Entitled the “OECD Shipbuilding Agreement Act”.

PART 1—GENERAL PROVISIONS

SEC. 101. SHORT TITLE; TABLE OF CONTENTS; PURPOSES.

(a) Short Title.—This Act may be cited as the “OECD Shipbuilding Agreement Act”.

(b) Table of Contents.—

PART 1—General Provisions

Sec. 101. Short title; table of contents.
Sec. 102. Approval of the Shipbuilding Agreement.
Sec. 103. Injurious pricing and countermeasures relating to shipbuilding.
Sec. 104. Enforcement of countermeasures.
Sec. 105. Judicial review in injurious pricing and countermeasure proceedings.

PART 2—Other Provisions

Sec. 111. Equipment and repair of vessels.
Sec. 112. Effect of 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. Withdrawal from agreement.
Sec. 117. Monitoring and enforcement.
Sec. 118. Jones Act and related laws not affected.
Sec. 119. Expanding membership in the Shipbuilding Agreement.
Sec. 120. Protection of United States security interests.
Sec. 121. Definitions.

PART 3—EFFECTIVE DATE

131. Effective date.

(c) PURPOSES.—The purposes of this Act are:

(1) To enhance the competitiveness of U.S.
Shipbuilders which has been diminished as a result
of foreign subsidy and predatory pricing practices.

(2) To ensure that U.S. ownership, manning,
and construction of coastwise trade (Jones Act) ves-
sels, which have provided the Department of Defense
with mariners and assets in time of national emer-
gency, cannot be compromised by the OECD Ship-
building Agreement.

(3) To strengthen our shipbuilding industrial
base to ensure that its full capabilities are available
in time of national emergency.

SEC. 102. APPROVAL OF THE SHIPBUILDING AGREEMENT.

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

SEC. 103. INJURIOUS PRICING AND COUNTERMEASURES RELATING TO SHIPBUILDING.

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

"TITLE VIII—INJURIOUS PRICING AND COUNTERMEASURES 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.
“Subtitle A—Imposition of Injurious Pricing Charge and Countermeasures

“SEC. 801. INJURIOUS PRICING CHARGE.

“(a) Basis for Charge.—If—

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

“(2) the Commission determines that—

“(A) an industry in the United States—

“(i) is or has been materially injured,

or

“(ii) is threatened with material injury, or

“(B) the establishment of an industry in the United States is or has been materially retarded,

by reason of the sale of such vessel, then there shall be imposed upon the foreign producer of the subject vessel an injurious pricing charge, in an amount equal to the amount by which the normal value exceeds the export price for the vessel. For purposes of this subsection and section 805(b)(1), a reference to the sale of a foreign vessel includes the creation of a vessel that is sold or exported to the United States, directly or indirectly, by a foreign producer or a United States buyer.
or transfer of an ownership interest in the vessel, except for an ownership interest created or acquired solely for the purpose of providing security for a normal commercial loan.

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

“SEC. 802. PROCEDURES FOR INITIATING AN INJURIOUS PRICING INVESTIGATION.

“(a) INITIATION BY ADMINISTERING AUTHORITY.—

“(1) GENERAL RULE.—Except in the case in which subsection (d)(6) applies, an injurious pricing investigation shall be initiated whenever the administering authority determines, from information available to it, that a formal investigation is warranted into the question of whether the elements necessary for the imposition of a charge under section 801(a) exist, and whether a producer described in section 861(17)(C) would meet the criteria of subsection (b)(1)(B) for a petitioner.

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

“(b) INITIATION BY PETITION.—

“(1) Petition requirements.—

“(A) IN GENERAL.—Except in a case in which subsection (d)(6) applies, an injurious pricing proceeding shall be initiated whenever an interested party, as defined in subparagraph (C), (D), (E), or (F) of section 861(17), files a petition with the administering authority, on behalf of an industry, which alleges the elements necessary for the imposition of an injurious pricing charge under section 801(a) and the elements required under subparagraph (B), (C), (D), or (E) of this paragraph, and which is accompanied by information reasonably available to the petitioner supporting those allegations and identifying the transaction concerned.

“(B) Petitioners described in section 861(17)(C).—

“(i) IN GENERAL.—If the petitioner is a producer described in section 861(17)(C), and—
“(I) if the vessel was sold through a broad multiple bid, the petition shall include information indicating that the petitioner was invited to tender a bid on the contract at issue, the petitioner actually did so, and the bid of the petitioner substantially met the delivery date and technical requirements of the bid,

“(II) if the vessel was sold through any bidding process other than a broad multiple bid and the petitioner was invited to tender a bid on the contract at issue, the petition shall include information indicating that the petitioner actually did so and the bid of the petitioner substantially met the delivery date and technical requirements of the bid, or

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

“(ii) Rebuttable presumption re-
garding knowledge of proposed pur-
chase.—For purposes of clause (i)(III),
there is a rebuttable presumption that the
petitioner knew or should have known of
the proposed purchase if it is demonstrated
that—

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

“(II) general information on the
sale was available from brokers, fin-
anciers, classification societies,
charterers, trade associations, or other
entities normally involved in shipbuild-
ing transactions with whom the peti-
tioner had regular contacts or dealings.

“(C) Petitioners described in section 861(17)(D).—If the petitioner is an interested party described in section 861(17)(D), the petition shall include information indicating that members of the union or group of workers described in that section are employed by a producer that meets the requirements of subparagraph (B) of this paragraph.

“(D) Petitioners described in section 861(17)(E).—If the petitioner is an interested party described in section 861(17)(E), the petition shall include information indicating that a member of the association described in that section is a producer that meets the requirements of subparagraph (B) of this paragraph.

“(E) Petitioners described in section 861(17)(F).—If the petitioner is an interested party described in section 861(17)(F), the petition shall include information indicating that a member of the association described in that section meets the requirements of subparagraph (C) or (D) of this paragraph.
“(F) Amendments.—The petition may be amended at such time, and upon such conditions, as the administering authority and the Commission may permit.

“(2) Simultaneous filing with Commission.—The petitioner shall file a copy of the petition with the Commission on the same day as it is filed with the administering authority.

“(3) Deadline for filing petition.—

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

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

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

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

“(I) file the petition no later than the earlier of 9 months after the time that the petitioner first knew or should have known of the sale of the subject vessel, or 6 months after delivery of the subject vessel, and
“(II) submit to the administering authority a notice of intent to file a petition no later than 6 months after the time that the petitioner first knew or should have known of the sale (unless the petition itself is filed within that 6-month period).

“(B) Presumption of Knowledge.—
For purposes of this paragraph, if the existence of the sale, together with general information concerning the vessel, is published in the international trade press, there is a rebuttable presumption that the petitioner knew or should have known of the sale of the vessel from the date of that publication.

“(c) Actions Before Initiating Investigations.—

“(1) Notification of Governments.—Before initiating an investigation under either subsection (a) or (b), the administering authority shall notify the government of the exporting country of the investigation. In the case of the initiation of an investigation under subsection (b), such notification shall include a public version of the petition.

“(2) Acceptance of Communications.—The administering authority shall not accept any unsolic-
ited oral or written communication from any person other than an interested party described in section 861(17) (C), (D), (E), or (F) before the administering authority makes its decision whether to initiate an investigation pursuant to a petition, except for inquiries regarding the status of the administering authority’s consideration of the petition or a request for consultation by the government of the exporting country.

“(3) NONDISCLOSURE OF CERTAIN INFORMATION.—The administering authority and the Commission shall not disclose information with regard to any draft petition submitted for review and comment before it is filed under subsection (b)(1).

“(d) PETITION DETERMINATION.—

“(1) TIME FOR INITIAL DETERMINATION.—

“(A) IN GENERAL.—Within 45 days after the date on which a petition is filed under subsection (b), the administering authority shall, after examining, on the basis of sources readily available to the administering authority, the accuracy and adequacy of the evidence provided in the petition, determine whether the petition—

“(i) alleges the elements necessary for the imposition of an injurious pricing
charge under section 801(a) and the ele-
ments required under subsection (b)(1) 
(B), (C), (D), or (E), and contains infor-
mation reasonably available to the peti-
tioner supporting the allegations; and 
“(ii) determine if the petition has 
been filed by or on behalf of the industry. 
“(B) CALCULATION OF 45-DAY PERIOD.—
Any period in which paragraph (6)(A) applies 
shall not be included in calculating the 45-day 
period described in subparagraph (A). 
“(2) AFFIRMATIVE DETERMINATIONS.—If the 
determinations under clauses (i) and (ii) of para-
graph (1)(A) are affirmative, the administering au-
thority shall initiate an investigation to determine 
whether the vessel was sold at less than fair value, 
unless paragraph (6) applies. 
“(3) NEGATIVE DETERMINATIONS.—If— 
“(A) the determination under clause (i) or 
(ii) of paragraph (1)(A) is negative, or 
“(B) paragraph (6)(B) applies, 
the administering authority shall dismiss the peti-
tion, terminate the proceeding, and notify the peti-
tioner in writing of the reasons for the determina-

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“(4) Determination of industry support.—

“(A) General rule.—For purposes of this subsection, the administering authority shall determine that the petition has been filed by or on behalf of the domestic industry, if—

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

“(ii) the domestic producers or workers who support the petition collectively account for more than 50 percent of the total capacity to produce a like vessel of that portion of the domestic industry expressing support for or opposition to the petition.

“(B) Certain positions disregarded.—In determining industry support under subparagraph (A), the administering authority shall disregard the position of domestic producers who oppose the petition, if such producers are related to the foreign producer or United States buyer of the subject vessel, or the domestic producer is itself the United States
buyer, unless such domestic producers demonstrate that their interests as domestic producers would be adversely affected by the imposition of an injurious pricing charge.

“(C) Polling the Industry.—If the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total capacity to produce a like vessel—

“(i) the administering authority shall poll the industry or rely on other information in order to determine if there is support for the petition as required by subparagraph (A), or

“(ii) if there is a large number of producers in the industry, the administering authority may determine industry support for the petition by using any statistically valid sampling method to poll the industry.

“(D) Comments by Interested Parties.—Before the administering authority makes a determination with respect to initiating an investigation, any person who would qualify as an interested party under section 861(17) if an investigation were initiated, may submit
comments or information on the issue of industry support. After the administering authority makes a determination with respect to initiating an investigation, the determination regarding industry support shall not be reconsidered.

“(5) Definition of domestic producers or workers.—For purposes of this subsection, the term ‘domestic producers or workers’ means interested parties as defined in section 861(17) (C), (D), (E), or (F).

“(6) Proceedings by WTO members.—The administering authority shall not initiate an investigation under this section if, with respect to the vessel sale at issue, an antidumping proceeding conducted by a WTO member who is not a Shipbuilding Agreement Party—

“(A) has been initiated and has been pending for not more than one year, or

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

“(e) Notification to Commission of Determination.—The administering authority shall—
“(1) notify the Commission immediately of any determination it makes under subsection (a) or (d), and

“(2) if the determination is affirmative, make available to the Commission such information as it may have relating to the matter under investigation, under such procedures as the administering authority and the Commission may establish to prevent disclosure, other than with the consent of the party providing it or under protective order, of any information to which confidential treatment has been given by the administering authority.

“SEC. 803. PRELIMINARY DETERMINATIONS.

“(a) DETERMINATION BY COMMISSION OF REASONABLE INDICATION OF INJURY.—

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

“(A) an industry in the United States—

“(i) is or has been materially injured,
“(ii) is threatened with material injury, or

“(B) the establishment of an industry in the United States is or has been materially retarded,

by reason of the sale of the subject vessel. If the Commission makes a negative determination under this paragraph, the investigation shall be terminated.

“(2) Time for Commission Determination.—The Commission shall make the determination described in paragraph (1) within 90 days after the date on which the petition is filed or, in the case of an investigation initiated under section 802(a), within 90 days after the date on which the Commission receives notice from the administering authority that the investigation has been initiated under such section.

“(b) Preliminary Determination by Administering Authority.—

“(1) Period of Injurious Pricing Investigation.—

“(A) In general.—The administering authority shall make a determination, based upon the information available to it at the time of the
determination, of whether there is a reasonable basis to believe or suspect that the subject vessel was sold at less than fair value.

“(B) Cost data used for normal value.—If cost data is required to determine normal value on the basis of a sale of a foreign like vessel that has not been delivered on or before the date on which the administering authority initiates the investigation, the administering authority shall make its determination within 160 days after the date of delivery of the foreign like vessel.

“(C) Normal value based on constructed value.—If normal value is to be determined on the basis of constructed value, the administering authority shall make its determination within 160 days after the date of delivery of the subject vessel.

“(D) Other cases.—In cases in which subparagraph (B) or (C) does not apply, the administering authority shall make its determination within 160 days after the date on which the administering authority initiates the investigation under section 802.
“(E) AFFIRMATIVE DETERMINATION BY COMMISSION REQUIRED.—In no event shall the administering authority make its determination before an affirmative determination is made by the Commission under subsection (a).

“(2) DE MINIMIS INJURIOUS PRICING MARGIN.—In making a determination under this subsection, the administering authority shall disregard any injurious pricing margin that is de minimis. For purposes of the preceding sentence, an injurious pricing margin is de minimis if the administering authority determines that the injurious pricing margin is less than 2 percent of the export price.

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

“(1) IN GENERAL.—If—

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

“(i) the case is extraordinarily complicated by reason of—

“(I) the novelty of the issues presented, or

“(II) the nature and extent of the information required, and
“(ii) additional time is necessary to make the preliminary determination, or
“(B) a party to the investigation requests an extension and demonstrates good cause for the extension,
then the administering authority may postpone the time for making its preliminary determination.

“(2) LENGTH OF POSTPONEMENT.—The preliminary determination may be postponed under paragraph (1) (A) or (B) until not later than the 190th day after—

“(A) the date of delivery of the foreign like vessel, if subsection (b)(1)(B) applies,
“(B) the date of delivery of the subject vessel, if subsection (b)(1)(C) applies, or
“(C) the date on which the administering authority initiates an investigation under section 802, in a case in which subsection (b)(1)(D) applies.

“(3) NOTICE OF POSTPONEMENT.—The administering authority shall notify the parties to the investigation, not later than 20 days before the date on which the preliminary determination would otherwise be required under subsection (b)(1), if it intends to postpone making the preliminary deter-
mination under paragraph (1). The notification shall include an explanation of the reasons for the postponement, and notice of the postponement shall be published in the Federal Register.

“(d) Effect of Determination by the Administering Authority.—If the preliminary determination of the administering authority under subsection (b) is affirmative, the administering authority shall—

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

“(2) make available to the Commission all information upon which its determination was based and which the Commission considers relevant to its injury determination, under such procedures as the administering authority and the Commission may establish to prevent disclosure, other than with the consent of the party providing it or under protective order, of any information to which confidential treatment has been given by the administering authority.

“(e) Notice of Determination.—Whenever the Commission or the administering authority makes a determination under this section, the Commission or the administering authority, as the case may be, shall notify the petitioner, and other parties to the investigation, and the Commission or the administering authority (whichever is
appropriate) of its determination. The administering au-

thority shall include with such notification the facts and

conclusions on which its determination is based. Not later

than 5 days after the date on which the determination is

required to be made under subsection (a)(2), the Commiss-

ion shall transmit to the administering authority the facts

and conclusions on which its determination is based.

“SEC. 804. TERMINATION OR SUSPENSION OF INVESTIGA-

TION.

“(a) TERMINATION OF INVESTIGATION UPON WITH-

DRAWAL OF PETITION.—

“(1) IN GENERAL.—Except as provided in para-

graph (2), an investigation under this subtitle may

be terminated by either the administering authority

or the Commission, after notice to all parties to the

investigation, upon withdrawal of the petition by the

petitioner.

“(2) LIMITATION ON TERMINATION BY COMMISS-

SION.—The Commission may not terminate an in-

vestigation under paragraph (1) before a preliminary

determination is made by the administering author-

ity under section 803(b).

“(b) TERMINATION OF INVESTIGATIONS INITIATED

BY ADMINISTERING AUTHORITY.—The administering au-

thority may terminate any investigation initiated by the
administering authority under section 802(a) after providing notice of such termination to all parties to the investigation.

“(c) Alternate Equivalent Remedy.—The criteria set forth in subparagraphs (A) through (D) of section 806(e)(1) shall apply to any agreement that forms the basis for termination of an investigation under subsection (a) or (b).

“(d) Proceedings by WTO Members.—

“(1) Suspension of Investigation.—The administering authority and the Commission shall suspend an investigation under this section if a WTO member that is not a Shipbuilding Agreement Party initiates an antidumping proceeding described in section 861(30)(A) with respect to the sale of the subject vessel.

“(2) Termination of Investigation.—If an antidumping proceeding described in paragraph (1) is concluded by—

“(A) the imposition of antidumping measures, or

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

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

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

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

then the administering authority and the Commission shall terminate the suspension and continue the investigation. The period in which the investigation was suspended shall not be included in calculating deadlines applicable with respect to the investigation.

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

“SEC. 805. FINAL DETERMINATIONS.

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

“(2) EXTENSION OF PERIOD FOR DETERMINATION.—

“(A) GENERAL RULE.—The administering authority may postpone making the final determination under paragraph (1) until not later than 290 days after—

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

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

“(iii) the date on which the administering authority initiates the investigation under section 802, in an investigation to which section 803(b)(1)(D) applies.

“(B) REQUEST REQUIRED.—The administering authority may apply subparagraph (A) if a request in writing is made by—
“(i) the producer of the subject vessel, in a proceeding in which the preliminary determination by the administering authority under section 803(b) was affirmative, or

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

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

“(b) FINAL DETERMINATION BY COMMISSION.—

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

“(A) an industry in the United States—

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

“(ii) is threatened with material injury, or

“(B) the establishment of an industry in the United States is or has been materially retarded, by reason of the sale of the vessel with
respect to which the administering authority
has made an affirmative determination under
subsection (a)(1).

“(2) Period for injury determination
following affirmative preliminary deter-
mination by administering authority.—If the
preliminary determination by the administering au-
thority under section 803(b) is affirmative, then the
Commission shall make the determination required
by paragraph (1) before the later of—

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

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

“(3) Period for injury determination
following negative preliminary determina-
tion by administering authority.—If the pre-
liminary determination by the administering author-
ity under section 803(b) is negative, and its final
determination under subsection (a) is affirmative,
then the final determination by the Commission
under this subsection shall be made within 75 days
after the date of that affirmative final determination.

“(c) Effect of Final Determinations.—

“(1) Effect of affirmative determination by the administering authority.—If the determination of the administering authority under subsection (a) is affirmative, then the administering authority shall—

“(A) make available to the Commission all information upon which such determination was based and which the Commission considers relevant to its determination, under such procedures as the administering authority and the Commission may establish to prevent disclosure, other than with the consent of the party providing it or under protective order, of any information as to which confidential treatment has been given by the administering authority, and

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

“(2) Issuance of order; effect of negative determination.—If the determinations of the administering authority and the Commission under
subsection (a)(1) and (b)(1) are affirmative, then
the administering authority shall issue an injurious
pricing order under section 806. If either of such de-
terminations is negative, the investigation shall be
terminated upon the publication of notice of that
negative determination.

“(d) Publication of Notice of Determinations.—Whenever the administering authority or the
Commission makes a determination under this section, it
shall notify the petitioner, other parties to the investiga-
tion, and the other agency of its determination and of the
facts and conclusions of law upon which the determination
is based, and it shall publish notice of its determination
in the Federal Register.

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

“SEC. 806. IMPOSITION AND COLLECTION OF INJURIOUS
PRICING CHARGE.

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

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

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

“(3) informs the foreign producer that—

“(A) failure to pay the injurious pricing
charge in a timely fashion may result in the im-
position of countermeasures with respect to that
producer under section 807,
“(B) payment made after the deadline described in paragraph (1) shall be subject to interest charges at the Commercial Interest Reference Rate (CIRR), and

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

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

“(1) EXTENSION.—Upon request, the administering authority may amend the order under subsection (a) to set a due date for payment or payments later than the date that is 180 days from the date of publication of the order, if the administering authority determines that full payment in 180 days would render the producer insolvent or would be incompatible with a judicially supervised reorganization. When an extended payment schedule provides for a series of partial payments, the administering authority shall specify the circumstances under which default on one or more payments will result in the imposition of countermeasures.

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

“(c) Notification of Order.—The administering authority shall deliver a copy of the order requesting payment to the foreign producer of the subject vessel and to an appropriate representative of the government of the exporting country.

“(d) Revocation of Order.—The administering authority—

“(1) may revoke an injurious pricing order if the administering authority determines that producers accounting for substantially all of the capacity to produce a domestic like vessel have expressed a lack of interest in the order, and

“(2) shall revoke an injurious pricing order—

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

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

“(C) upon full implementation of an alternative equivalent remedy described in subsection (e), or
“(D) if, with respect to the vessel sale that was at issue in the investigation that resulted in the injurious pricing order, an antidumping proceeding conducted by a WTO member who is not a Shipbuilding Agreement Party has been completed and resulted in the imposition of antidumping measures.

“(e) ALTERNATIVE EQUIVALENT REMEDY.—

“(1) AGREEMENT FOR ALTERNATE REMEDY.—

The administering authority may suspend an injurious pricing order if the administering authority enters into an agreement with the foreign producer subject to the order on an alternative equivalent remedy, that the administering authority determines—

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

“(B) is in the public interest,

“(C) can be effectively monitored and enforced, and

“(D) is otherwise consistent with the domestic law and international obligations of the United States.

“(2) PRIOR CONSULTATIONS AND SUBMISSION OF COMMENTS.—Before entering into an agreement
under paragraph (1), the administering authority shall consult with the industry, and provide for the submission of comments by interested parties, with respect to the agreement.

“(3) **Material Violations of Agreement.**—

If the injurious pricing order has been suspended under paragraph (1), and the administering authority determines that the foreign producer concerned has materially violated the terms of the agreement under paragraph (1), the administering authority shall terminate the suspension.

**SEC. 807. IMPOSITION OF COUNTERMEASURES.**

“(a) **General Rule.**—

“(1) **Issuance of Order Imposing Countermeasures.**—Unless an injurious pricing order is revoked or suspended under section 806 (d) or (e), the administering authority shall issue an order imposing countermeasures.

“(2) **Contents of Order.**—The countermeasure order shall—

“(A) state that, as provided in section 468, a permit to lade or unlade passengers or merchandise may not be issued with respect to vessels contracted to be built by the foreign producer of the vessel with respect to which an in-
jurious pricing order was issued under section 806, and

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

“(b) NOTICE OF INTENT TO IMPOSE COUNTERMEASURES.—

“(1) GENERAL RULE.—The administering authority shall issue a notice of intent to impose countermeasures not later than 30 days before the expiration of the time for payment specified in the injurious pricing order (or extended payment provided for under section 806(b)), and shall publish the notice in the Federal Register within 7 days after issuing the notice.

“(2) ELEMENTS OF THE NOTICE OF INTENT.—

The notice of intent shall contain at least the following elements:

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

“(i) built by the foreign producer subject to the proposed countermeasures, and

“(ii) with respect to which the material terms of sale are established within a
period of 4 consecutive years beginning on
the date that is 30 days after publication
in the Federal Register of the notice of in-
tent described in paragraph (1).

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

“(c) DETERMINATION TO IMPOSE COUNTER-
measures; Order.—

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

“(2) TIME FOR DETERMINATION.—The deter-
mination shall be issued within 90 days after the
date on which the notice of intent to impose counter-
measures under subsection (b) is published in the
Federal Register. The administering authority shall
publish the determination, and the order described
in paragraph (4), in the Federal Register within 7
days after issuing the final determination, and shall
provide a copy of the determination and order to the
Customs Service.
“(3) CONTENT OF THE DETERMINATION.—In the determination imposing countermeasures, the administering authority shall determine whether, in light of all of the circumstances, an interested party has demonstrated that the scope or duration of the countermeasures described in subsection (b)(2) should be narrower or shorter than the scope or duration set forth in the notice of intent to impose countermeasures.

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

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

“(1) REQUEST FOR REVIEW.—Each year, in the anniversary month of the issuance of the order imposing countermeasures under subsection (c), the administering authority shall publish in the Federal Register a notice providing that interested parties may request—

“(A) a review of the scope or duration of the countermeasures determined under subsection (c)(3), and
“(B) a hearing in connection with such a
review.
“(2) REVIEW.—If a proper request has been re-
ceived under paragraph (1), the administering au-
thority shall—
“(A) publish notice of initiation of a review
in the Federal Register not later than 15 days
after the end of the anniversary month of the
issuance of the order imposing counter-
measures, and
“(B) review and determine whether the re-
questing party has demonstrated that the scope
or duration of the countermeasures is excessive
in light of all of the circumstances.
“(3) TIME FOR REVIEW.—The administering
authority shall make its determination under para-
graph (2)(B) within 90 days after the date on which
the notice of initiation of the review is published. If
the determination under paragraph (2)(B) is affirm-
ative, the administering authority shall amend the
order accordingly. The administering authority shall
promptly publish the determination and any amend-
ment to the order in the Federal Register, and shall
provide a copy of any amended order to the Customs
Service. In extraordinary circumstances, the admin-
istering authority may extend the time for its deter-
nomination under paragraph (2)(B) to not later than
150 days after the date on which the notice of initia-
tion of the review is published.

“(e) EXTENSION OF COUNTERMEASURES.—

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

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

“(A) REQUEST FOR EXTENSION BEYOND 4
YEARS.—If the request seeks an extension that
would cause the scope or duration of counter-
measures to exceed 4 years, including any prior
extensions, the request for extension under
paragraph (1) shall be filed not earlier than the
date that is 15 months, and not later than the
date that is 12 months, before the date that
marks the end of the period that specifies the
vessels that fall within the scope of the order by
virtue of the establishment of material terms of
sale within that period.
“(B) Other requests.—If the request seeks an extension under paragraph (1) other than one described in subparagraph (A), the request shall be filed not earlier than the date that is 6 months, and not later than a date that is 3 months, before the date that marks the end of the period referred to in subparagraph (A).

“(3) Determination.—

“(A) Notice of request for extension.—If a proper request has been received under paragraph (1), the administering authority shall publish notice of initiation of an extension proceeding in the Federal Register not later than 15 days after the applicable deadline in paragraph (2) for requesting the extension.

“(B) Procedures.—

“(i) Requests for extension beyond 4 years.—If paragraph (2)(A) applies to the request, the administering authority shall consult with the Trade Representative under paragraph (4).

“(ii) Other requests.—If paragraph (2)(B) applies to the request, the administering authority shall determine, within 90 days after the date on which the
notice of initiation of the proceeding is published, whether the requesting party has demonstrated that the scope or duration of the countermeasures is inadequate in light of all of the circumstances. If the administering authority determines that an extension is warranted, it shall amend the countermeasure order accordingly. The administering authority shall promptly publish the determination and any amendment to the order in the Federal Register, and shall provide a copy of any amended order to the Customs Service.

“(4) Consultation with trade representative.—If paragraph (3)(B)(i) applies, the administering authority shall consult with the Trade Representative concerning whether it would be appropriate to request establishment of a dispute settlement panel under the Shipbuilding Agreement for the purpose of seeking authorization to extend the scope or duration of countermeasures for a period in excess of 4 years.

“(5) Decision not to request panel.—If, based on consultations under paragraph (4), the Trade Representative decides not to request estab-
lishment of a panel, the Trade Representative shall inform the party requesting the extension of the countermeasures of the reasons for its decision in writing. The decision shall not be subject to judicial review.

“(6) PANEL PROCEEDINGS.—If, based on consultations under paragraph (4), the Trade Representative requests the establishment of a panel under the Shipbuilding Agreement to authorize an extension of the period of countermeasures, and the panel authorizes such an extension, the administering authority shall promptly amend the countermeasure order. The administering authority shall publish notice of the amendment in the Federal Register.

“(f) LIST OF VESSELS SUBJECT TO COUNTERMEASURES.—

“(1) GENERAL RULE.—At least once during each 12-month period beginning on the anniversary date of a determination to impose countermeasures under this section, the administering authority shall publish in the Federal Register a list of all delivered vessels subject to countermeasures under the determination.
“(2) CONTENT OF LIST.—The list under paragraph (1) shall include the following information for each vessel, to the extent the information is available:

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

“(B) The vessel identification number.

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

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

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

“(F) The delivery date of the vessel.

“(G) The remaining duration of countermeasures on the vessel.

“(H) Any other identifying information available.

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

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

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

“(ii) the United States Customs Service,

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

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

“(v) the shipyards on the list, and

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

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

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

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

“(g) Administrative review of list of vessels subject to countermeasures.—
“(1) REQUEST FOR REVIEW.—

“(A) IN GENERAL.—An interested party may request in writing a review of the list described in subsection (f)(1), including any amendments thereto, to determine whether—

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

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

“(B) TIME FOR MAKING REQUEST.—Any request seeking a determination described in subparagraph (A)(i) shall be made within 90 days after the date of publication of the applicable list.

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

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

“(i) not later than 15 days after the request is received, or
“(ii) if the request seeks a determination described in paragraph (1)(A)(i), not later than 15 days after the deadline described in paragraph (1)(B), and
“(B) review and determine whether the requesting party has demonstrated that—
“(i) a vessel included in the list does not qualify for such inclusion, or
“(ii) a vessel not included in the list qualifies for inclusion.
“(3) **Time for Determination.**—The administering authority shall make its determination under paragraph (2)(B) within 90 days after the date on which the notice of initiation of such review is published. If the administering authority determines that a vessel should be added or deleted from the list, the administering authority shall amend the list accordingly. The administering authority shall promptly publish in the Federal Register the determination and any such amendment to the list.
“(h) **Expiration of Countermeasures.**—Upon expiration of a countermeasure order imposed under this section, the administering authority shall promptly publish a notice of the expiration in the Federal Register.
“(i) Suspension or termination of proceedings or countermeasures; temporary reduction of countermeasures.—

“(1) If injurious pricing order revoked or suspended.—If an injurious pricing order has been revoked or suspended under section 806(d) or (e), the administering authority shall, as appropriate, suspend or terminate proceedings under this section with respect to that order, or suspend or revoke a countermeasure order issued with respect to that injurious pricing order.

“(2) If payment date amended.—

“(A) Suspension or modification of deadline.—Subject to subparagraph (C), if the payment date under an injurious pricing order is amended under section 845, the administering authority shall, as appropriate, suspend proceedings or modify deadlines under this section, or suspend or amend a countermeasure order issued with respect to that injurious pricing order.

“(B) Date for application of countermeasure.—In taking action under subparagraph (A), the administering authority shall ensure that countermeasures are not ap-
plied before the date that is 30 days after publication in the Federal Register of the amended payment date.

“(C) REINSTITUTION OF PROCEEDINGS.— If—

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

“(ii) the administering authority determines that the period of time between the original payment date and the amended payment date is significant for purposes of determining the appropriate scope or duration of countermeasures,

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

“(j) COMMENT AND HEARING.—In the course of any proceeding under subsection (c), (d), (e), or (g), the administering authority—
“(1) shall solicit comments from interested par-
ties, and
“(2)(A) in a proceeding under subsection (c),
(d), or (e), upon the request of an interested party,
shall hold a hearing in accordance with section
841(b) in connection with that proceeding, or
“(B) in a proceeding under subsection (g), upon
the request of an interested party, may hold a hear-
ing in accordance with section 841(b) in connection
with that proceeding.

“SEC. 808. INJURIOUS PRICING PETITIONS BY THIRD COUN-
TRIES.
“(a) FILING OF PETITION.—The government of a
Shipbuilding Agreement Party may file with the Trade
Representative a petition requesting that an investigation
be conducted to determine if—
“(1) a vessel from another Shipbuilding Agree-
ment Party has been sold directly or indirectly to
one or more United States buyers at less than fair
value, and
“(2) an industry, in the petitioning country,
producing or capable of producing a like vessel is
materially injured by reason of such sale.
“(b) INITIATION.—The Trade Representative, after
consultation with the administering authority and the
Commission and obtaining the approval of the Parties Group under the Shipbuilding Agreement, shall determine whether to initiate an investigation described in subsection (a).

“(c) Determinations.—Upon initiation of an investigation under subsection (a), the Trade Representative shall request the following determinations be made in accordance with substantive and procedural requirements specified by the Trade Representative, notwithstanding any other provision of this title:

“(1) Sale at less than fair value.—The administering authority shall determine whether the subject vessel has been sold at less than fair value.

“(2) Injury to industry.—The Commission shall determine whether an industry in the petitioning country is or has been materially injured by reason of the sale of the subject vessel in the United States.

“(d) Public comment.—An opportunity for public comment shall be provided, as appropriate—

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

“(2) by the administering authority and the Commission, in making the determinations required by subsection (c).
“(e) ISSUANCE OF ORDER.—If the administering au-
thority makes an affirmative determination under para-
graph (1) of subsection (c), and the Commission makes
an affirmative determination under paragraph (2) of sub-
section (c), the administering authority shall—

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

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

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

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

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

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

“SEC. 809. THIRD COUNTRY INJURIOUS PRICING.

“(a) Petition by Domestic Industry.—

“(1) With respect to the sale of a vessel to a buyer in a Shipbuilding Agreement Party, any interested party who would be eligible to file a petition under section 802(b)(1) with respect to the sale if it had been to a United States buyer, if it has reason to believe that—

“(A) the vessel has been sold at less than fair value; and

“(B) an industry in the United States is or has been materially injured, or is threatened with material injury by reason of the sale of the vessel; may submit a petition to the Trade Representative that alleges the elements referred to in subparagraphs (A) and (B) and requests the Trade Representative to take action under subsection (b) of this section on behalf of the domestic industry.

“(2) A petition submitted under paragraph (1) shall contain such detailed information as the Trade Representative may require in support of the allegations in the petition.
“(b) APPLICATION FOR INJURIOUS PRICING ACTION
ON BEHALF OF THE DOMESTIC INDUSTRY.—

“(1) If the Trade Representative, on the basis
of the information contained in a petition submitted
under subsection (a), determines that there is a rea-
sonable basis for the allegations in the petition, the
Trade Representative shall submit to the appro-
priate authority of the Shipbuilding Agreement
Party where the alleged injurious pricing is occur-
ing an application pursuant to Article 10 of Annex
III to the Shipbuilding Agreement which requests
that appropriate injurious pricing action under
the law of that country be taken, on behalf of the
United States, with respect to the sale of the vessel.

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

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

“(d) Action Upon Refusal of Shipbuilding Agreement Party To Act.—If the appropriate authority of the Shipbuilding Agreement Party refuses to undertake injurious pricing measures in response to a request made therefor by the Trade Representative under subsection (b) of this section, the Trade Representative promptly shall consult with the domestic industry on whether action under any other law of the United States is appropriate.

“Subtitle B—Special Rules

“SEC. 821. EXPORT PRICE.

“(a) Export Price.—For purposes of this title, the term ‘export price’ means the price at which the subject vessel is first sold (or agreed to be sold) by or for the account of the foreign producer of the subject vessel to an unaffiliated United States buyer. The term ‘sold (or agreed to be sold) by or for the account of the foreign producer’ includes any transfer of an ownership interest, including by way of lease or long-term bareboat charter, in conjunction with the original transfer from the producer, either directly or indirectly, to a United States buyer.
“(b) ADJUSTMENTS TO EXPORT PRICE.—The price used to establish export price shall be—

“(1) increased by the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject vessel, and

“(2) reduced by—

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

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

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

“SEC. 822. NORMAL VALUE.

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

“(1) Determination of normal value.—

“(A) In general.—The normal value of the subject vessel shall be the price described in subparagraph (B), at a time reasonably corresponding to the time of the sale used to determine the export price under section 821(a).

“(B) Price.—The price referred to in subparagraph (A) is—

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

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

“(I) such price is representative, and

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

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

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

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

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

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

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

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

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

“(A) reduced by—

“(i) the amount, if any, included in the price described in paragraph (1)(B), attributable to any costs, charges, and expenses incident to bringing the foreign like vessel from the shipyard to the place of delivery to the purchaser,

“(ii) the amount of any taxes imposed directly upon the foreign like vessel or components thereof which have been rebated, or which have not been collected, on the subject vessel, but only to the extent that such taxes are added to or included in the price of the foreign like vessel, and
“(iii) the amount of all other expenses incidental to placing the foreign like vessel in condition for delivery to the buyer, and
“(B) increased or decreased by the amount of any difference (or lack thereof) between the export price and the price described in paragraph (1)(B) (other than a difference for which allowance is otherwise provided under this section) that is established to the satisfaction of the administering authority to be wholly or partly due to—
“(i) physical differences between the subject vessel and the vessel used in determining normal value, or
“(ii) other differences in the circumstances of sale.
“(6) ADJUSTMENTS FOR LEVEL OF TRADE.—
The price described in paragraph (1)(B) shall also be increased or decreased to make due allowance for any difference (or lack thereof) between the export price and the price described in paragraph (1)(B) (other than a difference for which allowance is otherwise made under this section) that is shown to be wholly or partly due to a difference in level of trade
between the export price and normal value, if the
difference in level of trade—

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

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

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

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

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

“(1) DETERMINATION; SALES DISREGARDED.—
Whenever the administering authority has reason-
able grounds to believe or suspect that the sale of
the foreign like vessel under consideration for the
determination of normal value has been made at a
price which represents less than the cost of produc-
tion of the foreign like vessel, the administering au-
authority shall determine whether, in fact, such sale was made at less than the cost of production. If the administering authority determines that the sale was made at less than the cost of production and was not at a price which permits recovery of all costs within 5 years, such sale may be disregarded in the determination of normal value. Whenever such a sale is disregarded, normal value shall be based on another sale of a foreign like vessel in the ordinary course of trade. If no sales made in the ordinary course of trade remain, the normal value shall be based on the constructed value of the subject vessel.

“(2) Definitions and special rules.—For purposes of this subsection:

“(A) Reasonable grounds to believe or suspect.—There are reasonable grounds to believe or suspect that the sale of a foreign like vessel was made at a price that is less than the cost of production of the vessel, if an interested party described in subparagraph (C), (D), (E), or (F) of section 861(17) provides information, based upon observed prices or constructed prices or costs, that the sale of the foreign like vessel under consideration for the determination of normal value has been made at a price which
represents less than the cost of production of the vessel.

“(B) Recovery of Costs.—If the price is below the cost of production at the time of sale but is above the weighted average cost of production for the period of investigation, such price shall be considered to provide for recovery of costs within 5 years.

“(3) Calculation of Cost of Production.—For purposes of this section, the cost of production shall be an amount equal to the sum of—

“(A) the cost of materials and of fabrication or other processing of any kind employed in producing the foreign like vessel, during a period which would ordinarily permit the production of that vessel in the ordinary course of business, and

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

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

“(c) NONMARKET ECONOMY COUNTRIES.—

“(1) IN GENERAL.—If—

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

“(B) the administering authority finds that available information does not permit the normal value of the subject vessel to be determined under subsection (a),

the administering authority shall determine the normal value of the subject vessel on the basis of the value of the factors of production utilized in producing the vessel and to which shall be added an amount for general expenses and profit plus the cost of expenses incidental to placing the vessel in a condition for delivery to the buyer. Except as provided in paragraph (2), the valuation of the factors of production shall be based on the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate by the administering authority.

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

“(A) comparable to the subject vessel, and

“(B) produced in one or more market economy countries that are at a level of economic development comparable to that of the nonmarket economy country,

is sold in other countries, including the United States.

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

“(A) hours of labor required,

“(B) quantities of raw materials employed,

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

“(D) representative capital cost, including depreciation.

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

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

“(B) significant producers of comparable vessels.

“(d) SPECIAL RULE FOR CERTAIN MULTINATIONAL CORPORATIONS.—Whenever, in the course of an investigation under this title, the administering authority determines that—

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

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

“(3) the normal value of a foreign like vessel produced in one or more of the facilities outside the exporting country is higher than the normal value of the foreign like vessel produced in the facilities located in the exporting country,

the administering authority shall determine the normal value of the subject vessel by reference to the normal value
at which a foreign like vessel is sold from one or more facilities outside the exporting country. The administering authority, in making any determination under this subsection, shall make adjustments for the difference between the costs of production (including taxes, labor, materials, and overhead) of the foreign like vessel produced in facilities outside the exporting country and costs of production of the foreign like vessel produced in facilities in the exporting country, if such differences are demonstrated to its satisfaction.

“(e) CONSTRUCTED VALUE.—

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

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

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

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

“(I) the actual amounts incurred and realized by the foreign producer of the subject vessel for selling, general, and administrative expenses, and for profits, in connection with the production and sale of the same general category of vessel in the domestic market of the country of origin of the subject vessel,

“(II) the weighted average of the actual amounts incurred and realized by producers in the country of origin of the subject vessel (other than the producer of the subject vessel) for selling, general, and administrative expenses, and for profits, in connection with the production and sale of a foreign like vessel, in the ordinary course of trade, in the domestic market, or

“(III) if data are not available under subclause (I) or (II), the amounts incurred
and realized for selling, general, and administrative expenses, and for profits, based on any other reasonable method, except that the amount allowed for profit may not exceed the amount normally realized by foreign producers (other than the producer of the subject vessel) in connection with the sale of vessels in the same general category of vessel as the subject vessel in the domestic market of the country of origin of the subject vessel.

For purposes of this paragraph, the profit shall be based on the average profit realized over a reasonable period of time before and after the sale of the subject vessel and shall reflect a reasonable profit at the time of such sale. For purposes of the preceding sentence, a ‘reasonable period of time’ shall not, except where otherwise appropriate, exceed 6 months before, or 6 months after, the sale of the subject vessel. In calculating profit under this paragraph, any distortion which would result in other than a profit which is reasonable at the time of the sale shall be eliminated.

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

“(3) Costs of materials.—For purposes of
paragraph (1)(A), the cost of materials shall be de-
determined without regard to any internal tax in the
exporting country imposed on such materials or their
disposition which are remitted or refunded upon ex-
portation of the subject vessel produced from such
materials.

“(f) Special rules for calculation of cost of
production and for calculation of constructed
value.—For purposes of subsections (b) and (e)—

“(1) Costs.—

“(A) In general.—Costs shall normally
be calculated based on the records of the for-
eign producer of the subject vessel, if such
records are kept in accordance with the gen-
erally accepted accounting principles of the ex-
porting country and reasonably reflect the costs
associated with the production and sale of the vessel. The administering authority shall consider all available evidence on the proper allocation of costs, including that which is made available by the foreign producer on a timely basis, if such allocations have been historically used by the foreign producer, in particular for establishing appropriate amortization and depreciation periods, and allowances for capital expenditures and other development costs.

“(B) Nonrecurring costs.—Costs shall be adjusted appropriately for those nonrecurring costs that benefit current or future production, or both.

“(C) Startup costs.—

“(i) In general.—Costs shall be adjusted appropriately for circumstances in which costs incurred during the time period covered by the investigation are affected by startup operations.

“(ii) Startup operations.—Adjustments shall be made for startup operations only where—

“(I) a producer is using new production facilities or producing a new
type of vessel that requires substantial
additional investment, and

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

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

“(iii) Adjustment for startup op-
erations.—The adjustment for startup
operations shall be made by substituting
the unit production costs incurred with re-
spect to the vessel at the end of the start-
up period for the unit production costs in-
curred during the startup period. If the
startup period extends beyond the period
of the investigation under this title, the ad-
ministering authority shall use the most
recent cost of production data that it rea-
sonably can obtain, analyze, and verify
without delaying the timely completion of
the investigation.

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

“(D) Costs due to extraordinary cir-
cumstances not included.—Costs shall not
include actual costs which are due to extraor-
dinary circumstances (including, but not limited
to, labor disputes, fire, and natural disasters)
and which are significantly over the cost in-
crease which the shipbuilder could have reason-
ably anticipated and taken into account at the
time of sale.

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

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

“SEC. 823. CURRENCY CONVERSION.

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

“(b) Date of Sale.—For purposes of this section, ‘date of sale’ means the date of the contract of sale or, where appropriate, the date on which the material terms of sale are otherwise established. If the material terms of sale are significantly changed after such date, the date of sale is the date of such change. In the case of such a change in the date of sale, the administering authority shall make appropriate adjustments to take into account any unreasonable effect on the injurious pricing margin due only to fluctuations in the exchange rate between the original date of sale and the new date of sale.

“Subtitle C—Procedures

“Sec. 841. Hearings.

“(a) Upon Request.—The administering authority and the Commission shall each hold a hearing in the course of an investigation under this title, upon the request of any party to the investigation, before making a final determination under section 805.

“(b) Procedures.—Any hearing required or permitted under this title shall be conducted after notice published in the Federal Register, and a transcript of the hearing shall be prepared and made available to the public.
The hearing shall not be subject to the provisions of sub-
chapter II of chapter 5 of title 5, United States Code, or

to section 702 of such title.

"SEC. 842. DETERMINATIONS ON THE BASIS OF THE FACTS
AVAILABLE.

“(a) In General.—If—

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

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

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

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

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

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

the administering authority and the Commission
shall, subject to section 844(c), use the facts other-
wise available in reaching the applicable determination under this title.

“(b) **Adverse Inferences.**—If the administering authority or the Commission (as the case may be) finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority or the Commission, the administering authority or the Commission (as the case may be), in reaching the applicable determination under this title, may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available. Such adverse inference may include reliance on information derived from—

“(1) the petition, or

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

“(c) **Corroboration of Secondary Information.**—When the administering authority or the Commission relies on secondary information rather than on information obtained in the course of an investigation under this title, the administering authority and the Commission, as the case may be, shall, to the extent practicable, corroborate that information from independent sources that are reasonably at their disposal.
SEC. 843. ACCESS TO INFORMATION.

“(a) INFORMATION GENERALLY MADE AVAILABLE.—

“(1) PROGRESS OF INVESTIGATION REPORTS.—

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

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

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

“(B) the person charged with making the determination, or any person charged with making a final recommendation to that person, in connection with that proceeding,

if information relating to that proceeding was presented or discussed at such meeting. The record of such an ex parte meeting shall include the identity of the persons present at the meeting, the date, time, and place of the meeting, and a summary of the matters discussed or submitted. The record of the ex parte meeting shall be included in the record of the proceeding.
“(3) Summaries; nonproprietary submissions.—The administering authority and the Commission shall disclose—

“(A) any proprietary information received in the course of a proceeding under this title if it is disclosed in a form which cannot be associated with, or otherwise be used to identify, operations of a particular person, and

“(B) any information submitted in connection with a proceeding which is not designated as proprietary by the person submitting it.

“(4) Maintenance of public record.—The administering authority and the Commission shall maintain and make available for public inspection and copying a record of all information which is obtained by the administering authority or the Commission, as the case may be, in a proceeding under this title to the extent that public disclosure of the information is not prohibited under this chapter or exempt from disclosure under section 552 of title 5, United States Code.

“(b) Proprietary information.—

“(1) Proprietary status maintained.—

“(A) In general.—Except as provided in subsection (a)(4) and subsection (c), informa-
tion submitted to the administering authority or the Commission which is designated as proprietary by the person submitting the information shall not be disclosed to any person without the consent of the person submitting the information, other than—

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

“(ii) to an officer or employee of the United States Customs Service who is directly involved in conducting an investigation regarding fraud under this title.

“(B) ADDITIONAL REQUIREMENTS.—The administering authority and the Commission shall require that information for which proprietary treatment is requested be accompanied by—

“(i) either—

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

“(II) a statement that the infor-
mation is not susceptible to summary,
accompanied by a statement of the
reasons in support of the contention,
and

“(ii) either—

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

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

“(2) UNWARRANTED DESIGNATION.—If the ad-
ministering authority or the Commission determines,
on the basis of the nature and extent of the informa-
tion or its availability from public sources, that des-
ignation of any information as proprietary is unwarranted, then it shall notify the person who submitted it and ask for an explanation of the reasons for the designation. Unless that person persuades the administering authority or the Commission that the designation is warranted, or withdraws the designation, the administering authority or the Commission, as the case may be, shall return it to the party submitting it. In a case in which the administering authority or the Commission returns the information to the person submitting it, the person may thereafter submit other material concerning the subject matter of the returned information if the submission is made within the time otherwise provided for submitting such material.

“(e) Limited Disclosure of Certain Proprietary Information Under Protective Order.—

“(1) Disclosure by Administering Authority or Commission.—

“(A) In general.—Upon receipt of an application (before or after receipt of the information requested) which describes in general terms the information requested and sets forth the reasons for the request, the administering authority or the Commission shall make all
business proprietary information presented to, or obtained by it, during a proceeding under this title (except privileged information, classified information, and specific information of a type for which there is a clear and compelling need to withhold from disclosure) available to all interested parties who are parties to the proceeding under a protective order described in subparagraph (B), regardless of when the information is submitted during the proceeding. Customer names (other than the name of the United States buyer of the subject vessel) obtained during any investigation which requires a determination under section 805(b) may not be disclosed by the administering authority under protective order until either an order is published under section 806(a) as a result of the investigation or the investigation is suspended or terminated. The Commission may delay disclosure of customer names (other than the name of the United States buyer of the subject vessel) under protective order during any such investigation until a reasonable time before any hearing provided under section 841 is held.
“(B) PROTECTIVE ORDER.—The protective order under which information is made available shall contain such requirements as the administering authority or the Commission may determine by regulation to be appropriate. The administering authority and the Commission shall provide by regulation for such sanctions as the administering authority and the Commission determine to be appropriate, including disbarment from practice before the agency.

“(C) TIME LIMITATIONS ON DETERMINATIONS.—The administering authority or the Commission, as the case may be, shall determine whether to make information available under this paragraph—

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

“(ii) if—

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

“(II) the information is unusually voluminous or complex,
not later than 30 days (10 days if the submission pertains to a proceeding under section 803(a)) after the date on which the information is submitted.

“(D) Availability after determination.—If the determination under subparagraph (C) is affirmative, then—

“(i) the business proprietary information submitted to the administering authority or the Commission on or before the date of the determination shall be made available, subject to the terms and conditions of the protective order, on such date, and

“(ii) the business proprietary information submitted to the administering authority or the Commission after the date of the determination shall be served as required by subsection (d).

“(E) Failure to disclose.—If a person submitting information to the administering authority refuses to disclose business proprietary information which the administering authority determines should be released under a protective order described in subparagraph (B), the
administering authority shall return the information, and any nonconfidential summary thereof, to the person submitting the information and summary and shall not consider either.

“(2) Disclosure under court order.—If the administering authority or the Commission denies a request for information under paragraph (1), then application may be made to the United States Court of International Trade for an order directing the administering authority or the Commission, as the case may be, to make the information available. After notification of all parties to the investigation and after an opportunity for a hearing on the record, the court may issue an order, under such conditions as the court deems appropriate, which shall not have the effect of stopping or suspending the investigation, directing the administering authority or the Commission to make all or a portion of the requested information described in the preceding sentence available under a protective order and setting forth sanctions for violation of such order if the court finds that, under the standards applicable in proceedings of the court, such an order is warranted, and that—
“(A) the administering authority or the Commission has denied access to the information under subsection (b)(1),

“(B) the person on whose behalf the information is requested is an interested party who is a party to the investigation in connection with which the information was obtained or developed, and

“(C) the party which submitted the information to which the request relates has been notified, in advance of the hearing, of the request made under this section and of its right to appear and be heard.

“(d) SERVICE.—Any party submitting written information, including business proprietary information, to the administering authority or the Commission during a proceeding shall, at the same time, serve the information upon all interested parties who are parties to the proceeding, if the information is covered by a protective order. The administering authority or the Commission shall not accept any such information that is not accompanied by a certificate of service and a copy of the protective order version of the document containing the information. Business proprietary information shall only be served upon interested parties who are parties to the proceeding that are
subject to protective order, except that a nonconfidential summary thereof shall be served upon all other interested parties who are parties to the proceeding.

“(e) Information Relating to Violations of Protective Orders and Sanctions.—The administering authority and the Commission may withhold from disclosure any correspondence, private letters of reprimand, settlement agreements, and documents and files compiled in relation to investigations and actions involving a violation or possible violation of a protective order issued under subsection (c), and such information shall be treated as information described in section 552(b)(3) of title 5, United States Code.

“(f) Opportunity for Comment by Vessel Buyers.—The administering authority and the Commission shall provide an opportunity for buyers of subject vessels to submit relevant information to the administering authority concerning a sale at less than fair value or countermeasures, and to the Commission concerning material injury by reason of the sale of a vessel at less than fair value.

“(g) Publication of Determinations; Requirements for Final Determinations.—

“(1) In general.—Whenever the administering authority makes a determination under section
whether to initiate an investigation, or the administering authority or the Commission makes a preliminary determination under section 803, a final determination under section 805, a determination under subsection (b), (c), (d), (e)(3)(B)(ii), (g), or (i) of section 807, or a determination to suspend an investigation under this title, the administering authority or the Commission, as the case may be, shall publish the facts and conclusions supporting that determination, and shall publish notice of that determination in the Federal Register.

“(2) CONTENTS OF NOTICE OR DETERMINATION.—The notice or determination published under paragraph (1) shall include, to the extent applicable—

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

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

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

“(iii) with respect to an injurious pricing charge, the injurious pricing margin
established and a full explanation of the methodology used in establishing such margin,

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

“(v) the primary reasons for the determination, and

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

“(i) considerations relevant to the determination of injury, and

“(ii) the primary reasons for the determination.

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

“(A) the administering authority shall include in a final determination under section 805 or 807(c) an explanation of the basis for its determination that addresses relevant arguments, made by interested parties who are parties to the investigation, concerning the establishment
of the injurious pricing charge with respect to
which the determination is made, and

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

“SEC. 844. CONDUCT OF INVESTIGATIONS.

“(a) Certification of Submissions.—Any person
providing factual information to the administering author-
ity or the Commission in connection with a proceeding
under this title on behalf of the petitioner or any other
interested party shall certify that such information is
accurate and complete to the best of that person’s
knowledge.

“(b) Difficulties in Meeting Requirements.—

“(1) Notification by interested party.—
If an interested party, promptly after receiving a re-
quest from the administering authority or the Com-
mision for information, notifies the administering
authority or the Commission (as the case may be)
that such party is unable to submit the information
requested in the requested form and manner, to-
together with a full explanation and suggested alternative forms in which such party is able to submit the information, the administering authority or the Commission (as the case may be) shall consider the ability of the interested party to submit the information in the requested form and manner and may modify such requirements to the extent necessary to avoid imposing an unreasonable burden on that party.

“(2) ASSISTANCE TO INTERESTED PARTIES.—

The administering authority and the Commission shall take into account any difficulties experienced by interested parties, particularly small companies, in supplying information requested by the administering authority or the Commission in connection with investigations under this title, and shall provide to such interested parties any assistance that is practicable in supplying such information.

“(c) DEFICIENT SUBMISSIONS.—If the administering authority or the Commission determines that a response to a request for information under this title does not comply with the request, the administering authority or the Commission (as the case may be) shall promptly inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that
person with an opportunity to remedy or explain the deficiency in light of the time limits established for the completion of investigations or reviews under this title. If that person submits further information in response to such deficiency and either—

“(1) the administering authority or the Commission (as the case may be) finds that such response is not satisfactory, or

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

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

“(d) USE OF CERTAIN INFORMATION.—In reaching a determination under section 803, 805, or 807, the administering authority and the Commission shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority or the Commission if—

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

“(2) the information can be verified,
“(3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination,

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

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

“(e) NONACCEPTANCE OF SUBMISSIONS.—If the administering authority or the Commission declines to accept into the record any information submitted in an investigation under this title, it shall, to the extent practicable, provide to the person submitting the information a written explanation of the reasons for not accepting the information.

“(f) PUBLIC COMMENT ON INFORMATION.—Information that is submitted on a timely basis to the administering authority or the Commission during the course of a proceeding under this title shall be subject to comment by other parties to the proceeding within such reasonable time as the administering authority or the Commission shall provide. The administering authority and the Commission, before making a final determination under section
805 or 807, shall cease collecting information and shall provide the parties with a final opportunity to comment on the information obtained by the administering authority or the Commission (as the case may be) upon which the parties have not previously had an opportunity to comment. Comments containing new factual information shall be disregarded.

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

“SEC. 845. ADMINISTRATIVE ACTION FOLLOWING SHIPBUILDING AGREEMENT PANEL REPORTS.

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

“(1) ADVISORY REPORT. — If a dispute settlement panel under the Shipbuilding Agreement finds in a report that an action by the Commission in connection with a particular proceeding under this title is not in conformity with the obligations of the United States under the Shipbuilding Agreement, the Trade Representative may request the Commission to issue an advisory report on whether this title permits the Commission to take steps in connection with the particular proceeding that would render its action not inconsistent with the findings of the panel
concerning those obligations. The Trade Representative shall notify the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate of such request.

“(2) TIME LIMITS FOR REPORT.—The Commission shall transmit its report under paragraph (1) to the Trade Representative within 30 calendar days after the Trade Representative requests the report.

“(3) CONSULTATIONS ON REQUEST FOR COMMISSION DETERMINATION.—If a majority of the Commissioners issues an affirmative report under paragraph (1), the Trade Representatives shall consult with the congressional committees listed in paragraph (1) concerning the matter.

“(4) COMMISSION DETERMINATION.—Notwithstanding any other provision of this title, if a majority of the Commissioners issues an affirmative report under paragraph (1), the Commission, upon the written request of the Trade Representative, shall issue a determination in connection with the particular proceeding that would render the Commission’s action described in paragraph (1) not inconsistent with the findings of the panel. The Commission shall issue its determination not later than 120 calendar
days after the request from the Trade Representative is made.

“(5) Consultations on Implementation of Commission Determination.—The Trade Representative shall consult with the congressional committees listed in paragraph (1) before the Commission’s determination under paragraph (4) is implemented.

“(6) Revocation of Order.—If, by virtue of the Commission’s determination under paragraph (4), an injurious pricing order is no longer supported by an affirmative Commission determination under this title, the Trade Representative may, after consulting with the congressional committees under paragraph (5), direct the administering authority to revoke the injurious pricing order.

“(b) Action by Administering Authority.—

“(1) Consultations with Administering Authority and Congressional Committees.—
Promptly after a report or other determination by a dispute settlement panel under the Shipbuilding Agreement is issued that contains findings that—

“(A) an action by the administering authority in a proceeding under this title is not in
conformity with the obligations of the United States under the Shipbuilding Agreement,

“(B) the due date for payment of an injurious pricing charge contained in an order issued under section 806 should be amended,

“(C) countermeasures provided for in an order issued under section 807 should be provisionally suspended or reduced pending the final decision of the panel, or

“(D) the scope or duration of countermeasures imposed under section 807 should be narrowed or shortened,

the Trade Representative shall consult with the administering authority and the congressional committees listed in subsection (a)(1) on the matter.

“(2) Determination by administering authority.—Notwithstanding any other provision of this title, the administering authority shall, in response to a written request from the Trade Representative, issue a determination, or an amendment to or suspension of an injurious pricing or countermeasure order, as the case may be, in connection with the particular proceeding that would render the administering authority’s action described in para-
graph (1) not inconsistent with the findings of the
panel.

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

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

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

“(4) CONSULTATIONS BEFORE IMPLEMENTA-
TION.—Before the administering authority imple-
m ents any determination, amendment, or suspension
under paragraph (2), the Trade Representative shall
consult with the administering authority and the
congressional committees listed in subsection (a)(1)
with respect to such determination, amendment, or
suspension.

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

“(c) Opportunity for Comment by Interested Parties.—Before issuing a determination, amendment, or suspension, the administering authority, in a matter described in subsection (b)(1)(A), or the Commission, in a matter described in subsection (a)(1), as the case may be, shall provide interested parties with an opportunity to submit written comments and, in appropriate cases, may hold a hearing, with respect to the determination.

“Subtitle D—Definitions

“Sec. 861. Definitions.

“For purposes of this subtitle:

“(1) Administering Authority.—The term ‘administering authority’ means the Secretary of Commerce, or any other officer of the United States to whom the responsibility for carrying out the duties of the administering authority under this title are transferred by law.

(3) COUNTRY.—The term ‘country’ means a foreign country, a political subdivision, dependent territory, or possession of a foreign country and, except as provided in paragraph (16)(E)(iii), may not include an association of 2 or more foreign countries, political subdivisions, dependent territories, or possessions of countries into a customs union outside the United States.

(4) INDUSTRY.—

(A) IN GENERAL.—Except as used in section 808, the term ‘industry’ means the producers as a whole of a domestic like vessel, or those producers whose collective capability to produce a domestic like vessel constitutes a major proportion of the total domestic capability to produce a domestic like vessel.

(B) PRODUCER.—A ‘producer’ of a domestic like vessel includes an entity that is producing the domestic like vessel and an entity with the capability to produce the domestic like vessel.

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

“(D) Related parties.—(i) In an inves-
tigation under this title, if a producer of a do-
mestic like vessel and the foreign producer, sell-
er (other than the foreign producer), or United
States buyer of the subject vessel are related
parties, or if a producer of a domestic like ves-

tel is also a United States buyer of the subject
vessel, the domestic producer may, in appro-
priate circumstances, be excluded from the in-
dustry.

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

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

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

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

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

For purposes of this subparagraph, a party shall be considered to directly or indirectly control another party if the party is legally or operationally in a position to exercise restraint or direction over the other party.

“(E) PRODUCT LINES.—In an investigation under this title, the effect of the sale of the subject vessel shall be assessed in relation to the United States production (or production capability) of a domestic like vessel if available data permit the separate identification of production (or production capability) in terms of such criteria as the production process or the producer’s profits. If the domestic production (or production capability) of a domestic like vessel has no separate identity in terms of such
criteria, then the effect of the sale of the sub-
ject vessel shall be assessed by the examination
of the production (or production capability) of
the narrowest group or range of vessels, which
includes a domestic like vessel, for which the
necessary information can be provided.

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

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

“(A) A United States citizen.

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

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

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

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

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

“(7) OWNERSHIP INTEREST.—An ‘ownership
interest’ in a vessel includes any contractual or pro-
prietary interest which allows the beneficiary or
beneficiaries of such interest to take advantage of
the operation of the vessel in a manner substantially
comparable to the way in which an owner may bene-
fit from the operation of the vessel. In determining
whether such substantial comparability exists, the
administering authority shall consider—
“(A) the terms and circumstances of the transaction which conveys the interest,

“(B) commercial practice within the industry,

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

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

“(8) VESSEL.—

“(A) IN GENERAL.—Except as otherwise specifically provided under international agreements, the term ‘vessel’ means—

“(i) a self-propelled seagoing vessel of 100 gross tons or more used for transportation of goods or persons or for performance of a specialized service (including, but not limited to, ice breakers and dredgers), and

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

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

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

“(ii) any military vessel (including any military reserve vessel), and

“(iii) any vessel sold before the date that the Shipbuilding Agreement enters into force with respect to the United States, except that any vessel sold after December 21, 1994, for delivery more than 5 years after the date of the contract of sale shall be a ‘vessel’ for purposes of this title unless the shipbuilder demonstrates to the administering authority that the extended delivery date was for normal commercial reasons and not to avoid applicability of this title.

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

“(D) MILITARY VESSEL.—A ‘military vessel’ is a vessel which, according to its basic structural characteristics and ability, is intended to be used exclusively for military purposes.

“(E) MILITARY RESERVE VESSEL.—A ‘military reserve vessel’ is a military vessel constructed under any of the programs enumerated in section 120 of the OECD Shipbuilding Agreement Act.

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

“(10) DOMESTIC LIKE VESSEL.—The term ‘domestic like vessel’ means a like vessel produced in the United States.

“(11) FOREIGN LIKE VESSEL.—Except as used in section 822(e)(1)(B)(ii)(II), the term ‘foreign like vessel’ means a like vessel produced by the foreign producer of the subject vessel for sale in the producer’s domestic market or in a third country.
“(12) **SAME GENERAL CATEGORY OF VESSEL.**—
The term ‘same general category of vessel’ means a vessel of the same type and purpose as the subject vessel, but of a significantly different size.

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

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

“(15) **EXPORTING COUNTRY.**—The term ‘exporting country’ means the country in which the subject vessel was built.

“(16) **MATERIAL INJURY.**—

“(A) **IN GENERAL.**—The term ‘material injury’ means harm which is not inconsequential, immaterial, or unimportant.

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

“(i) shall consider—

“(I) the sale of the subject vessel, 
“(II) the effect of the sale of the subject vessel on prices in the United States for a domestic like vessel, and
“(III) the impact of the sale of
the subject vessel on domestic produc-
ers of a domestic like vessel, but only
in the context of production oper-
ations within the United States, and
“(ii) may consider such other eco-
nomic factors as are relevant to the deter-
mination regarding whether there is or has
been material injury by reason of the sale
of the subject vessel.

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

“(C) Evaluation of relevant fac-
tors.—For purposes of subparagraph (B)—
“(i) Sale of the subject ves-
sel.—In evaluating the sale of the subject
vessel, the Commission shall consider
whether the sale, either in absolute terms
or relative to production or demand in the
United States, in terms of either volume or
value, is or has been significant.
“(ii) PRICE.—In evaluating the effect of the sale of the subject vessel on prices, the Commission shall consider whether—

“(I) there has been significant price underselling of the subject vessel as compared with the price of a domestic like vessel, and

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

“(iii) IMPACT ON AFFECTED DOMESTIC INDUSTRY.—In examining the impact required to be considered under subparagraph (B)(i)(III), the Commission shall evaluate all relevant economic factors which have a bearing on the state of the industry in the United States, including, but not limited to—

“(I) actual and potential decline in output, sales, market share, profits, productivity, return on investments, and utilization of capacity,
“(II) factors affecting domestic prices, including with regard to sales,

“(III) actual and potential negative effects on cash flow, employment, wages, growth, ability to raise capital, and investment,

“(IV) actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of a domestic like vessel, and

“(V) the magnitude of the injurious pricing margin.

The Commission shall evaluate all relevant economic factors described in this clause within the context of the business cycle and conditions of competition that are distinctive to the affected industry.

“(D) Standard for determination.—The presence or absence of any factor which the Commission is required to evaluate under subparagraph (C) shall not necessarily give decisive guidance with respect to the determination by the Commission of material injury.
“(E) Threat of material injury.—

“(i) In general.—In determining whether an industry in the United States is threatened with material injury by reason of the sale of the subject vessel, the Commission shall consider, among other relevant economic factors—

“(I) any existing unused production capacity or imminent, substantial increase in production capacity in the exporting country indicating the likelihood of substantially increased sales of a foreign like vessel to United States buyers, taking into account the availability of other export markets to absorb any additional exports,

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

“(III) whether sale of the subject vessel or sale of a foreign like vessel by the foreign producer are at prices that are likely to have a significant depressing or suppressing effect on
domestic prices, and are likely to increase demand for further sales,

“(IV) the potential for product-shifting if production facilities in the exporting country, which can presently be used to produce a foreign like vessel or could be adapted in a timely manner to produce a foreign like vessel, are currently being used to produce other types of vessels,

“(V) the actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of a domestic like vessel, and

“(VI) any other demonstrable adverse trends that indicate the probability that there is likely to be material injury by reason of the sale of the subject vessel.

“(ii) Basis for determination.— The Commission shall consider the factors set forth in clause (i) as a whole. The presence or absence of any factor which the
Commission is required to consider under clause (i) shall not necessarily give decisive guidance with respect to the determination. Such a determination may not be made on the basis of mere conjecture or supposition.

“(iii) Effect of injurious pricing in third-country markets.—

“(I) In general.—The Commission shall consider whether injurious pricing in the markets of foreign countries (as evidenced by injurious pricing findings or injurious pricing remedies of other Shipbuilding Agreement Parties, or antidumping determinations of, or measures imposed by, other countries, against a like vessel produced by the producer under investigation) suggests a threat of material injury to the domestic industry. In the course of its investigation, the Commission shall request information from the foreign producer or United States buyer concerning this issue.
“(II) EUROPEAN COMMUNITIES.—For purposes of this clause, the European Communities as a whole shall be treated as a single foreign country.

“(F) CUMULATION FOR DETERMINING MATERIAL INJURY.—

“(i) IN GENERAL.—For purposes of clauses (i) and (ii) of subparagraph (C), and subject to clause (ii) of this subparagraph, the Commission shall cumulatively assess the effects of sales of foreign like vessels from all foreign producers with respect to which—

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

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

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

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

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

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

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

“(iii) RECORDS IN FINAL INVESTIGA-
tions.—In each final determination in
which it cumulatively assesses the effects
of sales under clause (i), the Commission
may make its determinations based on the
record compiled in the first investigation in
which it makes a final determination, ex-
cept that when the administering authority
issues its final determination in a subse-
quently completed investigation, the Com-
mission shall permit the parties in the sub-
sequent investigation to submit comments
concerning the significance of the admin-
istering authority’s final determination,
and shall include such comments and the
administering authority’s final determina-
tion in the record for the subsequent inves-
tigation.

“(G) Cumulation for determining
threat of material injury.—To the extent
practicable and subject to subparagraph (F)(ii),
for purposes of clause (i) (II) and (III) of sub-
paragraph (E), the Commission may cumula-
tively assess the effects of sales of like vessels
from all countries with respect to which—

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

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

“(iii) petitions were filed under sec-
tion 802(b) and investigations were initi-
ated under section 802(a) on the same
day,
if, with respect to such vessels, the foreign producers compete with each other and with producers of a domestic like vessel in the United States market.

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

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

“(ii) a trade or business association a majority of the members of which are the foreign producer, seller, or United States buyer of the subject vessel,

“(B) the government of the country in which the subject vessel is produced or manufactured,

“(C) a producer that is a member of an industry,

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

“(E) a trade or business association a majority of whose members are producers in an industry,
“(F) an association, a majority of whose members is composed of interested parties described in subparagraph (C), (D), or (E), and

“(G) for purposes of section 807, a purchaser who, after the effective date of an order issued under that section, entered into a contract of sale with the foreign producer that is subject to the order.

“(18) AFFIRMATIVE DETERMINATIONS BY DIVIDED COMMISSION.—If the Commissioners voting on a determination by the Commission are evenly divided as to whether the determination should be affirmative or negative, the Commission shall be deemed to have made an affirmative determination. For the purpose of applying this paragraph when the issue before the Commission is to determine whether there is or has been—

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

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

“(C) material retardation of the establishment of an industry in the United States,
by reason of the sale of the subject vessel, an affirmative vote on any of the issues shall be treated as a vote that the determination should be affirmative.

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

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

“(B) Transactions disregarded under section 822(f)(2).

“(20) NONMARKET ECONOMY COUNTRY.—

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

“(B) FACTORS TO BE CONSIDERED.—In making determinations under subparagraph (A)
the administering authority shall take into account—

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

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

“(iii) the extent to which joint ventures or other investments by firms of other foreign countries are permitted in the foreign country,

“(iv) the extent of government ownership or control of the means of production,

“(v) the extent of government control over the allocation of resources and over the price and output decisions of enterprises, and

“(vi) such other factors as the administering authority considers appropriate.

“(C) DETERMINATION IN EFFECT.—

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

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

“(D) Determinations not in issue.—Notwithstanding any other provision of law, any determination made by the administering authority under subparagraph (A) shall not be subject to judicial review in any investigation conducted under subtitle A.


“(22) Shipbuilding agreement party.—The term ‘Shipbuilding Agreement Party’ means a state or separate customs territory that is a Party to the Shipbuilding Agreement, and with respect to which the United States applies the Shipbuilding Agreement.
“(23) **WTO AGREEMENT.**—The term ‘WTO Agreement’ means the Agreement defined in section 2(9) of the Uruguay Round Agreements Act.

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

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

“(26) **AFFILIATED PERSONS.**—The following persons shall be considered to be ‘affiliated’ or ‘affiliated persons’:

“(A) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.

“(B) Any officer or director of an organization and such organization.

“(C) Partners.

“(D) Employer and employee.

“(E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting
stock or shares of any organization, and such organization.

“(F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.

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

For purposes of this paragraph, a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person.

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

“(28) INJURIOUS PRICING MARGIN.—

“(A) In general.—The term ‘injurious pricing margin’ means the amount by which the normal value exceeds the export price of the subject vessel.

“(B) Magnitude of the injurious pricing margin.—The magnitude of the injurious pricing margin used by the Commission shall be—

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

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

“(29) COMMERCIAL INTEREST REFERENCE RATE.—The term ‘Commercial Interest Reference Rate’ or ‘CIRR’ means an interest rate that the administering authority determines to be consistent with Annex III, and appendices and notes thereto, of the Understanding on Export Credits for Ships, resulting from negotiations under the auspices of the Organization for Economic Cooperation, and entered into on December 21, 1994.

“(30) ANTIDUMPING.—

“(A) WTO MEMBERS.—In the case of a WTO member, the term ‘antidumping’ refers to
action taken pursuant to the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994.

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

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

SEC. 104. ENFORCEMENT OF COUNTERMEASURES.

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

“SEC. 468. SHIPBUILDING AGREEMENT COUNTERMEASURES.

“(a) IN GENERAL.—Notwithstanding any other provision of law, upon receiving from the Secretary of Commerce a list of vessels subject to countermeasures under section 807, the Customs Service shall deny any request for a permit to lade or unlade passengers, merchandise, or baggage from or onto those vessels so listed.
“(b) Exceptions.—Subsection (a) shall not be ap-
plied to deny a permit for the following:

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

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

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

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

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

“(c) Correction of ministerial or clerical
errors.—

“(1) Petition for correction.—If the mas-
ter of any vessel whose application for a permit to
lade or unlade has been denied under this section be-
believes that such denial resulted from a ministerial or clerical error, not amounting to a mistake of law, committed by any Customs officer, the master may petition the Customs Service for correction of such error, as provided by regulation.

“(2) Inapplicability of Sections 514 and 520.—Notwithstanding paragraph (1), imposition of countermeasures under this section shall not be deemed an exclusion or other protestable decision under section 514, and shall not be subject to correction under section 520.

“(3) Petitions seeking administrative review.—Any petition seeking administrative review of any matter regarding the Secretary of Commerce’s decision to list a vessel under section 807 must be brought under that section.

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

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

“(2) who attempts to, or actually does, lade or unlade in violation of any denial of such permit under this section.”.
SEC. 105. JUDICIAL REVIEW IN INJURIOUS PRICING AND COUNTERMEASURE PROCEEDINGS.

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

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

“(a) REVIEW OF DETERMINATION.—

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

“(A)(i) a determination by the administering authority under section 802(c) not to initiate an investigation,

“(ii) a negative determination by the Commission under section 803(a) as to whether there is or has been reasonable indication of material injury, threat of material injury, or material retardation,

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

“(iv) a determination by the administering authority under section 807(e),

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

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

“(viii) a determination by the administering authority in a review under section 807(g),

“(ix) a determination by the administering authority under section 807(i) to terminate proceedings, or to amend or revoke a countermeasure order,

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

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

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

“(iii) notice of implementation of a determination described in subparagraph (C) of paragraph (2), or
“(iv) notice of revocation of an injurious pricing order based on a determination described in subparagraph (D) of paragraph (2), an interested party who is a party to the proceeding in connection with which the matter arises may commence an action in the United States Court of International Trade by filing concurrently a summons and complaint, each with the content and in the form, manner, and style prescribed by the rules of that court, contesting any factual findings or legal conclusions upon which the determination is based.

“(2) REVIEWABLE DETERMINATIONS.—The determinations referred to in paragraph (1)(B) are—

“(A) a final affirmative determination by the administering authority or by the Commission under section 805, including any negative part of such a determination (other than a part referred to in subparagraph (B)),

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

“(C) a determination by the administering authority under section 845(b), with respect to a matter described in paragraph (1)(A) of that section, and
“(D) a determination by the Commission under section 845(a) that results in the revocation of an injurious pricing order.

“(3) Exception.—Notwithstanding the 30-day limitation imposed by paragraph (1) with regard to an order described in paragraph (1)(B)(i), a final affirmative determination by the administering authority under section 805 may be contested by commencing an action, in accordance with the provisions of paragraph (1), within 30 days after the date of publication in the Federal Register of a final negative determination by the Commission under section 805.

“(4) Procedures and Fees.—The procedures and fees set forth in chapter 169 of title 28, United States Code, apply to an action under this section.

“(b) Standards of Review.—

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

“(A) in an action brought under subparagraph (A) of subsection (a)(1), to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, or

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

“(2) Record for review.—

“(A) In general.—For purposes of this subsection, the record, unless otherwise stipulated by the parties, shall consist of—

“(i) a copy of all information presented to or obtained by the administering authority or the Commission during the course of the administrative proceeding, including all governmental memoranda pertaining to the case and the record of ex parte meetings required to be kept by section 843(a)(2); and

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

“(B) Confidential or privileged material.—The confidential or privileged status accorded to any documents, comments, or information shall be preserved in any action under this section. Notwithstanding the preceding sentence, the court may examine, in camera, the confidential or privileged material, and may dis-
close such material under such terms and conditions as it may order.

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

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

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

“(2) COMMISSION.—The term ‘Commission’ means the United States International Trade Commission.

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

(b) CONFORMING AMENDMENTS.—

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

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

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

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

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

PART 2—OTHER PROVISIONS

SEC. 111. EQUIPMENT AND REPAIR OF VESSELS.

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

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

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

“(2) tugs of 365 kilowatts or more.

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

SEC. 112. EFFECT OF AGREEMENT WITH RESPECT TO PRI-
VATE REMEDIES.

No person other than the United States—

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

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

SEC. 113. IMPLEMENTING REGULATIONS.

After the date of the enactment of this Act, the heads
of agencies with functions under this Act and the amend-
ments made by this Act may issue such regulations as may
be necessary to ensure that this Act is appropriately im-
implemented on the date the Shipbuilding Agreement enters
into force with respect to the United States.

SEC. 114. AMENDMENTS TO THE MERCHANT MARINE ACT,
1936.

The Merchant Marine Act, 1936, is amended as
follows:

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

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

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

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

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

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

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

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

“(ii) that is a Shipbuilding Agreement vessel and is constructed in a Shipbuilding Agreement Party and, if reconstructed, is recon-
structed in a Shipbuilding Agreement Party or in the United States.”

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

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

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

(5) Section 610 (46 App. U.S.C. 1180) is amended by striking “shall be built in a domestic yard or shall have been documented under the laws of the United States not later than February 1, 1928, or actually ordered and under construction for the account of citizens of the United States prior to such date,” and inserting “shall be built in the United States or, if the vessel is a Shipbuilding Agreement vessel, in a Shipbuilding Agreement Party.”.
(6) Section 901(b)(1) (46 App. U.S.C. 1241(b)(1)) is amended by striking the third sentence and inserting the following: “For purposes of this section, the term ‘privately owned United States-flag commercial vessels’ shall be deemed to include—

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

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

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

(7) Section 905 (46 App. U.S.C. 1244) is
amended by adding at the end the following:
“(h) The term ‘Shipbuilding Agreement’ means the
Agreement Respecting Normal Competitive Conditions in
the Commercial Shipbuilding and Repair Industry, which
resulted from negotiations under the auspices of the Orga-
nization for Economic Cooperation and Development, and
was entered into on December 21, 1994.
“(i) The term ‘Shipbuilding Agreement Party’ means
a state or separate customs territory that is a Party to
the Shipbuilding Agreement, and with respect to which the
United States applies the Shipbuilding Agreement.
“(j) The term ‘Shipbuilding Agreement vessel’ means
a vessel to which the Secretary determines Article 2.1 of
the Shipbuilding Agreement applies.
“(k) The term ‘Export Credit Understanding’ means
the Understanding on Export Credits for Ships which re-
sulted from negotiations under the auspices of the Organi-
zation for Economic Cooperation and Development and
was entered into on December 21, 1994.
“(1) The term ‘Export Credit Understanding vessel’ means a vessel to which the Secretary determines the Export Credit Understanding applies.”.

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

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

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

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

“(i)(1) Except as provided in paragraph (2), the Secretary may not, with respect to—
“(A) the general 75 percent or less limitation contained in subsection (b)(2),

“(B) the 87½ percent or less limitation contained in the 1st, 2nd, 4th, or 5th proviso to subsection (b)(2) or in section 1112(b), or

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

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

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

(C) Section 1104B(b) (46 App. U.S.C. 1274a(b)) is amended by striking the period at the end and inserting the following: “, except that, with respect to Export Credit Understanding vessels and Shipbuilding Agreement vessels, the Secretary may establish by rule, regulation,
or procedure a uniform percentage that the
Secretary determines to be consistent with obli-
gations of the United States under the Export
Credit Understanding or the Shipbuilding
Agreement, as the case may be.”.

SEC. 115. APPLICABILITY OF TITLE XI AMENDMENTS

(a) Effective Date.—

(1) In General.—Notwithstanding any provi-
sion of the Shipbuilding Agreement or the Export
Credit Understanding, the amendments made by
paragraph (8) of section 114 shall not apply with re-
spect to any commitment to guarantee made under
title XI of the Merchant Marine Act, 1936, before
January 1, 1999, with respect to a vessel delivered:

(A) before January 1, 2002, or

(B) in the case of “unusual circumstances”
to which paragraph (2) applies, as soon after
January 1, 2002, as is practicable.

(2) Unusual Circumstances.—This para-
graph applies in a case in which unusual cir-
cumstances beyond the control of the parties con-
cerned prevent the delivery of a vessel by January
1, 2002. As used in this paragraph, the term “un-
usual circumstances” means acts of God (other than
ordinary storms or inclement weather conditions)
labor strikes, acts of sabotage, explosions, fires, or vandalism, and similar circumstances.

(b) Matching Competition by Non-Members.—

Section 114 does not prevent the Secretary of Transportation from exercising his full discretion and authority under title XI of the Merchant Marine Act, 1936, consistent with clause 8 and Annex III of the Export Credit Understanding, to assist United States shipyards in meeting unfairly subsidized bids by foreign yards in countries not covered by the disciplines of the OECD Shipbuilding Agreement.

SEC. 116. WITHDRAWAL FROM AGREEMENT.

(a) Withdrawal.—

(1) Notice.—The President shall give notice, under Article 14 of the Shipbuilding Agreement, of intent of the United States to withdraw from the Shipbuilding Agreement, as soon as is practicable after one or more Shipbuilding Agreement Parties give notice, under such Article, of intent to withdraw from the Shipbuilding Agreement, if paragraph (2) applies.

(2) Tonnage of New Construction in Withdrawing Parties.—This paragraph applies if the combined gross tonnage of new Shipbuilding Agreement vessels that were constructed in all Shipbuild-
ing Agreement Parties who have given notice to withdraw from the Shipbuilding Agreement, and that were delivered in the calendar year preceding the calendar year in which the notice is given, is 15 percent or more of the gross tonnage of new Shipbuilding Agreement vessels that were constructed in all Shipbuilding Agreement Parties and were delivered in the calendar year preceding the calendar year in which the notice is given.

(3) Termination of Withdrawal.—If a Shipbuilding Agreement Party described in paragraph (2) takes action to terminate its withdrawal from the Shipbuilding Agreement, so that paragraph (2) would not apply if that Party had not given the notice to withdraw, the President may take the necessary steps to terminate the notice of withdrawal of the United States from the Shipbuilding Agreement.

(b) Reinstatement of Laws.—If the United States withdraws from the Shipbuilding Agreement, on the date on which the withdrawal becomes effective, the amendments made by section 114 cease to have effect, and the provisions of law amended by section 114 shall be effective, on and after such date, as if this Act had not been enacted.
SEC. 117. MONITORING AND ENFORCEMENT.

(a) In General.—The United States Trade Representative shall establish a program to monitor the compliance of Shipbuilding Agreement Parties with their obligations under the Shipbuilding Agreement. This program should include—

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

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

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

(4) regular consultations with representatives of industry, labor, and other interested parties regarding policies and practices of Shipbuilding Agreement Parties and of other countries with significant commercial shipbuilding industries;

(5) annual publication of a notice in the Federal Register affording an opportunity for interested parties to comment on the implementation of the Agreement; and
(6) the taking of any other appropriate action to monitor compliance of Shipbuilding Agreement Parties.

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

(1) the activities undertaken as part of its monitoring program;

(2) the results of its consultations under subsection (a)(4) above; and

(3) compliance with the provisions of the Shipbuilding Agreement.

(e) ACTION IF VIOLATION.—If the United States Trade Representative receives information including information provided by representatives of industry, labor, and other interested parties, indicating that a Shipbuilding Agreement Party is in material violation of the Shipbuilding Agreement in a manner that is detrimental to the interests of the United States, the United States Trade Representative should use vigorously the consultation and, if the matter is not otherwise resolved, the dispute settlement procedures provided for under the Shipbuilding Agreement to redress the situation.
SEC. 118. JONES ACT AND RELATED LAWS NOT AFFECTED.

(a) In General.—Nothing in the Shipbuilding Agreement shall be construed to amend, alter, or modify in any manner the Merchant Marine Act, 1920 (46 App. U.S.C. 861 et. seq.), the Act of June 19, 1886 (46 App. U.S.C. 289), or any other provision of law set forth in Accompanying Note 2 to Annex II to the Shipbuilding Agreement; nor shall the Shipbuilding Agreement undermine the operation or administration of these statutes or prevent them from achieving their objectives.

(b) Withdrawal of GATT Concessions.—The Shipbuilding Agreement shall not provide any mechanism for withdrawal of concessions under GATT 1994 because of the maintenance or operation of the coastwise trade laws of the United States.

(c) Annual Review.—The Secretary of Transportation shall review annually the impact, if any, of the Agreement on the operation or implementation of the statutes identified in subsection (a), shall consult with the United States Trade Representative, Department of Defense, U.S. industry and labor, and other interested parties, and shall report to the President. If the President determines that the implementation of the Agreement is significantly undermining the administration or operation of these statutes or significantly impeding them from achieving their objectives, the President shall give notice
of intent to withdraw from the Agreement pursuant to Article 14 of the Agreement. The authorization and implementation of responsive measures, under the provisions of paragraph 2.e of Annex II B of the Agreement by any Shipbuilding Agreement Party shall be taken into account in making this determination.

SEC. 119. EXPANDING MEMBERSHIP IN THE SHIPBUILDING AGREEMENT.

The United States Trade Representative shall monitor the impact of the policies and practices pursued by countries that are not Shipbuilding Agreement Parties, and shall seek the prompt accession to the Shipbuilding Agreement of countries that have significant commercial shipbuilding and repair industries, including, but not limited to Australia, the People's Republic of China, Poland, Romania, the Russian Federation, and Ukraine. The United States Trade Representative shall report to Congress annually on any impact and on the success of efforts to expand the membership of the Agreement. When it is determined that the continuing failure of a country to adopt the disciplines of the Agreement is undermining the effectiveness of the Agreement and placing U.S. shipyards at a competitive disadvantage, the United States Trade Representative shall act vigorously to redress this situation, making appropriate use of the mechanisms at its dis-
posal under United States trade laws as well as the opport-
unities for consultations and dispute settlement action
under any appropriate international organization, both bi-
laterally and in concert with other Shipbuilding Agree-
ment Parties.

SEC. 120. PROTECTION OF UNITED STATES SECURITY IN-
TERESTS.

(a) In General.—Nothing in the Shipbuilding
Agreement shall be construed to prevent the United States
from taking any action which the United States considers
necessary for the protection of essential security interests.

(b) Military Vessels and Requirements.—
Nothing in the Agreement and in this Act shall be con-
strued to amend or modify any laws or programs relating
to U.S. military vessels (including military reserve vessels)
or the military requirements of the United States. As used
in this section—

(1) Military vessel.—A “military vessel” is
a vessel which, according to its basic structural char-
acteristics and ability, is intended to be used exclu-
sively for military purposes;

(2) Military reserve vessels.—“Military
reserve vessels” are military vessels, as defined in
paragraph (1), that are either owned directly by the
Department of Defense or leased or chartered by the
Department of Defense for military use, including for the purpose of supporting the United States Armed Forces in a contingency. Military Reserve Vessels include:

(A) “Prepositioned Vessels”, which are vessels equipped with military features and strategically located throughout the world for utilization when needed;

(B) “Surge (Phase) Vessels”, which are vessels equipped with military features or which meet military specifications, and which are dedicated to the provision of logistical support for the Armed Forces on a contingency, including “Fast Sealift Ships” (FSS), “Ready Reserve Force” (RRF) vessels, and “Large Medium Speed Roll-on/roll-off” (LMSR) vessels; and

(C) “Sustainment (Phase) Vessels”, which are privately owned merchant marine vessels and are chartered on a long-term basis by the Department of Defense for the purpose of carrying military cargo or personnel including the “Military Sealift Command Controlled Fleet”; and
(3) MILITARY REQUIREMENTS.—“Laws or programs relating to the military requirements of the United States” include any program which, consistent with Article 2(2) of the Agreement, provides for modifications made or features added to vessels to make them more capable of carrying military equipment in a contingency provided that the vessels constructed or modified by such programs are under long-term contractual arrangement with the Department of Defense for their call up in the event of contingency.

SEC. 121. DEFINITIONS.

Except as otherwise provided, as used in this part—

(1) the terms “Shipbuilding Agreement”, “Shipbuilding Agreement Party”, “Shipbuilding Agreement Vessels”, and “Export Credit Understanding” have the meanings given those terms in subsections (h), (i), (j), and (k), respectively, of section 905 of the Merchant Marine Act, 1936, as added by section 114(7) of this Act; and

(2) the term “GATT 1994” has the meaning given that term in section 2 of the Uruguay Round Agreements Act.
PART 3—EFFECTIVE DATE

SEC. 131. EFFECTIVE DATE.

Except as otherwise provided, this Act takes effect on the date that the Shipbuilding Agreement enters into force with respect to the United States.