv) *with respect to countermeasures,*
24 *the scope and duration of countermeasures*
25 *and, if applicable, any changes thereto, and*

1 “(v) the primary reasons for the deter-
2 mination, and

3 “(B) in the case of a determination of the
4 Commission—

5 “(i) considerations relevant to the de-
6 termination of injury, and

7 “(ii) the primary reasons for the deter-
8 mination.

9 “(3) *ADDITIONAL REQUIREMENTS FOR FINAL DE-*
10 *TERMINATIONS.—In addition to the requirements set*
11 *forth in paragraph (2)—*

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

20 “(B) the Commission shall include in a
21 final determination of injury an explanation of
22 the basis for its determination that addresses rel-
23 evant arguments that are made by interested
24 parties who are parties to the investigation con-

1 cerning the effects and impact on the industry of
2 the sale of the subject vessel.

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

4 “(a) *CERTIFICATION OF SUBMISSIONS.*—Any person
5 *providing factual information to the administering author-*
6 *ity or the Commission in connection with a proceeding*
7 *under this title on behalf of the petitioner or any other in-*
8 *terested party shall certify that such information is accu-*
9 *rate and complete to the best of that person’s knowledge.*

10 “(b) *DIFFICULTIES IN MEETING REQUIREMENTS.*—

11 “(1) *NOTIFICATION BY INTERESTED PARTY.*—If
12 *an interested party, promptly after receiving a re-*
13 *quest from the administering authority or the Com-*
14 *mission for information, notifies the administering*
15 *authority or the Commission (as the case may be)*
16 *that such party is unable to submit the information*
17 *requested in the requested form and manner, together*
18 *with a full explanation and suggested alternative*
19 *forms in which such party is able to submit the infor-*
20 *mation, the administering authority or the Commis-*
21 *sion (as the case may be) shall consider the ability of*
22 *the interested party to submit the information in the*
23 *requested form and manner and may modify such re-*
24 *quirements to the extent necessary to avoid imposing*
25 *an unreasonable burden on that party.*

1 “(2) *ASSISTANCE TO INTERESTED PARTIES.*—

2 *The administering authority and the Commission*
3 *shall take into account any difficulties experienced by*
4 *interested parties, particularly small companies, in*
5 *supplying information requested by the administering*
6 *authority or the Commission in connection with in-*
7 *vestigations under this title, and shall provide to such*
8 *interested parties any assistance that is practicable in*
9 *supplying such information.*

10 “(c) *DEFICIENT SUBMISSIONS.*—*If the administering*
11 *authority or the Commission determines that a response to*
12 *a request for information under this title does not comply*
13 *with the request, the administering authority or the Com-*
14 *mission (as the case may be) shall promptly inform the per-*
15 *son submitting the response of the nature of the deficiency*
16 *and shall, to the extent practicable, provide that person with*
17 *an opportunity to remedy or explain the deficiency in light*
18 *of the time limits established for the completion of investiga-*
19 *tions or reviews under this title. If that person submits fur-*
20 *ther information in response to such deficiency and either—*

21 “(1) *the administering authority or the Commis-*
22 *sion (as the case may be) finds that such response is*
23 *not satisfactory, or*

24 “(2) *such response is not submitted within the*
25 *applicable time limits,*

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

4 “(d) *USE OF CERTAIN INFORMATION.—In reaching a*
5 *determination under section 803, 805, or 807, the admin-*
6 *istering authority and the Commission shall not decline to*
7 *consider information that is submitted by an interested*
8 *party and is necessary to the determination but does not*
9 *meet all the applicable requirements established by the ad-*
10 *ministering authority or the Commission if—*

11 “(1) *the information is submitted by the deadline*
12 *established for its submission,*

13 “(2) *the information can be verified,*

14 “(3) *the information is not so incomplete that it*
15 *cannot serve as a reliable basis for reaching the appli-*
16 *cable determination,*

17 “(4) *the interested party has demonstrated that*
18 *it acted to the best of its ability in providing the in-*
19 *formation and meeting the requirements established*
20 *by the administering authority or the Commission*
21 *with respect to the information, and*

22 “(5) *the information can be used without undue*
23 *difficulties.*

24 “(e) *NONACCEPTANCE OF SUBMISSIONS.—If the ad-*
25 *ministering authority or the Commission declines to accept*

1 *into the record any information submitted in an investiga-*
 2 *tion under this title, it shall, to the extent practicable, pro-*
 3 *vide to the person submitting the information a written ex-*
 4 *planation of the reasons for not accepting the information.*

5 “(f) *PUBLIC COMMENT ON INFORMATION.*—*Informa-*
 6 *tion that is submitted on a timely basis to the administer-*
 7 *ing authority or the Commission during the course of a pro-*
 8 *ceeding under this title shall be subject to comment by other*
 9 *parties within such reasonable time as the administering*
 10 *authority or the Commission shall provide. The administer-*
 11 *ing authority and the Commission, before making a final*
 12 *determination under section 805 or 807, shall cease collect-*
 13 *ing information and shall provide the parties with a final*
 14 *opportunity to comment on the information obtained by the*
 15 *administering authority or the Commission (as the case*
 16 *may be) upon which the parties have not previously had*
 17 *an opportunity to comment. Comments containing new fac-*
 18 *tual information shall be disregarded.*

19 “(g) *VERIFICATION.*—*The administering authority*
 20 *shall verify all information relied upon in making a final*
 21 *determination under section 805.*

22 **“SEC. 845. ADMINISTRATIVE ACTION FOLLOWING SHIP-**
 23 **BUILDING AGREEMENT PANEL REPORTS.**

24 “(a) *ACTION BY UNITED STATES INTERNATIONAL*
 25 *TRADE COMMISSION.*—

1 “(1) *ADVISORY REPORT.*—If a dispute settlement
2 panel under the Shipbuilding Agreement finds in a
3 report that an action by the Commission in connec-
4 tion with a particular proceeding under this title is
5 not in conformity with the obligations of the United
6 States under the Shipbuilding Agreement, the Trade
7 Representative may request the Commission to issue
8 an advisory report on whether this title permits the
9 Commission to take steps in connection with the par-
10 ticular proceeding that would render its action not
11 inconsistent with the findings of the panel concerning
12 those obligations. The Trade Representative shall no-
13 tify the Committee on Ways and Means of the House
14 of Representatives and the Committee on Finance of
15 the Senate of such request.

16 “(2) *TIME LIMITS FOR REPORT.*—The Commis-
17 sion shall transmit its report under paragraph (1) to
18 the Trade Representative within 30 calendar days
19 after the Trade Representative requests the report.

20 “(3) *CONSULTATIONS ON REQUEST FOR COMMIS-*
21 *SION DETERMINATION.*—If a majority of the Commis-
22 sioners issues an affirmative report under paragraph
23 (1), the Trade Representatives shall consult with the
24 congressional committees listed in paragraph (1) con-
25 cerning the matter.

1 “(4) *COMMISSION DETERMINATION.*—*Notwith-*
2 *standing any other provision of this title, if a major-*
3 *ity of the Commissioners issues an affirmative report*
4 *under paragraph (1), the Commission, upon the writ-*
5 *ten request of the Trade Representative, shall issue a*
6 *determination in connection with the particular pro-*
7 *ceeding that would render the Commission’s action*
8 *described in paragraph (1) not inconsistent with the*
9 *findings of the panel. The Commission shall issue its*
10 *determination not later than 120 calendar days after*
11 *the request from the Trade Representative is made.*

12 “(5) *CONSULTATIONS ON IMPLEMENTATION OF*
13 *COMMISSION DETERMINATION.*—*The Trade Represent-*
14 *ative shall consult with the congressional committees*
15 *listed in paragraph (1) before the Commission’s deter-*
16 *mination under paragraph (4) is implemented.*

17 “(6) *REVOCAION OF ORDER.*—*If, by virtue of*
18 *the Commission’s determination under paragraph (4),*
19 *an injurious pricing order is no longer supported by*
20 *an affirmative Commission determination under this*
21 *title, the Trade Representative may, after consulting*
22 *with the congressional committees under paragraph*
23 *(5), direct the administering authority to revoke the*
24 *injurious pricing order.*

25 “(b) *ACTION BY ADMINISTERING AUTHORITY.*—

1 “(1) *CONSULTATIONS WITH ADMINISTERING AU-*
2 *THORITY AND CONGRESSIONAL COMMITTEES.—*
3 *Promptly after a report or other determination by a*
4 *dispute settlement panel under the Shipbuilding*
5 *Agreement is issued that contains findings that—*

6 “(A) *an action by the administering au-*
7 *thority in a proceeding under this title is not in*
8 *conformity with the obligations of the United*
9 *States under the Shipbuilding Agreement,*

10 “(B) *the due date for payment of an injuri-*
11 *ous pricing charge contained in an order issued*
12 *under section 806 should be amended,*

13 “(C) *countermeasures provided for in an*
14 *order issued under section 807 should be provi-*
15 *sionally suspended or reduced pending the final*
16 *decision of the panel, or*

17 “(D) *the scope or duration of counter-*
18 *measures imposed under section 807 should be*
19 *narrowed or shortened,*

20 *the Trade Representative shall consult with the ad-*
21 *ministering authority and the congressional commit-*
22 *tees listed in subsection (a)(1) on the matter.*

23 “(2) *DETERMINATION BY ADMINISTERING AU-*
24 *THORITY.—Notwithstanding any other provision of*
25 *this title, the administering authority shall, in re-*

1 *sponse to a written request from the Trade Represent-*
2 *ative, issue a determination, or an amendment to or*
3 *suspension of an injurious pricing or countermeasure*
4 *order, as the case may be, in connection with the par-*
5 *ticular proceeding that would render the administer-*
6 *ing authority's action described in paragraph (1) not*
7 *inconsistent with the findings of the panel.*

8 *“(3) TIME LIMITS FOR DETERMINATIONS.—The*
9 *administering authority shall issue its determination,*
10 *amendment, or suspension under paragraph (2)—*

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

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

19 *“(4) CONSULTATIONS BEFORE IMPLEMENTA-*
20 *TION.—Before the administering authority imple-*
21 *ments any determination, amendment, or suspension*
22 *under paragraph (2), the Trade Representative shall*
23 *consult with the administering authority and the con-*
24 *gressional committees listed in subsection (a)(1) with*

1 *respect to such determination, amendment, or suspen-*
2 *sion.*

3 “(5) *IMPLEMENTATION OF DETERMINATION.—*
4 *The Trade Representative may, after consulting with*
5 *the administering authority and the congressional*
6 *committees under paragraph (4), direct the admin-*
7 *istering authority to implement, in whole or in part,*
8 *the determination, amendment, or suspension made*
9 *under paragraph (2).*

10 “(6) *IMPLEMENTATION OF DETERMINATION; NO-*
11 *TICE OF IMPLEMENTATION.—The administering au-*
12 *thority shall implement the determination, amend-*
13 *ment, or suspension under paragraph (2)—*

14 “(A) *with respect to a matter described in*
15 *subparagraph (A) of paragraph (1), only if the*
16 *injurious pricing margin determined under*
17 *paragraph (2) differs from the injurious pricing*
18 *margin in the determination reviewed by the*
19 *panel, and*

20 “(B) *with respect to a matter described in*
21 *subparagraph (B), (C), or (D) of paragraph (1),*
22 *upon issuance of the determination, amendment,*
23 *or suspension under paragraph (2).*

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

1 “(c) *OPPORTUNITY FOR COMMENT BY INTERESTED*
2 *PARTIES.*—*Before issuing a determination, amendment, or*
3 *suspension, the administering authority, in a matter de-*
4 *scribed in subsection (b)(1)(A), or the Commission, in a*
5 *matter described in subsection (a)(1), as the case may be,*
6 *shall provide interested parties with an opportunity to sub-*
7 *mit written comments and, in appropriate cases, may hold*
8 *a hearing, with respect to the determination.*

9 **“Subtitle D—Definitions**

10 **“SEC. 861. DEFINITIONS.**

11 *“For purposes of this title:*

12 “(1) *ADMINISTERING AUTHORITY.*—*The term*
13 *‘administering authority’ means the Secretary of*
14 *Commerce, or any other officer of the United States*
15 *to whom the responsibility for carrying out the duties*
16 *of the administering authority under this title are*
17 *transferred by law.*

18 “(2) *COMMISSION.*—*The term ‘Commission’*
19 *means the United States International Trade Com-*
20 *mission.*

21 “(3) *COUNTRY.*—*The term ‘country’ means a for-*
22 *foreign country, a political subdivision, dependent terri-*
23 *tory, or possession of a foreign country and, except as*
24 *provided in paragraph (16)(E)(iii), may not include*
25 *an association of 2 or more foreign countries, politi-*

1 *cal subdivisions, dependent territories, or possessions*
2 *of countries into a customs union outside the United*
3 *States.*

4 “(4) *INDUSTRY.*—

5 “(A) *IN GENERAL.*—*Except as used in sec-*
6 *tion 808, the term ‘industry’ means the produc-*
7 *ers as a whole of a domestic like vessel, or those*
8 *producers whose collective capability to produce*
9 *a domestic like vessel constitutes a major propor-*
10 *tion of the total domestic capability to produce*
11 *a domestic like vessel.*

12 “(B) *PRODUCER.*—*A ‘producer’ of a domes-*
13 *tic like vessel includes an entity that is produc-*
14 *ing the domestic like vessel and an entity with*
15 *the capability to produce the domestic like vessel.*

16 “(C) *CAPABILITY TO PRODUCE A DOMESTIC*
17 *LIKE VESSEL.*—*A producer has the ‘capability to*
18 *produce a domestic like vessel’ if it is capable of*
19 *producing a domestic like vessel with its present*
20 *facilities or could adapt its facilities in a timely*
21 *manner to produce a domestic like vessel.*

22 “(D) *RELATED PARTIES.*—*(i) In an inves-*
23 *tigation under this title, if a producer of a do-*
24 *mestic like vessel and the foreign producer, seller*
25 *(other than the foreign producer), or United*

1 *States buyer of the subject vessel are related par-*
2 *ties, or if a producer of a domestic like vessel is*
3 *also a United States buyer of the subject vessel,*
4 *the domestic producer may, in appropriate cir-*
5 *cumstances, be excluded from the industry.*

6 “(i) *For purposes of clause (i), a domestic*
7 *producer and the foreign producer, seller, or*
8 *United States buyer shall be considered to be re-*
9 *lated parties, if—*

10 “(I) *the domestic producer directly or*
11 *indirectly controls the foreign producer, sell-*
12 *er or United States buyer,*

13 “(II) *the foreign producer, seller, or*
14 *United States buyer directly or indirectly*
15 *controls the domestic producer,*

16 “(III) *a third party directly or indi-*
17 *rectly controls the domestic producer and*
18 *the foreign producer, seller, or United States*
19 *buyer, or*

20 “(IV) *the domestic producer and the*
21 *foreign producer, seller, or United States*
22 *buyer directly or indirectly control a third*
23 *party and there is reason to believe that the*
24 *relationship causes the producer to act dif-*
25 *ferently than a nonrelated producer.*

1 *For purposes of this subparagraph, a party shall*
2 *be considered to directly or indirectly control an-*
3 *other party if the party is legally or operation-*
4 *ally in a position to exercise restraint or direc-*
5 *tion over the other party.*

6 “(E) *PRODUCT LINES.*—*In an investigation*
7 *under this title, the effect of the sale of the subject*
8 *vessel shall be assessed in relation to the United*
9 *States production (or production capability) of a*
10 *domestic like vessel if available data permit the*
11 *separate identification of production (or produc-*
12 *tion capability) in terms of such criteria as the*
13 *production process or the producer’s profits. If*
14 *the domestic production (or production capabil-*
15 *ity) of a domestic like vessel has no separate*
16 *identity in terms of such criteria, then the effect*
17 *of the sale shall be assessed by the examination*
18 *of the production (or production capability) of*
19 *the narrowest group or range of vessels, which*
20 *includes a domestic like vessel, for which the nec-*
21 *essary information can be provided.*

22 “(5) *BUYER.*—*The term ‘buyer’ means any per-*
23 *son who acquires an ownership interest in a vessel,*
24 *including by way of lease or long-term bareboat char-*
25 *ter, in conjunction with the original transfer from the*

1 *producer, either directly or indirectly, including an*
2 *individual or company which owns or controls a*
3 *buyer. There may be more than one buyer of any one*
4 *vessel.*

5 *“(6) UNITED STATES BUYER.—The term ‘United*
6 *States buyer’ means a buyer that is any of the follow-*
7 *ing:*

8 *“(A) A United States citizen.*

9 *“(B) A juridical entity, including any cor-*
10 *poration, company, association, or other organi-*
11 *zation, that is legally constituted under the laws*
12 *and regulations of the United States or a politi-*
13 *cal subdivision thereof, regardless of whether the*
14 *entity is organized for pecuniary gain, privately*
15 *or government owned, or organized with limited*
16 *or unlimited liability.*

17 *“(C) A juridical entity that is owned or*
18 *controlled by nationals or entities described in*
19 *subparagraphs (A) and (B). For the purposes of*
20 *this subparagraph—*

21 *“(i) the term ‘own’ means having more*
22 *than a 50 percent interest, and*

23 *“(ii) the term ‘control’ means the ac-*
24 *tual ability to have substantial influence on*
25 *corporate behavior, and control is presumed*

1 to exist where there is at least a 25 percent
2 interest.

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

6 “(7) OWNERSHIP INTEREST.—An ‘ownership in-
7 terest’ in a vessel includes any contractual or propri-
8 etary interest which allows the beneficiary or bene-
9 ficiaries of such interest to take advantage of the oper-
10 ation of the vessel in a manner substantially com-
11 parable to the way in which an owner may benefit
12 from the operation of the vessel. In determining
13 whether such substantial comparability exists, the ad-
14 ministering authority shall consider—

15 “(A) the terms and circumstances of the
16 transaction which conveys the interest,

17 “(B) commercial practice,

18 “(C) whether the vessel subject to the trans-
19 action is integrated into the operations of the
20 beneficiary or beneficiaries, and

21 “(D) whether in practice there is a likeli-
22 hood that the beneficiary or beneficiaries of such
23 interests will take advantage of and the risk for
24 the operation of the vessel for a significant part
25 of the life-time of the vessel.

1 “(8) *VESSEL*.—

2 “(A) *IN GENERAL*.—*Except as otherwise*
3 *specifically provided under international agree-*
4 *ments, the term ‘vessel’ means—*

5 “(i) *a self-propelled seagoing vessel of*
6 *100 gross tons or more used for transpor-*
7 *tation of goods or persons or for perform-*
8 *ance of a specialized service (including, but*
9 *not limited to, ice breakers and dredgers),*
10 *and*

11 “(ii) *a tug of 365 kilowatts or more,*
12 *that is produced in a Shipbuilding Agreement*
13 *Party or a country that is not a Shipbuilding*
14 *Agreement Party and not a WTO member.*

15 “(B) *EXCLUSIONS*.—*The term ‘vessel’ does*
16 *not include—*

17 “(i) *any fishing vessel destined for the*
18 *fishing fleet of the country in which the ves-*
19 *sel is built,*

20 “(ii) *any military vessel, and*

21 “(iii) *any vessel sold before the date*
22 *that the Shipbuilding Agreement enters into*
23 *force with respect to the United States, ex-*
24 *cept that any vessel sold after December 21,*
25 *1994, for delivery more than 5 years after*

1 *the date of the contract of sale shall be a*
2 *‘vessel’ for purposes of this title unless the*
3 *shipbuilder demonstrates to the administer-*
4 *ing authority that the extended delivery*
5 *date was for normal commercial reasons*
6 *and not to avoid applicability of this title.*

7 “(C) *SELF-PROPELLED SEAGOING VES-*
8 *SEL.—A vessel is ‘self-propelled seagoing’ if its*
9 *permanent propulsion and steering provide it all*
10 *the characteristics of self-navigability in the high*
11 *seas.*

12 “(D) *MILITARY VESSEL.—A ‘military ves-*
13 *sel’ is a vessel which, according to its basic struc-*
14 *tural characteristics and ability, is intended to*
15 *be used exclusively for military purposes.*

16 “(9) *LIKE VESSEL.—The term ‘like vessel’ means*
17 *a vessel of the same type, same purpose, and approxi-*
18 *mate size as the subject vessel and possessing charac-*
19 *teristics closely resembling those of the subject vessel.*

20 “(10) *DOMESTIC LIKE VESSEL.—The term ‘do-*
21 *mestic like vessel’ means a like vessel produced in the*
22 *United States.*

23 “(11) *FOREIGN LIKE VESSEL.—Except as used*
24 *in section 822(e)(1)(B)(ii)(II), the term ‘foreign like*
25 *vessel’ means a like vessel produced by the foreign*

1 *producer of the subject vessel for sale in the producer’s*
2 *domestic market or in a third country.*

3 “(12) *SAME GENERAL CATEGORY OF VESSEL.—*
4 *The term ‘same general category of vessel’ means a*
5 *vessel of the same type and purpose as the subject ves-*
6 *sel, but of a significantly different size.*

7 “(13) *SUBJECT VESSEL.—The term ‘subject ves-*
8 *sel’ means a vessel subject to investigation under sec-*
9 *tion 801 or 808.*

10 “(14) *FOREIGN PRODUCER.—The term ‘foreign*
11 *producer’ means the producer or producers of the sub-*
12 *ject vessel.*

13 “(15) *EXPORTING COUNTRY.—The term ‘export-*
14 *ing country’ means the country in which the subject*
15 *vessel was built.*

16 “(16) *MATERIAL INJURY.—*

17 “(A) *IN GENERAL.—The term ‘material in-*
18 *jury’ means harm which is not inconsequential,*
19 *immaterial, or unimportant.*

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

23 “(i) *shall consider—*

24 “(I) *the sale of the subject vessel,*

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

4 “(III) the impact of the sale of the
5 subject vessel on domestic producers of
6 the domestic like vessel, but only in the
7 context of production operations within
8 the United States, and

9 “(ii) may consider such other economic
10 factors as are relevant to the determination
11 regarding whether there is or has been ma-
12 terial injury by reason of the sale of the
13 subject vessel.

14 *In the notification required under section 805(d),*
15 *the Commission shall explain its analysis of each*
16 *factor considered under clause (i), and identify*
17 *each factor considered under clause (ii) and ex-*
18 *plain in full its relevance to the determination.*

19 “(C) *EVALUATION OF RELEVANT FAC-*
20 *TORS.—For purposes of subparagraph (B)—*

21 “(i) *SALE OF THE SUBJECT VESSEL.—*

22 *In evaluating the sale of the subject vessel,*
23 *the Commission shall consider whether the*
24 *sale, either in absolute terms or relative to*
25 *production or demand in the United States,*

1 *in terms of either volume or value, is or has*
2 *been significant.*

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

6 “(I) *there has been significant*
7 *price underselling of the subject vessel*
8 *as compared with the price of a domes-*
9 *tic like vessel, and*

10 “(II) *the effect of the sale of the*
11 *subject vessel otherwise depresses or has*
12 *depressed prices to a significant degree*
13 *or prevents or has prevented price in-*
14 *creases, which otherwise would have oc-*
15 *curred, to a significant degree.*

16 “(iii) *IMPACT ON AFFECTED DOMESTIC*
17 *INDUSTRY.—In examining the impact re-*
18 *quired to be considered under subparagraph*
19 *(B)(i)(III), the Commission shall evaluate*
20 *all relevant economic factors which have a*
21 *bearing on the state of the industry in the*
22 *United States, including, but not limited*
23 *to—*

24 “(I) *actual and potential decline*
25 *in output, sales, market share, profits,*

1 *productivity, return on investments,*
2 *and utilization of capacity,*

3 “(II) *factors affecting domestic*
4 *prices, including with regard to sales,*

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

9 “(IV) *actual and potential nega-*
10 *tive effects on the existing development*
11 *and production efforts of the domestic*
12 *industry, including efforts to develop a*
13 *derivative or more advanced version of*
14 *a domestic like vessel, and*

15 “(V) *the magnitude of the injuri-*
16 *ous pricing margin.*

17 *The Commission shall evaluate all relevant*
18 *economic factors described in this clause*
19 *within the context of the business cycle and*
20 *conditions of competition that are distinc-*
21 *tive to the affected industry.*

22 “(D) *STANDARD FOR DETERMINATION.—*

23 *The presence or absence of any factor which the*
24 *Commission is required to evaluate under sub-*
25 *paragraph (C) shall not necessarily give decisive*

1 *guidance with respect to the determination by*
2 *the Commission of material injury.*

3 “(E) *THREAT OF MATERIAL INJURY.*—

4 “(i) *IN GENERAL.*—*In determining*
5 *whether an industry in the United States is*
6 *threatened with material injury by reason*
7 *of the sale of the subject vessel, the Commis-*
8 *sion shall consider, among other relevant*
9 *economic factors—*

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

19 “(II) *whether the sale of a foreign*
20 *like vessel or other factors indicate the*
21 *likelihood of significant additional*
22 *sales to United States buyers,*

23 “(III) *whether sale of the subject*
24 *vessel or sale of a foreign like vessel by*
25 *the foreign producer are at prices that*

1 are likely to have a significant depress-
2 ing or suppressing effect on domestic
3 prices, and are likely to increase de-
4 mand for further sales,

5 “(IV) the potential for product-
6 shifting if production facilities in the
7 exporting country, which can presently
8 be used to produce a foreign like vessel
9 or could be adapted in a timely man-
10 ner to produce a foreign like vessel, are
11 currently being used to produce other
12 types of vessels,

13 “(V) the actual and potential neg-
14 ative effects on the existing develop-
15 ment and production efforts of the do-
16 mestic industry, including efforts to
17 develop a derivative or more advanced
18 version of a domestic like vessel, and

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

24 “(ii) BASIS FOR DETERMINATION.—

25 *The Commission shall consider the factors*

1 *set forth in clause (i) as a whole. The pres-*
2 *ence or absence of any factor which the*
3 *Commission is required to consider under*
4 *clause (i) shall not necessarily give decisive*
5 *guidance with respect to the determination.*
6 *Such a determination may not be made on*
7 *the basis of mere conjecture or supposition.*

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

10 “(I) *IN GENERAL.—The Commis-*
11 *sion shall consider whether injurious*
12 *pricing in the markets of foreign coun-*
13 *tries (as evidenced by injurious pricing*
14 *findings or injurious pricing remedies*
15 *of other Shipbuilding Agreement Par-*
16 *ties, or antidumping determinations of,*
17 *or measures imposed by, other coun-*
18 *tries, against a like vessel produced by*
19 *the producer under investigation) sug-*
20 *gests a threat of material injury to the*
21 *domestic industry. In the course of its*
22 *investigation, the Commission shall re-*
23 *quest information from the foreign pro-*
24 *ducer or United States buyer concern-*
25 *ing this issue.*

1 “(II) *EUROPEAN COMMUNITIES.*—
2 *For purposes of this clause, the Euro-*
3 *pean Communities as a whole shall be*
4 *treated as a single foreign country.*

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

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

14 “(I) *petitions were filed under sec-*
15 *tion 802(b) on the same day,*

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

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

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

1 *producers of a domestic like vessel in the*
2 *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 subse-*
10 *quently made a final affirmative deter-*
11 *mination with respect to those sales be-*
12 *fore the Commission’s final determina-*
13 *tion 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 of*
20 *sales under clause (i), the Commission may*
21 *make its determinations based on the record*
22 *compiled in the first investigation in which*
23 *it makes a final determination, except that*
24 *when the administering authority issues its*
25 *final determination in a subsequently com-*

1 *pleted investigation, the Commission shall*
2 *permit the parties in the subsequent inves-*
3 *tigation to submit comments concerning the*
4 *significance of the administering authority’s*
5 *final determination, and shall include such*
6 *comments and the administering authority’s*
7 *final determination in the record for the*
8 *subsequent investigation.*

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

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

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

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

23 *if, with respect to such vessels, the foreign pro-*
24 *ducers compete with each other and with produc-*

1 *ers of a domestic like vessel in the United States*
2 *market.*

3 “(17) *INTERESTED PARTY.*—*The term ‘interested*
4 *party’ means, in a proceeding under this title—*

5 “(A)(i) *the foreign producer, seller (other*
6 *than the foreign producer), and the United*
7 *States buyer of the subject vessel, or*

8 “(i) *a trade or business association a ma-*
9 *jority of the members of which are the foreign*
10 *producer, seller, or United States buyer of the*
11 *subject vessel,*

12 “(B) *the government of the country in*
13 *which the subject vessel is produced or manufac-*
14 *tured,*

15 “(C) *a producer that is a member of an in-*
16 *dustry,*

17 “(D) *a certified union or recognized union*
18 *or group of workers which is representative of an*
19 *industry,*

20 “(E) *a trade or business association a ma-*
21 *jority of whose members are producers in an in-*
22 *dustry,*

23 “(F) *an association, a majority of whose*
24 *members is composed of interested parties de-*
25 *scribed in subparagraph (C), (D), or (E), and*

1 “(G) for purposes of section 807, a pur-
2 chaser who, after the effective date of an order is-
3 sued under that section, entered into a contract
4 of sale with the foreign producer that is subject
5 to the order.

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

15 “(A) material injury to an industry in the
16 United States,

17 “(B) threat of material injury to such an
18 industry, or

19 “(C) material retardation of the establish-
20 ment of an industry in the United States,
21 by reason of the sale of the subject vessel, an affirma-
22 tive vote on any of the issues shall be treated as a vote
23 that the determination should be affirmative.

24 “(19) *ORDINARY COURSE OF TRADE.*—The term
25 ‘ordinary course of trade’ means the conditions and

1 *practices which, for a reasonable time before the sale*
2 *of the subject vessel, have been normal in the ship-*
3 *building industry with respect to a like vessel. The*
4 *administering authority shall consider the following*
5 *sales and transactions, among others, to be outside the*
6 *ordinary course of trade:*

7 *“(A) Sales disregarded under section*
8 *822(b)(1).*

9 *“(B) Transactions disregarded under sec-*
10 *tion 822(f)(2).*

11 *“(20) NONMARKET ECONOMY COUNTRY.—*

12 *“(A) IN GENERAL.—The term ‘nonmarket*
13 *economy country’ means any foreign country*
14 *that the administering authority determines does*
15 *not operate on market principles of cost or pric-*
16 *ing structures, so that sales of vessels in such*
17 *country do not reflect the fair value of the vessels.*

18 *“(B) FACTORS TO BE CONSIDERED.—In*
19 *making determinations under subparagraph (A)*
20 *the administering authority shall take into ac-*
21 *count—*

22 *“(i) the extent to which the currency of*
23 *the foreign country is convertible into the*
24 *currency of other countries,*

1 “(ii) *the extent to which wage rates in*
2 *the foreign country are determined by free*
3 *bargaining between labor and management,*

4 “(iii) *the extent to which joint ventures*
5 *or other investments by firms of other for-*
6 *ign countries are permitted in the foreign*
7 *country,*

8 “(iv) *the extent of government owner-*
9 *ship or control of the means of production,*

10 “(v) *the extent of government control*
11 *over the allocation of resources and over the*
12 *price and output decisions of enterprises,*
13 *and*

14 “(vi) *such other factors as the admin-*
15 *istering authority considers appropriate.*

16 “(C) *DETERMINATION IN EFFECT.—*

17 “(i) *Any determination that a foreign*
18 *country is a nonmarket economy country*
19 *shall remain in effect until revoked by the*
20 *administering authority.*

21 “(ii) *The administering authority may*
22 *make a determination under subparagraph*
23 *(A) with respect to any foreign country at*
24 *any time.*

1 “(D) *DETERMINATIONS NOT IN ISSUE.*—
2 *Notwithstanding any other provision of law, any*
3 *determination made by the administering au-*
4 *thority under subparagraph (A) shall not be sub-*
5 *ject to judicial review in any investigation con-*
6 *ducted under subtitle A.*

7 “(21) *SHIPBUILDING AGREEMENT.*—*The term*
8 *‘Shipbuilding Agreement’ means The Agreement Re-*
9 *specting Normal Competitive Conditions in the Com-*
10 *mercial Shipbuilding and Repair Industry, resulting*
11 *from negotiations under the auspices of the Organiza-*
12 *tion for Economic Cooperation and Development, and*
13 *entered into on December 21, 1994.*

14 “(22) *SHIPBUILDING AGREEMENT PARTY.*—*The*
15 *term ‘Shipbuilding Agreement Party’ means a state*
16 *or separate customs territory that is a Party to the*
17 *Shipbuilding Agreement, and with respect to which*
18 *the United States applies the Shipbuilding Agree-*
19 *ment.*

20 “(23) *WTO AGREEMENT.*—*The term ‘WTO*
21 *Agreement’ means the Agreement defined in section*
22 *2(9) of the Uruguay Round Agreements Act.*

23 “(24) *WTO MEMBER.*—*The term ‘WTO member’*
24 *means a state, or separate customs territory (within*
25 *the meaning of Article XII of the WTO Agreement),*

1 *with respect to which the United States applies the*
2 *WTO Agreement.*

3 “(25) *TRADE REPRESENTATIVE.*—*The term*
4 *‘Trade Representative’ means the United States Trade*
5 *Representative.*

6 “(26) *AFFILIATED PERSONS.*—*The following per-*
7 *sons shall be considered to be ‘affiliated’ or ‘affiliated*
8 *persons’:*

9 “(A) *Members of a family, including broth-*
10 *ers and sisters (whether by the whole or half*
11 *blood), spouse, ancestors, and lineal descendants.*

12 “(B) *Any officer or director of an organiza-*
13 *tion and such organization.*

14 “(C) *Partners.*

15 “(D) *Employer and employee.*

16 “(E) *Any person directly or indirectly own-*
17 *ing, controlling, or holding with power to vote,*
18 *5 percent or more of the outstanding voting stock*
19 *or shares of any organization, and such organi-*
20 *zation.*

21 “(F) *Two or more persons directly or indi-*
22 *rectly controlling, controlled by, or under com-*
23 *mon control with, any person.*

24 “(G) *Any person who controls any other*
25 *person, and such other person.*

1 *For purposes of this paragraph, a person shall be con-*
2 *sidered to control another person if the person is le-*
3 *gally or operationally in a position to exercise re-*
4 *straint or direction over the other person.*

5 “(27) *INJURIOUS PRICING.*—*The term ‘injurious*
6 *pricing’ refers to the sale of a vessel at less than fair*
7 *value.*

8 “(28) *INJURIOUS PRICING MARGIN.*—

9 “(A) *IN GENERAL.*—*The term ‘injurious*
10 *pricing margin’ means the amount by which the*
11 *normal value exceeds the export price of the sub-*
12 *ject vessel.*

13 “(B) *MAGNITUDE OF THE INJURIOUS PRIC-*
14 *ING MARGIN.*—*The magnitude of the injurious*
15 *pricing margin used by the Commission shall*
16 *be—*

17 “(i) *in making a preliminary deter-*
18 *mination under section 803(a) in an inves-*
19 *tigation (including any investigation in*
20 *which the Commission cumulatively assesses*
21 *the effect of sales under paragraph*
22 *(16)(F)(i)), the injurious pricing margin or*
23 *margins published by the administering au-*
24 *thority in its notice of initiation of the in-*
25 *vestigation; and*

1 “(i) *in making a final determination*
2 *under section 805(b), the injurious pricing*
3 *margin or margins most recently published*
4 *by the administering authority before the*
5 *closing of the Commission’s administrative*
6 *record.*

7 “(29) *COMMERCIAL INTEREST REFERENCE*
8 *RATE.—The term ‘Commercial Interest Reference*
9 *Rate’ or ‘CIRR’ means an interest rate that the ad-*
10 *ministering authority determines to be consistent with*
11 *Annex III, and appendices and notes thereto, of the*
12 *Understanding on Export Credits for Ships, resulting*
13 *from negotiations under the auspices of the Organiza-*
14 *tion for Economic Cooperation, and entered into on*
15 *December 21, 1994.*

16 “(30) *ANTIDUMPING.—*

17 “(A) *WTO MEMBERS.—In the case of a*
18 *WTO member, the term ‘antidumping’ refers to*
19 *action taken pursuant to the Agreement on Im-*
20 *plementation of Article VI of the General Agree-*
21 *ment on Tariffs and Trade 1994.*

22 “(B) *OTHER CASES.—In the case of any*
23 *country that is not a WTO member, the term*
24 *‘antidumping’ refers to action taken by the coun-*
25 *try against the sale of a vessel at less than fair*

1 value that is comparable to action described in
2 subparagraph (A).

3 “(31) *BROAD MULTIPLE BID.*—The term ‘broad
4 multiple bid’ means a bid in which the proposed
5 buyer extends an invitation to at least all the produc-
6 ers in the industry known by the buyer to be capable
7 of building the subject vessel.”.

8 **SEC. 102. ENFORCEMENT OF COUNTERMEASURES.**

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

11 **“SEC. 468. SHIPBUILDING AGREEMENT COUNTER-**
12 **MEASURES.**

13 “(a) *IN GENERAL.*—Notwithstanding any other provi-
14 sion of law, upon receiving from the Secretary of Commerce
15 a list of vessels subject to countermeasures under section
16 807, the Customs Service shall deny any request for a per-
17 mit to lade or unlade passengers, merchandise, or baggage
18 from or onto those vessels so listed.

19 “(b) *EXCEPTIONS.*—Subsection (a) shall not be applied
20 to deny a permit for the following:

21 “(1) To unlade any United States citizen or per-
22 manent legal resident alien from a vessel included in
23 the list described in subsection (a), or to unlade any
24 refugee or any alien who would otherwise be eligible

1 *to apply for asylum and withholding of deportation*
2 *under the Immigration and Nationality Act.*

3 “(2) *To lade or unlade any crewmember of such*
4 *vessel.*

5 “(3) *To lade or unlade coal and other fuel sup-*
6 *plies (for the operation of the listed vessel), ships’*
7 *stores, sea stores, and the legitimate equipment of*
8 *such vessel.*

9 “(4) *To lade or unlade supplies for the use or*
10 *sale on such vessel.*

11 “(5) *To lade or unlade such other merchandise,*
12 *baggage, or passenger as the Customs Service shall de-*
13 *termine necessary to protect the immediate health,*
14 *safety, or welfare of a human being.*

15 “(c) *CORRECTION OF MINISTERIAL OR CLERICAL ER-*
16 *RORS.—*

17 “(1) *PETITION FOR CORRECTION.—If the master*
18 *of any vessel whose application for a permit to lade*
19 *or unlade has been denied under this section believes*
20 *that such denial resulted from a ministerial or cleri-*
21 *cal error, not amounting to a mistake of law, commit-*
22 *ted by any Customs officer, the master may petition*
23 *the Customs Service for correction of such error, as*
24 *provided by regulation.*

1 “(2) *INAPPLICABILITY OF SECTIONS 514 AND*
2 *520.—Notwithstanding paragraph (1), imposition of*
3 *countermeasures under this section shall not be*
4 *deemed an exclusion or other protestable decision*
5 *under section 514, and shall not be subject to correc-*
6 *tion under section 520.*

7 “(3) *PETITIONS SEEKING ADMINISTRATIVE RE-*
8 *VIEW.—Any petition seeking administrative review of*
9 *any matter regarding the Secretary of Commerce’s de-*
10 *cision to list a vessel under section 807 must be*
11 *brought under that section.*

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

15 “(1) *who submits false information in requesting*
16 *any permit to lade or unlade; or*

17 “(2) *who attempts to, or actually does, lade or*
18 *unlade in violation of any denial of such permit*
19 *under this section.”.*

20 **SEC. 103. JUDICIAL REVIEW IN INJURIOUS PRICING AND**
21 **COUNTERMEASURE PROCEEDINGS.**

22 “(a) *JUDICIAL REVIEW.—Part III of title IV of the Tar-*
23 *iff Act of 1930 is amended by inserting after section 516A*
24 *the following:*

1 **“SEC. 516B. JUDICIAL REVIEW IN INJURIOUS PRICING AND**
2 **COUNTERMEASURE PROCEEDINGS.**

3 *“(a) REVIEW OF DETERMINATION.—*

4 *“(1) IN GENERAL.—Within 30 days after the*
5 *date of publication in the Federal Register of—*

6 *“(A)(i) a determination by the administer-*
7 *ing authority under section 802(c) not to initiate*
8 *an investigation,*

9 *“(ii) a negative determination by the Com-*
10 *mission under section 803(a) as to whether there*
11 *is or has been reasonable indication of material*
12 *injury, threat of material injury, or material re-*
13 *tardation,*

14 *“(iii) a determination by the administering*
15 *authority to suspend or revoke an injurious pric-*
16 *ing order under section 806(d) or (e),*

17 *“(iv) a determination by the administering*
18 *authority under section 807(c),*

19 *“(v) a determination by the administering*
20 *authority in a review under section 807(d),*

21 *“(vi) a determination by the administering*
22 *authority concerning whether to extend the scope*
23 *or duration of a countermeasure order under sec-*
24 *tion 807(e)(3)(B)(ii),*

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

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

6 “(ix) a determination by the administering
7 authority under section 807(i) to terminate pro-
8 ceedings, or to amend or revoke a counter-
9 measure order,

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

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

17 “(ii) notice of a determination described in
18 subparagraph (B) of paragraph (2),

19 “(iii) notice of implementation of a deter-
20 mination described in subparagraph (C) of para-
21 graph (2), or

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

1 *an interested party who is a party to the proceeding*
2 *in connection with which the matter arises may com-*
3 *mence an action in the United States Court of Inter-*
4 *national Trade by filing concurrently a summons and*
5 *complaint, each with the content and in the form,*
6 *manner, and style prescribed by the rules of that*
7 *court, contesting any factual findings or legal conclu-*
8 *sions upon which the determination is based.*

9 “(2) *REVIEWABLE DETERMINATIONS.*—*The deter-*
10 *minations referred to in paragraph (1)(B) are—*

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

16 “(B) *a final negative determination by the*
17 *administering authority or the Commission*
18 *under section 805,*

19 “(C) *a determination by the administering*
20 *authority under section 845(b), with respect to a*
21 *matter described in paragraph (1)(A) of that sec-*
22 *tion, and*

23 “(D) *a determination by the Commission*
24 *under section 845(a) that results in the revoca-*
25 *tion of an injurious pricing order.*

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

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

13 “(b) *STANDARDS OF REVIEW.*—

14 “(1) *REMEDY.*—*The court shall hold unlawful*
15 *any determination, finding, or conclusion found—*

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

20 “(B) *in an action brought under subpara-*
21 *graph (B) of subsection (a)(1), to be unsupported*
22 *by substantial evidence on the record, or other-*
23 *wise not in accordance with law.*

24 “(2) *RECORD FOR REVIEW.*—

1 “(A) *IN GENERAL.*—*For purposes of this*
2 *subsection, the record, unless otherwise stipulated*
3 *by the parties, shall consist of—*

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

12 “(ii) *a copy of the determination, all*
13 *transcripts or records of conferences or hear-*
14 *ings, and all notices published in the Fed-*
15 *eral Register.*

16 “(B) *CONFIDENTIAL OR PRIVILEGED MATE-*
17 *RIAL.*—*The confidential or privileged status ac-*
18 *corded to any documents, comments, or informa-*
19 *tion shall be preserved in any action under this*
20 *section. Notwithstanding the preceding sentence,*
21 *the court may examine, in camera, the confiden-*
22 *tial or privileged material, and may disclose*
23 *such material under such terms and conditions*
24 *as it may order.*

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

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

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

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

16 “(3) *INTERESTED PARTY*.—The term ‘interested
17 party’ means any person described in section
18 861(17).”.

19 (b) *CONFORMING AMENDMENTS*.—

20 (1) *JURISDICTION OF THE COURT*.—Section
21 1581(c) of title 28, United States Code, is amended by
22 inserting “or 516B” after “section 516A”.

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

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

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

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

11 **TITLE II—OTHER PROVISIONS**

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

13 Section 466 of the Tariff Act of 1930 (19 U.S.C. 1466),
14 is amended by adding at the end the following new sub-
15 section:

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

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

25 “(2) tugs of 365 kilowatts or more.

1 *A vessel shall be considered ‘self-propelled seagoing’ if its*
2 *permanent propulsion and steering provide it all the char-*
3 *acteristics of self-navigability in the high seas.’’.*

4 **SEC. 202. EFFECT OF AGREEMENT WITH RESPECT TO PRI-**
5 **VATE REMEDIES.**

6 *No person other than the United States—*

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

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

18 **SEC. 203. IMPLEMENTING REGULATIONS.**

19 *After the date of the enactment of this Act, the heads*
20 *of agencies with functions under this Act and the amend-*
21 *ments made by this Act may issue such regulations as may*
22 *be necessary to ensure that this Act is appropriately imple-*
23 *mented on the date the Shipbuilding Agreement enters into*
24 *force with respect to the United States.*

1 **SEC. 204. AMENDMENTS TO THE MERCHANT MARINE ACT,**
2 **1936.**

3 *The Merchant Marine Act, 1936, is amended as fol-*
4 *lows:*

5 (1) Section 511(a)(2) (46 App. U.S.C.
6 1161(a)(2)) is amended by inserting after “1939,” the
7 following: “or, if the vessel is a Shipbuilding Agree-
8 ment vessel, constructed in a Shipbuilding Agreement
9 Party, but only with regard to moneys deposited, on
10 or after the date on which the Shipbuilding Trade
11 Agreement Act takes effect, into a construction reserve
12 fund established under subsection (b)”.

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

23 (3) Section 606(6) (46 App. U.S.C. 1176(6)) is
24 amended by inserting “or, if the vessel is a Shipbuild-
25 ing Agreement vessel, in a Shipbuilding Agreement

1 *Party or in the United States” before “, except in an*
2 *emergency.”.*

3 *(4) Section 607 (46 App. U.S.C. 1177) is amend-*
4 *ed as follows:*

5 *(A) Subsection (a) is amended by inserting*
6 *“or, if the vessel is a Shipbuilding Agreement*
7 *vessel, in a Shipbuilding Agreement Party,”*
8 *after “built in the United States”.*

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

10 *(i) Paragraph (1) is amended by strik-*
11 *ing subparagraph (A) and inserting the fol-*
12 *lowing:*

13 *“(A)(i) constructed in the United States and, if*
14 *reconstructed, reconstructed in the United States or in*
15 *a Shipbuilding Agreement Party, or*

16 *“(ii) that is a Shipbuilding Agreement vessel*
17 *and is constructed in a Shipbuilding Agreement*
18 *Party and, if reconstructed, is reconstructed in a*
19 *Shipbuilding Agreement Party or in the United*
20 *States,”.*

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

23 *“(A)(i) constructed in the United States and, if*
24 *reconstructed, reconstructed in the United States or in*
25 *a Shipbuilding Agreement Party, or*

1 “(ii) that is a Shipbuilding Agreement vessel
2 and is constructed in a Shipbuilding Agreement
3 Party and, if reconstructed, is reconstructed in a
4 Shipbuilding Agreement Party or in the United
5 States, but only with regard to moneys deposited into
6 the fund on or after the date on which the Shipbuild-
7 ing Trade Agreement Act takes effect.”.

8 (5) Section 610 (46 App. U.S.C. 1180) is amend-
9 ed by striking “shall be built in a domestic yard or
10 shall have been documented under the laws of the
11 United States not later than February 1, 1928, or ac-
12 tually ordered and under construction for the account
13 of citizens of the United States prior to such date,”
14 and inserting “shall be built in the United States or,
15 if the vessel is a Shipbuilding Agreement vessel, in a
16 Shipbuilding Agreement Party.”.

17 (6) Section 901(b)(1) (46 App. U.S.C.
18 1241(b)(1)) is amended by striking the third sentence
19 and inserting the following:

20 “*For purposes of this section, the term ‘privately owned*
21 *United States-flag commercial vessels’ shall be deemed to*
22 *include—*

23 “(A) any privately owned United States-flag
24 commercial vessel constructed in the United States,
25 and if rebuilt, rebuilt in the United States or in a

1 *Shipbuilding Agreement Party on or after the date on*
2 *which the Shipbuilding Trade Agreement Act takes ef-*
3 *fect, and*

4 “(B) *any privately owned vessel constructed in a*
5 *Shipbuilding Agreement Party on or after the date on*
6 *which the Shipbuilding Trade Agreement Act takes ef-*
7 *fect, and if rebuilt, rebuilt in a Shipbuilding Agree-*
8 *ment Party or in the United States, that is docu-*
9 *mented pursuant to chapter 121 of title 46, United*
10 *States Code.*

11 *The term ‘privately owned United States-flag commercial*
12 *vessels’ shall also be deemed to include any cargo vessel that*
13 *so qualified pursuant to section 615 of this Act or this para-*
14 *graph before the date on which the Shipbuilding Trade*
15 *Agreement Act takes effect. The term ‘privately owned Unit-*
16 *ed States-flag commercial vessels’ shall not be deemed to in-*
17 *clude any liquid bulk cargo vessel that does not meet the*
18 *requirements of section 3703a of title 46, United States*
19 *Code.’.*

20 (7) *Section 905 (46 App. U.S.C. 1244) is amend-*
21 *ed by adding at the end the following:*

22 “(h) *The term ‘Shipbuilding Agreement’ means the*
23 *Agreement Respecting Normal Competitive Conditions in*
24 *the Commercial Shipbuilding and Repair Industry, which*
25 *resulted from negotiations under the auspices of the Organi-*

1 *zation for Economic Cooperation and Development, and*
2 *was entered into on December 21, 1994.*

3 “(i) *The term ‘Shipbuilding Agreement Party’ means*
4 *a state or separate customs territory that is a Party to the*
5 *Shipbuilding Agreement, and with respect to which the*
6 *United States applies the Shipbuilding Agreement.*

7 “(j) *The term ‘Shipbuilding Agreement vessel’ means*
8 *a vessel to which the Secretary determines Article 2.1 of*
9 *the Shipbuilding Agreement applies.*

10 “(k) *The term ‘Export Credit Understanding’ means*
11 *the Understanding on Export Credits for Ships which re-*
12 *sulted from negotiations under the auspices of the Organiza-*
13 *tion for Economic Cooperation and Development and was*
14 *entered into on December 21, 1994.*

15 “(l) *The term ‘Export Credit Understanding vessel’*
16 *means a vessel to which the Secretary determines the Export*
17 *Credit Understanding applies.”.*

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

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

22 “(5) *shall bear interest (exclusive of charges for*
23 *the guarantee and service charges, if any) at rates not*
24 *to exceed such percent per annum on the unpaid*
25 *principal as the Secretary determines to be reason-*

1 *able, taking into account the range of interest rates*
2 *prevailing in the private market for similar loans*
3 *and the risks assumed by the Secretary, except that,*
4 *with respect to Export Credit Understanding vessels,*
5 *and Shipbuilding Agreement vessels, the obligations*
6 *shall bear interest at a rate the Secretary determines*
7 *to be consistent with obligations of the United States*
8 *under the Export Credit Understanding or the Ship-*
9 *building Agreement, as the case may be;”.*

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

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

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

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

19 *“(C) the 80 percent or less limitation in the 3rd*
20 *proviso to such subsection,*

21 *establish by rule, regulation, or procedure any percentage*
22 *within any such limitation that is, or is intended to be,*
23 *applied uniformly to all guarantees or commitments to*
24 *guarantee made under this section that are subject to the*
25 *limitation.*

1 “(2) *With respect to Export Credit Understanding ves-*
 2 *sels and Shipbuilding Agreement vessels, the Secretary may*
 3 *establish by rule, regulation, or procedure a uniform per-*
 4 *centage that the Secretary determines to be consistent with*
 5 *obligations of the United States under the Export Credit*
 6 *Understanding or the Shipbuilding Agreement, as the case*
 7 *may be.”.*

8 (C) *Section 1104B(b) (46 App. U.S.C.*
 9 *1274a(b)) is amended by striking the period at*
 10 *the end and inserting the following:*

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

18 **TITLE III—REVENUE OFFSET**

19 **SEC. 301. PENALTIES FOR FAILURE TO DISCLOSE POSITION**
 20 **THAT CERTAIN INTERNATIONAL SHIPPING**
 21 **INCOME IS NOT INCLUDIBLE IN GROSS IN-**
 22 **COME.**

23 (a) *IN GENERAL.*—*Section 883 of the Internal Revenue*
 24 *Code of 1986 is amended by adding at the end the following*
 25 *new subsection:*

1 “(d) *PENALTIES FOR FAILURE TO DISCLOSE POSITION*
2 *THAT CERTAIN INTERNATIONAL SHIPPING INCOME IS NOT*
3 *INCLUDIBLE IN GROSS INCOME.*—

4 “(1) *IN GENERAL.*—*A taxpayer who, with re-*
5 *spect to any tax imposed by this title, takes the posi-*
6 *tion that any of its gross income derived from the*
7 *international operation of a ship or ships is not in-*
8 *cludible in gross income by reason of subsection (a)(1)*
9 *or section 872(b)(1) shall be entitled to such treatment*
10 *only if such position is disclosed (in such manner as*
11 *the Secretary may prescribe) on the return of tax for*
12 *such tax (or any statement attached to such return).*

13 “(2) *ADDITIONAL PENALTIES FOR FAILING TO*
14 *DISCLOSE POSITION.*—*If a taxpayer fails to meet the*
15 *requirement of paragraph (1) with respect to any tax-*
16 *able year—*

17 “(A) *the amount of the income from the*
18 *international operation of a ship or ships—*

19 “(i) *which is from sources without the*
20 *United States, and*

21 “(ii) *which is attributable to a fixed*
22 *place of business in the United States,*
23 *shall be treated for purposes of this title as effec-*
24 *tively connected with the conduct of a trade or*
25 *business within the United States, and*

1 “(B) no deductions or credits shall be al-
2 lowed which are attributable to income from the
3 international operation of a ship or ships.

4 “(3) *REASONABLE CAUSE EXCEPTION.*—This
5 subsection shall not apply to a failure to disclose a
6 position if it is shown that such failure is due to rea-
7 sonable cause and not due to willful neglect.”

8 (b) *CONFORMING AMENDMENTS.*—

9 (1) Paragraph (1) of section 872(b) of such Code
10 is amended by striking “Gross income” and inserting
11 “Except as provided in section 883(d), gross income”.

12 (2) Paragraph (1) of section 883(a) of such Code
13 is amended by striking “Gross income” and inserting
14 “Except as provided in subsection (d), gross income”.

15 (c) *EFFECTIVE DATE.*—

16 (1) *IN GENERAL.*—Notwithstanding section 3, the
17 amendments made by this section shall apply to tax-
18 able years beginning after the later of—

19 (A) December 31, 1996, or

20 (B) the date that the Shipbuilding Agree-
21 ment enters into force with respect to the United
22 States.

23 (2) *COORDINATION WITH TREATIES.*—The
24 amendments made by this section shall not apply in

1 *any case where their application would be contrary*
2 *to any treaty obligation of the United States.*

3 *(d) INFORMATION TO BE PROVIDED BY CUSTOMS*
4 *SERVICE.—The United States Custom Service shall provide*
5 *the Secretary of the Treasury or his delegate with such in-*
6 *formation as may be specified by such Secretary in order*
7 *to enable such Secretary to determine whether ships which*
8 *are not registered in the United States are engaged in*
9 *transportation to or from the United States.*

10 **SECTION 1. SHORT TITLE.**

11 **This Act may be cited as the “Shipbuilding**
12 **Trade Agreement Act”.**

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

14 **The Congress approves The Agreement**
15 **Respecting Normal Competitive Conditions in**
16 **the Commercial Shipbuilding and Repair In-**
17 **dustry (hereafter in this Act referred to as the**
18 **“Shipbuilding Agreement”), a reciprocal trade**
19 **agreement which resulted from negotiations**
20 **under the auspices of the Organization for**
21 **Economic Cooperation and Development, and**
22 **was entered into on December 21, 1994.**

23 **SEC. 3. EFFECTIVE DATE.**

24 **Except as provided in section 205, this Act**
25 **and the amendments made by this Act take ef-**

1 **fect on the date that the Shipbuilding Agree-**
 2 **ment enters into force with respect to the**
 3 **United States.**

4 **TITLE I—INJURIOUS PRICING**
 5 **AND COUNTERMEASURES**

6 **SEC. 101. INJURIOUS PRICING AND COUNTERMEASURES**
 7 **PROCEEDINGS.**

8 **The Tariff Act of 1930 is amended by add-**
 9 **ing at the end the following new title:**

10 **“TITLE VIII—INJURIOUS PRIC-**
 11 **ING AND COUNTERMEASURES**
 12 **RELATING TO SHIPBUILDING**

“Subtitle A—Injurious Pricing Charge and Countermeasures

“Sec. 801. Injurious pricing charge.

“Sec. 802. Procedures for initiating an injurious pricing in-
vestigation.

“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.

“Sec. 809. Third country sales

“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 avail-
able.

“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 de-**
6 **termines that a foreign vessel has been**
7 **sold directly or indirectly to one or more**
8 **United States buyers at less than its fair**
9 **value, and**

10 **“(2) the Commission determines**
11 **that—**

12 **“(A) an industry in the United**
13 **States—**

14 **“(i) is or has been materially**
15 **injured, or**

16 **“(ii) is threatened with mate-**
17 **rial injury, or**

18 **“(B) the establishment of an in-**
19 **dustry in the United States is or has**
20 **been materially retarded,**

21 **by reason of the sale of such vessel, then**
22 **there shall be imposed upon the foreign**
23 **producer of the subject vessel an injuri-**
24 **ous pricing charge, in an amount equal to**

1 the amount by which the normal value
2 exceeds the export price for the vessel.
3 For purposes of this subsection and sec-
4 tion 805(b)(1), a reference to the sale of a
5 foreign vessel includes the creation or
6 transfer of an ownership interest in the
7 vessel, except for an ownership interest
8 created or acquired solely for the pur-
9 pose of providing security for a normal
10 commercial loan.

11 **“(b) FOREIGN VESSELS NOT MERCHANDISE.—**

12 **No foreign vessel may be considered to be, or**
13 **to be part of, a class or kind of merchandise**
14 **for purposes of subtitle B of title VII.**

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

17 **“(a) INITIATION BY ADMINISTERING AUTHOR-**
18 **ITY.—**

19 **“(1) GENERAL RULE.—Except in the**
20 **case in which subsection (d)(6) applies,**
21 **an injurious pricing investigation shall**
22 **be initiated whenever the administering**
23 **authority determines, from information**
24 **available to it, that a formal investigation**
25 **is warranted into the question of whether**

1 the elements necessary for the imposition
2 of a charge under section 801(a) exist,
3 and whether a producer described in sec-
4 tion 861(17)(C) would meet the criteria of
5 subsection (b)(1)(B) for a petitioner.

6 “(2) TIME FOR INITIATION BY ADMIN-
7 ISTERING AUTHORITY.—An investigation
8 may only be initiated under paragraph
9 (1) within 6 months after the time the ad-
10 ministering authority first knew or
11 should have known of the sale of the ves-
12 sel. Any period in which subsection
13 (d)(6)(A) applies shall not be included in
14 calculating that 6-month period.

15 “(b) INITIATION BY PETITION.—

16 “(1) PETITION REQUIREMENTS.—(A) Ex-
17 cept in a case in which subsection (d)(6)
18 applies, an injurious pricing proceeding
19 shall be initiated whenever an interested
20 party, as defined in subparagraph (C),
21 (D), (E), or (F) of section 861(17), files a
22 petition with the administering author-
23 ity, on behalf of an industry, which al-
24 leges the elements necessary for the im-
25 position of an injurious pricing charge

1 **under section 801(a) and the elements re-**
2 **quired under subparagraph (B), (C), (D),**
3 **or (E) of this paragraph, and which is ac-**
4 **companied by information reasonably**
5 **available to the petitioner supporting**
6 **those allegations and identifying the**
7 **transaction concerned.**

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

10 **“(I) if the petitioner was invited**
11 **to tender a bid on the contract at**
12 **issue, the petition shall include infor-**
13 **mation indicating that the petitioner**
14 **actually did so and the bid of the pe-**
15 **titioner substantially met the delivery**
16 **date and technical requirements of**
17 **the bid, or**

18 **“(II) if the petitioner was not in-**
19 **vited to tender a bid, the petition**
20 **shall include information indicating**
21 **that the petitioner was capable of**
22 **building the vessel concerned and, if**
23 **the petitioner knew or should have**
24 **known of the proposed purchase, it**
25 **made demonstrable efforts to con-**

1 **clude a sale with the United States**
2 **buyer consistent with the delivery**
3 **date and technical requirements of**
4 **the buyer.**

5 **“(ii) For purposes of clause (i)(II),**
6 **there is a rebuttable presumption that**
7 **the petitioner knew or should have**
8 **known of the proposed purchase if it is**
9 **demonstrated that—**

10 **“(I) the majority of the producers**
11 **in the industry have made efforts**
12 **with the United States buyer to con-**
13 **clude a sale of the subject vessel, or**

14 **“(II) general information on the**
15 **sale was available from brokers, fin-**
16 **anciers, classification societies,**
17 **charterers, trade associations, or**
18 **other entities normally involved in**
19 **shipbuilding transactions with whom**
20 **the petitioner had regular contacts or**
21 **dealings.**

22 **“(C) If the petitioner is an interested**
23 **party described in section 861(17)(D), the**
24 **petition shall include information indi-**
25 **cating that members of the union or**

1 **group of workers described in that sec-**
2 **tion are employed by a producer that**
3 **meets the requirements of subparagraph**
4 **(B) of this paragraph.**

5 **“(D) If the petitioner is an interested**
6 **party described in section 861(17)(E), the**
7 **petition shall include information indi-**
8 **cating that a member of the association**
9 **described in that section is a producer**
10 **that meets the requirements of subpara-**
11 **graph (B) of this paragraph.**

12 **“(E) If the petitioner is an interested**
13 **party described in section 861(17)(F), the**
14 **petition shall include information indi-**
15 **cating that a member of the association**
16 **described in that section meets the re-**
17 **quirements of subparagraph (C) or (D) of**
18 **this paragraph.**

19 **“(F) The petition may be amended at**
20 **such time, and upon such conditions, as**
21 **the administering authority and the Com-**
22 **mission may permit.**

23 **“(2) SIMULTANEOUS FILING WITH COM-**
24 **MISSION.—The petitioner shall file a copy**
25 **of the petition with the Commission on**

1 **the same day as it is filed with the admin-**
2 **istering authority.**

3 **“(3) DEADLINE FOR FILING PETITION.—**

4 **“(A) DEADLINE.—(i) A petitioner to**
5 **which paragraph (1)(B)(i)(I) applies**
6 **shall file the petition no later than**
7 **the earlier of—**

8 **“(I) 6 months after the time**
9 **that the petitioner first knew or**
10 **should have known of the sale of**
11 **the subject vessel, or**

12 **“(II) 6 months after delivery**
13 **of the subject vessel.**

14 **“(ii) A petitioner to which para-**
15 **graph (1)(B)(i)(II) applies shall—**

16 **“(I) file the petition no later**
17 **than the earlier of 9 months after**
18 **the time that the petitioner first**
19 **knew or should have known of**
20 **the sale of the subject vessel, or 6**
21 **months after delivery of the sub-**
22 **ject vessel, and**

23 **“(II) submit to the administer-**
24 **ing authority a notice of intent to**
25 **file a petition no later than 6**

1 months after the time that the pe-
2 titioner first knew or should have
3 known of the sale (unless the peti-
4 tion itself is filed within that 6-
5 month period).

6 **“(B) PRESUMPTION OF KNOWL-
7 EDGE.—**For purposes of this para-
8 graph, if the existence of the sale, to-
9 gether with general information con-
10 cerning the vessel, is published in the
11 international trade press, there is a
12 rebuttable presumption that the peti-
13 tioner knew or should have known of
14 the sale of the vessel from the date of
15 that publication.

16 **“(c) ACTIONS BEFORE INITIATING INVESTIGA-
17 TIONS.—**

18 **“(1) NOTIFICATION OF GOVERNMENTS.—**
19 Before initiating an investigation under
20 either subsection (a) or (b), the admin-
21 istering authority shall notify the govern-
22 ment of the exporting country of the in-
23 vestigation. In the case of the initiation
24 of an investigation under subsection (b),

1 **such notification shall include a public**
2 **version of the petition.**

3 **“(2) ACCEPTANCE OF COMMUNICA-**
4 **TIONS.—The administering authority shall**
5 **not accept any unsolicited oral or written**
6 **communication from any person other**
7 **than an interested party described in sec-**
8 **tion 861(17)(C), (D), (E), or (F) before the**
9 **administering authority makes its deci-**
10 **sion whether to initiate an investigation**
11 **pursuant to a petition, except for inquir-**
12 **ies regarding the status of the admin-**
13 **istering authority’s consideration of the**
14 **petition or a request for consultation by**
15 **the government of the exporting country.**

16 **“(3) NONDISCLOSURE OF CERTAIN INFOR-**
17 **MATION.—The administering authority**
18 **and the Commission shall not disclose in-**
19 **formation with regard to any draft peti-**
20 **tion submitted for review and comment**
21 **before it is filed under subsection (b)(1).**

22 **“(d) PETITION DETERMINATION.—**

23 **“(1) TIME FOR INITIAL DETERMINA-**
24 **TION.—(A) Within 45 days after the date**
25 **on which a petition is filed under sub-**

1 section (b), the administering authority
2 shall, after examining, on the basis of
3 sources readily available to the admin-
4 istering authority, the accuracy and ade-
5 quacy of the evidence provided in the pe-
6 tition, determine whether the petition—

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

15 “(ii) determine if the petition has
16 been filed by or on behalf of the in-
17 dustry.

18 “(B) Any period in which paragraph
19 (6)(A) applies shall not be included in cal-
20 culating the 45-day period described in
21 subparagraph (A).

22 “(2) AFFIRMATIVE DETERMINATIONS.—If
23 the determinations under clauses (i) and
24 (ii) of paragraph (1)(A) are affirmative,
25 the administering authority shall initiate

1 **an investigation to determine whether**
2 **the vessel was sold at less than fair value,**
3 **unless paragraph (6) applies.**

4 **“(3) NEGATIVE DETERMINATIONS.—If—**

5 **“(A) the determination under**
6 **clause (i) or (ii) of paragraph (1)(A) is**
7 **negative, or**

8 **“(B) paragraph (6)(B) applies,**
9 **the administering authority shall dismiss**
10 **the petition, terminate the proceeding,**
11 **and notify the petitioner in writing of the**
12 **reasons for the determination.**

13 **“(4) DETERMINATION OF INDUSTRY SUP-**
14 **PORT.—**

15 **“(A) GENERAL RULE.—For purposes**
16 **of this subsection, the administering**
17 **authority shall determine that the pe-**
18 **tion has been filed by or on behalf**
19 **of the domestic industry, if—**

20 **“(i) the domestic producers or**
21 **workers who support the petition**
22 **collectively account for at least 25**
23 **percent of the total capacity of**
24 **domestic producers capable of**
25 **producing a like vessel, and**

1 “(ii) the domestic producers
2 or workers who support the peti-
3 tion collectively account for more
4 than 50 percent of the total capac-
5 ity to produce a like vessel of that
6 portion of the domestic industry
7 expressing support for or opposi-
8 tion to the petition.

9 “(B) CERTAIN POSITIONS DIS-
10 REGARDED.—In determining industry
11 support under subparagraph (A), the
12 administering authority shall dis-
13 regard the position of domestic pro-
14 ducers who oppose the petition, if
15 such producers are related to the for-
16 eign producer or United States buyer
17 of the subject vessel, or the domestic
18 producer is itself the United States
19 buyer, unless such domestic produc-
20 ers demonstrate that their interests
21 as domestic producers would be ad-
22 versely affected by the imposition of
23 an injurious pricing charge.

24 “(C) POLLING THE INDUSTRY.—If the
25 petition does not establish support of

1 **domestic producers or workers ac-**
2 **counting for more than 50 percent of**
3 **the total capacity to produce a like**
4 **vessel—**

5 **“(i) the administering author-**
6 **ity shall poll the industry or rely**
7 **on other information in order to**
8 **determine if there is support for**
9 **the petition as required by sub-**
10 **paragraph (A), or**

11 **“(ii) if there is a large number**
12 **of producers in the industry, the**
13 **administering authority may de-**
14 **termine industry support for the**
15 **petition by using any statistically**
16 **valid sampling method to poll the**
17 **industry.**

18 **“(D) COMMENTS BY INTERESTED**
19 **PARTIES.—Before the administering**
20 **authority makes a determination**
21 **with respect to initiating an inves-**
22 **tigation, any person who would qual-**
23 **ify as an interested party under sec-**
24 **tion 861(17) if an investigation were**
25 **initiated, may submit comments or in-**

1 **formation on the issue of industry**
2 **support. After the administering au-**
3 **thority makes a determination with**
4 **respect to initiating an investigation,**
5 **the determination regarding industry**
6 **support shall not be reconsidered.**

7 **“(5) DEFINITION OF DOMESTIC PRODUC-**
8 **ERS OR WORKERS.—For purposes of this**
9 **subsection, the term ‘domestic producers**
10 **or workers’ means interested parties as**
11 **defined in section 861(17)(C), (D), (E), or**
12 **(F).**

13 **“(6) PROCEEDINGS BY WTO MEMBERS.—**
14 **The administering authority shall not ini-**
15 **tiate an investigation under this section**
16 **if, with respect to the vessel sale at issue,**
17 **an antidumping proceeding conducted by**
18 **a WTO member who is not a Shipbuilding**
19 **Agreement Party—**

20 **“(A) has been initiated and has**
21 **been pending for not more than one**
22 **year, or**

23 **“(B) has been completed and re-**
24 **sulted in the imposition of antidump-**
25 **ing measures or a negative deter-**

1 **mination with respect to whether the**
2 **sale was at less than fair value or**
3 **with respect to injury.**

4 **“(e) NOTIFICATION TO COMMISSION OF DE-**
5 **TERMINATION.—The administering authority**
6 **shall—**

7 **“(1) notify the Commission imme-**
8 **diately of any determination it makes**
9 **under subsection (a) or (d), and**

10 **“(2) if the determination is affirma-**
11 **tive, make available to the Commission**
12 **such information as it may have relating**
13 **to the matter under investigation, under**
14 **such procedures as the administering au-**
15 **thority and the Commission may estab-**
16 **lish to prevent disclosure, other than**
17 **with the consent of the party providing it**
18 **or under protective order, of any infor-**
19 **mation to which confidential treatment**
20 **has been given by the administering au-**
21 **thority.**

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

23 **“(a) DETERMINATION BY COMMISSION OF**
24 **REASONABLE INDICATION OF INJURY.—**

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

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

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

13 **“(ii) is threatened with mate-**
14 **rial injury, or**

15 **“(B) the establishment of an in-**
16 **dustry in the United States is or has**
17 **been materially retarded,**
18 **by reason of the sale of the subject vessel.**
19 **If the Commission makes a negative de-**
20 **termination under this paragraph, the in-**
21 **vestigation shall be terminated.**

22 **“(2) TIME FOR COMMISSION DETERMINA-**
23 **TION.—The Commission shall make the**
24 **determination described in paragraph (1)**
25 **within 90 days after the date on which**

1 the petition is filed or, in the case of an
2 investigation initiated under section
3 802(a), within 90 days after the date on
4 which the Commission receives notice
5 from the administering authority that the
6 investigation has been initiated.

7 “(b) PRELIMINARY DETERMINATION BY AD-
8 MINISTERING AUTHORITY.—

9 “(1) PERIOD OF INJURIOUS PRICING IN-
10 VESTIGATION.—(A) The administering au-
11 thority shall make a determination, based
12 upon the information available to it at
13 the time of the determination, of whether
14 there is a reasonable basis to believe or
15 suspect that the subject vessel was sold
16 at less than fair value.

17 “(B) If cost data is required to deter-
18 mine normal value on the basis of a sale
19 of a foreign like vessel that has not been
20 delivered on or before the date on which
21 the administering authority initiates the
22 investigation, the administering author-
23 ity shall make its determination within
24 160 days after the date of delivery of the
25 foreign like vessel.

1 **“(C) If normal value is to be deter-**
2 **mined on the basis of constructed value,**
3 **the administering authority shall make**
4 **its determination within 160 days after**
5 **the date of delivery of the subject vessel.**

6 **“(D) In cases in which subparagraph**
7 **(B) or (C) does not apply, the administer-**
8 **ing authority shall make its determina-**
9 **tion within 160 days after the date on**
10 **which the administering authority initi-**
11 **ates the investigation under section 802.**

12 **“(E) In no event shall the administer-**
13 **ing authority make its determination be-**
14 **fore an affirmative determination is**
15 **made by the Commission under sub-**
16 **section (a).**

17 **“(2) DE MINIMIS INJURIOUS PRICING**
18 **MARGIN.—In making a determination**
19 **under this subsection, the administering**
20 **authority shall disregard any injurious**
21 **pricing margin that is de minimis. For**
22 **purposes of the preceding sentence, an**
23 **injurious pricing margin is de minimis if**
24 **the administering authority determines**

1 **that the margin is less than 2 percent of**
2 **the export price.**

3 **“(c) EXTENSION OF PERIOD IN EXTRAOR-**
4 **DINARILY COMPLICATED CASES OR FOR GOOD**
5 **CAUSE.—**

6 **“(1) IN GENERAL.—If—**

7 **“(A) the administering authority**
8 **concludes that the parties concerned**
9 **are cooperating and determines**
10 **that—**

11 **“(i) the case is extraordinarily**
12 **complicated by reason of—**

13 **“(I) the novelty of the is-**
14 **sues presented, or**

15 **“(II) the nature and extent**
16 **of the information required,**
17 **and**

18 **“(ii) additional time is nec-**
19 **essary to make the preliminary**
20 **determination, or**

21 **“(B) a party to the investigation**
22 **requests an extension and dem-**
23 **onstrates good cause for the exten-**
24 **sion,**

1 then the administering authority may
2 postpone the time for making its prelimi-
3 nary determination.

4 “(2) LENGTH OF POSTPONEMENT.—The
5 preliminary determination may be post-
6 poned under paragraph (1)(A) or (B) until
7 not later than the 190th day after—

8 “(A) the date of delivery of the
9 foreign like vessel, if subsection
10 (b)(1)(B) applies,

11 “(B) the date of delivery of the
12 subject vessel, if subsection (b)(1)(C)
13 applies, or

14 “(C) the date on which the admin-
15 istering authority initiates an inves-
16 tigation under section 802, in a case
17 in which subsection (b)(1)(D) applies.

18 “(3) NOTICE OF POSTPONEMENT.—The
19 administering authority shall notify the
20 parties to the investigation, not later
21 than 20 days before the date on which
22 the preliminary determination would oth-
23 erwise be required under subsection
24 (b)(1), if it intends to postpone making
25 the preliminary determination under

1 paragraph (1). The notification shall in-
2 clude an explanation of the reasons for
3 the postponement, and notice of the post-
4 ponement shall be published in the Fed-
5 eral Register.

6 “(d) EFFECT OF DETERMINATION BY THE AD-
7 MINISTERING AUTHORITY.—If the preliminary
8 determination of the administering authority
9 under subsection (b) is affirmative, the ad-
10 ministering authority shall—

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

13 “(2) make available to the Commis-
14 sion all information upon which its deter-
15 mination was based and which the Com-
16 mission considers relevant to its injury
17 determination, under such procedures as
18 the administering authority and the Com-
19 mission may establish to prevent disclo-
20 sure, other than with the consent of the
21 party providing it or under protective
22 order, of any information to which con-
23 fidential treatment has been given by the
24 administering authority.

1 **“(e) NOTICE OF DETERMINATION.—Whenever**
2 **the Commission or the administering author-**
3 **ity makes a determination under this section,**
4 **the Commission or the administering author-**
5 **ity, as the case may be, shall notify the peti-**
6 **tioner, and other parties to the investigation,**
7 **and the Commission or the administering au-**
8 **thority (whichever is appropriate) of its de-**
9 **termination. The administering authority**
10 **shall include with such notification the facts**
11 **and conclusions on which its determination is**
12 **based. Not later than 5 days after the date on**
13 **which the determination is required to be**
14 **made under subsection (a)(2), the Commission**
15 **shall transmit to the administering authority**
16 **the facts and conclusions on which its deter-**
17 **mination is based.**

18 **“SEC. 804. TERMINATION OR SUSPENSION OF INVESTIGA-**
19 **TION.**

20 **“(a) TERMINATION OF INVESTIGATION UPON**
21 **WITHDRAWAL OF PETITION.—**

22 **“(1) IN GENERAL.—Except as provided**
23 **in paragraph (2), an investigation under**
24 **this subtitle may be terminated by either**
25 **the administering authority or the Com-**

1 mission, after notice to all parties to the
2 investigation, upon withdrawal of the pe-
3 tition by the petitioner.

4 “(2) LIMITATION ON TERMINATION BY
5 COMMISSION.—The Commission may not
6 terminate an investigation under para-
7 graph (1) before a preliminary determina-
8 tion is made by the administering author-
9 ity under section 803(b).

10 “(b) TERMINATION OF INVESTIGATIONS INITI-
11 ATED BY ADMINISTERING AUTHORITY.—The ad-
12 ministering authority may terminate any in-
13 vestigation initiated by the administering au-
14 thority under section 802(a) after providing
15 notice of such termination to all parties to the
16 investigation.

17 “(c) ALTERNATE EQUIVALENT REMEDY.—The
18 criteria set forth in subparagraphs (A)
19 through (D) of section 806(e)(1) shall apply to
20 any agreement that forms the basis for termi-
21 nation of an investigation under subsection
22 (a) or (b).

23 “(d) PROCEEDINGS BY WTO MEMBERS.—

24 “(1) SUSPENSION OF INVESTIGATION.—
25 The administering authority and the

1 **Commission shall suspend an investiga-**
2 **tion under this section if a WTO member**
3 **that is not a Shipbuilding Agreement**
4 **Party initiates an antidumping proceed-**
5 **ing described in section 861(29)(A) with**
6 **respect to the sale of the subject vessel.**

7 **“(2) TERMINATION OF INVESTIGATION.—**
8 **If an antidumping proceeding described**
9 **in paragraph (1) is concluded by—**

10 **“(A) the imposition of antidump-**
11 **ing measures, or**

12 **“(B) a negative determination**
13 **with respect to whether the sale is at**
14 **less than fair value or with respect to**
15 **injury,**

16 **the administering authority and the Com-**
17 **mission shall terminate the investigation**
18 **under this section.**

19 **“(3) CONTINUATION OF INVESTIGATION.—**
20 **(A) If such a proceeding—**

21 **“(i) is concluded by a result other**
22 **than a result described in paragraph**
23 **(2), or**

1 “(ii) is not concluded within one
2 year from the date of the initiation of
3 the proceeding,

4 then the administering authority and the
5 Commission shall terminate the suspen-
6 sion and continue the investigation. The
7 period in which the investigation was
8 suspended shall not be included in cal-
9 culating deadlines applicable with re-
10 spect to the investigation.

11 “(B) Notwithstanding subparagraph
12 (A)(ii), if the proceeding is concluded by
13 a result described in paragraph (2)(A),
14 the administering authority and the Com-
15 mission shall terminate the investigation
16 under this section.

17 “SEC. 805. FINAL DETERMINATIONS.

18 “(a) DETERMINATIONS BY ADMINISTERING
19 AUTHORITY.—

20 “(1) IN GENERAL.—Within 75 days after
21 the date of its preliminary determination
22 under section 803(b), the administering
23 authority shall make a final determina-
24 tion of whether the vessel which is the
25 subject of the investigation has been sold

1 in the United States at less than its fair
2 value.

3 “(2) **EXTENSION OF PERIOD FOR DETER-**
4 **MINATION.—(A) The administering author-**
5 **ity may postpone making the final deter-**
6 **mination under paragraph (1) until not**
7 **later than 290 days after—**

8 “(i) the date of delivery of the for-
9 eign like vessel, in an investigation to
10 which section 803(b)(1)(B) applies,

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

14 “(iii) the date on which the ad-
15 ministering authority initiates the in-
16 vestigation under section 802, in an
17 investigation to which section
18 803(b)(1)(D) applies.

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

22 “(i) the producer of the subject
23 vessel, in a proceeding in which the
24 preliminary determination by the ad-

1 **ministering authority under section**
2 **803(b) was affirmative, or**

3 **“(ii) the petitioner, in a proceed-**
4 **ing in which the preliminary deter-**
5 **mination by the administering au-**
6 **thority under section 803(b) was neg-**
7 **ative.**

8 **“(3) DE MINIMIS INJURIOUS PRICING**
9 **MARGIN.—In making a determination**
10 **under this subsection, the administering**
11 **authority shall disregard any injurious**
12 **pricing margin that is de minimis as de-**
13 **finied in section 803(b)(2).**

14 **“(b) FINAL DETERMINATION BY COMMIS-**
15 **SION.—**

16 **“(1) IN GENERAL.—The Commission**
17 **shall make a final determination of**
18 **whether—**

19 **“(A) an industry in the United**
20 **States—**

21 **“(i) is or has been materially**
22 **injured, or**

23 **“(ii) is threatened with mate-**
24 **rial injury, or**

1 **“(B) the establishment of an in-**
2 **dustry in the United States is or has**
3 **been materially retarded, by reason**
4 **of the sale of the vessel with respect**
5 **to which the administering authority**
6 **has made an affirmative determina-**
7 **tion under subsection (a)(1).**

8 **“(2) PERIOD FOR INJURY DETERMINATION**
9 **FOLLOWING AFFIRMATIVE PRELIMINARY DE-**
10 **TERMINATION BY ADMINISTERING AUTHOR-**
11 **ITY.—If the preliminary determination by**
12 **the administering authority under sec-**
13 **tion 803(b) is affirmative, then the Com-**
14 **mission shall make the determination re-**
15 **quired by paragraph (1) before the later**
16 **of—**

17 **“(A) the 120th day after the day**
18 **on which the administering authority**
19 **makes its affirmative preliminary de-**
20 **termination under section 803(b), or**

21 **“(B) the 45th day after the day on**
22 **which the administering authority**
23 **makes its affirmative final determina-**
24 **tion under subsection (a).**

1 **“(3) PERIOD FOR INJURY DETERMINATION**
2 **FOLLOWING NEGATIVE PRELIMINARY DETER-**
3 **MINATION BY ADMINISTERING AUTHORITY.—If**
4 **the preliminary determination by the ad-**
5 **ministering authority under section**
6 **803(b) is negative, and its final deter-**
7 **mination under subsection (a) is affirma-**
8 **tive, then the final determination by the**
9 **Commission under this subsection shall**
10 **be made within 75 days after the date of**
11 **that affirmative final determination.**

12 **“(c) EFFECT OF FINAL DETERMINATIONS.—**

13 **“(1) EFFECT OF AFFIRMATIVE DETER-**
14 **MINATION BY THE ADMINISTERING AUTHOR-**
15 **ITY.—If the determination of the admin-**
16 **istering authority under subsection (a) is**
17 **affirmative, then the administering au-**
18 **thority shall—**

19 **“(A) make available to the Com-**
20 **mission all information upon which**
21 **such determination was based and**
22 **which the Commission considers rel-**
23 **evant to its determination, under**
24 **such procedures as the administering**
25 **authority and the Commission may**

1 establish to prevent disclosure, other
2 than with the consent of the party
3 providing it or under protective
4 order, of any information to which
5 confidential treatment has been given
6 by the administering authority, and

7 “(B) calculate an injurious pricing
8 charge in an amount equal to the
9 amount by which the normal value
10 exceeds the export price of the sub-
11 ject vessel.

12 “(2) **ISSUANCE OF ORDER; EFFECT OF**
13 **NEGATIVE DETERMINATION.—**If the deter-
14 **minations of the administering authority**
15 **and the Commission under subsections**
16 **(a)(1) and (b)(1) are affirmative, then the**
17 **administering authority shall issue an in-**
18 **jurious pricing order under section 806.**
19 **If either of such determinations is nega-**
20 **tive, the investigation shall be terminated**
21 **upon the publication of notice of that**
22 **negative determination.**

23 “(d) **PUBLICATION OF NOTICE OF DETERMINA-**
24 **TIONS.—**Whenever the administering author-
25 **ity or the Commission makes a determination**

1 under this section, it shall notify the peti-
2 tioner, other parties to the investigation, and
3 the other agency of its determination and of
4 the facts and conclusions of law upon which
5 the determination is based, and it shall pub-
6 lish notice of its determination in the Federal
7 Register.

8 “(e) CORRECTION OF MINISTERIAL ERRORS.—
9 The administering authority shall establish
10 procedures for the correction of ministerial
11 errors in final determinations within a rea-
12 sonable time after the determinations are is-
13 sued under this section. Such procedures
14 shall ensure opportunity for interested par-
15 ties to present their views regarding any such
16 errors. As used in this subsection, the term
17 ‘ministerial error’ includes errors in addition,
18 subtraction, or other arithmetic function,
19 clerical errors resulting from inaccurate
20 copying, duplication, or the like, and any
21 other type of unintentional error which the
22 administering authority considers ministe-
23 rial.

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

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

10 **“(1) directs the foreign producer of**
11 **the subject vessel to pay to the Secretary**
12 **of the Treasury, or the designee of the**
13 **Secretary, within 180 days from the date**
14 **of publication of the order, an injurious**
15 **pricing charge in an amount equal to the**
16 **amount by which the normal value ex-**
17 **ceeds the export price of the subject ves-**
18 **sel,**

19 **“(2) includes the identity and location**
20 **of the foreign producer and a description**
21 **of the subject vessel, in such detail as the**
22 **administering authority deems necessary,**
23 **and**

24 **“(3) informs the foreign producer**
25 **that—**

1 “(A) failure to pay the injurious
2 pricing charge in a timely fashion
3 may result in the imposition of coun-
4 termeasures with respect to that pro-
5 ducer under section 807,

6 “(B) payment made after the
7 deadline described in paragraph (1)
8 shall be subject to interest charges at
9 the Commercial Interest Reference
10 Rate (CIRR), and

11 “(C) the foreign producer may re-
12 quest an extension of the due date for
13 payment under subsection (b).

14 “(b) EXTENSION OF DUE DATE FOR PAYMENT
15 IN EXTRAORDINARY CIRCUMSTANCES.—

16 “(1) EXTENSION.—Upon request, the
17 administering authority may amend the
18 order under subsection (a) to set a due
19 date for payment or payments later than
20 the date that is 180 days from the date of
21 publication of the order, if the admin-
22 istering authority determines that full
23 payment in 180 days would render the
24 producer insolvent or would be incom-
25 patible with a judicially supervised reor-

1 **ganization. When an extended payment**
2 **schedule provides for a series of partial**
3 **payments, the administering authority**
4 **shall specify the circumstances under**
5 **which default on one or more payments**
6 **will result in the imposition of counter-**
7 **measures.**

8 **“(2) INTEREST CHARGES.—If a request**
9 **is granted under paragraph (1), payments**
10 **made after the date that is 180 days from**
11 **the publication of the order shall be sub-**
12 **ject to interest charges at the CIRR.**

13 **“(c) NOTIFICATION OF ORDER.—The admin-**
14 **istering authority shall deliver a copy of the**
15 **order requesting payment to the foreign pro-**
16 **ducer of the subject vessel and to an appro-**
17 **priate representative of the government of**
18 **the exporting country.**

19 **“(d) REVOCATION OF ORDER.—The admin-**
20 **istering authority—**

21 **“(1) may revoke an injurious pricing**
22 **order if the administering authority de-**
23 **termines that producers accounting for**
24 **substantially all of the capacity to**
25 **produce a domestic like vessel have ex-**

1 pressed a lack of interest in the order,
2 and

3 “(2) shall revoke an injurious pricing
4 order—

5 “(A) if the sale of the vessel that
6 was the subject of the injurious pricing
7 determination is voided,

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

11 “(C) upon full implementation of
12 an alternative equivalent remedy de-
13 scribed in subsection (e), or

14 “(D) if, with respect to the vessel
15 sale that was at issue in the investiga-
16 tion that resulted in the injurious
17 pricing order, an antidumping pro-
18 ceeding conducted by a WTO member
19 who is not a Shipbuilding Agreement
20 Party has been completed and re-
21 sulted in the imposition of antidump-
22 ing measures.

23 “(e) ALTERNATIVE EQUIVALENT REMEDY.—

24 “(1) AGREEMENT FOR ALTERNATE REM-
25 EDY.—The administering authority may

1 suspend an injurious pricing order if the
2 administering authority enters into an
3 agreement with the foreign producer sub-
4 ject to the order on an alternative equiv-
5 alent remedy, that the administering au-
6 thority determines—

7 “(A) is at least as effective a rem-
8 edy as the injurious pricing charge,

9 “(B) is in the public interest,

10 “(C) can be effectively monitored
11 and enforced, and

12 “(D) is otherwise consistent with
13 the domestic law and international
14 obligations of the United States.

15 “(2) **PRIOR CONSULTATIONS AND SUBMIS-**
16 **SION OF COMMENTS.**—Before entering into
17 an agreement under paragraph (1), the
18 administering authority shall consult
19 with the industry, and provide for the
20 submission of comments by interested
21 parties, with respect to the agreement.

22 “(3) **MATERIAL VIOLATIONS OF AGREE-**
23 **MENT.**—If the injurious pricing order has
24 been suspended under paragraph (1), and
25 the administering authority determines

1 **that the foreign producer concerned has**
2 **materially violated the terms of the**
3 **agreement under paragraph (1), the ad-**
4 **ministering authority shall terminate the**
5 **suspension.**

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

7 **“(a) GENERAL RULE.—**

8 **“(1) ISSUANCE OF ORDER IMPOSING**
9 **COUNTERMEASURES.—Unless an injurious**
10 **pricing order is revoked or suspended**
11 **under section 806 (d) or (e), the admin-**
12 **istering authority shall issue an order im-**
13 **posing countermeasures.**

14 **“(2) CONTENTS OF ORDER.—The coun-**
15 **termeasure order shall—**

16 **“(A) state that, as provided in sec-**
17 **tion 468, a permit to lade or unlade**
18 **passengers or merchandise may not**
19 **be issued with respect to vessels con-**
20 **tracted to be built by the foreign pro-**
21 **ducer of the vessel with respect to**
22 **which an injurious pricing order was**
23 **issued under section 806, and**

24 **“(B) specify the scope and dura-**
25 **tion of the prohibition on the issu-**

1 **ance of a permit to lade or unlade**
2 **passengers or merchandise.**

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

5 **“(1) GENERAL RULE.—The administer-**
6 **ing authority shall issue a notice of in-**
7 **tent to impose countermeasures not later**
8 **than 30 days before the expiration of the**
9 **time for payment specified in the injuri-**
10 **ous pricing order (or extended payment**
11 **provided for under section 806(b)), and**
12 **shall publish the notice in the Federal**
13 **Register within 7 days after issuing the**
14 **notice.**

15 **“(2) ELEMENTS OF THE NOTICE OF IN-**
16 **TENT.—The notice of intent shall contain**
17 **at least the following elements:**

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

22 **“(i) built by the foreign pro-**
23 **ducer subject to the proposed**
24 **countermeasures, and**

1 “(ii) with respect to which the
2 material terms of sale are estab-
3 lished within a period of 4 con-
4 secutive years beginning on the
5 date that is 30 days after publica-
6 tion in the Federal Register of the
7 notice of intent described in para-
8 graph (1).

9 “(B) DURATION.—For each vessel
10 described in subparagraph (A), a per-
11 mit to lade or unlade passengers or
12 merchandise may not be issued for a
13 period of 4 years after the date of de-
14 livery of the vessel.

15 “(c) DETERMINATION TO IMPOSE COUNTER-
16 MEASURES; ORDER.—

17 “(1) GENERAL RULE.—The administer-
18 ing authority shall, within the time speci-
19 fied in paragraph (2), issue a determina-
20 tion and order imposing counter-
21 measures.

22 “(2) TIME FOR DETERMINATION.—The
23 determination shall be issued within 90
24 days after the date on which the notice of
25 intent to impose countermeasures under

1 subsection (b) is published in the Federal
2 Register. The administering authority
3 shall publish the determination, and the
4 order described in paragraph (4), in the
5 Federal Register within 7 days after issu-
6 ing the final determination, and shall
7 provide a copy of the determination and
8 order to the Customs Service.

9 “(3) CONTENT OF THE DETERMINATION.—

10 In the determination imposing counter-
11 measures, the administering authority
12 shall determine whether, in light of all of
13 the circumstances, an interested party
14 has demonstrated that the scope or dura-
15 tion of the countermeasures described in
16 subsection (b)(2) should be narrower or
17 shorter than the scope or duration set
18 forth in the notice of intent to impose
19 countermeasures.

20 “(4) ORDER.—At the same time it is-
21 sues its determination, the administering
22 authority shall issue an order imposing
23 countermeasures, consistent with its de-
24 termination.

1 **“(d) ADMINISTRATIVE REVIEW OF DETER-**
2 **MINATION TO IMPOSE COUNTERMEASURES.—**

3 **“(1) REQUEST FOR REVIEW.—Each year,**
4 **in the anniversary month of the issuance**
5 **of the order imposing countermeasures**
6 **under subsection (c), the administering**
7 **authority shall publish in the Federal**
8 **Register a notice providing that inter-**
9 **ested parties may request—**

10 **“(A) a review of the scope or du-**
11 **ration of the countermeasures deter-**
12 **mined under subsection (c)(3), and**

13 **“(B) a hearing in connection with**
14 **such a review.**

15 **“(2) REVIEW.—If a proper request has**
16 **been received under paragraph (1), the**
17 **administering authority shall—**

18 **“(A) publish notice of initiation of**
19 **a review in the Federal Register not**
20 **later than 15 days after the end of the**
21 **anniversary month of the issuance of**
22 **the order imposing countermeasures,**
23 **and**

24 **“(B) review and determine wheth-**
25 **er the requesting party has dem-**

1 **onstrated that the scope or duration**
2 **of the countermeasures is excessive**
3 **in light of all of the circumstances.**

4 **“(3) TIME FOR REVIEW.—The admin-**
5 **istering authority shall make its deter-**
6 **mination under paragraph (2)(B) within**
7 **90 days after the date on which the no-**
8 **tice of initiation of the review is pub-**
9 **lished. If the determination under para-**
10 **graph (2)(B) is affirmative, the admin-**
11 **istering authority shall amend the order**
12 **accordingly. The administering authority**
13 **shall promptly publish the determination**
14 **and any amendment to the order in the**
15 **Federal Register, and shall provide a**
16 **copy of any amended order to the Cus-**
17 **toms Service. In extraordinary cir-**
18 **cumstances, the administering authority**
19 **may extend the time for its determina-**
20 **tion under paragraph (2)(B) to not later**
21 **than 150 days after the date on which the**
22 **notice of initiation of the review is pub-**
23 **lished.**

24 **“(e) EXTENSION OF COUNTERMEASURES.—**

1 **“(1) REQUEST FOR EXTENSION.—Within**
2 **the time described in paragraph (2), an**
3 **interested party may file with the admin-**
4 **istering authority a request that the**
5 **scope or duration of countermeasures be**
6 **extended.**

7 **“(2) DEADLINE FOR REQUEST FOR EXTEN-**
8 **SION.—**

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

24 **“(B) OTHER REQUESTS.—If the re-**
25 **quest seeks an extension under para-**

1 **graph (1) other than one described in**
2 **subparagraph (A), the request shall**
3 **be filed not earlier than the date that**
4 **is 6 months, and not later than a date**
5 **that is 3 months, before the date that**
6 **marks the end of the period referred**
7 **to in subparagraph (A).**

8 **“(3) DETERMINATION.—**

9 **“(A) NOTICE OF REQUEST FOR EX-**
10 **TENSION.—If a proper request has**
11 **been received under paragraph (1),**
12 **the administering authority shall**
13 **publish notice of initiation of an ex-**
14 **tension proceeding in the Federal**
15 **Register not later than 15 days after**
16 **the applicable deadline in paragraph**
17 **(2) for requesting the extension.**

18 **“(B) PROCEDURES.—**

19 **“(i) REQUESTS FOR EXTENSION**
20 **BEYOND 4 YEARS.—If paragraph**
21 **(2)(A) applies to the request, the**
22 **administering authority shall con-**
23 **sult with the Trade Representa-**
24 **tive under paragraph (4).**

1 “(ii) OTHER REQUESTS.—If
2 paragraph (2)(B) applies to the re-
3 quest, the administering author-
4 ity shall determine, within 90
5 days after the date on which the
6 notice of initiation of the proceed-
7 ing is published, whether the re-
8 questing party has demonstrated
9 that the scope or duration of the
10 countermeasures is inadequate in
11 light of all of the circumstances.
12 If the administering authority de-
13 termines that an extension is war-
14 ranted, it shall amend the coun-
15 termeasure order accordingly.
16 The administering authority shall
17 promptly publish the determina-
18 tion and any amendment to the
19 order in the Federal Register, and
20 shall provide a copy of any
21 amended order to the Customs
22 Service.

23 “(4) CONSULTATION WITH TRADE REP-
24 RESENTATIVE.—If paragraph (3)(B)(i) ap-
25 plies, the administering authority shall

1 **consult with the Trade Representative**
2 **concerning whether it would be appro-**
3 **priate to request establishment of a dis-**
4 **pute settlement panel under the Ship-**
5 **building Agreement for the purpose of**
6 **seeking authorization to extend the scope**
7 **or duration of countermeasures for a pe-**
8 **riod in excess of 4 years.**

9 **“(5) DECISION NOT TO REQUEST PANEL.—**
10 **If, based on consultations under para-**
11 **graph (4), the Trade Representative de-**
12 **cides not to request establishment of a**
13 **panel, the Trade Representative shall in-**
14 **form the party requesting the extension**
15 **of the countermeasures of the reasons for**
16 **its decision in writing. The decision shall**
17 **not be subject to judicial review.**

18 **“(6) PANEL PROCEEDINGS.—If, based on**
19 **consultations under paragraph (4), the**
20 **Trade Representative requests the estab-**
21 **lishment of a panel under the Shipbuild-**
22 **ing Agreement to authorize an extension**
23 **of the period of countermeasures, and the**
24 **panel authorizes such an extension, the**
25 **administering authority shall promptly**

1 **amend the countermeasure order. The**
2 **administering authority shall publish no-**
3 **tice of the amendment in the Federal**
4 **Register.**

5 **“(f) LIST OF VESSELS SUBJECT TO COUNTER-**
6 **MEASURES.—**

7 **“(1) GENERAL RULE.—At least once**
8 **during each 12-month period beginning**
9 **on the anniversary date of a determina-**
10 **tion to impose countermeasures under**
11 **this section, the administering authority**
12 **shall publish in the Federal Register a**
13 **list of all delivered vessels subject to**
14 **countermeasures under the determina-**
15 **tion.**

16 **“(2) CONTENT OF LIST.—The list under**
17 **paragraph (1) shall include the following**
18 **information for each vessel, to the extent**
19 **the information is available:**

20 **“(A) The name and general de-**
21 **scription of the vessel.**

22 **“(B) The vessel identification**
23 **number.**

24 **“(C) The shipyard where the ves-**
25 **sel was constructed.**

1 **“(D) The last-known registry of**
2 **the vessel.**

3 **“(E) The name and address of the**
4 **last-known owner of the vessel.**

5 **“(F) The delivery date of the ves-**
6 **sel.**

7 **“(G) The remaining duration of**
8 **countermeasures on the vessel.**

9 **“(H) Any other identifying infor-**
10 **mation available.**

11 **“(3) AMENDMENT OF LIST.—The admin-**
12 **istering authority may amend the list**
13 **from time to time to reflect new informa-**
14 **tion that comes to its attention and shall**
15 **publish any amendments in the Federal**
16 **Register.**

17 **“(4) SERVICE OF LIST AND AMEND-**
18 **MENTS.—(A) The administering authority**
19 **shall serve a copy of the list described in**
20 **paragraph (1) on—**

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

23 **“(ii) the United States Customs**
24 **Service,**

1 “(iii) the Secretariat of the Orga-
2 nization for Economic Cooperation
3 and Development,

4 “(iv) the owners of vessels on the
5 list,

6 “(v) the shipyards on the list, and

7 “(vi) the government of the coun-
8 try in which a shipyard on the list is
9 located.

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

14 “(i) the parties listed in clauses
15 (i), (ii), and (iii) of subparagraph (A),
16 and,

17 “(ii) if the amendment affects
18 their interests, the parties listed in
19 clauses (iv), (v), and (vi) of subpara-
20 graph (A).

21 “(g) ADMINISTRATIVE REVIEW OF LIST OF
22 VESSELS SUBJECT TO COUNTERMEASURES.—

23 “(1) REQUEST FOR REVIEW.—(A) An in-
24 terested party may request in writing a
25 review of the list described in subsection

1 (f)(1), including any amendments thereto,
2 to determine whether—

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

7 “(ii) a vessel not included in the
8 list falls within the scope of the appli-
9 cable countermeasure order and
10 should be added.

11 “(B) Any request seeking a determina-
12 tion described in subparagraph (A)(i)
13 shall be made within 90 days after the
14 date of publication of the applicable list.

15 “(2) REVIEW.—If a proper request for
16 review has been received, the administer-
17 ing authority shall—

18 “(A) publish notice of initiation of
19 a review in the Federal Register—

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

22 “(ii) if the request seeks a de-
23 termination described in para-
24 graph (1)(A)(i), not later than 15

1 **days after the deadline described**
2 **in paragraph (1)(B), and**

3 **“(B) review and determine wheth-**
4 **er the requesting party has dem-**
5 **onstrated that—**

6 **“(i) a vessel included in the**
7 **list does not qualify for such in-**
8 **clusion, or**

9 **“(ii) a vessel not included in**
10 **the list qualifies for inclusion.**

11 **“(3) TIME FOR DETERMINATION.—The**
12 **administering authority shall make its**
13 **determination under paragraph (2)(B)**
14 **within 90 days after the date on which**
15 **the notice of initiation of such review is**
16 **published. If the administering authority**
17 **determines that a vessel should be added**
18 **or deleted from the list, the administer-**
19 **ing authority shall amend the list accord-**
20 **ingly. The administering authority shall**
21 **promptly publish in the Federal Register**
22 **the determination and any such amend-**
23 **ment to the list.**

24 **“(h) EXPIRATION OF COUNTERMEASURES.—**
25 **Upon expiration of a countermeasure order**

1 imposed under this section, the administering
2 authority shall promptly publish a notice of
3 the expiration in the Federal Register.

4 “(i) **SUSPENSION OR TERMINATION OF PRO-**
5 **CEEDINGS OR COUNTERMEASURES; TEMPORARY**
6 **REDUCTION OF COUNTERMEASURES.—**

7 “(1) **IF INJURIOUS PRICING ORDER RE-**
8 **VOKED OR SUSPENDED.—**If an injurious
9 pricing order has been revoked or sus-
10 pended under section 806(d) or (e), the
11 administering authority shall, as appro-
12 priate, suspend or terminate proceedings
13 under this section with respect to that
14 order, or suspend or revoke a counter-
15 measure order issued with respect to that
16 injurious pricing order.

17 “(2) **IF PAYMENT DATE AMENDED.—(A)**
18 **Subject to subparagraph (C), if the pay-**
19 **ment date under an injurious pricing**
20 **order is amended under section 845, the**
21 **administering authority shall, as appro-**
22 **priate, suspend proceedings or modify**
23 **deadlines under this section, or suspend**
24 **or amend a countermeasure order issued**

1 with respect to that injurious pricing
2 order.

3 “(B) In taking action under subpara-
4 graph (A), the administering authority
5 shall ensure that countermeasures are
6 not applied before the date that is 30
7 days after publication in the Federal Reg-
8 ister of the amended payment date.

9 “(C) If—

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

16 “(ii) the administering authority
17 determines that the period of time be-
18 tween the original payment date and
19 the amended payment date is signifi-
20 cant for purposes of determining the
21 appropriate scope or duration of
22 countermeasures,

23 the administering authority may, in lieu
24 of acting under subparagraph (A), re-
25 institute proceedings under subsection

1 (c) for purposes of issuing a new deter-
2 mination under that subsection.

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

6 “(1) shall solicit comments from inter-
7 ested parties, and

8 “(2)(A) in a proceeding under sub-
9 section (c) or (d), upon the request of an
10 interested party, shall hold a hearing in
11 accordance with section 841(b) in connec-
12 tion with that proceeding, or

13 “(B) in a proceeding under subsection
14 (e) or (g), upon the request of an inter-
15 ested party, may hold a hearing in ac-
16 cordance with section 841(b) in connec-
17 tion with that proceeding.

18 “SEC. 808. INJURIOUS PRICING PETITIONS BY THIRD COUN-
19 TRIES.

20 “(a) FILING OF PETITION.—The government
21 of a Shipbuilding Agreement Party may file
22 with the Trade Representative a petition re-
23 questing that an investigation be conducted
24 to determine if—

1 “(1) a vessel from another Shipbuild-
2 ing Agreement Party has been sold in the
3 United States at less than fair value, and

4 “(2) an industry, in the petitioning
5 country, producing or capable of produc-
6 ing a like vessel is materially injured by
7 reason of such sale.

8 “(b) INITIATION.—The Trade Representa-
9 tive, after consultation with the administer-
10 ing authority and the Commission and obtain-
11 ing the approval of the Parties Group under
12 the Shipbuilding Agreement, shall determine
13 whether to initiate an investigation described
14 in subsection (a).

15 “(c) DETERMINATIONS.—Upon initiation of
16 an investigation under subsection (a), the
17 Trade Representative shall request the fol-
18 lowing determinations be made in accordance
19 with substantive and procedural require-
20 ments specified by the Trade Representative,
21 notwithstanding any other provision of this
22 title:

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

1 **“(2) The Commission shall determine**
2 **whether an industry in the petitioning**
3 **country is materially injured by reason of**
4 **the sale of the subject vessel in the Unit-**
5 **ed States.**

6 **“(d) PUBLIC COMMENT.—An opportunity**
7 **for public comment shall be provided, as ap-**
8 **propriate—**

9 **“(1) by the Trade Representative, in**
10 **making the determinations required by**
11 **subsection (b), and**

12 **“(2) by the administering authority**
13 **and the Commission, in making the deter-**
14 **minations required by subsection (c).**

15 **“(e) ISSUANCE OF ORDER.—If the admin-**
16 **istering authority makes an affirmative deter-**
17 **mination under paragraph (1) of subsection**
18 **(c), and the Commission makes an affirmative**
19 **determination under paragraph (2) of sub-**
20 **section (c), the administering authority**
21 **shall—**

22 **“(1) order an injurious pricing charge**
23 **in accordance with section 806, and**

24 **“(2) make such determinations and**
25 **take such other actions as are required**

1 by sections 806 and 807, as if affirmative
2 determinations had been made under
3 subsections (a) and (b) of section 805.

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

7 **“(1) the final determinations of the**
8 **administering authority and the Commis-**
9 **sion under subsection (c) shall be treated**
10 **as final determinations made under sec-**
11 **tion 805, and**

12 **“(2) determinations of the administer-**
13 **ing authority under subsection (e)(2)**
14 **shall be treated as determinations made**
15 **under section 806 or 807, as the case may**
16 **be.**

17 **“(g) ACCESS TO INFORMATION.—Section 843**
18 **shall apply to investigations under this sec-**
19 **tion, to the extent specified by the Trade Rep-**
20 **resentative, after consultation with the ad-**
21 **ministering authority and the Commission.**

22 **“SEC. 809. THIRD COUNTRY SALES.**

23 **“(a) FILING OF PETITION.—Any interested**
24 **party that would be eligible to file a petition**
25 **under section 802(b)(1) with respect to a sale**

1 if such sale had been to a United States buyer
2 may, with respect to a sale of a vessel by a for-
3 eign producer in a Shipbuilding Agreement
4 Party to a buyer in a third country that is a
5 Shipbuilding Agreement Party, file with the
6 Trade Representative a petition alleging
7 that—

8 “(1) such vessel has been sold at less
9 than fair value; and

10 “(2) the industry in the United States
11 producing or capable of producing a like
12 vessel is materially injured by reason of
13 such sale.

14 “(b) DETERMINATION.—Upon receipt of a
15 petition under subsection (a), the Trade Rep-
16 resentative shall request that the following
17 determinations be made in accordance with
18 substantive and procedural requirements
19 specified by the Trade Representative, not-
20 withstanding any other provision of this title:

21 “(1) The administering authority shall
22 determine whether there is reasonable
23 cause to believe that the subject vessel
24 has been sold at less than fair value.

1 **“(2) The Commission shall determine**
2 **whether there is reasonable cause to be-**
3 **lieve that the industry in the United**
4 **States is materially injured by reason of**
5 **such sale.**

6 **“(c) COMPLAINT BY TRADE REPRESENTA-**
7 **TIVE.—If the administering authority makes**
8 **an affirmative determination under para-**
9 **graph (1) of subsection (b), and the Commis-**
10 **sion makes an affirmative determination**
11 **under paragraph (2) of subsection (b), the**
12 **Trade Representative shall make application**
13 **to the country of the buyer of the subject ves-**
14 **sel for an injurious pricing action and relief**
15 **similar to that available under section 808.**
16 **The Trade Representative shall advise the pe-**
17 **titioner of the proceedings undertaken by the**
18 **third country in response to such application**
19 **and shall permit the petitioner to participate**
20 **in such proceedings to the greatest extent**
21 **practicable.**

22 **“Subtitle B—Special Rules**

23 **“SEC. 821. EXPORT PRICE.**

24 **“(a) EXPORT PRICE.—For purposes of this**
25 **title, the term ‘export price’ means the price**

1 at which the subject vessel is first sold (or
2 agreed to be sold) by or for the account of the
3 foreign producer of the subject vessel to an
4 unaffiliated United States buyer. The term
5 ‘sold (or agreed to be sold) by or for the ac-
6 count of the foreign producer’ includes any
7 transfer of an ownership interest, including
8 by way of lease or long-term bareboat charter,
9 in conjunction with the original transfer from
10 the producer, either directly or indirectly, to
11 a United States buyer.

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

14 “(1) increased by the amount of any
15 import duties imposed by the country of
16 exportation which have been rebated, or
17 which have not been collected, by reason
18 of the exportation of the subject vessel,
19 and

20 “(2) reduced by—

21 “(A) the amount, if any, included
22 in such price, attributable to any ad-
23 ditional costs, charges, or expenses
24 which are incident to bringing the
25 subject vessel from the shipyard in

1 **the exporting country to the place of**
2 **delivery,**

3 **“(B) the amount, if included in**
4 **such price, of any export tax, duty, or**
5 **other charge imposed by the export-**
6 **ing country on the exportation of the**
7 **subject vessel, and**

8 **“(C) all other expenses incidental**
9 **to placing the vessel in condition for**
10 **delivery to the buyer.**

11 **“SEC. 822. NORMAL VALUE.**

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

20 **“(1) DETERMINATION OF NORMAL**
21 **VALUE.—**

22 **“(A) IN GENERAL.—The normal**
23 **value of the subject vessel shall be**
24 **the price described in subparagraph**
25 **(B), at a time reasonably correspond-**

1 **ing to the time of the sale used to de-**
2 **termine the export price under sec-**
3 **tion 821(a).**

4 **“(B) PRICE.—The price referred to**
5 **in subparagraph (A) is—**

6 **“(i) the price at which a for-**
7 **ign like vessel is first sold in the**
8 **exporting country, in the ordi-**
9 **nary course of trade and, to the**
10 **extent practicable, at the same**
11 **level of trade, or**

12 **“(ii) in a case to which sub-**
13 **paragraph (C) applies, the price**
14 **at which a foreign like vessel is so**
15 **sold for consumption in a country**
16 **other than the exporting country**
17 **or the United States, if—**

18 **“(I) such price is rep-**
19 **resentative, and**

20 **“(II) the administering au-**
21 **thority does not determine**
22 **that the particular market sit-**
23 **uation in such other country**
24 **prevents a proper comparison**
25 **with the export price.**

1 **“(C) THIRD COUNTRY SALES.—This**
2 **subparagraph applies when—**

3 **“(i) a foreign like vessel is not**
4 **sold in the exporting country as**
5 **described in subparagraph (B)(i),**
6 **or**

7 **“(ii) the particular market sit-**
8 **uation in the exporting country**
9 **does not permit a proper com-**
10 **parison with the export price.**

11 **“(D) CONTEMPORANEOUS SALE.—For**
12 **purposes of subparagraph (A), ‘a time**
13 **reasonably corresponding to the time**
14 **of the sale’ means within 3 months**
15 **before or after the sale of the subject**
16 **vessel or, in the absence of such sales,**
17 **such longer period as the administer-**
18 **ing authority determines would be**
19 **appropriate.**

20 **“(2) FICTITIOUS MARKETS.—No pre-**
21 **tended sale, and no sale intended to es-**
22 **tablish a fictitious market, shall be taken**
23 **into account in determining normal**
24 **value.**

1 **“(3) USE OF CONSTRUCTED VALUE.—If**
2 **the administering authority determines**
3 **that the normal value of the subject ves-**
4 **sel cannot be determined under para-**
5 **graph (1)(B) or (1)(C), then the normal**
6 **value of the subject vessel shall be the**
7 **constructed value of that vessel, as deter-**
8 **mined under subsection (e).**

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

14 **“(5) ADJUSTMENTS.—The price de-**
15 **scribed in paragraph (1)(B) shall be—**

16 **“(A) reduced by—**

17 **“(i) the amount, if any, in-**
18 **cluded in the price described in**
19 **paragraph (1)(B), attributable to**
20 **any costs, charges, and expenses**
21 **incident to bringing the foreign**
22 **like vessel from the shipyard to**
23 **the place of delivery to the pur-**
24 **chaser,**

1 “(ii) the amount of any taxes
2 imposed directly upon the foreign
3 like vessel or components thereof
4 which have been rebated, or
5 which have not been collected, on
6 the subject vessel, but only to the
7 extent that such taxes are added
8 to or included in the price of the
9 foreign like vessel, and

10 “(iii) the amount of all other
11 expenses incidental to placing the
12 foreign like vessel in condition
13 for delivery to the buyer, and

14 “(B) increased or decreased by
15 the amount of any difference (or lack
16 thereof) between the export price and
17 the price described in paragraph
18 (1)(B) (other than a difference for
19 which allowance is otherwise pro-
20 vided under this section) that is es-
21 tablished to the satisfaction of the ad-
22 ministering authority to be wholly or
23 partly due to—

24 “(i) physical differences be-
25 tween the subject vessel and the

1 vessel used in determining nor-
2 mal value, or

3 “(ii) other differences in the
4 circumstances of sale.

5 “(6) ADJUSTMENTS FOR LEVEL OF
6 TRADE.—The price described in para-
7 graph (1)(B) shall also be increased or de-
8 creased to make due allowance for any
9 difference (or lack thereof) between the
10 export price and the price described in
11 paragraph (1)(B) (other than a difference
12 for which allowance is otherwise made
13 under this section) that is shown to be
14 wholly or partly due to a difference in
15 level of trade between the export price
16 and normal value, if the difference in
17 level of trade—

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

20 “(B) is demonstrated to affect
21 price comparability, based on a pat-
22 tern of consistent price differences
23 between sales at different levels of
24 trade in the country in which normal
25 value is determined.

1 **In a case described in the preceding sen-**
2 **tence, the amount of the adjustment shall**
3 **be based on the price differences be-**
4 **tween the two levels of trade in the coun-**
5 **try in which normal value is determined.**

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

10 **“(b) SALES AT LESS THAN COST OF PRODUC-**
11 **TION.—**

12 **“(1) DETERMINATION; SALES DIS-**
13 **REGARDED.—Whenever the administering**
14 **authority has reasonable grounds to be-**
15 **lieve or suspect that the sale of the for-**
16 **foreign like vessel under consideration for**
17 **the determination of normal value has**
18 **been made at a price which represents**
19 **less than the cost of production of the**
20 **foreign like vessel, the administering au-**
21 **thority shall determine whether, in fact,**
22 **such sale was made at less than the cost**
23 **of production. If the administering au-**
24 **thority determines that the sale was**
25 **made at less than the cost of production**

1 **and was not at a price which permits re-**
2 **covery of all costs within 5 years, such**
3 **sale may be disregarded in the deter-**
4 **mination of normal value. Whenever such**
5 **a sale is disregarded, normal value shall**
6 **be based on another sale of a foreign like**
7 **vessel in the ordinary course of trade. If**
8 **no sales made in the ordinary course of**
9 **trade remain, the normal value shall be**
10 **based on the constructed value of the**
11 **subject vessel.**

12 **“(2) DEFINITIONS AND SPECIAL RULES.—**
13 **For purposes of this subsection:**

14 **“(A) REASONABLE GROUNDS TO BE-**
15 **LIEVE OR SUSPECT.—There are reason-**
16 **able grounds to believe or suspect**
17 **that the sale of a foreign like vessel**
18 **was made at a price that is less than**
19 **the cost of production of the vessel, if**
20 **an interested party described in sub-**
21 **paragraph (C), (D), (E), or (F) of sec-**
22 **tion 861(17) provides information,**
23 **based upon observed prices or con-**
24 **structed prices or costs, that the sale**
25 **of the foreign like vessel under con-**

1 **sideration for the determination of**
2 **normal value has been made at a**
3 **price which represents less than the**
4 **cost of production of the vessel.**

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

12 **“(3) CALCULATION OF COST OF PRODUC-**
13 **TION.—For purposes of this section, the**
14 **cost of production shall be an amount**
15 **equal to the sum of—**

16 **“(A) the cost of materials and of**
17 **fabrication or other processing of any**
18 **kind employed in producing the for-**
19 **ign like vessel, during a period**
20 **which would ordinarily permit the**
21 **production of that vessel in the ordi-**
22 **nary course of business, and**

23 **“(B) an amount for selling, gen-**
24 **eral, and administrative expenses**
25 **based on actual data pertaining to**

1 **the production and sale of the foreign**
2 **like vessel by the producer in ques-**
3 **tion.**

4 **For purposes of subparagraph (A), if the**
5 **normal value is based on the price of the**
6 **foreign like vessel sold in a country other**
7 **than the exporting country, the cost of**
8 **materials shall be determined without re-**
9 **gard to any internal tax in the exporting**
10 **country imposed on such materials or on**
11 **their disposition which are remitted or**
12 **refunded upon exportation.**

13 **“(c) NONMARKET ECONOMY COUNTRIES.—**

14 **“(1) IN GENERAL.—If—**

15 **“(A) the subject vessel is pro-**
16 **duced in a nonmarket economy coun-**
17 **try, and**

18 **“(B) the administering authority**
19 **finds that available information does**
20 **not permit the normal value of the**
21 **subject vessel to be determined under**
22 **subsection (a),**

23 **the administering authority shall deter-**
24 **mine the normal value of the subject ves-**
25 **sel on the basis of the value of the factors**

1 of production utilized in producing the
2 vessel and to which shall be added an
3 amount for general expenses and profit
4 plus the cost of expenses incidental to
5 placing the vessel in a condition for de-
6 livery to the buyer. Except as provided in
7 paragraph (2), the valuation of the fac-
8 tors of production shall be based on the
9 best available information regarding the
10 values of such factors in a market econ-
11 omy country or countries considered to
12 be appropriate by the administering au-
13 thority.

14 “(2) EXCEPTION.—If the administering
15 authority finds that the available infor-
16 mation is inadequate for purposes of de-
17 termining the normal value of the subject
18 vessel under paragraph (1), the admin-
19 istering authority shall determine the
20 normal value on the basis of the price at
21 which a vessel that is—

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

24 “(B) produced in one or more
25 market economy countries that are at

1 **a level of economic development com-**
2 **parable to that of the nonmarket**
3 **economy country,**
4 **is sold in other countries, including the**
5 **United States.**

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

10 **“(A) hours of labor required,**

11 **“(B) quantities of raw materials**
12 **employed,**

13 **“(C) amounts of energy and other**
14 **utilities consumed, and**

15 **“(D) representative capital cost,**
16 **including depreciation.**

17 **“(4) VALUATION OF FACTORS OF PRODUC-**
18 **TION.—The administering authority, in**
19 **valuing factors of production under para-**
20 **graph (1), shall utilize, to the extent pos-**
21 **sible, the prices or costs of factors of pro-**
22 **duction in one or more market economy**
23 **countries that are—**

1 “(A) at a level of economic devel-
2 opment comparable to that of the
3 nonmarket economy country, and

4 “(B) significant producers of com-
5 parable vessels.

6 “(d) SPECIAL RULE FOR CERTAIN MULTI-
7 NATIONAL CORPORATIONS.—Whenever, in the
8 course of an investigation under this title, the
9 administering authority determines that—

10 “(1) the subject vessel was produced
11 in facilities which are owned or con-
12 trolled, directly or indirectly, by a per-
13 son, firm, or corporation which also owns
14 or controls, directly or indirectly, other
15 facilities for the production of a foreign
16 like vessel which are located in another
17 country or countries,

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

19 “(3) the normal value of a foreign like
20 vessel produced in one or more of the fa-
21 cilities outside the exporting country is
22 higher than the normal value of the for-
23 eign like vessel produced in the facilities
24 located in the exporting country,

1 **the administering authority shall determine**
2 **the normal value of the subject vessel by ref-**
3 **erence to the normal value at which a foreign**
4 **like vessel is sold from one or more facilities**
5 **outside the exporting country. The admin-**
6 **istering authority, in making any determina-**
7 **tion under this subsection, shall make adjust-**
8 **ments for the difference between the costs of**
9 **production (including taxes, labor, materials,**
10 **and overhead) of the foreign like vessel pro-**
11 **duced in facilities outside the exporting coun-**
12 **try and costs of production of the foreign like**
13 **vessel produced in facilities in the exporting**
14 **country, if such differences are demonstrated**
15 **to its satisfaction.**

16 **“(e) CONSTRUCTED VALUE.—**

17 **“(1) IN GENERAL.—For purposes of this**
18 **title, the constructed value of a subject**
19 **vessel shall be an amount equal to the**
20 **sum of—**

21 **“(A) the cost of materials and fab-**
22 **rication or other processing of any**
23 **kind employed in producing the sub-**
24 **ject vessel, during a period which**
25 **would ordinarily permit the produc-**

1 **tion of the vessel in the ordinary**
2 **course of business, and**

3 **“(B)(i) the actual amounts in-**
4 **curring and realized by the foreign**
5 **producer of the subject vessel for sell-**
6 **ing, general, and administrative ex-**
7 **penses, and for profits, in connection**
8 **with the production and sale of a for-**
9 **foreign like vessel, in the ordinary**
10 **course of trade, in the domestic mar-**
11 **ket of the country of origin of the**
12 **subject vessel, or**

13 **“(ii) if actual data are not avail-**
14 **able with respect to the amounts de-**
15 **scribed in clause (i), then—**

16 **“(I) the actual amounts in-**
17 **curring and realized by the for-**
18 **ign producer of the subject ves-**
19 **sel for selling, general, and ad-**
20 **ministrative expenses, and for**
21 **profits, in connection with the**
22 **production and sale of the same**
23 **general category of vessel in the**
24 **domestic market of the country of**
25 **origin of the subject vessel,**

1 “(II) the weighted average of
2 the actual amounts incurred and
3 realized by producers in the
4 country of origin of the subject
5 vessel (other than the producer of
6 the subject vessel) for selling,
7 general, and administrative ex-
8 penses, and for profits, in connec-
9 tion with the production and sale
10 of a foreign like vessel, in the or-
11 dinary course of trade, in the do-
12 mestic market, or

13 “(III) if data is not available
14 under subclause (I) or (II), the
15 amounts incurred and realized
16 for selling, general, and adminis-
17 trative expenses, and for profits,
18 based on any other reasonable
19 method, except that the amount
20 allowed for profit may not exceed
21 the amount normally realized by
22 foreign producers (other than the
23 producer of the subject vessel) in
24 connection with the sale of ves-
25 sels in the same general category

1 of vessel as the subject vessel in
2 the domestic market of the coun-
3 try of origin of the subject vessel.

4 **The profit shall, for purposes of this**
5 **paragraph, be based on the average prof-**
6 **it realized over a reasonable period of**
7 **time before and after the sale of the sub-**
8 **ject vessel and shall reflect a reasonable**
9 **profit at the time of such sale. For pur-**
10 **poses of the preceding sentence, a ‘rea-**
11 **sonable period of time’ shall not, except**
12 **where otherwise appropriate, exceed 6**
13 **months before, or 6 months after, the sale**
14 **of the subject vessel. In calculating profit**
15 **under this paragraph, any distortion**
16 **which would result in other than a profit**
17 **which is reasonable at the time of the**
18 **sale shall be eliminated.**

19 **“(2) COSTS AND PROFITS BASED ON**
20 **OTHER REASONABLE METHODS.—When costs**
21 **and profits are determined under para-**
22 **graph (1)(B)(ii)(III), such determination**
23 **shall, except where otherwise appro-**
24 **priate, be based on appropriate export**
25 **sales by the producer of the subject ves-**

1 **sel or, absent such sales, to export sales**
2 **by other producers of a foreign like ves-**
3 **sel or the same general category of vessel**
4 **as the subject vessel in the country of ori-**
5 **gin of the subject vessel.**

6 **“(3) COSTS OF MATERIALS.—For pur-**
7 **poses of paragraph (1)(A), the cost of ma-**
8 **terials shall be determined without re-**
9 **gard to any internal tax in the exporting**
10 **country imposed on such materials or**
11 **their disposition which are remitted or**
12 **refunded upon exportation of the subject**
13 **vessel produced from such materials.**

14 **“(f) SPECIAL RULES FOR CALCULATION OF**
15 **COST OF PRODUCTION AND FOR CALCULATION OF**
16 **CONSTRUCTED VALUE.—For purposes of sub-**
17 **sections (b) and (e)—**

18 **“(1) COSTS.—**

19 **“(A) IN GENERAL.—Costs shall nor-**
20 **mally be calculated based on the**
21 **records of the foreign producer of the**
22 **subject vessel, if such records are**
23 **kept in accordance with the generally**
24 **accepted accounting principles of the**
25 **exporting country and reasonably re-**

1 **flect the costs associated with the**
2 **production and sale of the vessel. The**
3 **administering authority shall con-**
4 **sider all available evidence on proper**
5 **allocation of costs, including that**
6 **which is made available by the for-**
7 **ign producer on a timely basis, if**
8 **such allocations have been histori-**
9 **cally used by the foreign producer, in**
10 **particular for establishing appro-**
11 **priate amortization and depreciation**
12 **periods, and allowances for capital**
13 **expenditures and other development**
14 **costs.**

15 **“(B) NONRECURRING COSTS.—Costs**
16 **shall be adjusted appropriately for**
17 **those nonrecurring costs that benefit**
18 **current or future production, or both.**

19 **“(C) STARTUP COSTS.—**

20 **“(i) IN GENERAL.—Costs shall**
21 **be adjusted appropriately for cir-**
22 **cumstances in which costs in-**
23 **curring during the time period**
24 **covered by the investigation are**
25 **affected by startup operations.**

1 **“(ii) STARTUP OPERATIONS.—Ad-**
2 **justments shall be made for start-**
3 **up operations only where—**

4 **“(I) a producer is using**
5 **new production facilities or**
6 **producing a new type of ves-**
7 **sel that requires substantial**
8 **additional investment, and**

9 **“(II) production levels are**
10 **limited by technical factors**
11 **associated with the initial**
12 **phase of commercial produc-**
13 **tion.**

14 **For purposes of subclause (II), the**
15 **initial phase of commercial pro-**
16 **duction ends at the end of the**
17 **startup period. In determining**
18 **whether commercial production**
19 **levels have been achieved, the ad-**
20 **ministering authority shall con-**
21 **sider factors unrelated to startup**
22 **operations that might affect the**
23 **volume of production processed,**
24 **such as demand, seasonality, or**
25 **business cycles.**

1 **“(iii) ADJUSTMENT FOR STARTUP**
2 **OPERATIONS.—The adjustment for**
3 **startup operations shall be made**
4 **by substituting the unit produc-**
5 **tion costs incurred with respect**
6 **to the vessel at the end of the**
7 **startup period for the unit pro-**
8 **duction costs incurred during the**
9 **startup period. If the startup pe-**
10 **riod extends beyond the period of**
11 **the investigation under this title,**
12 **the administering authority shall**
13 **use the most recent cost of pro-**
14 **duction data that it reasonably**
15 **can obtain, analyze, and verify**
16 **without delaying the timely com-**
17 **pletion of the investigation. For**
18 **purposes of this subparagraph,**
19 **the startup period ends at the**
20 **point at which the level of com-**
21 **mercial production that is char-**
22 **acteristic of the vessel, the pro-**
23 **ducer, or the industry is**
24 **achieved.**

1 **“(D) COSTS DUE TO EXTRAORDINARY**
2 **CIRCUMSTANCES NOT INCLUDED.—Costs**
3 **shall not include actual costs which**
4 **are due to extraordinary cir-**
5 **cumstances (including, but not lim-**
6 **ited to, labor disputes, fire, and natu-**
7 **ral disasters) and which are signifi-**
8 **cantly over the cost increase which**
9 **the shipbuilder could have reason-**
10 **ably anticipated and taken into ac-**
11 **count at the time of sale.**

12 **“(2) TRANSACTIONS DISREGARDED.—A**
13 **transaction directly or indirectly be-**
14 **tween affiliated persons may be dis-**
15 **regarded if, in the case of any element of**
16 **value required to be considered, the**
17 **amount representing that element does**
18 **not fairly reflect the amount usually re-**
19 **flected in sales of a like vessel in the mar-**
20 **ket under consideration. If a transaction**
21 **is disregarded under the preceding sen-**
22 **tence and no other transactions are avail-**
23 **able for consideration, the determination**
24 **of the amount shall be based on the infor-**
25 **mation available as to what the amount**

1 would have been if the transaction had
2 occurred between persons who are not
3 affiliated.

4 “(3) MAJOR INPUT RULE.—If, in the case
5 of a transaction between affiliated per-
6 sons involving the production by one of
7 such persons of a major input to the sub-
8 ject vessel, the administering authority
9 has reasonable grounds to believe or sus-
10 pect that an amount represented as the
11 value of such input is less than the cost
12 of production of such input, then the ad-
13 ministering authority may determine the
14 value of the major input on the basis of
15 the information available regarding such
16 cost of production, if such cost is greater
17 than the amount that would be deter-
18 mined for such input under paragraph
19 (2).

20 “SEC. 823. CURRENCY CONVERSION.

21 “(a) IN GENERAL.—In an injurious pricing
22 proceeding under this title, the administering
23 authority shall convert foreign currencies
24 into United States dollars using the exchange
25 rate in effect on the date of sale of the subject

1 vessel, except that if it is established that a
2 currency transaction on forward markets is
3 directly linked to a sale under consideration,
4 the exchange rate specified with respect to
5 such foreign currency in the forward sale
6 agreement shall be used to convert the for-
7 eign currency.

8 “(b) **DATE OF SALE.**—For purposes of this
9 section, ‘date of sale’ means the date of the
10 contract of sale or, where appropriate, the
11 date on which the material terms of sale are
12 otherwise established. If the material terms of
13 sale are significantly changed after such date,
14 the date of sale is the date of such change. In
15 the case of such a change in the date of sale,
16 the administering authority shall make ap-
17 propriate adjustments to take into account
18 any unreasonable effect on the injurious pric-
19 ing margin due only to fluctuations in the ex-
20 change rate between the original date of sale
21 and the new date of sale.

22 **“Subtitle C—Procedures**

23 **“SEC. 841. HEARINGS.**

24 “(a) **UPON REQUEST.**—The administering
25 authority and the Commission shall each hold

1 a hearing in the course of an investigation
2 under this title, upon the request of any party
3 to the investigation, before making a final de-
4 termination under section 805.

5 “(b) PROCEDURES.—Any hearing required
6 or permitted under this title shall be con-
7 ducted after notice published in the Federal
8 Register, and a transcript of the hearing shall
9 be prepared and made available to the public.
10 The hearing shall not be subject to the provi-
11 sions of subchapter II of chapter 5 of title 5,
12 United States Code, or to section 702 of such
13 title.

14 “SEC. 842. DETERMINATIONS ON THE BASIS OF THE FACTS
15 AVAILABLE.

16 “(a) IN GENERAL.—If—

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

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

21 “(A) withholds information that
22 has been requested by the admin-
23 istering authority or the Commission
24 under this title,

1 **“(B) fails to provide such informa-**
2 **tion by the deadlines for the submis-**
3 **sion of the information or in the form**
4 **and manner requested, subject to**
5 **subsections (b)(1) and (d) of section**
6 **844,**

7 **“(C) significantly impedes a pro-**
8 **ceeding under this title, or**

9 **“(D) provides such information**
10 **but the information cannot be veri-**
11 **fied as provided in section 844(g),**
12 **the administering authority and the Com-**
13 **mission shall, subject to section 844(c),**
14 **use the facts otherwise available in**
15 **reaching the applicable determination**
16 **under this title.**

17 **“(b) ADVERSE INFERENCES.—If the admin-**
18 **istering authority or the Commission (as the**
19 **case may be) finds that an interested party**
20 **has failed to cooperate by not acting to the**
21 **best of its ability to comply with a request for**
22 **information from the administering authority**
23 **or the Commission, the administering author-**
24 **ity or the Commission (as the case may be),**
25 **in reaching the applicable determination**

1 under this title, may use an inference that is
2 adverse to the interests of that party in select-
3 ing from among the facts otherwise available.
4 Such adverse inference may include reliance
5 on information derived from—

6 “(1) the petition, or

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

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

19 “SEC. 843. ACCESS TO INFORMATION.

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

22 “(1) PROGRESS OF INVESTIGATION RE-
23 PORTS.—The administering authority and
24 the Commission shall, from time to time
25 upon request, inform the parties to an in-

1 **vestigation under this title of the**
2 **progress of that investigation.**

3 **“(2) EX PARTE MEETINGS.—The admin-**
4 **istering authority and the Commission**
5 **shall maintain a record of any ex parte**
6 **meeting between—**

7 **“(A) interested parties or other**
8 **persons providing factual informa-**
9 **tion in connection with a proceeding**
10 **under this title, and**

11 **“(B) the person charged with**
12 **making the determination, or any**
13 **person charged with making a final**
14 **recommendation to that person, in**
15 **connection with that proceeding,**

16 **if information relating to that proceeding**
17 **was presented or discussed at such meet-**
18 **ing. The record of such an ex parte meet-**
19 **ing shall include the identity of the per-**
20 **sons present at the meeting, the date,**
21 **time, and place of the meeting, and a**
22 **summary of the matters discussed or sub-**
23 **mitted. The record of the ex parte meet-**
24 **ing shall be included in the record of the**
25 **proceeding.**

1 **“(3) SUMMARIES; NON-PROPRIETARY SUB-**
2 **MISSIONS.—The administering authority**
3 **and the Commission shall disclose—**

4 **“(A) any proprietary information**
5 **received in the course of a proceed-**
6 **ing under this title if it is disclosed in**
7 **a form which cannot be associated**
8 **with, or otherwise be used to identify,**
9 **operations of a particular person, and**

10 **“(B) any information submitted in**
11 **connection with a proceeding which**
12 **is not designated as proprietary by**
13 **the person submitting it.**

14 **“(4) MAINTENANCE OF PUBLIC RECORD.—**
15 **The administering authority and the**
16 **Commission shall maintain and make**
17 **available for public inspection and copy-**
18 **ing a record of all information which is**
19 **obtained by the administering authority**
20 **or the Commission, as the case may be, in**
21 **a proceeding under this title to the ex-**
22 **tent that public disclosure of the infor-**
23 **mation is not prohibited under this chap-**
24 **ter or exempt from disclosure under sec-**
25 **tion 552 of title 5, United States Code.**

1 **“(b) PROPRIETARY INFORMATION.—**

2 **“(1) PROPRIETARY STATUS MAIN-**
3 **TAINED.—**

4 **“(A) IN GENERAL.—Except as pro-**
5 **vided in subsection (a)(4) and sub-**
6 **section (c), information submitted to**
7 **the administering authority or the**
8 **Commission which is designated as**
9 **proprietary by the person submitting**
10 **the information shall not be disclosed**
11 **to any person without the consent of**
12 **the person submitting the informa-**
13 **tion, other than—**

14 **“(i) to an officer or employee**
15 **of the administering authority or**
16 **the Commission who is directly**
17 **concerned with carrying out the**
18 **investigation in connection with**
19 **which the information is submit-**
20 **ted or any other proceeding**
21 **under this title covering the same**
22 **subject vessel, or**

23 **“(ii) to an officer or employee**
24 **of the United States Customs**
25 **Service who is directly involved**

1 **in conducting an investigation re-**
2 **garding fraud under this title.**

3 **“(B) ADDITIONAL REQUIREMENTS.—**

4 **The administering authority and the**
5 **Commission shall require that infor-**
6 **mation for which proprietary treat-**
7 **ment is requested be accompanied**
8 **by—**

9 **“(i) either—**

10 **“(I) a nonproprietary sum-**
11 **mary in sufficient detail to**
12 **permit a reasonable under-**
13 **standing of the substance of**
14 **the information submitted in**
15 **confidence, or**

16 **“(II) a statement that the**
17 **information is not susceptible**
18 **to summary, accompanied by**
19 **a statement of the reasons in**
20 **support of the contention, and**

21 **“(ii) either—**

22 **“(I) a statement which**
23 **permits the administering au-**
24 **thority or the Commission to**
25 **release under administrative**

1 protective order, in accord-
2 ance with subsection (c), the
3 information submitted in con-
4 fidence, or

5 “(II) a statement to the ad-
6 ministering authority or the
7 Commission that the business
8 proprietary information is of
9 a type that should not be re-
10 leased under administrative
11 protective order.

12 “(2) UNWARRANTED DESIGNATION.—If
13 the administering authority or the Com-
14 mission determines, on the basis of the
15 nature and extent of the information or
16 its availability from public sources, that
17 designation of any information as propri-
18 etary is unwarranted, then it shall notify
19 the person who submitted it and ask for
20 an explanation of the reasons for the des-
21 ignation. Unless that person persuades
22 the administering authority or the Com-
23 mission that the designation is war-
24 ranted, or withdraws the designation, the
25 administering authority or the Commis-

1 sion, as the case may be, shall return it to
2 the party submitting it. In a case in
3 which the administering authority or the
4 Commission returns the information to
5 the person submitting it, the person may
6 thereafter submit other material concern-
7 ing the subject matter of the returned in-
8 formation if the submission is made with-
9 in the time otherwise provided for sub-
10 mitting such material.

11 “(c) LIMITED DISCLOSURE OF CERTAIN PRO-
12 PRIETARY INFORMATION UNDER PROTECTIVE
13 ORDER.—

14 “(1) DISCLOSURE BY ADMINISTERING AU-
15 THORITY OR COMMISSION.—

16 “(A) IN GENERAL.—Upon receipt of
17 an application (before or after receipt
18 of the information requested) which
19 describes in general terms the infor-
20 mation requested and sets forth the
21 reasons for the request, the admin-
22 istering authority or the Commission
23 shall make all business proprietary
24 information presented to, or obtained
25 by it, during a proceeding under this

1 **title (except privileged information,**
2 **classified information, and specific**
3 **information of a type for which there**
4 **is a clear and compelling need to**
5 **withhold from disclosure) available to**
6 **all interested parties who are parties**
7 **to the proceeding under a protective**
8 **order described in subparagraph (B),**
9 **regardless of when the information is**
10 **submitted during the proceeding.**
11 **Customer names (other than the**
12 **name of the United States buyer of**
13 **the subject vessel) obtained during**
14 **any investigation which requires a**
15 **determination under section 805(b)**
16 **may not be disclosed by the admin-**
17 **istering authority under protective**
18 **order until either an order is pub-**
19 **lished under section 806(a) as a result**
20 **of the investigation or the investiga-**
21 **tion is suspended or terminated. The**
22 **Commission may delay disclosure of**
23 **customer names (other than the name**
24 **of the United States buyer of the sub-**
25 **ject vessel) under protective order**

1 **during any such investigation until a**
2 **reasonable time before any hearing**
3 **provided under section 841 is held.**

4 **“(B) PROTECTIVE ORDER.—The pro-**
5 **TECTIVE ORDER.—The protective order under which informa-**
6 **tion is made available shall contain**
7 **such requirements as the administer-**
8 **ing authority or the Commission may**
9 **determine by regulation to be appro-**
10 **priate. The administering authority**
11 **and the Commission shall provide by**
12 **regulation for such sanctions as the**
13 **administering authority and the Com-**
14 **mission determine to be appropriate,**
15 **including disbarment from practice**
16 **before the agency.**

17 **“(C) TIME LIMITATIONS ON DETER-**
18 **MINATIONS.—The administering au-**
19 **thority or the Commission, as the**
20 **case may be, shall determine whether**
21 **to make information available under**
22 **this paragraph—**

23 **“(i) not later than 14 days (7**
24 **days if the submission pertains to**
25 **a proceeding under section**

1 **803(a)) after the date on which**
2 **the information is submitted, or**

3 **“(ii) if—**

4 **“(I) the person submitting**
5 **the information raises objec-**
6 **tion to its release, or**

7 **“(II) the information is un-**
8 **usually voluminous or com-**
9 **plex,**

10 **not later than 30 days (10 days if**
11 **the submission pertains to a pro-**
12 **ceeding under section 803(a))**
13 **after the date on which the infor-**
14 **mation is submitted.**

15 **“(D) AVAILABILITY AFTER DETER-**
16 **MINATION.—If the determination**
17 **under subparagraph (C) is affirma-**
18 **tive, then—**

19 **“(i) the business proprietary**
20 **information submitted to the ad-**
21 **ministering authority or the Com-**
22 **mission on or before the date of**
23 **the determination shall be made**
24 **available, subject to the terms**

1 **and conditions of the protective**
2 **order, on such date, and**

3 **“(ii) the business proprietary**
4 **information submitted to the ad-**
5 **ministering authority or the Com-**
6 **mission after the date of the de-**
7 **termination shall be served as re-**
8 **quired by subsection (d).**

9 **“(E) FAILURE TO DISCLOSE.—If a**
10 **person submitting information to the**
11 **administering authority refuses to**
12 **disclose business proprietary infor-**
13 **mation which the administering au-**
14 **thority determines should be released**
15 **under a protective order described in**
16 **subparagraph (B), the administering**
17 **authority shall return the informa-**
18 **tion, and any nonconfidential sum-**
19 **mary thereof, to the person submit-**
20 **ting the information and summary**
21 **and shall not consider either.**

22 **“(2) DISCLOSURE UNDER COURT**
23 **ORDER.—If the administering authority or**
24 **the Commission denies a request for in-**
25 **formation under paragraph (1), then ap-**

1 **plication may be made to the United**
2 **States Court of International Trade for**
3 **an order directing the administering au-**
4 **thority or the Commission, as the case**
5 **may be, to make the information avail-**
6 **able. After notification of all parties to**
7 **the investigation and after an oppor-**
8 **tunity for a hearing on the record, the**
9 **court may issue an order, under such**
10 **conditions as the court deems appro-**
11 **priate, which shall not have the effect of**
12 **stopping or suspending the investigation,**
13 **directing the administering authority or**
14 **the Commission to make all or a portion**
15 **of the requested information described in**
16 **the preceding sentence available under a**
17 **protective order and setting forth sanc-**
18 **tions for violation of such order if the**
19 **court finds that, under the standards ap-**
20 **plicable in proceedings of the court, such**
21 **an order is warranted, and that—**

22 **“(A) the administering authority**
23 **or the Commission has denied access**
24 **to the information under subsection**
25 **(b)(1),**

1 “(B) the person on whose behalf
2 the information is requested is an in-
3 terested party who is a party to the
4 investigation in connection with
5 which the information was obtained
6 or developed, and

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

13 “(d) SERVICE.—Any party submitting writ-
14 ten information, including business propri-
15 etary information, to the administering au-
16 thority or the Commission during a proceed-
17 ing shall, at the same time, serve the informa-
18 tion upon all interested parties who are par-
19 ties to the proceeding, if the information is
20 covered by a protective order. The admin-
21 istering authority or the Commission shall
22 not accept any such information that is not
23 accompanied by a certificate of service and a
24 copy of the protective order version of the
25 document containing the information. Busi-

1 **ness proprietary information shall only be**
2 **served upon interested parties who are par-**
3 **ties to the proceeding that are subject to pro-**
4 **TECTIVE ORDER, except that a nonconfidential**
5 **summary thereof shall be served upon all**
6 **other interested parties who are parties to the**
7 **proceeding.**

8 “(e) **INFORMATION RELATING TO VIOLATIONS**
9 **OF PROTECTIVE ORDERS AND SANCTIONS.—The**
10 **administering authority and the Commission**
11 **may withhold from disclosure any cor-**
12 **respondence, private letters of reprimand,**
13 **settlement agreements, and documents and**
14 **files compiled in relation to investigations**
15 **and actions involving a violation or possible**
16 **violation of a protective order issued under**
17 **subsection (c), and such information shall be**
18 **treated as information described in section**
19 **552(b)(3) of title 5, United States Code.**

20 “(f) **OPPORTUNITY FOR COMMENT BY VESSEL**
21 **BUYERS.—The administering authority and**
22 **the Commission shall provide an opportunity**
23 **for buyers of subject vessels to submit rel-**
24 **evant information to the administering au-**
25 **thority concerning a sale at less than fair**

1 value or countermeasures, and to the Com-
2 mission concerning material injury by reason
3 of the sale of a vessel at less than fair value.

4 **“(g) PUBLICATION OF DETERMINATIONS; RE-
5 QUIREMENTS FOR FINAL DETERMINATIONS.—**

6 **“(1) IN GENERAL.—Whenever the ad-
7 ministering authority makes a determina-
8 tion under section 802 whether to initiate
9 an investigation, or the administering au-
10 thority or the Commission makes a pre-
11 liminary determination under section
12 803, a final determination under section
13 805, a determination under subsection
14 (b), (c), (d), (e)(3)(B)(ii), (g), or (i) of sec-
15 tion 807, or a determination to suspend
16 an investigation under this title, the ad-
17 ministering authority or the Commission,
18 as the case may be, shall publish the facts
19 and conclusions supporting that deter-
20 mination, and shall publish notice of that
21 determination in the Federal Register.**

22 **“(2) CONTENTS OF NOTICE OR DETER-
23 MINATION.—The notice or determination
24 published under paragraph (1) shall in-
25 clude, to the extent applicable—**

1 “(A) in the case of a determina-
2 tion of the administering authority—

3 “(i) the names of the foreign
4 producer and the country of ori-
5 gin of the subject vessel,

6 “(ii) a description sufficient to
7 identify the subject vessel,

8 “(iii) with respect to an injuri-
9 ous pricing charge, the injurious
10 pricing margin established and a
11 full explanation of the methodol-
12 ogy used in establishing such
13 margin,

14 “(iv) with respect to counter-
15 measures, the scope and duration
16 of countermeasures and, if appli-
17 cable, any changes thereto, and

18 “(v) the primary reasons for
19 the determination, and

20 “(B) in the case of a determina-
21 tion of the Commission—

22 “(i) considerations relevant to
23 the determination of injury, and

24 “(ii) the primary reasons for
25 the determination.

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

4 **“(A) the administering authority**
5 **shall include in a final determination**
6 **under section 805 or 807(c) an expla-**
7 **nation of the basis for its determina-**
8 **tion that addresses relevant argu-**
9 **ments, made by interested parties**
10 **who are parties to the investigation,**
11 **concerning the establishment of the**
12 **injurious pricing charge with respect**
13 **to which the determination is made,**
14 **and**

15 **“(B) the Commission shall include**
16 **in a final determination of injury an**
17 **explanation of the basis for its deter-**
18 **mination that addresses relevant ar-**
19 **guments that are made by interested**
20 **parties who are parties to the inves-**
21 **tigation concerning the effects and**
22 **impact on the industry of the sale of**
23 **the subject vessel.**

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

2 **“(a) CERTIFICATION OF SUBMISSIONS.—Any**
3 **person providing factual information to the**
4 **administering authority or the Commission in**
5 **connection with a proceeding under this title**
6 **on behalf of the petitioner or any other inter-**
7 **ested party shall certify that such information**
8 **is accurate and complete to the best of that**
9 **person’s knowledge.**

10 **“(b) DIFFICULTIES IN MEETING REQUIRE-**
11 **MENTS.—**

12 **“(1) NOTIFICATION BY INTERESTED**
13 **PARTY.—If an interested party, promptly**
14 **after receiving a request from the admin-**
15 **istering authority or the Commission for**
16 **information, notifies the administering**
17 **authority or the Commission (as the case**
18 **may be) that such party is unable to sub-**
19 **mit the information requested in the re-**
20 **quested form and manner, together with**
21 **a full explanation and suggested alter-**
22 **native forms in which such party is able**
23 **to submit the information, the admin-**
24 **istering authority or the Commission (as**
25 **the case may be) shall consider the abil-**
26 **ity of the interested party to submit the**

1 information in the requested form and
2 manner and may modify such require-
3 ments to the extent necessary to avoid
4 imposing an unreasonable burden on that
5 party.

6 “(2) ASSISTANCE TO INTERESTED PAR-
7 TIES.—The administering authority and
8 the Commission shall take into account
9 any difficulties experienced by interested
10 parties, particularly small companies, in
11 supplying information requested by the
12 administering authority or the Commis-
13 sion in connection with investigations
14 under this title, and shall provide to such
15 interested parties any assistance that is
16 practicable in supplying such informa-
17 tion.

18 “(c) DEFICIENT SUBMISSIONS.—If the admin-
19 istering authority or the Commission deter-
20 mines that a response to a request for infor-
21 mation under this title does not comply with
22 the request, the administering authority or
23 the Commission (as the case may be) shall
24 promptly inform the person submitting the
25 response of the nature of the deficiency and

1 shall, to the extent practicable, provide that
2 person with an opportunity to remedy or ex-
3 plain the deficiency in light of the time limits
4 established for the completion of investiga-
5 tions or reviews under this title. If that per-
6 son submits further information in response
7 to such deficiency and either—

8 “(1) the administering authority or
9 the Commission (as the case may be)
10 finds that such response is not satisfac-
11 tory, or

12 “(2) such response is not submitted
13 within the applicable time limits,
14 then the administering authority or the Com-
15 mission (as the case may be) may, subject to
16 subsection (d), disregard all or part of the
17 original and subsequent responses.

18 “(d) USE OF CERTAIN INFORMATION.—In
19 reaching a determination under section 803,
20 805, or 807, the administering authority and
21 the Commission shall not decline to consider
22 information that is submitted by an inter-
23 ested party and is necessary to the determina-
24 tion but does not meet all the applicable re-

1 requirements established by the administering
2 authority or the Commission if—

3 “(1) the information is submitted by
4 the deadline established for its submis-
5 sion,

6 “(2) the information can be verified,

7 “(3) the information is not so incom-
8 plete that it cannot serve as a reliable
9 basis for reaching the applicable deter-
10 mination,

11 “(4) the interested party has dem-
12 onstrated that it acted to the best of its
13 ability in providing the information and
14 meeting the requirements established by
15 the administering authority or the Com-
16 mission with respect to the information,
17 and

18 “(5) the information can be used with-
19 out undue difficulties.

20 “(e) NONACCEPTANCE OF SUBMISSIONS.—If
21 the administering authority or the Commis-
22 sion declines to accept into the record any in-
23 formation submitted in an investigation
24 under this title, it shall, to the extent prac-
25 ticable, provide to the person submitting the

1 information a written explanation of the rea-
2 sons for not accepting the information.

3 “(f) PUBLIC COMMENT ON INFORMATION.—In-
4 formation that is submitted on a timely basis
5 to the administering authority or the Commis-
6 sion during the course of a proceeding under
7 this title shall be subject to comment by other
8 parties within such reasonable time as the ad-
9 ministering authority or the Commission
10 shall provide. The administering authority
11 and the Commission, before making a final
12 determination under section 805 or 807, shall
13 cease collecting information and shall provide
14 the parties with a final opportunity to com-
15 ment on the information obtained by the ad-
16 ministering authority or the Commission (as
17 the case may be) upon which the parties have
18 not previously had an opportunity to com-
19 ment. Comments containing new factual in-
20 formation shall be disregarded.

21 “(g) VERIFICATION.—The administering au-
22 thority shall verify all information relied
23 upon in making a final determination under
24 section 805.

1 "SEC. 845. ADMINISTRATIVE ACTION FOLLOWING SHIP-
2 BUILDING AGREEMENT PANEL REPORTS.

3 "(a) ACTION BY UNITED STATES INTER-
4 NATIONAL TRADE COMMISSION.—

5 "(1) ADVISORY REPORT.—If a dispute
6 settlement panel under the Shipbuilding
7 Agreement finds in a report that an ac-
8 tion by the Commission in connection
9 with a particular proceeding under this
10 title is not in conformity with the obliga-
11 tions of the United States under the Ship-
12 building Agreement, the Trade Rep-
13 resentative may request the Commission
14 to issue an advisory report on whether
15 this title permits the Commission to take
16 steps in connection with the particular
17 proceeding that would render its action
18 not inconsistent with the findings of the
19 panel concerning those obligations. The
20 Trade Representative shall notify the
21 Committee on Ways and Means of the
22 House of Representatives and the Com-
23 mittee on Finance of the Senate of such
24 request.

25 "(2) TIME LIMITS FOR REPORT.—The
26 Commission shall transmit its report

1 under paragraph (1) to the Trade Rep-
2 resentative within 30 calendar days after
3 the Trade Representative requests the re-
4 port.

5 “(3) CONSULTATIONS ON REQUEST FOR
6 COMMISSION DETERMINATION.—If a majority
7 of the Commissioners issues an affirma-
8 tive report under paragraph (1), the
9 Trade Representatives shall consult with
10 the congressional committees listed in
11 paragraph (1) concerning the matter.

12 “(4) COMMISSION DETERMINATION.—Not-
13 withstanding any other provision of this
14 title, if a majority of the Commissioners
15 issues an affirmative report under para-
16 graph (1), the Commission, upon the writ-
17 ten request of the Trade Representative,
18 shall issue a determination in connection
19 with the particular proceeding that
20 would render the Commission’s action de-
21 scribed in paragraph (1) not inconsistent
22 with the findings of the panel. The Com-
23 mission shall issue its determination not
24 later than 120 calendar days after the re-

1 **quest from the Trade Representative is**
2 **made.**

3 **“(5) CONSULTATIONS ON IMPLEMENTA-**
4 **TION OF COMMISSION DETERMINATION.—The**
5 **Trade Representative shall consult with**
6 **the congressional committees listed in**
7 **paragraph (1) before the Commission’s**
8 **determination under paragraph (4) is im-**
9 **plemented.**

10 **“(6) REVOCATION OF ORDER.—If, by vir-**
11 **tue of the Commission’s determination**
12 **under paragraph (4), an injurious pricing**
13 **order is no longer supported by an af-**
14 **firmative Commission determination**
15 **under this title, the Trade Representative**
16 **may, after consulting with the congress-**
17 **sional committees under paragraph (5),**
18 **direct the administering authority to re-**
19 **voke the injurious pricing order.**

20 **“(b) ACTION BY ADMINISTERING AUTHOR-**
21 **ITY.—**

22 **“(1) CONSULTATIONS WITH ADMINISTER-**
23 **ING AUTHORITY AND CONGRESSIONAL COM-**
24 **MITTEES.—Promptly after a report or**
25 **other determination by a dispute settle-**

1 **ment panel under the Shipbuilding**
2 **Agreement is issued that contains find-**
3 **ings that—**

4 **“(A) an action by the administer-**
5 **ing authority in a proceeding under**
6 **this title is not in conformity with the**
7 **obligations of the United States**
8 **under the Shipbuilding Agreement,**

9 **“(B) the due date for payment of**
10 **an injurious pricing charge contained**
11 **in an order issued under section 806**
12 **should be amended,**

13 **“(C) countermeasures provided**
14 **for in an order issued under section**
15 **807 should be provisionally sus-**
16 **pending or reduced pending the final**
17 **decision of the panel, or**

18 **“(D) the scope or duration of**
19 **countermeasures imposed under sec-**
20 **tion 807 should be narrowed or short-**
21 **ened,**

22 **the Trade Representative shall consult**
23 **with the administering authority and the**
24 **congressional committees listed in sub-**
25 **section (a)(1) on the matter.**

1 **“(2) DETERMINATION BY ADMINISTERING**
2 **AUTHORITY.—Notwithstanding any other**
3 **provision of this title, the administering**
4 **authority shall, in response to a written**
5 **request from the Trade Representative,**
6 **issue a determination, or an amendment**
7 **to or suspension of an injurious pricing**
8 **or countermeasure order, as the case may**
9 **be, in connection with the particular pro-**
10 **ceeding that would render the admin-**
11 **istering authority’s action described in**
12 **paragraph (1) not inconsistent with the**
13 **findings of the panel.**

14 **“(3) TIME LIMITS FOR DETERMINA-**
15 **TIONS.—The administering authority shall**
16 **issue its determination, amendment, or**
17 **suspension under paragraph (2)—**

18 **“(A) with respect to a matter de-**
19 **scribed in subparagraph (A) of para-**
20 **graph (1), within 180 calendar days**
21 **after the request from the Trade Rep-**
22 **resentative is made, and**

23 **“(B) with respect to a matter de-**
24 **scribed in subparagraph (B), (C), or**
25 **(D) of paragraph (1), within 15 cal-**

1 **endar days after the request from the**
2 **Trade Representative is made.**

3 **“(4) CONSULTATIONS BEFORE IMPLEMEN-**
4 **TATION.—Before the administering au-**
5 **thority implements any determination,**
6 **amendment, or suspension under para-**
7 **graph (2), the Trade Representative shall**
8 **consult with the administering authority**
9 **and the congressional committees listed**
10 **in subsection (a)(1) with respect to such**
11 **determination, amendment, or suspen-**
12 **sion.**

13 **“(5) IMPLEMENTATION OF DETERMINA-**
14 **TION.—The Trade Representative may,**
15 **after consulting with the administering**
16 **authority and the congressional commit-**
17 **tees under paragraph (4), direct the ad-**
18 **ministering authority to implement, in**
19 **whole or in part, the determination,**
20 **amendment, or suspension made under**
21 **paragraph (2).**

22 **“(6) IMPLEMENTATION OF DETERMINA-**
23 **TION; NOTICE OF IMPLEMENTATION.—The ad-**
24 **ministering authority shall implement**

1 **the determination, amendment, or sus-**
2 **pension under paragraph (2)—**

3 **“(A) with respect to a matter de-**
4 **scribed in subparagraph (A) of para-**
5 **graph (1), only if the injurious pricing**
6 **margin determined under paragraph**
7 **(2) differs from the injurious pricing**
8 **margin in the determination re-**
9 **viewed by the panel, and**

10 **“(B) with respect to a matter de-**
11 **scribed in subparagraph (B), (C), or**
12 **(D) of paragraph (1), upon issuance of**
13 **the determination, amendment, or**
14 **suspension under paragraph (2).**

15 **The administering authority shall publish**
16 **notice of such implementation in the Fed-**
17 **eral Register.**

18 **“(c) OPPORTUNITY FOR COMMENT BY INTER-**
19 **ESTED PARTIES.—Before issuing a determina-**
20 **tion, amendment, or suspension, the admin-**
21 **istering authority, in a matter described in**
22 **subsection (b)(1)(A), or the Commission, in a**
23 **matter described in subsection (a)(1), as the**
24 **case may be, shall provide interested parties**
25 **with an opportunity to submit written com-**

1 ments and, in appropriate cases, may hold a
2 hearing, with respect to the determination.

3 **“Subtitle D—Definitions**

4 **“SEC. 861. DEFINITIONS.**

5 **“For purposes of this title:**

6 **“(1) ADMINISTERING AUTHORITY.—The**
7 **term ‘administering authority’ means the**
8 **Secretary of Commerce, or any other offi-**
9 **cer of the United States to whom the re-**
10 **sponsibility for carrying out the duties of**
11 **the administering authority under this**
12 **title are transferred by law.**

13 **“(2) COMMISSION.—The term ‘Commis-**
14 **sion’ means the United States Inter-**
15 **national Trade Commission.**

16 **“(3) COUNTRY.—The term ‘country’**
17 **means a foreign country, a political sub-**
18 **division, dependent territory, or posses-**
19 **sion of a foreign country and, except as**
20 **provided in paragraph (16)(E)(iii), may**
21 **not include an association of 2 or more**
22 **foreign countries, political subdivisions,**
23 **dependent territories, or possessions of**
24 **countries into a customs union outside**
25 **the United States.**

1 **“(4) INDUSTRY.—**

2 **“(A) IN GENERAL.—Except as used**
3 **in section 808, the term ‘industry’**
4 **means the producers as a whole of a**
5 **domestic like vessel, or those produc-**
6 **ers whose collective capability to**
7 **produce a domestic like vessel con-**
8 **stitutes a major proportion of the**
9 **total domestic capability to produce a**
10 **domestic like vessel.**

11 **“(B) PRODUCER.—A ‘producer’ of a**
12 **domestic like vessel includes an en-**
13 **tity that is producing the domestic**
14 **like vessel and an entity with the ca-**
15 **pability to produce the domestic like**
16 **vessel.**

17 **“(C) CAPABILITY TO PRODUCE A DO-**
18 **MESTIC LIKE VESSEL.—A producer has**
19 **the ‘capability to produce a domestic**
20 **like vessel’ if it is capable of produc-**
21 **ing a domestic like vessel with its**
22 **present facilities or could adapt its**
23 **facilities in a timely manner to**
24 **produce a domestic like vessel.**

1 **“(D) RELATED PARTIES.—(i) In an**
2 **investigation under this title, if a pro-**
3 **ducer of a domestic like vessel and**
4 **the foreign producer, seller (other**
5 **than the foreign producer), or United**
6 **States buyer of the subject vessel are**
7 **related parties, or if a producer of a**
8 **domestic like vessel is also a United**
9 **States buyer of the subject vessel, the**
10 **domestic producer may, in appro-**
11 **priate circumstances, be excluded**
12 **from the industry.**

13 **“(ii) For purposes of clause (i), a**
14 **domestic producer and the foreign**
15 **producer, seller, or United States**
16 **buyer shall be considered to be relat-**
17 **ed parties, if—**

18 **“(I) the domestic producer di-**
19 **rectly or indirectly controls the**
20 **foreign producer, seller or United**
21 **States buyer,**

22 **“(II) the foreign producer,**
23 **seller, or United States buyer di-**
24 **rectly or indirectly controls the**
25 **domestic producer,**

1 **“(III) a third party directly or**
2 **indirectly controls the domestic**
3 **producer and the foreign pro-**
4 **ducer, seller, or United States**
5 **buyer, or**

6 **“(IV) the domestic producer**
7 **and the foreign producer, seller,**
8 **or United States buyer directly or**
9 **indirectly control a third party**
10 **and there is reason to believe that**
11 **the relationship causes the pro-**
12 **ducer to act differently than a**
13 **nonrelated producer.**

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

20 **“(E) PRODUCT LINES.—In an inves-**
21 **tigation under this title, the effect of**
22 **the sale of the subject vessel shall be**
23 **assessed in relation to the United**
24 **States production (or production ca-**
25 **pability) of a domestic like vessel if**

1 **available data permit the separate**
2 **identification of production (or pro-**
3 **duction capability) in terms of such**
4 **criteria as the production process or**
5 **the producer’s profits. If the domestic**
6 **production (or production capability)**
7 **of a domestic like vessel has no sepa-**
8 **rate identity in terms of such criteria,**
9 **then the effect of the sale shall be as-**
10 **essed by the examination of the pro-**
11 **duction (or production capability) of**
12 **the narrowest group or range of ves-**
13 **sels, which includes a domestic like**
14 **vessel, for which the necessary infor-**
15 **mation can be provided.**

16 **“(5) BUYER.—The term ‘buyer’ means**
17 **any person who acquires an ownership**
18 **interest in a vessel, including by way of**
19 **lease or long-term bareboat charter, in**
20 **conjunction with the original transfer**
21 **from the producer, either directly or indi-**
22 **rectly, including an individual or com-**
23 **pany which owns or controls a buyer.**
24 **There may be more than one buyer of**
25 **any one vessel.**

1 **“(6) UNITED STATES BUYER.—The term**
2 **‘United States buyer’ means a buyer that**
3 **is any of the following:**

4 **“(A) A United States citizen.**

5 **“(B) A juridical entity, including**
6 **any corporation, company, associa-**
7 **tion, or other organization, that is le-**
8 **gally constituted under the laws and**
9 **regulations of the United States or a**
10 **political subdivision thereof, regard-**
11 **less of whether the entity is orga-**
12 **nized for pecuniary gain, privately or**
13 **government owned, or organized with**
14 **limited or unlimited liability.**

15 **“(C) A juridical entity that is**
16 **owned or controlled by nationals or**
17 **entities described in subparagraphs**
18 **(A) and (B). For the purposes of this**
19 **subparagraph—**

20 **“(i) the term ‘own’ means hav-**
21 **ing more than a 50 percent inter-**
22 **est, and**

23 **“(ii) the term ‘control’ means**
24 **the actual ability to have substan-**
25 **tial influence on corporate behav-**

1 ior, and control is presumed to
2 exist where there is at least a 25
3 percent interest.

4 If ownership of a company is estab-
5 lished under clause (i), other control
6 is presumed not to exist unless it is
7 otherwise established.

8 “(7) OWNERSHIP INTEREST.—An ‘owner-
9 ship interest’ in a vessel includes any
10 contractual or proprietary interest which
11 allows the beneficiary or beneficiaries of
12 such interest to take advantage of the op-
13 eration of the vessel in a manner substan-
14 tially comparable to the way in which an
15 owner may benefit from the operation of
16 the vessel. In determining whether such
17 substantial comparability exists, the ad-
18 ministering authority shall consider—

19 “(A) the terms and circumstances
20 of the transaction which conveys the
21 interest,

22 “(B) commercial practice,

23 “(C) whether the vessel subject to
24 the transaction is integrated into the

1 **operations of the beneficiary or bene-**
2 **ficiaries, and**

3 **“(D) whether in practice there is**
4 **a likelihood that the beneficiary or**
5 **beneficiaries of such interests will**
6 **take advantage of and the risk for the**
7 **operation of the vessel for a signifi-**
8 **cant part of the life-time of the vessel.**

9 **“(8) VESSEL.—**

10 **“(A) IN GENERAL.—Except as other-**
11 **wise specifically provided under**
12 **international agreements, the term**
13 **‘vessel’ means—**

14 **“(i) a self-propelled seagoing**
15 **vessel of 100 gross tons or more**
16 **used for transportation of goods**
17 **or persons or for performance of**
18 **a specialized service (including,**
19 **but not limited to, ice breakers**
20 **and dredgers), and**

21 **“(ii) a tug of 365 kilowatts or**
22 **more,**
23 **that is produced in a Shipbuilding**
24 **Agreement Party or a country that is**

1 **not a Shipbuilding Agreement Party**
2 **and not a WTO member.**

3 **“(B) EXCLUSIONS.—The term ‘ves-**
4 **sel’ does not include—**

5 **“(i) any fishing vessel des-**
6 **tined for the fishing fleet of the**
7 **country in which the vessel is**
8 **built,**

9 **“(ii) any military vessel,**

10 **“(iii) a military reserve vessel,**
11 **and**

12 **“(iv) any vessel sold before**
13 **the date that the Shipbuilding**
14 **Agreement enters into force with**
15 **respect to the United States, ex-**
16 **cept that any vessel sold after De-**
17 **cember 21, 1994, for delivery more**
18 **than 5 years after the date of the**
19 **contract of sale shall be a ‘vessel’**
20 **for purposes of this title unless**
21 **the shipbuilder demonstrates to**
22 **the administering authority that**
23 **the extended delivery date was**
24 **for normal commercial reasons**

1 **and not to avoid applicability of**
2 **this title.**

3 **“(C) SELF-PROPELLED SEAGOING**
4 **VESSEL.—A vessel is ‘self-propelled**
5 **seagoing’ if its permanent propulsion**
6 **and steering provide it all the charac-**
7 **teristics of self-navigability in the**
8 **high seas.**

9 **“(D) MILITARY VESSEL.—A ‘military**
10 **vessel’ is a vessel which, according to**
11 **its basic structural characteristics**
12 **and ability, is intended to be used ex-**
13 **clusively for military purposes.**

14 **“(E) MILITARY RESERVE VESSEL.—A**
15 **‘military reserve vessel’ is a vessel**
16 **that has been constructed with na-**
17 **tional defense features and character-**
18 **istics required by the Secretary of De-**
19 **fense for the purpose of supporting**
20 **the United States Armed Forces in a**
21 **contingency.**

22 **“(9) LIKE VESSEL.—The term ‘like ves-**
23 **sel’ means a vessel of the same type, same**
24 **purpose, and approximate size as the**
25 **subject vessel and possessing characteris-**

1 **tics closely resembling those of the sub-**
2 **ject vessel.**

3 **“(10) DOMESTIC LIKE VESSEL.—The**
4 **term ‘domestic like vessel’ means a like**
5 **vessel produced in the United States.**

6 **“(11) FOREIGN LIKE VESSEL.—Except as**
7 **used in section 822(e)(1)(B)(ii)(II), the**
8 **term ‘foreign like vessel’ means a like**
9 **vessel produced by the foreign producer**
10 **of the subject vessel for sale in the pro-**
11 **ducer’s domestic market or in a third**
12 **country.**

13 **“(12) SAME GENERAL CATEGORY OF VES-**
14 **SEL.—The term ‘same general category of**
15 **vessel’ means a vessel of the same type**
16 **and purpose as the subject vessel, but of**
17 **a significantly different size.**

18 **“(13) SUBJECT VESSEL.—The term ‘sub-**
19 **ject vessel’ means a vessel subject to in-**
20 **vestigation under section 801, 808, or 809.**

21 **“(14) FOREIGN PRODUCER.—The term**
22 **‘foreign producer’ means the producer or**
23 **producers of the subject vessel.**

1 **“(15) EXPORTING COUNTRY.—The term**
2 **‘exporting country’ means the country in**
3 **which the subject vessel was built.**

4 **“(16) MATERIAL INJURY.—**

5 **“(A) IN GENERAL.—The term ‘mate-**
6 **rial injury’ means harm which is not**
7 **inconsequential, immaterial, or unim-**
8 **portant.**

9 **“(B) SALE AND CONSEQUENT IM-**
10 **PACT.—In making determinations**
11 **under sections 803(a) and 805(b), the**
12 **Commission in each case—**

13 **“(i) shall consider—**

14 **“(I) the sale of the subject**
15 **vessel,**

16 **“(II) the effect of the sale**
17 **of the subject vessel on prices**
18 **in the United States for a do-**
19 **mestic like vessel, and**

20 **“(III) the impact of the**
21 **sale of the subject vessel on**
22 **domestic producers of the do-**
23 **mestic like vessel, but only in**
24 **the context of production op-**

1 erations within the United
2 States, and

3 “(ii) may consider such other
4 economic factors as are relevant
5 to the determination regarding
6 whether there is or has been ma-
7 terial injury by reason of the sale
8 of the subject vessel.

9 In the notification required under
10 section 805(d), the Commission shall
11 explain its analysis of each factor
12 considered under clause (i), and iden-
13 tify each factor considered under
14 clause (ii) and explain in full its rel-
15 evance to the determination.

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

19 “(i) SALE OF THE SUBJECT VES-
20 SEL.—In evaluating the sale of the
21 subject vessel, the Commission
22 shall consider whether the sale,
23 either in absolute terms or rel-
24 ative to production or demand in
25 the United States, in terms of ei-

1 **ther volume or value, is or has**
2 **been significant.**

3 **“(ii) PRICE.—In evaluating the**
4 **effect of the sale of the subject**
5 **vessel on prices, the Commission**
6 **shall consider whether—**

7 **“(I) there has been signifi-**
8 **cant price underselling of the**
9 **subject vessel as compared**
10 **with the price of a domestic**
11 **like vessel, and**

12 **“(II) the effect of the sale**
13 **of the subject vessel other-**
14 **wise depresses or has de-**
15 **pressed prices to a significant**
16 **degree or prevents or has pre-**
17 **vented price increases, which**
18 **otherwise would have oc-**
19 **curred, to a significant de-**
20 **gree.**

21 **“(iii) IMPACT ON AFFECTED DO-**
22 **MESTIC INDUSTRY.—In examining**
23 **the impact required to be consid-**
24 **ered under subparagraph**
25 **(B)(i)(III), the Commission shall**

1 evaluate all relevant economic
2 factors which have a bearing on
3 the state of the industry in the
4 United States, including, but not
5 limited to—

6 “(I) actual and potential
7 decline in output, sales, mar-
8 ket share, profits, productiv-
9 ity, return on investments,
10 and utilization of capacity,

11 “(II) factors affecting do-
12 mestic prices, including with
13 regard to sales,

14 “(III) actual and potential
15 negative effects on cash flow,
16 employment, wages, growth,
17 ability to raise capital, and in-
18 vestment,

19 “(IV) actual and potential
20 negative effects on the exist-
21 ing development and produc-
22 tion efforts of the domestic in-
23 dustry, including efforts to
24 develop a derivative or more

1 **advanced version of a domes-**
2 **tic like vessel, and**

3 **“(V) the magnitude of the**
4 **injurious pricing margin.**

5 **The Commission shall evaluate all**
6 **relevant economic factors de-**
7 **scribed in this clause within the**
8 **context of the business cycle and**
9 **conditions of competition that are**
10 **distinctive to the affected indus-**
11 **try.**

12 **“(D) STANDARD FOR DETERMINA-**
13 **TION.—The presence or absence of**
14 **any factor which the Commission is**
15 **required to evaluate under subpara-**
16 **graph (C) shall not necessarily give**
17 **decisive guidance with respect to the**
18 **determination by the Commission of**
19 **material injury.**

20 **“(E) THREAT OF MATERIAL INJURY.—**

21 **“(i) IN GENERAL.—In determin-**
22 **ing whether an industry in the**
23 **United States is threatened with**
24 **material injury by reason of the**
25 **sale of the subject vessel, the**

1 **Commission shall consider,**
2 **among other relevant economic**
3 **factors—**

4 **“(I) any existing unused**
5 **production capacity or immi-**
6 **nent, substantial increase in**
7 **production capacity in the ex-**
8 **porting country indicating**
9 **the likelihood of substantially**
10 **increased sales of a foreign**
11 **like vessel to United States**
12 **buyers, taking into account**
13 **the availability of other ex-**
14 **port markets to absorb any**
15 **additional exports,**

16 **“(II) whether the sale of a**
17 **foreign like vessel or other**
18 **factors indicate the likelihood**
19 **of significant additional sales**
20 **to United States buyers,**

21 **“(III) whether sale of the**
22 **subject vessel or sale of a for-**
23 **ign like vessel by the foreign**
24 **producer are at prices that**
25 **are likely to have a significant**

1 **depressing or suppressing ef-**
2 **fect on domestic prices, and**
3 **are likely to increase demand**
4 **for further sales,**

5 **“(IV) the potential for**
6 **product-shifting if production**
7 **facilities in the exporting**
8 **country, which can presently**
9 **be used to produce a foreign**
10 **like vessel or could be adapt-**
11 **ed in a timely manner to**
12 **produce a foreign like vessel,**
13 **are currently being used to**
14 **produce other types of ves-**
15 **sels,**

16 **“(V) the actual and poten-**
17 **tial negative effects on the ex-**
18 **isting development and pro-**
19 **duction efforts of the domes-**
20 **tic industry, including efforts**
21 **to develop a derivative or**
22 **more advanced version of a**
23 **domestic like vessel, and**

24 **“(VI) any other demon-**
25 **strable adverse trends that in-**

1 **dic**ate the probability that
2 **there is likely to be material**
3 **injury by reason of the sale of**
4 **the subject vessel.**

5 **“(ii) BASIS FOR DETERMINA-**
6 **TION.—The Commission shall con-**
7 **sider the factors set forth in**
8 **clause (i) as a whole. The pres-**
9 **ence or absence of any factor**
10 **which the Commission is required**
11 **to consider under clause (i) shall**
12 **not necessarily give decisive guid-**
13 **ance with respect to the deter-**
14 **mination. Such a determination**
15 **may not be made on the basis of**
16 **mere conjecture or supposition.**

17 **“(iii) EFFECT OF INJURIOUS**
18 **PRICING IN THIRD-COUNTRY MAR-**
19 **KETS.—**

20 **“(I) IN GENERAL.—The**
21 **Commission shall consider**
22 **whether injurious pricing in**
23 **the markets of foreign coun-**
24 **tries (as evidenced by injuri-**
25 **ous pricing findings or injuri-**

1 ous pricing remedies of other
2 Shipbuilding Agreement Par-
3 ties, or antidumping deter-
4 minations of, or measures im-
5 posed by, other countries,
6 against a like vessel produced
7 by the producer under inves-
8 tigation) suggests a threat of
9 material injury to the domes-
10 tic industry. In the course of
11 its investigation, the Commis-
12 sion shall request information
13 from the foreign producer or
14 United States buyer concern-
15 ing this issue.

16 “(II) EUROPEAN COMMU-
17 NITIES.—For purposes of this
18 clause, the European Commu-
19 nities as a whole shall be
20 treated as a single foreign
21 country.

22 “(F) CUMULATION FOR DETERMINING
23 MATERIAL INJURY.—

24 “(i) IN GENERAL.—For purposes
25 of clauses (i) and (ii) of subpara-

1 **graph (C), and subject to clause**
2 **(ii) of this subparagraph, the**
3 **Commission shall cumulatively**
4 **assess the effects of sales of for-**
5 **foreign like vessels from all foreign**
6 **producers with respect to**
7 **which—**

8 **“(I) petitions were filed**
9 **under section 802(b) on the**
10 **same day,**

11 **“(II) investigations were**
12 **initiated under section 802(a)**
13 **on the same day, or**

14 **“(III) petitions were filed**
15 **under section 802(b) and in-**
16 **vestigations were initiated**
17 **under section 802(a) on the**
18 **same day,**

19 **if, with respect to such vessels,**
20 **the foreign producers compete**
21 **with each other and with produc-**
22 **ers of a domestic like vessel in the**
23 **United States market.**

24 **“(ii) EXCEPTIONS.—The Com-**
25 **mission shall not cumulatively as-**

1 **sess the effects of sales under**
2 **clause (i)—**

3 **“(I) with respect to which**
4 **the administering authority**
5 **has made a preliminary nega-**
6 **tive determination, unless the**
7 **administering authority sub-**
8 **sequently made a final affirm-**
9 **ative determination with re-**
10 **spect to those sales before the**
11 **Commission’s final determina-**
12 **tion is made, or**

13 **“(II) from any producer**
14 **with respect to which the in-**
15 **vestigation has been termi-**
16 **nated.**

17 **“(iii) RECORDS IN FINAL INVES-**
18 **TIGATIONS.—In each final deter-**
19 **mination in which it cumulatively**
20 **assesses the effects of sales under**
21 **clause (i), the Commission may**
22 **make its determinations based on**
23 **the record compiled in the first**
24 **investigation in which it makes a**
25 **final determination, except that**

1 when the administering authority
2 issues its final determination in a
3 subsequently completed inves-
4 tigation, the Commission shall
5 permit the parties in the subse-
6 quent investigation to submit
7 comments concerning the signifi-
8 cance of the administering
9 authority's final determination,
10 and shall include such comments
11 and the administering authority's
12 final determination in the record
13 for the subsequent investigation.

14 “(G) CUMULATION FOR DETERMINING
15 THREAT OF MATERIAL INJURY.—To the
16 extent practicable and subject to sub-
17 paragraph (F)(ii), for purposes of
18 clause (i) (II) and (III) of subpara-
19 graph (E), the Commission may cumu-
20 latively assess the effects of sales of
21 like vessels from all countries with
22 respect to which—

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

1 “(ii) investigations were initi-
2 ated under section 802(a) on the
3 same day, or

4 “(iii) petitions were filed
5 under section 802(b) and inves-
6 tigations were initiated under
7 section 802(a) on the same day,

8 if, with respect to such vessels, the
9 foreign producers compete with each
10 other and with producers of a domes-
11 tic like vessel in the United States
12 market.

13 “(17) INTERESTED PARTY.—The term
14 ‘interested party’ means, in a proceeding
15 under this title—

16 “(A)(i) the foreign producer, seller
17 (other than the foreign producer),
18 and the United States buyer of the
19 subject vessel, or

20 “(ii) a trade or business associa-
21 tion a majority of the members of
22 which are the foreign producer, sell-
23 er, or United States buyer of the sub-
24 ject vessel,

1 **“(B) the government of the coun-**
2 **try in which the subject vessel is pro-**
3 **duced or manufactured,**

4 **“(C) a producer that is a member**
5 **of an industry,**

6 **“(D) a certified union or recog-**
7 **nized union or group of workers**
8 **which is representative of an indus-**
9 **try,**

10 **“(E) a trade or business associa-**
11 **tion a majority of whose members are**
12 **producers in an industry,**

13 **“(F) an association, a majority of**
14 **whose members is composed of inter-**
15 **ested parties described in subpara-**
16 **graph (C), (D), or (E), and**

17 **“(G) for purposes of section 807, a**
18 **purchaser who, after the effective**
19 **date of an order issued under that**
20 **section, entered into a contract of**
21 **sale with the foreign producer that is**
22 **subject to the order.**

23 **“(18) AFFIRMATIVE DETERMINATIONS BY**
24 **DIVIDED COMMISSION.—If the Commis-**
25 **sioners voting on a determination by the**

1 Commission are evenly divided as to
2 whether the determination should be af-
3 firmative or negative, the Commission
4 shall be deemed to have made an affirma-
5 tive determination. For the purpose of
6 applying this paragraph when the issue
7 before the Commission is to determine
8 whether there is or has been—

9 “(A) material injury to an indus-
10 try in the United States,

11 “(B) threat of material injury to
12 such an industry, or

13 “(C) material retardation of the
14 establishment of an industry in the
15 United States,

16 by reason of the sale of the subject vessel,
17 an affirmative vote on any of the issues
18 shall be treated as a vote that the deter-
19 mination should be affirmative.

20 “(19) ORDINARY COURSE OF TRADE.—

21 The term ‘ordinary course of trade’
22 means the conditions and practices
23 which, for a reasonable time before the
24 sale of the subject vessel, have been nor-
25 mal in the shipbuilding industry with re-

1 **spect to a like vessel. The administering**
2 **authority shall consider the following**
3 **sales and transactions, among others, to**
4 **be outside the ordinary course of trade:**

5 **“(A) Sales disregarded under sec-**
6 **tion 822(b)(1).**

7 **“(B) Transactions disregarded**
8 **under section 822(f)(2).**

9 **“(20) NONMARKET ECONOMY COUNTRY.—**

10 **“(A) IN GENERAL.—The term ‘non-**
11 **market economy country’ means any**
12 **foreign country that the administer-**
13 **ing authority determines does not op-**
14 **erate on market principles of cost or**
15 **pricing structures, so that sales of**
16 **vessels in such country do not reflect**
17 **the fair value of the vessels.**

18 **“(B) FACTORS TO BE CONSIDERED.—**
19 **In making determinations under sub-**
20 **paragraph (A) the administering au-**
21 **thority shall take into account—**

22 **“(i) the extent to which the**
23 **currency of the foreign country is**
24 **convertible into the currency of**
25 **other countries,**

1 “(ii) the extent to which wage
2 rates in the foreign country are
3 determined by free bargaining be-
4 tween labor and management,

5 “(iii) the extent to which joint
6 ventures or other investments by
7 firms of other foreign countries
8 are permitted in the foreign coun-
9 try,

10 “(iv) the extent of government
11 ownership or control of the
12 means of production,

13 “(v) the extent of government
14 control over the allocation of re-
15 sources and over the price and
16 output decisions of enterprises,
17 and

18 “(vi) such other factors as the
19 administering authority considers
20 appropriate.

21 “(C) DETERMINATION IN EFFECT.—

22 “(i) Any determination that a
23 foreign country is a nonmarket
24 economy country shall remain in

1 effect until revoked by the admin-
2 istering authority.

3 “(ii) The administering au-
4 thority may make a determina-
5 tion under subparagraph (A) with
6 respect to any foreign country at
7 any time.

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

16 “(21) SHIPBUILDING AGREEMENT.—The
17 term ‘Shipbuilding Agreement’ means
18 The Agreement Respecting Normal Com-
19 petitive Conditions in the Commercial
20 Shipbuilding and Repair Industry, result-
21 ing from negotiations under the auspices
22 of the Organization for Economic Co-
23 operation and Development, and entered
24 into on December 21, 1994.

1 **“(22) SHIPBUILDING AGREEMENT**
2 **PARTY.—The term ‘Shipbuilding Agree-**
3 **ment Party’ means a state or separate**
4 **customs territory that is a Party to the**
5 **Shipbuilding Agreement, and with re-**
6 **spect to which the United States applies**
7 **the Shipbuilding Agreement.**

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

12 **“(24) WTO MEMBER.—The term ‘WTO**
13 **member’ means a state, or separate cus-**
14 **toms territory (within the meaning of Ar-**
15 **ticle XII of the WTO Agreement), with re-**
16 **spect to which the United States applies**
17 **the WTO Agreement.**

18 **“(25) TRADE REPRESENTATIVE.—The**
19 **term ‘Trade Representative’ means the**
20 **United States Trade Representative.**

21 **“(26) AFFILIATED PERSONS.—The fol-**
22 **lowing persons shall be considered to be**
23 **‘affiliated’ or ‘affiliated persons’:**

24 **“(A) Members of a family, includ-**
25 **ing brothers and sisters (whether by**

1 **the whole or half blood), spouse, an-**
2 **cestors, and lineal descendants.**

3 **“(B) Any officer or director of an**
4 **organization and such organization.**

5 **“(C) Partners.**

6 **“(D) Employer and employee.**

7 **“(E) Any person directly or indi-**
8 **rectly owning, controlling, or holding**
9 **with power to vote, 5 percent or more**
10 **of the outstanding voting stock or**
11 **shares of any organization, and such**
12 **organization.**

13 **“(F) Two or more persons directly**
14 **or indirectly controlling, controlled**
15 **by, or under common control with,**
16 **any person.**

17 **“(G) Any person who controls any**
18 **other person, and such other person.**

19 **For purposes of this paragraph, a person**
20 **shall be considered to control another**
21 **person if the person is legally or oper-**
22 **ationally in a position to exercise re-**
23 **straint or direction over the other per-**
24 **son.**

1 **“(27) INJURIOUS PRICING.—The term**
2 **‘injurious pricing’ refers to the sale of a**
3 **vessel at less than fair value.**

4 **“(28) INJURIOUS PRICING MARGIN.—**

5 **“(A) IN GENERAL.—The term ‘inju-**
6 **rious pricing margin’ means the**
7 **amount by which the normal value**
8 **exceeds the export price of the sub-**
9 **ject vessel.**

10 **“(B) MAGNITUDE OF THE INJURIOUS**
11 **PRICING MARGIN.—The magnitude of**
12 **the injurious pricing margin used by**
13 **the Commission shall be—**

14 **“(i) in making a preliminary**
15 **determination under section**
16 **803(a) in an investigation (includ-**
17 **ing any investigation in which the**
18 **Commission cumulatively as-**
19 **sesses the effect of sales under**
20 **paragraph (16)(F)(i)), the injuri-**
21 **ous pricing margin or margins**
22 **published by the administering**
23 **authority in its notice of initi-**
24 **ation of the investigation; and**

1 “(ii) in making a final deter-
2 mination under section 805(b),
3 the injurious pricing margin or
4 margins most recently published
5 by the administering authority
6 before the closing of the Commis-
7 sion’s administrative record.

8 “(29) COMMERCIAL INTEREST REF-
9 ERENCE RATE.—The term ‘Commercial In-
10 terest Reference Rate’ or ‘CIRR’ means
11 an interest rate that the administering
12 authority determines to be consistent
13 with Annex III, and appendices and notes
14 thereto, of the Understanding on Export
15 Credits for Ships, resulting from negotia-
16 tions under the auspices of the Organiza-
17 tion for Economic Cooperation, and en-
18 tered into on December 21, 1994.

19 “(30) ANTIDUMPING.—

20 “(A) WTO MEMBERS.—In the case
21 of a WTO member, the term ‘anti-
22 dumping’ refers to action taken pur-
23 suant to the Agreement on Implemen-
24 tation of Article VI of the General
25 Agreement on Tariffs and Trade 1994.

1 **“(B) OTHER CASES.—**In the case of
2 **any country that is not a WTO mem-**
3 **ber, the term ‘antidumping’ refers to**
4 **action taken by the country against**
5 **the sale of a vessel at less than fair**
6 **value that is comparable to action de-**
7 **scribed in subparagraph (A).**

8 **“(31) BROAD MULTIPLE BID.—**The term
9 **‘broad multiple bid’ means a bid in which**
10 **the proposed buyer extends an invitation**
11 **to at least all the producers in the indus-**
12 **try known by the buyer to be capable of**
13 **building the subject vessel.”.**

14 **SEC. 102. ENFORCEMENT OF COUNTERMEASURES.**

15 **Part II of title IV of the Tariff Act of 1930**
16 **is amended by adding at the end the follow-**
17 **ing:**

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

20 **“(a) IN GENERAL.—**Notwithstanding any
21 **other provision of law, upon receiving from**
22 **the Secretary of Commerce a list of vessels**
23 **subject to countermeasures under section 807,**
24 **the Customs Service shall deny any request**
25 **for a permit to lade or unlade passengers,**

1 merchandise, or baggage from or onto those
2 vessels so listed.

3 **“(b) EXCEPTIONS.—Subsection (a) shall not**
4 **be applied to deny a permit for the following:**

5 **“(1) To unlade any United States citi-**
6 **zen or permanent legal resident alien**
7 **from a vessel included in the list de-**
8 **scribed in subsection (a), or to unlade**
9 **any refugee or any alien who would oth-**
10 **erwise be eligible to apply for asylum and**
11 **withholding of deportation under the Im-**
12 **migration and Nationality Act.**

13 **“(2) To lade or unlade any crew-**
14 **member of such vessel.**

15 **“(3) To lade or unlade coal and other**
16 **fuel supplies (for the operation of the list-**
17 **ed vessel), ships’ stores, sea stores, and**
18 **the legitimate equipment of such vessel.**

19 **“(4) To lade or unlade supplies for the**
20 **use or sale on such vessel.**

21 **“(5) To lade or unlade such other**
22 **merchandise, baggage, or passenger as**
23 **the Customs Service shall determine nec-**
24 **essary to protect the immediate health,**
25 **safety, or welfare of a human being.**

1 **“(c) CORRECTION OF MINISTERIAL OR CLERI-**
2 **CAL ERRORS.—**

3 **“(1) PETITION FOR CORRECTION.—If the**
4 **master of any vessel whose application**
5 **for a permit to lade or unlade has been**
6 **denied under this section believes that**
7 **such denial resulted from a ministerial or**
8 **clerical error, not amounting to a mis-**
9 **take of law, committed by any Customs**
10 **officer, the master may petition the Cus-**
11 **toms Service for correction of such error,**
12 **as provided by regulation.**

13 **“(2) INAPPLICABILITY OF SECTIONS 514**
14 **AND 520.—Notwithstanding paragraph (1),**
15 **imposition of countermeasures under this**
16 **section shall not be deemed an exclusion**
17 **or other protestable decision under sec-**
18 **tion 514, and shall not be subject to cor-**
19 **rection under section 520.**

20 **“(3) PETITIONS SEEKING ADMINISTRATIVE**
21 **REVIEW.—Any petition seeking adminis-**
22 **trative review of any matter regarding**
23 **the Secretary of Commerce’s decision to**
24 **list a vessel under section 807 must be**
25 **brought under that section.**

1 “(d) **PENALTIES.**—In addition to any other
2 **provision of law, the Customs Service may im-**
3 **pose a civil penalty of not to exceed \$10,000**
4 **against the master of any vessel—**

5 “(1) **who submits false information in**
6 **requesting any permit to lade or unlade;**
7 **or**

8 “(2) **who attempts to, or actually does,**
9 **lade or unlade in violation of any denial**
10 **of such permit under this section.”.**

11 **SEC. 103. JUDICIAL REVIEW IN INJURIOUS PRICING AND**
12 **COUNTERMEASURE PROCEEDINGS.**

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

16 **“SEC. 516B. JUDICIAL REVIEW IN INJURIOUS PRICING AND**
17 **COUNTERMEASURE PROCEEDINGS.**

18 “(a) **REVIEW OF DETERMINATION.**—

19 “(1) **IN GENERAL.**—Within 30 days after
20 **the date of publication in the Federal**
21 **Register of—**

22 “(A)(i) **a determination by the ad-**
23 **ministering authority under section**
24 **802(c) not to initiate an investigation,**

1 “(ii) a negative determination by
2 the Commission under section 803(a)
3 as to whether there is or has been
4 reasonable indication of material in-
5 jury, threat of material injury, or ma-
6 terial retardation,

7 “(iii) a determination by the ad-
8 ministering authority to suspend or
9 revoke an injurious pricing order
10 under section 806(d) or (e),

11 “(iv) a determination by the ad-
12 ministering authority under section
13 807(c),

14 “(v) a determination by the ad-
15 ministering authority in a review
16 under section 807(d),

17 “(vi) a determination by the ad-
18 ministering authority concerning
19 whether to extend the scope or dura-
20 tion of a countermeasure order under
21 section 807(e)(3)(B)(ii),

22 “(vii) a determination by the ad-
23 ministering authority to amend a
24 countermeasure order under section
25 807(e)(6),

1 “(viii) a determination by the ad-
2 ministering authority in a review
3 under section 807(g),

4 “(ix) a determination by the ad-
5 ministering authority under section
6 807(i) to terminate proceedings, or to
7 amend or revoke a countermeasure
8 order,

9 “(x) a determination by the ad-
10 ministering authority under section
11 845(b), with respect to a matter de-
12 scribed in paragraph (1)(D) of that
13 section, or

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

17 “(ii) notice of a determination de-
18 scribed in subparagraph (B) of para-
19 graph (2),

20 “(iii) notice of implementation of
21 a determination described in sub-
22 paragraph (C) of paragraph (2), or

23 “(iv) notice of revocation of an in-
24 jurious pricing order based on a de-

1 **termination described in subpara-**
2 **graph (D) of paragraph (2),**
3 **an interested party who is a party to the**
4 **proceeding in connection with which the**
5 **matter arises may commence an action in**
6 **the United States Court of International**
7 **Trade by filing concurrently a summons**
8 **and complaint, each with the content and**
9 **in the form, manner, and style prescribed**
10 **by the rules of that court, contesting any**
11 **factual findings or legal conclusions upon**
12 **which the determination is based.**

13 **“(2) REVIEWABLE DETERMINATIONS.—**
14 **The determinations referred to in para-**
15 **graph (1)(B) are—**

16 **“(A) a final affirmative determina-**
17 **tion by the administering authority**
18 **or by the Commission under section**
19 **805, including any negative part of**
20 **such a determination (other than a**
21 **part referred to in subparagraph (B)),**

22 **“(B) a final negative determina-**
23 **tion by the administering authority**
24 **or the Commission under section 805,**

1 “(C) a determination by the ad-
2 ministering authority under section
3 845(b), with respect to a matter de-
4 scribed in paragraph (1)(A) of that
5 section, and

6 “(D) a determination by the Com-
7 mission under section 845(a) that re-
8 sults in the revocation of an injurious
9 pricing order.

10 “(3) EXCEPTION.—Notwithstanding the
11 30-day limitation imposed by paragraph
12 (1) with regard to an order described in
13 paragraph (1)(B)(i), a final affirmative de-
14 termination by the administering author-
15 ity under section 805 may be contested by
16 commencing an action, in accordance
17 with the provisions of paragraph (1),
18 within 30 days after the date of publica-
19 tion in the Federal Register of a final
20 negative determination by the Commis-
21 sion under section 805.

22 “(4) PROCEDURES AND FEES.—The pro-
23 cedures and fees set forth in chapter 169
24 of title 28, United States Code, apply to
25 an action under this section.

1 **“(b) STANDARDS OF REVIEW.—**

2 **“(1) REMEDY.—The court shall hold**
3 **unlawful any determination, finding, or**
4 **conclusion found—**

5 **“(A) in an action brought under**
6 **subparagraph (A) of subsection (a)(1),**
7 **to be arbitrary, capricious, an abuse**
8 **of discretion, or otherwise not in ac-**
9 **cordance with law, or**

10 **“(B) in an action brought under**
11 **subparagraph (B) of subsection (a)(1),**
12 **to be unsupported by substantial evi-**
13 **dence on the record, or otherwise not**
14 **in accordance with law.**

15 **“(2) RECORD FOR REVIEW.—**

16 **“(A) IN GENERAL.—For purposes of**
17 **this subsection, the record, unless**
18 **otherwise stipulated by the parties,**
19 **shall consist of—**

20 **“(i) a copy of all information**
21 **presented to or obtained by the**
22 **administering authority or the**
23 **Commission during the course of**
24 **the administrative proceeding, in-**
25 **cluding all governmental memo-**

1 randa pertaining to the case and
2 the record of ex parte meetings
3 required to be kept by section
4 843(a)(2); and

5 “(ii) a copy of the determina-
6 tion, all transcripts or records of
7 conferences or hearings, and all
8 notices published in the Federal
9 Register.

10 “(B) CONFIDENTIAL OR PRIVILEGED
11 MATERIAL.—The confidential or privi-
12 leged status accorded to any docu-
13 ments, comments, or information
14 shall be preserved in any action
15 under this section. Notwithstanding
16 the preceding sentence, the court
17 may examine, in camera, the con-
18 fidential or privileged material, and
19 may disclose such material under
20 such terms and conditions as it may
21 order.

22 “(c) STANDING.—Any interested party who
23 was a party to the proceeding under title VIII
24 shall have the right to appear and be heard
25 as a party in interest before the United States

1 **Court of International Trade in an action**
2 **under this section. The party filing the action**
3 **shall notify all such interested parties of the**
4 **filing of an action under this section, in the**
5 **form, manner, and within the time prescribed**
6 **by rules of the court.**

7 **“(d) DEFINITIONS.—For purposes of this**
8 **section:**

9 **“(1) ADMINISTERING AUTHORITY.—The**
10 **term ‘administering authority’ has the**
11 **meaning given that term in section**
12 **861(1).**

13 **“(2) COMMISSION.—The term ‘Commis-**
14 **sion’ means the United States Inter-**
15 **national Trade Commission.**

16 **“(3) INTERESTED PARTY.—The term ‘in-**
17 **terested party’ means any person de-**
18 **scribed in section 861(17).”.**

19 **(b) CONFORMING AMENDMENTS.—**

20 **(1) JURISDICTION OF THE COURT.—Sec-**
21 **tion 1581(c) of title 28, United States**
22 **Code, is amended by inserting “or 516B”**
23 **after “section 516A”.**

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

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

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

6 “(6) In any civil action under section 516B
7 of the Tariff Act of 1930, the Court of Inter-
8 national Trade may not issue injunctions or
9 any other form of equitable relief, except with
10 regard to implementation of a counter-
11 measure order under section 468 of that Act,
12 upon a proper showing that such relief is war-
13 ranted.”.

14 **TITLE II—OTHER PROVISIONS**

15 SEC. 201. EQUIPMENT AND REPAIR OF VESSELS.

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

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

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

1 performance of a specialized service (in-
2 cluding, but not limited to, ice breakers
3 and dredges), and

4 “(2) tugs of 365 kilowatts or more.

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

9 SEC. 202. EFFECT OF AGREEMENT WITH RESPECT TO PRI-
10 VATE REMEDIES.

11 No person other than the United States—

12 (1) shall have any cause of action or
13 defense under the Shipbuilding Agree-
14 ment or by virtue of congressional ap-
15 proval of the agreement, or

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

1 SEC. 203. IMPLEMENTING REGULATIONS.

2 **After the date of the enactment of this**
3 **Act, the heads of agencies with functions**
4 **under this Act and the amendments made by**
5 **this Act may issue such regulations as may be**
6 **necessary to ensure that this Act is appro-**
7 **priately implemented on the date the Ship-**
8 **building Agreement enters into force with re-**
9 **spect to the United States.**

10 SEC. 204. AMENDMENTS TO THE MERCHANT MARINE ACT,
11 1936.

12 **The Merchant Marine Act, 1936, is amend-**
13 **ed as follows:**

14 (1) Section 511(a)(2) (46 App. U.S.C.
15 1161(a)(2)) is amended by inserting after
16 “1939,” the following: “or, if the vessel is
17 a Shipbuilding Agreement vessel, con-
18 structed in a Shipbuilding Agreement
19 Party, but only with regard to moneys de-
20 posited, on or after the date on which the
21 Shipbuilding Trade Agreement Act takes
22 effect, into a construction reserve fund
23 established under subsection (b)”.

24 (2) Section 601(a) (46 App. U.S.C.
25 1171(a)) is amended by striking “, and
26 that such vessel or vessels were built in

1 the United States, or have been docu-
2 mented under the laws of the United
3 States not later than February 1, 1928, or
4 actually ordered and under construction
5 for the account of citizens of the United
6 States prior to such date” and inserting
7 “and that such vessel or vessels were
8 built in the United States, or, if the vessel
9 or vessels are Shipbuilding Agreement
10 vessels, in a Shipbuilding Agreement
11 Party”.

12 (3) Section 606(6) (46 App. U.S.C.
13 1176(6)) is amended by inserting “or, if
14 the vessel is a Shipbuilding Agreement
15 vessel, in a Shipbuilding Agreement
16 Party or in the United States” before “,
17 except in an emergency.”.

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

20 (A) Subsection (a) is amended by
21 inserting “or, if the vessel is a Ship-
22 building Agreement vessel, in a Ship-
23 building Agreement Party,” after
24 “built in the United States”.

1 **(B) Subsection (k) is amended as**
2 **follows:**

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

6 **“(A)(i) constructed in the United**
7 **States and, if reconstructed, recon-**
8 **structed in the United States or in a**
9 **Shipbuilding Agreement Party, or**

10 **“(ii) that is a Shipbuilding Agreement**
11 **vessel and is constructed in a Shipbuild-**
12 **ing Agreement Party and, if recon-**
13 **structed, is reconstructed in a Shipbuild-**
14 **ing Agreement Party or in the United**
15 **States,”.**

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

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

22 **“(ii) that is a Shipbuilding Agreement**
23 **vessel and is constructed in a Shipbuild-**
24 **ing Agreement Party and, if recon-**
25 **structed, is reconstructed in a Shipbuild-**

1 **ing Agreement Party or in the United**
2 **States, but only with regard to moneys**
3 **deposited into the fund on or after the**
4 **date on which the Shipbuilding Trade**
5 **Agreement Act takes effect,”.**

6 **(5) Section 610 (46 App. U.S.C. 1180) is**
7 **amended by striking “shall be built in a**
8 **domestic yard or shall have been docu-**
9 **mented under the laws of the United**
10 **States not later than February 1, 1928, or**
11 **actually ordered and under construction**
12 **for the account of citizens of the United**
13 **States prior to such date,” and inserting**
14 **“shall be built in the United States or, if**
15 **the vessel is a Shipbuilding Agreement**
16 **vessel, in a Shipbuilding Agreement**
17 **Party,”.**

18 **(6) Section 901(b)(1) (46 App. U.S.C.**
19 **1241(b)(1)) is amended by striking the**
20 **third sentence and inserting the follow-**
21 **ing:**

22 **“For purposes of this section, the term ‘pri-**
23 **vately owned United States-flag commercial**
24 **vessels’ shall be deemed to include—**

1 **“(A) any privately owned United**
2 **States-flag commercial vessel constructed**
3 **in the United States, and if rebuilt, re-**
4 **built in the United States or in a Ship-**
5 **building Agreement Party on or after the**
6 **date on which the Shipbuilding Trade**
7 **Agreement Act takes effect, and**

8 **“(B) any privately owned vessel con-**
9 **structed in a Shipbuilding Agreement**
10 **Party on or after the date on which the**
11 **Shipbuilding Trade Agreement Act takes**
12 **effect, and if rebuilt, rebuilt in a Ship-**
13 **building Agreement Party or in the Unit-**
14 **ed States, that is documented pursuant to**
15 **chapter 121 of title 46, United States**
16 **Code.**

17 **The term ‘privately owned United States-flag**
18 **commercial vessels’ shall also be deemed to**
19 **include any cargo vessel that so qualified pur-**
20 **suant to section 615 of this Act or this para-**
21 **graph before the date on which the Shipbuild-**
22 **ing Trade Agreement Act takes effect. The**
23 **term ‘privately owned United States-flag com-**
24 **mercial vessels’ shall not be deemed to in-**
25 **clude any liquid bulk cargo vessel that does**

1 not meet the requirements of section 3703a of
2 title 46, United States Code.”.

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

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

14 “(i) The term ‘Shipbuilding Agreement
15 Party’ means a state or separate customs ter-
16 ritory that is a Party to the Shipbuilding
17 Agreement, and with respect to which the
18 United States applies the Shipbuilding Agree-
19 ment.

20 “(j) The term ‘Shipbuilding Agreement
21 vessel’ means a vessel to which the Secretary
22 determines Article 2.1 of the Shipbuilding
23 Agreement applies.

24 “(k) The term ‘Export Credit Understand-
25 ing’ means the Understanding on Export

1 **Credits for Ships which resulted from nego-**
2 **tiations under the auspices of the Organiza-**
3 **tion for Economic Cooperation and Develop-**
4 **ment and was entered into on December 21,**
5 **1994.**

6 **“(l) The term ‘Export Credit Understand-**
7 **ing vessel’ means a vessel to which the Sec-**
8 **retary determines the Export Credit Under-**
9 **standing applies.”.**

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

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

14 **“(5) shall bear interest (exclusive of**
15 **charges for the guarantee and service**
16 **charges, if any) at rates not to exceed**
17 **such percent per annum on the unpaid**
18 **principal as the Secretary determines to**
19 **be reasonable, taking into account the**
20 **range of interest rates prevailing in the**
21 **private market for similar loans and the**
22 **risks assumed by the Secretary, except**
23 **that, with respect to Export Credit Un-**
24 **derstanding vessels, and Shipbuilding**
25 **Agreement vessels, the obligations shall**

1 **bear interest at a rate the Secretary de-**
2 **termines to be consistent with obliga-**
3 **tions of the United States under the Ex-**
4 **port Credit Understanding or the Ship-**
5 **building Agreement, as the case may be;”.**

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

8 **“(i)(1) Except as provided in paragraph**
9 **(2), the Secretary may not, with respect to—**

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

12 **“(B) the 87½ percent or less limita-**
13 **tion contained in the 1st, 2nd, 4th, or 5th**
14 **proviso to subsection (b)(2) or in section**
15 **1112(b), or**

16 **“(C) the 80 percent or less limitation**
17 **in the 3rd proviso to such subsection,**
18 **establish by rule, regulation, or procedure**
19 **any percentage within any such limitation**
20 **that is, or is intended to be, applied uniformly**
21 **to all guarantees or commitments to guaran-**
22 **tee made under this section that are subject**
23 **to the limitation.**

24 **“(2) With respect to Export Credit Under-**
25 **standing vessels and Shipbuilding Agreement**

1 vessels, the Secretary may establish by rule,
2 regulation, or procedure a uniform percent-
3 age that the Secretary determines to be con-
4 sistent with obligations of the United States
5 under the Export Credit Understanding or
6 the Shipbuilding Agreement, as the case may
7 be.”.

8 (C) Section 1104B(b) (46 App.
9 U.S.C. 1274a(b)) is amended by strik-
10 ing the period at the end and insert-
11 ing the following:

12 “, except that, with respect to Export Credit
13 Understanding vessels and Shipbuilding
14 Agreement vessels, the Secretary may estab-
15 lish by rule, regulation, or procedure a uni-
16 form percentage that the Secretary deter-
17 mines to be consistent with obligations of the
18 United States under the Export Credit Under-
19 standing or the Shipbuilding Agreement, as
20 the case may be.”.

21 SEC. 205. APPLICABILITY OF TITLE XI AMENDMENTS.

22 (a) EFFECTIVE DATE.—

23 (1) IN GENERAL.—Notwithstanding any
24 provision of the Shipbuilding Agreement
25 or the Export Credit Understanding, the

1 amendments made by paragraph (8) of
2 section 204 shall not apply with respect
3 to any commitment to guarantee made
4 under title XI of the Merchant Marine
5 Act, 1936, before January 1, 1999, with re-
6 spect to a vessel delivered—

7 (A) before January 1, 2002, or

8 (B) in the case of unusual cir-
9 cumstances to which paragraph (2)
10 applies, as soon after January 1, 2002,
11 as is practicable.

12 (2) UNUSUAL CIRCUMSTANCES.—This
13 paragraph applies in a case in which un-
14 usual circumstances beyond the control
15 of the parties concerned prevent the de-
16 livery of a vessel by January 1, 2002. As
17 used in this paragraph, the term “un-
18 usual circumstances” means acts of God
19 (other than ordinary storms or inclement
20 weather conditions), labor strikes, acts of
21 sabotage, explosions, fires, or vandalism,
22 and similar circumstances.

23 SEC. 206. WITHDRAWAL FROM THE AGREEMENT.

24 (a) WITHDRAWAL.—

1 **(1) NOTICE.—The President shall give**
2 **notice, under Article 14 of the Shipbuild-**
3 **ing Agreement, of intent of the United**
4 **States to withdraw from the Shipbuilding**
5 **Agreement, as soon as is practicable after**
6 **one or more Shipbuilding Agreement Par-**
7 **ties give notice, under such article, of in-**
8 **tent to withdraw from the Shipbuilding**
9 **Agreement, if paragraph (2) applies.**

10 **(2) TONNAGE OF NEW CONSTRUCTION IN**
11 **WITHDRAWING PARTIES.—This paragraph**
12 **applies if the combined gross tonnage of**
13 **new Shipbuilding Agreement vessels con-**
14 **structed in all Shipbuilding Agreement**
15 **Parties who have given notice to with-**
16 **draw from the Shipbuilding Agreement,**
17 **which were delivered in the calendar**
18 **year preceding the calendar year in**
19 **which the notice is given, is 15 percent or**
20 **more of the gross tonnage of new Ship-**
21 **building Agreement vessels that were**
22 **constructed in all Shipbuilding Agree-**
23 **ment Parties and were delivered in the**
24 **calendar year preceding the calendar**
25 **year in which the notice is given.**

1 **(3) TERMINATION OF WITHDRAWAL.—If a**
2 **Shipbuilding Agreement Party described**
3 **in paragraph (2) takes action to termi-**
4 **nate its withdrawal from the Shipbuild-**
5 **ing Agreement, so that paragraph (2)**
6 **would not apply if that Party had not**
7 **given the notice to withdraw, the Presi-**
8 **dent may take the necessary steps to ter-**
9 **minate the notice of withdrawal of the**
10 **United States from the Shipbuilding**
11 **Agreement.**

12 **(b) REINSTATEMENT OF LAWS.—If the Unit-**
13 **ed States withdraws from the Shipbuilding**
14 **Agreement, on the date on which such with-**
15 **drawal becomes effective, the amendments**
16 **made by section 204 shall be deemed not to**
17 **have been made, and the provisions of law**
18 **amended by section 204 shall, on and after**
19 **such date, be effective as if this Act had not**
20 **been enacted.**

21 **SEC. 207. OTHER LAWS NOT AFFECTED.**

22 **The Shipbuilding Agreement shall not af-**
23 **fect, directly or indirectly, the Merchant Ma-**
24 **rine Act, 1920, the Act of June 19, 1886 (46**
25 **U.S.C. App. 289), or any other provision of law**

1 set forth in Accompanying Note 2 to Annex II
2 to the Shipbuilding Agreement, and shall not
3 provide any mechanism to subject any pro-
4 ducer of vessels in the United States to finan-
5 cial penalties, duties, bid restrictions, unfa-
6 vorable bid preferences, or withdrawal of con-
7 cessions under the GATT 1994 or other Uru-
8 guay Round Agreements, in the competition
9 for international commercial vessel construc-
10 tion or reconstruction orders because of con-
11 struction of vessels by United States ship-
12 builders for operation in the coastwise trade
13 of the United States.

14 SEC. 208. PROTECTION OF UNITED STATES INTERESTS.

15 **Nothing in the Shipbuilding Agreement**
16 **shall be construed to prevent the United**
17 **States from taking any action which it consid-**
18 **ers necessary for the protection of essential**
19 **security interests or from invoking its sov-**
20 **ereign authority to define, for purposes of ex-**
21 **clusion from coverage under the Shipbuilding**
22 **Agreement and from any dispute or challenge**
23 **based on Annex I to the Shipbuilding Agree-**
24 **ment, “military vessel”, “military reserve ves-**
25 **sel”, or “essential security interest” on a case**

1 by case basis, as determined by the Secretary
2 of Defense.

3 SEC. 209. DEFINITIONS.

4 As used in this title—

5 (1) the terms “Shipbuilding Agree-
6 ment”, “Shipbuilding Agreement Party”,
7 “Shipbuilding Agreement Vessels”, and
8 “Export Credit Understanding” have the
9 meanings given those terms in sub-
10 sections (h), (i), (j), and (k), respectively,
11 of section 905 of the Merchant Marine
12 Act, 1936, as added by section 204(7) of
13 this Act; and

14 (2) the terms “GATT 1994” and “Uru-
15 guay Round Agreements” have the mean-
16 ings given those terms in section 2 of the
17 Uruguay Round Agreements Act.

18 **TITLE III—REVENUE OFFSET**

19 SEC. 301. PENALTIES FOR FAILURE TO DISCLOSE POSITION
20 THAT CERTAIN INTERNATIONAL SHIPPING
21 INCOME IS NOT INCLUDIBLE IN GROSS IN-
22 COME.

23 (a) IN GENERAL.—Section 883 of the Inter-
24 nal Revenue Code of 1986 is amended by add-
25 ing at the end the following new subsection:

1 **“(d) PENALTIES FOR FAILURE TO DISCLOSE**
2 **POSITION THAT CERTAIN INTERNATIONAL SHIP-**
3 **PING INCOME IS NOT INCLUDIBLE IN GROSS IN-**
4 **COME.—**

5 **“(1) IN GENERAL.—A taxpayer who,**
6 **with respect to any tax imposed by this**
7 **title, takes the position that any of its**
8 **gross income derived from the inter-**
9 **national operation of a ship or ships is**
10 **not includible in gross income by reason**
11 **of subsection (a)(1) or section 872(b)(1)**
12 **shall be entitled to such treatment only if**
13 **such position is disclosed (in such man-**
14 **ner as the Secretary may prescribe) on**
15 **the return of tax for such tax (or any**
16 **statement attached to such return).**

17 **“(2) ADDITIONAL PENALTIES FOR FAILING**
18 **TO DISCLOSE POSITION.—If a taxpayer fails**
19 **to meet the requirement of paragraph (1)**
20 **with respect to any taxable year—**

21 **“(A) the amount of the income**
22 **from the international operation of a**
23 **ship or ships—**

24 **“(i) which is from sources**
25 **without the United States, and**

1 “(ii) which is attributable to a
2 fixed place of business in the
3 United States,
4 shall be treated for purposes of this
5 title as effectively connected with the
6 conduct of a trade or business within
7 the United States, and

8 “(B) no deductions or credits shall
9 be allowed which are attributable to
10 income from the international oper-
11 ation of a ship or ships.

12 “(3) REASONABLE CAUSE EXCEPTION.—
13 This subsection shall not apply to a fail-
14 ure to disclose a position if it is shown
15 that such failure is due to reasonable
16 cause and not due to willful neglect.”

17 (b) CONFORMING AMENDMENTS.—

18 (1) Paragraph (1) of section 872(b) of
19 such Code is amended by striking “Gross
20 income” and inserting “Except as pro-
21 vided in section 883(d), gross income”.

22 (2) Paragraph (1) of section 883(a) of
23 such Code is amended by striking “Gross
24 income” and inserting “Except as pro-
25 vided in subsection (d), gross income”.

1 **(c) EFFECTIVE DATE.—**

2 **(1) IN GENERAL.—Notwithstanding sec-**
3 **tion 3, the amendments made by this sec-**
4 **tion shall apply to taxable years begin-**
5 **ning after the later of—**

6 **(A) December 31, 1996, or**

7 **(B) the date that the Shipbuilding**
8 **Agreement enters into force with re-**
9 **spect to the United States.**

10 **(2) COORDINATION WITH TREATIES.—The**
11 **amendments made by this section shall**
12 **not apply in any case where their appli-**
13 **cation would be contrary to any treaty**
14 **obligation of the United States.**

15 **(d) INFORMATION TO BE PROVIDED BY CUS-**
16 **TOMS SERVICE.—The United States Custom**
17 **Service shall provide the Secretary of the**
18 **Treasury or his delegate with such informa-**
19 **tion as may be specified by such Secretary in**
20 **order to enable such Secretary to determine**
21 **whether ships which are not registered in the**
22 **United States are engaged in transportation**
23 **to or from the United States.**