

105TH CONGRESS
1ST SESSION

S. 1216

[Report No. 105–84]

To approve and implement the OECD Shipbuilding Trade Agreement.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 9, 1997

Ordered referred to the Committee on Commerce, Science, and Transportation
for consideration of matters within its jurisdiction for not to exceed 10
calendar days

A BILL

To approve and implement the OECD Shipbuilding Trade
Agreement.

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

3 **SECTION 1. SHORT TITLE; PURPOSES; TABLE OF CON-**
4 **TENTS.**

5 (a) **SHORT TITLE.**—This Act may be cited as the
6 “OECD Shipbuilding Trade Agreement Act”.

7 (b) **PURPOSES.**—The purposes of this Act are—

8 (1) to enhance the competitiveness of United
9 States shipbuilders which has been diminished as a

1 result of foreign subsidies and predatory pricing
2 practices;

3 (2) to ensure that United States ownership,
4 manning, registry, and construction requirements for
5 coastwise trade vessels, which have provided the De-
6 partment of Defense with mariners and assets in
7 time of national emergency, cannot be compromised
8 by the Shipbuilding Agreement; and

9 (3) to strengthen the United States shipbuild-
10 ing industrial base to ensure that its full capabilities
11 are available in time of national emergency.

12 (c) TABLE OF CONTENTS.—The table of contents for
13 this Act is as follows:

Sec. 1. Short title; purposes; table of contents.

TITLE I—APPROVAL AND IMPLEMENTATION OF OECD
SHIPBUILDING AGREEMENT

Subtitle A—General Provisions

- Sec. 101. Approval of the Shipbuilding Agreement.
- Sec. 102. Injurious pricing and countermeasures relating to shipbuilding.
- Sec. 103. Enforcement of countermeasures.
- Sec. 104. Judicial review in injurious pricing and countermeasure proceedings.

Subtitle B—Other Provisions

- Sec. 111. Equipment and repair of vessels.
- Sec. 112. Effect of Shipbuilding Trade Agreement with respect to private remedies.
- Sec. 113. Implementing regulations.
- Sec. 114. Amendments to the Merchant Marine Act, 1936.
- Sec. 115. Applicability of title XI amendments.
- Sec. 116. Monitoring and enforcement.
- Sec. 117. Jones Act and related laws not affected.
- Sec. 118. Withdrawal from Shipbuilding Agreement.
- Sec. 119. Expanding membership in the Shipbuilding Agreement.
- Sec. 120. Protection of United States security interests.
- Sec. 121. Definitions.
- Sec. 122. Capital construction fund conforming amendment.

Subtitle C—Effective Date

Sec. 131. Effective date.

TITLE II—INTERNATIONAL SHIPPING INCOME DISCLOSURE

Sec. 201. Penalties for failure to disclose position that certain international shipping income is not includible in gross income.

1 **TITLE I—APPROVAL AND IMPLE-**
 2 **MENTATION OF OECD SHIP-**
 3 **BUILDING AGREEMENT**

4 **Subtitle A—General Provisions**

5 **SEC. 101. APPROVAL OF THE SHIPBUILDING AGREEMENT.**

6 The Congress approves The Agreement Respecting
 7 Normal Competitive Conditions in the Commercial Ship-
 8 building and Repair Industry (referred to in this Act as
 9 the “Shipbuilding Agreement”), a reciprocal trade agree-
 10 ment which resulted from negotiations under the auspices
 11 of the Organization for Economic Cooperation and Devel-
 12 opment, and was entered into on December 21, 1994.

13 **SEC. 102. INJURIOUS PRICING AND COUNTERMEASURES**
 14 **RELATING TO SHIPBUILDING.**

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

17 **“TITLE VIII—INJURIOUS PRIC-**
 18 **ING AND COUNTERMEASURES**
 19 **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.
- “Sec. 809. Third country injurious pricing.

“Subtitle B—Special Rules

- “Sec. 821. Export price.
- “Sec. 822. Normal value.
- “Sec. 823. Currency conversion.

“Subtitle C—Procedures

- “Sec. 841. Hearings.
- “Sec. 842. Determinations on the basis of the facts available.
- “Sec. 843. Access to information.
- “Sec. 844. Conduct of investigations.
- “Sec. 845. Administrative action following Shipbuilding Agreement panel reports.

“Subtitle D—Definitions

- “Sec. 861. Definitions.

1 **“Subtitle A—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
 7 that a foreign vessel has been sold directly or indi-
 8 rectly to one or more United States buyers at less
 9 than its fair 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

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

3 “(B) the establishment of an industry in
4 the United States is or has been materially re-
5 tarded,

6 by reason of the sale of such vessel, then there shall
7 be imposed upon the foreign producer of the subject
8 vessel an injurious pricing charge, in an amount
9 equal to the amount by which the normal value ex-
10 ceeds the export price for the vessel. For purposes
11 of this subsection and section 805(b)(1), a reference
12 to the sale of a foreign vessel includes the creation
13 or transfer of an ownership interest in the vessel, ex-
14 cept for an ownership interest created or acquired
15 solely for the purpose of providing security for a
16 normal commercial loan.

17 “(b) FOREIGN VESSELS NOT MERCHANDISE.—No
18 foreign vessel may be considered to be, or to be part of,
19 a class or kind of merchandise for purposes of subtitle B
20 of title VII.

21 **“SEC. 802. PROCEDURES FOR INITIATING AN INJURIOUS**
22 **PRICING INVESTIGATION.**

23 “(a) INITIATION BY ADMINISTERING AUTHORITY.—

24 “(1) GENERAL RULE.—Except in the case in
25 which subsection (d)(6) applies, an injurious pricing

1 investigation shall be initiated whenever the admin-
2 istering authority determines, from information
3 available to it, that a formal investigation is war-
4 ranted into the question of whether the elements
5 necessary for the imposition of a charge under sec-
6 tion 801(a) exist, and whether a producer described
7 in section 861(17)(C) would meet the criteria of sub-
8 section (b)(1)(B) for a petitioner.

9 “(2) TIME FOR INITIATION BY ADMINISTERING
10 AUTHORITY.—An investigation may only be initiated
11 under paragraph (1) within 6 months after the time
12 the administering authority first knew or should
13 have known of the sale of the vessel. Any period dur-
14 ing which an investigation is initiated and pending
15 as described in subsection (d)(6)(A) shall not be in-
16 cluded in calculating that 6-month period.

17 “(b) INITIATION BY PETITION.—

18 “(1) PETITION REQUIREMENTS.—

19 “(A) IN GENERAL.—Except in a case in
20 which subsection (d)(6) applies, an injurious
21 pricing proceeding shall be initiated whenever
22 an interested party, as defined in subparagraph
23 (C), (D), (E), or (F) of section 861(17), files
24 a petition with the administering authority, on
25 behalf of an industry, which alleges the ele-

1 ments necessary for the imposition of an injuri-
2 ous pricing charge under section 801(a) and the
3 elements required under subparagraph (B), (C),
4 (D), or (E) of this paragraph, and which is ac-
5 companied by information reasonably available
6 to the petitioner supporting those allegations
7 and identifying the transaction concerned.

8 “(B) PETITIONERS DESCRIBED IN SEC-
9 TION 861(17)(C).—

10 “(i) IN GENERAL.—If the petitioner is
11 a producer described in section
12 861(17)(C), and—

13 “(I) if the vessel was sold
14 through a broad multiple bid, the peti-
15 tion shall include information indicat-
16 ing that the petitioner was invited to
17 tender a bid on the contract at issue,
18 the petitioner actually did so, and the
19 bid of the petitioner substantially met
20 the delivery date and technical re-
21 quirements of the bid,

22 “(II) if the vessel was sold
23 through any bidding process other
24 than a broad multiple bid and the pe-
25 titioner was invited to tender a bid on

1 the contract at issue, the petition
2 shall include information indicating
3 that the petitioner actually did so and
4 the bid of the petitioner substantially
5 met the delivery date and technical re-
6 quirements of the bid, or

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

20 “(ii) REBUTTABLE PRESUMPTION RE-
21 GARDING KNOWLEDGE OF PROPOSED PUR-
22 CHASE.—For purposes of clause (i)(III),
23 there is a rebuttable presumption that the
24 petitioner knew or should have known of

1 the proposed purchase if it is demonstrated
2 that—

3 “(I) the majority of the produc-
4 ers in the industry have made efforts
5 with the United States buyer to con-
6 clude a sale of the subject vessel, or

7 “(II) general information on the
8 sale was available from brokers, fin-
9 anciers, classification societies,
10 charterers, trade associations, or other
11 entities normally involved in shipbuild-
12 ing transactions with whom the peti-
13 tioner had regular contacts or deal-
14 ings.

15 “(C) PETITIONERS DESCRIBED IN SECTION
16 861(17)(D).—If the petitioner is an interested
17 party described in section 861(17)(D), the peti-
18 tion shall include information indicating that
19 members of the union or group of workers de-
20 scribed in that section are employed by a pro-
21 ducer that meets the requirements of subpara-
22 graph (B) of this paragraph.

23 “(D) PETITIONERS DESCRIBED IN SEC-
24 TION 861(17)(E).—If the petitioner is an inter-
25 ested party described in section 861(17)(E), the

1 petition shall include information indicating
2 that a member of the association described in
3 that section is a producer that meets the re-
4 quirements of subparagraph (B) of this para-
5 graph.

6 “(E) PETITIONERS DESCRIBED IN SECTION
7 861(17)(F).—If the petitioner is an interested
8 party described in section 861(17)(F), the peti-
9 tion shall include information indicating that a
10 member of the association described in that sec-
11 tion meets the requirements of subparagraph
12 (C) or (D) of this paragraph.

13 “(F) AMENDMENTS.—The petition may be
14 amended at such time, and upon such condi-
15 tions, as the administering authority and the
16 Commission may permit.

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

21 “(3) DEADLINE FOR FILING PETITION.—

22 “(A) DEADLINE.—(i) A petitioner to which
23 paragraph (1)(B)(i) (I) or (II) applies shall file
24 the petition no later than the earlier of—

1 “(I) 6 months after the time that the
2 petitioner first knew or should have known
3 of the sale of the subject vessel, or

4 “(II) 6 months after delivery of the
5 subject vessel.

6 “(ii) A petitioner to which paragraph
7 (1)(B)(i)(III) applies shall—

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

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

20 “(B) PRESUMPTION OF KNOWLEDGE.—

21 For purposes of this paragraph, if the existence
22 of the sale, together with general information
23 concerning the vessel, is published in the inter-
24 national trade press, there is a rebuttable pre-
25 sumption that the petitioner knew or should

1 have known of the sale of the vessel from the
2 date of that publication.

3 “(c) ACTIONS BEFORE INITIATING INVESTIGA-
4 TIONS.—

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

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

23 “(3) NONDISCLOSURE OF CERTAIN INFORMA-
24 TION.—The administering authority and the Com-
25 mission shall not disclose information with regard to

1 any draft petition submitted for review and comment
2 before it is filed under subsection (b)(1).

3 “(d) PETITION DETERMINATION.—

4 “(1) TIME FOR INITIAL DETERMINATION.—

5 “(A) IN GENERAL.—Within 45 days after
6 the date on which a petition is filed under sub-
7 section (b), the administering authority shall,
8 after examining, on the basis of sources readily
9 available to the administering authority, the ac-
10 curacy and adequacy of the evidence provided in
11 the petition, determine whether the petition—

12 “(i) alleges the elements necessary for
13 the imposition of an injurious pricing
14 charge under section 801(a) and the ele-
15 ments required under subsection (b)(1)
16 (B), (C), (D), or (E), and contains infor-
17 mation reasonably available to the peti-
18 tioner supporting the allegations; and

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

21 “(B) CALCULATION OF 45-DAY PERIOD.—

22 Any period in which paragraph (6)(A) applies
23 shall not be included in calculating the 45-day
24 period described in subparagraph (A).

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

7 “(3) NEGATIVE DETERMINATIONS.—If—

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

10 “(B) paragraph (6)(B) applies,
11 the administering authority shall dismiss the peti-
12 tion, terminate the proceeding, and notify the peti-
13 tioner in writing of the reasons for the determina-
14 tion.

15 “(4) DETERMINATION OF INDUSTRY SUP-
16 PORT.—

17 “(A) GENERAL RULE.—For purposes of
18 this subsection, the administering authority
19 shall determine that the petition has been filed
20 by or on behalf of the domestic industry, if—

21 “(i) the domestic producers or work-
22 ers who support the petition collectively ac-
23 count for at least 25 percent of the total
24 capacity of domestic producers capable of
25 producing a like vessel, and

1 “(ii) the domestic producers or work-
2 ers who support the petition collectively ac-
3 count for more than 50 percent of the total
4 capacity to produce a like vessel of that
5 portion of the domestic industry expressing
6 support for or opposition to the petition.

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

19 “(C) POLLING THE INDUSTRY.—If the pe-
20 tition does not establish support of domestic
21 producers or workers accounting for more than
22 50 percent of the total capacity to produce a
23 like vessel—

24 “(i) the administering authority shall
25 poll the industry or rely on other informa-

1 tion in order to determine if there is sup-
2 port for the petition as required by sub-
3 paragraph (A), or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 or

16 “(ii) is threatened with material in-

17 jury, or

18 “(B) the establishment of an industry in

19 the United States is or has been materially re-

20 tarded,

21 by reason of the sale of the subject vessel. If the

22 Commission makes a negative determination under

23 this paragraph, the investigation shall be termi-

24 nated.

1 “(2) TIME FOR COMMISSION DETERMINA-
2 TION.—The Commission shall make the determina-
3 tion described in paragraph (1) within 90 days after
4 the date on which the petition is filed or, in the case
5 of an investigation initiated under section 802(a),
6 within 90 days after the date on which the Commis-
7 sion receives notice from the administering authority
8 that the investigation has been initiated under such
9 section.

10 “(b) PRELIMINARY DETERMINATION BY ADMIN-
11 ISTERING AUTHORITY.—

12 “(1) PERIOD OF INJURIOUS PRICING INVES-
13 TIGATION.—

14 “(A) IN GENERAL.—The administering au-
15 thority shall make a determination, based upon
16 the information available to it at the time of the
17 determination, of whether there is a reasonable
18 basis to believe or suspect that the subject ves-
19 sel was sold at less than fair value.

20 “(B) COST DATA USED FOR NORMAL
21 VALUE.—If cost data is required to determine
22 normal value on the basis of a sale of a foreign
23 like vessel that has not been delivered on or be-
24 fore the date on which the administering au-
25 thority initiates the investigation, the admin-

1 istering authority shall make its determination
2 within 160 days after the date of delivery of the
3 foreign like vessel.

4 “(C) NORMAL VALUE BASED ON CON-
5 STRUCTED VALUE.—If normal value is to be de-
6 termined on the basis of constructed value, the
7 administering authority shall make its deter-
8 mination within 160 days after the date of de-
9 livery of the subject vessel.

10 “(D) OTHER CASES.—In cases in which
11 subparagraph (B) or (C) does not apply, the
12 administering authority shall make its deter-
13 mination within 160 days after the date on
14 which the administering authority initiates the
15 investigation under section 802.

16 “(E) AFFIRMATIVE DETERMINATION BY
17 COMMISSION REQUIRED.—In no event shall the
18 administering authority make its determination
19 before an affirmative determination is made by
20 the Commission under subsection (a).

21 “(2) DE MINIMIS INJURIOUS PRICING MAR-
22 GIN.—In making a determination under this sub-
23 section, the administering authority shall disregard
24 any injurious pricing margin that is de minimis. For
25 purposes of the preceding sentence, an injurious

1 pricing margin is de minimis if the administering
2 authority determines that the injurious pricing mar-
3 gin is less than 2 percent of the export price.

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

6 “(1) IN GENERAL.—If—

7 “(A) the administering authority concludes
8 that the parties concerned are cooperating and
9 determines that—

10 “(i) the case is extraordinarily com-
11 plicated by reason of—

12 “(I) the novelty of the issues pre-
13 sented, or

14 “(II) the nature and extent of
15 the information required, and

16 “(ii) additional time is necessary to
17 make the preliminary determination, or

18 “(B) a party to the investigation requests
19 an extension and demonstrates good cause for
20 the extension,

21 then the administering authority may postpone the
22 time for making its preliminary determination.

23 “(2) LENGTH OF POSTPONEMENT.—The pre-
24 liminary determination may be postponed under

1 paragraph (1) (A) or (B) until not later than the
2 190th day after—

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

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

7 “(C) the date on which the administering
8 authority initiates an investigation under sec-
9 tion 802, in a case in which subsection
10 (b)(1)(D) applies.

11 “(3) NOTICE OF POSTPONEMENT.—The admin-
12 istering authority shall notify the parties to the in-
13 vestigation, not later than 20 days before the date
14 on which the preliminary determination would other-
15 wise be required under subsection (b)(1), if it in-
16 tends to postpone making the preliminary deter-
17 mination under paragraph (1). The notification shall
18 include an explanation of the reasons for the post-
19 ponement, and notice of the postponement shall be
20 published in the Federal Register.

21 “(d) EFFECT OF DETERMINATION BY THE ADMIN-
22 ISTERING AUTHORITY.—If the preliminary determination
23 of the administering authority under subsection (b) is af-
24 firmative, the administering authority shall—

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

3 “(2) make available to the Commission all in-
4 formation upon which its determination was based
5 and which the Commission considers relevant to its
6 injury determination, under such procedures as the
7 administering authority and the Commission may es-
8 tablish to prevent disclosure, other than with the
9 consent of the party providing it or under protective
10 order, of any information to which confidential treat-
11 ment has been given by the administering authority.

12 “(e) NOTICE OF DETERMINATION.—Whenever the
13 Commission or the administering authority makes a deter-
14 mination under this section, the Commission or the admin-
15 istering authority, as the case may be, shall notify the pe-
16 titioner, and other parties to the investigation, and the
17 Commission or the administering authority (whichever is
18 appropriate) of its determination. The administering au-
19 thority shall include with such notification the facts and
20 conclusions on which its determination is based. Not later
21 than 5 days after the date on which the determination is
22 required to be made under subsection (a)(2), the Commis-
23 sion shall transmit to the administering authority the facts
24 and conclusions on which its determination is based.

1 **“SEC. 804. TERMINATION OR SUSPENSION OF INVESTIGA-**
2 **TION.**

3 “(a) **TERMINATION OF INVESTIGATION UPON WITH-**
4 **DRAWAL OF PETITION.—**

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

11 “(2) **LIMITATION ON TERMINATION BY COMMIS-**
12 **SION.—**The Commission may not terminate an in-
13 vestigation under paragraph (1) before a preliminary
14 determination is made by the administering author-
15 ity under section 803(b).

16 “(b) **TERMINATION OF INVESTIGATIONS INITIATED**
17 **BY ADMINISTERING AUTHORITY.—**The administering au-
18 thority may terminate any investigation initiated by the
19 administering authority under section 802(a) after provid-
20 ing notice of such termination to all parties to the inves-
21 tigation.

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

1 “(d) PROCEEDINGS BY WTO MEMBERS.—

2 “(1) SUSPENSION OF INVESTIGATION.—The ad-
3 ministering authority and the Commission shall sus-
4 pend an investigation under this section if a WTO
5 member that is not a Shipbuilding Agreement Party
6 initiates an antidumping proceeding described in sec-
7 tion 861(30)(A) with respect to the sale of the sub-
8 ject vessel.

9 “(2) TERMINATION OF INVESTIGATION.—If an
10 antidumping proceeding described in paragraph (1)
11 is concluded by—

12 “(A) the imposition of antidumping meas-
13 ures, or

14 “(B) a negative determination with respect
15 to whether the sale is at less than fair value or
16 with respect to injury,

17 the administering authority and the Commission
18 shall terminate the investigation under this section.

19 “(3) CONTINUATION OF INVESTIGATION.—(A)
20 If such a proceeding—

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

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

1 then the administering authority and the Commis-
2 sion shall terminate the suspension and continue the
3 investigation. The period in which the investigation
4 was suspended shall not be included in calculating
5 deadlines applicable with respect to the investigation.

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

11 **“SEC. 805. FINAL DETERMINATIONS.**

12 “(a) DETERMINATIONS BY ADMINISTERING AUTHOR-
13 ITY.—

14 “(1) IN GENERAL.—Within 75 days after the
15 date of its preliminary determination under section
16 803(b), the administering authority shall make a
17 final determination of whether the vessel which is
18 the subject of the investigation has been sold in the
19 United States at less than its fair value.

20 “(2) EXTENSION OF PERIOD FOR DETERMINA-
21 TION.—

22 “(A) GENERAL RULE.—The administering
23 authority may postpone making the final deter-
24 mination under paragraph (1) until not later
25 than 290 days after—

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

4 “(ii) the date of delivery of the subject
5 vessel, in an investigation to which section
6 803(b)(1)(C) applies, or

7 “(iii) the date on which the admin-
8 istering authority initiates the investigation
9 under section 802, in an investigation to
10 which section 803(b)(1)(D) applies.

11 “(B) REQUEST REQUIRED.—The admin-
12 istering authority may apply subparagraph (A)
13 if a request in writing is made by—

14 “(i) the producer of the subject vessel,
15 in a proceeding in which the preliminary
16 determination by the administering author-
17 ity under section 803(b) was affirmative,
18 or

19 “(ii) the petitioner, in a proceeding in
20 which the preliminary determination by the
21 administering authority under section
22 803(b) was negative.

23 “(3) DE MINIMIS INJURIOUS PRICING MAR-
24 GIN.—In making a determination under this sub-
25 section, the administering authority shall disregard

1 any injurious pricing margin that is de minimis as
2 defined in section 803(b)(2).

3 “(b) FINAL DETERMINATION BY COMMISSION.—

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

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

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

8 or

9 “(ii) is threatened with material in-
10 jury, or

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

14 by reason of the sale of the vessel with respect to
15 which the administering authority has made an af-
16 firmative determination under subsection (a)(1).

17 “(2) PERIOD FOR INJURY DETERMINATION
18 FOLLOWING AFFIRMATIVE PRELIMINARY DETER-
19 MINATION BY ADMINISTERING AUTHORITY.—If the
20 preliminary determination by the administering au-
21 thority under section 803(b) is affirmative, then the
22 Commission shall make the determination required
23 by paragraph (1) before the later of—

24 “(A) the 120th day after the day on which
25 the administering authority makes its affirma-

1 tive preliminary determination under section
2 803(b), or

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

6 “(3) PERIOD FOR INJURY DETERMINATION
7 FOLLOWING NEGATIVE PRELIMINARY DETERMINA-
8 TION BY ADMINISTERING AUTHORITY.—If the pre-
9 liminary determination by the administering author-
10 ity under section 803(b) is negative, and its final de-
11 termination under subsection (a) is affirmative, then
12 the final determination by the Commission under
13 this subsection shall be made within 75 days after
14 the date of that affirmative final determination.

15 “(c) EFFECT OF FINAL DETERMINATIONS.—

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

21 “(A) make available to the Commission all
22 information upon which such determination was
23 based and which the Commission considers rel-
24 evant to its determination, under such proce-
25 dures as the administering authority and the

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

6 “(B) calculate an injurious pricing charge
7 in an amount equal to the amount by which the
8 normal value exceeds the export price of the
9 subject vessel.

10 “(2) ISSUANCE OF ORDER; EFFECT OF NEGA-
11 TIVE DETERMINATION.—If the determinations of the
12 administering authority and the Commission under
13 subsections (a)(1) and (b)(1) are affirmative, then
14 the administering authority shall issue an injurious
15 pricing order under section 806. If either of such de-
16 terminations is negative, the investigation shall be
17 terminated upon the publication of notice of that
18 negative determination.

19 “(d) PUBLICATION OF NOTICE OF DETERMINA-
20 TIONS.—Whenever the administering authority or the
21 Commission makes a determination under this section, it
22 shall notify the petitioner, other parties to the investiga-
23 tion, and the other agency of its determination and of the
24 facts and conclusions of law upon which the determination

1 is based, and it shall publish notice of its determination
2 in the Federal Register.

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

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

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

22 “(1) directs the foreign producer of the subject
23 vessel to pay to the Secretary of the Treasury, or
24 the designee of the Secretary, within 180 days from
25 the date of publication of the order, an injurious

1 pricing charge in an amount equal to the amount by
2 which the normal value exceeds the export price of
3 the subject vessel,

4 “(2) includes the identity and location of the
5 foreign producer and a description of the subject
6 vessel, in such detail as the administering authority
7 deems necessary, and

8 “(3) informs the foreign producer that—

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

13 “(B) payment made after the deadline de-
14 scribed in paragraph (1) shall be subject to in-
15 terest charges at the Commercial Interest Ref-
16 erence Rate (CIRR), and

17 “(C) the foreign producer may request an
18 extension of the due date for payment under
19 subsection (b).

20 “(b) EXTENSION OF DUE DATE FOR PAYMENT IN
21 EXTRAORDINARY CIRCUMSTANCES.—

22 “(1) EXTENSION.—Upon request, the admin-
23 istering authority may amend the order under sub-
24 section (a) to set a due date for payment or pay-
25 ments later than the date that is 180 days from the

1 date of publication of the order, if the administering
2 authority determines that full payment in 180 days
3 would render the producer insolvent or would be in-
4 compatible with a judicially supervised reorganiza-
5 tion. When an extended payment schedule provides
6 for a series of partial payments, the administering
7 authority shall specify the circumstances under
8 which default on one or more payments will result
9 in the imposition of countermeasures.

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

22 “(1) may revoke an injurious pricing order if
23 the administering authority determines that produc-
24 ers 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 sub-
12 section (e), or

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

1 remedy, that the administering authority deter-
2 mines—

3 “(A) is at least as effective a remedy as
4 the 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 do-
9 mestic law and international obligations of the
10 United States.

11 “(2) **PRIOR CONSULTATIONS AND SUBMISSION**
12 **OF 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
16 respect to the agreement.

17 “(3) **MATERIAL VIOLATIONS OF AGREEMENT.**—
18 If the injurious pricing order has been suspended
19 under paragraph (1), and the administering author-
20 ity determines that the foreign producer concerned
21 has materially violated the terms of the agreement
22 under paragraph (1), the administering authority
23 shall terminate 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 counter-
7 measure 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 pro-
12 ducer of the vessel with respect to which an in-
13 jurious pricing order was issued under section
14 806, and

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

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

20 “(1) GENERAL RULE.—The administering au-
21 thority shall issue a notice of intent to impose coun-
22 termeasures not later than 30 days before the expi-
23 ration of the time for payment specified in the inju-
24 rious pricing order (or extended payment provided
25 for under section 806(b)), and shall publish the no-

1 tice in the Federal Register within 7 days after issu-
2 ing the 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 mate-
12 rial terms of sale are established within a
13 period of 4 consecutive years beginning on
14 the date that is 30 days after publication
15 in the Federal Register of the notice of in-
16 tent described in paragraph (1).

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

22 “(c) DETERMINATION TO IMPOSE COUNTER-
23 MEASURES; 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
5 date 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
9 in paragraph (4), in the Federal Register within 7
10 days after issuing the final determination, and shall
11 provide a copy of the determination and order to the
12 Customs Service.

13 “(3) CONTENT OF THE DETERMINATION.—In
14 the determination imposing countermeasures, the
15 administering authority shall determine whether, in
16 light of all of the circumstances, an interested party
17 has demonstrated that the scope or duration of the
18 countermeasures described in subsection (b)(2)
19 should be narrower or shorter than the scope or du-
20 ration set forth in the notice of intent to impose
21 countermeasures.

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

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

3 “(1) REQUEST FOR REVIEW.—Each year, in the
4 anniversary month of the issuance of the order im-
5 posing countermeasures under subsection (c), the
6 administering authority shall publish in the Federal
7 Register a notice providing that interested parties
8 may request—

9 “(A) a review of the scope or duration of
10 the countermeasures determined under sub-
11 section (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
20 issuance of the order imposing counter-
21 measures, 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
2 authority shall make its determination under para-
3 graph (2)(B) within 90 days after the date on which
4 the notice of initiation of the review is published. If
5 the determination under paragraph (2)(B) is affirm-
6 ative, the administering authority shall amend the
7 order accordingly. The administering authority shall
8 promptly publish the determination and any amend-
9 ment to the order in the Federal Register, and shall
10 provide a copy of any amended order to the Customs
11 Service. In extraordinary circumstances, the admin-
12 istering authority may extend the time for its deter-
13 mination under paragraph (2)(B) to not later than
14 150 days after the date on which the notice of initi-
15 ation of the 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
4 paragraph (1) shall be filed not earlier than the
5 date that is 15 months, and not later than the
6 date that is 12 months, before the date that
7 marks the end of the period that specifies the
8 vessels that fall within the scope of the order by
9 virtue of the establishment of material terms of
10 sale within 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
15 that is 6 months, and not later than a date that
16 is 3 months, before the date that marks the end
17 of 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
24 later than 15 days after the applicable deadline
25 in 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
9 administering authority shall determine,
10 within 90 days after the date on which the
11 notice of initiation of the proceeding is
12 published, whether the requesting party
13 has demonstrated that the scope or dura-
14 tion of the countermeasures is inadequate
15 in light of all of the circumstances. If the
16 administering authority determines that an
17 extension is warranted, it shall amend the
18 countermeasure order accordingly. The ad-
19 ministering authority shall promptly pub-
20 lish the determination and any amendment
21 to the order in the Federal Register, and
22 shall provide a copy of any amended order
23 to the Customs Service.

24 “(4) CONSULTATION WITH TRADE REPRESENT-
25 ATIVE.—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 settle-
4 ment panel under the Shipbuilding Agreement for
5 the purpose of seeking authorization to extend the
6 scope or duration of countermeasures for a period in
7 excess of 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 estab-
11 lishment of a panel, the Trade Representative shall
12 inform the party requesting the extension of the
13 countermeasures of the reasons for its decision in
14 writing. The decision shall not be subject to judicial
15 review.

16 “(6) PANEL PROCEEDINGS.—If, based on con-
17 sultations under paragraph (4), the Trade Rep-
18 resentative requests the establishment of a panel
19 under the Shipbuilding Agreement to authorize an
20 extension of the period of countermeasures, and the
21 panel authorizes such an extension, the administer-
22 ing authority shall promptly amend the counter-
23 measure order. The administering authority shall
24 publish notice of the amendment in the Federal Reg-
25 ister.

1 “(f) LIST OF VESSELS SUBJECT TO COUNTER-
2 MEASURES.—

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

10 “(2) CONTENT OF LIST.—The list under para-
11 graph (1) shall include the following information for
12 each vessel, to the extent the information is avail-
13 able:

14 “(A) The name and general description of
15 the vessel.

16 “(B) The vessel identification number.

17 “(C) The shipyard where the vessel was
18 constructed.

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

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

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

23 “(G) The remaining duration of counter-
24 measures on the vessel.

1 “(H) Any other identifying information
2 available.

3 “(3) AMENDMENT OF LIST.—The administering
4 authority may amend the list from time to time to
5 reflect new information that comes to its attention
6 and shall publish any amendments in the Federal
7 Register.

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

9 “(A) SERVICE OF LIST.—The administer-
10 ing authority shall serve a copy of the list de-
11 scribed in paragraph (1) on—

12 “(i) the petitioner under section
13 802(b),

14 “(ii) the United States Customs Serv-
15 ice,

16 “(iii) the Secretariat of the Organiza-
17 tion for Economic Cooperation and Devel-
18 opment,

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

20 “(v) the shipyards on the list, and

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

23 “(B) SERVICE OF AMENDMENTS.—The ad-
24 ministering authority shall serve a copy of any

1 amendments to the list under paragraph (3) or
2 subsection (g)(3) on—

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

5 “(ii) if the amendment affects their
6 interests, the parties listed in clauses (iv),
7 (v), and (vi) of subparagraph (A).

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

10 “(1) REQUEST FOR REVIEW.—

11 “(A) IN GENERAL.—An interested party
12 may request in writing a review of the list de-
13 scribed in subsection (f)(1), including any
14 amendments thereto, to determine whether—

15 “(i) a vessel included in the list does
16 not fall within the scope of the applicable
17 countermeasure order and should be de-
18 leted, or

19 “(ii) a vessel not included in the list
20 falls within the scope of the applicable
21 countermeasure order and should be
22 added.

23 “(B) TIME FOR MAKING REQUEST.—Any
24 request seeking a determination described in
25 subparagraph (A)(i) shall be made within 90

1 days after the date of publication of the appli-
2 cable list.

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

6 “(A) publish notice of initiation of a review
7 in the Federal Register—

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

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

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

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

18 “(ii) a vessel not included in the list
19 qualifies for inclusion.

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

1 list, the administering authority shall amend the list
2 accordingly. The administering authority shall
3 promptly publish in the Federal Register the deter-
4 mination and any such amendment to the list.

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

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

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

20 “(2) IF PAYMENT DATE AMENDED.—

21 “(A) SUSPENSION OR MODIFICATION OF
22 DEADLINE.—Subject to subparagraph (C), if
23 the payment date under an injurious pricing
24 order is amended under section 845, the admin-
25 istering authority shall, as appropriate, suspend

1 proceedings or modify deadlines under this sec-
2 tion, or suspend or amend a countermeasure
3 order issued with respect to that injurious pric-
4 ing order.

5 “(B) DATE FOR APPLICATION OF COUN-
6 TERMEASURE.—In taking action under sub-
7 paragraph (A), the administering authority
8 shall ensure that countermeasures are not ap-
9 plied before the date that is 30 days after publi-
10 cation in the Federal Register of the amended
11 payment date.

12 “(C) REINSTITUTION OF PROCEEDINGS.—
13 If—

14 “(i) a countermeasure order is issued
15 under subsection (c) before an amendment
16 is made under section 845 to the payment
17 date of the injurious pricing order to which
18 the countermeasure order applies, and

19 “(ii) the administering authority de-
20 termines that the period of time between
21 the original payment date and the amend-
22 ed payment date is significant for purposes
23 of determining the appropriate scope or
24 duration of countermeasures,

1 the administering authority may, in lieu of act-
2 ing under subparagraph (A), reinstitute pro-
3 ceedings under subsection (c) for purposes of is-
4 suing a new determination under that sub-
5 section.

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

9 “(1) shall solicit comments from interested par-
10 ties, and

11 “(2)(A) in a proceeding under subsection (c),
12 (d), or (e), upon the request of an interested party,
13 shall hold a hearing in accordance with section
14 841(b) in connection with that proceeding, or

15 “(B) in a proceeding under subsection (g), upon
16 the request of an interested party, may hold a hear-
17 ing in accordance with section 841(b) in connection
18 with that proceeding.

19 **“SEC. 808. INJURIOUS PRICING PETITIONS BY THIRD COUN-**
20 **TRIES.**

21 “(a) FILING OF PETITION.—The government of a
22 Shipbuilding Agreement Party may file with the Trade
23 Representative a petition requesting that an investigation
24 be conducted to determine if—

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

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

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

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

20 “(1) SALE AT LESS THAN FAIR VALUE.—The
21 administering authority shall determine whether the
22 subject vessel has been sold at less than fair value.

23 “(2) INJURY TO INDUSTRY.—The Commission
24 shall determine whether an industry in the petition-
25 ing country is or has been materially injured by rea-

1 son of the sale of the subject vessel in the United
2 States.

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

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

7 “(2) by the administering authority and the
8 Commission, in making the determinations required
9 by subsection (c).

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

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

17 “(2) make such determinations and take such
18 other actions as are required by sections 806 and
19 807, as if affirmative determinations had been made
20 under subsections (a) and (b) of section 805.

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

24 “(1) the final determinations of the administer-
25 ing authority and the Commission under subsection

1 (c) shall be treated as final determinations made
2 under section 805, and

3 “(2) determinations of the administering au-
4 thority under subsection (e)(2) shall be treated as
5 determinations made under section 806 or 807, as
6 the case may be.

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

11 **“SEC. 809. THIRD COUNTRY INJURIOUS PRICING.**

12 “(a) PETITION BY DOMESTIC INDUSTRY.—

13 “(1) With respect to the sale of a vessel to a
14 buyer in a Shipbuilding Agreement Party, any inter-
15 ested party who would be eligible to file a petition
16 under section 802(b)(1) with respect to the sale if
17 it had been to a United States buyer, if it has rea-
18 son to believe that—

19 “(A) the vessel has been sold at less than
20 fair value, and

21 “(B) an industry in the United States is or
22 has been materially injured, or is threatened
23 with material injury by reason of the sale of the
24 vessel,

1 may submit a petition to the Trade Representative
2 that alleges the elements referred to in subpara-
3 graphs (A) and (B) and requests the Trade Rep-
4 resentative to take action under subsection (b) of
5 this section on behalf of the domestic industry.

6 “(2) A petition submitted under paragraph (1)
7 shall contain such detailed information as the Trade
8 Representative may require in support of the allega-
9 tions in the petition.

10 “(b) APPLICATION FOR INJURIOUS PRICING ACTION
11 ON BEHALF OF THE DOMESTIC INDUSTRY.—

12 “(1) If the Trade Representative, on the basis
13 of the information contained in a petition submitted
14 under subsection (a), determines that there is a rea-
15 sonable basis for the allegations in the petition, the
16 Trade Representative shall submit to the appro-
17 priate authority of the Shipbuilding Agreement
18 Party where the alleged injurious pricing is occur-
19 ring an application pursuant to Article 10 of Annex
20 III of the Shipbuilding Agreement. The application
21 shall request that appropriate injurious pricing ac-
22 tion be taken on behalf of the United States with re-
23 spect to the sale of the vessel under the law of the
24 country of that Party consistent with the terms of
25 the Shipbuilding Agreement.

1 “(2) At the request of the Trade Representa-
2 tive, the appropriate officers of the Department of
3 Commerce and the United States International
4 Trade Commission shall assist the Trade Represent-
5 ative in preparing the application under paragraph
6 (1).

7 “(c) CONSULTATION AFTER SUBMISSION OF APPLI-
8 CATION.—After submitting an application under sub-
9 section (b)(1), the Trade Representative shall seek con-
10 sultations with the appropriate authority of the Shipbuild-
11 ing Agreement Party regarding the request for injurious
12 pricing action.

13 “(d) ACTION UPON REFUSAL OF SHIPBUILDING
14 AGREEMENT PARTY TO ACT.—If the appropriate author-
15 ity of the Shipbuilding Agreement Party refuses to under-
16 take injurious pricing measures in response to a request
17 made by the Trade Representative under subsection (b),
18 the Trade Representative promptly shall consult with the
19 domestic industry on whether action under any other law
20 of the United States is appropriate.

21 **“Subtitle B—Special Rules**

22 **“SEC. 821. EXPORT PRICE.**

23 “(a) EXPORT PRICE.—For purposes of this title, the
24 term ‘export price’ means the price at which the subject
25 vessel is first sold (or agreed to be sold) by or for the

1 account of the foreign producer of the subject vessel to
2 an unaffiliated United States buyer. The term ‘sold (or
3 agreed to be sold) by or for the account of the foreign
4 producer’ includes any transfer of an ownership interest,
5 including by way of lease or long-term bareboat charter,
6 in conjunction with the original transfer from the pro-
7 ducer, either directly or indirectly, to a United States
8 buyer.

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

11 “(1) increased by the amount of any import du-
12 ties imposed by the country of exportation which
13 have been rebated, or which have not been collected,
14 by reason of the exportation of the subject vessel,
15 and

16 “(2) reduced by—

17 “(A) the amount, if any, included in such
18 price, attributable to any additional costs,
19 charges, or expenses which are incident to
20 bringing the subject vessel from the shipyard in
21 the exporting country to the place of delivery,

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

1 “(C) all other expenses incidental to plac-
2 ing the vessel in condition for delivery to the
3 buyer.

4 **“SEC. 822. NORMAL VALUE.**

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

11 “(1) DETERMINATION OF NORMAL VALUE.—

12 “(A) IN GENERAL.—The normal value of
13 the subject vessel shall be the price described in
14 subparagraph (B), at a time reasonably cor-
15 responding to the time of the sale used to deter-
16 mine the export price under section 821(a).

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

19 “(i) the price at which a foreign like
20 vessel is first sold in the exporting country,
21 in the ordinary course of trade and, to the
22 extent practicable, at the same level of
23 trade, or

24 “(ii) in a case to which subparagraph
25 (C) applies, the price at which a foreign

1 like vessel is so sold for consumption in a
2 country other than the exporting country
3 or the United States, if—

4 “(I) such price is representative,
5 and

6 “(II) the administering authority
7 does not determine that the particular
8 market situation in such other coun-
9 try prevents a proper comparison with
10 the export price.

11 “(C) THIRD COUNTRY SALES.—This sub-
12 paragraph applies when—

13 “(i) a foreign like vessel is not sold in
14 the exporting country as described in sub-
15 paragraph (B)(i), or

16 “(ii) the particular market situation
17 in the exporting country does not permit a
18 proper comparison with the export price.

19 “(D) CONTEMPORANEOUS SALE.—For
20 purposes of subparagraph (A), ‘a time reason-
21 ably corresponding to the time of the sale’
22 means within 3 months before or after the sale
23 of the subject vessel or, in the absence of such
24 sales, such longer period as the administering
25 authority determines would be appropriate.

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

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

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

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

18 “(A) reduced by—

19 “(i) the amount, if any, included in
20 the price described in paragraph (1)(B),
21 attributable to any costs, charges, and ex-
22 penses incident to bringing the foreign like
23 vessel from the shipyard to the place of de-
24 livery to the purchaser,

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

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

11 “(B) increased or decreased by the amount
12 of any difference (or lack thereof) between the
13 export price and the price described in para-
14 graph (1)(B) (other than a difference for which
15 allowance is otherwise provided under this sec-
16 tion) that is established to the satisfaction of
17 the administering authority to be wholly or
18 partly due to—

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

22 “(ii) other differences in the cir-
23 cumstances of sale.

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

25 The price described in paragraph (1)(B) shall also

1 be increased or decreased to make due allowance for
2 any difference (or lack thereof) between the export
3 price and the price described in paragraph (1)(B)
4 (other than a difference for which allowance is oth-
5 erwise made under this section) that is shown to be
6 wholly or partly due to a difference in level of trade
7 between the export price and normal value, if the
8 difference in level of trade—

9 “(A) involves the performance of different
10 selling activities, and

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

16 In a case described in the preceding sentence, the
17 amount of the adjustment shall be based on the
18 price differences between the two levels of trade in
19 the country in which normal value is determined.

20 “(7) ADJUSTMENTS TO CONSTRUCTED
21 VALUE.—Constructed value as determined under
22 subsection (e) may be adjusted, as appropriate, pur-
23 suant to this subsection.

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

1 “(1) DETERMINATION; SALES DISREGARDED.—

2 Whenever the administering authority has reason-
3 able grounds to believe or suspect that the sale of
4 the foreign like vessel under consideration for the
5 determination of normal value has been made at a
6 price which represents less than the cost of produc-
7 tion of the foreign like vessel, the administering au-
8 thority shall determine whether, in fact, such sale
9 was made at less than the cost of production. If the
10 administering authority determines that the sale was
11 made at less than the cost of production and was
12 not at a price which permits recovery of all costs
13 within 5 years, such sale may be disregarded in the
14 determination of normal value. Whenever such a sale
15 is disregarded, normal value shall be based on an-
16 other sale of a foreign like vessel in the ordinary
17 course of trade. If no sales made in the ordinary
18 course of trade remain, the normal value shall be
19 based on the constructed value of the subject vessel.

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

22 “(A) REASONABLE GROUNDS TO BELIEVE
23 OR SUSPECT.—There are reasonable grounds to
24 believe or suspect that the sale of a foreign like
25 vessel was made at a price that is less than the

1 cost of production of the vessel, if an interested
2 party described in subparagraph (C), (D), (E),
3 or (F) of section 861(17) provides information,
4 based upon observed prices or constructed
5 prices or costs, that the sale of the foreign like
6 vessel under consideration for the determination
7 of normal value has been made at a price which
8 represents less than the cost of production of
9 the vessel.

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

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

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

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

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

12 “(c) NONMARKET ECONOMY COUNTRIES.—

13 “(1) IN GENERAL.—If—

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

16 “(B) the administering authority finds that
17 available information does not permit the nor-
18 mal value of the subject vessel to be determined
19 under subsection (a), the administering author-
20 ity shall determine the normal value of the sub-
21 ject vessel on the basis of the value of the fac-
22 tors of production utilized in producing the ves-
23 sel and to which shall be added an amount for
24 general expenses and profit plus the cost of ex-
25 penses incidental to placing the vessel in a con-

1 dition for delivery to the buyer. Except as pro-
2 vided in paragraph (2), the valuation of the fac-
3 tors of production shall be based on the best
4 available information regarding the values of
5 such factors in a market economy country or
6 countries considered to be appropriate by the
7 administering authority.

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

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

15 “(B) produced in one or more market
16 economy countries that are at a level of eco-
17 nomic development comparable to that of the
18 nonmarket economy country,

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

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

25 “(A) hours of labor required,

1 “(B) quantities of raw materials employed,

2 “(C) amounts of energy and other utilities

3 consumed, and

4 “(D) representative capital cost, including

5 depreciation.

6 “(4) VALUATION OF FACTORS OF PRODUC-

7 TION.—The administering authority, in valuing fac-

8 tors of production under paragraph (1), shall utilize,

9 to the extent possible, the prices or costs of factors

10 of production in one or more market economy coun-

11 tries that are—

12 “(A) at a level of economic development

13 comparable to that of the nonmarket economy

14 country, and

15 “(B) significant producers of comparable

16 vessels.

17 “(d) SPECIAL RULE FOR CERTAIN MULTINATIONAL

18 CORPORATIONS.—Whenever, in the course of an investiga-

19 tion under this title, the administering authority deter-

20 mines that—

21 “(1) the subject vessel was produced in facilities

22 which are owned or controlled, directly or indirectly,

23 by a person, firm, or corporation which also owns or

24 controls, directly or indirectly, other facilities for the

1 production of a foreign like vessel which are located
2 in another country or countries,

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

4 “(3) the normal value of a foreign like vessel
5 produced in one or more of the facilities outside the
6 exporting country is higher than the normal value of
7 the foreign like vessel produced in the facilities lo-
8 cated in the exporting country,

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

21 “(e) CONSTRUCTED VALUE.—

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

1 “(A) the cost of materials and fabrication
2 or other processing of any kind employed in
3 producing the subject vessel, during a period
4 which would ordinarily permit the production of
5 the vessel in the ordinary course of business,
6 and

7 “(B)(i) the actual amounts incurred and
8 realized by the foreign producer of the subject
9 vessel for selling, general, and administrative
10 expenses, and for profits, in connection with the
11 production and sale of a foreign like vessel, in
12 the ordinary course of trade, in the domestic
13 market of the country of origin of the subject
14 vessel, or

15 “(ii) if actual data are not available with
16 respect to the amounts described in clause (i),
17 then—

18 “(I) the actual amounts incurred and
19 realized by the foreign producer of the sub-
20 ject vessel for selling, general, and admin-
21 istrative expenses, and for profits, in con-
22 nection with the production and sale of the
23 same general category of vessel in the do-
24 mestic market of the country of origin of
25 the subject vessel,

1 “(II) the weighted average of the ac-
2 tual amounts incurred and realized by pro-
3 ducers in the country of origin of the sub-
4 ject vessel (other than the producer of the
5 subject vessel) for selling, general, and ad-
6 ministrative expenses, and for profits, in
7 connection with the production and sale of
8 a foreign like vessel, in the ordinary course
9 of trade, in the domestic market, or

10 “(III) if data are not available under
11 subclause (I) or (II), the amounts incurred
12 and realized for selling, general, and ad-
13 ministrative expenses, and for profits,
14 based on any other reasonable method, ex-
15 cept that the amount allowed for profit
16 may not exceed the amount normally real-
17 ized by foreign producers (other than the
18 producer of the subject vessel) in connec-
19 tion with the sale of vessels in the same
20 general category of vessel as the subject
21 vessel in the domestic market of the coun-
22 try of origin of the subject vessel.

23 For purposes of this paragraph, the profit shall be
24 based on the average profit realized over a reason-
25 able period of time before and after the sale of the

1 subject vessel and shall reflect a reasonable profit
2 at the time of such sale. For purposes of the preced-
3 ing sentence, a ‘reasonable period of time’ shall not,
4 except where otherwise appropriate, exceed 6 months
5 before, or 6 months after, the sale of the subject
6 vessel. In calculating profit under this paragraph,
7 any distortion which would result in other than a
8 profit which is reasonable at the time of the sale
9 shall be eliminated.

10 “(2) COSTS AND PROFITS BASED ON OTHER
11 REASONABLE METHODS.—When costs and profits
12 are determined under paragraph (1)(B)(ii)(III), such
13 determination shall, except where otherwise appro-
14 priate, be based on appropriate export sales by the
15 producer of the subject vessel or, absent such sales,
16 to export sales by other producers of a foreign like
17 vessel or the same general category of vessel as the
18 subject vessel in the country of origin of the subject
19 vessel.

20 “(3) COSTS OF MATERIALS.—For purposes of
21 paragraph (1)(A), the cost of materials shall be de-
22 termined without regard to any internal tax in the
23 exporting country imposed on such materials or their
24 disposition which are remitted or refunded upon ex-

1 portation of the subject vessel produced from such
2 materials.

3 “(f) SPECIAL RULES FOR CALCULATION OF COST OF
4 PRODUCTION AND FOR CALCULATION OF CONSTRUCTED
5 VALUE.—For purposes of subsections (b) and (e)—

6 “(1) COSTS.—

7 “(A) IN GENERAL.—Costs shall normally
8 be calculated based on the records of the for-
9 eign producer of the subject vessel, if such
10 records are kept in accordance with the gen-
11 erally accepted accounting principles of the ex-
12 porting country and reasonably reflect the costs
13 associated with the production and sale of the
14 vessel. The administering authority shall con-
15 sider all available evidence on the proper alloca-
16 tion of costs, including that which is made
17 available by the foreign producer on a timely
18 basis, if such allocations have been historically
19 used by the foreign producer, in particular for
20 establishing appropriate amortization and de-
21 preciation periods, and allowances for capital
22 expenditures and other development costs.

23 “(B) NONRECURRING COSTS.—Costs shall
24 be adjusted appropriately for those non-

1 recurring costs that benefit current or future
2 production, or both.

3 “(C) STARTUP COSTS.—

4 “(i) IN GENERAL.—Costs shall be ad-
5 justed appropriately for circumstances in
6 which costs incurred during the time pe-
7 riod covered by the investigation are af-
8 fected by startup operations.

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

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

16 “(II) production levels are limited
17 by technical factors associated with
18 the initial phase of commercial pro-
19 duction.

20 For purposes of subclause (II), the initial phase
21 of commercial production ends at the end of the
22 startup period. In determining whether com-
23 mercial production levels have been achieved,
24 the administering authority shall consider fac-
25 tors unrelated to startup operations that might

1 affect the volume of production processed, such
2 as demand, seasonality, or business cycles.

3 “(iii) ADJUSTMENT FOR STARTUP OP-
4 ERATIONS.—The adjustment for startup
5 operations shall be made by substituting
6 the unit production costs incurred with re-
7 spect to the vessel at the end of the start-
8 up period for the unit production costs in-
9 curred during the startup period. If the
10 startup period extends beyond the period
11 of the investigation under this title, the ad-
12 ministering authority shall use the most
13 recent cost of production data that it rea-
14 sonably can obtain, analyze, and verify
15 without delaying the timely completion of
16 the investigation.

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

22 “(D) COSTS DUE TO EXTRAORDINARY CIR-
23 CUMSTANCES NOT INCLUDED.—Costs shall not
24 include actual costs which are due to extraor-
25 dinary circumstances (including, but not limited

1 to, labor disputes, fire, and natural disasters)
2 and which are significantly over the cost in-
3 crease which the shipbuilder could have reason-
4 ably anticipated and taken into account at the
5 time of sale.

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

19 “(3) MAJOR INPUT RULE.—If, in the case of a
20 transaction between affiliated persons involving the
21 production by one of such persons of a major input
22 to the subject vessel, the administering authority has
23 reasonable grounds to believe or suspect that an
24 amount represented as the value of such input is
25 less than the cost of production of such input, then

1 the administering authority may determine the value
2 of the major input on the basis of the information
3 available regarding such cost of production, if such
4 cost is greater than the amount that would be deter-
5 mined for such input under paragraph (2).

6 **“SEC. 823. CURRENCY CONVERSION.**

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

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

1 due only to fluctuations in the exchange rate between the
2 original date of sale and the new date of sale.

3 **“Subtitle C—Procedures**

4 **“SEC. 841. HEARINGS.**

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

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

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

19 “(a) IN GENERAL.—If—

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

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

23 “(A) withholds information that has been
24 requested by the administering authority or the
25 Commission under this title,

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

6 “(C) significantly impedes a proceeding
7 under this title, or

8 “(D) provides such information but the in-
9 formation cannot be verified as provided in sec-
10 tion 844(g), the administering authority and the
11 Commission shall, subject to section 844(c), use
12 the facts otherwise available in reaching the ap-
13 plicable determination under this title.

14 “(b) ADVERSE INFERENCES.—If the administering
15 authority or the Commission (as the case may be) finds
16 that an interested party has failed to cooperate by not act-
17 ing to the best of its ability to comply with a request for
18 information from the administering authority or the Com-
19 mission, the administering authority or the Commission
20 (as the case may be), in reaching the applicable determina-
21 tion under this title, may use an inference that is adverse
22 to the interests of that party in selecting from among the
23 facts otherwise available. Such adverse inference may in-
24 clude reliance on information derived from—

25 “(1) the petition, or

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

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

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

12 “(a) INFORMATION GENERALLY MADE AVAIL-
13 ABLE.—

14 “(1) PROGRESS OF INVESTIGATION REPORTS.—
15 The administering authority and the Commission
16 shall, from time to time upon request, inform the
17 parties to an investigation under this title of the
18 progress of that investigation.

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

22 “(A) interested parties or other persons
23 providing factual information in connection with
24 a 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
8 of the persons present at the meeting, the date,
9 time, and place of the meeting, and a summary of
10 the matters discussed or submitted. The record of
11 the ex parte meeting shall be included in the record
12 of the proceeding.

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, op-
20 erations 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 Com-
4 mission, as the case may be, in a proceeding under
5 this title to the extent that public disclosure of the
6 information is not prohibited under this chapter or
7 exempt from disclosure under section 552 of title 5,
8 United 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), informa-
13 tion submitted to the administering authority or
14 the Commission which is designated as propri-
15 etary by the person submitting the information
16 shall not be disclosed to any person without the
17 consent of the person submitting the informa-
18 tion, other than—

19 “(i) to an officer or employee of the
20 administering 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
14 of 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
19 reasons in support of the contention,
20 and

21 “(ii) either—

22 “(I) a statement which permits
23 the administering authority or the
24 Commission to release under adminis-
25 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 ad-
17 ministering authority or the Commission that the
18 designation is warranted, or withdraws the designa-
19 tion, the administering authority or the Commission,
20 as the case may be, shall return it to the party sub-
21 mitting it. In a case in which the administering au-
22 thority or the Commission returns the information
23 to the person submitting it, the person may there-
24 after submit other material concerning the subject
25 matter of the returned information if the submission

1 is made within the time otherwise provided for sub-
2 mitting such material.

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

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

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

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

13 “(B) PROTECTIVE ORDER.—The protective
14 order under which information is made avail-
15 able shall contain such requirements as the ad-
16 ministering authority or the Commission may
17 determine by regulation to be appropriate. The
18 administering authority and the Commission
19 shall provide by regulation for such sanctions as
20 the administering authority and the Commis-
21 sion determine to be appropriate, including dis-
22 barment from practice before the agency.

23 “(C) TIME LIMITATIONS ON DETERMINA-
24 TIONS.—The administering authority or the
25 Commission, as the case may be, shall deter-

1 mine whether to make information available
2 under this paragraph—

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

7 “(ii) if—

8 “(I) the person that submitted
9 the information raises objection to its
10 release, or

11 “(II) the information is unusu-
12 ally voluminous or complex, not later
13 than 30 days (10 days if the submis-
14 sion pertains to a proceeding under
15 section 803(a)) after the date on
16 which the information is submitted.

17 “(D) AVAILABILITY AFTER DETERMINA-
18 TION.—If the determination under subpara-
19 graph (C) is affirmative, then—

20 “(i) the business proprietary informa-
21 tion submitted to the administering au-
22 thority or the Commission on or before the
23 date of the determination shall be made
24 available, subject to the terms and condi-

1 tions of the protective order, on such date,
2 and

3 “(ii) the business proprietary informa-
4 tion submitted to the administering au-
5 thority or the Commission after the date of
6 the determination shall be served as re-
7 quired by subsection (d).

8 “(E) FAILURE TO DISCLOSE.—If a person
9 submitting information to the administering au-
10 thority refuses to disclose business proprietary
11 information which the administering authority
12 determines should be released under a protec-
13 tive order described in subparagraph (B), the
14 administering authority shall return the infor-
15 mation, and any nonconfidential summary
16 thereof, to the person submitting the informa-
17 tion and summary and shall not consider either.

18 “(2) DISCLOSURE UNDER COURT ORDER.—If
19 the administering authority or the Commission de-
20 nies a request for information under paragraph (1),
21 then application may be made to the United States
22 Court of International Trade for an order directing
23 the administering authority or the Commission, as
24 the case may be, to make the information available.
25 After notification of all parties to the investigation

1 and after an opportunity for a hearing on the
2 record, the court may issue an order, under such
3 conditions as the court deems appropriate, which
4 shall not have the effect of stopping or suspending
5 the investigation, directing the administering author-
6 ity or the Commission to make all or a portion of
7 the requested information described in the preceding
8 sentence available under a protective order and set-
9 ting forth sanctions for violation of such order if the
10 court finds that, under the standards applicable in
11 proceedings of the court, such an order is warranted,
12 and that—

13 “(A) the administering authority or the
14 Commission has denied access to the informa-
15 tion under subsection (b)(1),

16 “(B) the person on whose behalf the infor-
17 mation is requested is an interested party who
18 is a party to the investigation in connection
19 with which the information was obtained or de-
20 veloped, and

21 “(C) the party which submitted the infor-
22 mation to which the request relates has been
23 notified, in advance of the hearing, of the re-
24 quest made under this section and of its right
25 to appear and be heard.

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

16 “(e) INFORMATION RELATING TO VIOLATIONS OF
17 PROTECTIVE ORDERS AND SANCTIONS.—The administer-
18 ing authority and the Commission may withhold from dis-
19 closure any correspondence, private letters of reprimand,
20 settlement agreements, and documents and files compiled
21 in relation to investigations and actions involving a viola-
22 tion or possible violation of a protective order issued under
23 subsection (c), and such information shall be treated as
24 information described in section 552(b)(3) of title 5, Unit-
25 ed States Code.

1 “(f) OPPORTUNITY FOR COMMENT BY VESSEL BUY-
2 ERS.—The administering authority and the Commission
3 shall provide an opportunity for buyers of subject vessels
4 to submit relevant information to the administering au-
5 thority concerning a sale at less than fair value or counter-
6 measures, and to the Commission concerning material in-
7 jury by reason of the sale of a vessel at less than fair
8 value.

9 “(g) PUBLICATION OF DETERMINATIONS; REQUIRE-
10 MENTS FOR FINAL DETERMINATIONS.—

11 “(1) IN GENERAL.—Whenever the administer-
12 ing authority makes a determination under section
13 802 whether to initiate an investigation, or the ad-
14 ministering authority or the Commission makes a
15 preliminary determination under section 803, a final
16 determination under section 805, a determination
17 under subsection (b), (c), (d), (e)(3)(B)(ii), (g), or
18 (i) of section 807, or a determination to suspend an
19 investigation under this title, the administering au-
20 thority or the Commission, as the case may be, shall
21 publish the facts and conclusions supporting that de-
22 termination, and shall publish notice of that deter-
23 mination in the Federal Register.

24 “(2) CONTENTS OF NOTICE OR DETERMINA-
25 TION.—The notice or determination published under

1 paragraph (1) shall include, to the extent applica-
2 ble—

3 “(A) in the case of a determination of the
4 administering authority—

5 “(i) the names of the United States
6 buyer and the foreign producer, and the
7 country of origin of the subject vessel,

8 “(ii) a description sufficient to iden-
9 tify the subject vessel (including type, pur-
10 pose, and size),

11 “(iii) with respect to an injurious prie-
12 ing charge, the injurious pricing margin
13 established and a full explanation of the
14 methodology used in establishing such
15 margin,

16 “(iv) with respect to countermeasures,
17 the scope and duration of countermeasures
18 and, if applicable, any changes thereto,
19 and

20 “(v) the primary reasons for the de-
21 termination, and

22 “(B) in the case of a determination of the
23 Commission—

24 “(i) considerations relevant to the de-
25 termination of injury, and

1 “(ii) the primary reasons for the de-
2 termination.

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

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

14 “(B) the Commission shall include in a
15 final determination of injury an explanation of
16 the basis for its determination that addresses
17 relevant arguments that are made by interested
18 parties who are parties to the investigation con-
19 cerning the effects and impact on the industry
20 of the sale of the subject vessel.

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

22 “(a) CERTIFICATION OF SUBMISSIONS.—Any person
23 providing factual information to the administering author-
24 ity or the Commission in connection with a proceeding
25 under this title on behalf of the petitioner or any other

1 interested party shall certify that such information is ac-
2 curate and complete to the best of that person's knowl-
3 edge.

4 “(b) DIFFICULTIES IN MEETING REQUIREMENTS.—

5 “(1) NOTIFICATION BY INTERESTED PARTY.—

6 If an interested party, promptly after receiving a re-
7 quest from the administering authority or the Com-
8 mission for information, notifies the administering
9 authority or the Commission (as the case may be)
10 that such party is unable to submit the information
11 requested in the requested form and manner, to-
12 gether with a full explanation and suggested alter-
13 native forms in which such party is able to submit
14 the information, the administering authority or the
15 Commission (as the case may be) shall consider the
16 ability of the interested party to submit the informa-
17 tion in the requested form and manner and may
18 modify such requirements to the extent necessary to
19 avoid imposing an unreasonable burden on that
20 party.

21 “(2) ASSISTANCE TO INTERESTED PARTIES.—

22 The administering authority and the Commission
23 shall take into account any difficulties experienced
24 by interested parties, particularly small companies,
25 in supplying information requested by the admin-

1 istering authority or the Commission in connection
2 with investigations under this title, and shall provide
3 to such interested parties any assistance that is
4 practicable in supplying such information.

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

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

20 “(2) such response is not submitted within the
21 applicable time limits, then the administering au-
22 thority or the Commission (as the case may be) may,
23 subject to subsection (d), disregard all or part of the
24 original and subsequent responses.

1 “(d) USE OF CERTAIN INFORMATION.—In reaching
2 a determination under section 803, 805, or 807, the ad-
3 ministering authority and the Commission shall not de-
4 cline to consider information that is submitted by an inter-
5 ested party and is necessary to the determination but does
6 not meet all the applicable requirements established by the
7 administering authority or the Commission if—

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

10 “(2) the information can be verified,

11 “(3) the information is not so incomplete that
12 it cannot serve as a reliable basis for reaching the
13 applicable determination,

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

19 “(5) the information can be used without undue
20 difficulties.

21 “(e) NONACCEPTANCE OF SUBMISSIONS.—If the ad-
22 ministering authority or the Commission declines to accept
23 into the record any information submitted in an investiga-
24 tion under this title, it shall, to the extent practicable, pro-
25 vide to the person submitting the information a written

1 explanation of the reasons for not accepting the informa-
2 tion.

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

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

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

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

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

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

20 “(3) CONSULTATIONS ON REQUEST FOR COM-
21 MISSION DETERMINATION.—If a majority of the
22 Commissioners issues an affirmative report under
23 paragraph (1), the Trade Representatives shall con-
24 sult with the congressional committees listed in
25 paragraph (1) concerning the matter.

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

13 “(5) CONSULTATIONS ON IMPLEMENTATION OF
14 COMMISSION DETERMINATION.—The Trade Rep-
15 resentative shall consult with the congressional com-
16 mittees listed in paragraph (1) before the Commis-
17 sion’s determination under paragraph (4) is imple-
18 mented.

19 “(6) REVOCATION OF ORDER.—If, by virtue of
20 the Commission’s determination under paragraph
21 (4), an injurious pricing order is no longer sup-
22 ported by an affirmative Commission determination
23 under this title, the Trade Representative may, after
24 consulting with the congressional committees under

1 paragraph (5), direct the administering authority to
2 revoke the injurious pricing order.

3 “(b) ACTION BY ADMINISTERING AUTHORITY.—

4 “(1) CONSULTATIONS WITH ADMINISTERING
5 AUTHORITY AND CONGRESSIONAL COMMITTEES.—

6 Promptly after a report or other determination by a
7 dispute settlement panel under the Shipbuilding
8 Agreement is issued that contains findings that—

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

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

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

20 “(D) the scope or duration of counter-
21 measures imposed under section 807 should be
22 narrowed or shortened,

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

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

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

15 “(A) with respect to a matter described in
16 subparagraph (A) of paragraph (1), within 180
17 calendar days after the request from the Trade
18 Representative is made, and

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

23 “(4) CONSULTATIONS BEFORE IMPLEMENTA-
24 TION.—Before the administering authority imple-
25 ments any determination, amendment, or suspension

1 under paragraph (2), the Trade Representative shall
2 consult with the administering authority and the
3 congressional committees listed in subsection (a)(1)
4 with respect to such determination, amendment, or
5 suspension.

6 “(5) IMPLEMENTATION OF DETERMINATION.—
7 The Trade Representative may, after consulting with
8 the administering authority and the congressional
9 committees under paragraph (4), direct the admin-
10 istering authority to implement, in whole or in part,
11 the determination, amendment, or suspension made
12 under paragraph (2). The administering authority
13 shall publish notice of such implementation in the
14 Federal Register.

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

23 **“Subtitle D—Definitions**

24 **“SEC. 861. DEFINITIONS.**

25 “In this title:

1 “(1) ADMINISTERING AUTHORITY.—The term
2 ‘administering authority’ means the Secretary of
3 Commerce, or any other officer of the United States
4 to whom the responsibility for carrying out the du-
5 ties of the administering authority under this title
6 are transferred by law.

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

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

18 “(4) INDUSTRY.—

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

1 “(B) PRODUCER.—A ‘producer’ of a do-
2 mestic like vessel includes an entity that is pro-
3 ducing the domestic like vessel and an entity
4 with the capability to produce the domestic like
5 vessel.

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

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

23 “(ii) For purposes of clause (i), a domestic
24 producer and the foreign producer, seller, or

1 United States buyer shall be considered to be
2 related parties, if—

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

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

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

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

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

1 “(E) PRODUCT LINES.—In an investiga-
2 tion under this title, the effect of the sale of the
3 subject vessel shall be assessed in relation to
4 the United States production (or production ca-
5 pability) of a domestic like vessel if available
6 data permit the separate identification of pro-
7 duction (or production capability) in terms of
8 such criteria as the production process or the
9 producer’s profits. If the domestic production
10 (or production capability) of a domestic like
11 vessel has no separate identity in terms of such
12 criteria, then the effect of the sale of the sub-
13 ject vessel shall be assessed by the examination
14 of the production (or production capability) of
15 the narrowest group or range of vessels, which
16 includes a domestic like vessel, for which the
17 necessary information can be provided.

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

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

4 “(A) A United States citizen.

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

13 “(C) A juridical entity that is owned or
14 controlled by nationals or entities described in
15 subparagraphs (A) and (B). For the purposes
16 of this subparagraph—

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

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

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

4 “(7) OWNERSHIP INTEREST.—An ‘ownership
5 interest’ in a vessel includes any contractual or pro-
6 prietary interest which allows the beneficiary or
7 beneficiaries of such interest to take advantage of
8 the operation of the vessel in a manner substantially
9 comparable to the way in which an owner may bene-
10 fit from the operation of the vessel. In determining
11 whether such substantial comparability exists, the
12 administering authority shall consider—

13 “(A) the terms and circumstances of the
14 transaction which conveys the interest,

15 “(B) commercial practice within the indus-
16 try,

17 “(C) whether the vessel subject to the
18 transaction is integrated into the operations of
19 the beneficiary or beneficiaries, and

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

25 “(8) VESSEL.—

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

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

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

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

16 “(i) any fishing vessel destined for the
17 fishing fleet of the country in which the
18 vessel is built,

19 “(ii) any military vessel or any mili-
20 tary reserve vessel, and

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

1 5 years after the date of the contract of
2 sale shall be a ‘vessel’ for purposes of this
3 title unless the shipbuilder demonstrates to
4 the administering authority that the ex-
5 tended delivery date was for normal com-
6 mercial reasons and not to avoid applica-
7 bility of this title.

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

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

17 “(E) MILITARY RESERVE VESSEL.—A
18 ‘military reserve vessel’ is a vessel that has been
19 constructed with national defense features and
20 characteristics required by the Secretary of De-
21 fense for the purpose of supporting the United
22 States Armed Forces in a contingency, if the
23 vessel (without regard to such features and
24 characteristics) is otherwise subject to the

1 terms and conditions of the Shipbuilding Agree-
2 ment.

3 “(9) LIKE VESSEL.—The term ‘like vessel’
4 means a vessel of the same type, same purpose, and
5 approximate size as the subject vessel and possessing
6 characteristics closely resembling those of the sub-
7 ject vessel.

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

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

16 “(12) SAME GENERAL CATEGORY OF VESSEL.—
17 The term ‘same general category of vessel’ means a
18 vessel of the same type and purpose as the subject
19 vessel, but of a significantly different size.

20 “(13) SUBJECT VESSEL.—The term ‘subject
21 vessel’ means a vessel subject to an investigation or
22 an injurious pricing order under this title.

23 “(14) FOREIGN PRODUCER.—The term ‘foreign
24 producer’ means the producer or producers of the
25 subject vessel.

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

4 “(16) MATERIAL INJURY.—

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

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

11 “(i) shall consider—

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

13 “(II) the effect of the sale of the
14 subject vessel on prices in the United
15 States for a domestic like vessel, and

16 “(III) the impact of the sale of
17 the subject vessel on domestic produc-
18 ers of a domestic like vessel, but only
19 in the context of production oper-
20 ations within the United States, and

21 “(ii) may consider such other eco-
22 nomic factors as are relevant to the deter-
23 mination regarding whether there is or has
24 been material injury by reason of the sale
25 of the subject vessel.

1 In the notification required under section
2 805(d), the Commission shall explain its analy-
3 sis of each factor considered under clause (i),
4 and identify each factor considered under clause
5 (ii) and explain in full its relevance to the deter-
6 mination.

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

9 “(i) SALE OF THE SUBJECT VES-
10 SEL.—In evaluating the sale of the subject
11 vessel, the Commission shall consider
12 whether the sale, either in absolute terms
13 or relative to production or demand in the
14 United States, in terms of either volume or
15 value, is or has been significant.

16 “(ii) PRICE.—In evaluating the effect
17 of the sale of the subject vessel on prices,
18 the Commission shall consider whether—

19 “(I) there has been significant
20 price underselling of the subject vessel
21 as compared with the price of a do-
22 mestic like vessel, and

23 “(II) the effect of the sale of the
24 subject vessel otherwise depresses or
25 has depressed prices to a significant

1 degree or prevents or has prevented
2 price increases, which otherwise would
3 have occurred, to a significant degree.

4 “(iii) IMPACT ON AFFECTED DOMES-
5 TIC INDUSTRY.—In examining the impact
6 required to be considered under subpara-
7 graph (B)(i)(III), the Commission shall
8 evaluate all relevant economic factors
9 which have a bearing on the state of the
10 industry in the United States, including,
11 but not limited to—

12 “(I) actual and potential decline
13 in output, sales, market share, profits,
14 productivity, return on investments,
15 and utilization of capacity,

16 “(II) factors affecting domestic
17 prices, including with regard to sales,

18 “(III) actual and potential nega-
19 tive effects on cash flow, employment,
20 wages, growth, ability to raise capital,
21 and investment,

22 “(IV) actual and potential nega-
23 tive effects on the existing develop-
24 ment and production efforts of the do-
25 mestic industry, including efforts to

1 develop a derivative or more advanced
2 version of a domestic like vessel, and
3 “(V) the magnitude of the injuri-
4 ous pricing margin.

5 The Commission shall evaluate all relevant
6 economic factors described in this clause
7 within the context of the business cycle
8 and conditions of competition that are dis-
9 tinctive to the affected industry.

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

16 “(E) THREAT OF MATERIAL INJURY.—
17 “(i) IN GENERAL.—In determining
18 whether an industry in the United States
19 is threatened with material injury by rea-
20 son of the sale of the subject vessel, the
21 Commission shall consider, among other
22 relevant economic factors—

23 “(I) any existing unused produc-
24 tion capacity or imminent, substantial
25 increase in production capacity in the

1 exporting country indicating the likeli-
2 hood of substantially increased sales
3 of a foreign like vessel to United
4 States buyers, taking into account the
5 availability of other export markets to
6 absorb any additional exports,

7 “(II) whether the sale of a for-
8 eign like vessel or other factors indi-
9 cate the likelihood of significant addi-
10 tional sales to United States buyers,

11 “(III) whether sale of the subject
12 vessel or sale of a foreign like vessel
13 by the foreign producer are at prices
14 that are likely to have a significant
15 depressing or suppressing effect on
16 domestic prices, and are likely to in-
17 crease demand for further sales,

18 “(IV) the potential for product-
19 shifting if production facilities in the
20 exporting country, which can pres-
21 ently be used to produce a foreign like
22 vessel or could be adapted in a timely
23 manner to produce a foreign like ves-
24 sel, are currently being used to
25 produce other types of vessels,

1 “(V) the actual and potential
2 negative effects on the existing devel-
3 opment and production efforts of the
4 domestic industry, including efforts to
5 develop a derivative or more advanced
6 version of a domestic like vessel, and

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

12 “(ii) BASIS FOR DETERMINATION.—

13 The Commission shall consider the factors
14 set forth in clause (i) as a whole. The pres-
15 ence or absence of any factor which the
16 Commission is required to consider under
17 clause (i) shall not necessarily give decisive
18 guidance with respect to the determination.
19 Such a determination may not be made on
20 the basis of mere conjecture or suppo-
21 sition.

22 “(iii) EFFECT OF INJURIOUS PRICING
23 IN THIRD-COUNTRY MARKETS.—

24 “(I) IN GENERAL.—The Commis-
25 sion shall consider whether injurious

1 pricing in the markets of foreign
2 countries (as evidenced by injurious
3 pricing findings or injurious pricing
4 remedies of other Shipbuilding Agree-
5 ment Parties, or antidumping deter-
6 minations of, or measures imposed by,
7 other countries, against a like vessel
8 produced by the producer under inves-
9 tigation) suggests a threat of material
10 injury to the domestic industry. In the
11 course of its investigation, the Com-
12 mission shall request information
13 from the foreign producer or United
14 States buyer concerning this issue.

15 “(II) EUROPEAN COMMU-
16 NITIES.—For purposes of this clause,
17 the European Communities as a whole
18 shall be treated as a single foreign
19 country.

20 “(F) CUMULATION FOR DETERMINING MA-
21 TERIAL INJURY.—

22 “(i) IN GENERAL.—For purposes of
23 clauses (i) and (ii) of subparagraph (C),
24 and subject to clause (ii) of this subpara-
25 graph, the Commission shall cumulatively

1 assess the effects of sales of foreign like
2 vessels from all foreign producers with re-
3 spect to which—

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

6 “(II) investigations were initiated
7 under section 802(a) on the same day,
8 or

9 “(III) petitions were filed under
10 section 802(b) and investigations were
11 initiated under section 802(a) on the
12 same day,

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

17 “(ii) EXCEPTIONS.—The Commission
18 shall not cumulatively assess the effects of
19 sales under clause (i)—

20 “(I) with respect to which the ad-
21 ministering authority has made a pre-
22 liminary negative determination, un-
23 less the administering authority sub-
24 sequently made a final affirmative de-
25 termination with respect to those sales

1 before the Commission's final deter-
2 mination is made, or

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

6 “(iii) RECORDS IN FINAL INVESTIGA-
7 TIONS.—In each final determination in
8 which it cumulatively assesses the effects
9 of sales under clause (i), the Commission
10 may make its determinations based on the
11 record compiled in the first investigation in
12 which it makes a final determination, ex-
13 cept that when the administering authority
14 issues its final determination in a subse-
15 quently completed investigation, the Com-
16 mission shall permit the parties in the sub-
17 sequent investigation to submit comments
18 concerning the significance of the admin-
19 istering authority's final determination,
20 and shall include such comments and the
21 administering authority's final determina-
22 tion in the record for the subsequent inves-
23 tigation.

24 “(G) CUMULATION FOR DETERMINING
25 THREAT OF MATERIAL INJURY.—To the extent

1 practicable and subject to subparagraph (F)(ii),
2 for purposes of clause (i) (II) and (III) of sub-
3 paragraph (E), the Commission may cumula-
4 tively assess the effects of sales of like vessels
5 from all countries with respect to which—

6 “(i) petitions were filed under section
7 802(b) on the same day,

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

10 “(iii) petitions were filed under sec-
11 tion 802(b) and investigations were initi-
12 ated under section 802(a) on the same
13 day,

14 if, with respect to such vessels, the foreign pro-
15 ducers compete with each other and with pro-
16 ducers of a domestic like vessel in the United
17 States market.

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

21 “(A)(i) the foreign producer, seller (other
22 than the foreign producer), and the United
23 States buyer of the subject vessel, or

24 “(ii) a trade or business association a ma-
25 jority of the members of which are the foreign

1 producer, seller, or United States buyer of the
2 subject vessel,

3 “(B) the government of the country in
4 which the subject vessel is produced or manu-
5 factured,

6 “(C) a producer that is a member of an in-
7 dustry,

8 “(D) a certified union or recognized union
9 or group of workers which is representative of
10 an industry,

11 “(E) a trade or business association a ma-
12 jority of whose members are producers in an in-
13 dustry,

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

17 “(G) for purposes of section 807, a pur-
18 chaser who, after the effective date of an order
19 issued under that section, entered into a con-
20 tract of sale with the foreign producer that is
21 subject to the order.

22 “(18) AFFIRMATIVE DETERMINATIONS BY DI-
23 VIDED COMMISSION.—If the Commissioners voting
24 on a determination by the Commission are evenly di-
25 vided as to whether the determination should be af-

1 firmative or negative, the Commission shall be
2 deemed to have made an affirmative determination.
3 For the purpose of applying this paragraph when
4 the issue before the Commission is to determine
5 whether there is or has been—

6 “(A) material injury to an industry in the
7 United States,

8 “(B) threat of material injury to such an
9 industry, or

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

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

15 “(19) ORDINARY COURSE OF TRADE.—The
16 term ‘ordinary course of trade’ means the conditions
17 and practices which, for a reasonable time before the
18 sale of the subject vessel, have been normal in the
19 shipbuilding industry with respect to a like vessel.
20 The administering authority shall consider the fol-
21 lowing sales and transactions, among others, to be
22 outside the ordinary course of trade:

23 “(A) Sales disregarded under section
24 822(b)(1).

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

3 “(20) NONMARKET ECONOMY COUNTRY.—

4 “(A) IN GENERAL.—The term ‘nonmarket
5 economy country’ means any foreign country
6 that the administering authority determines
7 does not operate on market principles of cost or
8 pricing structures, so that sales of vessels in
9 such country do not reflect the fair value of the
10 vessels.

11 “(B) FACTORS TO BE CONSIDERED.—In
12 making determinations under subparagraph (A)
13 the administering authority shall take into ac-
14 count—

15 “(i) the extent to which the currency
16 of the foreign country is convertible into
17 the currency of other countries,

18 “(ii) the extent to which wage rates in
19 the foreign country are determined by free
20 bargaining between labor and manage-
21 ment,

22 “(iii) the extent to which joint ven-
23 tures or other investments by firms of
24 other foreign countries are permitted in
25 the foreign country,

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

3 “(v) the extent of government control
4 over the allocation of resources and over
5 the price and output decisions of enter-
6 prises, and

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

9 “(C) DETERMINATION IN EFFECT.—

10 “(i) Any determination that a foreign
11 country is a nonmarket economy country
12 shall remain in effect until revoked by the
13 administering authority.

14 “(ii) The administering authority may
15 make a determination under subparagraph
16 (A) with respect to any foreign country at
17 any time.

18 “(D) DETERMINATIONS NOT IN ISSUE.—

19 Notwithstanding any other provision of law, any
20 determination made by the administering au-
21 thority under subparagraph (A) shall not be
22 subject to judicial review in any investigation
23 conducted under subtitle A.

24 “(21) SHIPBUILDING AGREEMENT.—The term
25 ‘Shipbuilding Agreement’ means The Agreement Re-

1 specting Normal Competitive Conditions in the Com-
2 mercial Shipbuilding and Repair Industry, resulting
3 from negotiations under the auspices of the Organi-
4 zation for Economic Cooperation and Development,
5 and entered into on December 21, 1994.

6 “(22) SHIPBUILDING AGREEMENT PARTY.—The
7 term ‘Shipbuilding Agreement Party’ means a state
8 or separate customs territory that is a Party to the
9 Shipbuilding Agreement, and with respect to which
10 the United States applies the Shipbuilding Agree-
11 ment.

12 “(23) WTO AGREEMENT.—The term ‘WTO
13 Agreement’ means the Agreement defined in section
14 2(9) of the Uruguay Round Agreements Act.

15 “(24) WTO MEMBER.—The term ‘WTO mem-
16 ber’ means a state, or separate customs territory
17 (within the meaning of Article XII of the WTO
18 Agreement), with respect to which the United States
19 applies the WTO Agreement.

20 “(25) TRADE REPRESENTATIVE.—The term
21 ‘Trade Representative’ means the United States
22 Trade Representative.

23 “(26) AFFILIATED PERSONS.—The following
24 persons shall be considered to be ‘affiliated’ or ‘af-
25 filiated persons’:

1 “(A) Members of a family, including broth-
2 ers and sisters (whether by the whole or half
3 blood), spouse, ancestors, and lineal descend-
4 ants.

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

7 “(C) Partners.

8 “(D) Employer and employee.

9 “(E) Any person directly or indirectly own-
10 ing, controlling, or holding with power to vote,
11 5 percent or more of the outstanding voting
12 stock or shares of any organization, and such
13 organization.

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

17 “(G) Any person who controls any other
18 person, and such other person.

19 For purposes of this paragraph, a person shall be
20 considered to control another person if the person is
21 legally or operationally in a position to exercise re-
22 straint or direction over the other person.

23 “(27) INJURIOUS PRICING.—The term ‘injuri-
24 ous pricing’ refers to the sale of a vessel at less than
25 fair value.

1 “(28) INJURIOUS PRICING MARGIN.—

2 “(A) IN GENERAL.—The term ‘injuriously
3 pricing margin’ means the amount by which the
4 normal value exceeds the export price of the
5 subject vessel.

6 “(B) MAGNITUDE OF THE INJURIOUS
7 PRICING MARGIN.—The magnitude of the inju-
8 rious pricing margin used by the Commission
9 shall be—

10 “(i) in making a preliminary deter-
11 mination under section 803(a) in an inves-
12 tigation (including any investigation in
13 which the Commission cumulatively as-
14 sesses the effect of sales under paragraph
15 (16)(F)(i)), the injurious pricing margin or
16 margins published by the administering
17 authority in its notice of initiation of the
18 investigation; and

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

1 “(29) COMMERCIAL INTEREST REFERENCE
2 RATE.—The term ‘Commercial Interest Reference
3 Rate’ or ‘CIRR’ means an interest rate that the ad-
4 ministering authority determines to be consistent
5 with Annex III, and appendices and notes thereto, of
6 the Understanding on Export Credits for Ships, re-
7 sulting from negotiations under the auspices of the
8 Organization for Economic Cooperation, and entered
9 into on December 21, 1994.

10 “(30) ANTIDUMPING.—

11 “(A) WTO MEMBERS.—In the case of a
12 WTO member, the term ‘antidumping’ refers to
13 action taken pursuant to the Agreement on Im-
14 plementation of Article VI of the General
15 Agreement on Tariffs and Trade 1994.

16 “(B) OTHER CASES.—In the case of any
17 country that is not a WTO member, the term
18 ‘antidumping’ refers to action taken by the
19 country against the sale of a vessel at less than
20 fair value that is comparable to action described
21 in subparagraph (A).

22 “(31) BROAD MULTIPLE BID.—The term ‘broad
23 multiple bid’ means a bid in which the proposed
24 buyer extends an invitation to bid to at least all the

1 producers in the industry known by the buyer to be
2 capable of building the subject vessel.”.

3 **SEC. 103. ENFORCEMENT OF COUNTERMEASURES.**

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

6 **“SEC. 468. SHIPBUILDING AGREEMENT COUNTER-**
7 **MEASURES.**

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

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

16 “(1) To unlade any United States citizen or
17 permanent legal resident alien from a vessel included
18 in the list described in subsection (a), or to unlade
19 any refugee or any alien who would otherwise be eli-
20 gible to apply for asylum and withholding of depor-
21 tation under the Immigration and Nationality Act.

22 “(2) To lade or unlade any crewmember of such
23 vessel.

24 “(3) To lade or unlade coal and other fuel sup-
25 plies (for the operation of the listed vessel), ships’

1 stores, sea stores, and the legitimate equipment of
2 such vessel.

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

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

9 “(c) CORRECTION OF MINISTERIAL OR CLERICAL
10 ERRORS.—

11 “(1) PETITION FOR CORRECTION.—If the mas-
12 ter of any vessel whose application for a permit to
13 lade or unlade has been denied under this section be-
14 lieves that such denial resulted from a ministerial or
15 clerical error, not amounting to a mistake of law,
16 committed by any Customs officer, the master may
17 petition the Customs Service for correction of such
18 error, as provided by regulation.

19 “(2) INAPPLICABILITY OF SECTIONS 514 AND
20 520.—Notwithstanding paragraph (1), imposition of
21 countermeasures under this section shall not be
22 deemed an exclusion or other protestable decision
23 under section 514, and shall not be subject to cor-
24 rection under section 520.

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

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

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

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

15 **SEC. 104. JUDICIAL REVIEW IN INJURIOUS PRICING AND**
 16 **COUNTERMEASURE PROCEEDINGS.**

17 (a) JUDICIAL REVIEW.—Part III of title IV of the
 18 Tariff Act of 1930 is amended by inserting after section
 19 516A the following:

20 **“SEC. 516B. JUDICIAL REVIEW IN INJURIOUS PRICING AND**
 21 **COUNTERMEASURE PROCEEDINGS.**

22 “(a) REVIEW OF DETERMINATION.—

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

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

4 “(ii) a negative determination by the Com-
5 mission under section 803(a) as to whether
6 there is or has been reasonable indication of
7 material injury, threat of material injury, or
8 material retardation,

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

12 “(iv) a determination by the administering
13 authority under section 807(c),

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

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

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

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

1 “(ix) a determination by the administering
2 authority under section 807(i) to terminate pro-
3 ceedings, or to amend or revoke a counter-
4 measure order,

5 “(x) a determination by the administering
6 authority under section 845(b), with respect to
7 a matter described in paragraph (1)(D) of that
8 section, or

9 “(B)(i) an injurious pricing order based on
10 a determination described in subparagraph (A)
11 of paragraph (2),

12 “(ii) notice of a determination described in
13 subparagraph (B) of paragraph (2),

14 “(iii) notice of implementation of a deter-
15 mination described in subparagraph (C) of
16 paragraph (2), or

17 “(iv) notice of revocation of an injurious
18 pricing order based on a determination de-
19 scribed in subparagraph (D) of paragraph (2),
20 an interested party who is a party to the pro-
21 ceeding in connection with which the matter
22 arises may commence an action in the United
23 States Court of International Trade by filing
24 concurrently a summons and complaint, each
25 with the content and in the form, manner, and

1 style prescribed by the rules of that court, con-
2 testing any factual findings or legal conclusions
3 upon which the determination is based.

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

6 “(A) a final affirmative determination by
7 the administering authority or by the Commis-
8 sion under section 805, including any negative
9 part of such a determination (other than a part
10 referred to in subparagraph (B)),

11 “(B) a final negative determination by the
12 administering authority or the Commission
13 under section 805,

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

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

21 “(3) EXCEPTION.—Notwithstanding the 30-day
22 limitation imposed by paragraph (1) with regard to
23 an order described in paragraph (1)(B)(i), a final af-
24 firmative determination by the administering author-
25 ity under section 805 may be contested by commene-

1 ing an action, in accordance with the provisions of
2 paragraph (1), within 30 days after the date of pub-
3 lication in the Federal Register of a final negative
4 determination by the Commission under section 805.

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

8 “(b) STANDARDS OF REVIEW.—

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

11 “(A) in an action brought under subpara-
12 graph (A) of subsection (a)(1), to be arbitrary,
13 capricious, an abuse of discretion, or otherwise
14 not in accordance with law, or

15 “(B) in an action brought under subpara-
16 graph (B) of subsection (a)(1), to be unsup-
17 ported by substantial evidence on the record, or
18 otherwise not in accordance with law.

19 “(2) RECORD FOR REVIEW.—

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

23 “(i) a copy of all information pre-
24 sented to or obtained by the administering
25 authority or the Commission during the

1 course of the administrative proceeding, in-
2 cluding all governmental memoranda per-
3 taining to the case and the record of ex
4 parte meetings required to be kept by sec-
5 tion 843(a)(2); and

6 “(ii) a copy of the determination, all
7 transcripts or records of conferences or
8 hearings, and all notices published in the
9 Federal Register.

10 “(B) CONFIDENTIAL OR PRIVILEGED MA-
11 TERIAL.—The confidential or privileged status
12 accorded to any documents, comments, or infor-
13 mation shall be preserved in any action under
14 this section. Notwithstanding the preceding sen-
15 tence, the court may examine, in camera, the
16 confidential or privileged material, and may dis-
17 close such material under such terms and con-
18 ditions as it may order.

19 “(c) STANDING.—Any interested party who was a
20 party to the proceeding under title VIII shall have the
21 right to appear and be heard as a party in interest before
22 the United States Court of International Trade in an ac-
23 tion under this section. The party filing the action shall
24 notify all such interested parties of the filing of an action

1 under this section, in the form, manner, and within the
2 time prescribed by rules of the court.

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

4 “(1) ADMINISTERING AUTHORITY.—The term
5 ‘administering authority’ has the meaning given that
6 term in section 861(1).

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

10 “(3) INTERESTED PARTY.—The term ‘inter-
11 ested party’ means any person described in section
12 861(17).”.

13 (b) CONFORMING AMENDMENTS.—

14 (1) JURISDICTION OF THE COURT.—Section
15 1581(c) of title 28, United States Code, is amended
16 by inserting “or 516B” after “section 516A”.

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

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

21 (B) in subsection (c) by adding at the end
22 the following new paragraph:

23 “(6) In any civil action under section 516B of the
24 Tariff Act of 1930, the Court of International Trade may
25 not issue injunctions or any other form of equitable relief,

1 except with regard to implementation of a countermeasure
 2 order under section 468 of that Act, upon a proper show-
 3 ing that such relief is warranted.”.

4 **Subtitle B—Other Provisions**

5 **SEC. 111. EQUIPMENT AND REPAIR OF VESSELS.**

6 (a) IN GENERAL.—Section 466 of the Tariff Act of
 7 1930 (19 U.S.C. 1466), is amended by adding at the end
 8 the following new subsection:

9 “(i) EXCEPTION TO IMPOSITION OF DUTY.—

10 “(1) IN GENERAL.—The duty imposed by sub-
 11 section (a) shall not apply with respect to activities
 12 occurring in a Shipbuilding Agreement Party, as de-
 13 fined in section 861(22), with respect to—

14 “(A) self-propelled seagoing vessels of 100
 15 gross tons or more that are used for transpor-
 16 tation of goods or persons or for performance
 17 of a specialized service (including, but not lim-
 18 ited to, ice breakers and dredges);

19 “(B) tugs of 365 kilowatts or more; and

20 “(C) integrated tug-barges or tug-barge
 21 combinations.

22 “(2) SELF-PROPELLED SEAGOING; INTEGRATED
 23 TUG-BARGE.—

24 “(A) SELF-PROPELLED SEAGOING.—A ves-
 25 sel shall be considered ‘self-propelled seagoing’

1 if its permanent propulsion and steering provide
2 it all the characteristics of self-navigability in
3 the high seas.

4 “(B) INTEGRATED TUG-BARGE.—An inte-
5 grated tug-barge or tug-barge combination
6 means a vessel that is designed to operate to-
7 gether in either the push mode or pull mode, if
8 the barge is of 100 gross tons or more and the
9 tug is of 365 kilowatts or more.”.

10 **SEC. 112. EFFECT OF SHIPBUILDING TRADE AGREEMENT**
11 **WITH RESPECT TO PRIVATE REMEDIES.**

12 No person other than the United States—

13 (1) shall have any cause of action or defense
14 under the Shipbuilding Agreement or by virtue of
15 congressional approval of the Shipbuilding Agree-
16 ment, or

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

1 **SEC. 113. IMPLEMENTING REGULATIONS.**

2 After the date of the enactment of this title, the heads
3 of agencies with functions under this title and the amend-
4 ments made by this title may issue such regulations as
5 may be necessary to ensure that this title is appropriately
6 implemented on the date the Shipbuilding Agreement en-
7 ters into force with respect to the United States.

8 **SEC. 114. AMENDMENTS TO THE MERCHANT MARINE ACT,**
9 **1936.**

10 The Merchant Marine Act, 1936, is amended as fol-
11 lows:

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

21 (2) Section 601(a) (46 App. U.S.C. 1171(a)) is
22 amended by striking “, and that such vessel or ves-
23 sels were built in the United States, or have been
24 documented under the laws of the United States not
25 later than February 1, 1928, or actually ordered and
26 under construction for the account of citizens of the

1 United States prior to such date;” and inserting
2 “and that such vessel or vessels were built in the
3 United States, or, if the vessel or vessels are Ship-
4 building Agreement vessels, in a Shipbuilding Agree-
5 ment Party;”.

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

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

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

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

18 (i) Paragraph (1) is amended by
19 striking subparagraph (A) and inserting
20 the following:

21 “(A)(i) constructed in the United States
22 and, if reconstructed, reconstructed in the Unit-
23 ed States or in a Shipbuilding Agreement
24 Party, or

1 “(ii) that is a Shipbuilding Agreement ves-
2 sel and is constructed in a Shipbuilding Agree-
3 ment Party and, if reconstructed, is recon-
4 structed in a Shipbuilding Agreement Party or
5 in the United States,”.

6 (ii) Paragraph (2)(A) is amended to
7 read as follows:

8 “(A)(i) constructed in the United States
9 and, if reconstructed, reconstructed in the Unit-
10 ed States or in a Shipbuilding Agreement
11 Party, or

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

20 (5) Section 610 (46 App. U.S.C. 1180) is
21 amended by striking “shall be built in a domestic
22 yard or shall have been documented under the laws
23 of the United States not later than February 1,
24 1928, or actually ordered and under construction for
25 the account of citizens of the United States prior to

1 such date,” and inserting “shall be built in the Unit-
2 ed States or, if the vessel is a Shipbuilding Agree-
3 ment vessel, in a Shipbuilding Agreement Party,”.

4 (6) Section 901(b)(1) (46 App. U.S.C.
5 1241(b)(1)) is amended by striking the third sen-
6 tence and inserting the following: “For purposes of
7 this section, the term ‘privately owned United
8 States-flag commercial vessels’ shall be deemed to
9 include—

10 “(A) any privately owned United States-
11 flag commercial vessel constructed in the Unit-
12 ed States, and if rebuilt, rebuilt in the United
13 States or in a Shipbuilding Agreement Party on
14 or after the date on which the OECD Ship-
15 building Trade Agreement Act takes effect, and

16 “(B) any privately owned vessel con-
17 structed in a Shipbuilding Agreement Party on
18 or after the date on which the OECD Ship-
19 building Trade Agreement Act takes effect, and
20 if rebuilt, rebuilt in a Shipbuilding Agreement
21 Party or in the United States, that is docu-
22 mented pursuant to chapter 121 of title 46,
23 United States Code.

24 The term ‘privately owned United States-flag com-
25 mercial vessels’ shall also be deemed to include any

1 cargo vessel that so qualified pursuant to section
2 615 of this Act or this paragraph before the date
3 on which the OECD Shipbuilding Trade Agreement
4 Act takes effect. The term ‘privately owned United
5 States-flag commercial vessels’ shall not be deemed
6 to include any liquid bulk cargo vessel that does not
7 meet the requirements of section 3703a of title 46,
8 United States Code.”.

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

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

17 “(i) The term ‘Shipbuilding Agreement Party’ means
18 a state or separate customs territory that is a Party to
19 the Shipbuilding Agreement, and with respect to which the
20 United States applies the Shipbuilding Agreement.

21 “(j) The term ‘Shipbuilding Agreement vessel’ means
22 a vessel to which the Secretary determines Article 2.1 of
23 the Shipbuilding Agreement applies.

24 “(k) The term ‘Export Credit Understanding’ means
25 the Understanding on Export Credits for Ships which re-

1 sulted from negotiations under the auspices of the Organi-
2 zation for Economic Cooperation and Development and
3 was entered into on December 21, 1994.

4 “(l) The term ‘Export Credit Understanding vessel’
5 means a vessel to which the Secretary determines the Ex-
6 port Credit Understanding applies.

7 “(m) The term ‘integrated tug-barge’ has the mean-
8 ing given such term in section 466(i) of the Tariff Act
9 of 1930 (19 U.S.C. 1466(i)).”

10 (8) Section 1104A (46 App. U.S.C. 1274) is
11 amended—

12 (A) in subsection (b), by amending para-
13 graph (5) to read as follows:

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

1 States under the Export Credit Understanding or
2 the Shipbuilding Agreement, as the case may be.”;

3 (B) by amending subsection (i) to read as
4 follows:

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

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

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

12 “(C) the 80 percent or less limitation in the 3rd
13 proviso to subsection (b)(2),

14 establish by rule, regulation, or procedure any percentage
15 within any such limitation that is, or is intended to be,
16 applied uniformly to all guarantees or commitments to
17 guarantee made under this section that are subject to the
18 limitation.

19 “(2) With respect to Export Credit Understanding
20 vessels and Shipbuilding Agreement vessels, the Secretary
21 may establish by rule, regulation, or procedure a uniform
22 percentage that the Secretary determines to be consistent
23 with obligations of the United States under the Export
24 Credit Understanding or the Shipbuilding Agreement, as
25 the case may be.”; and

1 (C) by adding at the end the following new
2 subsection:

3 “(k) The Secretary shall establish by rule, regulation,
4 or procedure a uniform percentage with respect to inte-
5 grated tug-barges that the Secretary determines to be con-
6 sistent with the percentages applied with respect to Export
7 Credit Understanding vessels and Shipbuilding Agreement
8 vessels under subsections (b)(5) and (i)(2).”.

9 (9) Section 1104B(b) (46 App. U.S.C.
10 1274a(b)) is amended by striking the period at the
11 end and inserting the following: “, except that, with
12 respect to Export Credit Understanding vessels and
13 Shipbuilding Agreement vessels, the Secretary may
14 establish by rule, regulation, or procedure a uniform
15 percentage that the Secretary determines to be con-
16 sistent with obligations of the United States under
17 the Export Credit Understanding or the Shipbuild-
18 ing Agreement, as the case may be. With respect to
19 integrated tug-barges, the Secretary shall establish
20 by rule, regulation, or procedure a uniform percent-
21 age that the Secretary determines to be consistent
22 with the percentages applied with respect to Export
23 Credit Understanding vessels and Shipbuilding
24 Agreement vessels pursuant to the preceding sen-
25 tence.”.

1 **SEC. 115. APPLICABILITY OF TITLE XI AMENDMENTS.**

2 (a) **EFFECTIVE DATE.**—

3 (1) **IN GENERAL.**—Notwithstanding any provi-
4 sion of the Shipbuilding Agreement or the Export
5 Credit Understanding, the amendments made by
6 paragraphs (9) and (10) of section 114 shall not
7 apply with respect to any commitment to guarantee
8 made under title XI of the Merchant Marine Act,
9 1936, before January 1, 2000, with respect to a ves-
10 sel delivered—

11 (A) before January 1, 2003, or

12 (B) in the case of unusual circumstances
13 (as described in paragraph (2)), as soon after
14 December 31, 2002, as practicable.

15 (2) **UNUSUAL CIRCUMSTANCES DESCRIBED.**—

16 As used in this subsection, the term “unusual cir-
17 cumstances” means an act of God (other than ordi-
18 nary storms or inclement weather conditions) labor
19 strikes, acts of sabotage, explosions, fires, or vandal-
20 ism, and similar circumstances beyond the control of
21 the parties concerned which prevent the delivery of
22 a vessel before January 1, 2003.

23 (b) **MATCHING COMPETITION BY NONMEMBERS.**—

24 Section 114 shall not prevent the Secretary of Transpor-
25 tation from exercising the Secretary’s full discretion and
26 authority under title XI of the Merchant Marine Act,

1 1936, consistent with clause 8 and Annex III of the Ex-
2 port Credit Understanding, to assist United States ship-
3 yards in meeting unfairly subsidized bids by foreign yards
4 in countries not covered by the Shipbuilding Agreement.

5 **SEC. 116. MONITORING AND ENFORCEMENT.**

6 (a) IN GENERAL.—The United States Trade Rep-
7 resentative shall establish a program to monitor the com-
8 pliance of Shipbuilding Agreement Parties with their obli-
9 gations under the Shipbuilding Agreement. The program
10 shall include—

11 (1) the establishment of a task force composed
12 of representatives of the Departments of Commerce,
13 Labor, State, Transportation, and other appropriate
14 agencies;

15 (2) coordination of gathering and analysis of
16 relevant information;

17 (3) consultation with United States embassies
18 located in countries that are Shipbuilding Agreement
19 Parties to assist in obtaining information that is
20 publicly available on the policies and practices in
21 those countries;

22 (4) regular consultations with representatives of
23 industry, labor, and other interested parties regard-
24 ing policies and practices of Shipbuilding Agreement

1 Parties and of other countries with significant com-
2 mercial shipbuilding industries;

3 (5) annual publication of a notice in the Fed-
4 eral Register affording an opportunity for interested
5 parties to comment on the implementation of the
6 Shipbuilding Agreement; and

7 (6) taking of any other appropriate action to
8 monitor compliance of Shipbuilding Agreement Par-
9 ties.

10 (b) REPORT TO CONGRESS.—Before the end of each
11 12-month period in which the United States is a Party
12 to the Shipbuilding Agreement, the United States Trade
13 Representative shall report to Congress on—

14 (1) the activities undertaken as part of its mon-
15 itoring program;

16 (2) the results of its consultations under sub-
17 section (a)(4); and

18 (3) compliance with the provisions of the Ship-
19 building Agreement.

20 (c) ACTION IF VIOLATION.—If the United States
21 Trade Representative receives information, including in-
22 formation provided by representatives of industry, labor,
23 and other interested parties, indicating that a Shipbuild-
24 ing Agreement Party is in material violation of the Ship-
25 building Agreement in a manner that is detrimental to the

1 interests of the United States, the United States Trade
2 Representative should use vigorously the consultation pro-
3 cedures under the Shipbuilding Agreement. If the matter
4 is not otherwise resolved, the United States Trade Rep-
5 resentative should use the dispute settlement procedures
6 under the Shipbuilding Agreement to redress the situa-
7 tion.

8 **SEC. 117. JONES ACT AND RELATED LAWS NOT AFFECTED.**

9 (a) IN GENERAL.—Nothing in the Shipbuilding
10 Agreement shall be construed to amend, alter, or modify
11 in any manner the Merchant Marine Act, 1920 (46 App.
12 U.S.C. 861 et seq.), the Act of June 19, 1886 (46 App.
13 U.S.C. 289), or any other provision of law set forth in
14 Accompanying Note 2 to Annex II of the Shipbuilding
15 Agreement. Nor shall the Shipbuilding Agreement be in-
16 terpreted to undermine the operation or administration of
17 any of the foregoing provisions of law or impede the objec-
18 tives of such laws.

19 (b) RELATION TO GATT 1994.—Nothing in the
20 Shipbuilding Agreement shall be construed to provide a
21 mechanism for withdrawal of concessions under GATT
22 1994 because of the construction of vessels by United
23 States shipbuilders for operation in the coastwise trade of
24 the United States.

1 (c) ANNUAL REVIEW; NOTIFICATION.—As part of the
2 annual review of all trade agreements conducted under
3 section 163 of the Trade Act of 1974, the United States
4 Trade Representative shall—

5 (1) review the impact, if any, of the Shipbuild-
6 ing Agreement on the operation or implementation
7 of any of the provisions of law listed in subsection
8 (a);

9 (2) in conducting the review, consult with the
10 Secretary of Transportation, the Secretary of De-
11 fense, United States industry, labor groups, and
12 other interested parties; and

13 (3) report the results of the review to the Presi-
14 dent and the appropriate committees.

15 **SEC. 118. WITHDRAWAL FROM SHIPBUILDING AGREEMENT.**

16 (a) WITHDRAWAL BY PRESIDENT.—

17 (1) NOTICE.—The President shall give notice,
18 under Article 14 of the Shipbuilding Agreement, of
19 intent of the United States to withdraw from the
20 Shipbuilding Agreement, as soon as is practicable
21 after one or more Shipbuilding Agreement Parties
22 gives notice, under such Article, of intent to with-
23 draw from the Shipbuilding Agreement, if the cir-
24 cumstances described in paragraph (2) apply.

1 (2) TONNAGE OF NEW CONSTRUCTION IN WITH-
2 DRAWING PARTIES.—The circumstances described in
3 this paragraph are that the combined gross tonnage
4 of Shipbuilding Agreement vessels that—

5 (A) were constructed in all Shipbuilding
6 Agreement Parties who have given notice to
7 withdraw from the Shipbuilding Agreement,
8 and

9 (B) were delivered in the calendar year
10 preceding the calendar year in which the notice
11 is given,

12 is 15 percent or more of the gross tonnage of Ship-
13 building Agreement vessels that were constructed in
14 all Shipbuilding Agreement Parties and were deliv-
15 ered in the calendar year preceding the calendar
16 year in which the notice is given.

17 (3) TERMINATION OF WITHDRAWAL.—If a
18 Shipbuilding Agreement Party described in para-
19 graph (2) takes action to terminate its withdrawal
20 from the Shipbuilding Agreement, so that paragraph
21 (2) would not apply if that Party had not given the
22 notice to withdraw, the President may take the nec-
23 essary steps to terminate the notice of withdrawal of
24 the United States from the Shipbuilding Agreement.

1 (b) CONGRESSIONAL RESOLUTION WITHDRAWING
2 APPROVAL OF THE SHIPBUILDING AGREEMENT.—

3 (1) NOTIFICATION BY THE PRESIDENT.—The
4 President shall notify the appropriate committees as
5 soon as is practicable of any decision by a Shipbuild-
6 ing Agreement Party to apply responsive measures
7 under the provisions of paragraph 2.e of Annex II
8 B of the Shipbuilding Agreement against the United
9 States and the applicable date of such measures.

10 (2) CONGRESSIONAL ACTION.—If Congress re-
11 ceives a notification described in paragraph (1), the
12 approval of Congress, provided under section 101 of
13 this Act, shall cease to be effective if, and only if,
14 a joint resolution is enacted into law pursuant to the
15 provisions of paragraphs (3) and (4).

16 (3) PROCEDURAL PROVISIONS.—

17 (A) IN GENERAL.—The requirements of
18 this paragraph are met if a joint resolution is
19 adopted under paragraph (4), and—

20 (i) Congress transmits the joint reso-
21 lution to the President before the end of
22 the 90-day period, beginning on the appli-
23 cable date referred to in paragraph (1),
24 and

1 (ii) if the President vetoes the joint
2 resolution, each House of Congress votes
3 to override that veto on or before the later
4 of—

5 (I) the last day of the 90-day pe-
6 riod referred to in clause (i), or

7 (II) the last day of the 15-day
8 period beginning on the date on which
9 Congress receives the veto message
10 from the President.

11 (B) INTRODUCTION.—A joint resolution to
12 which this subsection applies may be introduced
13 at any time on or after the applicable date re-
14 ferred to in paragraph (1).

15 (4) JOINT RESOLUTION.—

16 (A) JOINT RESOLUTION.—For purposes of
17 this subsection, the term “joint resolution”
18 means only a joint resolution of the 2 Houses
19 of Congress, the matter after the resolving
20 clause of which is as follows: “That Congress
21 withdraws its approval, provided under section
22 101 of the OECD Shipbuilding Trade Agree-
23 ment Act, of the Shipbuilding Agreement de-
24 scribed in section 101 of that Act.”.

25 (B) PROCEDURES.—

1 (i) IN GENERAL.—Joint resolutions
2 may be introduced in either House of Con-
3 gress by any Member of such House.

4 (ii) APPLICATION OF SECTION 152 OF
5 THE TRADE ACT OF 1974.—Subject to the
6 provisions of this subsection, the provisions
7 of subsections (b), (d), (e), and (f) of sec-
8 tion 152 of the Trade Act of 1974 (19
9 U.S.C. 2192 (b), (d), (e), and (f)) apply to
10 joint resolutions to the same extent as
11 such provisions apply to resolutions under
12 such section.

13 (iii) DISCHARGE OF COMMITTEE.—If
14 a committee of either House to which a
15 joint resolution has been referred has not
16 reported it by the close of the 45th day
17 after its introduction, such committee shall
18 be automatically discharged from further
19 consideration of the joint resolution and it
20 shall be placed on the appropriate cal-
21 endar.

22 (iv) FLOOR CONSIDERATION.—It is
23 not in order for—

24 (I) the Senate to consider any
25 joint resolution unless it has been re-

1 ported by the Committee on Finance
2 or the committee has been discharged
3 under clause (iii);

4 (II) the House of Representatives
5 to consider any joint resolution unless
6 it has been reported by the Committee
7 on Ways and Means or the committee
8 has been discharged under clause (iii);
9 or

10 (III) either House to consider
11 any joint resolution or take any action
12 under paragraph (3)(A) (i) or (ii), if
13 the President has notified the appro-
14 priate committees that the decision to
15 apply responsive measures described
16 in paragraph (1) has been withdrawn
17 and the responsive measures have not
18 actually been applied.

19 (v) CONSIDERATION IN THE HOUSE.—

20 A motion in the House of Representatives
21 to proceed to the consideration of a joint
22 resolution may only be made on the second
23 legislative day after the calendar day on
24 which the Member making the motion an-
25 nounces his or her intention to do so.

1 (C) CONSIDERATION OF SECOND RESOLU-
2 TION NOT IN ORDER.—It shall not be in order
3 in either the House of Representatives or the
4 Senate to consider another joint resolution
5 under this subsection (other than a joint resolu-
6 tion received from the other House), if that
7 House has previously voted on a joint resolution
8 under this subsection with respect to the same
9 Presidential notification described in paragraph
10 (1).

11 (5) DEFINITION AND SPECIAL RULE.—

12 (A) APPLICABLE DATE.—For purposes of
13 this subsection, the term “applicable date”
14 means the date on which the responsive meas-
15 ures described in paragraph (1) are first sched-
16 uled to be applied by the Shipbuilding Agree-
17 ment Party.

18 (B) COMPUTATION OF TIME PERIODS.—
19 For purposes of paragraph (3)(A) (i) and (ii)
20 and paragraph (4)(B)(iii), the 90-day period,
21 the 15-day period, and the 45 days referred to
22 in such paragraphs shall be computed by ex-
23 cluding—

24 (i) the days on which either House is
25 not in session because of an adjournment

1 of more than 3 days to a day certain or an
 2 adjournment of the Congress sine die, and
 3 (ii) any Saturday and Sunday, not ex-
 4 cluded under clause (i), when either House
 5 is not in session.

6 (6) RULES OF HOUSE OF REPRESENTATIVES
 7 AND SENATE.—This subsection is enacted by Con-
 8 gress—

9 (A) as an exercise of the rulemaking power
 10 of the House of Representatives and the Sen-
 11 ate, respectively, and such procedures supersede
 12 other rules only to the extent that such proce-
 13 dures are inconsistent with such other rules;
 14 and

15 (B) with the full recognition of the con-
 16 stitutional right of either House to change the
 17 rules (so far as relating to the procedures of
 18 that House) at any time, in the same manner,
 19 and to the same extent as any other rule of that
 20 House.

21 **SEC. 119. EXPANDING MEMBERSHIP IN THE SHIPBUILDING**
 22 **AGREEMENT.**

23 (a) MONITORING.—The United States Trade Rep-
 24 resentative shall monitor the impact of the policies and
 25 practices pursued by countries that are not Shipbuilding

1 Agreement Parties, and shall seek the prompt accession
2 to the Shipbuilding Agreement of countries that have sig-
3 nificant commercial shipbuilding and repair industries, in-
4 cluding, but not limited to, Australia, Brazil, India, the
5 People's Republic of China, Poland, Romania, the Russian
6 Federation, Singapore, and Ukraine.

7 (b) REPORT.—The United States Trade Representa-
8 tive shall report to Congress annually on the results of
9 efforts to expand the membership of the Shipbuilding
10 Agreement. If it is determined that the continuing failure
11 of a country to adopt the disciplines of the Shipbuilding
12 Agreement is undermining the effectiveness of the Ship-
13 building Agreement and placing United States shipyards
14 at a competitive disadvantage, the United States Trade
15 Representative shall take vigorous action to redress the
16 situation by—

17 (1) using mechanisms available under United
18 States trade laws,

19 (2) seeking consultations with the country in-
20 volved, and

21 (3) initiating dispute settlement under applica-
22 ble international agreements.

23 The United States Trade Representative may also take ac-
24 tion with other Shipbuilding Agreement Parties.

1 **SEC. 120. PROTECTION OF UNITED STATES SECURITY IN-**
2 **TERESTS.**

3 Nothing in the Shipbuilding Agreement shall be con-
4 strued to prevent the United States from taking any ac-
5 tion which the United States considers necessary for the
6 protection of the essential security interests of the United
7 States as determined by the President, including invoking
8 its sovereign authority to exclude “military vessels” and
9 “military reserve vessels” from coverage under the Ship-
10 building Agreement and from any dispute or challenge
11 based on Annex I to the Shipbuilding Agreement. If the
12 United States takes action under the preceding sentence,
13 the Secretary of Defense shall designate the “military ves-
14 sels” and “military reserve vessels” to be excluded on a
15 case-by-case basis.

16 **SEC. 121. DEFINITIONS.**

17 In this subtitle:

18 (1) **APPROPRIATE COMMITTEES.**—The term
19 “appropriate committees” means the Committees on
20 Finance and Commerce, Science, and Transpor-
21 tation of the Senate, and the Committees on Ways
22 and Means and National Security of the House of
23 Representatives.

24 (2) **SHIPBUILDING AGREEMENT, ETC.**—The
25 terms “Shipbuilding Agreement”, “Shipbuilding
26 Agreement Party”, “Shipbuilding Agreement ves-

1 sels”, and “Export Credit Understanding” have the
2 meanings given those terms in subsections (h), (i),
3 (j), and (k), respectively, of section 905 of the Mer-
4 chant Marine Act, 1936, as added by section 114(8)
5 of this Act.

6 (3) GATT 1994.—The term “GATT 1994” has
7 the meaning given that term in section 2 of the Uru-
8 guay Round Agreements Act (19 U.S.C. 3501).

9 (4) MILITARY VESSEL.—The term “military
10 vessel” means a vessel that, according to its basic
11 structural characteristics and ability, is intended to
12 be used exclusively for military purposes.

13 (5) MILITARY RESERVE VESSEL.—The term
14 “military reserve vessel” means a vessel that has
15 been constructed with national defense features and
16 characteristics required by the Secretary of Defense
17 for the purpose of supporting the United States
18 Armed Forces in a contingency, if the vessel (with-
19 out regard to such features and characteristics) is
20 otherwise subject to the terms and conditions of the
21 Shipbuilding Agreement.

22 **SEC. 122. CAPITAL CONSTRUCTION FUND CONFORMING**
23 **AMENDMENT.**

24 Subsection (i) of section 7518 of the Internal Reve-
25 nue Code of 1986 is amended by inserting before the pe-

1 riod the following: “, except that in the case of the terms
 2 ‘eligible vessel’ and ‘qualified vessel’, the amendments to
 3 such section by the OECD Shipbuilding Trade Agreement
 4 Act shall be taken into account”.

5 **Subtitle C—Effective Date**

6 **SEC. 131. EFFECTIVE DATE.**

7 (a) IN GENERAL.—Except as otherwise provided in
 8 this title, this title and the amendments made by this title
 9 take effect on the date that the Shipbuilding Agreement
 10 enters into force with respect to the United States.

11 (b) TERMINATION OF TITLE AND AMENDMENTS.—
 12 This title and the amendments made by this title shall
 13 cease to be effective on the date the withdrawal of the
 14 United States from the Shipbuilding Agreement becomes
 15 effective.

16 **TITLE II—INTERNATIONAL** 17 **SHIPPING INCOME DISCLOSURE**

18 **SEC. 201. PENALTIES FOR FAILURE TO DISCLOSE POSITION**

19 **THAT CERTAIN INTERNATIONAL SHIPPING**
 20 **INCOME IS NOT INCLUDIBLE IN GROSS IN-**
 21 **COME.**

22 (a) IN GENERAL.—Section 883 of the Internal Reve-
 23 nue Code of 1986 is amended by adding at the end the
 24 following new subsection:

1 “(d) PENALTIES FOR FAILURE TO DISCLOSE POSI-
2 TION THAT CERTAIN INTERNATIONAL SHIPPING INCOME
3 IS NOT 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
9 (a)(1) or section 872(b)(1) (or by reason of any ap-
10 plicable treaty) shall be entitled to such treatment
11 only if such position is disclosed (in such manner as
12 the Secretary may prescribe) on the return of tax for
13 such tax (or 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
17 taxable 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 ef-
2 fectively connected with the conduct of a trade
3 or 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) of such
13 Code is amended by striking “Gross income” and in-
14 serting “Except as provided in section 883(d), gross
15 income”.

16 (2) Paragraph (1) of section 883(a) of such
17 Code is amended by striking “Gross income” and in-
18 serting “Except as provided in subsection (d), gross
19 income”.

20 (c) EFFECTIVE DATE.—

21 (1) IN GENERAL.—The amendments made by
22 this section shall apply to taxable years beginning
23 after December 31, 1997.

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

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

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

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