

105TH CONGRESS
1ST SESSION

S. 629

Entitled the “OECD Shipbuilding Agreement Act”.

IN THE SENATE OF THE UNITED STATES

APRIL 22, 1997

Mr. BREAUX (by request) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

Entitled the “OECD Shipbuilding Agreement Act”.

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

3 **PART 1—GENERAL PROVISIONS**

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

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

7 (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.

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

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

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

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

14 **SEC. 102. APPROVAL OF THE SHIPBUILDING AGREEMENT.**

15 The Congress approves The Agreement Respecting
16 Normal Competitive Conditions in the Commercial Ship-
17 building and Repair Industry (referred to in this Act as
18 the “Shipbuilding Agreement”), a reciprocal trade agree-
19 ment which resulted from negotiations under the auspices

1 of the Organization for Economic Cooperation and Devel-
 2 opment, and was entered into on December 21, 1994.

3 **SEC. 103. INJURIOUS PRICING AND COUNTERMEASURES**
 4 **RELATING TO SHIPBUILDING.**

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

7 **“TITLE VIII—INJURIOUS PRIC-**
 8 **ING AND COUNTERMEASURES**
 9 **RELATING TO SHIPBUILDING**

“Subtitle A—Imposition of Injurious Pricing Charge and Countermeasures

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

“Subtitle D—Definitions

- “Sec. 861. Definitions.

1 **“Subtitle A—Imposition of Injuri-**
 2 **ous Pricing Charge and Coun-**
 3 **termeasures**

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

5 “(a) BASIS FOR CHARGE.—If—

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

10 “(2) the Commission determines that—

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

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

13 or

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

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

19 by reason of the sale of such vessel, then there shall
 20 be imposed upon the foreign producer of the subject
 21 vessel an injurious pricing charge, in an amount
 22 equal to the amount by which the normal value ex-
 23 ceeds the export price for the vessel. For purposes
 24 of this subsection and section 805(b)(1), a reference
 25 to the sale of a foreign vessel includes the creation

1 or transfer of an ownership interest in the vessel, ex-
2 cept for an ownership interest created or acquired
3 solely for the purpose of providing security for a
4 normal commercial loan.

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

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

11 “(a) INITIATION BY ADMINISTERING AUTHORITY.—

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

22 “(2) TIME FOR INITIATION BY ADMINISTERING
23 AUTHORITY.—An investigation may only be initiated
24 under paragraph (1) within 6 months after the time
25 the administering authority first knew or should

1 have known of the sale of the vessel. Any period dur-
 2 ing which an investigation is initiated and pending
 3 as described in subsection (d)(6)(A) shall not be in-
 4 cluded in calculating that 6-month period.

5 “(b) INITIATION BY PETITION.—

6 “(1) PETITION REQUIREMENTS.—

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

21 “(B) PETITIONERS DESCRIBED IN SEC-
 22 TION 861(17)(C).—

23 “(i) IN GENERAL.—If the peti-
 24 tioner is a producer described in section
 25 861(17)(C), and—

1 “(I) if the vessel was sold
2 through a broad multiple bid, the peti-
3 tion shall include information indicat-
4 ing that the petitioner was invited to
5 tender a bid on the contract at issue,
6 the petitioner actually did so, and the
7 bid of the petitioner substantially met
8 the delivery date and technical re-
9 quirements of the bid,

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

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

1 vessel concerned and, if the petitioner
2 knew or should have known of the
3 proposed purchase, it made demon-
4 strable efforts to conclude a sale with
5 the United States buyer consistent
6 with the delivery date and technical
7 requirements of the buyer.

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

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

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

1 tioner had regular contacts or deal-
2 ings.

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

11 “(D) PETITIONERS DESCRIBED IN SEC-
12 TION 861(17)(E).—If the petitioner is an inter-
13 ested party described in section 861(17)(E), the
14 petition shall include information indicating
15 that a member of the association described in
16 that section is a producer that meets the re-
17 quirements of subparagraph (B) of this para-
18 graph.

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

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

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

9 “(3) DEADLINE FOR FILING PETITION.—

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

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

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

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

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

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

7 “(B) PRESUMPTION OF KNOWLEDGE.—
8 For purposes of this paragraph, if the existence
9 of the sale, together with general information
10 concerning the vessel, is published in the inter-
11 national trade press, there is a rebuttable pre-
12 sumption that the petitioner knew or should
13 have known of the sale of the vessel from the
14 date of that publication.

15 “(c) ACTIONS BEFORE INITIATING INVESTIGA-
16 TIONS.—

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

24 “(2) ACCEPTANCE OF COMMUNICATIONS.—The
25 administering authority shall not accept any unsolic-

1 ited oral or written communication from any person
2 other than an interested party described in section
3 861(17) (C), (D), (E), or (F) before the administer-
4 ing authority makes its decision whether to initiate
5 an investigation pursuant to a petition, except for
6 inquiries regarding the status of the administering
7 authority’s consideration of the petition or a request
8 for consultation by the government of the exporting
9 country.

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

15 “(d) PETITION DETERMINATION.—

16 “(1) TIME FOR INITIAL DETERMINATION.—

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

24 “(i) alleges the elements necessary for
25 the imposition of an injurious pricing

1 charge under section 801(a) and the ele-
2 ments required under subsection (b)(1)
3 (B), (C), (D), or (E), and contains infor-
4 mation reasonably available to the peti-
5 tioner supporting the allegations; and

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

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

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

18 “(3) NEGATIVE DETERMINATIONS.—If—

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

21 “(B) paragraph (6)(B) applies,

22 the administering authority shall dismiss the peti-
23 tion, terminate the proceeding, and notify the peti-
24 tioner in writing of the reasons for the determina-
25 tion.

1 “(4) DETERMINATION OF INDUSTRY SUP-
2 PORT.—

3 “(A) GENERAL RULE.—For purposes of
4 this subsection, the administering authority
5 shall determine that the petition has been filed
6 by or on behalf of the domestic industry, if—

7 “(i) the domestic producers or work-
8 ers who support the petition collectively ac-
9 count for at least 25 percent of the total
10 capacity of domestic producers capable of
11 producing a like vessel, and

12 “(ii) the domestic producers or work-
13 ers who support the petition collectively ac-
14 count for more than 50 percent of the total
15 capacity to produce a like vessel of that
16 portion of the domestic industry expressing
17 support for or opposition to the petition.

18 “(B) CERTAIN POSITIONS DIS-
19 REGARDED.—In determining industry support
20 under subparagraph (A), the administering au-
21 thority shall disregard the position of domestic
22 producers who oppose the petition, if such pro-
23 ducers are related to the foreign producer or
24 United States buyer of the subject vessel, or the
25 domestic producer is itself the United States

1 buyer, unless such domestic producers dem-
2 onstrate that their interests as domestic pro-
3 ducers would be adversely affected by the impo-
4 sition of an injurious pricing charge.

5 “(C) POLLING THE INDUSTRY.—If the pe-
6 tition does not establish support of domestic
7 producers or workers accounting for more than
8 50 percent of the total capacity to produce a
9 like vessel—

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

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

20 “(D) COMMENTS BY INTERESTED PAR-
21 TIES.—Before the administering authority
22 makes a determination with respect to initiating
23 an investigation, any person who would qualify
24 as an interested party under section 861(17) if
25 an investigation were initiated, may submit

1 comments or information on the issue of indus-
2 try support. After the administering authority
3 makes a determination with respect to initiating
4 an investigation, the determination regarding
5 industry support shall not be reconsidered.

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

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

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

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

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

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

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

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

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

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

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

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

25 or

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

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

6 by reason of the sale of the subject vessel. If the
7 Commission makes a negative determination under
8 this paragraph, the investigation shall be termi-
9 nated.

10 “(2) TIME FOR COMMISSION DETERMINA-
11 TION.—The Commission shall make the determina-
12 tion described in paragraph (1) within 90 days after
13 the date on which the petition is filed or, in the case
14 of an investigation initiated under section 802(a),
15 within 90 days after the date on which the Commis-
16 sion receives notice from the administering authority
17 that the investigation has been initiated under such
18 section.

19 “(b) PRELIMINARY DETERMINATION BY ADMIN-
20 ISTERING AUTHORITY.—

21 “(1) PERIOD OF INJURIOUS PRICING INVES-
22 TIGATION.—

23 “(A) IN GENERAL.—The administering au-
24 thority shall make a determination, based upon
25 the information available to it at the time of the

1 determination, of whether there is a reasonable
2 basis to believe or suspect that the subject ves-
3 sel was sold at less than fair value.

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

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

19 “(D) OTHER CASES.—In cases in which
20 subparagraph (B) or (C) does not apply, the
21 administering authority shall make its deter-
22 mination within 160 days after the date on
23 which the administering authority initiates the
24 investigation under section 802.

1 “(E) AFFIRMATIVE DETERMINATION BY
2 COMMISSION REQUIRED.—In no event shall the
3 administering authority make its determination
4 before an affirmative determination is made by
5 the Commission under subsection (a).

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

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

16 “(1) IN GENERAL.—If—

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

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

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

24 “(II) the nature and extent of
25 the information required, and

1 “(ii) additional time is necessary to
2 make the preliminary determination, or

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

6 then the administering authority may postpone the
7 time for making its preliminary determination.

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

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

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

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

20 “(3) NOTICE OF POSTPONEMENT.—The admin-
21 istering authority shall notify the parties to the in-
22 vestigation, not later than 20 days before the date
23 on which the preliminary determination would other-
24 wise be required under subsection (b)(1), if it in-
25 tends to postpone making the preliminary deter-

1 mination under paragraph (1). The notification shall
2 include an explanation of the reasons for the post-
3 ponement, and notice of the postponement shall be
4 published in the Federal Register.

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

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

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

20 “(e) NOTICE OF DETERMINATION.—Whenever the
21 Commission or the administering authority makes a deter-
22 mination under this section, the Commission or the admin-
23 istering authority, as the case may be, shall notify the pe-
24 titioner, and other parties to the investigation, and the
25 Commission or the administering authority (whichever is

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

8 **“SEC. 804. TERMINATION OR SUSPENSION OF INVESTIGA-**
 9 **TION.**

10 “(a) TERMINATION OF INVESTIGATION UPON WITH-
 11 DRAWAL OF PETITION.—

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

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

23 “(b) TERMINATION OF INVESTIGATIONS INITIATED
 24 BY ADMINISTERING AUTHORITY.—The administering au-
 25 thority may terminate any investigation initiated by the

1 administering authority under section 802(a) after provid-
2 ing notice of such termination to all parties to the inves-
3 tigation.

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

9 “(d) PROCEEDINGS BY WTO MEMBERS.—

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

17 “(2) TERMINATION OF INVESTIGATION.—If an
18 antidumping proceeding described in paragraph (1)
19 is concluded by—

20 “(A) the imposition of antidumping meas-
21 ures, or

22 “(B) a negative determination with respect
23 to whether the sale is at less than fair value or
24 with respect to injury,

1 the administering authority and the Commission
2 shall terminate the investigation under this section.

3 “(3) CONTINUATION OF INVESTIGATION.—(A)

4 If such a proceeding—

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

7 or

8 “(ii) is not concluded within one year
9 from the date of the initiation of the pro-
10 ceeding,

11 then the administering authority and the Com-
12 mission shall terminate the suspension and con-
13 tinue the investigation. The period in which the
14 investigation was suspended shall not be in-
15 cluded in calculating deadlines applicable with
16 respect to the investigation.

17 “(B) Notwithstanding subparagraph
18 (A)(ii), if the proceeding is concluded by a re-
19 sult described in paragraph (2)(A), the admin-
20 istering authority and the Commission shall ter-
21minate the investigation under this section.

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

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

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

7 “(2) EXTENSION OF PERIOD FOR DETERMINA-
8 TION.—

9 “(A) GENERAL RULE.—The administering
10 authority may postpone making the final deter-
11 mination under paragraph (1) until not later
12 than 290 days after—

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

16 “(ii) the date of delivery of the subject
17 vessel, in an investigation to which section
18 803(b)(1)(C) applies, or

19 “(iii) the date on which the admin-
20 istering authority initiates the investigation
21 under section 802, in an investigation to
22 which section 803(b)(1)(D) applies.

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

1 “(i) the producer of the subject vessel,
2 in a proceeding in which the preliminary
3 determination by the administering author-
4 ity under section 803(b) was affirmative,
5 or

6 “(ii) the petitioner, in a proceeding in
7 which the preliminary determination by the
8 administering authority under section
9 803(b) was negative.

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

15 “(b) FINAL DETERMINATION BY COMMISSION.—

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

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

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

21 “(ii) is threatened with material in-
22 jury, or

23 “(B) the establishment of an industry in
24 the United States is or has been materially re-
25 tarded, by reason of the sale of the vessel with

1 respect to which the administering authority
2 has made an affirmative determination under
3 subsection (a)(1).

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

11 “(A) the 120th day after the day on which
12 the administering authority makes its affirma-
13 tive preliminary determination under section
14 803(b), or

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

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

1 after the date of that affirmative final determina-
2 tion.

3 “(c) EFFECT OF FINAL DETERMINATIONS.—

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

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

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

23 “(2) ISSUANCE OF ORDER; EFFECT OF NEGA-
24 TIVE DETERMINATION.—If the determinations of the
25 administering authority and the Commission under

1 subsections (a)(1) and (b)(1) are affirmative, then
2 the administering authority shall issue an injurious
3 pricing order under section 806. If either of such de-
4 terminations is negative, the investigation shall be
5 terminated upon the publication of notice of that
6 negative determination.

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

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

1 and any other type of unintentional error which the ad-
2 ministering authority considers ministerial.

3 **“SEC. 806. IMPOSITION AND COLLECTION OF INJURIOUS**
4 **PRICING CHARGE.**

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

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

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

21 “(3) informs the foreign producer that—

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

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

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

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

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

23 “(2) INTEREST CHARGES.—If a request is
24 granted under paragraph (1), payments made after
25 the date that is 180 days from the publication of the

1 order shall be subject to interest charges at the
2 CIRR.

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

8 “(d) REVOCATION OF ORDER.—The administering
9 authority—

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

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

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

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

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

1 “(D) if, with respect to the vessel sale that
2 was at issue in the investigation that resulted
3 in the injurious pricing order, an antidumping
4 proceeding conducted by a WTO member who
5 is not a Shipbuilding Agreement Party has been
6 completed and resulted in the imposition of
7 antidumping measures.

8 “(e) ALTERNATIVE EQUIVALENT REMEDY.—

9 “(1) AGREEMENT FOR ALTERNATE REMEDY.—

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

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

18 “(B) is in the public interest,

19 “(C) can be effectively monitored and en-
20 forced, and

21 “(D) is otherwise consistent with the do-
22 mestic law and international obligations of the
23 United States.

24 “(2) PRIOR CONSULTATIONS AND SUBMISSION
25 OF COMMENTS.—Before entering into an agreement

1 under paragraph (1), the administering authority
2 shall consult with the industry, and provide for the
3 submission of comments by interested parties, with
4 respect to the agreement.

5 “(3) MATERIAL VIOLATIONS OF AGREEMENT.—
6 If the injurious pricing order has been suspended
7 under paragraph (1), and the administering author-
8 ity determines that the foreign producer concerned
9 has materially violated the terms of the agreement
10 under paragraph (1), the administering authority
11 shall terminate the suspension.

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

13 “(a) GENERAL RULE.—

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

19 “(2) CONTENTS OF ORDER.—The counter-
20 measure order shall—

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

1 injurious pricing order was issued under section
2 806, and

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

6 “(b) NOTICE OF INTENT TO IMPOSE COUNTER-
7 MEASURES.—

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

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

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

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

24 “(ii) with respect to which the mate-
25 rial terms of sale are established within a

1 period of 4 consecutive years beginning on
2 the date that is 30 days after publication
3 in the Federal Register of the notice of in-
4 tent described in paragraph (1).

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

10 “(c) DETERMINATION TO IMPOSE COUNTER-
11 MEASURES; ORDER.—

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

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

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

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

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

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

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

1 “(B) a hearing in connection with such a
2 review.

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

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

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

15 “(3) TIME FOR REVIEW.—The administering
16 authority shall make its determination under para-
17 graph (2)(B) within 90 days after the date on which
18 the notice of initiation of the review is published. If
19 the determination under paragraph (2)(B) is affirm-
20 ative, the administering authority shall amend the
21 order accordingly. The administering authority shall
22 promptly publish the determination and any amend-
23 ment to the order in the Federal Register, and shall
24 provide a copy of any amended order to the Customs
25 Service. In extraordinary circumstances, the admin-

1 istering authority may extend the time for its deter-
2 mination under paragraph (2)(B) to not later than
3 150 days after the date on which the notice of initi-
4 ation of the review is published.

5 “(e) EXTENSION OF COUNTERMEASURES.—

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

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

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

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

8 “(3) DETERMINATION.—

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

16 “(B) PROCEDURES.—

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

22 “(ii) OTHER REQUESTS.—If para-
23 graph (2)(B) applies to the request, the
24 administering authority shall determine,
25 within 90 days after the date on which the

1 notice of initiation of the proceeding is
2 published, whether the requesting party
3 has demonstrated that the scope or dura-
4 tion of the countermeasures is inadequate
5 in light of all of the circumstances. If the
6 administering authority determines that an
7 extension is warranted, it shall amend the
8 countermeasure order accordingly. The ad-
9 ministering authority shall promptly pub-
10 lish the determination and any amendment
11 to the order in the Federal Register, and
12 shall provide a copy of any amended order
13 to the Customs Service.

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

23 “(5) DECISION NOT TO REQUEST PANEL.—If,
24 based on consultations under paragraph (4), the
25 Trade Representative decides not to request estab-

1 lishment of a panel, the Trade Representative shall
2 inform the party requesting the extension of the
3 countermeasures of the reasons for its decision in
4 writing. The decision shall not be subject to judicial
5 review.

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

16 “(f) LIST OF VESSELS SUBJECT TO COUNTER-
17 MEASURES.—

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

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

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

7 “(B) The vessel identification number.

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

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

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

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

14 “(G) The remaining duration of counter-
15 measures on the vessel.

16 “(H) Any other identifying information
17 available.

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

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

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

4 “(i) the petitioner under section
5 802(b),

6 “(ii) the United States Customs Serv-
7 ice,

8 “(iii) the Secretariat of the Organiza-
9 tion for Economic Cooperation and Devel-
10 opment,

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

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

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

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

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

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

24 “(g) ADMINISTRATIVE REVIEW OF LIST OF VESSELS
25 SUBJECT TO COUNTERMEASURES.—

1 “(1) REQUEST FOR REVIEW.—

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

6 “(i) a vessel included in the list does
7 not fall within the scope of the applicable
8 countermeasure order and should be de-
9 leted, or

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

14 “(B) TIME FOR MAKING REQUEST.—Any
15 request seeking a determination described in
16 subparagraph (A)(i) shall be made within 90
17 days after the date of publication of the appli-
18 cable list.

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

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

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

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

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

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

9 “(ii) a vessel not included in the list
10 qualifies for inclusion.

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

21 “(h) EXPIRATION OF COUNTERMEASURES.—Upon
22 expiration of a countermeasure order imposed under this
23 section, the administering authority shall promptly publish
24 a notice of the expiration in the Federal Register.

1 “(i) SUSPENSION OR TERMINATION OF PROCEED-
2 INGS OR COUNTERMEASURES; TEMPORARY REDUCTION
3 OF COUNTERMEASURES.—

4 “(1) IF INJURIOUS PRICING ORDER REVOKED
5 OR SUSPENDED.—If an injurious pricing order has
6 been revoked or suspended under section 806(d) or
7 (e), the administering authority shall, as appro-
8 priate, suspend or terminate proceedings under this
9 section with respect to that order, or suspend or re-
10 voke a countermeasure order issued with respect to
11 that injurious pricing order.

12 “(2) IF PAYMENT DATE AMENDED.—

13 “(A) SUSPENSION OR MODIFICATION OF
14 DEADLINE.—Subject to subparagraph (C), if
15 the payment date under an injurious pricing
16 order is amended under section 845, the admin-
17 istering authority shall, as appropriate, suspend
18 proceedings or modify deadlines under this sec-
19 tion, or suspend or amend a countermeasure
20 order issued with respect to that injurious prie-
21 ing order.

22 “(B) DATE FOR APPLICATION OF COUN-
23 TERMEASURE.—In taking action under sub-
24 paragraph (A), the administering authority
25 shall ensure that countermeasures are not ap-

1 plied before the date that is 30 days after publi-
2 cation in the Federal Register of the amended
3 payment date.

4 “(C) REINSTITUTION OF PROCEEDINGS.—
5 If—

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

11 “(ii) the administering authority de-
12 termines that the period of time between
13 the original payment date and the amend-
14 ed payment date is significant for purposes
15 of determining the appropriate scope or
16 duration of countermeasures,

17 the administering authority may, in lieu of act-
18 ing under subparagraph (A), reinstitute pro-
19 ceedings under subsection (c) for purposes of is-
20 suing a new determination under that sub-
21 section.

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

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

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

7 “(B) in a proceeding under subsection (g), upon
8 the request of an interested party, may hold a hear-
9 ing in accordance with section 841(b) in connection
10 with that proceeding.

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

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

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

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

24 “(b) INITIATION.—The Trade Representative, after
25 consultation with the administering authority and the

1 Commission and obtaining the approval of the Parties
2 Group under the Shipbuilding Agreement, shall determine
3 whether to initiate an investigation described in subsection
4 (a).

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

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

14 “(2) INJURY TO INDUSTRY.—The Commission
15 shall determine whether an industry in the petition-
16 ing country is or has been materially injured by rea-
17 son of the sale of the subject vessel in the United
18 States.

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

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

23 “(2) by the administering authority and the
24 Commission, in making the determinations required
25 by subsection (c).

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

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

8 “(2) make such determinations and take such
9 other actions as are required by sections 806 and
10 807, as if affirmative determinations had been made
11 under subsections (a) and (b) of section 805.

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

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

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

23 “(g) ACCESS TO INFORMATION.—Section 843 shall
24 apply to investigations under this section, to the extent

1 specified by the Trade Representative, after consultation
2 with the administering authority and the Commission.

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

4 “(a) PETITION BY DOMESTIC INDUSTRY.—

5 “(1) With respect to the sale of a vessel to a
6 buyer in a Shipbuilding Agreement Party, any inter-
7 ested party who would be eligible to file a petition
8 under section 802(b)(1) with respect to the sale if
9 it had been to a United States buyer, if it has rea-
10 son to believe that—

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

13 “(B) an industry in the United States is or
14 has been materially injured, or is threatened
15 with material injury by reason of the sale of the
16 vessel;

17 may submit a petition to the Trade Representative
18 that alleges the elements referred to in subpara-
19 graphs (A) and (B) and requests the Trade Rep-
20 resentative to take action under subsection (b) of
21 this section on behalf of the domestic industry.

22 “(2) A petition submitted under paragraph (1)
23 shall contain such detailed information as the Trade
24 Representative may require in support of the allega-
25 tions in the petition.

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

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

15 “(2) At the request of the Trade Representa-
16 tive, the appropriate officers of the Department of
17 Commerce and the United States International
18 Trade Commission shall assist the Trade Represent-
19 ative in preparing the application under paragraph
20 (1).

21 “(c) CONSULTATION AFTER SUBMISSION OF APPLI-
22 CATION.—After submitting an application under sub-
23 section (b)(1), the Trade Representative shall seek con-
24 sultations with the appropriate authority of the Shipbuild-

1 ing Agreement Party regarding the request for injurious
2 pricing action.

3 “(d) ACTION UPON REFUSAL OF SHIPBUILDING
4 AGREEMENT PARTY TO ACT.—If the appropriate author-
5 ity of the Shipbuilding Agreement Party refuses to under-
6 take injurious pricing measures in response to a request
7 made therefor by the Trade Representative under sub-
8 section (b) of this section, the Trade Representative
9 promptly shall consult with the domestic industry on
10 whether action under any other law of the United States
11 is appropriate.

12 **“Subtitle B—Special Rules**

13 **“SEC. 821. EXPORT PRICE.**

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

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

3 “(1) increased by the amount of any import du-
4 ties imposed by the country of exportation which
5 have been rebated, or which have not been collected,
6 by reason of the exportation of the subject vessel,
7 and

8 “(2) reduced by—

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

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

18 “(C) all other expenses incidental to plac-
19 ing the vessel in condition for delivery to the
20 buyer.

21 **“SEC. 822. NORMAL VALUE.**

22 “(a) DETERMINATION.—In determining under this
23 title whether a subject vessel has been sold at less than
24 fair value, a fair comparison shall be made between the
25 export price and normal value of the subject vessel. In

1 order to achieve a fair comparison with the export price,
2 normal value shall be determined as follows:

3 “(1) DETERMINATION OF NORMAL VALUE.—

4 “(A) IN GENERAL.—The normal value of
5 the subject vessel shall be the price described in
6 subparagraph (B), at a time reasonably cor-
7 responding to the time of the sale used to deter-
8 mine the export price under section 821(a).

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

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

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

21 “(I) such price is representative,
22 and

23 “(II) the administering authority
24 does not determine that the particular
25 market situation in such other coun-

1 try prevents a proper comparison with
2 the export price.

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

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

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

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

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

22 “(3) USE OF CONSTRUCTED VALUE.—If the ad-
23 ministering authority determines that the normal
24 value of the subject vessel cannot be determined
25 under paragraph (1)(B) or (1)(C), then the normal

1 value of the subject vessel shall be the constructed
2 value of that vessel, as determined under subsection
3 (e).

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

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

10 “(A) reduced by—

11 “(i) the amount, if any, included in
12 the price described in paragraph (1)(B),
13 attributable to any costs, charges, and ex-
14 penses incident to bringing the foreign like
15 vessel from the shipyard to the place of de-
16 livery to the purchaser,

17 “(ii) the amount of any taxes imposed
18 directly upon the foreign like vessel or
19 components thereof which have been re-
20 bated, or which have not been collected, on
21 the subject vessel, but only to the extent
22 that such taxes are added to or included in
23 the price of the foreign like vessel, and

1 “(iii) the amount of all other expenses
2 incidental to placing the foreign like vessel
3 in condition for delivery to the buyer, and
4 “(B) increased or decreased by the amount
5 of any difference (or lack thereof) between the
6 export price and the price described in para-
7 graph (1)(B) (other than a difference for which
8 allowance is otherwise provided under this sec-
9 tion) that is established to the satisfaction of
10 the administering authority to be wholly or
11 partly due to—

12 “(i) physical differences between the
13 subject vessel and the vessel used in deter-
14 mining normal value, or

15 “(ii) other differences in the cir-
16 cumstances of sale.

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

18 The price described in paragraph (1)(B) shall also
19 be increased or decreased to make due allowance for
20 any difference (or lack thereof) between the export
21 price and the price described in paragraph (1)(B)
22 (other than a difference for which allowance is oth-
23 erwise made under this section) that is shown to be
24 wholly or partly due to a difference in level of trade

1 between the export price and normal value, if the
2 difference in level of trade—

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

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

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

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

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

19 “(1) DETERMINATION; SALES DISREGARDED.—

20 Whenever the administering authority has reason-
21 able grounds to believe or suspect that the sale of
22 the foreign like vessel under consideration for the
23 determination of normal value has been made at a
24 price which represents less than the cost of produc-
25 tion of the foreign like vessel, the administering au-

1 thority shall determine whether, in fact, such sale
2 was made at less than the cost of production. If the
3 administering authority determines that the sale was
4 made at less than the cost of production and was
5 not at a price which permits recovery of all costs
6 within 5 years, such sale may be disregarded in the
7 determination of normal value. Whenever such a sale
8 is disregarded, normal value shall be based on an-
9 other sale of a foreign like vessel in the ordinary
10 course of trade. If no sales made in the ordinary
11 course of trade remain, the normal value shall be
12 based on the constructed value of the subject vessel.

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

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

1 represents less than the cost of production of
2 the vessel.

3 “(B) RECOVERY OF COSTS.—If the price is
4 below the cost of production at the time of sale
5 but is above the weighted average cost of pro-
6 duction for the period of investigation, such
7 price shall be considered to provide for recovery
8 of costs within 5 years.

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

12 “(A) the cost of materials and of fabrica-
13 tion or other processing of any kind employed
14 in producing the foreign like vessel, during a
15 period which would ordinarily permit the pro-
16 duction of that vessel in the ordinary course of
17 business, and

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

22 For purposes of subparagraph (A), if the normal
23 value is based on the price of the foreign like vessel
24 sold in a country other than the exporting country,
25 the cost of materials shall be determined without re-

1 gard to any internal tax in the exporting country im-
2 posed on such materials or on their disposition
3 which are remitted or refunded upon exportation.

4 “(c) NONMARKET ECONOMY COUNTRIES.—

5 “(1) IN GENERAL.—If—

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

8 “(B) the administering authority finds that
9 available information does not permit the nor-
10 mal value of the subject vessel to be determined
11 under subsection (a),

12 the administering authority shall determine the nor-
13 mal value of the subject vessel on the basis of the
14 value of the factors of production utilized in produc-
15 ing the vessel and to which shall be added an
16 amount for general expenses and profit plus the cost
17 of expenses incidental to placing the vessel in a con-
18 dition for delivery to the buyer. Except as provided
19 in paragraph (2), the valuation of the factors of pro-
20 duction shall be based on the best available informa-
21 tion regarding the values of such factors in a market
22 economy country or countries considered to be ap-
23 propriate by the administering authority.

24 “(2) EXCEPTION.—If the administering author-
25 ity finds that the available information is inadequate

1 for purposes of determining the normal value of the
2 subject vessel under paragraph (1), the administer-
3 ing authority shall determine the normal value on
4 the basis of the price at which a vessel that is—

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

6 “(B) produced in one or more market
7 economy countries that are at a level of eco-
8 nomic development comparable to that of the
9 nonmarket economy country,

10 is sold in other countries, including the United
11 States.

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

16 “(A) hours of labor required,

17 “(B) quantities of raw materials employed,

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

20 “(D) representative capital cost, including
21 depreciation.

22 “(4) VALUATION OF FACTORS OF PRODUC-
23 TION.—The administering authority, in valuing fac-
24 tors of production under paragraph (1), shall utilize,
25 to the extent possible, the prices or costs of factors

1 of production in one or more market economy coun-
2 tries that are—

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

6 “(B) significant producers of comparable
7 vessels.

8 “(d) SPECIAL RULE FOR CERTAIN MULTINATIONAL
9 CORPORATIONS.—Whenever, in the course of an investiga-
10 tion under this title, the administering authority deter-
11 mines that—

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

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

19 “(3) the normal value of a foreign like vessel
20 produced in one or more of the facilities outside the
21 exporting country is higher than the normal value of
22 the foreign like vessel produced in the facilities lo-
23 cated in the exporting country,

24 the administering authority shall determine the normal
25 value of the subject vessel by reference to the normal value

1 at which a foreign like vessel is sold from one or more
2 facilities outside the exporting country. The administering
3 authority, in making any determination under this sub-
4 section, shall make adjustments for the difference between
5 the costs of production (including taxes, labor, materials,
6 and overhead) of the foreign like vessel produced in facili-
7 ties outside the exporting country and costs of production
8 of the foreign like vessel produced in facilities in the ex-
9 porting country, if such differences are demonstrated to
10 its satisfaction.

11 “(e) CONSTRUCTED VALUE.—

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

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

21 “(B)(i) the actual amounts incurred and
22 realized by the foreign producer of the subject
23 vessel for selling, general, and administrative
24 expenses, and for profits, in connection with the
25 production and sale of a foreign like vessel, in

1 the ordinary course of trade, in the domestic
2 market of the country of origin of the subject
3 vessel, or

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

7 “(I) the actual amounts incurred and
8 realized by the foreign producer of the sub-
9 ject vessel for selling, general, and admin-
10 istrative expenses, and for profits, in con-
11 nection with the production and sale of the
12 same general category of vessel in the do-
13 mestic market of the country of origin of
14 the subject vessel,

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

24 “(III) if data are not available under
25 subclause (I) or (II), the amounts incurred

1 and realized for selling, general, and ad-
2 ministrative expenses, and for profits,
3 based on any other reasonable method, ex-
4 cept that the amount allowed for profit
5 may not exceed the amount normally real-
6 ized by foreign producers (other than the
7 producer of the subject vessel) in connec-
8 tion with the sale of vessels in the same
9 general category of vessel as the subject
10 vessel in the domestic market of the coun-
11 try of origin of the subject vessel.

12 For purposes of this paragraph, the profit shall be
13 based on the average profit realized over a reason-
14 able period of time before and after the sale of the
15 subject vessel and shall reflect a reasonable profit
16 at the time of such sale. For purposes of the preced-
17 ing sentence, a ‘reasonable period of time’ shall not,
18 except where otherwise appropriate, exceed 6 months
19 before, or 6 months after, the sale of the subject
20 vessel. In calculating profit under this paragraph,
21 any distortion which would result in other than a
22 profit which is reasonable at the time of the sale
23 shall be eliminated.

24 “(2) COSTS AND PROFITS BASED ON OTHER
25 REASONABLE METHODS.—When costs and profits

1 are determined under paragraph (1)(B)(ii)(III), such
2 determination shall, except where otherwise appro-
3 priate, be based on appropriate export sales by the
4 producer of the subject vessel or, absent such sales,
5 to export sales by other producers of a foreign like
6 vessel or the same general category of vessel as the
7 subject vessel in the country of origin of the subject
8 vessel.

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

16 “(f) SPECIAL RULES FOR CALCULATION OF COST OF
17 PRODUCTION AND FOR CALCULATION OF CONSTRUCTED
18 VALUE.—For purposes of subsections (b) and (e)—

19 “(1) COSTS.—

20 “(A) IN GENERAL.—Costs shall normally
21 be calculated based on the records of the for-
22 eign producer of the subject vessel, if such
23 records are kept in accordance with the gen-
24 erally accepted accounting principles of the ex-
25 porting country and reasonably reflect the costs

1 associated with the production and sale of the
2 vessel. The administering authority shall con-
3 sider all available evidence on the proper alloca-
4 tion of costs, including that which is made
5 available by the foreign producer on a timely
6 basis, if such allocations have been historically
7 used by the foreign producer, in particular for
8 establishing appropriate amortization and de-
9 preciation periods, and allowances for capital
10 expenditures and other development costs.

11 “(B) NONRECURRING COSTS.—Costs shall
12 be adjusted appropriately for those non-
13 recurring costs that benefit current or future
14 production, or both.

15 “(C) STARTUP COSTS.—

16 “(i) IN GENERAL.—Costs shall be ad-
17 justed appropriately for circumstances in
18 which costs incurred during the time pe-
19 riod covered by the investigation are af-
20 fected by startup operations.

21 “(ii) STARTUP OPERATIONS.—Adjust-
22 ments shall be made for startup operations
23 only where—

24 “(I) a producer is using new pro-
25 duction facilities or producing a new

1 type of vessel that requires substantial
2 additional investment, and

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

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

16 “(iii) ADJUSTMENT FOR STARTUP OP-
17 ERATIONS.—The adjustment for startup
18 operations shall be made by substituting
19 the unit production costs incurred with re-
20 spect to the vessel at the end of the start-
21 up period for the unit production costs in-
22 curred during the startup period. If the
23 startup period extends beyond the period
24 of the investigation under this title, the ad-
25 ministering authority shall use the most

1 recent cost of production data that it rea-
2 sonably can obtain, analyze, and verify
3 without delaying the timely completion of
4 the investigation.

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

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

19 “(2) TRANSACTIONS DISREGARDED.—A trans-
20 action directly or indirectly between affiliated per-
21 sons may be disregarded if, in the case of any ele-
22 ment of value required to be considered, the amount
23 representing that element does not fairly reflect the
24 amount usually reflected in sales of a like vessel in
25 the market under consideration. If a transaction is

1 disregarded under the preceding sentence and no
2 other transactions are available for consideration,
3 the determination of the amount shall be based on
4 the information available as to what the amount
5 would have been if the transaction had occurred be-
6 tween persons who are not affiliated.

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

19 **“SEC. 823. CURRENCY CONVERSION.**

20 “(a) IN GENERAL.—In an injurious pricing proceed-
21 ing under this title, the administering authority shall con-
22 vert foreign currencies into United States dollars using the
23 exchange rate in effect on the date of sale of the subject
24 vessel, except that if it is established that a currency
25 transaction on forward markets is directly linked to a sale

1 under consideration, the exchange rate specified with re-
2 spect to such foreign currency in the forward sale agree-
3 ment shall be used to convert the foreign currency.

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

15 **“Subtitle C—Procedures**

16 **“SEC. 841. HEARINGS.**

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

22 “(b) PROCEDURES.—Any hearing required or per-
23 mitted under this title shall be conducted after notice pub-
24 lished in the Federal Register, and a transcript of the
25 hearing shall be prepared and made available to the public.

1 The hearing shall not be subject to the provisions of sub-
2 chapter II of chapter 5 of title 5, United States Code, or
3 to section 702 of such title.

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

5 **AVAILABLE.**

6 “(a) IN GENERAL.—If—

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

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

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

13 “(B) fails to provide such information by
14 the deadlines for the submission of the informa-
15 tion or in the form and manner requested, sub-
16 ject to subsections (b)(1) and (d) of section
17 844,

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

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

23 the administering authority and the Commission
24 shall, subject to section 844(c), use the facts other-

1 wise available in reaching the applicable determina-
2 tion under this title.

3 “(b) ADVERSE INFERENCES.—If the administering
4 authority or the Commission (as the case may be) finds
5 that an interested party has failed to cooperate by not act-
6 ing to the best of its ability to comply with a request for
7 information from the administering authority or the Com-
8 mission, the administering authority or the Commission
9 (as the case may be), in reaching the applicable determina-
10 tion under this title, may use an inference that is adverse
11 to the interests of that party in selecting from among the
12 facts otherwise available. Such adverse inference may in-
13 clude reliance on information derived from—

14 “(1) the petition, or

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

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

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

2 “(a) INFORMATION GENERALLY MADE AVAIL-
3 ABLE.—

4 “(1) PROGRESS OF INVESTIGATION REPORTS.—

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

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

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

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

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

1 “(3) SUMMARIES; NONPROPRIETARY SUBMIS-
2 SIONS.—The administering authority and the Com-
3 mission shall disclose—

4 “(A) any proprietary information received
5 in the course of a proceeding under this title if
6 it is disclosed in a form which cannot be associ-
7 ated with, or otherwise be used to identify, op-
8 erations of a particular person, and

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

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

22 “(b) PROPRIETARY INFORMATION.—

23 “(1) PROPRIETARY STATUS MAINTAINED.—

24 “(A) IN GENERAL.—Except as provided in
25 subsection (a)(4) and subsection (c), informa-

1 tion submitted to the administering authority or
2 the Commission which is designated as propri-
3 etary by the person submitting the information
4 shall not be disclosed to any person without the
5 consent of the person submitting the informa-
6 tion, other than—

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

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

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

23 “(i) either—

24 “(I) a nonproprietary summary
25 in sufficient detail to permit a reason-

1 able understanding of the substance
2 of the information submitted in con-
3 fidence, or

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

9 “(ii) either—

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

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

22 “(2) UNWARRANTED DESIGNATION.—If the ad-
23 ministering authority or the Commission determines,
24 on the basis of the nature and extent of the informa-
25 tion or its availability from public sources, that des-

1 ignation of any information as proprietary is unwar-
2 ranted, then it shall notify the person who submitted
3 it and ask for an explanation of the reasons for the
4 designation. Unless that person persuades the ad-
5 ministering authority or the Commission that the
6 designation is warranted, or withdraws the designa-
7 tion, the administering authority or the Commission,
8 as the case may be, shall return it to the party sub-
9 mitting it. In a case in which the administering au-
10 thority or the Commission returns the information
11 to the person submitting it, the person may there-
12 after submit other material concerning the subject
13 matter of the returned information if the submission
14 is made within the time otherwise provided for sub-
15 mitting such material.

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

18 “(1) DISCLOSURE BY ADMINISTERING AUTHOR-
19 ITY OR COMMISSION.—

20 “(A) IN GENERAL.—Upon receipt of an
21 application (before or after receipt of the infor-
22 mation requested) which describes in general
23 terms the information requested and sets forth
24 the reasons for the request, the administering
25 authority or the Commission shall make all

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

1 “(B) PROTECTIVE ORDER.—The protective
2 order under which information is made avail-
3 able shall contain such requirements as the ad-
4 ministering authority or the Commission may
5 determine by regulation to be appropriate. The
6 administering authority and the Commission
7 shall provide by regulation for such sanctions as
8 the administering authority and the Commis-
9 sion determine to be appropriate, including dis-
10 barment from practice before the agency.

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

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

20 “(ii) if—

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

24 “(II) the information is unusu-
25 ally voluminous or complex,

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

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

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

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

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

1 administering authority shall return the infor-
2 mation, and any nonconfidential summary
3 thereof, to the person submitting the informa-
4 tion and summary and shall not consider either.

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

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

4 “(B) the person on whose behalf the infor-
5 mation is requested is an interested party who
6 is a party to the investigation in connection
7 with which the information was obtained or de-
8 veloped, and

9 “(C) the party which submitted the infor-
10 mation to which the request relates has been
11 notified, in advance of the hearing, of the re-
12 quest made under this section and of its right
13 to appear and be heard.

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

1 subject to protective order, except that a nonconfidential
2 summary thereof shall be served upon all other interested
3 parties who are parties to the proceeding.

4 “(e) INFORMATION RELATING TO VIOLATIONS OF
5 PROTECTIVE ORDERS AND SANCTIONS.—The administer-
6 ing authority and the Commission may withhold from dis-
7 closure any correspondence, private letters of reprimand,
8 settlement agreements, and documents and files compiled
9 in relation to investigations and actions involving a viola-
10 tion or possible violation of a protective order issued under
11 subsection (c), and such information shall be treated as
12 information described in section 552(b)(3) of title 5, Unit-
13 ed States Code.

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

22 “(g) PUBLICATION OF DETERMINATIONS; REQUIRE-
23 MENTS FOR FINAL DETERMINATIONS.—

24 “(1) IN GENERAL.—Whenever the administer-
25 ing authority makes a determination under section

1 802 whether to initiate an investigation, or the ad-
2 ministering authority or the Commission makes a
3 preliminary determination under section 803, a final
4 determination under section 805, a determination
5 under subsection (b), (c), (d), (e)(3)(B)(ii), (g), or
6 (i) of section 807, or a determination to suspend an
7 investigation under this title, the administering au-
8 thority or the Commission, as the case may be, shall
9 publish the facts and conclusions supporting that de-
10 termination, and shall publish notice of that deter-
11 mination in the Federal Register.

12 “(2) CONTENTS OF NOTICE OR DETERMINA-
13 TION.—The notice or determination published under
14 paragraph (1) shall include, to the extent applica-
15 ble—

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

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

21 “(ii) a description sufficient to iden-
22 tify the subject vessel (including type, pur-
23 pose, and size),

24 “(iii) with respect to an injurious pric-
25 ing charge, the injurious pricing margin

1 established and a full explanation of the
2 methodology used in establishing such
3 margin,

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

8 “(v) the primary reasons for the de-
9 termination, and

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

12 “(i) considerations relevant to the de-
13 termination of injury, and

14 “(ii) the primary reasons for the de-
15 termination.

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

19 “(A) the administering authority shall in-
20 clude in a final determination under section 805
21 or 807(c) an explanation of the basis for its de-
22 termination that addresses relevant arguments,
23 made by interested parties who are parties to
24 the investigation, concerning the establishment

1 of the injurious pricing charge with respect to
2 which the determination is made, and

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

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

11 “(a) CERTIFICATION OF SUBMISSIONS.—Any person
12 providing factual information to the administering author-
13 ity or the Commission in connection with a proceeding
14 under this title on behalf of the petitioner or any other
15 interested party shall certify that such information is
16 accurate and complete to the best of that person’s
17 knowledge.

18 “(b) DIFFICULTIES IN MEETING REQUIREMENTS.—

19 “(1) NOTIFICATION BY INTERESTED PARTY.—

20 If an interested party, promptly after receiving a re-
21 quest from the administering authority or the Com-
22 mission for information, notifies the administering
23 authority or the Commission (as the case may be)
24 that such party is unable to submit the information
25 requested in the requested form and manner, to-

1 gether with a full explanation and suggested alter-
2 native forms in which such party is able to submit
3 the information, the administering authority or the
4 Commission (as the case may be) shall consider the
5 ability of the interested party to submit the informa-
6 tion in the requested form and manner and may
7 modify such requirements to the extent necessary to
8 avoid imposing an unreasonable burden on that
9 party.

10 “(2) ASSISTANCE TO INTERESTED PARTIES.—

11 The administering authority and the Commission
12 shall take into account any difficulties experienced
13 by interested parties, particularly small companies,
14 in supplying information requested by the admin-
15 istering authority or the Commission in connection
16 with investigations under this title, and shall provide
17 to such interested parties any assistance that is
18 practicable in supplying such information.

19 “(c) DEFICIENT SUBMISSIONS.—If the administering

20 authority or the Commission determines that a response
21 to a request for information under this title does not com-
22 ply with the request, the administering authority or the
23 Commission (as the case may be) shall promptly inform
24 the person submitting the response of the nature of the
25 deficiency and shall, to the extent practicable, provide that

1 person with an opportunity to remedy or explain the defi-
2 ciency in light of the time limits established for the com-
3 pletion of investigations or reviews under this title. If that
4 person submits further information in response to such
5 deficiency and either—

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

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

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

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

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

23 “(2) the information can be verified,

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

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

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

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

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

1 805 or 807, shall cease collecting information and shall
2 provide the parties with a final opportunity to comment
3 on the information obtained by the administering author-
4 ity or the Commission (as the case may be) upon which
5 the parties have not previously had an opportunity to com-
6 ment. Comments containing new factual information shall
7 be disregarded.

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

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

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

15 “(1) ADVISORY REPORT.—If a dispute settle-
16 ment panel under the Shipbuilding Agreement finds
17 in a report that an action by the Commission in con-
18 nection with a particular proceeding under this title
19 is not in conformity with the obligations of the Unit-
20 ed States under the Shipbuilding Agreement, the
21 Trade Representative may request the Commission
22 to issue an advisory report on whether this title per-
23 mits the Commission to take steps in connection
24 with the particular proceeding that would render its
25 action not inconsistent with the findings of the panel

1 concerning those obligations. The Trade Representa-
2 tive shall notify the Committee on Ways and Means
3 of the House of Representatives and the Committee
4 on Finance of the Senate of such request.

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

9 “(3) CONSULTATIONS ON REQUEST FOR COM-
10 MISSION DETERMINATION.—If a majority of the
11 Commissioners issues an affirmative report under
12 paragraph (1), the Trade Representatives shall con-
13 sult with the congressional committees listed in
14 paragraph (1) concerning the matter.

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

1 days after the request from the Trade Representa-
2 tive is made.

3 “(5) CONSULTATIONS ON IMPLEMENTATION OF
4 COMMISSION DETERMINATION.—The Trade Rep-
5 resentative shall consult with the congressional com-
6 mittees listed in paragraph (1) before the Commis-
7 sion’s determination under paragraph (4) is imple-
8 mented.

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

17 “(b) ACTION BY ADMINISTERING AUTHORITY.—

18 “(1) CONSULTATIONS WITH ADMINISTERING
19 AUTHORITY AND CONGRESSIONAL COMMITTEES.—
20 Promptly after a report or other determination by a
21 dispute settlement panel under the Shipbuilding
22 Agreement is issued that contains findings that—

23 “(A) an action by the administering au-
24 thority in a proceeding under this title is not in

1 conformity with the obligations of the United
2 States under the Shipbuilding Agreement,

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

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

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

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

16 “(2) DETERMINATION BY ADMINISTERING AU-
17 THORITY.—Notwithstanding any other provision of
18 this title, the administering authority shall, in re-
19 sponse to a written request from the Trade Rep-
20 resentative, issue a determination, or an amendment
21 to or suspension of an injurious pricing or counter-
22 measure order, as the case may be, in connection
23 with the particular proceeding that would render the
24 administering authority’s action described in para-

1 graph (1) not inconsistent with the findings of the
2 panel.

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

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

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

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

22 “(5) IMPLEMENTATION OF DETERMINATION.—
23 The Trade Representative may, after consulting with
24 the administering authority and the congressional
25 committees under paragraph (4), direct the admin-

1 administering authority to implement, in whole or in part,
2 the determination, amendment, or suspension made
3 under paragraph (2). The administering authority
4 shall publish notice of such implementation in the
5 Federal Register.

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

14 **“Subtitle D—Definitions**

15 **“SEC. 861. DEFINITIONS.**

16 “For purposes of this subtitle:

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

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

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

9 “(4) INDUSTRY.—

10 “(A) IN GENERAL.—Except as used in
11 section 808, the term ‘industry’ means the pro-
12 ducers as a whole of a domestic like vessel, or
13 those producers whose collective capability to
14 produce a domestic like vessel constitutes a
15 major proportion of the total domestic capabil-
16 ity to produce a domestic like vessel.

17 “(B) PRODUCER.—A ‘producer’ of a do-
18 mestic like vessel includes an entity that is pro-
19 ducing the domestic like vessel and an entity
20 with the capability to produce the domestic like
21 vessel.

22 “(C) CAPABILITY TO PRODUCE A DOMES-
23 TIC LIKE VESSEL.—A producer has the ‘capa-
24 bility to produce a domestic like vessel’ if it is
25 capable of producing a domestic like vessel with

1 its present facilities or could adapt its facilities
2 in a timely manner to produce a domestic like
3 vessel.

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

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

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

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

24 “(III) a third party directly or indi-
25 rectly controls the domestic producer and

1 the foreign producer, seller, or United
2 States buyer, or

3 “(IV) the domestic producer and the
4 foreign producer, seller, or United States
5 buyer directly or indirectly control a third
6 party and there is reason to believe that
7 the relationship causes the domestic pro-
8 ducer to act differently than a nonrelated
9 producer.

10 For purposes of this subparagraph, a party
11 shall be considered to directly or indirectly con-
12 trol another party if the party is legally or oper-
13 ationally in a position to exercise restraint or
14 direction over the other party.

15 “(E) PRODUCT LINES.—In an investiga-
16 tion under this title, the effect of the sale of the
17 subject vessel shall be assessed in relation to
18 the United States production (or production ca-
19 pability) of a domestic like vessel if available
20 data permit the separate identification of pro-
21 duction (or production capability) in terms of
22 such criteria as the production process or the
23 producer’s profits. If the domestic production
24 (or production capability) of a domestic like
25 vessel has no separate identity in terms of such

1 criteria, then the effect of the sale of the sub-
2 ject vessel shall be assessed by the examination
3 of the production (or production capability) of
4 the narrowest group or range of vessels, which
5 includes a domestic like vessel, for which the
6 necessary information can be provided.

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

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

18 “(A) A United States citizen.

19 “(B) A juridical entity, including any cor-
20 poration, company, association, or other organi-
21 zation, that is legally constituted under the laws
22 and regulations of the United States or a politi-
23 cal subdivision thereof, regardless of whether
24 the entity is organized for pecuniary gain, pri-

1 vately or government owned, or organized with
2 limited or unlimited liability.

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

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

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

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

17 “(7) OWNERSHIP INTEREST.—An ‘ownership
18 interest’ in a vessel includes any contractual or pro-
19 prietary interest which allows the beneficiary or
20 beneficiaries of such interest to take advantage of
21 the operation of the vessel in a manner substantially
22 comparable to the way in which an owner may bene-
23 fit from the operation of the vessel. In determining
24 whether such substantial comparability exists, the
25 administering authority shall consider—

1 “(A) the terms and circumstances of the
2 transaction which conveys the interest,

3 “(B) commercial practice within the indus-
4 try,

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

8 “(D) whether in practice there is a likeli-
9 hood that the beneficiary or beneficiaries of
10 such interests will take advantage of and the
11 risk for the operation of the vessel for a signifi-
12 cant part of the life-time of the vessel.

13 “(8) VESSEL.—

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

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

23 “(ii) a tug of 365 kilowatts or more,

1 that is produced in a Shipbuilding Agreement
2 Party or a country that is not a Shipbuilding
3 Agreement Party and not a WTO member.

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

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

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

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

23 “(C) SELF-PROPELLED SEAGOING VES-
24 SEL.—A vessel is ‘self-propelled seagoing’ if its
25 permanent propulsion and steering provide it all

1 the characteristics of self-navigability in the
2 high seas.

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

8 “(E) MILITARY RESERVE VESSEL.—A
9 ‘military reserve vessel’ is a military vessel con-
10 structed under any of the programs enumerated
11 in section 120 of the OECD Shipbuilding
12 Agreement Act.

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

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

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

1 “(12) SAME GENERAL CATEGORY OF VESSEL.—

2 The term ‘same general category of vessel’ means a
3 vessel of the same type and purpose as the subject
4 vessel, but of a significantly different size.

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

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

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

14 “(16) MATERIAL INJURY.—

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

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

21 “(i) shall consider—

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

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

1 “(III) the impact of the sale of
2 the subject vessel on domestic produc-
3 ers of a domestic like vessel, but only
4 in the context of production oper-
5 ations within the United States, and
6 “(ii) may consider such other eco-
7 nomic factors as are relevant to the deter-
8 mination regarding whether there is or has
9 been material injury by reason of the sale
10 of the subject vessel.

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

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

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

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

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

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

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

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

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

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

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

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

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

20 “(D) STANDARD FOR DETERMINATION.—

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

1 “(E) THREAT OF MATERIAL INJURY.—

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

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

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

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

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

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

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

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

22 “(ii) BASIS FOR DETERMINATION.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 “(20) NONMARKET ECONOMY COUNTRY.—

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

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

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

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

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

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

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

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

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

22 “(C) DETERMINATION IN EFFECT.—

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

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

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

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

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

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

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

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

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

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

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

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

21 “(C) Partners.

22 “(D) Employer and employee.

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

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

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

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

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

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

15 “(28) INJURIOUS PRICING MARGIN.—

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

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

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

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

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

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

23 “(30) ANTIDUMPING.—

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

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

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

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

15 **SEC. 104. ENFORCEMENT OF COUNTERMEASURES.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 **SEC. 105. JUDICIAL REVIEW IN INJURIOUS PRICING AND**
2 **COUNTERMEASURE PROCEEDINGS.**

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

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

8 “(a) REVIEW OF DETERMINATION.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 “(b) STANDARDS OF REVIEW.—

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

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

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

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

3 “(2) RECORD FOR REVIEW.—

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

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

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

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

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

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

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

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

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

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

21 (b) CONFORMING AMENDMENTS.—

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

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

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

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

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

13 **PART 2—OTHER PROVISIONS**

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

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

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

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

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

3 “(2) tugs of 365 kilowatts or more.

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

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

9 No person other than the United States—

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

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

21 **SEC. 113. IMPLEMENTING REGULATIONS.**

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

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

3 **SEC. 114. AMENDMENTS TO THE MERCHANT MARINE ACT,**
4 **1936.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (6) Section 901(b)(1) (46 App. U.S.C.
2 1241(b)(1)) is amended by striking the third sen-
3 tence and inserting the following: “For purposes of
4 this section, the term ‘privately owned United
5 States-flag commercial vessels’ shall be deemed to
6 include—

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

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

21 The term ‘privately owned United States-flag commercial
22 vessels’ shall also be deemed to include any cargo vessel
23 that so qualified pursuant to section 615 of this Act or
24 this paragraph before the date on which the Shipbuilding
25 Trade Agreement Act takes effect. The term ‘privately

1 owned United States-flag commercial vessels’ shall not be
2 deemed to include any liquid bulk cargo vessel that does
3 not meet the requirements of section 3703a of title 46,
4 United States Code.”.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (C) Section 1104B(b) (46 App. U.S.C.
21 1274a(b)) is amended by striking the period at
22 the end and inserting the following: “, except
23 that, with respect to Export Credit Understand-
24 ing vessels and Shipbuilding Agreement vessels,
25 the Secretary may establish by rule, regulation,

1 or procedure a uniform percentage that the
2 Secretary determines to be consistent with obli-
3 gations of the United States under the Export
4 Credit Understanding or the Shipbuilding
5 Agreement, as the case may be.”.

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

7 (a) **EFFECTIVE DATE.**—

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

15 (A) before January 1, 2002, or

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

19 (2) **UNUSUAL CIRCUMSTANCES.**—This para-
20 graph applies in a case in which unusual cir-
21 cumstances beyond the control of the parties con-
22 cerned prevent the delivery of a vessel by January
23 1, 2002. As used in this paragraph, the term “un-
24 usual circumstances” means acts of God (other than
25 ordinary storms or inclement weather conditions)

1 labor strikes, acts of sabotage, explosions, fires, or
2 vandalism, and similar circumstances.

3 (b) MATCHING COMPETITION BY NON-MEMBERS.—

4 Section 114 does not prevent the Secretary of Transpor-
5 tation from exercising his full discretion and authority
6 under title XI of the Merchant Marine Act, 1936, consist-
7 ent with clause 8 and Annex III of the Export Credit Un-
8 derstanding, to assist United States shipyards in meeting
9 unfairly subsidized bids by foreign yards in countries not
10 covered by the disciplines of the OECD Shipbuilding
11 Agreement.

12 **SEC. 116. WITHDRAWAL FROM AGREEMENT.**

13 (a) WITHDRAWAL.—

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

22 (2) TONNAGE OF NEW CONSTRUCTION IN WITH-
23 DRAWING PARTIES.—This paragraph applies if the
24 combined gross tonnage of new Shipbuilding Agree-
25 ment vessels that were constructed in all Shipbuild-

1 ing Agreement Parties who have given notice to
2 withdraw from the Shipbuilding Agreement, and
3 that were delivered in the calendar year preceding
4 the calendar year in which the notice is given, is 15
5 percent or more of the gross tonnage of new Ship-
6 building Agreement vessels that were constructed in
7 all Shipbuilding Agreement Parties and were deliv-
8 ered in the calendar year preceding the calendar
9 year in which the notice is given.

10 (3) TERMINATION OF WITHDRAWAL.—If a
11 Shipbuilding Agreement Party described in para-
12 graph (2) takes action to terminate its withdrawal
13 from the Shipbuilding Agreement, so that paragraph
14 (2) would not apply if that Party had not given the
15 notice to withdraw, the President may take the nec-
16 essary steps to terminate the notice of withdrawal of
17 the United States from the Shipbuilding Agreement.

18 (b) REINSTATEMENT OF LAWS.—If the United
19 States withdraws from the Shipbuilding Agreement, on
20 the date on which the withdrawal becomes effective, the
21 amendments made by section 114 cease to have effect, and
22 the provisions of law amended by section 114 shall be ef-
23 fective, on and after such date, as if this Act had not been
24 enacted.

1 **SEC. 117. MONITORING AND ENFORCEMENT.**

2 (a) IN GENERAL.—The United States Trade Rep-
3 resentative shall establish a program to monitor the com-
4 pliance of Shipbuilding Agreement Parties with their obli-
5 gations under the Shipbuilding Agreement. This program
6 should include—

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

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

13 (3) consultation with United States embassies
14 located in countries that are Shipbuilding Agreement
15 Parties to assist in obtaining information on policies
16 and practices that is publicly available in those coun-
17 tries;

18 (4) regular consultations with representatives of
19 industry, labor, and other interested parties regard-
20 ing policies and practices of Shipbuilding Agreement
21 Parties and of other countries with significant com-
22 mercial shipbuilding industries;

23 (5) annual publication of a notice in the Fed-
24 eral Register affording an opportunity for interested
25 parties to comment on the implementation of the
26 Agreement; and

1 (6) the taking of any other appropriate action
2 to monitor compliance of Shipbuilding Agreement
3 Parties.

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

8 (1) the activities undertaken as part of its mon-
9 itoring program;

10 (2) the results of its consultations under sub-
11 section (a)(4) above; and

12 (3) compliance with the provisions of the Ship-
13 building Agreement.

14 (c) ACTION IF VIOLATION.—If the United States
15 Trade Representative receives information including infor-
16 mation provided by representatives of industry, labor, and
17 other interested parties, indicating that a Shipbuilding
18 Agreement Party is in material violation of the Shipbuild-
19 ing Agreement in a manner that is detrimental to the in-
20 terests of the United States, the United States Trade Rep-
21 resentative should use vigorously the consultation and, if
22 the matter is not otherwise resolved, the dispute settle-
23 ment procedures provided for under the Shipbuilding
24 Agreement to redress the situation.

1 **SEC. 118. JONES ACT AND RELATED LAWS NOT AFFECTED.**

2 (a) IN GENERAL.—Nothing in the Shipbuilding
3 Agreement shall be construed to amend, alter, or modify
4 in any manner the Merchant Marine Act, 1920 (46 App.
5 U.S.C. 861 et. seq.), the Act of June 19, 1886 (46 App.
6 U.S.C. 289), or any other provision of law set forth in
7 Accompanying Note 2 to Annex II to the Shipbuilding
8 Agreement; nor shall the Shipbuilding Agreement under-
9 mine the operation or administration of these statutes or
10 prevent them from achieving their objectives.

11 (b) WITHDRAWAL OF GATT CONCESSIONS.—The
12 Shipbuilding Agreement shall not provide any mechanism
13 for withdrawal of concessions under GATT 1994 because
14 of the maintenance or operation of the coastwise trade
15 laws of the United States.

16 (c) ANNUAL REVIEW.—The Secretary of Transpor-
17 tation shall review annually the impact, if any, of the
18 Agreement on the operation or implementation of the stat-
19 utes identified in subsection (a), shall consult with the
20 United States Trade Representative, Department of De-
21 fense, U.S. industry and labor, and other interested par-
22 ties, and shall report to the President. If the President
23 determines that the implementation of the Agreement is
24 significantly undermining the administration or operation
25 of these statutes or significantly impeding them from
26 achieving their objectives, the President shall give notice

1 of intent to withdraw from the Agreement pursuant to Ar-
2 ticle 14 of the Agreement. The authorization and imple-
3 mentation of responsive measures, under the provisions of
4 paragraph 2.e of Annex II B of the Agreement by any
5 Shipbuilding Agreement Party shall be taken into account
6 in making this determination.

7 **SEC. 119. EXPANDING MEMBERSHIP IN THE SHIPBUILDING**
8 **AGREEMENT.**

9 The United States Trade Representative shall mon-
10 itor the impact of the policies and practices pursued by
11 countries that are not Shipbuilding Agreement Parties,
12 and shall seek the prompt accession to the Shipbuilding
13 Agreement of countries that have significant commercial
14 shipbuilding and repair industries, including, but not lim-
15 ited to Australia, the People's Republic of China, Poland,
16 Romania, the Russian Federation, and Ukraine. The
17 United States Trade Representative shall report to Con-
18 gress annually on any impact and on the success of efforts
19 to expand the membership of the Agreement. When it is
20 determined that the continuing failure of a country to
21 adopt the disciplines of the Agreement is undermining the
22 effectiveness of the Agreement and placing U.S. shipyards
23 at a competitive disadvantage, the United States Trade
24 Representative shall act vigorously to redress this situa-
25 tion, making appropriate use of the mechanisms at its dis-

1 posal under United States trade laws as well as the oppor-
2 tunities for consultations and dispute settlement action
3 under any appropriate international organization, both bi-
4 laterally and in concert with other Shipbuilding Agree-
5 ment Parties.

6 **SEC. 120. PROTECTION OF UNITED STATES SECURITY IN-**
7 **TERESTS.**

8 (a) IN GENERAL.—Nothing in the Shipbuilding
9 Agreement shall be construed to prevent the United States
10 from taking any action which the United States considers
11 necessary for the protection of essential security interests.

12 (b) MILITARY VESSELS AND REQUIREMENTS.—
13 Nothing in the Agreement and in this Act shall be con-
14 strued to amend or modify any laws or programs relating
15 to U.S. military vessels (including military reserve vessels)
16 or the military requirements of the United States. As used
17 in this section—

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

22 (2) MILITARY RESERVE VESSELS.—“Military
23 reserve vessels” are military vessels, as defined in
24 paragraph (1), that are either owned directly by the
25 Department of Defense or leased or chartered by the

1 Department of Defense for military use, including
2 for the purpose of supporting the United States
3 Armed Forces in a contingency. Military Reserve
4 Vessels include:

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

9 (B) “Surge (Phase) Vessels”, which are
10 vessels equipped with military features or which
11 meet military specifications, and which are
12 dedicated to the provision of logistical support
13 for the Armed Forces on a contingency, includ-
14 ing “Fast Sealift Ships” (FSS), “Ready Re-
15 serve Force” (RRF) vessels, and “Large Me-
16 dium Speed Roll-on/roll-off” (LMSR) vessels;
17 and

18 (C) “Sustainment (Phase) Vessels”, which
19 are privately owned merchant marine vessels
20 and are chartered on a long-term basis by the
21 Department of Defense for the purpose of car-
22 rying military cargo or personnel including the
23 “Military Sealift Command Controlled Fleet”;
24 and

1 (3) MILITARY REQUIREMENTS.—“Laws or pro-
2 grams relating to the military requirements of the
3 United States” include any program which, consist-
4 ent with Article 2(2) of the Agreement, provides for
5 modifications made or features added to vessels to
6 make them more capable of carrying military equip-
7 ment in a contingency provided that the vessels con-
8 structed or modified by such programs are under
9 long-term contractual arrangement with the Depart-
10 ment of Defense for their call up in the event of con-
11 tingency.

12 **SEC. 121. DEFINITIONS.**

13 Except as otherwise provided, as used in this part—

14 (1) the terms “Shipbuilding Agreement”,
15 “Shipbuilding Agreement Party”, “Shipbuilding
16 Agreement Vessels”, and “Export Credit Under-
17 standing” have the meanings given those terms in
18 subsections (h), (i), (j), and (k), respectively, of sec-
19 tion 905 of the Merchant Marine Act, 1936, as
20 added by section 114(7) of this Act; and

21 (2) the term “GATT 1994” has the meaning
22 given that term in section 2 of the Uruguay Round
23 Agreements Act.

1 **PART 3—EFFECTIVE DATE**

2 **SEC. 131. EFFECTIVE DATE.**

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

○