

Calendar No. 404

104TH CONGRESS
2D Session

H. R. 3074

[Report No. 104-270]

AN ACT

To amend the United States-Israel Free Trade Area Implementation Act of 1985 to provide the President with additional proclamation authority with respect to articles of the West Bank or Gaza Strip or a qualifying industrial zone.

MAY 13, 1996

Reported with an amendment and an amendment to the title

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IN THE SENATE OF THE UNITED STATES

APRIL 17, 1996

Received; read twice and referred to the Committee on Finance

MAY 13, 1996

Reported by Mr. ROTH, with an amendment and an amendment to the title

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

AN ACT

To amend the United States-Israel Free Trade Area Implementation Act of 1985 to provide the President with additional proclamation authority with respect to articles of the West Bank or Gaza Strip or a qualifying industrial zone.

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. ADDITIONAL PROCLAMATION AUTHORITY.**

4 The United States-Israel Free Trade Area Implemen-
5 tation Act of 1985 (19 U.S.C. 2112 note) is amended by
6 adding at the end the following new section:

1 **“SEC. 9. ADDITIONAL PROCLAMATION AUTHORITY.**

2 **“(a) ELIMINATION OR MODIFICATIONS OF DUTIES.—**

3 The President is authorized to proclaim elimination or
4 modification of any existing duty as the President deter-
5 mines is necessary to exempt any article from duty if—

6 **“(1)** that article is wholly the growth, product,
7 or manufacture of the West Bank, the Gaza Strip,
8 or a qualifying industrial zone or is a new or dif-
9 ferent article of commerce that has been grown, pro-
10 duced, or manufactured in the West Bank, the Gaza
11 Strip, or a qualifying industrial zone;

12 **“(2)** that article is imported directly from the
13 West Bank, the Gaza Strip, Israel, or a qualifying
14 industrial zone; and

15 **“(3)** the sum of—

16 **“(A)** the cost or value of the materials pro-
17 duced in the West Bank, the Gaza Strip, Israel,
18 or a qualifying industrial zone, plus

19 **“(B)** the direct costs of processing oper-
20 ations performed in the West Bank, the Gaza
21 Strip, Israel, or a qualifying industrial zone,

22 is not less than 35 percent of the appraised value of
23 the product at the time it is entered into the United
24 States.

25 For purposes of determining the 35 percent content re-
26 quirement contained in paragraph (3), the cost or value

1 of materials which are used in the production of an article
 2 in the West Bank, the Gaza Strip, or a qualifying indus-
 3 trial zone, and are the products of the United States, may
 4 be counted in an amount up to 15 percent of the appraised
 5 value of the article.

6 “(b) APPLICABILITY OF CERTAIN PROVISIONS OF
 7 THE AGREEMENT.—

8 “(1) NONQUALIFYING OPERATIONS.—No article
 9 shall be considered a new or different article of com-
 10 merce under this section, and no material shall be
 11 included for purposes of determining the 35 percent
 12 requirement of subsection (a)(3), by virtue of having
 13 merely undergone—

14 “(A) simple combining or packaging oper-
 15 ations, or

16 “(B) mere dilution with water or with an-
 17 other substance that does not materially alter
 18 the characteristics of the article or material.

19 “(2) REQUIREMENTS FOR NEW OR DIFFERENT
 20 ARTICLE OF COMMERCE.—For purposes of sub-
 21 section (a)(1), an article is a ‘new or different article
 22 of commerce’ if it is substantially transformed into
 23 an article having a new name, character, or use.

24 “(3) COST OR VALUE OF MATERIALS.—(A) For
 25 purposes of this section, the cost or value of mate-

1 rials produced in the West Bank, the Gaza Strip, or
2 a qualifying industrial zone includes—

3 “(i) the manufacturer’s actual cost for the
4 materials;

5 “(ii) when not included in the manufactur-
6 er’s actual cost for the materials, the freight,
7 insurance, packing, and all other costs incurred
8 in transporting the materials to the manufac-
9 turer’s plant;

10 “(iii) the actual cost of waste or spoilage,
11 less the value of recoverable scrap; and

12 “(iv) taxes or duties imposed on the mate-
13 rials by the West Bank, the Gaza Strip, or a
14 qualifying industrial zone, if such taxes or du-
15 ties are not remitted on exportation.

16 “(B) If a material is provided to the manufac-
17 turer without charge, or at less than fair market
18 value, its cost or value shall be determined by com-
19 puting the sum of—

20 “(i) all expenses incurred in the growth,
21 production, or manufacture of the material, in-
22 cluding general expenses;

23 “(ii) an amount for profit; and

1 “(iii) freight, insurance, packing, and all
2 other costs incurred in transporting the mate-
3 rial to the manufacturer’s plant.

4 If the information necessary to compute the cost or
5 value of a material is not available, the Customs
6 Service may ascertain or estimate the value thereof
7 using all reasonable methods.

8 “(4) DIRECT COSTS OF PROCESSING OPER-
9 ATIONS.—(A) For purposes of this section, the ‘di-
10 rect costs of processing operations performed in the
11 West Bank, Gaza Strip, or a qualifying industrial
12 zone’ with respect to an article are those costs either
13 directly incurred in, or which can be reasonably allo-
14 cated to, the growth, production, manufacture, or
15 assembly, of that article. Such costs include, but are
16 not limited to, the following to the extent that they
17 are includible in the appraised value of articles im-
18 ported into the United States:

19 “(i) All actual labor costs involved in the
20 growth, production, manufacture, or assembly
21 of the article, including fringe benefits, on-the-
22 job training, and costs of engineering, super-
23 visory, quality control, and similar personnel.

1 “(ii) Dies, molds, tooling, and depreciation
2 on machinery and equipment which are allocable to the article.
3

4 “(iii) Research, development, design, engineering, and blueprint costs insofar as they are
5 allocable to the article.
6

7 “(iv) Costs of inspecting and testing the
8 article.

9 “(B) Those items that are not included as direct costs of processing operations with respect to an
10 article are those which are not directly attributable
11 to the article or are not costs of manufacturing the
12 article. Such items include, but are not limited to—
13

14 “(i) profit; and

15 “(ii) general expenses of doing business
16 which are either not allocable to the article or
17 are not related to the growth, production, manufacture, or assembly of the article, such as administrative salaries, casualty and liability insurance, advertising, and salesmen’s salaries,
18 commissions, or expenses.
19
20
21

22 “(5) IMPORTED DIRECTLY.—For purposes of
23 this section—

24 “(A) articles are ‘imported directly’ if—

1 “(i) the articles are shipped directly
2 from the West Bank, the Gaza Strip, a
3 qualifying industrial zone, or Israel into
4 the United States without passing through
5 the territory of any intermediate country;
6 or

7 “(ii) if shipment is through the terri-
8 tory of an intermediate country, the arti-
9 cles in the shipment do not enter into the
10 commerce of any intermediate country and
11 the invoices, bills of lading, and other ship-
12 ping documents specify the United States
13 as the final destination; or

14 “(B) if articles are shipped through an in-
15 termediate country and the invoices and other
16 documents do not specify the United States as
17 the final destination, then the articles in the
18 shipment, upon arrival in the United States, are
19 imported directly only if they—

20 “(i) remain under the control of the
21 customs authority in an intermediate coun-
22 try;

23 “(ii) do not enter into the commerce
24 of an intermediate country except for the
25 purpose of a sale other than at retail; but

only if the articles are imported as a result of the original commercial transactions between the importer and the producer or the producer's sales agent; and

“(iii) have not been subjected to operations other than loading, unloading, or other activities necessary to preserve the article in good condition.

“(6) DOCUMENTATION REQUIRED.—An article is eligible for the duty exemption under this section only if—

“(A) the importer certifies that the article meets the conditions for the duty exemption; and

“(B) when requested by the Customs Service, the importer, manufacturer, or exporter submits a declaration setting forth all pertinent information with respect to the article, including the following:

“(i) A description of the article, quantity, numbers, and marks of packages, invoice numbers, and bills of lading.

“(ii) A description of the operations performed in the production of the article in the West Bank, the Gaza Strip, a quali-

1 fying industrial zone, or Israel and identi-
2 fication of the direct costs of processing
3 operations.

4 “(iii) A description of any materials
5 used in production of the article which are
6 wholly the growth, product, or manufac-
7 ture of the West Bank, the Gaza Strip, a
8 qualifying industrial zone, Israel or United
9 States, and a statement as to the cost or
10 value of such materials.

11 “(iv) A description of the operations
12 performed on, and a statement as to the
13 origin and cost or value of, any foreign
14 materials used in the article which are
15 claimed to have been sufficiently processed
16 in the West Bank, the Gaza Strip, a quali-
17 fying industrial zone, or Israel so as to be
18 materials produced in the West Bank, the
19 Gaza Strip, a qualifying industrial zone, or
20 Israel.

21 “(v) A description of the origin and
22 cost or value of any foreign materials used
23 in the article which have not been substan-
24 tially transformed in the West Bank, the
25 Gaza Strip, or a qualifying industrial zone.

1 “(c) SHIPMENT OF ARTICLES OF ISRAEL THROUGH
 2 WEST BANK OR GAZA STRIP.—The President is author-
 3 ized to proclaim that articles of Israel may be treated as
 4 though they were articles directly shipped from Israel for
 5 the purposes of the Agreement even if shipped to the Unit-
 6 ed States from the West Bank, the Gaza Strip, or a quali-
 7 fying industrial zone, if the articles otherwise meet the re-
 8 quirements of the Agreement.

9 “(d) TREATMENT OF COST OR VALUE OF MATE-
 10 RIALS.—The President is authorized to proclaim that the
 11 cost or value of materials produced in the West Bank, the
 12 Gaza Strip, or a qualifying industrial zone may be in-
 13 cluded in the cost or value of materials produced in Israel
 14 under section 1(c)(i) of Annex 3 of the Agreement, and
 15 the direct costs of processing operations performed in the
 16 West Bank, the Gaza Strip, or a qualifying industrial zone
 17 may be included in the direct costs of processing oper-
 18 ations performed in Israel under section 1(c)(ii) of Annex
 19 3 of the Agreement.

20 “(e) QUALIFYING INDUSTRIAL ZONE DEFINED.—
 21 For purposes of this section, a ‘qualifying industrial zone’
 22 means any area that—

23 “(1) encompasses portions of the territory of Is-
 24 rael and Jordan or Israel and Egypt;

1 “(2) has been designated by local authorities as
 2 an enclave where merchandise may enter without
 3 payment of duty or excise taxes; and
 4 “(3) has been specified by the President as a
 5 qualifying industrial zone.”.

6 **SECTION 1. TABLE OF CONTENTS.**

7 *The table of contents is as follows:*

Sec. 1. Table of contents.

TITLE I—EXTENSION OF FREE TRADE TO WEST BANK AND GAZA

Sec. 101. Additional proclamation authority.

**TITLE II—APPROVAL AND IMPLEMENTATION OF OECD
SHIPBUILDING AGREEMENT**

Subtitle A—General Provisions

Sec. 201. Short title.

Sec. 202. Approval of the Shipbuilding Agreement.

Sec. 203. Injurious pricing and countermeasures relating to shipbuilding.

Sec. 204. Enforcement of countermeasures.

Sec. 205. Judicial review in injurious pricing and countermeasure proceedings.

Subtitle B—Other Provisions

Sec. 211. Equipment and repair of vessels.

Sec. 212. Effect of agreement with respect to private remedies.

Sec. 213. Implementing regulations.

Sec. 214. Amendments to the Merchant Marine Act, 1936.

Subtitle C—Effective Date

Sec. 221. Effective date.

TITLE III—GENERALIZED SYSTEM OF PREFERENCES

Sec. 301. Short title.

Sec. 302. Generalized system of preferences.

Sec. 303. Effective date.

Sec. 304. Conforming amendments.

TITLE IV—REVENUE OFFSETS

Sec. 400. Amendment of 1986 Code.

Subtitle A—Foreign Trust Tax Compliance

Sec. 401. Improved information reporting on foreign trusts.

Sec. 402. Comparable penalties for failure to file return relating to transfers to foreign entities.

Sec. 403. Modifications of rules relating to foreign trusts having one or more United States beneficiaries.

Sec. 404. Foreign persons not to be treated as owners under grantor trust rules.

Sec. 405. Information reporting regarding foreign gifts.

Sec. 406. Modification of rules relating to foreign trusts which are not grantor trusts.

Sec. 407. Residence of trusts, etc.

Subtitle B—International Shipping Income Disclosure

Sec. 411. Penalties for failure to disclose position that certain international shipping income is not includible in gross income.

1 **TITLE I—EXTENSION OF FREE**
 2 **TRADE TO WEST BANK AND**
 3 **GAZA**

4 **SEC. 101. ADDITIONAL PROCLAMATION AUTHORITY.**

5 *The United States-Israel Free Trade Area Implemen-*
 6 *tation Act of 1985 (19 U.S.C. 2112 note) is amended by*
 7 *adding at the end the following new section:*

8 **“SEC. 9. ADDITIONAL PROCLAMATION AUTHORITY.**

9 **“(a) ELIMINATION OR MODIFICATIONS OF DUTIES.—**
 10 *The President is authorized to proclaim elimination or*
 11 *modification of any existing duty as the President deter-*
 12 *mines is necessary to exempt any article from duty if—*

13 *“(1) that article is wholly the growth, product,*
 14 *or manufacture of the West Bank, the Gaza Strip, or*
 15 *a qualifying industrial zone or is a new or different*
 16 *article of commerce that has been grown, produced, or*
 17 *manufactured in the West Bank, the Gaza Strip, or*
 18 *a qualifying industrial zone;*

1 “(2) *that article is imported directly from the*
 2 *West Bank, the Gaza Strip, Israel, or a qualifying in-*
 3 *dustrial zone; and*

4 “(3) *the sum of—*

5 “(A) *the cost or value of the materials pro-*
 6 *duced in the West Bank, the Gaza Strip, Israel,*
 7 *or a qualifying industrial zone, plus*

8 “(B) *the direct costs of processing oper-*
 9 *ations performed in the West Bank, the Gaza*
 10 *Strip, Israel, or a qualifying industrial zone,*
 11 *is not less than 35 percent of the appraised value of*
 12 *the product at the time it is entered into the United*
 13 *States.*

14 *For purposes of determining the 35 percent content require-*
 15 *ment contained in paragraph (3), the cost or value of mate-*
 16 *rials which are used in the production of an article in the*
 17 *West Bank, the Gaza Strip, or a qualifying industrial zone,*
 18 *and are the products of the United States, may be counted*
 19 *in an amount up to 15 percent of the appraised value of*
 20 *the article.*

21 “(b) *APPLICABILITY OF CERTAIN PROVISIONS OF THE*
 22 *AGREEMENT.—*

23 “(1) *NONQUALIFYING OPERATIONS.—No article*
 24 *shall be considered a new or different article of com-*
 25 *merce under this section, and no material shall be in-*

1 *cluded for purposes of determining the 35 percent re-*
2 *quirement of subsection (a)(3), by virtue of having*
3 *merely undergone—*

4 *“(A) simple combining or packaging oper-*
5 *ations, or*

6 *“(B) mere dilution with water or with an-*
7 *other substance that does not materially alter the*
8 *characteristics of the article or material.*

9 *“(2) REQUIREMENTS FOR NEW OR DIFFERENT*
10 *ARTICLE OF COMMERCE.—For purposes of subsection*
11 *(a)(1), an article is a ‘new or different article of com-*
12 *merce’ if it is substantially transformed into an arti-*
13 *cle having a new name, character, or use.*

14 *“(3) COST OR VALUE OF MATERIALS.—(A) For*
15 *purposes of this section, the cost or value of materials*
16 *produced in the West Bank, the Gaza Strip, or a*
17 *qualifying industrial zone includes—*

18 *“(i) the manufacturer’s actual cost for the*
19 *materials;*

20 *“(ii) when not included in the manufactur-*
21 *er’s actual cost for the materials, the freight, in-*
22 *surance, packing, and all other costs incurred in*
23 *transporting the materials to the manufacturer’s*
24 *plant;*

1 “(iii) the actual cost of waste or spoilage,
2 less the value of recoverable scrap; and

3 “(iv) taxes or duties imposed on the mate-
4 rials by the West Bank, the Gaza Strip, or a
5 qualifying industrial zone, if such taxes or duties
6 are not remitted on exportation.

7 “(B) If a material is provided to the manufac-
8 turer without charge, or at less than fair market
9 value, its cost or value shall be determined by com-
10 puting the sum of—

11 “(i) all expenses incurred in the growth,
12 production, or manufacture of the material, in-
13 cluding general expenses;

14 “(ii) an amount for profit; and

15 “(iii) freight, insurance, packing, and all
16 other costs incurred in transporting the material
17 to the manufacturer’s plant.

18 If the information necessary to compute the cost or
19 value of a material is not available, the Customs
20 Service may ascertain or estimate the value thereof
21 using all reasonable methods.

22 “(4) DIRECT COSTS OF PROCESSING OPER-
23 ATIONS.—(A) For purposes of this section, the ‘direct
24 costs of processing operations performed in the West
25 Bank, Gaza Strip, or a qualifying industrial zone’

1 *with respect to an article are those costs either di-*
2 *rectly incurred in, or which can be reasonably allo-*
3 *cated to, the growth, production, manufacture, or as-*
4 *sembly, of that article. Such costs include, but are not*
5 *limited to, the following to the extent that they are in-*
6 *cludible in the appraised value of articles imported*
7 *into the United States:*

8 “(i) *All actual labor costs involved in the*
9 *growth, production, manufacture, or assembly of*
10 *the article, including fringe benefits, on-the-job*
11 *training, and costs of engineering, supervisory,*
12 *quality control, and similar personnel.*

13 “(ii) *Dies, molds, tooling, and depreciation*
14 *on machinery and equipment which are allocable*
15 *to the article.*

16 “(iii) *Research, development, design, engi-*
17 *neering, and blueprint costs insofar as they are*
18 *allocable to the article.*

19 “(iv) *Costs of inspecting and testing the ar-*
20 *ticle.*

21 “(B) *Those items that are not included as direct*
22 *costs of processing operations with respect to an arti-*
23 *cle are those which are not directly attributable to the*
24 *article or are not costs of manufacturing the article.*
25 *Such items include, but are not limited to—*

1 “(i) profit; and

2 “(ii) general expenses of doing business
3 *which are either not allocable to the article or*
4 *are not related to the growth, production, manu-*
5 *facture, or assembly of the article, such as ad-*
6 *ministrative salaries, casualty and liability in-*
7 *surance, advertising, and salesmen’s salaries,*
8 *commissions, or expenses.*

9 “(5) *IMPORTED DIRECTLY.*—*For purposes of this*
10 *section—*

11 “(A) articles are ‘imported directly’ if—

12 “(i) the articles are shipped directly
13 *from the West Bank, the Gaza Strip, a*
14 *qualifying industrial zone, or Israel into the*
15 *United States without passing through the*
16 *territory of any intermediate country; or*

17 “(ii) if shipment is through the terri-
18 *tory of an intermediate country, the articles*
19 *in the shipment do not enter into the com-*
20 *merce of any intermediate country and the*
21 *invoices, bills of lading, and other shipping*
22 *documents specify the United States as the*
23 *final destination; or*

24 “(B) if articles are shipped through an in-
25 *termediate country and the invoices and other*

1 *documents do not specify the United States as*
2 *the final destination, then the articles in the*
3 *shipment, upon arrival in the United States, are*
4 *imported directly only if they—*

5 “(i) *remain under the control of the*
6 *customs authority in an intermediate coun-*
7 *try;*

8 “(ii) *do not enter into the commerce of*
9 *an intermediate country except for the pur-*
10 *pose of a sale other than at retail, but only*
11 *if the articles are imported as a result of the*
12 *original commercial transactions between*
13 *the importer and the producer or the pro-*
14 *ducer’s sales agent; and*

15 “(iii) *have not been subjected to oper-*
16 *ations other than loading, unloading, or*
17 *other activities necessary to preserve the ar-*
18 *ticle in good condition.*

19 “(6) *DOCUMENTATION REQUIRED.—An article is*
20 *eligible for the duty exemption under this section only*
21 *if—*

22 “(A) *the importer certifies that the article*
23 *meets the conditions for the duty exemption; and*

24 “(B) *when requested by the Customs Serv-*
25 *ice, the importer, manufacturer, or exporter sub-*

1 mits a declaration setting forth all pertinent in-
2 formation with respect to the article, including
3 the following:

4 “(i) A description of the article, quan-
5 tity, numbers, and marks of packages, in-
6 voice numbers, and bills of lading.

7 “(ii) A description of the operations
8 performed in the production of the article in
9 the West Bank, the Gaza Strip, a qualifying
10 industrial zone, or Israel and identification
11 of the direct costs of processing operations.

12 “(iii) A description of any materials
13 used in production of the article which are
14 wholly the growth, product, or manufacture
15 of the West Bank, the Gaza Strip, a quali-
16 fying industrial zone, Israel or United
17 States, and a statement as to the cost or
18 value of such materials.

19 “(iv) A description of the operations
20 performed on, and a statement as to the ori-
21 gin and cost or value of, any foreign mate-
22 rials used in the article which are claimed
23 to have been sufficiently processed in the
24 West Bank, the Gaza Strip, a qualifying in-
25 dustrial zone, or Israel so as to be materials

1 *produced in the West Bank, the Gaza Strip,*
 2 *a qualifying industrial zone, or Israel.*

3 “(v) *A description of the origin and*
 4 *cost or value of any foreign materials used*
 5 *in the article which have not been substan-*
 6 *tially transformed in the West Bank, the*
 7 *Gaza Strip, or a qualifying industrial zone.*

8 “(c) *SHIPMENT OF ARTICLES OF ISRAEL THROUGH*
 9 *WEST BANK OR GAZA STRIP.—The President is authorized*
 10 *to proclaim that articles of Israel may be treated as though*
 11 *they were articles directly shipped from Israel for the pur-*
 12 *poses of the Agreement even if shipped to the United States*
 13 *from the West Bank, the Gaza Strip, or a qualifying indus-*
 14 *trial zone, if the articles otherwise meet the requirements*
 15 *of the Agreement.*

16 “(d) *TREATMENT OF COST OR VALUE OF MATE-*
 17 *RIALS.—The President is authorized to proclaim that the*
 18 *cost or value of materials produced in the West Bank, the*
 19 *Gaza Strip, or a qualifying industrial zone may be in-*
 20 *cluded in the cost or value of materials produced in Israel*
 21 *under section 1(c)(i) of Annex 3 of the Agreement, and the*
 22 *direct costs of processing operations performed in the West*
 23 *Bank, the Gaza Strip, or a qualifying industrial zone may*
 24 *be included in the direct costs of processing operations per-*

1 *formed in Israel under section 1(c)(ii) of Annex 3 of the*
 2 *Agreement.*

3 “(e) *QUALIFYING INDUSTRIAL ZONE DEFINED.*—For
 4 *purposes of this section, a ‘qualifying industrial zone’*
 5 *means any area that—*

6 “(1) *encompasses portions of the territory of Is-*
 7 *rael and Jordan or Israel and Egypt;*

8 “(2) *has been designated by local authorities as*
 9 *an enclave where merchandise may enter without*
 10 *payment of duty or excise taxes; and*

11 “(3) *has been specified by the President as a*
 12 *qualifying industrial zone.”.*

13 ***TITLE II—APPROVAL AND IMPLE-***
 14 ***MENTATION OF OECD SHIP-***
 15 ***BUILDING AGREEMENT***

16 ***Subtitle A—General Provisions***

17 ***SEC. 201. SHORT TITLE.***

18 *This title may be cited as the “OECD Shipbuilding*
 19 *Agreement Act”.*

20 ***SEC. 202. APPROVAL OF THE SHIPBUILDING AGREEMENT.***

21 *The Congress approves The Agreement Respecting Nor-*
 22 *mal Competitive Conditions in the Commercial Shipbuild-*
 23 *ing and Repair Industry (hereafter in this title referred to*
 24 *as the “Shipbuilding Agreement”), a reciprocal trade agree-*
 25 *ment which resulted from negotiations under the auspices*

1 *of the Organization for Economic Cooperation and Develop-*
 2 *ment, and was entered into on December 21, 1994.*

3 **SEC. 203. INJURIOUS PRICING AND COUNTERMEASURES**
 4 **RELATING TO SHIPBUILDING.**

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—Imposition of 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—Imposition of Injuri-**
 2 **ous Pricing Charge and Coun-**
 3 **termeasures**

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

5 “(a) *BASIS FOR CHARGE.*—If—

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

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

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

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

13 *or*

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

16 “(B) *the establishment of an industry in the*

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

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

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

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

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

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

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

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

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

1 *for an ownership interest created or acquired solely*
 2 *for the purpose of providing security for a normal*
 3 *commercial loan.*

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

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

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

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

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

1 *which an investigation is initiated and pending as*
 2 *described in subsection (d)(6)(A) shall not be included*
 3 *in calculating that 6-month period.*

4 “(b) *INITIATION BY PETITION.*—

5 “(1) *PETITION REQUIREMENTS.*—

6 “(A) *IN GENERAL.*—*Except in a case in*
 7 *which subsection (d)(6) applies, an injurious*
 8 *pricing proceeding shall be initiated whenever*
 9 *an interested party, as defined in subparagraph*
 10 *(C), (D), (E), or (F) of section 861(17), files a*
 11 *petition with the administering authority, on be-*
 12 *half of an industry, which alleges the elements*
 13 *necessary for the imposition of an injurious pric-*
 14 *ing charge under section 801(a) and the elements*
 15 *required under subparagraph (B), (C), (D), or*
 16 *(E) of this paragraph, and which is accom-*
 17 *panied by information reasonably available to*
 18 *the petitioner supporting those allegations and*
 19 *identifying the transaction concerned.*

20 “(B) *PETITIONERS DESCRIBED IN SECTION*

21 *861(17)(C).*—

22 “(i) *IN GENERAL.*—*If the petitioner is*
 23 *a producer described in section 861(17)(C),*
 24 *and—*

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

10 “(II) if the vessel was sold through
11 any bidding process other than a broad
12 multiple bid and the petitioner was in-
13 vited to tender a bid on the contract at
14 issue, the petition shall include infor-
15 mation indicating that the petitioner
16 actually did so and the bid of the peti-
17 tioner substantially met the delivery
18 date and technical requirements of the
19 bid, or

20 “(III) except in a case in which
21 the vessel was sold through a broad
22 multiple bid, if there is no invitation
23 to tender a bid, the petition shall in-
24 clude information indicating that the
25 petitioner was capable of building the

1 vessel concerned and, if the petitioner
2 knew or should have known of the pro-
3 posed purchase, it made demonstrable
4 efforts to conclude a sale with the Unit-
5 ed States buyer consistent with the de-
6 livery date and technical requirements
7 of the buyer.

8 “(ii) *REBUTTABLE PRESUMPTION RE-*
9 *GARDING KNOWLEDGE OF PROPOSED PUR-*
10 *CHASE.—For purposes of clause (i)(III),*
11 *there is a rebuttable presumption that the*
12 *petitioner knew or should have known of the*
13 *proposed purchase if it is demonstrated*
14 *that—*

15 “(I) *the majority of the producers*
16 *in the industry have made efforts with*
17 *the United States buyer to conclude a*
18 *sale of the subject vessel, or*

19 “(II) *general information on the*
20 *sale was available from brokers, fin-*
21 *anciers, classification societies,*
22 *charterers, trade associations, or other*
23 *entities normally involved in ship-*
24 *building transactions with whom the*

1 *petitioner had regular contacts or deal-*
2 *ings.*

3 “(C) *PETITIONERS DESCRIBED IN SECTION*
4 *861(17)(D).—If the petitioner is an interested*
5 *party described in section 861(17)(D), the peti-*
6 *tion shall include information indicating that*
7 *members of the union or group of workers de-*
8 *scribed in that section are employed by a pro-*
9 *ducer that meets the requirements of subpara-*
10 *graph (B) of this paragraph.*

11 “(D) *PETITIONERS DESCRIBED IN SECTION*
12 *861(17)(E).—If the petitioner is an interested*
13 *party described in section 861(17)(E), the peti-*
14 *tion shall include information indicating that a*
15 *member of the association described in that sec-*
16 *tion is a producer that meets the requirements of*
17 *subparagraph (B) of this paragraph.*

18 “(E) *PETITIONERS DESCRIBED IN SECTION*
19 *861(17)(F).—If the petitioner is an interested*
20 *party described in section 861(17)(F), the peti-*
21 *tion shall include information indicating that a*
22 *member of the association described in that sec-*
23 *tion meets the requirements of subparagraph (C)*
24 *or (D) of this paragraph.*

1 “(F) *AMENDMENTS.*—*The petition may be*
 2 *amended at such time, and upon such condi-*
 3 *tions, as the administering authority and the*
 4 *Commission may permit.*

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

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

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

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

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

18 “(ii) *A petitioner to which paragraph*
 19 *(1)(B)(i)(III) applies shall—*

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

1 “(II) submit to the administering au-
2 thority a notice of intent to file a petition
3 no later than 6 months after the time that
4 the petitioner first knew or should have
5 known of the sale (unless the petition itself
6 is filed within that 6-month period).

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

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

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

23 “(2) *ACCEPTANCE OF COMMUNICATIONS.*—The
24 administering authority shall not accept any unsolic-
25 ited oral or written communication from any person

1 *other than an interested party described in section*
 2 *861(17) (C), (D), (E), or (F) before the administering*
 3 *authority makes its decision whether to initiate an*
 4 *investigation pursuant to a petition, except for in-*
 5 *quiries regarding the status of the administering*
 6 *authority's consideration of the petition or a request*
 7 *for consultation by the government of the exporting*
 8 *country.*

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

14 “(d) *PETITION DETERMINATION.—*

15 “(1) *TIME FOR INITIAL DETERMINATION.—*

16 “(A) *IN GENERAL.—Within 45 days after*
 17 *the date on which a petition is filed under sub-*
 18 *section (b), the administering authority shall,*
 19 *after examining, on the basis of sources readily*
 20 *available to the administering authority, the ac-*
 21 *curacy and adequacy of the evidence provided in*
 22 *the petition, determine whether the petition—*

23 “(i) *alleges the elements necessary for*
 24 *the imposition of an injurious pricing*
 25 *charge under section 801(a) and the ele-*

1 ments required under subsection (b)(1) (B),
 2 (C), (D), or (E), and contains information
 3 reasonably available to the petitioner sup-
 4 porting the allegations; and

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

7 “(B) CALCULATION OF 45-DAY PERIOD.—
 8 Any period in which paragraph (6)(A) applies
 9 shall not be included in calculating the 45-day
 10 period described in subparagraph (A).

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

17 “(3) NEGATIVE DETERMINATIONS.—If—
 18 “(A) the determination under clause (i) or
 19 (ii) of paragraph (1)(A) is negative, or

20 “(B) paragraph (6)(B) applies,
 21 the administering authority shall dismiss the petition,
 22 terminate the proceeding, and notify the petitioner in
 23 writing of the reasons for the determination.

24 “(4) DETERMINATION OF INDUSTRY SUPPORT.—

1 “(A) *GENERAL RULE.*—For purposes of this
2 subsection, the administering authority shall de-
3 termine that the petition has been filed by or on
4 behalf of the domestic industry, if—

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

10 “(ii) the domestic producers or workers
11 who support the petition collectively account
12 for more than 50 percent of the total capac-
13 ity to produce a like vessel of that portion
14 of the domestic industry expressing support
15 for or opposition to the petition.

16 “(B) *CERTAIN POSITIONS DISREGARDED.*—
17 In determining industry support under subpara-
18 graph (A), the administering authority shall dis-
19 regard the position of domestic producers who
20 oppose the petition, if such producers are related
21 to the foreign producer or United States buyer of
22 the subject vessel, or the domestic producer is it-
23 self the United States buyer, unless such domestic
24 producers demonstrate that their interests as do-

1 *mestic producers would be adversely affected by*
2 *the imposition of an injurious pricing charge.*

3 “(C) *POLLING THE INDUSTRY.—If the peti-*
4 *tion does not establish support of domestic pro-*
5 *ducers or workers accounting for more than 50*
6 *percent of the total capacity to produce a like*
7 *vessel—*

8 “(i) *the administering authority shall*
9 *poll the industry or rely on other informa-*
10 *tion in order to determine if there is sup-*
11 *port for the petition as required by sub-*
12 *paragraph (A), or*

13 “(ii) *if there is a large number of pro-*
14 *ducers in the industry, the administering*
15 *authority may determine industry support*
16 *for the petition by using any statistically*
17 *valid sampling method to poll the industry.*

18 “(D) *COMMENTS BY INTERESTED PAR-*
19 *TIES.—Before the administering authority makes*
20 *a determination with respect to initiating an in-*
21 *vestigation, any person who would qualify as an*
22 *interested party under section 861(17) if an in-*
23 *vestigation were initiated, may submit comments*
24 *or information on the issue of industry support.*
25 *After the administering authority makes a deter-*

1 *mination with respect to initiating an investiga-*
 2 *tion, the determination regarding industry sup-*
 3 *port shall not be reconsidered.*

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

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

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

17 “(B) *has been completed and resulted in the*
 18 *imposition of antidumping measures or a nega-*
 19 *tive determination with respect to whether the*
 20 *sale was at less than fair value or with respect*
 21 *to injury.*

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

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

4 “(2) *if the determination is affirmative, make*
 5 *available to the Commission such information as it*
 6 *may have relating to the matter under investigation,*
 7 *under such procedures as the administering authority*
 8 *and the Commission may establish to prevent disclo-*
 9 *sure, other than with the consent of the party provid-*
 10 *ing it or under protective order, of any information*
 11 *to which confidential treatment has been given by the*
 12 *administering authority.*

13 **“SEC. 803. PRELIMINARY DETERMINATIONS.**

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

16 “(1) *GENERAL RULE.—Except in the case of a*
 17 *petition dismissed by the administering authority*
 18 *under section 802(d)(3), the Commission, within the*
 19 *time specified in paragraph (2), shall determine,*
 20 *based on the information available to it at the time*
 21 *of the determination, whether there is a reasonable in-*
 22 *dication that—*

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

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

25 *or*

1 “(ii) is threatened with material in-
2 jury, or

3 “(B) the establishment of an industry in the
4 United States is or has been materially retarded,
5 by reason of the sale of the subject vessel. If the Com-
6 mission makes a negative determination under this
7 paragraph, the investigation shall be terminated.

8 “(2) *TIME FOR COMMISSION DETERMINATION.*—
9 The Commission shall make the determination de-
10 scribed in paragraph (1) within 90 days after the
11 date on which the petition is filed or, in the case of
12 an investigation initiated under section 802(a), with-
13 in 90 days after the date on which the Commission
14 receives notice from the administering authority that
15 the investigation has been initiated under such sec-
16 tion.

17 “(b) *PRELIMINARY DETERMINATION BY ADMINISTER-*
18 *ING AUTHORITY.*—

19 “(1) *PERIOD OF INJURIOUS PRICING INVESTIGA-*
20 *TION.*—

21 “(A) *IN GENERAL.*—The administering au-
22 thority shall make a determination, based upon
23 the information available to it at the time of the
24 determination, of whether there is a reasonable

1 *basis to believe or suspect that the subject vessel*
2 *was sold at less than fair value.*

3 “(B) *COST DATA USED FOR NORMAL*
4 *VALUE.—If cost data is required to determine*
5 *normal value on the basis of a sale of a foreign*
6 *like vessel that has not been delivered on or be-*
7 *fore the date on which the administering author-*
8 *ity initiates the investigation, the administering*
9 *authority shall make its determination within*
10 *160 days after the date of delivery of the foreign*
11 *like vessel.*

12 “(C) *NORMAL VALUE BASED ON CON-*
13 *STRUCTED VALUE.—If normal value is to be de-*
14 *termined on the basis of constructed value, the*
15 *administering authority shall make its deter-*
16 *mination within 160 days after the date of deliv-*
17 *ery of the subject vessel.*

18 “(D) *OTHER CASES.—In cases in which*
19 *subparagraph (B) or (C) does not apply, the ad-*
20 *ministering authority shall make its determina-*
21 *tion within 160 days after the date on which the*
22 *administering authority initiates the investiga-*
23 *tion under section 802.*

24 “(E) *AFFIRMATIVE DETERMINATION BY*
25 *COMMISSION REQUIRED.—In no event shall the*

1 *administering authority make its determination*
 2 *before an affirmative determination is made by*
 3 *the Commission under subsection (a).*

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

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

14 “(1) *IN GENERAL.*—*If—*

15 “(A) *the administering authority concludes*
 16 *that the parties concerned are cooperating and*
 17 *determines that—*

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

20 “(I) *the novelty of the issues pre-*
 21 *sented, or*

22 “(II) *the nature and extent of the*
 23 *information required, and*

24 “(ii) *additional time is necessary to*
 25 *make the preliminary determination, or*

1 “(B) a party to the investigation requests
 2 an extension and demonstrates good cause for the
 3 extension,
 4 then the administering authority may postpone the
 5 time for making its preliminary determination.

6 “(2) *LENGTH OF POSTPONEMENT.*—The prelimi-
 7 nary determination may be postponed under para-
 8 graph (1)(A) or (B) until not later than the 190th
 9 day after—

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

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

14 “(C) the date on which the administering
 15 authority initiates an investigation under sec-
 16 tion 802, in a case in which subsection (b)(1)(D)
 17 applies.

18 “(3) *NOTICE OF POSTPONEMENT.*—The admin-
 19 istering authority shall notify the parties to the inves-
 20 tigation, not later than 20 days before the date on
 21 which the preliminary determination would otherwise
 22 be required under subsection (b)(1), if it intends to
 23 postpone making the preliminary determination
 24 under paragraph (1). The notification shall include
 25 an explanation of the reasons for the postponement,

1 *and notice of the postponement shall be published in*
 2 *the Federal Register.*

3 “(d) *EFFECT OF DETERMINATION BY THE ADMIN-*
 4 *ISTERING AUTHORITY.—If the preliminary determination*
 5 *of the administering authority under subsection (b) is af-*
 6 *firmative, the administering authority shall—*

7 “(1) *determine an estimated injurious pricing*
 8 *margin, and*

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

18 “(e) *NOTICE OF DETERMINATION.—Whenever the*
 19 *Commission or the administering authority makes a deter-*
 20 *mination under this section, the Commission or the admin-*
 21 *istering authority, as the case may be, shall notify the peti-*
 22 *tioner, and other parties to the investigation, and the Com-*
 23 *mission or the administering authority (whichever is ap-*
 24 *propriate) of its determination. The administering author-*
 25 *ity shall include with such notification the facts and conclu-*

1 sions on which its determination is based. Not later than
 2 5 days after the date on which the determination is required
 3 to be made under subsection (a)(2), the Commission shall
 4 transmit to the administering authority the facts and con-
 5 clusions on which its determination is based.

6 **“SEC. 804. TERMINATION OR SUSPENSION OF INVESTIGA-**
 7 **TION.**

8 “(a) *TERMINATION OF INVESTIGATION UPON WITH-*
 9 *DRAWAL OF PETITION.—*

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

16 “(2) *LIMITATION ON TERMINATION BY COMMIS-*
 17 *SION.—*The Commission may not terminate an inves-
 18 *tigation under paragraph (1) before a preliminary*
 19 *determination is made by the administering author-*
 20 *ity under section 803(b).*

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

1 “(c) *ALTERNATE EQUIVALENT REMEDY.*—*The criteria*
 2 *set forth in subparagraphs (A) through (D) of section*
 3 *806(e)(1) shall apply to any agreement that forms the basis*
 4 *for termination of an investigation under subsection (a) or*
 5 *(b).*

6 “(d) *PROCEEDINGS BY WTO MEMBERS.*—

7 “(1) *SUSPENSION OF INVESTIGATION.*—*The ad-*
 8 *ministering authority and the Commission shall sus-*
 9 *pend an investigation under this section if a WTO*
 10 *member that is not a Shipbuilding Agreement Party*
 11 *initiates an antidumping proceeding described in sec-*
 12 *tion 861(30)(A) with respect to the sale of the subject*
 13 *vessel.*

14 “(2) *TERMINATION OF INVESTIGATION.*—*If an*
 15 *antidumping proceeding described in paragraph (1)*
 16 *is concluded by—*

17 “(A) *the imposition of antidumping meas-*
 18 *ures, or*

19 “(B) *a negative determination with respect*
 20 *to whether the sale is at less than fair value or*
 21 *with respect to injury,*
 22 *the administering authority and the Commission*
 23 *shall terminate the investigation under this section.*

24 “(3) *CONTINUATION OF INVESTIGATION.*—(A) *If*
 25 *such a proceeding—*

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

3 “(ii) is not concluded within one year from
4 the date of the initiation of the proceeding,
5 then the administering authority and the Commission
6 shall terminate the suspension and continue the inves-
7 tigation. The period in which the investigation was
8 suspended shall not be included in calculating dead-
9 lines applicable with respect to the investigation.

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

15 **“SEC. 805. FINAL DETERMINATIONS.**

16 “(a) DETERMINATIONS BY ADMINISTERING AUTHOR-
17 ITY.—

18 “(1) IN GENERAL.—Within 75 days after the
19 date of its preliminary determination under section
20 803(b), the administering authority shall make a
21 final determination of whether the vessel which is the
22 subject of the investigation has been sold in the Unit-
23 ed States at less than its fair value.

24 “(2) EXTENSION OF PERIOD FOR DETERMINA-
25 TION.—

1 “(A) *GENERAL RULE.*—*The administering*
 2 *authority may postpone making the final deter-*
 3 *mination under paragraph (1) until not later*
 4 *than 290 days after—*

5 “(i) *the date of delivery of the foreign*
 6 *like vessel, in an investigation to which sec-*
 7 *tion 803(b)(1)(B) applies,*

8 “(ii) *the date of delivery of the subject*
 9 *vessel, in an investigation to which section*
 10 *803(b)(1)(C) applies, or*

11 “(iii) *the date on which the admin-*
 12 *istering authority initiates the investigation*
 13 *under section 802, in an investigation to*
 14 *which section 803(b)(1)(D) applies.*

15 “(B) *REQUEST REQUIRED.*—*The admin-*
 16 *istering authority may apply subparagraph (A)*
 17 *if a request in writing is made by—*

18 “(i) *the producer of the subject vessel,*
 19 *in a proceeding in which the preliminary*
 20 *determination by the administering author-*
 21 *ity under section 803(b) was affirmative, or*

22 “(ii) *the petitioner, in a proceeding in*
 23 *which the preliminary determination by the*
 24 *administering authority under section*
 25 *803(b) was negative.*

1 “(3) *DE MINIMIS INJURIOUS PRICING MARGIN.*—
 2 *In making a determination under this subsection, the*
 3 *administering authority shall disregard any injurious*
 4 *pricing margin that is de minimis as defined in sec-*
 5 *tion 803(b)(2).*

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

7 “(1) *IN GENERAL.*—*The Commission shall make*
 8 *a final determination of whether—*

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

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

11 *or*

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

14 “(B) *the establishment of an industry in the*
 15 *United States is or has been materially retarded,*
 16 *by reason of the sale of the vessel with respect to*
 17 *which the administering authority has made an af-*
 18 *firmative determination under subsection (a)(1).*

19 “(2) *PERIOD FOR INJURY DETERMINATION FOL-*
 20 *LOWING AFFIRMATIVE PRELIMINARY DETERMINATION*
 21 *BY ADMINISTERING AUTHORITY.*—*If the preliminary*
 22 *determination by the administering authority under*
 23 *section 803(b) is affirmative, then the Commission*
 24 *shall make the determination required by paragraph*
 25 *(1) before the later of—*

1 “(A) the 120th day after the day on which
 2 the administering authority makes its affirma-
 3 tive preliminary determination under section
 4 803(b), or

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

8 “(3) *PERIOD FOR INJURY DETERMINATION FOL-*
 9 *LOWING NEGATIVE PRELIMINARY DETERMINATION BY*
 10 *ADMINISTERING AUTHORITY.—If the preliminary de-*
 11 *termination by the administering authority under*
 12 *section 803(b) is negative, and its final determination*
 13 *under subsection (a) is affirmative, then the final de-*
 14 *termination by the Commission under this subsection*
 15 *shall be made within 75 days after the date of that*
 16 *affirmative final determination.*

17 “(c) *EFFECT OF FINAL DETERMINATIONS.—*

18 “(1) *EFFECT OF AFFIRMATIVE DETERMINATION*
 19 *BY THE ADMINISTERING AUTHORITY.—If the deter-*
 20 *mination of the administering authority under sub-*
 21 *section (a) is affirmative, then the administering au-*
 22 *thority shall—*

23 “(A) make available to the Commission all
 24 information upon which such determination was
 25 based and which the Commission considers rel-

1 *evant to its determination, under such proce-*
 2 *dures as the administering authority and the*
 3 *Commission may establish to prevent disclosure,*
 4 *other than with the consent of the party provid-*
 5 *ing it or under protective order, of any informa-*
 6 *tion as to which confidential treatment has been*
 7 *given by the administering authority, and*

8 *“(B) calculate an injurious pricing charge*
 9 *in an amount equal to the amount by which the*
 10 *normal value exceeds the export price of the sub-*
 11 *ject vessel.*

12 *“(2) ISSUANCE OF ORDER; EFFECT OF NEGATIVE*
 13 *DETERMINATION.—If the determinations of the ad-*
 14 *ministering authority and the Commission under sub-*
 15 *sections (a)(1) and (b)(1) are affirmative, then the*
 16 *administering authority shall issue an injurious pric-*
 17 *ing order under section 806. If either of such deter-*
 18 *minations is negative, the investigation shall be ter-*
 19 *minated upon the publication of notice of that nega-*
 20 *tive determination.*

21 *“(d) PUBLICATION OF NOTICE OF DETERMINATIONS.—*
 22 *Whenever the administering authority or the Commission*
 23 *makes a determination under this section, it shall notify*
 24 *the petitioner, other parties to the investigation, and the*
 25 *other agency of its determination and of the facts and con-*

1 *clusions of law upon which the determination is based, and*
 2 *it shall publish notice of its determination in the Federal*
 3 *Register.*

4 “(e) *CORRECTION OF MINISTERIAL ERRORS.*—*The ad-*
 5 *ministering authority shall establish procedures for the cor-*
 6 *rection of ministerial errors in final determinations within*
 7 *a reasonable time after the determinations are issued under*
 8 *this section. Such procedures shall ensure opportunity for*
 9 *interested parties to present their views regarding any such*
 10 *errors. As used in this subsection, the term ‘ministerial*
 11 *error’ includes errors in addition, subtraction, or other*
 12 *arithmetic function, clerical errors resulting from inac-*
 13 *curate copying, duplication, or the like, and any other type*
 14 *of unintentional error which the administering authority*
 15 *considers ministerial.*

16 **“SEC. 806. IMPOSITION AND COLLECTION OF INJURIOUS**
 17 **PRICING CHARGE.**

18 “(a) *IN GENERAL.*—*Within 7 days after being notified*
 19 *by the Commission of an affirmative determination under*
 20 *section 805(b), the administering authority shall publish an*
 21 *order imposing an injurious pricing charge on the foreign*
 22 *producer of the subject vessel which—*

23 “(1) *directs the foreign producer of the subject*
 24 *vessel to pay to the Secretary of the Treasury, or the*
 25 *designee of the Secretary, within 180 days from the*

1 *date of publication of the order, an injurious pricing*
 2 *charge in an amount equal to the amount by which*
 3 *the normal value exceeds the export price of the sub-*
 4 *ject vessel,*

5 *“(2) includes the identity and location of the for-*
 6 *ign producer and a description of the subject vessel,*
 7 *in such detail as the administering authority deems*
 8 *necessary, and*

9 *“(3) informs the foreign producer that—*

10 *“(A) failure to pay the injurious pricing*
 11 *charge in a timely fashion may result in the im-*
 12 *position of countermeasures with respect to that*
 13 *producer under section 807,*

14 *“(B) payment made after the deadline de-*
 15 *scribed in paragraph (1) shall be subject to inter-*
 16 *est charges at the Commercial Interest Reference*
 17 *Rate (CIRR), and*

18 *“(C) the foreign producer may request an*
 19 *extension of the due date for payment under sub-*
 20 *section (b).*

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

23 *“(1) EXTENSION.—Upon request, the administer-*
 24 *ing authority may amend the order under subsection*
 25 *(a) to set a due date for payment or payments later*

1 *than the date that is 180 days from the date of publi-*
2 *cation of the order, if the administering authority de-*
3 *termines that full payment in 180 days would render*
4 *the producer insolvent or would be incompatible with*
5 *a judicially supervised reorganization. When an ex-*
6 *tended payment schedule provides for a series of par-*
7 *tial payments, the administering authority shall*
8 *specify the circumstances under which default on one*
9 *or more payments will result in the imposition of*
10 *countermeasures.*

11 *“(2) INTEREST CHARGES.—If a request is grant-*
12 *ed under paragraph (1), payments made after the*
13 *date that is 180 days from the publication of the*
14 *order shall be subject to interest charges at the CIRR.*

15 *“(c) NOTIFICATION OF ORDER.—The administering*
16 *authority shall deliver a copy of the order requesting pay-*
17 *ment to the foreign producer of the subject vessel and to*
18 *an appropriate representative of the government of the ex-*
19 *porting country.*

20 *“(d) REVOCATION OF ORDER.—The administering au-*
21 *thority—*

22 *“(1) may revoke an injurious pricing order if the*
23 *administering authority determines that producers*
24 *accounting for substantially all of the capacity to*

1 *produce a domestic like vessel have expressed a lack*
 2 *of interest in the order, and*

3 *“(2) shall revoke an injurious pricing order—*

4 *“(A) if the sale of the vessel that was the*
 5 *subject of the injurious pricing determination is*
 6 *voided,*

7 *“(B) if the injurious pricing charge is paid*
 8 *in full, including any interest accrued for late*
 9 *payment,*

10 *“(C) upon full implementation of an alter-*
 11 *native equivalent remedy described in subsection*
 12 *(e), or*

13 *“(D) if, with respect to the vessel sale that*
 14 *was at issue in the investigation that resulted in*
 15 *the injurious pricing order, an antidumping*
 16 *proceeding conducted by a WTO member who is*
 17 *not a Shipbuilding Agreement Party has been*
 18 *completed and resulted in the imposition of anti-*
 19 *dumping measures.*

20 *“(e) ALTERNATIVE EQUIVALENT REMEDY.—*

21 *“(1) AGREEMENT FOR ALTERNATE REMEDY.—*

22 *The administering authority may suspend an injuri-*
 23 *ous pricing order if the administering authority en-*
 24 *ters into an agreement with the foreign producer sub-*

1 *ject to the order on an alternative equivalent remedy,*
 2 *that the administering authority determines—*

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

5 *“(B) is in the public interest,*

6 *“(C) can be effectively monitored and en-*
 7 *forced, and*

8 *“(D) is otherwise consistent with the domes-*
 9 *tic law and international obligations of the*
 10 *United States.*

11 *“(2) PRIOR CONSULTATIONS AND SUBMISSION OF*
 12 *COMMENTS.—Before entering into an agreement*
 13 *under paragraph (1), the administering authority*
 14 *shall consult with the industry, and provide for the*
 15 *submission of comments by interested parties, with re-*
 16 *spect to the agreement.*

17 *“(3) MATERIAL VIOLATIONS OF AGREEMENT.—If*
 18 *the injurious pricing order has been suspended under*
 19 *paragraph (1), and the administering authority de-*
 20 *termines that the foreign producer concerned has ma-*
 21 *terially violated the terms of the agreement under*
 22 *paragraph (1), the administering authority shall ter-*
 23 *minate the suspension.*

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

25 *“(a) GENERAL RULE.—*

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

6 “(2) *CONTENTS OF ORDER.—The countermeasure*
 7 *order shall—*

8 “(A) *state that, as provided in section 468,*
 9 *a permit to lade or unlade passengers or mer-*
 10 *chandise may not be issued with respect to ves-*
 11 *sels contracted to be built by the foreign producer*
 12 *of the vessel with respect to which an injurious*
 13 *pricing order was issued under section 806, and*

14 “(B) *specify the scope and duration of the*
 15 *prohibition on the issuance of a permit to lade*
 16 *or unlade passengers or merchandise.*

17 “(b) *NOTICE OF INTENT TO IMPOSE COUNTER-*
 18 *MEASURES.—*

19 “(1) *GENERAL RULE.—The administering au-*
 20 *thority shall issue a notice of intent to impose coun-*
 21 *termeasures not later than 30 days before the expira-*
 22 *tion of the time for payment specified in the injurious*
 23 *pricing order (or extended payment provided for*
 24 *under section 806(b)), and shall publish the notice in*

1 *the Federal Register within 7 days after issuing the*
 2 *notice.*

3 “(2) *ELEMENTS OF THE NOTICE OF INTENT.—*
 4 *The notice of intent shall contain at least the follow-*
 5 *ing elements:*

6 “(A) *SCOPE.—A permit to lade or unlade*
 7 *passengers or merchandise may not be issued*
 8 *with respect to any vessel—*

9 “(i) *built by the foreign producer sub-*
 10 *ject to the proposed countermeasures, and*

11 “(ii) *with respect to which the material*
 12 *terms of sale are established within a period*
 13 *of 4 consecutive years beginning on the date*
 14 *that is 30 days after publication in the Fed-*
 15 *eral Register of the notice of intent de-*
 16 *scribed in paragraph (1).*

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

22 “(c) *DETERMINATION TO IMPOSE COUNTERMEASURES;*
 23 *ORDER.—*

24 “(1) *GENERAL RULE.—The administering au-*
 25 *thority shall, within the time specified in paragraph*

1 (2), issue a determination and order imposing coun-
2 termeasures.

3 “(2) *TIME FOR DETERMINATION.*—The deter-
4 mination shall be issued within 90 days after the date
5 on which the notice of intent to impose counter-
6 measures under subsection (b) is published in the
7 *Federal Register*. The administering authority shall
8 publish the determination, and the order described in
9 paragraph (4), in the *Federal Register* within 7 days
10 after issuing the final determination, and shall pro-
11 vide a copy of the determination and order to the
12 Customs Service.

13 “(3) *CONTENT OF THE DETERMINATION.*—In the
14 determination imposing countermeasures, the admin-
15 istering authority shall determine whether, in light of
16 all of the circumstances, an interested party has dem-
17 onstrated that the scope or duration of the counter-
18 measures described in subsection (b)(2) should be nar-
19 rower or shorter than the scope or duration set forth
20 in the notice of intent to impose countermeasures.

21 “(4) *ORDER.*—At the same time it issues its de-
22 termination, the administering authority shall issue
23 an order imposing countermeasures, consistent with
24 its determination under paragraph (1).

1 “(d) *ADMINISTRATIVE REVIEW OF DETERMINATION TO*
2 *IMPOSE COUNTERMEASURES.*—

3 “(1) *REQUEST FOR REVIEW.*—*Each year, in the*
4 *anniversary month of the issuance of the order impos-*
5 *ing countermeasures under subsection (c), the admin-*
6 *istering authority shall publish in the Federal Reg-*
7 *ister a notice providing that interested parties may*
8 *request—*

9 “(A) *a review of the scope or duration of the*
10 *countermeasures determined under subsection*
11 *(c)(3), and*

12 “(B) *a hearing in connection with such a*
13 *review.*

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

17 “(A) *publish notice of initiation of a review*
18 *in the Federal Register not later than 15 days*
19 *after the end of the anniversary month of the is-*
20 *suance of the order imposing countermeasures,*
21 *and*

22 “(B) *review and determine whether the re-*
23 *questing party has demonstrated that the scope*
24 *or duration of the countermeasures is excessive*
25 *in light of all of the circumstances.*

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

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

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

22 “(2) *DEADLINE FOR REQUEST FOR EXTEN-*
23 *SION.*—

24 “(A) *REQUEST FOR EXTENSION BEYOND 4*
25 *YEARS.*—*If the request seeks an extension that*

1 *would cause the scope or duration of counter-*
2 *measures to exceed 4 years, including any prior*
3 *extensions, the request for extension under para-*
4 *graph (1) shall be filed not earlier than the date*
5 *that is 15 months, and not later than the date*
6 *that is 12 months, before the date that marks the*
7 *end of the period that specifies the vessels that*
8 *fall within the scope of the order by virtue of the*
9 *establishment of material terms of sale within*
10 *that period.*

11 “(B) *OTHER REQUESTS.—If the request*
12 *seeks an extension under paragraph (1) other*
13 *than one described in subparagraph (A), the re-*
14 *quest shall be filed not earlier than the date that*
15 *is 6 months, and not later than a date that is*
16 *3 months, before the date that marks the end of*
17 *the period referred to in subparagraph (A).*

18 “(3) *DETERMINATION.—*

19 “(A) *NOTICE OF REQUEST FOR EXTEN-*
20 *SION.—If a proper request has been received*
21 *under paragraph (1), the administering author-*
22 *ity shall publish notice of initiation of an exten-*
23 *sion proceeding in the Federal Register not later*
24 *than 15 days after the applicable deadline in*
25 *paragraph (2) for requesting the extension.*

1 “(B) *PROCEDURES*.—

2 “(i) *REQUESTS FOR EXTENSION BE-*
3 *YOND 4 YEARS*.—*If paragraph (2)(A) ap-*
4 *plies to the request, the administering au-*
5 *thority shall consult with the Trade Rep-*
6 *resentative under paragraph (4).*

7 “(ii) *OTHER REQUESTS*.—*If para-*
8 *graph (2)(B) applies to the request, the ad-*
9 *ministering authority shall determine, with-*
10 *in 90 days after the date on which the no-*
11 *tice of initiation of the proceeding is pub-*
12 *lished, whether the requesting party has*
13 *demonstrated that the scope or duration of*
14 *the countermeasures is inadequate in light*
15 *of all of the circumstances. If the admin-*
16 *istering authority determines that an exten-*
17 *sion is warranted, it shall amend the coun-*
18 *termeasure order accordingly. The admin-*
19 *istering authority shall promptly publish*
20 *the determination and any amendment to*
21 *the order in the Federal Register, and shall*
22 *provide a copy of any amended order to the*
23 *Customs Service.*

24 “(4) *CONSULTATION WITH TRADE REPRESENTA-*
25 *TIVE*.—*If paragraph (3)(B)(i) applies, the admin-*

1 *istering authority shall consult with the Trade Rep-*
2 *resentative concerning whether it would be appro-*
3 *priate to request establishment of a dispute settlement*
4 *panel under the Shipbuilding Agreement for the pur-*
5 *pose of seeking authorization to extend the scope or*
6 *duration of countermeasures for a period in excess of*
7 *4 years.*

8 *“(5) DECISION NOT TO REQUEST PANEL.—If,*
9 *based on consultations under paragraph (4), the*
10 *Trade Representative decides not to request establish-*
11 *ment of a panel, the Trade Representative shall in-*
12 *form the party requesting the extension of the counter-*
13 *measures of the reasons for its decision in writing.*
14 *The decision shall not be subject to judicial review.*

15 *“(6) PANEL PROCEEDINGS.—If, based on con-*
16 *sultations under paragraph (4), the Trade Represent-*
17 *ative requests the establishment of a panel under the*
18 *Shipbuilding Agreement to authorize an extension of*
19 *the period of countermeasures, and the panel author-*
20 *izes such an extension, the administering authority*
21 *shall promptly amend the countermeasure order. The*
22 *administering authority shall publish notice of the*
23 *amendment in the Federal Register.*

24 *“(f) LIST OF VESSELS SUBJECT TO COUNTER-*
25 *MEASURES.—*

1 “(1) *GENERAL RULE.*—At least once during each
2 12-month period beginning on the anniversary date of
3 a determination to impose countermeasures under
4 this section, the administering authority shall publish
5 in the *Federal Register* a list of all delivered vessels
6 subject to countermeasures under the determination.

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

10 “(A) *The name and general description of*
11 *the vessel.*

12 “(B) *The vessel identification number.*

13 “(C) *The shipyard where the vessel was con-*
14 *structed.*

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

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

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

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

21 “(H) *Any other identifying information*
22 *available.*

23 “(3) *AMENDMENT OF LIST.*—The administering
24 authority may amend the list from time to time to re-
25 flect new information that comes to its attention and

1 *shall publish any amendments in the Federal Reg-*
 2 *ister.*

3 “(4) *SERVICE OF LIST AND AMENDMENTS.*—

4 “(A) *SERVICE OF LIST.*—*The administering*
 5 *authority shall serve a copy of the list described*
 6 *in paragraph (1) on—*

7 “(i) *the petitioner under section*
 8 *802(b),*

9 “(ii) *the United States Customs Serv-*
 10 *ice,*

11 “(iii) *the Secretariat of the Organiza-*
 12 *tion for Economic Cooperation and Devel-*
 13 *opment,*

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

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

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

18 “(B) *SERVICE OF AMENDMENTS.*—*The ad-*
 19 *ministering authority shall serve a copy of any*
 20 *amendments to the list under paragraph (3) or*
 21 *subsection (g)(3) on—*

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

1 “(ii) if the amendment affects their in-
 2 terests, the parties listed in clauses (iv), (v),
 3 and (vi) of subparagraph (A).

4 “(g) *ADMINISTRATIVE REVIEW OF LIST OF VESSELS*
 5 *SUBJECT TO COUNTERMEASURES.*—

6 “(1) *REQUEST FOR REVIEW.*—

7 “(A) *IN GENERAL.*—An interested party
 8 may request in writing a review of the list de-
 9 scribed in subsection (f)(1), including any
 10 amendments thereto, to determine whether—

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

15 “(ii) a vessel not included in the list
 16 falls within the scope of the applicable coun-
 17 termeasure order and should be added.

18 “(B) *TIME FOR MAKING REQUEST.*—Any re-
 19 quest seeking a determination described in sub-
 20 paragraph (A)(i) shall be made within 90 days
 21 after the date of publication of the applicable
 22 list.

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

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

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

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

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

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

13 “(ii) a vessel not included in the list
14 qualifies for inclusion.

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

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

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

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

16 “(2) *IF PAYMENT DATE AMENDED.*—

17 “(A) *SUSPENSION OR MODIFICATION OF*
 18 *DEADLINE.*—Subject to subparagraph (C), if the
 19 payment date under an injurious pricing order
 20 is amended under section 845, the administering
 21 authority shall, as appropriate, suspend proceed-
 22 ings or modify deadlines under this section, or
 23 suspend or amend a countermeasure order issued
 24 with respect to that injurious pricing order.

1 “(B) *DATE FOR APPLICATION OF COUNTER-*
2 *MEASURE.—In taking action under subpara-*
3 *graph (A), the administering authority shall en-*
4 *sure that countermeasures are not applied before*
5 *the date that is 30 days after publication in the*
6 *Federal Register of the amended payment date.*

7 “(C) *REINSTITUTION OF PROCEEDINGS.—*
8 *If—*

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

14 “(ii) *the administering authority de-*
15 *termines that the period of time between the*
16 *original payment date and the amended*
17 *payment date is significant for purposes of*
18 *determining the appropriate scope or dura-*
19 *tion of countermeasures,*
20 *the administering authority may, in lieu of act-*
21 *ing under subparagraph (A), reinstitute proceed-*
22 *ings under subsection (c) for purposes of issuing*
23 *a new determination under that subsection.*

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

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

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

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

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

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

20 “(1) *a vessel from another Shipbuilding Agree-*
 21 *ment Party has been sold directly or indirectly to one*
 22 *or more United States buyers at less than fair value,*
 23 *and*

1 “(2) *an industry, in the petitioning country,*
2 *producing or capable of producing a like vessel is ma-*
3 *terially injured by reason of such sale.*

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

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

16 “(1) *SALE AT LESS THAN FAIR VALUE.—The ad-*
17 *ministering authority shall determine whether the*
18 *subject vessel has been sold at less than fair value.*

19 “(2) *INJURY TO INDUSTRY.—The Commission*
20 *shall determine whether an industry in the petition-*
21 *ing country is or has been materially injured by rea-*
22 *son of the sale of the subject vessel in the United*
23 *States.*

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

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

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

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

11 “(1) order an injurious pricing charge in accord-
12 ance with section 806, and

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

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

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

24 “(2) determinations of the administering author-
25 ity under subsection (e)(2) shall be treated as deter-

1 *minations made under section 806 or 807, as the case*
 2 *may be.*

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

7 **“Subtitle B—Special Rules**

8 **“SEC. 821. EXPORT PRICE.**

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

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

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

25 “(2) *reduced by—*

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

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

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

12 **“SEC. 822. NORMAL VALUE.**

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

19 “(1) *DETERMINATION OF NORMAL VALUE.*—

20 “(A) *IN GENERAL.*—The normal value of the
 21 subject vessel shall be the price described in sub-
 22 paragraph (B), at a time reasonably correspond-
 23 ing to the time of the sale used to determine the
 24 export price under section 821(a).

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

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

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

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

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

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

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

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

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

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

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

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

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

3 “(A) *reduced by—*

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

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

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

20 “(B) *increased or decreased by the amount*
21 *of any difference (or lack thereof) between the ex-*
22 *port price and the price described in paragraph*
23 *(1)(B) (other than a difference for which allow-*
24 *ance is otherwise provided under this section)*
25 *that is established to the satisfaction of the ad-*

1 *ministering authority to be wholly or partly due*
2 *to—*

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

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

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

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

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

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

5 “(7) *ADJUSTMENTS TO CONSTRUCTED VALUE.—*
6 *Constructed value as determined under subsection (e)*
7 *may be adjusted, as appropriate, pursuant to this*
8 *subsection.*

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

10 “(1) *DETERMINATION; SALES DISREGARDED.—*
11 *Whenever the administering authority has reasonable*
12 *grounds to believe or suspect that the sale of the for-*
13 *ign like vessel under consideration for the determina-*
14 *tion of normal value has been made at a price which*
15 *represents less than the cost of production of the for-*
16 *ign like vessel, the administering authority shall de-*
17 *termine whether, in fact, such sale was made at less*
18 *than the cost of production. If the administering au-*
19 *thority determines that the sale was made at less than*
20 *the cost of production and was not at a price which*
21 *permits recovery of all costs within 5 years, such sale*
22 *may be disregarded in the determination of normal*
23 *value. Whenever such a sale is disregarded, normal*
24 *value shall be based on another sale of a foreign like*
25 *vessel in the ordinary course of trade. If no sales*

1 *made in the ordinary course of trade remain, the nor-*
2 *mal value shall be based on the constructed value of*
3 *the subject vessel.*

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

6 “(A) *REASONABLE GROUNDS TO BELIEVE*
7 *OR SUSPECT.—There are reasonable grounds to*
8 *believe or suspect that the sale of a foreign like*
9 *vessel was made at a price that is less than the*
10 *cost of production of the vessel, if an interested*
11 *party described in subparagraph (C), (D), (E),*
12 *or (F) of section 861(17) provides information,*
13 *based upon observed prices or constructed prices*
14 *or costs, that the sale of the foreign like vessel*
15 *under consideration for the determination of nor-*
16 *mal value has been made at a price which rep-*
17 *resents less than the cost of production of the ves-*
18 *sel.*

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

1 “(3) *CALCULATION OF COST OF PRODUCTION.*—

2 *For purposes of this section, the cost of production*
3 *shall be an amount equal to the sum of—*

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

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

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

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

22 “(1) *IN GENERAL.*—*If—*

23 “(A) *the subject vessel is produced in a non-*
24 *market economy country, and*

1 “(B) the administering authority finds that
2 available information does not permit the nor-
3 mal value of the subject vessel to be determined
4 under subsection (a),
5 the administering authority shall determine the nor-
6 mal value of the subject vessel on the basis of the value
7 of the factors of production utilized in producing the
8 vessel and to which shall be added an amount for gen-
9 eral expenses and profit plus the cost of expenses inci-
10 dental to placing the vessel in a condition for delivery
11 to the buyer. Except as provided in paragraph (2),
12 the valuation of the factors of production shall be
13 based on the best available information regarding the
14 values of such factors in a market economy country
15 or countries considered to be appropriate by the ad-
16 ministering authority.

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

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

24 “(B) produced in one or more market econ-
25 omy countries that are at a level of economic de-

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

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

8 “(A) *hours of labor required,*

9 “(B) *quantities of raw materials employed,*

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

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

14 “(4) *VALUATION OF FACTORS OF PRODUCTION.*—
15 *The administering authority, in valuing factors of*
16 *production under paragraph (1), shall utilize, to the*
17 *extent possible, the prices or costs of factors of produc-*
18 *tion in one or more market economy countries that*
19 *are—*

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

23 “(B) *significant producers of comparable*
24 *vessels.*

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

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

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

12 “(3) *the normal value of a foreign like vessel pro-*
13 *duced in one or more of the facilities outside the ex-*
14 *porting country is higher than the normal value of*
15 *the foreign like vessel produced in the facilities located*
16 *in the exporting country,*

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

1 *foreign like vessel produced in facilities in the exporting*
 2 *country, if such differences are demonstrated to its satisfac-*
 3 *tion.*

4 “(e) *CONSTRUCTED VALUE.*—

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

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

13 “(B)(i) *the actual amounts incurred and re-*
 14 *alized by the foreign producer of the subject ves-*
 15 *sel for selling, general, and administrative ex-*
 16 *penses, and for profits, in connection with the*
 17 *production and sale of a foreign like vessel, in*
 18 *the ordinary course of trade, in the domestic*
 19 *market of the country of origin of the subject ves-*
 20 *sel, or*

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

24 “(I) *the actual amounts incurred and*
 25 *realized by the foreign producer of the sub-*

1 *ject vessel for selling, general, and adminis-*
2 *trative expenses, and for profits, in connec-*
3 *tion with the production and sale of the*
4 *same general category of vessel in the do-*
5 *mestic market of the country of origin of the*
6 *subject vessel,*

7 *“(II) the weighted average of the actual*
8 *amounts incurred and realized by producers*
9 *in the country of origin of the subject vessel*
10 *(other than the producer of the subject ves-*
11 *sel) for selling, general, and administrative*
12 *expenses, and for profits, in connection with*
13 *the production and sale of a foreign like*
14 *vessel, in the ordinary course of trade, in*
15 *the domestic market, or*

16 *“(III) if data are not available under*
17 *subclause (I) or (II), the amounts incurred*
18 *and realized for selling, general, and ad-*
19 *ministrative expenses, and for profits, based*
20 *on any other reasonable method, except that*
21 *the amount allowed for profit may not ex-*
22 *ceed the amount normally realized by for-*
23 *eign producers (other than the producer of*
24 *the subject vessel) in connection with the*
25 *sale of vessels in the same general category*

1 of vessel as the subject vessel in the domestic
2 market of the country of origin of the sub-
3 ject vessel.

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

15 “(2) COSTS AND PROFITS BASED ON OTHER REA-
16 SONABLE METHODS.—When costs and profits are de-
17 termined under paragraph (1)(B)(ii)(III), such deter-
18 mination shall, except where otherwise appropriate,
19 be based on appropriate export sales by the producer
20 of the subject vessel or, absent such sales, to export
21 sales by other producers of a foreign like vessel or the
22 same general category of vessel as the subject vessel in
23 the country of origin of the subject vessel.

24 “(3) COSTS OF MATERIALS.—For purposes of
25 paragraph (1)(A), the cost of materials shall be deter-

1 mined without regard to any internal tax in the ex-
2 porting country imposed on such materials or their
3 disposition which are remitted or refunded upon ex-
4 portation of the subject vessel produced from such ma-
5 terials.

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

9 “(1) *COSTS.*—

10 “(A) *IN GENERAL.*—Costs shall normally be
11 calculated based on the records of the foreign
12 producer of the subject vessel, if such records are
13 kept in accordance with the generally accepted
14 accounting principles of the exporting country
15 and reasonably reflect the costs associated with
16 the production and sale of the vessel. The admin-
17 istering authority shall consider all available
18 evidence on the proper allocation of costs, includ-
19 ing that which is made available by the foreign
20 producer on a timely basis, if such allocations
21 have been historically used by the foreign pro-
22 ducer, in particular for establishing appropriate
23 amortization and depreciation periods, and al-
24 lowances for capital expenditures and other de-
25 velopment costs.

1 “(B) *NONRECURRING COSTS*.—Costs shall be
2 adjusted appropriately for those nonrecurring
3 costs that benefit current or future production, or
4 both.

5 “(C) *STARTUP COSTS*.—

6 “(i) *IN GENERAL*.—Costs shall be ad-
7 justed appropriately for circumstances in
8 which costs incurred during the time period
9 covered by the investigation are affected by
10 startup operations.

11 “(ii) *STARTUP OPERATIONS*.—Adjust-
12 ments shall be made for startup operations
13 only where—

14 “(I) a producer is using new pro-
15 duction facilities or producing a new
16 type of vessel that requires substantial
17 additional investment, and

18 “(II) production levels are limited
19 by technical factors associated with the
20 initial phase of commercial produc-
21 tion.

22 For purposes of subclause (II), the initial
23 phase of commercial production ends at the
24 end of the startup period. In determining
25 whether commercial production levels have

1 *been achieved, the administering authority*
 2 *shall consider factors unrelated to startup*
 3 *operations that might affect the volume of*
 4 *production processed, such as demand,*
 5 *seasonality, or business cycles.*

6 “(iii) *ADJUSTMENT FOR STARTUP OP-*
 7 *ERATIONS.—The adjustment for startup op-*
 8 *erations shall be made by substituting the*
 9 *unit production costs incurred with respect*
 10 *to the vessel at the end of the startup period*
 11 *for the unit production costs incurred dur-*
 12 *ing the startup period. If the startup period*
 13 *extends beyond the period of the investiga-*
 14 *tion under this title, the administering au-*
 15 *thority shall use the most recent cost of pro-*
 16 *duction data that it reasonably can obtain,*
 17 *analyze, and verify without delaying the*
 18 *timely completion of the investigation.*

19 *For purposes of this subparagraph, the startup*
 20 *period ends at the point at which the level of*
 21 *commercial production that is characteristic of*
 22 *the vessel, the producer, or the industry is*
 23 *achieved.*

24 “(D) *COSTS DUE TO EXTRAORDINARY CIR-*
 25 *CUMSTANCES NOT INCLUDED.—Costs shall not*

1 *include actual costs which are due to extraor-*
2 *dinary circumstances (including, but not limited*
3 *to, labor disputes, fire, and natural disasters)*
4 *and which are significantly over the cost in-*
5 *crease which the shipbuilder could have reason-*
6 *ably anticipated and taken into account at the*
7 *time of sale.*

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

21 “(3) *MAJOR INPUT RULE.*—*If, in the case of a*
22 *transaction between affiliated persons involving the*
23 *production by one of such persons of a major input*
24 *to the subject vessel, the administering authority has*
25 *reasonable grounds to believe or suspect that an*

1 *amount represented as the value of such input is less*
2 *than the cost of production of such input, then the ad-*
3 *ministering authority may determine the value of the*
4 *major input on the basis of the information available*
5 *regarding such cost of production, if such cost is*
6 *greater than the amount that would be determined for*
7 *such input under paragraph (2).*

8 **“SEC. 823. CURRENCY CONVERSION.**

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

18 *“(b) DATE OF SALE.—For purposes of this section,*
19 *‘date of sale’ means the date of the contract of sale or, where*
20 *appropriate, the date on which the material terms of sale*
21 *are otherwise established. If the material terms of sale are*
22 *significantly changed after such date, the date of sale is the*
23 *date of such change. In the case of such a change in the*
24 *date of sale, the administering authority shall make appro-*
25 *priate adjustments to take into account any unreasonable*

1 *effect on the injurious pricing margin due only to fluctua-*
 2 *tions in the exchange rate between the original date of sale*
 3 *and the new date of sale.*

4 **“Subtitle C—Procedures**

5 **“SEC. 841. HEARINGS.**

6 “(a) *UPON REQUEST.*—*The administering authority*
 7 *and the Commission shall each hold a hearing in the course*
 8 *of an investigation under this title, upon the request of any*
 9 *party to the investigation, before making a final determina-*
 10 *tion under section 805.*

11 “(b) *PROCEDURES.*—*Any hearing required or per-*
 12 *mitted under this title shall be conducted after notice pub-*
 13 *lished in the Federal Register, and a transcript of the hear-*
 14 *ing shall be prepared and made available to the public. The*
 15 *hearing shall not be subject to the provisions of subchapter*
 16 *II of chapter 5 of title 5, United States Code, or to section*
 17 *702 of such title.*

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

19 **AVAILABLE.**

20 “(a) *IN GENERAL.*—*If—*

21 “(1) *necessary information is not available on*
 22 *the record, or*

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

1 “(A) withholds information that has been
2 requested by the administering authority or the
3 Commission under this title,

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

8 “(C) significantly impedes a proceeding
9 under this title, or

10 “(D) provides such information but the in-
11 formation cannot be verified as provided in sec-
12 tion 844(g),

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

17 “(b) ADVERSE INFERENCES.—If the administering au-
18 thority or the Commission (as the case may be) finds that
19 an interested party has failed to cooperate by not acting
20 to the best of its ability to comply with a request for infor-
21 mation from the administering authority or the Commis-
22 sion, the administering authority or the Commission (as
23 the case may be), in reaching the applicable determination
24 under this title, may use an inference that is adverse to
25 the interests of that party in selecting from among the facts

1 *otherwise available. Such adverse inference may include re-*
 2 *liance on information derived from—*

3 *“(1) the petition, or*

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

5 *“(c) CORROBORATION OF SECONDARY INFORMA-*
 6 *TION.—When the administering authority or the Commis-*
 7 *sion relies on secondary information rather than on infor-*
 8 *mation obtained in the course of an investigation under this*
 9 *title, the administering authority and the Commission, as*
 10 *the case may be, shall, to the extent practicable, corroborate*
 11 *that information from independent sources that are reason-*
 12 *ably at their disposal.*

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

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

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

16 *The administering authority and the Commission*
 17 *shall, from time to time upon request, inform the par-*
 18 *ties to an investigation under this title of the progress*
 19 *of that investigation.*

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

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

1 “(B) the person charged with making the
 2 determination, or any person charged with mak-
 3 ing a final recommendation to that person, in
 4 connection with that proceeding,
 5 if information relating to that proceeding was pre-
 6 sented or discussed at such meeting. The record of
 7 such an *ex parte* meeting shall include the identity of
 8 the persons present at the meeting, the date, time, and
 9 place of the meeting, and a summary of the matters
 10 discussed or submitted. The record of the *ex parte*
 11 meeting shall be included in the record of the proceed-
 12 ing.

13 “(3) *SUMMARIES; NONPROPRIETARY SUBMIS-*
 14 *SIONS.—The administering authority and the Com-*
 15 *mission shall disclose—*

16 “(A) any proprietary information received
 17 in the course of a proceeding under this title if
 18 it is disclosed in a form which cannot be associ-
 19 ated with, or otherwise be used to identify, oper-
 20 ations of a particular person, and

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

24 “(4) *MAINTENANCE OF PUBLIC RECORD.—The*
 25 *administering authority and the Commission shall*

1 *maintain and make available for public inspection*
 2 *and copying a record of all information which is ob-*
 3 *tained by the administering authority or the Commis-*
 4 *sion, as the case may be, in a proceeding under this*
 5 *title to the extent that public disclosure of the infor-*
 6 *mation is not prohibited under this chapter or exempt*
 7 *from disclosure under section 552 of title 5, United*
 8 *States Code.*

9 “(b) *PROPRIETARY INFORMATION.*—

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

11 “(A) *IN GENERAL.*—*Except as provided in*
 12 *subsection (a)(4) and subsection (c), information*
 13 *submitted to the administering authority or the*
 14 *Commission which is designated as proprietary*
 15 *by the person submitting the information shall*
 16 *not be disclosed to any person without the con-*
 17 *sent of the person submitting the information,*
 18 *other than—*

19 “(i) *to an officer or employee of the ad-*
 20 *ministering authority or the Commission*
 21 *who is directly concerned with carrying out*
 22 *the investigation in connection with which*
 23 *the information is submitted or any other*
 24 *proceeding under this title covering the*
 25 *same subject vessel, or*

1 “(ii) to an officer or employee of the
2 United States Customs Service who is di-
3 rectly involved in conducting an investiga-
4 tion regarding fraud under this title.

5 “(B) *ADDITIONAL REQUIREMENTS.*—The
6 administering authority and the Commission
7 shall require that information for which propri-
8 etary treatment is requested be accompanied
9 by—

10 “(i) either—

11 “(I) a nonproprietary summary
12 in sufficient detail to permit a reason-
13 able understanding of the substance of
14 the information submitted in con-
15 fidence, or

16 “(II) a statement that the infor-
17 mation is not susceptible to summary,
18 accompanied by a statement of the rea-
19 sons in support of the contention, and

20 “(ii) either—

21 “(I) a statement which permits
22 the administering authority or the
23 Commission to release under adminis-
24 trative protective order, in accordance

1 *with subsection (c), the information*
2 *submitted in confidence, or*

3 “(II) *a statement to the admin-*
4 *istering authority or the Commission*
5 *that the business proprietary informa-*
6 *tion is of a type that should not be re-*
7 *leased under administrative protective*
8 *order.*

9 “(2) *UNWARRANTED DESIGNATION.—If the ad-*
10 *ministering authority or the Commission determines,*
11 *on the basis of the nature and extent of the informa-*
12 *tion or its availability from public sources, that des-*
13 *ignation of any information as proprietary is unwar-*
14 *ranted, then it shall notify the person who submitted*
15 *it and ask for an explanation of the reasons for the*
16 *designation. Unless that person persuades the admin-*
17 *istering authority or the Commission that the des-*
18 *ignation is warranted, or withdraws the designation,*
19 *the administering authority or the Commission, as*
20 *the case may be, shall return it to the party submit-*
21 *ting it. In a case in which the administering author-*
22 *ity or the Commission returns the information to the*
23 *person submitting it, the person may thereafter sub-*
24 *mit other material concerning the subject matter of*
25 *the returned information if the submission is made*

1 *within the time otherwise provided for submitting*
 2 *such material.*

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

5 “(1) *DISCLOSURE BY ADMINISTERING AUTHOR-*
 6 *ITY OR COMMISSION.—*

7 “(A) *IN GENERAL.—*Upon receipt of an ap-
 8 *plication (before or after receipt of the informa-*
 9 *tion requested) which describes in general terms*
 10 *the information requested and sets forth the rea-*
 11 *sons for the request, the administering authority*
 12 *or the Commission shall make all business pro-*
 13 *prietary information presented to, or obtained by*
 14 *it, during a proceeding under this title (except*
 15 *privileged information, classified information,*
 16 *and specific information of a type for which*
 17 *there is a clear and compelling need to withhold*
 18 *from disclosure) available to all interested par-*
 19 *ties who are parties to the proceeding under a*
 20 *protective order described in subparagraph (B),*
 21 *regardless of when the information is submitted*
 22 *during the proceeding. Customer names (other*
 23 *than the name of the United States buyer of the*
 24 *subject vessel) obtained during any investigation*
 25 *which requires a determination under section*

1 805(b) may not be disclosed by the administering
2 authority under protective order until either an
3 order is published under section 806(a) as a re-
4 sult of the investigation or the investigation is
5 suspended or terminated. The Commission may
6 delay disclosure of customer names (other than
7 the name of the United States buyer of the sub-
8 ject vessel) under protective order during any
9 such investigation until a reasonable time before
10 any hearing provided under section 841 is held.

11 “(B) *PROTECTIVE ORDER.*—The protective
12 order under which information is made available
13 shall contain such requirements as the admin-
14 istering authority or the Commission may deter-
15 mine by regulation to be appropriate. The ad-
16 ministering authority and the Commission shall
17 provide by regulation for such sanctions as the
18 administering authority and the Commission de-
19 termine to be appropriate, including disbarment
20 from practice before the agency.

21 “(C) *TIME LIMITATIONS ON DETERMINA-*
22 *TIONS.*—The administering authority or the
23 Commission, as the case may be, shall determine
24 whether to make information available under
25 this paragraph—

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

5 “(ii) if—

6 “(I) the person that submitted the
7 information raises objection to its re-
8 lease, or

9 “(II) the information is unusually
10 voluminous or complex,
11 not later than 30 days (10 days if the sub-
12 mission pertains to a proceeding under sec-
13 tion 803(a)) after the date on which the in-
14 formation is submitted.

15 “(D) AVAILABILITY AFTER DETERMINA-
16 TION.—If the determination under subparagraph
17 (C) is affirmative, then—

18 “(i) the business proprietary informa-
19 tion submitted to the administering author-
20 ity or the Commission on or before the date
21 of the determination shall be made avail-
22 able, subject to the terms and conditions of
23 the protective order, on such date, and

24 “(ii) the business proprietary informa-
25 tion submitted to the administering author-

1 *ity or the Commission after the date of the*
2 *determination shall be served as required by*
3 *subsection (d).*

4 “(E) *FAILURE TO DISCLOSE.*—If a person
5 *submitting information to the administering au-*
6 *thority refuses to disclose business proprietary*
7 *information which the administering authority*
8 *determines should be released under a protective*
9 *order described in subparagraph (B), the admin-*
10 *istering authority shall return the information,*
11 *and any nonconfidential summary thereof, to the*
12 *person submitting the information and summary*
13 *and shall not consider either.*

14 “(2) *DISCLOSURE UNDER COURT ORDER.*—If the
15 *administering authority or the Commission denies a*
16 *request for information under paragraph (1), then*
17 *application may be made to the United States Court*
18 *of International Trade for an order directing the ad-*
19 *ministering authority or the Commission, as the case*
20 *may be, to make the information available. After no-*
21 *tification of all parties to the investigation and after*
22 *an opportunity for a hearing on the record, the court*
23 *may issue an order, under such conditions as the*
24 *court deems appropriate, which shall not have the ef-*
25 *fect of stopping or suspending the investigation, di-*

1 *recting the administering authority or the Commis-*
2 *sion to make all or a portion of the requested infor-*
3 *mation described in the preceding sentence available*
4 *under a protective order and setting forth sanctions*
5 *for violation of such order if the court finds that,*
6 *under the standards applicable in proceedings of the*
7 *court, such an order is warranted, and that—*

8 *“(A) the administering authority or the*
9 *Commission has denied access to the information*
10 *under subsection (b)(1),*

11 *“(B) the person on whose behalf the infor-*
12 *mation is requested is an interested party who is*
13 *a party to the investigation in connection with*
14 *which the information was obtained or devel-*
15 *oped, and*

16 *“(C) the party which submitted the infor-*
17 *mation to which the request relates has been no-*
18 *tified, in advance of the hearing, of the request*
19 *made under this section and of its right to ap-*
20 *pear and be heard.*

21 *“(d) SERVICE.—Any party submitting written infor-*
22 *mation, including business proprietary information, to the*
23 *administering authority or the Commission during a pro-*
24 *ceeding shall, at the same time, serve the information upon*
25 *all interested parties who are parties to the proceeding, if*

1 *the information is covered by a protective order. The ad-*
 2 *ministering authority or the Commission shall not accept*
 3 *any such information that is not accompanied by a certifi-*
 4 *cate of service and a copy of the protective order version*
 5 *of the document containing the information. Business pro-*
 6 *prietary information shall only be served upon interested*
 7 *parties who are parties to the proceeding that are subject*
 8 *to protective order, except that a nonconfidential summary*
 9 *thereof shall be served upon all other interested parties who*
 10 *are parties to the proceeding.*

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

20 “(f) *OPPORTUNITY FOR COMMENT BY VESSEL BUY-*
 21 *ERS.*—*The administering authority and the Commission*
 22 *shall provide an opportunity for buyers of subject vessels*
 23 *to submit relevant information to the administering author-*
 24 *ity concerning a sale at less than fair value or counter-*

1 *measures, and to the Commission concerning material in-*
 2 *jury by reason of the sale of a vessel at less than fair value.*

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

5 “(1) *IN GENERAL.—Whenever the administering*
 6 *authority makes a determination under section 802*
 7 *whether to initiate an investigation, or the admin-*
 8 *istering authority or the Commission makes a pre-*
 9 *liminary determination under section 803, a final de-*
 10 *termination under section 805, a determination under*
 11 *subsection (b), (c), (d), (e)(3)(B)(ii), (g), or (i) of sec-*
 12 *tion 807, or a determination to suspend an investiga-*
 13 *tion under this title, the administering authority or*
 14 *the Commission, as the case may be, shall publish the*
 15 *facts and conclusions supporting that determination,*
 16 *and shall publish notice of that determination in the*
 17 *Federal Register.*

18 “(2) *CONTENTS OF NOTICE OR DETERMINA-*
 19 *TION.—The notice or determination published under*
 20 *paragraph (1) shall include, to the extent applica-*
 21 *ble—*

22 “(A) *in the case of a determination of the*
 23 *administering authority—*

1 “(i) the names of the United States
2 buyer and the foreign producer, and the
3 country of origin of the subject vessel,

4 “(ii) a description sufficient to identify
5 the subject vessel (including type, purpose,
6 and size),

7 “(iii) with respect to an injurious
8 pricing charge, the injurious pricing mar-
9 gin established and a full explanation of the
10 methodology used in establishing such mar-
11 gin,

12 “(iv) with respect to countermeasures,
13 the scope and duration of countermeasures
14 and, if applicable, any changes thereto, and

15 “(v) the primary reasons for the deter-
16 mination, and

17 “(B) in the case of a determination of the
18 Commission—

19 “(i) considerations relevant to the de-
20 termination of injury, and

21 “(ii) the primary reasons for the deter-
22 mination.

23 “(3) ADDITIONAL REQUIREMENTS FOR FINAL DE-
24 TERMINATIONS.—In addition to the requirements set
25 forth in paragraph (2)—

1 “(A) the administering authority shall in-
 2 clude in a final determination under section 805
 3 or 807(c) an explanation of the basis for its de-
 4 termination that addresses relevant arguments,
 5 made by interested parties who are parties to the
 6 investigation, concerning the establishment of the
 7 injurious pricing charge with respect to which
 8 the determination is made, and

9 “(B) the Commission shall include in a
 10 final determination of injury an explanation of
 11 the basis for its determination that addresses rel-
 12 evant arguments that are made by interested
 13 parties who are parties to the investigation con-
 14 cerning the effects and impact on the industry of
 15 the sale of the subject vessel.

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

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

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

24 “(1) *NOTIFICATION BY INTERESTED PARTY.*—If
 25 an interested party, promptly after receiving a re-

1 *quest from the administering authority or the Com-*
2 *mission for information, notifies the administering*
3 *authority or the Commission (as the case may be)*
4 *that such party is unable to submit the information*
5 *requested in the requested form and manner, together*
6 *with a full explanation and suggested alternative*
7 *forms in which such party is able to submit the infor-*
8 *mation, the administering authority or the Commis-*
9 *sion (as the case may be) shall consider the ability of*
10 *the interested party to submit the information in the*
11 *requested form and manner and may modify such re-*
12 *quirements to the extent necessary to avoid imposing*
13 *an unreasonable burden on that party.*

14 *“(2) ASSISTANCE TO INTERESTED PARTIES.—*
15 *The administering authority and the Commission*
16 *shall take into account any difficulties experienced by*
17 *interested parties, particularly small companies, in*
18 *supplying information requested by the administering*
19 *authority or the Commission in connection with in-*
20 *vestigations under this title, and shall provide to such*
21 *interested parties any assistance that is practicable in*
22 *supplying such information.*

23 *“(c) DEFICIENT SUBMISSIONS.—If the administering*
24 *authority or the Commission determines that a response to*
25 *a request for information under this title does not comply*

1 *with the request, the administering authority or the Com-*
2 *mission (as the case may be) shall promptly inform the per-*
3 *son submitting the response of the nature of the deficiency*
4 *and shall, to the extent practicable, provide that person with*
5 *an opportunity to remedy or explain the deficiency in light*
6 *of the time limits established for the completion of investiga-*
7 *tions or reviews under this title. If that person submits fur-*
8 *ther information in response to such deficiency and either—*

9 “(1) the administering authority or the Commis-
10 sion (as the case may be) finds that such response is
11 not satisfactory, or

12 “(2) such response is not submitted within the
13 applicable time limits,

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

17 “(d) *USE OF CERTAIN INFORMATION.—In reaching a*
18 *determination under section 803, 805, or 807, the admin-*
19 *istering authority and the Commission shall not decline to*
20 *consider information that is submitted by an interested*
21 *party and is necessary to the determination but does not*
22 *meet all the applicable requirements established by the ad-*
23 *ministering authority or the Commission if—*

24 “(1) the information is submitted by the deadline
25 established for its submission,

1 “(2) the information can be verified,

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

5 “(4) the interested party has demonstrated that
6 it acted to the best of its ability in providing the in-
7 formation and meeting the requirements established
8 by the administering authority or the Commission
9 with respect to the information, and

10 “(5) the information can be used without undue
11 difficulties.

12 “(e) NONACCEPTANCE OF SUBMISSIONS.—If the ad-
13 ministering authority or the Commission declines to accept
14 into the record any information submitted in an investiga-
15 tion under this title, it shall, to the extent practicable, pro-
16 vide to the person submitting the information a written ex-
17 planation of the reasons for not accepting the information.

18 “(f) PUBLIC COMMENT ON INFORMATION.—Informa-
19 tion that is submitted on a timely basis to the administer-
20 ing authority or the Commission during the course of a pro-
21 ceeding under this title shall be subject to comment by other
22 parties to the proceeding within such reasonable time as
23 the administering authority or the Commission shall pro-
24 vide. The administering authority and the Commission, be-
25 fore making a final determination under section 805 or 807,

1 *shall cease collecting information and shall provide the par-*
 2 *ties with a final opportunity to comment on the informa-*
 3 *tion obtained by the administering authority or the Com-*
 4 *mission (as the case may be) upon which the parties have*
 5 *not previously had an opportunity to comment. Comments*
 6 *containing new factual information shall be disregarded.*

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

10 **“SEC. 845. ADMINISTRATIVE ACTION FOLLOWING SHIP-**
 11 **BUILDING AGREEMENT PANEL REPORTS.**

12 “(a) *ACTION BY UNITED STATES INTERNATIONAL*
 13 *TRADE COMMISSION.*—

14 “(1) *ADVISORY REPORT.*—*If a dispute settlement*
 15 *panel under the Shipbuilding Agreement finds in a*
 16 *report that an action by the Commission in connec-*
 17 *tion with a particular proceeding under this title is*
 18 *not in conformity with the obligations of the United*
 19 *States under the Shipbuilding Agreement, the Trade*
 20 *Representative may request the Commission to issue*
 21 *an advisory report on whether this title permits the*
 22 *Commission to take steps in connection with the par-*
 23 *ticular proceeding that would render its action not*
 24 *inconsistent with the findings of the panel concerning*
 25 *those obligations. The Trade Representative shall no-*

1 *tify the Committee on Ways and Means of the House*
 2 *of Representatives and the Committee on Finance of*
 3 *the Senate of such request.*

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

8 “(3) *CONSULTATIONS ON REQUEST FOR COMMIS-*
 9 *SION DETERMINATION.*—*If a majority of the Commis-*
 10 *sioners issues an affirmative report under paragraph*
 11 *(1), the Trade Representatives shall consult with the*
 12 *congressional committees listed in paragraph (1) con-*
 13 *cerning the matter.*

14 “(4) *COMMISSION DETERMINATION.*—*Notwith-*
 15 *standing any other provision of this title, if a major-*
 16 *ity of the Commissioners issues an affirmative report*
 17 *under paragraph (1), the Commission, upon the writ-*
 18 *ten request of the Trade Representative, shall issue a*
 19 *determination in connection with the particular pro-*
 20 *ceeding that would render the Commission’s action*
 21 *described in paragraph (1) not inconsistent with the*
 22 *findings of the panel. The Commission shall issue its*
 23 *determination not later than 120 calendar days after*
 24 *the request from the Trade Representative is made.*

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

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

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

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

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

1 “(B) the due date for payment of an injuri-
2 ous pricing charge contained in an order issued
3 under section 806 should be amended,

4 “(C) countermeasures provided for in an
5 order issued under section 807 should be provi-
6 sionally suspended or reduced pending the final
7 decision of the panel, or

8 “(D) the scope or duration of counter-
9 measures imposed under section 807 should be
10 narrowed or shortened,

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

14 “(2) DETERMINATION BY ADMINISTERING AU-
15 THORITY.—Notwithstanding any other provision of
16 this title, the administering authority shall, in re-
17 sponse to a written request from the Trade Represent-
18 ative, issue a determination, or an amendment to or
19 suspension of an injurious pricing or countermeasure
20 order, as the case may be, in connection with the par-
21 ticular proceeding that would render the administer-
22 ing authority’s action described in paragraph (1) not
23 inconsistent with the findings of the panel.

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

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

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

12 “(4) *CONSULTATIONS BEFORE IMPLEMENTA-*
 13 *TION.*—*Before the administering authority imple-*
 14 *ments any determination, amendment, or suspension*
 15 *under paragraph (2), the Trade Representative shall*
 16 *consult with the administering authority and the con-*
 17 *gressional committees listed in subsection (a)(1) with*
 18 *respect to such determination, amendment, or suspen-*
 19 *sion.*

20 “(5) *IMPLEMENTATION OF DETERMINATION.*—
 21 *The Trade Representative may, after consulting with*
 22 *the administering authority and the congressional*
 23 *committees under paragraph (4), direct the admin-*
 24 *istering authority to implement, in whole or in part,*
 25 *the determination, amendment, or suspension made*

1 under paragraph (2). The administering authority
 2 shall publish notice of such implementation in the
 3 Federal Register.

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

12 **“Subtitle D—Definitions**

13 **“SEC. 861. DEFINITIONS.**

14 *“For purposes of this title:*

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

21 “(2) *COMMISSION.*—The term ‘Commission’
 22 means the United States International Trade Com-
 23 mission.

24 “(3) *COUNTRY.*—The term ‘country’ means a for-
 25 eign country, a political subdivision, dependent terri-

1 *tory, or possession of a foreign country and, except as*
 2 *provided in paragraph (16)(E)(iii), may not include*
 3 *an association of 2 or more foreign countries, politi-*
 4 *cal subdivisions, dependent territories, or possessions*
 5 *of countries into a customs union outside the United*
 6 *States.*

7 “(4) *INDUSTRY.*—

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

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

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

1 “(D) *RELATED PARTIES.*—(i) *In an inves-*
2 *tigation under this title, if a producer of a do-*
3 *mestic like vessel and the foreign producer, seller*
4 *(other than the foreign producer), or United*
5 *States buyer of the subject vessel are related par-*
6 *ties, or if a producer of a domestic like vessel is*
7 *also a United States buyer of the subject vessel,*
8 *the domestic producer may, in appropriate cir-*
9 *cumstances, be excluded from the industry.*

10 “(ii) *For purposes of clause (i), a domestic*
11 *producer and the foreign producer, seller, or*
12 *United States buyer shall be considered to be re-*
13 *lated parties, if—*

14 “(I) *the domestic producer directly or*
15 *indirectly controls the foreign producer, sell-*
16 *er, or United States buyer,*

17 “(II) *the foreign producer, seller, or*
18 *United States buyer directly or indirectly*
19 *controls the domestic producer,*

20 “(III) *a third party directly or indi-*
21 *rectly controls the domestic producer and*
22 *the foreign producer, seller, or United States*
23 *buyer, or*

24 “(IV) *the domestic producer and the*
25 *foreign producer, seller, or United States*

1 *buyer directly or indirectly control a third*
2 *party and there is reason to believe that the*
3 *relationship causes the domestic producer to*
4 *act differently than a nonrelated producer.*

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

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

1 *for which the necessary information can be pro-*
2 *vided.*

3 “(5) *BUYER.*—*The term ‘buyer’ means any per-*
4 *son who acquires an ownership interest in a vessel,*
5 *including by way of lease or long-term bareboat char-*
6 *ter, in conjunction with the original transfer from the*
7 *producer, either directly or indirectly, including an*
8 *individual or company which owns or controls a*
9 *buyer. There may be more than one buyer of any one*
10 *vessel.*

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

14 “(A) *A United States citizen.*

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

23 “(C) *A juridical entity that is owned or*
24 *controlled by nationals or entities described in*

1 subparagraphs (A) and (B). For the purposes of
2 this subparagraph—

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

5 “(ii) the term ‘control’ means the ac-
6 tual ability to have substantial influence on
7 corporate behavior, and control is presumed
8 to exist where there is at least a 25 percent
9 interest.

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

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

22 “(A) the terms and circumstances of the
23 transaction which conveys the interest,

24 “(B) commercial practice within the indus-
25 try,

1 “(C) *whether the vessel subject to the trans-*
 2 *action is integrated into the operations of the*
 3 *beneficiary or beneficiaries, and*

4 “(D) *whether in practice there is a likeli-*
 5 *hood that the beneficiary or beneficiaries of such*
 6 *interests will take advantage of and the risk for*
 7 *the operation of the vessel for a significant part*
 8 *of the life-time of the vessel.*

9 “(8) *VESSEL.—*

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

13 “(i) *a self-propelled seagoing vessel of*
 14 *100 gross tons or more used for transpor-*
 15 *tation of goods or persons or for perform-*
 16 *ance of a specialized service (including, but*
 17 *not limited to, ice breakers and dredgers),*
 18 *and*

19 “(ii) *a tug of 365 kilowatts or more,*
 20 *that is produced in a Shipbuilding Agreement*
 21 *Party or a country that is not a Shipbuilding*
 22 *Agreement Party and not a WTO member.*

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

1 “(i) *any fishing vessel destined for the*
2 *fishing fleet of the country in which the ves-*
3 *sel is built,*

4 “(ii) *any military vessel, and*

5 “(iii) *any vessel sold before the date*
6 *that the Shipbuilding Agreement enters into*
7 *force with respect to the United States, ex-*
8 *cept that any vessel sold after December 21,*
9 *1994, for delivery more than 5 years after*
10 *the date of the contract of sale shall be a*
11 *‘vessel’ for purposes of this title unless the*
12 *shipbuilder demonstrates to the administer-*
13 *ing authority that the extended delivery*
14 *date was for normal commercial reasons*
15 *and not to avoid applicability of this title.*

16 “(C) *SELF-PROPELLED SEAGOING VES-*
17 *SEL.—A vessel is ‘self-propelled seagoing’ if its*
18 *permanent propulsion and steering provide it all*
19 *the characteristics of self-navigability in the high*
20 *seas.*

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

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

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

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

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

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

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

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

1 “(16) *MATERIAL INJURY*.—

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

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

8 “(i) *shall consider—*

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

10 “(II) *the effect of the sale of the*
11 *subject vessel on prices in the United*
12 *States for a domestic like vessel, and*

13 “(III) *the impact of the sale of the*
14 *subject vessel on domestic producers of*
15 *a domestic like vessel, but only in the*
16 *context of production operations within*
17 *the United States, and*

18 “(ii) *may consider such other economic*
19 *factors as are relevant to the determination*
20 *regarding whether there is or has been ma-*
21 *terial injury by reason of the sale of the*
22 *subject vessel.*

23 *In the notification required under section 805(d),*
24 *the Commission shall explain its analysis of each*
25 *factor considered under clause (i), and identify*

1 *each factor considered under clause (ii) and ex-*
2 *plain in full its relevance to the determination.*

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

5 “(i) *SALE OF THE SUBJECT VESSEL.—*
6 *In evaluating the sale of the subject vessel,*
7 *the Commission shall consider whether the*
8 *sale, either in absolute terms or relative to*
9 *production or demand in the United States,*
10 *in terms of either volume or value, is or has*
11 *been significant.*

12 “(ii) *PRICE.—In evaluating the effect*
13 *of the sale of the subject vessel on prices, the*
14 *Commission shall consider whether—*

15 “(I) *there has been significant*
16 *price underselling of the subject vessel*
17 *as compared with the price of a domes-*
18 *tic like vessel, and*

19 “(II) *the effect of the sale of the*
20 *subject vessel otherwise depresses or has*
21 *depressed prices to a significant degree*
22 *or prevents or has prevented price in-*
23 *creases, which otherwise would have oc-*
24 *curred, to a significant degree.*

1 “(iii) *IMPACT ON AFFECTED DOMESTIC*
2 *INDUSTRY.—In examining the impact re-*
3 *quired to be considered under subparagraph*
4 *(B)(i)(III), the Commission shall evaluate*
5 *all relevant economic factors which have a*
6 *bearing on the state of the industry in the*
7 *United States, including, but not limited*
8 *to—*

9 “(I) *actual and potential decline*
10 *in output, sales, market share, profits,*
11 *productivity, return on investments,*
12 *and utilization of capacity,*

13 “(II) *factors affecting domestic*
14 *prices, including with regard to sales,*

15 “(III) *actual and potential nega-*
16 *tive effects on cash flow, employment,*
17 *wages, growth, ability to raise capital,*
18 *and investment,*

19 “(IV) *actual and potential nega-*
20 *tive effects on the existing development*
21 *and production efforts of the domestic*
22 *industry, including efforts to develop a*
23 *derivative or more advanced version of*
24 *a domestic like vessel, and*

1 “(V) *the magnitude of the injuri-*
2 *ous pricing margin.*

3 *The Commission shall evaluate all relevant*
4 *economic factors described in this clause*
5 *within the context of the business cycle and*
6 *conditions of competition that are distinc-*
7 *tive to the affected industry.*

8 “(D) *STANDARD FOR DETERMINATION.—*
9 *The presence or absence of any factor which the*
10 *Commission is required to evaluate under sub-*
11 *paragraph (C) shall not necessarily give decisive*
12 *guidance with respect to the determination by*
13 *the Commission of material injury.*

14 “(E) *THREAT OF MATERIAL INJURY.—*

15 “(i) *IN GENERAL.—In determining*
16 *whether an industry in the United States is*
17 *threatened with material injury by reason*
18 *of the sale of the subject vessel, the Commis-*
19 *sion shall consider, among other relevant*
20 *economic factors—*

21 “(I) *any existing unused produc-*
22 *tion capacity or imminent, substantial*
23 *increase in production capacity in the*
24 *exporting country indicating the likeli-*
25 *hood of substantially increased sales of*

1 *a foreign like vessel to United States*
2 *buyers, taking into account the avail-*
3 *ability of other export markets to ab-*
4 *sorb any additional exports,*

5 *“(II) whether the sale of a foreign*
6 *like vessel or other factors indicate the*
7 *likelihood of significant additional*
8 *sales to United States buyers,*

9 *“(III) whether sale of the subject*
10 *vessel or sale of a foreign like vessel by*
11 *the foreign producer are at prices that*
12 *are likely to have a significant depress-*
13 *ing or suppressing effect on domestic*
14 *prices, and are likely to increase de-*
15 *mand for further sales,*

16 *“(IV) the potential for product-*
17 *shifting if production facilities in the*
18 *exporting country, which can presently*
19 *be used to produce a foreign like vessel*
20 *or could be adapted in a timely man-*
21 *ner to produce a foreign like vessel, are*
22 *currently being used to produce other*
23 *types of vessels,*

24 *“(V) the actual and potential neg-*
25 *ative effects on the existing develop-*

1 *ment and production efforts of the do-*
 2 *mestic industry, including efforts to*
 3 *develop a derivative or more advanced*
 4 *version of a domestic like vessel, and*

5 *“(VI) any other demonstrable ad-*
 6 *verse trends that indicate the prob-*
 7 *ability that there is likely to be mate-*
 8 *rial injury by reason of the sale of the*
 9 *subject vessel.*

10 *“(ii) BASIS FOR DETERMINATION.—*
 11 *The Commission shall consider the factors*
 12 *set forth in clause (i) as a whole. The pres-*
 13 *ence or absence of any factor which the*
 14 *Commission is required to consider under*
 15 *clause (i) shall not necessarily give decisive*
 16 *guidance with respect to the determination.*
 17 *Such a determination may not be made on*
 18 *the basis of mere conjecture or supposition.*

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

21 *“(I) IN GENERAL.—The Commis-*
 22 *sion shall consider whether injurious*
 23 *pricing in the markets of foreign coun-*
 24 *tries (as evidenced by injurious pricing*
 25 *findings or injurious pricing remedies*

1 *of other Shipbuilding Agreement Par-*
 2 *ties, or antidumping determinations of,*
 3 *or measures imposed by, other coun-*
 4 *tries, against a like vessel produced by*
 5 *the producer under investigation) sug-*
 6 *gests a threat of material injury to the*
 7 *domestic industry. In the course of its*
 8 *investigation, the Commission shall re-*
 9 *quest information from the foreign pro-*
 10 *ducer or United States buyer concern-*
 11 *ing this issue.*

12 “(II) *EUROPEAN COMMUNITIES.*—

13 *For purposes of this clause, the Euro-*
 14 *pean Communities as a whole shall be*
 15 *treated as a single foreign country.*

16 “(F) *CUMULATION FOR DETERMINING MA-*
 17 *TERIAL INJURY.*—

18 “(i) *IN GENERAL.*—*For purposes of*
 19 *clauses (i) and (ii) of subparagraph (C),*
 20 *and subject to clause (ii) of this subpara-*
 21 *graph, the Commission shall cumulatively*
 22 *assess the effects of sales of foreign like ves-*
 23 *sels from all foreign producers with respect*
 24 *to which—*

1 “(I) petitions were filed under sec-
2 tion 802(b) on the same day,

3 “(II) investigations were initiated
4 under section 802(a) on the same day,
5 or

6 “(III) petitions were filed under
7 section 802(b) and investigations were
8 initiated under section 802(a) on the
9 same day,

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

14 “(ii) *EXCEPTIONS.*—The Commission
15 shall not cumulatively assess the effects of
16 sales under clause (i)—

17 “(I) with respect to which the ad-
18 ministering authority has made a pre-
19 liminary negative determination, un-
20 less the administering authority subse-
21 quently made a final affirmative deter-
22 mination with respect to those sales be-
23 fore the Commission’s final determina-
24 tion is made, or

1 “(II) from any producer with re-
2 spect to which the investigation has
3 been terminated.

4 “(iii) RECORDS IN FINAL INVESTIGA-
5 TIONS.—In each final determination in
6 which it cumulatively assesses the effects of
7 sales under clause (i), the Commission may
8 make its determinations based on the record
9 compiled in the first investigation in which
10 it makes a final determination, except that
11 when the administering authority issues its
12 final determination in a subsequently com-
13 pleted investigation, the Commission shall
14 permit the parties in the subsequent inves-
15 tigation to submit comments concerning the
16 significance of the administering authority’s
17 final determination, and shall include such
18 comments and the administering authority’s
19 final determination in the record for the
20 subsequent investigation.

21 “(G) CUMULATION FOR DETERMINING
22 THREAT OF MATERIAL INJURY.—To the extent
23 practicable and subject to subparagraph (F)(ii),
24 for purposes of clause (i) (II) and (III) of sub-
25 paragraph (E), the Commission may cumula-

1 *tively assess the effects of sales of like vessels from*
 2 *all countries with respect to which—*

3 *“(i) petitions were filed under section*
 4 *802(b) on the same day,*

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

7 *“(iii) petitions were filed under section*
 8 *802(b) and investigations were initiated*
 9 *under section 802(a) on the same day,*
 10 *if, with respect to such vessels, the foreign pro-*
 11 *ducers compete with each other and with produc-*
 12 *ers of a domestic like vessel in the United States*
 13 *market.*

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

16 *“(A)(i) the foreign producer, seller (other*
 17 *than the foreign producer), and the United*
 18 *States buyer of the subject vessel, or*

19 *“(ii) a trade or business association a ma-*
 20 *jority of the members of which are the foreign*
 21 *producer, seller, or United States buyer of the*
 22 *subject vessel,*

23 *“(B) the government of the country in*
 24 *which the subject vessel is produced or manufac-*
 25 *tured,*

1 “(C) a producer that is a member of an in-
2 dustry,

3 “(D) a certified union or recognized union
4 or group of workers which is representative of an
5 industry,

6 “(E) a trade or business association a ma-
7 jority of whose members are producers in an in-
8 dustry,

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

12 “(G) for purposes of section 807, a pur-
13 chaser who, after the effective date of an order is-
14 sued under that section, entered into a contract
15 of sale with the foreign producer that is subject
16 to the order.

17 “(18) *AFFIRMATIVE DETERMINATIONS BY DI-*
18 *VIDED COMMISSION.—If the Commissioners voting on*
19 *a determination by the Commission are evenly di-*
20 *vided as to whether the determination should be af-*
21 *firmative or negative, the Commission shall be deemed*
22 *to have made an affirmative determination. For the*
23 *purpose of applying this paragraph when the issue*
24 *before the Commission is to determine whether there*
25 *is or has been—*

1 “(A) *material injury to an industry in the*
 2 *United States,*

3 “(B) *threat of material injury to such an*
 4 *industry, or*

5 “(C) *material retardation of the establish-*
 6 *ment of an industry in the United States,*

7 *by reason of the sale of the subject vessel, an affirma-*
 8 *tive vote on any of the issues shall be treated as a vote*
 9 *that the determination should be affirmative.*

10 “(19) *ORDINARY COURSE OF TRADE.—The term*
 11 *‘ordinary course of trade’ means the conditions and*
 12 *practices which, for a reasonable time before the sale*
 13 *of the subject vessel, have been normal in the ship-*
 14 *building industry with respect to a like vessel. The*
 15 *administering authority shall consider the following*
 16 *sales and transactions, among others, to be outside the*
 17 *ordinary course of trade:*

18 “(A) *Sales disregarded under section*
 19 *822(b)(1).*

20 “(B) *Transactions disregarded under sec-*
 21 *tion 822(f)(2).*

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

23 “(A) *IN GENERAL.—The term ‘nonmarket*
 24 *economy country’ means any foreign country*
 25 *that the administering authority determines does*

1 *not operate on market principles of cost or pric-*
2 *ing structures, so that sales of vessels in such*
3 *country do not reflect the fair value of the vessels.*

4 “(B) *FACTORS TO BE CONSIDERED.—In*
5 *making determinations under subparagraph (A)*
6 *the administering authority shall take into ac-*
7 *count—*

8 “(i) *the extent to which the currency of*
9 *the foreign country is convertible into the*
10 *currency of other countries,*

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

14 “(iii) *the extent to which joint ventures*
15 *or other investments by firms of other for-*
16 *ign countries are permitted in the foreign*
17 *country,*

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

20 “(v) *the extent of government control*
21 *over the allocation of resources and over the*
22 *price and output decisions of enterprises,*
23 *and*

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

1 “(C) *DETERMINATION IN EFFECT.*—

2 “(i) *Any determination that a foreign*
 3 *country is a nonmarket economy country*
 4 *shall remain in effect until revoked by the*
 5 *administering authority.*

6 “(ii) *The administering authority may*
 7 *make a determination under subparagraph*
 8 *(A) with respect to any foreign country at*
 9 *any time.*

10 “(D) *DETERMINATIONS NOT IN ISSUE.*—

11 *Notwithstanding any other provision of law, any*
 12 *determination made by the administering au-*
 13 *thority under subparagraph (A) shall not be sub-*
 14 *ject to judicial review in any investigation con-*
 15 *ducted under subtitle A.*

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

23 “(22) *SHIPBUILDING AGREEMENT PARTY.*—*The*
 24 *term ‘Shipbuilding Agreement Party’ means a state*
 25 *or separate customs territory that is a Party to the*

1 *Shipbuilding Agreement, and with respect to which*
2 *the United States applies the Shipbuilding Agree-*
3 *ment.*

4 “(23) *WTO AGREEMENT.*—*The term ‘WTO*
5 *Agreement’ means the Agreement defined in section*
6 *2(9) of the Uruguay Round Agreements Act.*

7 “(24) *WTO MEMBER.*—*The term ‘WTO member’*
8 *means a state, or separate customs territory (within*
9 *the meaning of Article XII of the WTO Agreement),*
10 *with respect to which the United States applies the*
11 *WTO Agreement.*

12 “(25) *TRADE REPRESENTATIVE.*—*The term*
13 *‘Trade Representative’ means the United States Trade*
14 *Representative.*

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

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

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

23 “(C) *Partners.*

24 “(D) *Employer and employee.*

1 “(E) Any person directly or indirectly own-
 2 ing, controlling, or holding with power to vote,
 3 5 percent or more of the outstanding voting stock
 4 or shares of any organization, and such organi-
 5 zation.

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

9 “(G) Any person who controls any other
 10 person, and such other person.

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

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

18 “(28) *INJURIOUS PRICING MARGIN.*—

19 “(A) *IN GENERAL.*—*The term ‘injurious*
 20 *pricing margin’ means the amount by which the*
 21 *normal value exceeds the export price of the sub-*
 22 *ject vessel.*

23 “(B) *MAGNITUDE OF THE INJURIOUS PRIC-*
 24 *ING MARGIN.*—*The magnitude of the injurious*

pricing margin used by the Commission shall
be—

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

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

“(29) *COMMERCIAL INTEREST REFERENCE RATE.*—The term ‘Commercial Interest Reference Rate’ or ‘CIRR’ means an interest rate that the administering authority determines to be consistent with Annex III, and appendices and notes thereto, of the Understanding on Export Credits for Ships, resulting from negotiations under the auspices of the Organiza-

1 *tion for Economic Cooperation, and entered into on*
 2 *December 21, 1994.*

3 “(30) *ANTIDUMPING.*—

4 “(A) *WTO MEMBERS.*—*In the case of a*
 5 *WTO member, the term ‘antidumping’ refers to*
 6 *action taken pursuant to the Agreement on Im-*
 7 *plementation of Article VI of the General Agree-*
 8 *ment on Tariffs and Trade 1994.*

9 “(B) *OTHER CASES.*—*In the case of any*
 10 *country that is not a WTO member, the term*
 11 *‘antidumping’ refers to action taken by the coun-*
 12 *try against the sale of a vessel at less than fair*
 13 *value that is comparable to action described in*
 14 *subparagraph (A).*

15 “(31) *BROAD MULTIPLE BID.*—*The term ‘broad*
 16 *multiple bid’ means a bid in which the proposed*
 17 *buyer extends an invitation to bid to at least all the*
 18 *producers in the industry known by the buyer to be*
 19 *capable of building the subject vessel.”.*

20 **SEC. 204. ENFORCEMENT OF COUNTERMEASURES.**

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

1 **“SEC. 468. SHIPBUILDING AGREEMENT COUNTER-**
2 **MEASURES.**

3 “(a) *IN GENERAL.*—Notwithstanding any other provi-
4 sion of law, upon receiving from the Secretary of Commerce
5 a list of vessels subject to countermeasures under section
6 807, the Customs Service shall deny any request for a per-
7 mit to lade or unlade passengers, merchandise, or baggage
8 from or onto those vessels so listed.

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

11 “(1) *To unlade any United States citizen or per-*
12 *manent legal resident alien from a vessel included in*
13 *the list described in subsection (a), or to unlade any*
14 *refugee or any alien who would otherwise be eligible*
15 *to apply for asylum and withholding of deportation*
16 *under the Immigration and Nationality Act.*

17 “(2) *To lade or unlade any crewmember of such*
18 *vessel.*

19 “(3) *To lade or unlade coal and other fuel sup-*
20 *plies (for the operation of the listed vessel), ships’*
21 *stores, sea stores, and the legitimate equipment of*
22 *such vessel.*

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

25 “(5) *To lade or unlade such other merchandise,*
26 *baggage, or passenger as the Customs Service shall de-*

1 *termine necessary to protect the immediate health,*
 2 *safety, or welfare of a human being.*

3 *“(c) CORRECTION OF MINISTERIAL OR CLERICAL ER-*
 4 *RORS.—*

5 *“(1) PETITION FOR CORRECTION.—If the master*
 6 *of any vessel whose application for a permit to lade*
 7 *or unlade has been denied under this section believes*
 8 *that such denial resulted from a ministerial or cleri-*
 9 *cal error, not amounting to a mistake of law, commit-*
 10 *ted by any Customs officer, the master may petition*
 11 *the Customs Service for correction of such error, as*
 12 *provided by regulation.*

13 *“(2) INAPPLICABILITY OF SECTIONS 514 AND*
 14 *520.—Notwithstanding paragraph (1), imposition of*
 15 *countermeasures under this section shall not be*
 16 *deemed an exclusion or other protestable decision*
 17 *under section 514, and shall not be subject to correc-*
 18 *tion under section 520.*

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

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

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

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

9 **SEC. 205. JUDICIAL REVIEW IN INJURIOUS PRICING AND**
 10 **COUNTERMEASURE PROCEEDINGS.**

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

14 **“SEC. 516B. JUDICIAL REVIEW IN INJURIOUS PRICING AND**
 15 **COUNTERMEASURE PROCEEDINGS.**

16 “(a) *REVIEW OF DETERMINATION.*—

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

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

22 “(ii) *a negative determination by the Com-*
 23 *mission under section 803(a) as to whether there*
 24 *is or has been reasonable indication of material*

1 *injury, threat of material injury, or material re-*
2 *tardation,*

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

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

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

10 “(vi) a determination by the administering
11 *authority concerning whether to extend the scope*
12 *or duration of a countermeasure order under sec-*
13 *tion 807(e)(3)(B)(ii),*

14 “(vii) a determination by the administering
15 *authority to amend a countermeasure order*
16 *under section 807(e)(6),*

17 “(viii) a determination by the administer-
18 *ing authority in a review under section 807(g),*

19 “(ix) a determination by the administering
20 *authority under section 807(i) to terminate pro-*
21 *ceedings, or to amend or revoke a counter-*
22 *measure order,*

23 “(x) a determination by the administering
24 *authority under section 845(b), with respect to a*

1 *matter described in paragraph (1)(D) of that*
 2 *section, or*

3 *“(B)(i) an injurious pricing order based on*
 4 *a determination described in subparagraph (A)*
 5 *of paragraph (2),*

6 *“(ii) notice of a determination described in*
 7 *subparagraph (B) of paragraph (2),*

8 *“(iii) notice of implementation of a deter-*
 9 *mination described in subparagraph (C) of para-*
 10 *graph (2), or*

11 *“(iv) notice of revocation of an injurious*
 12 *pricing order based on a determination described*
 13 *in subparagraph (D) of paragraph (2),*

14 *an interested party who is a party to the proceeding*
 15 *in connection with which the matter arises may com-*
 16 *mence an action in the United States Court of Inter-*
 17 *national Trade by filing concurrently a summons and*
 18 *complaint, each with the content and in the form,*
 19 *manner, and style prescribed by the rules of that*
 20 *court, contesting any factual findings or legal conclu-*
 21 *sions upon which the determination is based.*

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

24 *“(A) a final affirmative determination by*
 25 *the administering authority or by the Commis-*

1 *sion under section 805, including any negative*
 2 *part of such a determination (other than a part*
 3 *referred to in subparagraph (B)),*

4 *“(B) a final negative determination by the*
 5 *administering authority or the Commission*
 6 *under section 805,*

7 *“(C) a determination by the administering*
 8 *authority under section 845(b), with respect to a*
 9 *matter described in paragraph (1)(A) of that sec-*
 10 *tion, and*

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

14 *“(3) EXCEPTION.—Notwithstanding the 30-day*
 15 *limitation imposed by paragraph (1) with regard to*
 16 *an order described in paragraph (1)(B)(i), a final af-*
 17 *firmative determination by the administering author-*
 18 *ity under section 805 may be contested by commenc-*
 19 *ing an action, in accordance with the provisions of*
 20 *paragraph (1), within 30 days after the date of publi-*
 21 *cation in the Federal Register of a final negative de-*
 22 *termination by the Commission under section 805.*

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

1 “(b) *STANDARDS OF REVIEW.*—

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

4 “(A) *in an action brought under subpara-*
5 *graph (A) of subsection (a)(1), to be arbitrary,*
6 *capricious, an abuse of discretion, or otherwise*
7 *not in accordance with law, or*

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

12 “(2) *RECORD FOR REVIEW.*—

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

16 “(i) *a copy of all information pre-*
17 *sented to or obtained by the administering*
18 *authority or the Commission during the*
19 *course of the administrative proceeding, in-*
20 *cluding all governmental memoranda per-*
21 *taining to the case and the record of ex*
22 *parte meetings required to be kept by sec-*
23 *tion 843(a)(2); and*

24 “(ii) *a copy of the determination, all*
25 *transcripts or records of conferences or hear-*

1 ings, and all notices published in the Fed-
2 eral Register.

3 “(B) *CONFIDENTIAL OR PRIVILEGED MATE-*
4 *RIAL.*—The confidential or privileged status ac-
5 corded to any documents, comments, or informa-
6 tion shall be preserved in any action under this
7 section. Notwithstanding the preceding sentence,
8 the court may examine, in camera, the confiden-
9 tial or privileged material, and may disclose
10 such material under such terms and conditions
11 as it may order.

12 “(c) *STANDING.*—Any interested party who was a
13 party to the proceeding under title VIII shall have the right
14 to appear and be heard as a party in interest before the
15 United States Court of International Trade in an action
16 under this section. The party filing the action shall notify
17 all such interested parties of the filing of an action under
18 this section, in the form, manner, and within the time pre-
19 scribed by rules of the court.

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

21 “(1) *ADMINISTERING AUTHORITY.*—The term
22 ‘administering authority’ has the meaning given that
23 term in section 861(1).

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

4 “(3) *INTERESTED PARTY.*—*The term ‘interested*
 5 *party’ means any person described in section*
 6 *861(17).’.*

7 **(b) CONFORMING AMENDMENTS.**—

8 (1) *JURISDICTION OF THE COURT.*—*Section*
 9 *1581(c) of title 28, United States Code, is amended by*
 10 *inserting “or 516B” after “section 516A”.*

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

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

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

17 “(6) *In any civil action under section 516B of the Tar-*
 18 *iff Act of 1930, the Court of International Trade may not*
 19 *issue injunctions or any other form of equitable relief, ex-*
 20 *cept with regard to implementation of a countermeasure*
 21 *order under section 468 of that Act, upon a proper showing*
 22 *that such relief is warranted.’.*

1 ***Subtitle B—Other Provisions***

2 ***SEC. 211. EQUIPMENT AND REPAIR OF VESSELS.***

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

6 “(i) *The duty imposed by subsection (a) shall not*
 7 *apply with respect to activities occurring in a Shipbuilding*
 8 *Agreement Party, as defined in section 861(22), with re-*
 9 *spect to—*

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

15 “(2) *tugs of 365 kilowatts or more.*

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

19 ***SEC. 212. EFFECT OF AGREEMENT WITH RESPECT TO PRI-***
 20 ***VATE REMEDIES.***

21 *No person other than the United States—*

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

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

9 **SEC. 213. IMPLEMENTING REGULATIONS.**

10 After the date of the enactment of this title, the heads
 11 of agencies with functions under this title and the amend-
 12 ments made by this title may issue such regulations as may
 13 be necessary to ensure that this title is appropriately imple-
 14 mented on the date the Shipbuilding Agreement enters into
 15 force with respect to the United States.

16 **SEC. 214. AMENDMENTS TO THE MERCHANT MARINE ACT,**
 17 **1936.**

18 The Merchant Marine Act, 1936, is amended as fol-
 19 lows:

20 (1) Section 511(a)(2) (46 App. U.S.C.
 21 1161(a)(2)) is amended by inserting after “1939,” the
 22 following: “or, if the vessel is a Shipbuilding Agree-
 23 ment vessel, constructed in a Shipbuilding Agreement
 24 Party, but only with regard to moneys deposited, on
 25 or after the date on which the Shipbuilding Trade

1 *Agreement Act takes effect, into a construction reserve*
2 *fund established under subsection (b)”.*

3 (2) *Section 601(a) (46 App. U.S.C. 1171(a)) is*
4 *amended by striking “, and that such vessel or vessels*
5 *were built in the United States, or have been docu-*
6 *mented under the laws of the United States not later*
7 *than February 1, 1928, or actually ordered and under*
8 *construction for the account of citizens of the United*
9 *States prior to such date;” and inserting “and that*
10 *such vessel or vessels were built in the United States,*
11 *or, if the vessel or vessels are Shipbuilding Agreement*
12 *vessels, in a Shipbuilding Agreement Party;”.*

13 (3) *Section 606(6) (46 App. U.S.C. 1176(6)) is*
14 *amended by inserting “or, if the vessel is a Shipbuild-*
15 *ing Agreement vessel, in a Shipbuilding Agreement*
16 *Party or in the United States,” before “, except in an*
17 *emergency.”.*

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

20 (A) *Subsection (a) is amended by inserting*
21 *“or, if the vessel is a Shipbuilding Agreement*
22 *vessel, in a Shipbuilding Agreement Party,”*
23 *after “built in the United States”.*

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

1 (i) Paragraph (1) is amended by strik-
2 ing subparagraph (A) and inserting the fol-
3 lowing:

4 “(A)(i) constructed in the United States
5 and, if reconstructed, reconstructed in the United
6 States or in a Shipbuilding Agreement Party, or
7 “(ii) that is a Shipbuilding Agreement ves-
8 sel and is constructed in a Shipbuilding Agree-
9 ment Party and, if reconstructed, is recon-
10 structed in a Shipbuilding Agreement Party or
11 in the United States,”.

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

14 “(A)(i) constructed in the United States
15 and, if reconstructed, reconstructed in the United
16 States or in a Shipbuilding Agreement Party, or
17 “(ii) that is a Shipbuilding Agreement ves-
18 sel and is constructed in a Shipbuilding Agree-
19 ment Party and, if reconstructed, is recon-
20 structed in a Shipbuilding Agreement Party or
21 in the United States, but only with regard to
22 moneys deposited into the fund on or after the
23 date on which the Shipbuilding Trade Agreement
24 Act takes effect.”.

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

10 (6) *Section 901(b)(1) (46 App. U.S.C.*
11 *1241(b)(1)) is amended by striking the third sentence*
12 *and inserting the following:*

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

16 *“(A) any privately owned United States-flag*
17 *commercial vessel constructed in the United States,*
18 *and if rebuilt, rebuilt in the United States or in a*
19 *Shipbuilding Agreement Party on or after the date on*
20 *which the Shipbuilding Trade Agreement Act takes ef-*
21 *fect, and*

22 *“(B) any privately owned vessel constructed in a*
23 *Shipbuilding Agreement Party on or after the date on*
24 *which the Shipbuilding Trade Agreement Act takes ef-*
25 *fect, and if rebuilt, rebuilt in a Shipbuilding Agree-*

1 *ment Party or in the United States, that is docu-*
 2 *mented pursuant to chapter 121 of title 46, United*
 3 *States Code.*

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

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

15 *“(h) The term ‘Shipbuilding Agreement’ means the*
 16 *Agreement Respecting Normal Competitive Conditions in*
 17 *the Commercial Shipbuilding and Repair Industry, which*
 18 *resulted from negotiations under the auspices of the Organi-*
 19 *zation for Economic Cooperation and Development, and*
 20 *was entered into on December 21, 1994.*

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

1 “(j) The term ‘Shipbuilding Agreement vessel’ means
2 a vessel to which the Secretary determines Article 2.1 of
3 the Shipbuilding Agreement applies.

4 “(k) The term ‘Export Credit Understanding’ means
5 the Understanding on Export Credits for Ships which re-
6 sulted from negotiations under the auspices of the Organiza-
7 tion for Economic Cooperation and Development and was
8 entered into on December 21, 1994.

9 “(l) The term ‘Export Credit Understanding vessel’
10 means a vessel to which the Secretary determines the Export
11 Credit Understanding applies.”.

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

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

16 “(5) shall bear interest (exclusive of charges for
17 the guarantee and service charges, if any) at rates not
18 to exceed such percent per annum on the unpaid
19 principal as the Secretary determines to be reason-
20 able, taking into account the range of interest rates
21 prevailing in the private market for similar loans
22 and the risks assumed by the Secretary, except that,
23 with respect to Export Credit Understanding vessels,
24 and Shipbuilding Agreement vessels, the obligations
25 shall bear interest at a rate the Secretary determines

1 *to be consistent with obligations of the United States*
 2 *under the Export Credit Understanding or the Ship-*
 3 *building Agreement, as the case may be;”.*

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

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

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

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

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

15 *establish by rule, regulation, or procedure any percentage*
 16 *within any such limitation that is, or is intended to be,*
 17 *applied uniformly to all guarantees or commitments to*
 18 *guarantee made under this section that are subject to the*
 19 *limitation.*

20 *“(2) With respect to Export Credit Understanding ves-*
 21 *sels and Shipbuilding Agreement vessels, the Secretary may*
 22 *establish by rule, regulation, or procedure a uniform per-*
 23 *centage that the Secretary determines to be consistent with*
 24 *obligations of the United States under the Export Credit*

1 *Understanding or the Shipbuilding Agreement, as the case*
 2 *may be.”.*

3 (C) Section 1104B(b) (46 App. U.S.C.
 4 1274a(b)) is amended by striking the period at
 5 the end and inserting the following:

6 “, except that, with respect to Export Credit Understanding
 7 vessels and Shipbuilding Agreement vessels, the Secretary
 8 may establish by rule, regulation, or procedure a uniform
 9 percentage that the Secretary determines to be consistent
 10 with obligations of the United States under the Export
 11 Credit Understanding or the Shipbuilding Agreement, as
 12 the case may be.”.

13 ***Subtitle C—Effective Date***

14 **SEC. 221. EFFECTIVE DATE.**

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

18 ***TITLE III—GENERALIZED*** 19 ***SYSTEM OF PREFERENCES***

20 **SEC. 301. SHORT TITLE.**

21 *This title may be cited as the “GSP Renewal Act of*
 22 *1996”.*

23 **SEC. 302. GENERALIZED SYSTEM OF PREFERENCES.**

24 (a) *IN GENERAL.—Title V of the Trade Act of 1974*
 25 *is amended to read as follows:*

1 **“TITLE V—GENERALIZED**
 2 **SYSTEM OF PREFERENCES**

3 **“SEC. 501. AUTHORITY TO EXTEND PREFERENCES.**

4 *“The President may provide duty-free treatment for*
 5 *any eligible article from any beneficiary developing country*
 6 *in accordance with the provisions of this title. In taking*
 7 *any such action, the President shall have due regard for—*

8 *“(1) the effect such action will have on further-*
 9 *ing the economic development of developing countries*
 10 *through the expansion of their exports;*

11 *“(2) the extent to which other major developed*
 12 *countries are undertaking a comparable effort to as-*
 13 *ist developing countries by granting generalized pref-*
 14 *erences with respect to imports of products of such*
 15 *countries;*

16 *“(3) the anticipated impact of such action on*
 17 *United States producers of like or directly competitive*
 18 *products; and*

19 *“(4) the extent of the beneficiary developing*
 20 *country’s competitiveness with respect to eligible arti-*
 21 *cles.*

22 **“SEC. 502. DESIGNATION OF BENEFICIARY DEVELOPING**
 23 **COUNTRIES.**

24 **“(a) AUTHORITY TO DESIGNATE COUNTRIES.—**

1 “(1) *BENEFICIARY DEVELOPING COUNTRIES.*—
 2 *The President is authorized to designate countries as*
 3 *beneficiary developing countries for purposes of this*
 4 *title.*

5 “(2) *LEAST-DEVELOPED BENEFICIARY DEVELOP-*
 6 *ING COUNTRIES.*—*The President is authorized to des-*
 7 *ignate any beneficiary developing country as a least-*
 8 *developed beneficiary developing country for purposes*
 9 *of this title, based on the considerations in section 501*
 10 *and subsection (c) of this section.*

11 “(b) *COUNTRIES INELIGIBLE FOR DESIGNATION.*—

12 “(1) *SPECIFIC COUNTRIES.*—*The following coun-*
 13 *tries may not be designated as beneficiary developing*
 14 *countries for purposes of this title:*

15 “(A) *Australia.*

16 “(B) *Canada.*

17 “(C) *European Union member states.*

18 “(D) *Iceland.*

19 “(E) *Japan.*

20 “(F) *Monaco.*

21 “(G) *New Zealand.*

22 “(H) *Norway.*

23 “(I) *Switzerland.*

24 “(2) *OTHER BASES FOR INELIGIBILITY.*—*The*
 25 *President shall not designate any country a bene-*

1 *ficiary developing country under this title if any of*
2 *the following applies:*

3 *“(A) Such country is a Communist country,*
4 *unless—*

5 *“(i) the products of such country re-*
6 *ceive nondiscriminatory treatment,*

7 *“(ii) such country is a WTO Member*
8 *(as such term is defined in section 2(10) of*
9 *the Uruguay Round Agreements Act) (19*
10 *U.S.C. 3501(10)) and a member of the*
11 *International Monetary Fund, and*

12 *“(iii) such country is not dominated or*
13 *controlled by international communism.*

14 *“(B) Such country is a party to an ar-*
15 *rangement of countries and participates in any*
16 *action pursuant to such arrangement, the effect*
17 *of which is—*

18 *“(i) to withhold supplies of vital com-*
19 *modity resources from international trade*
20 *or to raise the price of such commodities to*
21 *an unreasonable level, and*

22 *“(ii) to cause serious disruption of the*
23 *world economy.*

24 *“(C) Such country affords preferential*
25 *treatment to the products of a developed country,*

1 *other than the United States, which has, or is*
2 *likely to have, a significant adverse effect on*
3 *United States commerce.*

4 “(D)(i) Such country—

5 “(I) has nationalized, expropriated, or
6 otherwise seized ownership or control of
7 property, including patents, trademarks, or
8 copyrights, owned by a United States citi-
9 zen or by a corporation, partnership, or as-
10 sociation which is 50 percent or more bene-
11 ficially owned by United States citizens,

12 “(II) has taken steps to repudiate or
13 nullify an existing contract or agreement
14 with a United States citizen or a corpora-
15 tion, partnership, or association which is 50
16 percent or more beneficially owned by Unit-
17 ed States citizens, the effect of which is to
18 nationalize, expropriate, or otherwise seize
19 ownership or control of property, including
20 patents, trademarks, or copyrights, so
21 owned, or

22 “(III) has imposed or enforced taxes or
23 other exactions, restrictive maintenance or
24 operational conditions, or other measures
25 with respect to property, including patents,

1 *trademarks, or copyrights, so owned, the ef-*
2 *fect of which is to nationalize, expropriate,*
3 *or otherwise seize ownership or control of*
4 *such property,*

5 *unless clause (ii) applies.*

6 *“(ii) This clause applies if the President de-*
7 *termines that—*

8 *“(I) prompt, adequate, and effective*
9 *compensation has been or is being made to*
10 *the citizen, corporation, partnership, or as-*
11 *sociation referred to in clause (i),*

12 *“(II) good faith negotiations to provide*
13 *prompt, adequate, and effective compensa-*
14 *tion under the applicable provisions of*
15 *international law are in progress, or the*
16 *country described in clause (i) is otherwise*
17 *taking steps to discharge its obligations*
18 *under international law with respect to*
19 *such citizen, corporation, partnership, or*
20 *association, or*

21 *“(III) a dispute involving such citizen,*
22 *corporation, partnership, or association*
23 *over compensation for such a seizure has*
24 *been submitted to arbitration under the pro-*
25 *visions of the Convention for the Settlement*

1 *of Investment Disputes, or in another mutu-*
2 *ally agreed upon forum,*
3 *and the President promptly furnishes a copy of*
4 *such determination to the Senate and House of*
5 *Representatives.*

6 “(E) Such country fails to act in good faith
7 in recognizing as binding or in enforcing arbi-
8 tral awards in favor of United States citizens or
9 a corporation, partnership, or association which
10 is 50 percent or more beneficially owned by
11 United States citizens, which have been made by
12 arbitrators appointed for each case or by perma-
13 nent arbitral bodies to which the parties involved
14 have submitted their dispute.

15 “(F) Such country aids or abets, by grant-
16 ing sanctuary from prosecution to, any individ-
17 ual or group which has committed an act of
18 international terrorism.

19 “(G) Such country has not taken or is not
20 taking steps to afford internationally recognized
21 worker rights to workers in the country (includ-
22 ing any designated zone in that country).

23 Subparagraphs (D), (E), (F), and (G) shall not pre-
24 vent the designation of any country as a beneficiary
25 developing country under this title if the President

1 *determines that such designation will be in the na-*
2 *tional economic interest of the United States and re-*
3 *ports such determination to the Congress with the rea-*
4 *sons therefor.*

5 “(c) *FACTORS AFFECTING COUNTRY DESIGNATION.*—
6 *In determining whether to designate any country as a bene-*
7 *ficiary developing country under this title, the President*
8 *shall take into account—*

9 “(1) *an expression by such country of its desire*
10 *to be so designated;*

11 “(2) *the level of economic development of such*
12 *country, including its per capita gross national prod-*
13 *uct, the living standards of its inhabitants, and any*
14 *other economic factors which the President deems ap-*
15 *propriate;*

16 “(3) *whether or not other major developed coun-*
17 *tries are extending generalized preferential tariff*
18 *treatment to such country;*

19 “(4) *the extent to which such country has as-*
20 *suured the United States that it will provide equitable*
21 *and reasonable access to the markets and basic com-*
22 *modity resources of such country and the extent to*
23 *which such country has assured the United States*
24 *that it will refrain from engaging in unreasonable ex-*
25 *port practices;*

1 “(5) *the extent to which such country is provid-*
 2 *ing adequate and effective protection of intellectual*
 3 *property rights;*

4 “(6) *the extent to which such country has taken*
 5 *action to—*

6 “(A) *reduce trade distorting investment*
 7 *practices and policies (including export perform-*
 8 *ance requirements); and*

9 “(B) *reduce or eliminate barriers to trade*
 10 *in services; and*

11 “(7) *whether or not such country has taken or is*
 12 *taking steps to afford to workers in that country (in-*
 13 *cluding any designated zone in that country) inter-*
 14 *nationally recognized worker rights.*

15 “(d) *WITHDRAWAL, SUSPENSION, OR LIMITATION OF*
 16 *COUNTRY DESIGNATION.—*

17 “(1) *IN GENERAL.—The President may with-*
 18 *draw, suspend, or limit the application of the duty-*
 19 *free treatment accorded under this title with respect*
 20 *to any country. In taking any action under this sub-*
 21 *section, the President shall consider the factors set*
 22 *forth in section 501 and subsection (c) of this section.*

23 “(2) *CHANGED CIRCUMSTANCES.—The President*
 24 *shall, after complying with the requirements of sub-*
 25 *section (f)(2), withdraw or suspend the designation of*

1 *any country as a beneficiary developing country if,*
2 *after such designation, the President determines that*
3 *as the result of changed circumstances such country*
4 *would be barred from designation as a beneficiary de-*
5 *veloping country under subsection (b)(2). Such coun-*
6 *try shall cease to be a beneficiary developing country*
7 *on the day on which the President issues an Executive*
8 *order or Presidential proclamation revoking the des-*
9 *ignation of such country under this title.*

10 “(3) *ADVICE TO CONGRESS.—The President*
11 *shall, as necessary, advise the Congress on the appli-*
12 *cation of section 501 and subsection (c) of this sec-*
13 *tion, and the actions the President has taken to with-*
14 *draw, to suspend, or to limit the application of duty-*
15 *free treatment with respect to any country which has*
16 *failed to adequately take the actions described in sub-*
17 *section (c).*

18 “(e) *MANDATORY GRADUATION OF BENEFICIARY DE-*
19 *VELOPING COUNTRIES.—If the President determines that a*
20 *beneficiary developing country has become a ‘high income’*
21 *country, as defined by the official statistics of the Inter-*
22 *national Bank for Reconstruction and Development, then*
23 *the President shall terminate the designation of such coun-*
24 *try as a beneficiary developing country for purposes of this*

1 *title, effective on January 1 of the second year following*
 2 *the year in which such determination is made.*

3 “(f) CONGRESSIONAL NOTIFICATION.—

4 “(1) NOTIFICATION OF DESIGNATION.—

5 “(A) IN GENERAL.—*Before the President*
 6 *designates any country as a beneficiary develop-*
 7 *ing country under this title, the President shall*
 8 *notify the Congress of the President’s intention to*
 9 *make such designation, together with the consid-*
 10 *erations entering into such decision.*

11 “(B) DESIGNATION AS LEAST-DEVELOPED
 12 *BENEFICIARY DEVELOPING COUNTRY.—At least*
 13 *60 days before the President designates any*
 14 *country as a least-developed beneficiary develop-*
 15 *ing country, the President shall notify the Con-*
 16 *gress of the President’s intention to make such*
 17 *designation.*

18 “(2) NOTIFICATION OF TERMINATION.—*If the*
 19 *President has designated any country as a beneficiary*
 20 *developing country under this title, the President*
 21 *shall not terminate such designation unless, at least*
 22 *60 days before such termination, the President has*
 23 *notified the Congress and has notified such country of*
 24 *the President’s intention to terminate such designa-*

1 *tion, together with the considerations entering into*
 2 *such decision.*

3 **“SEC. 503. DESIGNATION OF ELIGIBLE ARTICLES.**

4 *“(a) ELIGIBLE ARTICLES.—*

5 *“(1) DESIGNATION.—*

6 *“(A) IN GENERAL.—Except as provided in*
 7 *subsection (b), the President is authorized to des-*
 8 *ignate articles as eligible articles from all bene-*
 9 *ficiary developing countries for purposes of this*
 10 *title by Executive order or Presidential procla-*
 11 *mation after receiving the advice of the Inter-*
 12 *national Trade Commission in accordance with*
 13 *subsection (e).*

14 *“(B) LEAST-DEVELOPED BENEFICIARY DE-*
 15 *VELOPING COUNTRIES.—Except for articles de-*
 16 *scribed in subparagraphs (A), (B), and (E) of*
 17 *subsection (b)(1) and articles described in para-*
 18 *graphs (2) and (3) of subsection (b), the Presi-*
 19 *dent may, in carrying out section 502(d)(1) and*
 20 *subsection (c)(1) of this section, designate articles*
 21 *as eligible articles only for countries designated*
 22 *as least-developed beneficiary developing coun-*
 23 *tries under section 502(a)(2) if, after receiving*
 24 *the advice of the International Trade Commis-*
 25 *sion in accordance with subsection (e) of this sec-*

tion, the President determines that such articles are not import-sensitive in the context of imports from least-developed beneficiary developing countries.

“(C) *THREE-YEAR RULE.*—If, after receiving the advice of the International Trade Commission under subsection (e), an article has been formally considered for designation as an eligible article under this title and denied such designation, such article may not be reconsidered for such designation for a period of 3 years after such denial.

“(2) *RULE OF ORIGIN.*—

“(A) *GENERAL RULE.*—The duty-free treatment provided under this title shall apply to any eligible article which is the growth, product, or manufacture of a beneficiary developing country if—

“(i) that article is imported directly from a beneficiary developing country into the customs territory of the United States; and

“(ii) the sum of—

“(I) the cost or value of the materials produced in the beneficiary devel-

1 *oping country or any two or more such*
 2 *countries that are members of the same*
 3 *association of countries and are treated*
 4 *as one country under section 507(2),*
 5 *plus*

6 *“(II) the direct costs of processing*
 7 *operations performed in such bene-*
 8 *ficiary developing country or such*
 9 *member countries,*
 10 *is not less than 35 percent of the appraised*
 11 *value of such article at the time it is en-*
 12 *tered.*

13 *“(B) EXCLUSIONS.—An article shall not be*
 14 *treated as the growth, product, or manufacture of*
 15 *a beneficiary developing country by virtue of*
 16 *having merely undergone—*

17 *“(i) simple combining or packaging*
 18 *operations, or*

19 *“(ii) mere dilution with water or mere*
 20 *dilution with another substance that does*
 21 *not materially alter the characteristics of*
 22 *the article.*

23 *“(3) REGULATIONS.—The Secretary of the Treas-*
 24 *ury, after consulting with the United States Trade*
 25 *Representative, shall prescribe such regulations as*

1 *may be necessary to carry out paragraph (2), includ-*
 2 *ing, but not limited to, regulations providing that,*
 3 *in order to be eligible for duty-free treatment under*
 4 *this title, an article—*

5 *“(A) must be wholly the growth, product, or*
 6 *manufacture of a beneficiary developing country,*
 7 *or*

8 *“(B) must be a new or different article of*
 9 *commerce which has been grown, produced, or*
 10 *manufactured in the beneficiary developing*
 11 *country.*

12 *“(b) ARTICLES THAT MAY NOT BE DESIGNATED AS*
 13 *ELIGIBLE ARTICLES.—*

14 *“(1) IMPORT SENSITIVE ARTICLES.—The Presi-*
 15 *dent may not designate any article as an eligible ar-*
 16 *ticle under subsection (a) if such article is within one*
 17 *of the following categories of import-sensitive articles:*

18 *“(A) Textile and apparel articles which*
 19 *were not eligible articles for purposes of this title*
 20 *on January 1, 1994, as this title was in effect*
 21 *on such date.*

22 *“(B) Watches, except those watches entered*
 23 *after June 30, 1989, that the President specifi-*
 24 *cally determines, after public notice and com-*
 25 *ment, will not cause material injury to watch or*

1 *watch band, strap, or bracelet manufacturing*
2 *and assembly operations in the United States or*
3 *the United States insular possessions.*

4 *“(C) Import-sensitive electronic articles.*

5 *“(D) Import-sensitive steel articles.*

6 *“(E) Footwear, handbags, luggage, flat*
7 *goods, work gloves, and leather wearing apparel*
8 *which were not eligible articles for purposes of*
9 *this title on January 1, 1995, as this title was*
10 *in effect on such date.*

11 *“(F) Import-sensitive semimanufactured*
12 *and manufactured glass products.*

13 *“(G) Any other articles which the President*
14 *determines to be import-sensitive in the context*
15 *of the Generalized System of Preferences.*

16 *“(2) ARTICLES AGAINST WHICH OTHER ACTIONS*
17 *TAKEN.—An article shall not be an eligible article for*
18 *purposes of this title for any period during which*
19 *such article is the subject of any action proclaimed*
20 *pursuant to section 203 of this Act (19 U.S.C. 2253)*
21 *or section 232 or 351 of the Trade Expansion Act of*
22 *1962 (19 U.S.C. 1862, 1981).*

23 *“(3) AGRICULTURAL PRODUCTS.—No quantity of*
24 *an agricultural product subject to a tariff-rate quota*

1 *that exceeds the in-quota quantity shall be eligible for*
 2 *duty-free treatment under this title.*

3 “(c) *WITHDRAWAL, SUSPENSION, OR LIMITATION OF*
 4 *DUTY-FREE TREATMENT; COMPETITIVE NEED LIMITA-*
 5 *TION.—*

6 “(1) *IN GENERAL.—The President may with-*
 7 *draw, suspend, or limit the application of the duty-*
 8 *free treatment accorded under this title with respect*
 9 *to any article, except that no rate of duty may be es-*
 10 *tablished with respect to any article pursuant to this*
 11 *subsection other than the rate which would apply but*
 12 *for this title. In taking any action under this sub-*
 13 *section, the President shall consider the factors set*
 14 *forth in sections 501 and 502(c).*

15 “(2) *COMPETITIVE NEED LIMITATION.—*

16 “(A) *BASIS FOR WITHDRAWAL OF DUTY-*
 17 *FREE TREATMENT.—*

18 “(i) *IN GENERAL.—Except as provided*
 19 *in clause (ii) and subject to subsection (d),*
 20 *whenever the President determines that a*
 21 *beneficiary developing country has exported*
 22 *(directly or indirectly) to the United States*
 23 *during any calendar year beginning after*
 24 *December 31, 1995—*

1 “(I) a quantity of an eligible arti-
 2 cle having an appraised value in excess
 3 of the applicable amount for the cal-
 4 endar year, or

5 “(II) a quantity of an eligible ar-
 6 ticle equal to or exceeding 50 percent of
 7 the appraised value of the total im-
 8 ports of that article into the United
 9 States during any calendar year,
 10 the President shall, not later than July 1 of
 11 the next calendar year, terminate the duty-
 12 free treatment for that article from that
 13 beneficiary developing country.

14 “(ii) ANNUAL ADJUSTMENT OF APPLI-
 15 CABLE AMOUNT.—For purposes of applying
 16 clause (i), the applicable amount is—

17 “(I) for 1996, \$75,000,000, and

18 “(II) for each calendar year there-
 19 after, an amount equal to the applica-
 20 ble amount in effect for the preceding
 21 calendar year plus \$5,000,000.

22 “(B) COUNTRY DEFINED.—For purposes of
 23 this paragraph, the term ‘country’ does not in-
 24 clude an association of countries which is treated
 25 as one country under section 507(2), but does in-

1 *clude a country which is a member of any such*
 2 *association.*

3 “(C) *REDESIGNATIONS.*—*A country which*
 4 *is no longer treated as a beneficiary developing*
 5 *country with respect to an eligible article by rea-*
 6 *son of subparagraph (A) may, subject to the con-*
 7 *siderations set forth in sections 501 and 502, be*
 8 *redesignated a beneficiary developing country*
 9 *with respect to such article if imports of such ar-*
 10 *ticle from such country did not exceed the limita-*
 11 *tions in subparagraph (A) during the preceding*
 12 *calendar year.*

13 “(D) *LEAST-DEVELOPED BENEFICIARY DE-*
 14 *VELOPING COUNTRIES.*—*Subparagraph (A) shall*
 15 *not apply to any least-developed beneficiary de-*
 16 *veloping country.*

17 “(E) *ARTICLES NOT PRODUCED IN THE*
 18 *UNITED STATES EXCLUDED.*—*Subparagraph*
 19 *(A)(i)(II) shall not apply with respect to any eli-*
 20 *gible article if a like or directly competitive arti-*
 21 *cle was not produced in the United States on*
 22 *January 1, 1995.*

23 “(F) *DE MINIMIS WAIVERS.*—

24 “(i) *IN GENERAL.*—*The President may*
 25 *disregard subparagraph (A)(i)(II) with re-*

1 *spect to any eligible article from any bene-*
 2 *ficiary developing country if the aggregate*
 3 *appraised value of the imports of such arti-*
 4 *cle into the United States during the pre-*
 5 *ceding calendar year does not exceed the ap-*
 6 *plicable amount for such preceding calendar*
 7 *year.*

8 “(ii) *APPLICABLE AMOUNT.*—*For pur-*
 9 *poses of applying clause (i), the applicable*
 10 *amount is—*

11 “(I) *for calendar year 1996,*
 12 *\$13,000,000, and*

13 “(II) *for each calendar year there-*
 14 *after, an amount equal to the applica-*
 15 *ble amount in effect for the preceding*
 16 *calendar year plus \$500,000.*

17 “(d) *WAIVER OF COMPETITIVE NEED LIMITATION.*—

18 “(1) *IN GENERAL.*—*The President may waive the*
 19 *application of subsection (c)(2) with respect to any el-*
 20 *igible article of any beneficiary developing country if,*
 21 *before July 1 of the calendar year beginning after the*
 22 *calendar year for which a determination described in*
 23 *subsection (c)(2)(A) was made with respect to such el-*
 24 *igible article, the President—*

1 “(A) receives the advice of the International
 2 Trade Commission under section 332 of the Tar-
 3 iff Act of 1930 on whether any industry in the
 4 United States is likely to be adversely affected by
 5 such waiver,

6 “(B) determines, based on the consider-
 7 ations described in sections 501 and 502(c) and
 8 the advice described in subparagraph (A), that
 9 such waiver is in the national economic interest
 10 of the United States, and

11 “(C) publishes the determination described
 12 in subparagraph (B) in the Federal Register.

13 “(2) CONSIDERATIONS BY THE PRESIDENT.—In
 14 making any determination under paragraph (1), the
 15 President shall give great weight to—

16 “(A) the extent to which the beneficiary de-
 17 veloping country has assured the United States
 18 that such country will provide equitable and rea-
 19 sonable access to the markets and basic commod-
 20 ity resources of such country, and

21 “(B) the extent to which such country pro-
 22 vides adequate and effective protection of intellec-
 23 tual property rights.

24 “(3) OTHER BASES FOR WAIVER.—The President
 25 may waive the application of subsection (c)(2) if, be-

1 *fore July 1 of the calendar year beginning after the*
 2 *calendar year for which a determination described in*
 3 *subsection (c)(2) was made with respect to a bene-*
 4 *ficiary developing country, the President determines*
 5 *that—*

6 *“(A) there has been a historical preferential*
 7 *trade relationship between the United States and*
 8 *such country,*

9 *“(B) there is a treaty or trade agreement in*
 10 *force covering economic relations between such*
 11 *country and the United States, and*

12 *“(C) such country does not discriminate*
 13 *against, or impose unjustifiable or unreasonable*
 14 *barriers to, United States commerce,*
 15 *and the President publishes that determination in the*
 16 *Federal Register.*

17 *“(4) LIMITATIONS ON WAIVERS.—*

18 *“(A) IN GENERAL.—The President may not*
 19 *exercise the waiver authority under this sub-*
 20 *section with respect to a quantity of an eligible*
 21 *article entered during any calendar year begin-*
 22 *ning after 1995, the aggregate appraised value of*
 23 *which equals or exceeds 30 percent of the aggre-*
 24 *gate appraised value of all articles that entered*

1 *duty-free under this title during the preceding*
2 *calendar year.*

3 “(B) *OTHER WAIVER LIMITS.*—*The Presi-*
4 *dent may not exercise the waiver authority pro-*
5 *vided under this subsection with respect to a*
6 *quantity of an eligible article entered during any*
7 *calendar year beginning after 1995, the aggre-*
8 *gate appraised value of which exceeds 15 percent*
9 *of the aggregate appraised value of all articles*
10 *that have entered duty-free under this title dur-*
11 *ing the preceding calendar year from those bene-*
12 *ficiary developing countries which for the preced-*
13 *ing calendar year—*

14 “(i) *had a per capita gross national*
15 *product (calculated on the basis of the best*
16 *available information, including that of the*
17 *International Bank for Reconstruction and*
18 *Development) of \$5,000 or more; or*

19 “(ii) *had exported (either directly or*
20 *indirectly) to the United States a quantity*
21 *of articles that was duty-free under this title*
22 *that had an aggregate appraised value of*
23 *more than 10 percent of the aggregate ap-*
24 *praised value of all articles that entered*
25 *duty-free under this title during that year.*

1 “(C) *CALCULATION OF LIMITATIONS.*—*There*
 2 *shall be counted against the limitations imposed*
 3 *under subparagraphs (A) and (B) for any cal-*
 4 *endar year only that value of any eligible article*
 5 *of any country that—*

6 “(i) *entered duty-free under this title*
 7 *during such calendar year; and*

8 “(ii) *is in excess of the value of that*
 9 *article that would have been so entered dur-*
 10 *ing such calendar year if the limitations*
 11 *under subsection (c)(2)(A) applied.*

12 “(5) *EFFECTIVE PERIOD OF WAIVER.*—*Any*
 13 *waiver granted under this subsection shall remain in*
 14 *effect until the President determines that such waiver*
 15 *is no longer warranted due to changed circumstances.*

16 “(e) *INTERNATIONAL TRADE COMMISSION ADVICE.*—
 17 *Before designating articles as eligible articles under sub-*
 18 *section (a)(1), the President shall publish and furnish the*
 19 *International Trade Commission with lists of articles which*
 20 *may be considered for designation as eligible articles for*
 21 *purposes of this title. The provisions of sections 131, 132,*
 22 *133, and 134 shall be complied with as though action under*
 23 *section 501 and this section were action under section 123*
 24 *to carry out a trade agreement entered into under section*
 25 *123.*

1 “(f) *SPECIAL RULE CONCERNING PUERTO RICO.*—No
 2 *action under this title may affect any tariff duty imposed*
 3 *by the Legislature of Puerto Rico pursuant to section 319*
 4 *of the Tariff Act of 1930 on coffee imported into Puerto*
 5 *Rico.*

6 **“SEC. 504. REVIEW AND REPORT TO CONGRESS.**

7 *“The President shall submit an annual report to the*
 8 *Congress on the status of internationally recognized worker*
 9 *rights within each beneficiary developing country.*

10 **“SEC. 505. DATE OF TERMINATION.**

11 *“No duty-free treatment provided under this title shall*
 12 *remain in effect after May 12, 1997.*

13 **“SEC. 506. AGRICULTURAL EXPORTS OF BENEFICIARY DE-**
 14 **VELOPING COUNTRIES.**

15 *“The appropriate agencies of the United States shall*
 16 *assist beneficiary developing countries to develop and im-*
 17 *plement measures designed to assure that the agricultural*
 18 *sectors of their economies are not directed to export markets*
 19 *to the detriment of the production of foodstuffs for their citi-*
 20 *zenry.*

21 **“SEC. 507. DEFINITIONS.**

22 *“For purposes of this title:*

23 *“(1) BENEFICIARY DEVELOPING COUNTRY.—The*
 24 *term ‘beneficiary developing country’ means any*
 25 *country with respect to which there is in effect an Ex-*

1 *ecutive order or Presidential proclamation by the*
 2 *President designating such country as a beneficiary*
 3 *developing country for purposes of this title.*

4 “(2) *COUNTRY.*—*The term ‘country’ means any*
 5 *foreign country or territory, including any overseas*
 6 *dependent territory or possession of a foreign country,*
 7 *or the Trust Territory of the Pacific Islands. In the*
 8 *case of an association of countries which is a free*
 9 *trade area or customs union, or which is contributing*
 10 *to comprehensive regional economic integration*
 11 *among its members through appropriate means, in-*
 12 *cluding, but not limited to, the reduction of duties,*
 13 *the President may by Executive order or Presidential*
 14 *proclamation provide that all members of such asso-*
 15 *ciation other than members which are barred from*
 16 *designation under section 502(b) shall be treated as*
 17 *one country for purposes of this title.*

18 “(3) *ENTERED.*—*The term ‘entered’ means en-*
 19 *tered, or withdrawn from warehouse for consumption,*
 20 *in the customs territory of the United States.*

21 “(4) *INTERNATIONALLY RECOGNIZED WORKER*
 22 *RIGHTS.*—*The term ‘internationally recognized work-*
 23 *er rights’ includes—*

24 “(A) *the right of association;*

1 “(B) *the right to organize and bargain col-*
2 *lectively;*

3 “(C) *a prohibition on the use of any form*
4 *of forced or compulsory labor;*

5 “(D) *a minimum age for the employment of*
6 *children; and*

7 “(E) *acceptable conditions of work with re-*
8 *spect to minimum wages, hours of work, and oc-*
9 *cupational safety and health.*

10 “(5) *LEAST-DEVELOPED BENEFICIARY DEVELOP-*
11 *ING COUNTRY.—The term ‘least-developed beneficiary*
12 *developing country’ means a beneficiary developing*
13 *country that is designated as a least-developed bene-*
14 *ficiary developing country under section 502(a)(2).”.*

15 “(b) *TABLE OF CONTENTS.—The items relating to title*
16 *V in the table of contents of the Trade Act of 1974 are*
17 *amended to read as follows:*

“TITLE V—GENERALIZED SYSTEM OF PREFERENCES

“Sec. 501. Authority to extend preferences.

“Sec. 502. Designation of beneficiary developing countries.

“Sec. 503. Designation of eligible articles.

“Sec. 504. Review and report to Congress.

“Sec. 505. Date of termination.

“Sec. 506. Agricultural exports of beneficiary developing countries.

“Sec. 507. Definitions.”.

18 **SEC. 303. EFFECTIVE DATE.**

19 “(a) *IN GENERAL.—The amendments made by this title*
20 *apply to articles entered on or after October 1, 1996.*

21 “(b) *RETROACTIVE APPLICATION.—*

(1) *GENERAL RULE.*—Notwithstanding section 514 of the Tariff Act of 1930 or any other provision of law and subject to subsection (c)—

(A) any article that was entered—

(i) after July 31, 1995, and

(ii) before January 1, 1996, and

to which duty-free treatment under title V of the Trade Act of 1974 would have applied if the entry had been made on July 31, 1995, shall be liquidated or reliquidated as free of duty, and the Secretary of the Treasury shall refund any duty paid with respect to such entry, and

(B) any article that was entered—

(i) after December 31, 1995, and

(ii) before October 1, 1996, and

to which duty-free treatment under title V of the Trade Act of 1974 (as amended by this title) would have applied if the entry had been made on or after October 1, 1996, shall be liquidated or reliquidated as free of duty, and the Secretary of the Treasury shall refund any duty paid with respect to such entry.

(2) *LIMITATION ON REFUNDS.*—No refund shall be made pursuant to this subsection before October 1, 1996.

1 (3) *ENTRY*.—As used in this subsection, the term
 2 “entry” includes a withdrawal from warehouse for
 3 consumption.

4 (c) *REQUESTS*.—Liquidation or reliquidation may be
 5 made under subsection (b) with respect to an entry only
 6 if a request therefor is filed with the Customs Service, with-
 7 in 180 days after the date of the enactment of this Act, that
 8 contains sufficient information to enable the Customs Serv-
 9 ice—

10 (1) to locate the entry; or

11 (2) to reconstruct the entry if it cannot be lo-
 12 cated.

13 **SEC. 304. CONFORMING AMENDMENTS.**

14 (a) *TRADE LAWS*.—

15 (1) Section 1211(b) of the Omnibus Trade and
 16 Competitiveness Act of 1988 (19 U.S.C. 3011(b)) is
 17 amended—

18 (A) in paragraph (1), by striking “(19
 19 U.S.C. 2463(a), 2464(c)(3))” and inserting “(as
 20 in effect on July 31, 1995)”; and

21 (B) in paragraph (2), by striking “(19
 22 U.S.C. 2464(c)(1))” and inserting the following:
 23 “(as in effect on July 31, 1995)”.

(2) *Section 203(c)(7) of the Andean Trade Preference Act (19 U.S.C. 3202(c)(7)) is amended by striking “502(a)(4)” and inserting “507(4)”.*

(3) *Section 212(b)(7) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2702(b)(7)) is amended by striking “502(a)(4)” and inserting “507(4)”.*

(4) *General note 3(a)(iv)(C) of the Harmonized Tariff Schedule of the United States is amended by striking “sections 503(b) and 504(c)” and inserting “subsections (a), (c), and (d) of section 503”.*

(5) *Section 201(a)(2) of the North American Free Trade Agreement Implementation Act (19 U.S.C. 3331(a)(2)) is amended by striking “502(a)(2) of the Trade Act of 1974 (19 U.S.C. 2462(a)(2))” and inserting “502(f)(2) of the Trade Act of 1974”.*

(6) *Section 131 of the Uruguay Round Agreements Act (19 U.S.C. 3551) is amended in subsections (a) and (b)(1) by striking “502(a)(4)” and inserting “507(4)”.*

(b) *OTHER LAWS.—*

(1) *Section 871(f)(2)(B) of the Internal Revenue Code of 1986 is amended by striking “within the meaning of section 502” and inserting “under title V”.*

1 (2) *Section 2202(8) of the Export Enhancement*
 2 *Act of 1988 (15 U.S.C. 4711(8)) is amended by strik-*
 3 *ing “502(a)(4)” and inserting “507(4)”.*

4 (3) *Section 231A(a) of the Foreign Assistance*
 5 *Act of 1961 (22 U.S.C. 2191a(a)) is amended—*

6 (A) *in paragraph (1) by striking “502(a)(4)*
 7 *of the Trade Act of 1974 (19 U.S.C. 2462(a)(4))”*
 8 *and inserting “507(4) of the Trade Act of 1974”;*

9 (B) *in paragraph (2) by striking “505(c) of*
 10 *the Trade Act of 1974 (19 U.S.C. 2465(c))” and*
 11 *inserting “504 of the Trade Act of 1974”; and*

12 (C) *in paragraph (4) by striking*
 13 *“502(a)(4)” and inserting “507(4)”.*

14 (4) *Section 1621(a)(1) of the International Fi-*
 15 *nancial Institutions Act (22 U.S.C. 262p–4p(a)(1)) is*
 16 *amended by striking “502(a)(4)” and inserting*
 17 *“507(4)”.*

18 (5) *Section 103B of the Agricultural Act of 1949*
 19 *(7 U.S.C. 1444–2) is amended in subsections*
 20 *(a)(5)(F) (v) and (n)(1)(C) by striking “503(d) of the*
 21 *Trade Act of 1974 (19 U.S.C. 2463(d))” and inserting*
 22 *“503(b)(3) of the Trade Act of 1974”.*

1 **TITLE IV—REVENUE OFFSETS**

2 **SEC. 400. AMENDMENT OF 1986 CODE.**

3 *Except as otherwise expressly provided, whenever in*
 4 *this title an amendment or repeal is expressed in terms of*
 5 *an amendment to, or repeal of, a section or other provision,*
 6 *the reference shall be considered to be made to a section or*
 7 *other provision of the Internal Revenue Code of 1986.*

8 **Subtitle A—Foreign Trust Tax** 9 **Compliance**

10 **SEC. 401. IMPROVED INFORMATION REPORTING ON FOR-** 11 **EIGN TRUSTS.**

12 *(a) IN GENERAL.—Section 6048 (relating to returns*
 13 *as to certain foreign trusts) is amended to read as follows:*

14 **“SEC. 6048. INFORMATION WITH RESPECT TO CERTAIN FOR-** 15 **EIGN TRUSTS.**

16 **“(a) NOTICE OF CERTAIN EVENTS.—**

17 **“(1) GENERAL RULE.—***On or before the 90th day*
 18 *(or such later day as the Secretary may prescribe)*
 19 *after any reportable event, the responsible party shall*
 20 *provide written notice of such event to the Secretary*
 21 *in accordance with paragraph (2).*

22 **“(2) CONTENTS OF NOTICE.—***The notice required*
 23 *by paragraph (1) shall contain such information as*
 24 *the Secretary may prescribe, including—*

1 “(A) *the amount of money or other property*
 2 *(if any) transferred to the trust in connection*
 3 *with the reportable event, and*

4 “(B) *the identity of the trust and of each*
 5 *trustee and beneficiary (or class of beneficiaries)*
 6 *of the trust.*

7 “(3) *REPORTABLE EVENT.—For purposes of this*
 8 *subsection—*

9 “(A) *IN GENERAL.—The term ‘reportable*
 10 *event’ means—*

11 “(i) *the creation of any foreign trust*
 12 *by a United States person,*

13 “(ii) *the transfer of any money or*
 14 *property (directly or indirectly) to a foreign*
 15 *trust by a United States person, including*
 16 *a transfer by reason of death, and*

17 “(iii) *the death of a citizen or resident*
 18 *of the United States if—*

19 “(I) *the decedent was treated as*
 20 *the owner of any portion of a foreign*
 21 *trust under the rules of subpart E of*
 22 *part I of subchapter J of chapter 1, or*

23 “(II) *any portion of a foreign*
 24 *trust was included in the gross estate*
 25 *of the decedent.*

1 “(B) *EXCEPTIONS.*—

2 “(i) *FAIR MARKET VALUE SALES.*—
 3 *Subparagraph (A)(ii) shall not apply to*
 4 *any transfer of property to a trust in ex-*
 5 *change for consideration of at least the fair*
 6 *market value of the transferred property.*
 7 *For purposes of the preceding sentence, con-*
 8 *sideration other than cash shall be taken*
 9 *into account at its fair market value and*
 10 *the rules of section 679(a)(3) shall apply.*

11 “(ii) *DEFERRED COMPENSATION AND*
 12 *CHARITABLE TRUSTS.*—*Subparagraph (A)*
 13 *shall not apply with respect to a trust*
 14 *which is—*

15 “(I) *described in section 402(b),*
 16 *404(a)(4), or 404A, or*

17 “(II) *determined by the Secretary*
 18 *to be described in section 501(c)(3).*

19 “(4) *RESPONSIBLE PARTY.*—*For purposes of this*
 20 *subsection, the term ‘responsible party’ means—*

21 “(A) *the grantor in the case of the creation*
 22 *of an inter vivos trust,*

23 “(B) *the transferor in the case of a report-*
 24 *able event described in paragraph (3)(A)(ii)*
 25 *other than a transfer by reason of death, and*

1 “(C) *the executor of the decedent’s estate in*
 2 *any other case.*

3 “(b) *UNITED STATES GRANTOR OF FOREIGN TRUST.—*

4 “(1) *IN GENERAL.—If, at any time during any*
 5 *taxable year of a United States person, such person*
 6 *is treated as the owner of any portion of a foreign*
 7 *trust under the rules of subpart E of part I of sub-*
 8 *chapter J of chapter 1, such person shall be respon-*
 9 *sible to ensure that—*

10 “(A) *such trust makes a return for such*
 11 *year which sets forth a full and complete ac-*
 12 *counting of all trust activities and operations for*
 13 *the year, the name of the United States agent for*
 14 *such trust, and such other information as the*
 15 *Secretary may prescribe, and*

16 “(B) *such trust furnishes such information*
 17 *as the Secretary may prescribe to each United*
 18 *States person (i) who is treated as the owner of*
 19 *any portion of such trust or (ii) who receives*
 20 *(directly or indirectly) any distribution from the*
 21 *trust.*

22 “(2) *TRUSTS NOT HAVING UNITED STATES*
 23 *AGENT.—*

24 “(A) *IN GENERAL.—If the rules of this*
 25 *paragraph apply to any foreign trust, the deter-*

1 *mination of amounts required to be taken into*
2 *account with respect to such trust by a United*
3 *States person under the rules of subpart E of*
4 *part I of subchapter J of chapter 1 shall be de-*
5 *termined by the Secretary.*

6 “(B) UNITED STATES AGENT REQUIRED.—
7 *The rules of this paragraph shall apply to any*
8 *foreign trust to which paragraph (1) applies un-*
9 *less such trust agrees (in such manner, subject to*
10 *such conditions, and at such time as the Sec-*
11 *retary shall prescribe) to authorize a United*
12 *States person to act as such trust’s limited agent*
13 *solely for purposes of applying sections 7602,*
14 *7603, and 7604 with respect to—*

15 “(i) *any request by the Secretary to ex-*
16 *amine records or produce testimony related*
17 *to the proper treatment of amounts required*
18 *to be taken into account under the rules re-*
19 *ferred to in subparagraph (A), or*

20 “(ii) *any summons by the Secretary*
21 *for such records or testimony.*

22 *The appearance of persons or production of*
23 *records by reason of a United States person*
24 *being such an agent shall not subject such per-*
25 *sons or records to legal process for any purpose*

1 *other than determining the correct treatment*
 2 *under this title of the amounts required to be*
 3 *taken into account under the rules referred to in*
 4 *subparagraph (A). A foreign trust which ap-*
 5 *points an agent described in this subparagraph*
 6 *shall not be considered to have an office or a per-*
 7 *manent establishment in the United States, or*
 8 *to be engaged in a trade or business in the Unit-*
 9 *ed States, solely because of the activities of such*
 10 *agent pursuant to this subsection.*

11 *“(C) OTHER RULES TO APPLY.—Rules simi-*
 12 *lar to the rules of paragraphs (2) and (4) of sec-*
 13 *tion 6038A(e) shall apply for purposes of this*
 14 *paragraph.*

15 *“(c) REPORTING BY UNITED STATES BENEFICIARIES*
 16 *OF FOREIGN TRUSTS.—*

17 *“(1) IN GENERAL.—If any United States person*
 18 *receives (directly or indirectly) during any taxable*
 19 *year of such person any distribution from a foreign*
 20 *trust, such person shall make a return with respect to*
 21 *such trust for such year which includes—*

22 *“(A) the name of such trust,*

23 *“(B) the aggregate amount of the distribu-*
 24 *tions so received from such trust during such*
 25 *taxable year, and*

1 “(C) *such other information as the Sec-*
2 *retary may prescribe.*

3 “(2) *INCLUSION IN INCOME IF RECORDS NOT*
4 *PROVIDED.—*

5 “(A) *IN GENERAL.—If adequate records are*
6 *not provided to the Secretary to determine the*
7 *proper treatment of any distribution from a for-*
8 *foreign trust, such distribution shall be treated as*
9 *an accumulation distribution includible in the*
10 *gross income of the distributee under chapter 1.*
11 *To the extent provided in regulations, the preced-*
12 *ing sentence shall not apply if the foreign trust*
13 *elects to be subject to rules similar to the rules*
14 *of subsection (b)(2)(B).*

15 “(B) *APPLICATION OF ACCUMULATION DIS-*
16 *TRIBUTION RULES.—For purposes of applying*
17 *section 668 in a case to which subparagraph (A)*
18 *applies, the applicable number of years for pur-*
19 *poses of section 668(a) shall be $\frac{1}{2}$ of the number*
20 *of years the trust has been in existence.*

21 “(d) *SPECIAL RULES.—*

22 “(1) *DETERMINATION OF WHETHER UNITED*
23 *STATES PERSON MAKES TRANSFER OR RECEIVES DIS-*
24 *TRIBUTION.—For purposes of this section, in deter-*
25 *mining whether a United States person makes a*

1 *transfer to, or receives a distribution from, a foreign*
 2 *trust, the fact that a portion of such trust is treated*
 3 *as owned by another person under the rules of sub-*
 4 *part E of part I of subchapter J of chapter 1 shall*
 5 *be disregarded.*

6 “(2) *DOMESTIC TRUSTS WITH FOREIGN ACTIVI-*
 7 *TIES.—To the extent provided in regulations, a trust*
 8 *which is a United States person shall be treated as*
 9 *a foreign trust for purposes of this section and section*
 10 *6677 if such trust has substantial activities, or holds*
 11 *substantial property, outside the United States.*

12 “(3) *TIME AND MANNER OF FILING INFORMA-*
 13 *TION.—Any notice or return required under this sec-*
 14 *tion shall be made at such time and in such manner*
 15 *as the Secretary shall prescribe.*

16 “(4) *MODIFICATION OF RETURN REQUIRE-*
 17 *MENTS.—The Secretary is authorized to suspend or*
 18 *modify any requirement of this section if the Sec-*
 19 *retary determines that the United States has no sig-*
 20 *nificant tax interest in obtaining the required infor-*
 21 *mation.”.*

22 (b) *INCREASED PENALTIES.—Section 6677 (relating to*
 23 *failure to file information returns with respect to certain*
 24 *foreign trusts) is amended to read as follows:*

1 **“SEC. 6677. FAILURE TO FILE INFORMATION WITH RESPECT**
2 **TO CERTAIN FOREIGN TRUSTS.**

3 “(a) *CIVIL PENALTY.*—*In addition to any criminal*
4 *penalty provided by law, if any notice or return required*
5 *to be filed by section 6048—*

6 “(1) *is not filed on or before the time provided*
7 *in such section, or*

8 “(2) *does not include all the information re-*
9 *quired pursuant to such section or includes incorrect*
10 *information,*

11 *the person required to file such notice or return shall pay*
12 *a penalty equal to 35 percent of the gross reportable*
13 *amount. If any failure described in the preceding sentence*
14 *continues for more than 90 days after the day on which*
15 *the Secretary mails notice of such failure to the person re-*
16 *quired to pay such penalty, such person shall pay a penalty*
17 *(in addition to the amount determined under the preceding*
18 *sentence) of \$10,000 for each 30-day period (or fraction*
19 *thereof) during which such failure continues after the expi-*
20 *ration of such 90-day period. In no event shall the penalty*
21 *under this subsection with respect to any failure exceed the*
22 *gross reportable amount.*

23 “(b) *SPECIAL RULES FOR RETURNS UNDER SECTION*
24 *6048(b).*—*In the case of a return required under section*
25 *6048(b)—*

1 “(1) the United States person referred to in such
2 section shall be liable for the penalty imposed by sub-
3 section (a), and

4 “(2) subsection (a) shall be applied by substitut-
5 ing ‘5 percent’ for ‘35 percent’.

6 “(c) *GROSS REPORTABLE AMOUNT.*—For purposes of
7 subsection (a), the term ‘gross reportable amount’ means—
8 “(1) the gross value of the property involved in
9 the event (determined as of the date of the event) in
10 the case of a failure relating to section 6048(a),

11 “(2) the gross value of the portion of the trust’s
12 assets at the close of the year treated as owned by the
13 United States person in the case of a failure relating
14 to section 6048(b)(1), and

15 “(3) the gross amount of the distributions in the
16 case of a failure relating to section 6048(c).

17 “(d) *REASONABLE CAUSE EXCEPTION.*—No penalty
18 shall be imposed by this section on any failure which is
19 shown to be due to reasonable cause and not due to willful
20 neglect. The fact that a foreign jurisdiction would impose
21 a civil or criminal penalty on the taxpayer (or any other
22 person) for disclosing the required information is not rea-
23 sonable cause.

24 “(e) *DEFICIENCY PROCEDURES NOT TO APPLY.*—Sub-
25 chapter B of chapter 63 (relating to deficiency procedures

1 *for income, estate, gift, and certain excise taxes) shall not*
 2 *apply in respect of the assessment or collection of any pen-*
 3 *alty imposed by subsection (a).”.*

4 *(c) CONFORMING AMENDMENTS.—*

5 *(1) Paragraph (2) of section 6724(d) is amended*
 6 *by striking “or” at the end of subparagraph (S), by*
 7 *striking the period at the end of subparagraph (T)*
 8 *and inserting “, or”, and by inserting after subpara-*
 9 *graph (T) the following new subparagraph:*

10 *“(U) section 6048(b)(1)(B) (relating to for-*
 11 *eign trust reporting requirements).”.*

12 *(2) The table of sections for subpart B of part*
 13 *III of subchapter A of chapter 61 is amended by strik-*
 14 *ing the item relating to section 6048 and inserting*
 15 *the following new item:*

“Sec. 6048. Information with respect to certain foreign trusts.”.

16 *(3) The table of sections for part I of subchapter*
 17 *B of chapter 68 is amended by striking the item relat-*
 18 *ing to section 6677 and inserting the following new*
 19 *item:*

“Sec. 6677. Failure to file information with respect to certain for-
eign trusts.”.

20 *(d) EFFECTIVE DATES.—*

21 *(1) REPORTABLE EVENTS.—To the extent related*
 22 *to subsection (a) of section 6048 of the Internal Reve-*
 23 *nue Code of 1986, as amended by this section, the*

1 amendments made by this section shall apply to re-
 2 portable events (as defined in such section 6048) oc-
 3 curring after the date of the enactment of this Act.

4 (2) *GRANTOR TRUST REPORTING.*—To the extent
 5 related to subsection (b) of such section 6048, the
 6 amendments made by this section shall apply to tax-
 7 able years of United States persons beginning after
 8 December 31, 1995.

9 (3) *REPORTING BY UNITED STATES BENE-*
 10 *FICIARIES.*—To the extent related to subsection (c) of
 11 such section 6048, the amendments made by this sec-
 12 tion shall apply to distributions received after the
 13 date of the enactment of this Act.

14 **SEC. 402. COMPARABLE PENALTIES FOR FAILURE TO FILE**
 15 **RETURN RELATING TO TRANSFERS TO FOR-**
 16 **EIGN ENTITIES.**

17 (a) *IN GENERAL.*—Section 1494 is amended by adding
 18 at the end the following new subsection:

19 “(c) *PENALTY.*—In the case of any failure to file a re-
 20 turn required by the Secretary with respect to any transfer
 21 described in section 1491, the person required to file such
 22 return shall be liable for the penalties provided in section
 23 6677 in the same manner as if such failure were a failure
 24 to file a notice under section 6048(a).”.

1 (b) *EFFECTIVE DATE.*—*The amendment made by sub-*
 2 *section (a) shall apply to transfers after the date of the en-*
 3 *actment of this Act.*

4 **SEC. 403. MODIFICATIONS OF RULES RELATING TO FOR-**
 5 **EIGN TRUSTS HAVING ONE OR MORE UNITED**
 6 **STATES BENEFICIARIES.**

7 (a) *TREATMENT OF TRUST OBLIGATIONS, ETC.*—

8 (1) *Paragraph (2) of section 679(a) is amended*
 9 *by striking subparagraph (B) and inserting the fol-*
 10 *lowing:*

11 “(B) *TRANSFERS AT FAIR MARKET*
 12 *VALUE.*—*To any transfer of property to a trust*
 13 *in exchange for consideration of at least the fair*
 14 *market value of the transferred property. For*
 15 *purposes of the preceding sentence, consideration*
 16 *other than cash shall be taken into account at its*
 17 *fair market value.”.*

18 (2) *Subsection (a) of section 679 (relating to for-*
 19 *ign trusts having one or more United States bene-*
 20 *ficiaries) is amended by adding at the end the follow-*
 21 *ing new paragraph:*

22 “(3) *CERTAIN OBLIGATIONS NOT TAKEN INTO AC-*
 23 *COUNT UNDER FAIR MARKET VALUE EXCEPTION.*—

24 “(A) *IN GENERAL.*—*In determining whether*
 25 *paragraph (2)(B) applies to any transfer by a*

1 *person described in clause (ii) or (iii) of sub-*
 2 *paragraph (C), there shall not be taken into ac-*
 3 *count—*

4 *“(i) except as provided in regulations,*
 5 *any obligation of a person described in sub-*
 6 *paragraph (C), and*

7 *“(ii) to the extent provided in regula-*
 8 *tions, any obligation which is guaranteed*
 9 *by a person described in subparagraph (C).*

10 *“(B) TREATMENT OF PRINCIPAL PAYMENTS*
 11 *ON OBLIGATION.—Principal payments by the*
 12 *trust on any obligation referred to in subpara-*
 13 *graph (A) shall be taken into account on and*
 14 *after the date of the payment in determining the*
 15 *portion of the trust attributable to the property*
 16 *transferred.*

17 *“(C) PERSONS DESCRIBED.—The persons*
 18 *described in this subparagraph are—*

19 *“(i) the trust,*

20 *“(ii) any grantor or beneficiary of the*
 21 *trust, and*

22 *“(iii) any person who is related (with-*
 23 *in the meaning of section 643(i)(2)(B)) to*
 24 *any grantor or beneficiary of the trust.”.*

1 (b) *EXEMPTION OF TRANSFERS TO CHARITABLE*
 2 *TRUSTS.*—Subsection (a) of section 679 is amended by
 3 striking “section 404(a)(4) or 404A” and inserting “section
 4 6048(a)(3)(B)(ii)”.

5 (c) *OTHER MODIFICATIONS.*—Subsection (a) of section
 6 679 is amended by adding at the end the following new
 7 paragraphs:

8 “(4) *SPECIAL RULES APPLICABLE TO FOREIGN*
 9 *GRANTOR WHO LATER BECOMES A UNITED STATES*
 10 *PERSON.*—

11 “(A) *IN GENERAL.*—If a nonresident alien
 12 individual has a residency starting date within
 13 5 years after directly or indirectly transferring
 14 property to a foreign trust, this section and sec-
 15 tion 6048 shall be applied as if such individual
 16 transferred to such trust on the residency start-
 17 ing date an amount equal to the portion of such
 18 trust attributable to the property transferred by
 19 such individual to such trust in such transfer.

20 “(B) *TREATMENT OF UNDISTRIBUTED IN-*
 21 *COME.*—For purposes of this section, undistrib-
 22 uted net income for periods before such individ-
 23 ual’s residency starting date shall be taken into
 24 account in determining the portion of the trust
 25 which is attributable to property transferred by

1 *such individual to such trust but shall not other-*
 2 *wise be taken into account.*

3 “(C) *RESIDENCY STARTING DATE.*—*For*
 4 *purposes of this paragraph, an individual’s resi-*
 5 *dency starting date is the residency starting date*
 6 *determined under section 7701(b)(2)(A).*

7 “(5) *OUTBOUND TRUST MIGRATIONS.*—*If—*

8 “(A) *an individual who is a citizen or resi-*
 9 *dent of the United States transferred property to*
 10 *a trust which was not a foreign trust, and*

11 “(B) *such trust becomes a foreign trust*
 12 *while such individual is alive,*

13 *then this section and section 6048 shall be applied as*
 14 *if such individual transferred to such trust on the*
 15 *date such trust becomes a foreign trust an amount*
 16 *equal to the portion of such trust attributable to the*
 17 *property previously transferred by such individual to*
 18 *such trust. A rule similar to the rule of paragraph*
 19 *(4)(B) shall apply for purposes of this paragraph.”.*

20 “(d) *MODIFICATIONS RELATING TO WHETHER TRUST*
 21 *HAS UNITED STATES BENEFICIARIES.*—*Subsection (c) of*
 22 *section 679 is amended by adding at the end the following*
 23 *new paragraph:*

24 “(3) *CERTAIN UNITED STATES BENEFICIARIES*
 25 *DISREGARDED.*—*A beneficiary shall not be treated as*

1 *a United States person in applying this section with*
 2 *respect to any transfer of property to foreign trust if*
 3 *such beneficiary first became a United States person*
 4 *more than 5 years after the date of such transfer.”.*

5 *(e) TECHNICAL AMENDMENT.—Subparagraph (A) of*
 6 *section 679(c)(2) is amended to read as follows:*

7 *“(A) in the case of a foreign corporation,*
 8 *such corporation is a controlled foreign corpora-*
 9 *tion (as defined in section 957(a)),”.*

10 *(f) REGULATIONS.—Section 679 is amended by adding*
 11 *at the end the following new subsection:*

12 *“(d) REGULATIONS.—The Secretary shall prescribe*
 13 *such regulations as may be necessary or appropriate to*
 14 *carry out the purposes of this section.”.*

15 *(g) EFFECTIVE DATE.—The amendments made by this*
 16 *section shall apply to transfers of property after February*
 17 *6, 1995.*

18 **SEC. 404. FOREIGN PERSONS NOT TO BE TREATED AS OWN-**
 19 **ERS UNDER GRANTOR TRUST RULES.**

20 *(a) GENERAL RULE.—*

21 *(1) Subsection (f) of section 672 (relating to spe-*
 22 *cial rule where grantor is foreign person) is amended*
 23 *to read as follows:*

24 *“(f) SUBPART NOT TO RESULT IN FOREIGN OWNER-*
 25 *SHIP.—*

1 “(1) *IN GENERAL.*—Notwithstanding any other
 2 *provision of this subpart, this subpart shall apply*
 3 *only to the extent such application results in an*
 4 *amount (if any) being currently taken into account*
 5 *(directly or through 1 or more entities) under this*
 6 *chapter in computing the income of a citizen or resi-*
 7 *dent of the United States or a domestic corporation.*

8 “(2) *EXCEPTIONS.*—

9 “(A) *CERTAIN REVOCABLE AND IRREV-*
 10 *OCABLE TRUSTS.*—Paragraph (1) shall not
 11 *apply to any portion of a trust if—*

12 “(i) *the power to revest absolutely in*
 13 *the grantor title to the trust property to*
 14 *which such portion is attributable is exer-*
 15 *cisable solely by the grantor without the ap-*
 16 *proval or consent of any other person or*
 17 *with the consent of a related or subordinate*
 18 *party who is subservient to the grantor, or*

19 “(ii) *the only amounts distributable*
 20 *from such portion (whether income or cor-*
 21 *pus) during the lifetime of the grantor are*
 22 *amounts distributable to the grantor or the*
 23 *spouse of the grantor.*

24 “(B) *COMPENSATORY TRUSTS.*—*Except as*
 25 *provided in regulations, paragraph (1) shall not*

1 *apply to any portion of a trust distributions*
2 *from which are taxable as compensation for serv-*
3 *ices rendered.*

4 “(3) *SPECIAL RULES.—Except as otherwise pro-*
5 *vided in regulations prescribed by the Secretary—*

6 “(A) *a controlled foreign corporation (as de-*
7 *finied in section 957) shall be treated as a domes-*
8 *tic corporation for purposes of paragraph (1),*
9 *and*

10 “(B) *paragraph (1) shall not apply for pur-*
11 *poses of applying section 1296.*

12 “(4) *RECHARACTERIZATION OF PURPORTED*
13 *GIFTS.—In the case of any transfer directly or indi-*
14 *rectly from a partnership or foreign corporation*
15 *which the transferee treats as a gift or bequest, the*
16 *Secretary may recharacterize such transfer in such*
17 *circumstances as the Secretary determines to be ap-*
18 *propriate to prevent the avoidance of the purposes of*
19 *this subsection.*

20 “(5) *SPECIAL RULE WHERE GRANTOR IS FOR-*
21 *EIGN PERSON.—If—*

22 “(A) *but for this subsection, a foreign per-*
23 *son would be treated as the owner of any portion*
24 *of a trust, and*

1 “(B) such trust has a beneficiary who is a
 2 United States person,
 3 such beneficiary shall be treated as the grantor of
 4 such portion to the extent such beneficiary or any
 5 member of such beneficiary’s family (within the
 6 meaning of section 267(c)(4)) has made (directly or
 7 indirectly) transfers of property (other than in a sale
 8 for full and adequate consideration) to such foreign
 9 person. For purposes of the preceding sentence, any
 10 gift shall not be taken into account to the extent such
 11 gift would be excluded from taxable gifts under section
 12 2503(b).

13 “(6) REGULATIONS.—The Secretary shall pre-
 14 scribe such regulations as may be necessary or appro-
 15 priate to carry out the purposes of this subsection, in-
 16 cluding regulations providing that paragraph (1)
 17 shall not apply in appropriate cases.”.

18 (2) The last sentence of subsection (c) of section
 19 672 of such Code is amended by inserting “subsection
 20 (f) and” before “sections 674”.

21 (b) CREDIT FOR CERTAIN TAXES.—

22 (1) Paragraph (2) of section 665(d) is amended
 23 by adding at the end the following new sentence:
 24 “Under rules or regulations prescribed by the Sec-
 25 retary, in the case of any foreign trust of which the

1 settlor or another person would be treated as owner
 2 of any portion of the trust under subpart E but for
 3 section 672(f), the term ‘taxes imposed on the trust’
 4 includes the allocable amount of any income, war
 5 profits, and excess profits taxes imposed by any for-
 6 eign country or possession of the United States on the
 7 settlor or such other person in respect of trust in-
 8 come.”.

9 (2) Paragraph (5) of section 901(b) is amended
 10 by adding at the end the following new sentence:
 11 “Under rules or regulations prescribed by the Sec-
 12 retary, in the case of any foreign trust of which the
 13 settlor or another person would be treated as owner
 14 of any portion of the trust under subpart E but for
 15 section 672(f), the allocable amount of any income,
 16 war profits, and excess profits taxes imposed by any
 17 foreign country or possession of the United States on
 18 the settlor or such other person in respect of trust in-
 19 come.”.

20 (c) *DISTRIBUTIONS BY CERTAIN FOREIGN TRUSTS*
 21 *THROUGH NOMINEES.*—

22 (1) Section 643 is amended by adding at the end
 23 the following new subsection:

24 “(h) *DISTRIBUTIONS BY CERTAIN FOREIGN TRUSTS*
 25 *THROUGH NOMINEES.*—For purposes of this part, any

1 *amount paid to a United States person which is derived*
 2 *directly or indirectly from a foreign trust of which the*
 3 *payor is not the grantor shall be deemed in the year of pay-*
 4 *ment to have been directly paid by the foreign trust to such*
 5 *United States person.”.*

6 (2) *Section 665 is amended by striking sub-*
 7 *section (c).*

8 (d) *EFFECTIVE DATE.—*

9 (1) *IN GENERAL.—Except as provided by para-*
 10 *graph (2), the amendments made by this section shall*
 11 *take effect on the date of the enactment of this Act.*

12 (2) *EXCEPTION FOR CERTAIN TRUSTS.—The*
 13 *amendments made by this section shall not apply to*
 14 *any trust—*

15 (A) *which is treated as owned by the grant-*
 16 *or under section 676 or 677 (other than sub-*
 17 *section (a)(3) thereof) of the Internal Revenue*
 18 *Code of 1986, and*

19 (B) *which is in existence on September 19,*
 20 *1995.*

21 *The preceding sentence shall not apply to the portion*
 22 *of any such trust attributable to any transfer to such*
 23 *trust after September 19, 1995.*

24 (e) *TRANSITIONAL RULE.—If—*

1 (1) *by reason of the amendments made by this*
 2 *section, any person other than a United States person*
 3 *ceases to be treated as the owner of a portion of a do-*
 4 *mestic trust, and*

5 (2) *before January 1, 1997, such trust becomes*
 6 *a foreign trust, or the assets of such trust are trans-*
 7 *ferred to a foreign trust,*
 8 *no tax shall be imposed by section 1491 of the Internal Rev-*
 9 *enue Code of 1986 by reason of such trust becoming a for-*
 10 *ign trust or the assets of such trust being transferred to*
 11 *a foreign trust.*

12 **SEC. 405. INFORMATION REPORTING REGARDING FOREIGN**
 13 **GIFTS.**

14 (a) *IN GENERAL.*—*Subpart A of part III of subchapter*
 15 *A of chapter 61 is amended by inserting after section 6039E*
 16 *the following new section:*

17 **“SEC. 6039F. NOTICE OF LARGE GIFTS RECEIVED FROM**
 18 **FOREIGN PERSONS.**

19 “(a) *IN GENERAL.*—*If the value of the aggregate for-*
 20 *ign gifts received by a United States person (other than*
 21 *an organization described in section 501(c) and exempt*
 22 *from tax under section 501(a)) during any taxable year ex-*
 23 *ceeds \$10,000, such United States person shall furnish (at*
 24 *such time and in such manner as the Secretary shall pre-*

1 scribe) such information as the Secretary may prescribe re-
2 garding each foreign gift received during such year.

3 “(b) *FOREIGN GIFT.*—For purposes of this section, the
4 term ‘foreign gift’ means any amount received from a per-
5 son other than a United States person which the recipient
6 treats as a gift or bequest. Such term shall not include any
7 qualified transfer (within the meaning of section
8 2503(e)(2)) or any distribution properly disclosed in a re-
9 turn under section 6048(c).

10 “(c) *PENALTY FOR FAILURE TO FILE INFORMATION.*—

11 “(1) *IN GENERAL.*—If a United States person
12 fails to furnish the information required by subsection
13 (a) with respect to any foreign gift within the time
14 prescribed therefor (including extensions)—

15 “(A) the tax consequences of the receipt of
16 such gift shall be determined by the Secretary,
17 and

18 “(B) such United States person shall pay
19 (upon notice and demand by the Secretary and
20 in the same manner as tax) an amount equal to
21 5 percent of the amount of such foreign gift for
22 each month for which the failure continues (not
23 to exceed 25 percent of such amount in the aggre-
24 gate).

1 “(2) *REASONABLE CAUSE EXCEPTION.*—Para-
 2 graph (1) shall not apply to any failure to report a
 3 foreign gift if the United States person shows that the
 4 failure is due to reasonable cause and not due to will-
 5 ful neglect.

6 “(d) *COST-OF-LIVING ADJUSTMENT.*—In the case of
 7 any taxable year beginning after December 31, 1996, the
 8 \$10,000 amount under subsection (a) shall be increased by
 9 an amount equal to the product of such amount and the
 10 cost-of-living adjustment for such taxable year under section
 11 1(f)(3), except that subparagraph (B) thereof shall be ap-
 12 plied by substituting ‘1995’ for ‘1992’.

13 “(e) *REGULATIONS.*—The Secretary shall prescribe
 14 such regulations as may be necessary or appropriate to
 15 carry out the purposes of this section.”.

16 “(b) *CLERICAL AMENDMENT.*—The table of sections for
 17 such subpart is amended by inserting after the item relating
 18 to section 6039E the following new item:

 “Sec. 6039F. Notice of large gifts received from foreign persons.”.

19 “(c) *EFFECTIVE DATE.*—The amendments made by this
 20 section shall apply to amounts received after the date of
 21 the enactment of this Act in taxable years ending after such
 22 date.

1 **SEC. 406. MODIFICATION OF RULES RELATING TO FOREIGN**
 2 **TRUSTS WHICH ARE NOT GRANTOR TRUSTS.**

3 (a) *MODIFICATION OF INTEREST CHARGE ON ACCUMU-*
 4 *LATION DISTRIBUTIONS.*—Subsection (a) of section 668 (re-
 5 *lating to interest charge on accumulation distributions from*
 6 *foreign trusts) is amended to read as follows:*

7 “(a) *GENERAL RULE.*—For purposes of the tax deter-
 8 *mined under section 667(a)—*

9 “(1) *INTEREST DETERMINED USING UNDERPAY-*
 10 *MENT RATES.*—The interest charge determined under
 11 *this section with respect to any distribution is the*
 12 *amount of interest which would be determined on the*
 13 *partial tax computed under section 667(b) for the pe-*
 14 *riod described in paragraph (2) using the rates and*
 15 *the method under section 6621 applicable to under-*
 16 *payments of tax.*

17 “(2) *PERIOD.*—For purposes of paragraph (1),
 18 *the period described in this paragraph is the period*
 19 *which begins on the date which is the applicable num-*
 20 *ber of years before the date of the distribution and*
 21 *which ends on the date of the distribution.*

22 “(3) *APPLICABLE NUMBER OF YEARS.*—For pur-
 23 *poses of paragraph (2)—*

24 “(A) *IN GENERAL.*—The applicable number
 25 *of years with respect to a distribution is the*
 26 *number determined by dividing—*

1 “(i) the sum of the products described
2 in subparagraph (B) with respect to each
3 undistributed income year, by

4 “(ii) the aggregate undistributed net
5 income.

6 The quotient determined under the preceding
7 sentence shall be rounded under procedures pre-
8 scribed by the Secretary.

9 “(B) *PRODUCT DESCRIBED*.—For purposes
10 of subparagraph (A), the product described in
11 this subparagraph with respect to any undistrib-
12 uted income year is the product of—

13 “(i) the undistributed net income for
14 such year, and

15 “(ii) the sum of the number of taxable
16 years between such year and the taxable
17 year of the distribution (counting in each
18 case the undistributed income year but not
19 counting the taxable year of the distribu-
20 tion).

21 “(4) *UNDISTRIBUTED INCOME YEAR*.—For pur-
22 poses of this subsection, the term ‘undistributed in-
23 come year’ means any prior taxable year of the trust
24 for which there is undistributed net income, other
25 than a taxable year during all of which the bene-

1 *ficiary receiving the distribution was not a citizen or*
 2 *resident of the United States.*

3 “(5) *DETERMINATION OF UNDISTRIBUTED NET*
 4 *INCOME.*—*Notwithstanding section 666, for purposes*
 5 *of this subsection, an accumulation distribution from*
 6 *the trust shall be treated as reducing proportionately*
 7 *the undistributed net income for undistributed income*
 8 *years.*

9 “(6) *PERIODS BEFORE 1996.*—*Interest for the*
 10 *portion of the period described in paragraph (2)*
 11 *which occurs before January 1, 1996, shall be deter-*
 12 *mined—*

13 “(A) *by using an interest rate of 6 percent,*
 14 *and*

15 “(B) *without compounding until January*
 16 *1, 1996.”.*

17 (b) *ABUSIVE TRANSACTIONS.*—*Section 643(a) is*
 18 *amended by inserting after paragraph (6) the following new*
 19 *paragraph:*

20 “(7) *ABUSIVE TRANSACTIONS.*—*The Secretary*
 21 *shall prescribe such regulations as may be necessary*
 22 *or appropriate to carry out the purposes of this part,*
 23 *including regulations to prevent avoidance of such*
 24 *purposes.”.*

25 (c) *TREATMENT OF LOANS FROM TRUSTS.*—

1 (1) *IN GENERAL.*—Section 643 (relating to defi-
 2 nitions applicable to subparts A, B, C, and D) is
 3 amended by adding at the end the following new sub-
 4 section:

5 “(i) *LOANS FROM FOREIGN TRUSTS.*—For purposes of
 6 subparts B, C, and D—

7 “(1) *GENERAL RULE.*—Except as provided in
 8 regulations, if a foreign trust makes a loan of cash or
 9 marketable securities directly or indirectly to—

10 “(A) any grantor or beneficiary of such
 11 trust who is a United States person, or

12 “(B) any United States person not de-
 13 scribed in subparagraph (A) who is related to
 14 such grantor or beneficiary,

15 the amount of such loan shall be treated as a distribu-
 16 tion by such trust to such grantor or beneficiary (as
 17 the case may be).

18 “(2) *DEFINITIONS AND SPECIAL RULES.*—For
 19 purposes of this subsection—

20 “(A) *CASH.*—The term ‘cash’ includes for-
 21 eign currencies and cash equivalents.

22 “(B) *RELATED PERSON.*—

23 “(i) *IN GENERAL.*—A person is related
 24 to another person if the relationship between
 25 such persons would result in a disallowance

1 of losses under section 267 or 707(b). In ap-
 2 plying section 267 for purposes of the pre-
 3 ceding sentence, section 267(c)(4) shall be
 4 applied as if the family of an individual
 5 includes the spouses of the members of the
 6 family.

7 “(ii) *ALLOCATION*.—If any person de-
 8 scribed in paragraph (1)(B) is related to
 9 more than one person, the grantor or bene-
 10 ficiary to whom the treatment under this
 11 subsection applies shall be determined under
 12 regulations prescribed by the Secretary.

13 “(C) *EXCLUSION OF TAX-EXEMPTS*.—The
 14 term ‘United States person’ does not include any
 15 entity exempt from tax under this chapter.

16 “(D) *TRUST NOT TREATED AS SIMPLE*
 17 *TRUST*.—Any trust which is treated under this
 18 subsection as making a distribution shall be
 19 treated as not described in section 651.

20 “(3) *SUBSEQUENT TRANSACTIONS REGARDING*
 21 *LOAN PRINCIPAL*.—If any loan is taken into account
 22 under paragraph (1), any subsequent transaction be-
 23 tween the trust and the original borrower regarding
 24 the principal of the loan (by way of complete or par-
 25 tial repayment, satisfaction, cancellation, discharge,

1 or otherwise) shall be disregarded for purposes of this
2 title.”.

3 (2) *TECHNICAL AMENDMENT.*—Paragraph (8) of
4 section 7872(f) is amended by inserting “, 643(i),” be-
5 fore “or 1274” each place it appears.

6 (d) *EFFECTIVE DATES.*—

7 (1) *INTEREST CHARGE.*—The amendment made
8 by subsection (a) shall apply to distributions after the
9 date of the enactment of this Act.

10 (2) *ABUSIVE TRANSACTIONS.*—The amendment
11 made by subsection (b) shall take effect on the date of
12 the enactment of this Act.

13 (3) *LOANS FROM TRUSTS.*—The amendment
14 made by subsection (c) shall apply to loans of cash
15 or marketable securities made after September 19,
16 1995.

17 **SEC. 407. RESIDENCE OF TRUSTS, ETC.**

18 (a) *TREATMENT AS UNITED STATES PERSON.*—

19 (1) *IN GENERAL.*—Paragraph (30) of section
20 7701(a) is amended by striking “and” at the end of
21 subparagraph (C) and by striking subparagraph (D)
22 and by inserting the following new subparagraphs:

23 “(D) any estate (other than a foreign estate,
24 within the meaning of paragraph (31)), and

25 “(E) any trust if—

1 “(i) a court within the United States
2 is able to exercise primary supervision over
3 the administration of the trust, and

4 “(ii) one or more United States fidu-
5 ciaries have the authority to control all sub-
6 stantial decisions of the trust.”.

7 (2) *CONFORMING AMENDMENT.*—Paragraph (31)
8 of section 7701(a) is amended to read as follows:

9 “(31) *FOREIGN ESTATE OR TRUST.*—

10 “(A) *FOREIGN ESTATE.*—The term ‘foreign
11 estate’ means an estate the income of which, from
12 sources without the United States which is not
13 effectively connected with the conduct of a trade
14 or business within the United States, is not in-
15 cludible in gross income under subtitle A.

16 “(B) *FOREIGN TRUST.*—The term ‘foreign
17 trust’ means any trust other than a trust de-
18 scribed in subparagraph (E) of paragraph
19 (30).”.

20 (3) *EFFECTIVE DATE.*—The amendments made
21 by this subsection shall apply—

22 (A) to taxable years beginning after Decem-
23 ber 31, 1996, or

1 (B) at the election of the trustee of a trust,
 2 to taxable years ending after the date of the en-
 3 actment of this Act.

4 Such an election, once made, shall be irrevocable.

5 (b) DOMESTIC TRUSTS WHICH BECOME FOREIGN
 6 TRUSTS.—

7 (1) IN GENERAL.—Section 1491 (relating to im-
 8 position of tax on transfers to avoid income tax) is
 9 amended by adding at the end the following new flush
 10 sentence:

11 “If a trust which is not a foreign trust becomes a foreign
 12 trust, such trust shall be treated for purposes of this section
 13 as having transferred, immediately before becoming a for-
 14 eign trust, all of its assets to a foreign trust.”.

15 (2) EFFECTIVE DATE.—The amendment made by
 16 this subsection shall take effect on the date of the en-
 17 actment of this Act.

18 **Subtitle B—International Shipping**
 19 **Income Disclosure**

20 **SEC. 411. PENALTIES FOR FAILURE TO DISCLOSE POSITION**
 21 **THAT CERTAIN INTERNATIONAL SHIPPING**
 22 **INCOME IS NOT INCLUDIBLE IN GROSS IN-**
 23 **COME.**

24 (a) IN GENERAL.—Section 883 is amended by adding
 25 at the end the following 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) (or by reason of any applicable*
 10 *treaty) shall be entitled to such treatment only if such*
 11 *position is disclosed (in such manner as the Secretary*
 12 *may prescribe) on the return of tax for such tax (or*
 13 *any statement attached to such return).*

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

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

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

22 “(ii) *which is attributable to a fixed*
 23 *place of business in the United States,*

1 *shall be treated for purposes of this title as effec-*
 2 *tively connected with the conduct of a trade or*
 3 *business within the United States, and*

4 *“(B) no deductions or credits shall be al-*
 5 *lowed which are attributable to income from the*
 6 *international operation of a ship or ships.*

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

11 *(b) CONFORMING AMENDMENTS.—*

12 *(1) Paragraph (1) of section 872(b) is amended*
 13 *by striking “Gross income” and inserting “Except as*
 14 *provided in section 883(d), gross income”.*

15 *(2) Paragraph (1) of section 883(a) is amended*
 16 *by striking “Gross income” and inserting “Except as*
 17 *provided in subsection (d), gross income”.*

18 *(c) EFFECTIVE DATE.—*

19 *(1) IN GENERAL.—The amendments made by*
 20 *this section shall apply to taxable years beginning*
 21 *after the later of—*

22 *(A) December 31, 1996, or*

23 *(B) the date that the Shipbuilding Agree-*
 24 *ment enters into force with respect to the United*
 25 *States.*

1 (2) COORDINATION WITH TREATIES.—*The*
2 *amendments made by this section shall not apply in*
3 *any case where their application would be contrary*
4 *to any treaty obligation of the United States.*

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

Amend the title so as to read: “An Act to amend the United States-Israel Free Trade Area Implementation Act of 1985 to provide the President with additional proclamation authority with respect to articles of the West Bank or Gaza Strip or a qualifying industrial zone, to approve and implement the OECD Shipbuilding Agreement, to reauthorize the Generalized System of Preferences, and for other purposes.”.