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EXTENSION OF FREE TRADE BENEFITS TO THE WEST BANK AND GAZA STRIP; OECD SHIPBUILDING AGREEMENT ACT; AND REAUTHORIZATION OF THE GENERALIZED SYSTEM OF PREFERENCES PROGRAM

MAY 13, 1996.—Ordered to be printed

Mr. ROTH, from the Committee on Finance,
submitted the following

REPORT

[To accompany H.R. 3074]

[Including cost estimate of the Congressional Budget Office]

The Committee on Finance, to which was referred the bill (H.R. 3074) to amend the United States-Israel Free Trade Area Implementation Act of 1985 to provide the President with additional proclamation authority with respect to articles of the West Bank or Gaza Strip or a qualifying industrial zone, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill, as amended, do pass.

I. SUMMARY OF H.R. 3074, AS AMENDED

H.R. 3074, as amended, contains four titles. Title I includes the original House bill language to amend the United States-Israel Free Trade Area Implementation Act of 1985 to provide the President with additional proclamation authority with respect to articles of the West Bank or Gaza Strip or a qualifying industrial zone, encompassing portions of the territory of Israel and Jordan or Israel and Egypt. Title II approves and implements the Agreement Respecting Normal Competitive Conditions in the Commercial Shipbuilding and Repair Industry, resulting from negotiations conducted under the auspices of the Organization for Economic Cooperation and Development, which was signed on December 21, 1994. Title III reauthorizes the Generalized System of Preferences program for a period of one year, nine months, and 12 days, retroactive to August 1, 1995, with an effective date for the renewal of

October 1, 1996. Finally, title IV contains revenue offsets for the bill, which include provisions relating to the tax treatment of foreign trusts and the imposition of penalties for failure to meet foreign shipping income tax reporting requirements. H.R. 3074, as amended, modifies the title of the original House bill to reflect these changes.

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

A. BACKGROUND

Section 3 of the United States-Israel Free Trade Area Implementation Act approved a free trade area between the United States and Israel. Products of the West Bank and the Gaza Strip that were marked as products of Israel were accorded preferential tariff treatment as provided for under the United States-Israel Free Trade Area Implementation Act. Following implementation of the 1994 Declaration of Principles by Israel and the Palestine Liberation Organization (PLO), on behalf of the Palestinian people, products of the West Bank and the Gaza Strip were marked as such and no longer qualified for preferential tariff treatment as products of Israel. Instead, such products currently enter the United States under normal most-favored-nation (MFN) tariff rates.

In connection with the Blair House Communique of February 12, 1995, the United States proposed to extend duty free treatment to products from the West Bank, the Gaza Strip, and industrial zones along the border of Israel and Egypt and Israel and Jordan. In a letter of October 17, 1995, the Palestinian Authority agreed to accord U.S. products duty free access to the West Bank and the Gaza Strip, to prevent illegal transshipment of goods not qualifying for duty free access, and to support all efforts to end the Arab economic boycott of Israel.

B. SUMMARY OF TITLE I

Title I, section 1 of H.R. 3074, as amended, would amend the United States-Israel Free Trade Area Implementation Act (the "Act") by adding a new section 9 to the Act. This new section would provide the President authority to proclaim the modification or elimination of any existing duty on articles that are produced in and imported from the West Bank, the Gaza Strip, or a qualifying industrial zone. The new section 9 of the Act also applies the same rule of origin requirements to products from the West Bank, the Gaza Strip, and qualifying industrial zones as are already applicable to products from Israel.

Finally, the new section 9 of the Act defines "qualifying industrial zone" as any area designated as such by the President, which encompasses portions of the territory of Israel and Jordan or Israel and Egypt and which local authorities designate as an enclave where merchandise may enter without payment of duty or excise tax.

C. GENERAL EXPLANATION

1. Congressional Action

On December 12, 1995, Senators Brown and Feinstein introduced S. 1469, which was referred to the Committee on Finance. This bill would give the President authority to provide imports from the West Bank, the Gaza Strip, and qualifying industrial zones (encompassing portions of the territory of Israel and Jordan or Israel and Egypt) the same tariff treatment as articles from Israel under the U.S.-Israel Free Trade Agreement (U.S.-Israel FTA). On April 16, 1996, the House of Representatives passed H.R. 3074, which is substantially similar legislation to S. 1469. H.R. 3074 was referred to the Committee on Finance on April 17, 1996.

2. Trade with the West Bank and Gaza Strip

There is a lack of reliable data on the volume and value of trade between the United States and the West Bank/Gaza Strip, in part, because exports to and imports from the West Bank and Gaza Strip are transshipped through Israel. Nonetheless, it is clear that the amount of trade is comparatively insignificant in terms of total U.S. trade with the Middle East. According to U.S. Department of Commerce data, leading U.S. exports to the West Bank and Gaza Strip include machinery, mechanical appliances, and rice. Principal imports from the West Bank and Gaza Strip include textiles and vegetable products.

3. Committee Views

It is the view of the Committee that products from the West Bank and the Gaza Strip should not be subjected to less favorable treatment now than those products received before the signing of the Declaration of Principles by the Government of Israel and the PLO. Accordingly, title I of H.R. 3074 is intended to offer to products from the West Bank, the Gaza Strip, and qualifying industrial zones (located between Israel and Jordan or Israel and Egypt) the same tariff treatment as is currently offered to products from Israel under the U.S.-Israel FTA. The legislation also applies the same rule of origin requirements to products from the West Bank, the Gaza Strip, and qualifying industrial zones, as are already applicable to products from Israel.

It is the Committee's understanding that the Administration intends to apply the proclamation authority granted under this legislation to all eligible products from these areas. The President may, however, terminate the grant of duty free treatment if changed circumstances should warrant such action in the future.

The Committee believes that providing duty free treatment to imports from the West Bank, the Gaza Strip, and qualifying industrial zones is important to promoting the peace process in the Middle East, increasing employment and stimulating the region's economy, and ending the Arab economic boycott of Israel.

Therefore, the Committee strongly supports the extension of duty free tariff treatment to products from the West Bank, the Gaza Strip, and qualifying industrial zones.

III. Approval and Implementation of OECD Shipbuilding Agreement

A. BACKGROUND

On June 8, 1989, the Shipbuilders Council of America (SCA), representing the U.S. shipbuilding industry, filed a petition under section 301 of the Trade Act of 1974, which alleged that foreign government subsidies to the shipbuilding industry constituted an unjustifiable, unreasonable, or discriminatory trade practice that burdens or restricts U.S. commerce. The SCA withdrew the petition on July 21, 1989, following a commitment by the U.S. Government to initiate negotiations on an agreement to discipline government support to the shipbuilding and repair industry within the framework of the Working Party on Shipbuilding of the Council of the Organization for Economic Cooperation and Development ("OECD"). These negotiations commenced on October 24, 1989, when the United States notified the Executive Committee of the OECD of its intention to negotiate such an agreement.

After more than five years of negotiation, the Agreement Respecting the Normal Competitive Conditions in the Commercial Shipbuilding and Repair Industry (the "Shipbuilding Agreement") was signed on December 21, 1994, by the Commission of the European Communities, and the Governments of Finland, Japan, the Republic of Korea, Norway, Sweden, and the United States. Together, the signatories account for approximately 80 percent of global shipbuilding capacity.

The Shipbuilding Agreement applies only to the construction and repair of self-propelled, seagoing commercial vessels of 100 gross tons and above (including certain specialized vessels) and tugs of 365 kilowatts or more. It does not cover the construction of naval vessels or the outfit and repair of vessels for military purposes.

The Shipbuilding Agreement has four general sections. First, with some limited exceptions, the Shipbuilding Agreement requires the elimination of virtually all subsidies to the shipbuilding industry granted either directly to shipbuilders or indirectly through ship operators or other entities. Second, to avoid trade-distorting financing programs, the Shipbuilding Agreement also establishes common rules to discipline government financing for export and domestic ship sales. Third, the Shipbuilding Agreement includes an "injurious-pricing code," modeled on the antidumping rules of the World Trade Organization (WTO), which would allow signatories to assess an offsetting injurious-pricing charge against foreign shipbuilders who sell ships at unfairly low (*i.e.*, dumped prices) that injure domestic shipbuilders. The injurious-pricing code also permits signatories to impose specified countermeasures against a foreign shipbuilder that is subject to an affirmative injurious-pricing determination, if the shipbuilder does not pay the injurious-pricing charge. Finally, the Shipbuilding Agreement includes binding rules for dispute settlement in the OECD, which are patterned after the WTO's dispute-settlement regime.

The Shipbuilding Agreement is scheduled to enter into force 30 days after all signatories deposit instruments of ratification, acceptance, or approval with the OECD Secretariat. In order for the United States to complete its ratification, legislation must be enacted

by Congress to bring U.S. law into compliance with the Shipbuilding Agreement.

The Shipbuilding Agreement had an initial target date for entry into force of January 1, 1996. At the meeting of the OECD Council Working Party on Shipbuilding on December 11, 1995, representatives of Korea, Norway, and the European Union (which now includes Finland and Sweden) deposited their respective instruments of ratification with the OECD Secretariat. At the same time, participants acknowledged that it would not be possible for either the United States or Japan to complete their ratification procedures in time to meet the original target effective date of January 1, 1996. Accordingly, representatives of the signatories agreed to extend the deadline and set a new target date of June 15, 1996, for depositing instruments of ratification, thereby permitting the Shipbuilding Agreement to enter into force by July 15, 1996.

B. SUMMARY OF TITLE II

The Shipbuilding Agreement establishes a mechanism for the determination of injurious pricing in the construction and sale of seagoing vessels, in a manner analogous to the provisions in the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("WTO Antidumping Agreement"). In addition, the Shipbuilding Agreement provides for the assessment of an injurious-pricing charge and countermeasures where appropriate—remedies that are different from the antidumping provisions under Title VII of the Tariff Act of 1930, as amended ("Title VII"), which implements the WTO Antidumping Agreement into U.S. law. Because ocean-going vessels engaged in international trade are technically not imported or entered for consumption in the United States, it is virtually impossible to use the antidumping remedies of Title VII to cover the sale of vessels at less than fair value. Accordingly, separate statutory authority is required to implement the Shipbuilding Agreement.

1. Injurious Pricing and Countermeasures

Section 203 of Title II, would establish a new Title VIII of the Tariff Act of 1930, as amended, in order to create an injurious-pricing mechanism applicable to shipbuilding. This mechanism would permit the collection of an injurious-pricing charge against ocean-going vessels sold to U.S. buyers at a price below normal value when that sale injures a U.S. shipbuilding industry. This mechanism also allows for the imposition of countermeasures against a shipyard that fails to pay the injurious-pricing charge.

The new Title VIII would be analogous to the current antidumping provisions of Title VII, which sets forth procedures under U.S. law for assessment of antidumping duties. The specific injurious-pricing provisions differ from the antidumping provisions in Title VII only where necessary to take into account differences between the Shipbuilding Agreement and the WTO Antidumping Agreement due to the unique characteristics of the construction and sale of ocean-going vessels.

The new Title VIII would also provide for judicial review of injurious pricing and countermeasures determinations in the U.S.

Court of International Trade, with subsequent appellate review in the U.S. Court of Appeals for the Federal Circuit.

2. Other Provisions

Title II also includes the following changes or additions to current law:

Repairs made in a signatory to the Shipbuilding Agreement on U.S.-flagged vessels of a type covered by the Shipbuilding Agreement would be exempt from the 50 percent duty imposed under section 466 of the Tariff Act of 1930 on the cost of repairs made outside the United States on a U.S.-flagged vessel.

The requirements of certain tax and subsidy programs available under the Merchant Marine Act of 1936 to vessels constructed in the United States as well as government guarantees available under Title XI of the Merchant Marine Act for financing the construction, reconstruction or reconditioning of U.S. built vessels, are changed to conform to the requirements of the Shipbuilding Agreement and the related OECD Understanding on Export Credits for Ships.

Private persons other than the U.S. Government are prohibited from asserting any cause of action or defense under the Shipbuilding Agreement in U.S. courts.

C. GENERAL DESCRIPTION OF TITLE II

1. Subtitle A—General Provisions.

Short Title

(Section 201)

Section 201 provides that the title may be cited as the "OECD Shipbuilding Agreement Act."

Approval of the Shipbuilding Agreement

(Section 202)

Section 202 provides that the Congress approves the Shipbuilding Agreement, which resulted from negotiations conducted under the auspices of the OECD and which was entered into on December 21, 1994.

Injurious Pricing and Countermeasures Relating to Shipbuilding

(Section 203)

Section 203 adds a new Title VIII to the Tariff Act of 1930. Title VIII contains four subtitles, described section-by-section below. Because Title VIII is modeled on the antidumping statute in Title VII, this description outlines only those differences between the two titles.

SUBTITLE A—INJURIOUS PRICING CHARGE AND COUNTERMEASURES

Section 801: Injurious Pricing Charge

Section 801 would require the imposition of a one-time injurious-pricing charge against a foreign shipbuilder if the Department of Commerce (Commerce) determines that a vessel produced by that shipbuilder has been sold directly or indirectly to a U.S. buyer at less than its fair value and the International Trade Commission (ITC) determines that an industry in the United States is or has been materially injured or threatened with material injury, or the establishment of an industry in the United States is or has been materially retarded by reason of the sale of that vessel. The amount of the injurious-pricing charge would be the amount by which normal value exceeds the export price. The injurious-pricing charge would be assessed once for the sale in question. After the charge is paid, there would be no continuing liability on future sales or scrutiny of sales of other vessels produced by the foreign shipbuilder unless a separate investigation is conducted with respect to each of those sales.

Section 801 is modeled on and analogous to section 731 of Title VII. However, Title VIII contains several changes, which are required to take into account the unique characteristics of the shipbuilding industry and the requirements of the Shipbuilding Agreement. Specifically, because ocean-going vessels engaged in international trade are technically not imported or entered for consumption in the United States, the Shipbuilding Agreement and Title VIII would permit investigations to be commenced when a vessel is sold directly or indirectly to a U.S. buyer, regardless of whether the vessel is imported or entered for consumption in the United States.

Thus, the traditional antidumping mechanism of imposing an antidumping duty on future entries of imported merchandise would not provide a domestic shipbuilding industry with effective relief. Accordingly, the Shipbuilding Agreement and Title VIII would establish a one-time charge to be assessed against the shipyard producing the injuriously-priced vessel.

Finally, the Shipbuilding Agreement provides that there must be a demonstration that there is or *has been* material injury by reason of the sale of the vessel or vessels in question. In contrast, the WTO Antidumping Agreement provides that there must be a demonstration that there *is* material injury by reason of imports. Accordingly, section 801 reflects the difference by requiring the ITC to determine whether there is or *has been* material injury by reason of the sale of the injuriously-priced vessel.

Accordingly, the Committee intends that the material injury standards of Title VII and Title VIII be interpreted differently consistent with the particular nature of the material-injury inquiry under the two titles.

Section 802: Procedures For Instituting An Injurious-Pricing Investigation

Section 802 sets forth the procedures for conducting an injurious-pricing investigation. Section 802(a) describes procedures for initi-

ation by Commerce and provides that an investigation may be self-initiated only within six months after the time that Commerce first knew or should have known of the sale of the vessel. Section 802(b) describes the procedures for initiation by petition. These procedures require that a petition be filed within either six or nine months (depending upon the circumstances) from the time the petitioner knew or should have known of the sale of the vessel, but no later than six months after the delivery of the vessel. If these deadlines are not met, an investigation may not be commenced.

Section 802(b)(1)(B)(iii) provides that if a petitioner is a producer, it must show that it had the capability to produce the subject vessel. In addition, if the sale of the subject vessel was made through a bidding process that was either a broad multiple bid or on which the producer was invited to bid, the petitioner must show that it made a timely effort to obtain the sale through a proposal that met bid specifications. If the sale was not made through a broad multiple bid and the petitioner was not invited to bid, but knew or should have known of the proposed purchase of the vessel in question, the petitioner must show it made timely efforts to conclude a sale consistent with the buyer's requirements.

Section 802(d)(1) provides a 45-day deadline, with no extension, for initiating an investigation after the filing of a petition, assuming that the petition meets the requirements set forth. Among these requirements, section 802(d)(4) sets forth certain requirements for petitioners, including the requirement that a petitioner must file "on behalf of" a domestic industry. Under this requirement, there must be sufficient industry support for the petition. Support is deemed to be sufficient when the following criteria are met:

> domestic producers or workers who support the petition must account for at least 25 percent of the total capacity of domestic producers capable of producing the like vessel; and
>
> domestic producers or workers who support the petition must account for more than 50 percent of the total capacity to produce the like vessel of that portion of the industry expressing a view on the petition.

Section 802(d)(6) provides that Commerce may not initiate an injurious-pricing investigation if a third country that is a WTO member, but not a party to the Shipbuilding Agreement, has initiated an antidumping proceeding against the same vessel that has been pending for not more than a year, or that has been completed and resulted in the imposition of antidumping measures or a negative determination.

The procedures for initiating an injurious-pricing investigation under Title VIII differ in a number of respects from procedures to initiate an antidumping investigation under Title VII. Because most injurious-pricing investigations will involve only one ship, it was deemed appropriate to establish deadlines in the Shipbuilding Agreement for the filing of petitions and for self-initiation of an investigation with respect to that ship. Such deadlines are not needed in an antidumping investigation under Title VII, in which all entries of the subject imports during the period recent to the investigation are examined.

In addition, because vessels are generally unique and often made to individual specifications, a domestic producer may not have produced a vessel actually identical to the subject vessel. Nonetheless, the domestic producer could still be injured as a result of the sale because that producer was capable of producing the subject vessel. By contrast, Title VII investigations require that the petitioner, if a producer, actually produce or manufacture the like product (except in the context of a determination whether the establishment of a domestic industry is materially retarded by reason of dumped imports). Moreover, the petitioner under Title VII is not required to show that it made an effort to sell like merchandise to the purchaser.

Title VIII provides for a 45-day period for determining whether to initiate an injurious-pricing investigation, as opposed to 20 days with a possible extension to 40 days in an antidumping case under section 732(c)(1) of Title VII, because of the Administration's concern that the new representation requirements and deadlines for filing petitions under Title VIII may create additional complexities requiring more time to determine the sufficiency of the petition.

Finally, Title VII does not provide for the delay or termination of an antidumping investigation if another WTO member undertakes antidumping or other measures against like merchandise from the subject country. Under Title VIII, however, a U.S. producer could seek to bring an injurious-pricing action against a vessel that is also subject to an antidumping action in a WTO member country that is not a party to the Shipbuilding Agreement. In this situation, the Shipbuilding Agreement and Title VIII would require that the injurious-pricing action not be initiated in certain circumstances.

Section 803: Preliminary Investigations

Section 803(a) would require the ITC to make its preliminary determination within 90 days after the filing of the injurious-pricing petition.

Section 803(b) states that Commerce is to make its preliminary determination within 160 days after initiating its investigation or 160 days after the date of delivery of the vessel in a cost or constructed-value investigation. An extension is permitted in extraordinarily complicated cases or for good cause until not later than 190 days after initiation or date of delivery, as the case may be.

These time periods for preliminary determinations in Title VIII cases are generally longer than in antidumping investigations under Title VII. This difference is related to the different nature of the investigations under the two titles. Due to the unique nature of the construction of vessels, a Title VIII cost investigation must be delayed until construction is completed to allow Commerce to obtain actual cost information. Tying Commerce's investigation to the date of the vessel's delivery may result in a delay of the investigation for several years due to the length of time necessary to construct a vessel.

Because the remedies established under Title VII and Title VIII are completely different, the effect of a preliminary affirmative Commerce determination would be different as well. Title VII provides for provisional relief in the form of the posting of a bond or

cash deposit by the importer in the amount of the preliminary dumping margin and the collection of duties on entries of the subject merchandise after an affirmative preliminary determination has been rendered. Under Title VIII, however, no provisional relief after the preliminary investigation is necessary because the remedy consists entirely of a one-time charge, imposed on the shipbuilder after a final determination has been made.

Section 804: Termination or Suspension of Investigation

Section 804(d) provides for the suspension of an injurious-pricing investigation if a third country that is a WTO member, but not a party to the Shipbuilding Agreement, initiates an antidumping proceeding with respect to the same vessel. The investigation would be terminated if the third country proceeding results in the imposition of antidumping measures or a negative determination. If the third-country proceeding ends without the imposition of antidumping measures or a negative determination, or if it is not concluded within one year (unless antidumping measures are subsequently imposed), the suspension would end and the Title VIII investigation would proceed.

This rule under 804(d) contrasts with Title VII, which does not allow for the suspension or termination of an investigation based on action by a third country. However, the Shipbuilding Agreement contemplates the situation where, for example, a U.S. producer seeks to bring a Title VIII action against a vessel that has been sold to a buyer in the United States and is also subject to an antidumping investigation by a WTO Member country that is not a party to the Shipbuilding Agreement. The rule in the Shipbuilding Agreement and Title VIII would require that the injurious-pricing investigation be terminated or suspended in such situations to avoid multiple investigations of the subject vessel.

Section 805: Final Determinations

Section 805(a) provides that Commerce would be required to make its final determination in an injurious-pricing investigation under Title VIII not later than 75 days after its preliminary determination. This period may be extended under certain circumstances to 290 days after initiation of the investigation in ordinary cases or after delivery of the vessel in cost or constructed-value investigations.

Section 805(b) provides that the ITC would be required to make its final determination before the later of the l20th day on which Commerce makes an affirmative preliminary determination or the 45th day after the day on which Commerce makes an affirmative final determination.

The extension for completion of Commerce's injurious-pricing investigation is longer under Title VIII than is provided for under Title VII, section 735 in an antidumping investigation. This difference between the two titles is related to the different nature of the investigations and the substantial delays that may be caused by use of actual cost data with respect to the construction of ships.

Section 806: Imposition And Collection Of Injurious Pricing Charge

In the event of final affirmative determinations by Commerce and the ITC under Title VIII, Commerce would be required to publish an order imposing a one-time injurious-pricing charge on the foreign shipbuilder in an amount equal to the injurious pricing margin for the vessel subject to investigation. The shipbuilder must pay the charge within 180 days. However, the payment period may be extended under extraordinary circumstances, subject to interest charges. Once the injurious-pricing charge is paid, the shipbuilder would not be subject to any continuing liability on future sales or scrutiny of sales of other vessels constructed by that shipbuilder unless a new investigation under Title VIII is conducted with respect to each of those sales.

This injurious-pricing remedy under the Shipbuilding Agreement and Title VIII is different than the antidumping remedy under Title VII because of the differences between the sale of imported merchandise and the nature of sales transactions involving ships. Because vessels engaged in international trade do not enter the United States for consumption, the traditional antidumping mechanism of imposing an antidumping duty on future entries would not provide the domestic industry with effective relief. Accordingly, the Shipbuilding Agreement and Title VIII would establish a one-time charge to be assessed against the shipyard producing the injuriously-priced vessel. Because the remedy would be a one-time charge, there is no need for an administrative or sunset review of the order as provided for under section 751 with respect to antidumping orders under Title VII.

Section 807: Imposition of Countermeasures

Section 807 provides that failure to pay the injurious-pricing charge imposed against a foreign shipbuilder subjects that shipbuilder to the imposition of countermeasures. The countermeasures would take the form of a temporary denial (for a period of up to four years after delivery of the vessel subject to countermeasures) of privileges to load or unload cargo or passengers in the United States to vessels contracted to be built by the offending shipbuilder within a period of up to four years after the effective date of the countermeasures.

Sections 807 (b) and (c) set forth the procedures for establishing countermeasures. Specifically, section 807(b) would require Commerce to publish a notice of an intent to impose countermeasures not later than 30 days before the expiration of the time for payment of the injurious-pricing charge. Under section 807(c), Commerce would be required to issue a determination and order imposing countermeasures within 90 days after the notice of intent is published. In issuing this order, Commerce would be required to determine whether an interested party has demonstrated that the scope or duration of the countermeasures should be narrower or shorter than that set forth in the notice of intent.

Section 807(d) provides that if countermeasures are imposed, they may be reviewed annually as to scope and duration.

Section 807(e) provides that countermeasures may be extended in scope and duration beyond four years only if a panel established

under the Shipbuilding Agreement agrees that such extension is appropriate.

Finally, section 807(f) would require Commerce to publish each year a list of all vessels subject to countermeasures and to provide notice of the imposition of countermeasures to certain interested parties.

The countermeasures procedure under Title VIII is essentially an enforcement mechanism. Neither Title VII nor the WTO Antidumping Agreement provide for the imposition of countermeasures. However, an injurious-pricing order under Title VIII would not apply to future vessels delivered by the shipyard in question. Therefore, the United States would have no recourse in enforcing the order if the shipyard refused to pay the injurious-pricing charge. Accordingly, it is necessary to establish a mechanism to ensure that a shipyard is unable to avoid the remedial effect of an order simply by not paying the injurious-pricing charge, and Title VIII and the Shipbuilding Agreement establish the countermeasures procedure as the enforcement mechanism.

The Committee notes that under section 861(17)(G) of Title VIII, purchasers of vessels potentially subject to countermeasures have standing to participate fully in proceedings concerning the imposition of countermeasures. The Committee expects that the interests of such purchasers, as well as other entities such as domestic producers and respondents, be taken into account in making countermeasure determinations.

The Committee also notes that the countermeasures would apply to vessels contracted to be built by the offending foreign producer after the date of the order imposing countermeasures. Specifically, a vessel would be covered if the material terms of sale for that vessel are established within a period of four consecutive years beginning 30 days after the notice of intent is published. The Committee expects that purchasers will be given ample notice as to vessels that may be potentially covered by the countermeasure order and wishes to avoid situations in which purchasers would not have sufficient notice that changes in contract terms could subject the vessel to countermeasures.

Accordingly, the Committee intends that only significant changes in the material terms of a legitimate contract entered into before the effective date of the countermeasures order should push the sale into the period covered by countermeasures if those changes were made after the order's effective date. Such significant changes amount to more than, for example, merely changing the delivery date because of construction delays, changing vessel specifications in a manner that does not affect the overall nature of the vessel subject to the contract, or other minor changes in price or terms. Of course, the Committee also intends that a vessel would be included in the countermeasure order if a sham contract were established covering the vessel before the effective countermeasure date simply to avoid imposition of countermeasures.

Section 808: Injurious Pricing Petitions By Third Countries

Section 808 provides that the government of a party to the Shipbuilding Agreement may file a petition with the U.S. Trade Representative (USTR) that requests an investigation to determine

whether a vessel from another Shipbuilding Agreement party has been sold directly or indirectly to one or more U.S. buyers at less than its normal value and that an industry in the petitioning country is materially injured by reason of the sale. After consulting with Commerce and the ITC, USTR would be required to determine whether to initiate an investigation. However, USTR would be able to proceed to initiate the investigation only after obtaining the approval of the Parties Group under the Shipbuilding Agreement.

The procedure in section 808 to allow third countries to file injurious-pricing petitions is in accordance with the requirements of the Shipbuilding Agreement and is intended to provide an opportunity to conduct an investigation to determine whether injury by reason of an injuriously-priced sale is experienced in another Shipbuilding Agreement party. Section 808 is comparable to the procedure under Title VII, section 783, which allows the government of a WTO party to file a petition with USTR requesting the initiation of an antidumping investigation to determine whether there is material injury to an industry in the petitioning country by reason of dumped imports entered for consumption in the United States.

SUBTITLE B—SPECIAL RULES

Section 821: Export Price

Section 821 sets forth the rules for determining the export price to be used in injurious-pricing investigations. "Export price" is defined as the price at which the subject vessel is first sold (or agreed to be sold) by or for the account of the foreign producer of the subject vessel to an unaffiliated U.S. buyer. Such a sale would include any transfer in ownership interest, including by lease or long-term bareboat charter, in conjunction with the original transfer from the producer, either directly or indirectly, to a U.S. buyer. Section 821(b) sets forth the adjustments to be made to export price.

The definition of export price under section 821 is similar to the definition in Title VII (section 772). However, Title VII also contains a definition of the concept "constructed export price." Because of the unique manner in which vessels are sold, there is no need for a constructed export price concept in the context of an injurious-pricing determination under Title VIII.

Section 822: Normal Value

Section 822(a)(1) provides that the normal value of the subject vessel is the price of a like vessel in the home market, as adjusted, if sold at a time reasonably corresponding to the time of the sale under investigation. Section 822(a)(1)(D) defines such contemporaneous sales as being within three months before or after the sale of the subject vessel or, in the absence of such sales, such longer period as Commerce determines would be appropriate. If home-market sales are not available, Commerce would be required to determine normal value based on the price of a like vessel in third-country sales. Only if such sales are inappropriate could Commerce use constructed value to determine normal value.

Section 822(e) provides that in constructed-value situations, normal value would be derived on the basis of a statutory formula,

which is the sum of the costs of production, plus the actual amount of profit and selling, administrative, and general expenses (where actual data are available). If constructed value is used, section 803(b)(1)(C) provides that the investigation may be delayed until the construction of the ship in question has been completed, even though the petition was filed at the time of contract.

Section 822(b) states that if Commerce determines that a home-market sale was made at less than the cost of production and was at a price that does not permit recovery of all costs within five years, that sale may be disregarded in determining normal value. If a sale is disregarded, normal value would be based on another sale of a foreign like vessel in the ordinary course of trade. If no such sale is available, then Commerce must use constructed value to determine the normal value of the subject vessel.

Section 822(f)(1)(C) provides for adjusting costs if they have been affected by startup operations. Section 822(f)(1)(D) would require that costs due to "extraordinary circumstances" such as labor disputes, fire, and natural disaster, be excluded.

The rules applicable to normal value in Title VIII are similar to those of Title VII (section 773), altered only where necessary to account for the lengthy periods required to construct ships and the fact that, due to the unique nature of the shipbuilding industry, there often are few, if any, vessels constructed by the foreign shipbuilder that may be used as an appropriate comparison. Title VII contains no special provision for adjusting costs due to "extraordinary circumstances" such as labor disputes, fire, or natural disaster.

The Committee understands that Commerce expects to use constructed value in most investigations because of lack of actual comparable sales. Nonetheless, the Committee expects that Commerce will make every effort to base normal value on home market or third-country sales when available within a reasonably coincident period.

Section 823: Currency Conversion

Under section 823(a), Commerce would be required to convert foreign currencies into U.S. dollars using the exchange rate in effect on the date of sale of the subject vessel, except that if it is established that a currency transaction on forward markets is directly linked to a sale under consideration, the rate specified in the forward-sale agreement shall be used.

Section 823(b) would define the date of sale as the date of the contract of sale. If the material terms of sale are significantly changed after that date, the date of sale would be the date of the change, and Commerce would be required to adjust for any unreasonable effect on the injurious-pricing margin due only to fluctuations in the exchange rate between the original and the new date of sale.

The provisions of section 823 are essentially the same as under Title VII, section 773A. Unlike the WTO Antidumping Agreement, however, the Shipbuilding Agreement does not require that, in converting currencies, fluctuations in exchange rates are to be ignored. This difference between the two agreements, which is reflected in Title VIII, accounts for differences in the respective investigations

under the two titles, as well as the particular characteristics of the shipbuilding industry. In an antidumping investigation under Title VII, Commerce generally investigates multiple transactions during the 12 months prior to the filing of the petition. During that period of time, the exchange rate may fluctuate or change. Accordingly, under Title VII, Commerce is required to allow exporters time to adjust their export prices in response to sustained changes in the exchange rate. However, most Title VIII injurious-pricing investigations would involve only a single sales transaction.

Furthermore, two years or more may elapse between the time a ship contract is signed and ship construction is completed. Because of the long lead-time, during which numerous contract modifications may occur that could change the date of sale, there is much greater potential for movements in exchange rates to unreasonably distort the margin calculation for that sale. Therefore, section 823 requires adjustments to eliminate such distortions.

SUBTITLE C—PROCEDURES

Sections 841 Through 845: Procedures

Sections 841 through 845 set forth procedural requirements concerning the injurious-pricing mechanism. Specifically, section 841 provides that, upon request, Commerce and the ITC are each to hold hearings during their investigations.

Section 842 provides for determinations on the basis of the facts available. As in section 776 of Title VII, the option to use adverse inferences would be limited to those cases in which the agency finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Moreover, whenever the agency relies on secondary information rather than information obtained during the course of the investigation, the agency, to the extent practicable, would be required to corroborate that information from independent sources that are reasonably at its disposal.

Section 843 sets forth the requirements for making information concerning the investigation available to the public, treating information as proprietary, disclosing proprietary information under protective order, serving submissions on other parties, handling violations of protective orders and sanctions, providing opportunity for comment by vessel buyers, and publishing determinations.

Section 844 sets forth procedures for conducting investigations, including certification of submissions, the manner for handling difficulties by the parties in meeting requirements of the investigation, treatment of deficient submissions, use of information submitted by the parties, non-acceptance of submissions, public comment on information, and verification of information submitted. The provision would require that the agencies not decline to consider information submitted by an interested party that is necessary to the determination but does not meet all of the requirements of the agency, if the information is submitted by the established deadline, it can be verified (where appropriate), it is not so incomplete that it cannot serve as a reliable basis for reaching a determination, the interested party has demonstrated that it has acted to the best of

its ability to provide the information and meet the requirements, and that the information can be used without undue difficulty.

All of these procedural requirements under Title VIII are the same as the procedures set up under Title VII in sections 774, 776, 777, and 782 with respect to antidumping investigations. In addition, because the Shipbuilding Agreement provides that injurious-pricing determinations are subject to dispute resolution before the OECD, section 845 sets forth requirements for administrative action following OECD panel reports issued under the dispute-settlement rules of the Shipbuilding Agreement, which are virtually identical to the requirements in section 129 of the Uruguay Round Agreements Act with respect to administrative action following WTO dispute-settlement panel reports on antidumping and injury determinations.

The Committee intends that the procedural requirements of current law with respect to antidumping apply to shipbuilding investigations as well. Accordingly, antidumping procedural requirements under Title VII have been repeated in Title VIII, making only those changes necessitated by the differences between the WTO Antidumping Code and the Shipbuilding Agreement.

SUBTITLE D—DEFINITIONS

Section 861: Definitions

Industry; Producer

Section 861(4) defines "industry" as the producers as a whole of a domestic like vessel, or those producers whose collective capability to produce a domestic like vessel constitutes a major proportion of the total domestic capability to produce a like vessel. A "producer" is defined as including an entity that is producing the domestic like vessel and an entity with the capability to produce the domestic like vessel. "Capability to produce" is further defined as the capability of a producer to produce a domestic like vessel with its present facilities or ability to adapt its facilities in a timely manner.

By contrast, under Title VII, section 771(4) defines "industry" as the producers as a whole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.

As discussed above with respect to section 802 of Title VIII, vessels are generally unique and made to individual specifications. Therefore, a domestic producer may not have produced a vessel like the subject vessel but could, nonetheless, still be injured by the sale because that producer was capable of producing such a vessel. Accordingly, the definition of "industry" and "producer" in Title VIII would not require that the party actually produce a like vessel in order to be considered a producer or part of the industry. This definition under Title VIII differs from Title VII, which requires that the petitioner, if a producer, actually produce or manufacture the like product (except in the context of a determination whether the establishment of a domestic industry is materially retarded by reason of dumped imports).

Buyer; United States buyer

Section 801(a)(1) requires that a vessel be sold directly or indirectly to a U.S. buyer in order for an injurious-pricing investigation under Title VIII to be commenced. Section 861(5) defines a "buyer" as any person who acquires an ownership interest in a vessel, including by lease or long-term bareboat charter, in conjunction with the original transfer from the producer, either directly or indirectly.

Section 861(6) defines "United States buyer" as a buyer that is a U.S. citizen, a juridical entity organized under the laws of the United States (or a political subdivision thereof), or another juridical entity owned or controlled by such a juridical entity or U.S. citizen. The term "own" is defined as having more than a 50 percent interest. The term "control" is defined as the actual ability to have substantial influence on corporate behavior, which is presumed to exist where there is at least a 25 percent interest.

Title VII does not contain a definition of buyer or purchaser because Title VII does not require that a sale of the subject merchandise be made to a U.S. entity for an antidumping investigation to be commenced. Instead, Title VII requires that the subject merchandise enter the United States for consumption.

Because ocean-going vessels are technically not imported or entered for consumption in the United States, however, the Shipbuilding Agreement and Title VIII would permit investigations to be commenced only when a vessel is sold directly or indirectly to a U.S. buyer.

Ownership interest

With respect to the definition of a "buyer" in section 861(5), section 861(7) defines the term "ownership interest" as including any contractual or proprietary interest allowing the beneficiary to take advantage of the operation of a vessel in a manner substantially comparable to an owner. Section 861(5) automatically includes leases or bareboat charters as being ownership interests.

In an antidumping investigation under Title VII, Commerce may determine that a lease is equivalent to a sale under section 771(19) after considering the terms of the lease, commercial practice within the industry, the circumstances of the transaction, whether the product subject to the lease is integrated into the operations of the lessee or importer, whether in practice there is a likelihood that the lease will be continued or renewed for a significant period of time, and other relevant factors, including whether the lease transaction would permit avoidance of antidumping or countervailing duties.

Vessel; Respondents subject to investigation

Section 861(8) defines "vessel" as a self-propelled seagoing vessel of 100 gross tons or more used for transportation of goods or persons or for performance of a specialized service (including icebreakers and dredgers) and a tug of 365 kilowatts or more, as long as it is produced in a Shipbuilding Agreement Party or in a country that is neither a Shipbuilding Agreement Party nor a member of the WTO. Accordingly, respondents in injurious-pricing investigations must be from countries that are parties to the Shipbuilding Agreement or from countries that are neither parties to the Ship-

building Agreement nor members of the WTO. Thus, if a producer is from a country that is a member of the WTO but is not a party to the Shipbuilding Agreement, the Title VIII remedy may not be utilized.

By contrast, Title VII (section 771(16)) provides that a respondent may be from any country, even if it is not a member of the WTO, as long as the product is imported or sold for importation into the United States. This distinction between Title VII and Title VIII arises out of concern that an injurious-pricing action against a WTO member that agreed to be bound only by the rules of the WTO but not the provisions of the Shipbuilding Agreement may be subject to challenge as being inconsistent with United States' obligations under the WTO.

Like vessel

Section 861(9) defines a "like vessel" as a vessel of the same type, purpose, and approximate size as the subject vessel and possessing characteristics closely resembling those of the subject vessel. This definition of "like vessel" in Title VIII is analogous to the definition of "like product" in Title VII.

Under Title VII, section 771(10) defines a "domestic like product" as a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to investigation.

The Committee recognizes that ocean-going vessels are frequently built to unique specifications. Accordingly, the Committee intends that, under the appropriate circumstances, there may be some minor variation in size and equipment between like vessels.

Material injury

Section 861(16) defines "material injury" as harm that is not inconsequential, immaterial, or unimportant. In making its determination whether an industry in the United States is or has been materially injured by reason of the sale of the subject vessel, section 861(16)(B) would require the ITC to consider the sale of the subject vessel, the effect of the sale of the subject vessel on prices in the United States for a domestic like vessel, and the impact of the sale of the subject vessel on domestic producers of a domestic like vessel, but only in the context of production operations in the United States. In addition, the ITC may consider such other economic factors as are relevant to the material-injury determination.

In considering the sale of the subject vessel for purposes of determining material injury, section 861(16)(C)(i) would require the ITC to ascertain whether the sale, either in absolute terms or relative to production or demand in the United States, in terms of either volume or value, is or has been significant.

In evaluating the effect of the sale of the subject vessel on prices, section 861(16)(C)(ii) specifies that the ITC consider whether there has been significant underselling of the subject vessel as compared with the price of a domestic like vessel and whether the effect of the sale otherwise depresses or has depressed prices to a significant degree or prevents or has prevented price increases, which otherwise would have occurred, to a significant degree.

Finally, in evaluating the impact on the domestic industry, section 861(16)(C)(iii) requires evaluation of all relevant economic fac-

tors having a bearing on the state of the U.S. industry, including actual and potential decline in output, sales (or offers for sale), market share, profits, productivity, return on investments, and utilization of capacity; factors affecting domestic prices; actual and potential negative effects on cash flow, employment, wages, growth, ability to raise capital, and investment; actual and potential negative effects on the existing development and production efforts of the domestic industry; and the magnitude of the injurious-pricing margin. All factors are to be evaluated within the context of the business cycle and conditions of competition that are distinctive to the domestic industry.

Section 771(7)(B) of Title VII requires the ITC to consider the volume of subject imports in determining whether a domestic industry is materially injured by reason of such imports. The definitions of "material injury" and the requirements for determining material injury under Title VIII are analogous. Differences between the two titles are merely intended to account for the particular characteristics of the shipbuilding industry and the requirements of the Shipbuilding Agreement.

Nonetheless, with respect to the consideration of volume in determining material injury under Title VIII, the Committee recognizes that, unlike antidumping cases, injurious-pricing proceedings will normally involve the sale of only one vessel. Therefore, it is the Committee's view that, depending upon the circumstances of a particular investigation, the sale of one vessel at an injurious price may be sufficient to satisfy the volume criterion under Title VIII, whereas, it would be an unusual case in which a single sale would be considered a significant volume under Title VII. In addition, the Committee intends consideration of the "sale" under Title VIII to include the number of sales, tonnage, and value represented by that sale or sales, as appropriate.

Moreover, as discussed above concerning section 801, Title VIII provides that there must be a demonstration that there is or *has been* material injury by reason of the sale of the vessel or vessels in question. Accordingly, the material-injury provision under Title VIII is drafted to permit consideration of whether the sale of the subject vessel *has caused* price depression or suppression.

Threat

Section 861(16)(E) specifies that in determining whether a U.S. industry is threatened with material injury by reason of the sale of the subject vessel, the ITC is to consider, among other relevant economic factors, any existing unused production capacity or imminent, substantial increase in production capacity in the exporting country indicating the likelihood of substantially increased sales of a foreign like vessel to U.S. buyers, taking into account the availability of other export markets to absorb any additional exports; whether the sale of a foreign like vessel or other factors indicate the likelihood of significant additional sales to U.S. buyers; whether the sale of the subject vessel or sale of a foreign like vessel by the foreign producer are at prices that are likely to have a significant depressing or suppressing effect on domestic prices, and are likely to increase demand for further sales; the potential for product shifting; the actual and potential negative effects on the exist-

ing development and production efforts of the domestic industry; and any other demonstrable adverse trends that indicate the probability that there is likely to be material injury by reason of the sale of the subject vessel.

These criteria under Title VIII for determining threat of material injury in an injurious-pricing investigation are analogous to the criteria under section 771(7)(F) in Title VII that the ITC is to consider in determining threat of material injury by reason of dumped imports. The only differences in the threat criteria between the two titles are intended to account for the particular characteristics of the shipbuilding industry and the requirements of the Shipbuilding Agreement. Therefore, except when necessary to account for these differences, the ITC should apply the threat criteria in Title VIII in the same manner as under Title VII.

The Committee notes, however, that although both Title VII and Title VIII make reference to "substantially increased sales" in the threat section, the increase in sales of a foreign like vessel or the increase in production capacity may, in appropriate circumstances, satisfy the Title VIII criterion even though such increase may not be sufficient in most cases in the context of a threat determination under Title VII. The ITC's consideration of "sale" in determining threat of material injury under Title VIII includes the number of sales, tonnage, and value represented by that sale or sales. Because there may be no more than one sale in most instances, the ITC need not focus on evidence of increased past sales in determining the likelihood of future sales.

Cumulation

Under section 861(16)(F), the ITC would be required, subject to certain exceptions, to assess cumulatively the effects of sales of foreign like vessels from all foreign producers. Section 861(16)(F) provides that the ITC must conduct a cumulative analysis with respect to petitions filed on the same day, investigations self-initiated on the same day, or petitions filed and investigations self-initiated on the same day, if the foreign producers of the subject vessels compete with each other and with producers of a domestic like vessel in the U.S. market.

These requirements regarding cumulative analysis by the ITC under Title VIII are analogous to the provisions in section 771(7)(G) of Title VII with respect to a cumulative assessment by the ITC of the volume and effects of imports of subject merchandise from all foreign countries. Therefore, the rules regarding the types of investigations that must be cumulated under Title VII and Title VIII are intended to be the same.

The only difference between the two titles in final determinations in which the ITC performs a cumulative analysis, concerns the use of the record compiled in the first investigation in which the ITC makes a final determination. In antidumping cases under Title VII, the ITC is generally required to use such a record. However, in injurious-pricing investigations under Title VIII, the ITC may, but would not be required to use this record. The reason for the difference is that some Title VIII investigations may be delayed for long periods of time in order to obtain cost-of-production information, and use of the record in the first investigation may, therefore,

not be appropriate for purposes of conducting a cumulative analysis.

Interested party

Section 861(17) defines "interested party" as the foreign producer, seller (other than the foreign producer), and the U.S. buyer of the subject vessel, or a trade or business association a majority of whose members are the foreign producer, seller, or U.S. buyer of the subject vessel; the government of the country in which the subject vessel is produced or manufactured; a producer that is a member of an industry; a certified union or recognized union or group of workers which is representative of an industry; a trade or business association a majority of whose members are producers in an industry; and an association a majority of whose members is composed of interested parties listed above.

Except to account for the particular characteristics of the shipbuilding industry, these definitions of "interested party" are analogous to the definitions of "interested party" under section 771(9) in Title VII. However, 861(17)(G) would also permit a purchaser to be an interested party in countermeasure proceedings if, after the effective date of an order imposing countermeasures under section 807, the purchaser entered into a contract of sale with the foreign producer that is subject to the order. Giving such parties interested party status would permit them to participate in proceedings before Commerce to determine the scope and duration of countermeasures.

Enforcement of Countermeasures

(Section 204)

Section 204 would amend Part II of Title IV of the Tariff Act of 1930 to provide the U.S. Customs Service with the authority to deny any request for a permit to lade or unlade passengers, merchandise, or baggage from or onto vessels listed by Commerce as being subject to countermeasures. Section 204(b) provides for certain limited exceptions to this rule.

Unlike the WTO Antidumping Agreement, the Shipbuilding Agreement, as reflected in section 204, specifically provides for the imposition of countermeasures if the foreign shipyard in question does not pay the injurious-pricing charge assessed against it. Because the antidumping law permits the assessment of an antidumping duty on future entries of merchandise subject to an antidumping order, U.S. law does not permit the imposition of countermeasures in the dumping context.

Judicial Review in Injurious Pricing and Countermeasure Proceedings

(Section 205)

Section 205 amends the Tariff Act of 1930 to add section 516B, which provides that interested parties may challenge Commerce and ITC final determinations before the Court of International Trade, with subsequent appeal to the U.S. Court of Appeals for the Federal Circuit. In such cases, the applicable standard of review is

whether the determination is "unsupported by substantial evidence on the record, or otherwise not in accordance with law." In addition, certain preliminary determinations and countermeasure determinations may be challenged. In these cases, the standard of review is whether determination is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."

Section 516B is analogous to the judicial review procedures and standards of review provided for in section 516A of the Tariff Act of 1930 in antidumping and countervailing duty investigations under Title VII. Therefore, the Committee intends that section 516B provide essentially analogous opportunities for judicial review as under section 516A. The differences are intended to take into account the differences in the two types of investigations, especially the imposition of countermeasures and the absence of comparable administrative reviews and sunset reviews under Title VIII.

2. Subtitle B—Other Provisions

Equipment and Repair of Vessels

(Section 211)

Section 211 amends section 466 of the Tariff Act of 1930, by adding a new subsection (i). The new subsection provides that the equipment and repair made in a signatory to the Shipbuilding Agreement on U.S.-flagged vessels of a type covered under the Shipbuilding Agreement are not subject to the 50 percent *ad valorem* duty imposed under subsection 466(a) of the Tariff Act of 1930 on the cost of such equipment and repair made in a foreign country on a U.S.-flagged vessel.

Section 211 implements the provision in the Shipbuilding Agreement that prohibits the collection of duties on vessel repairs made in a signatory to the Shipbuilding Agreement. Accordingly, U.S. law must be changed to eliminate the duty if the repairs to a U.S.-flagged vessel are made in a Shipbuilding Agreement signatory. However, the duty would remain in place if the repairs are made in a country that is not a signatory to the Shipbuilding Agreement.

Effect of Agreement with Respect to Private Remedies

(Section 212)

Section 212 clarifies that no person other than the United States may assert any cause of action or defense under the Shipbuilding Agreement, or may challenge any action or inaction by the United States, the District of Columbia, any State, U.S. territory, or U.S. possession on the grounds that it is inconsistent with the Agreement. The implementing legislation of other trade agreements, such as section 102(c) of the Uruguay Round Agreements Act (Public Law 103–465) and section 102(c) of the North American Free Trade Agreement Implementation Act (Public Law 103–182), have essentially identical provisions to limit private remedies under those trade agreements. The Committee intends that section 212 provide the same limitations with respect to private remedies, as in the Uruguay Round Agreements Act and the North American Free Trade Agreement Implementation Act.

Implementing Regulations

(Section 213)

Section 213 authorizes relevant agencies to issue regulations, as may be necessary to ensure that the amendments made by the OECD Shipbuilding Agreement Act are appropriately implemented on the date that the Shipbuilding Agreement enters into force with respect to the United States.

The Committee intends that the relevant agencies take steps to ensure through regulation that the amendments made by the OECD Shipbuilding Act are appropriately implemented upon entry into force. With respect to injurious pricing, the Committee expects that regulations would be modeled after regulations implementing Title VII of the Tariff Act of 1930 wherever possible, making only those changes necessitated by the differences between existing law and the amendments made by the OECD Shipbuilding Agreement Act.

Amendments to the Merchant Marine Act, 1936

(Section 214)

Section 214 makes several changes to the Merchant Marine Act, 1936. The Merchant Marine Act contains tax and subsidy programs that provide benefits limited to vessels constructed in the United States. These programs are: (1) construction reserve funds (CRF); (2) operating differential subsidies (ODS); and (3) capital construction funds (CCF). In addition, under the Merchant Marine Act, vessels built or rebuilt outside the United States must wait three years after being flagged as a U.S. vessel before being permitted to carry government-impelled cargoes under the government cargo preference provisions.

In addition, Title XI of the Merchant Marine Act authorizes the Secretary of Transportation to provide a U.S. Government guarantee for certain types of financing for the construction, reconstruction, or reconditioning of U.S.-built vessels. Guarantees with respect to vessels intended for domestic use may apply to financing of up to 87½ percent of the vessel cost (over 25 years), at an interest rate determined by the Secretary to be reasonable. The Secretary is authorized to accord more favorable terms for exported vessels than is accorded to vessels for domestic use.

Section 214 amends the Merchant Marine Act to provide the same treatment as is currently accorded U.S.-built vessels to vessels covered by the Shipbuilding Agreement that are constructed (and, where applicable, reconstructed) in a Shipbuilding Agreement signatory and flagged as a U.S. vessel. The changes to the CRF and the CCF would apply only with respect to monies deposited on or after the date on which the Shipbuilding Agreement enters into force with respect to the United States.

Section 214 also provides that, with respect to vessels covered by the Shipbuilding Agreement and the related OECD Understanding on Export Credits for Ships (the "Understanding"), the Secretary of Transportation shall extend guarantees on terms consistent with the Agreement and the Understanding. Among other things, the

Agreement and the Understanding limit guaranteed financing to 80 percent of the vessel's cost (over twelve years) and provide, with certain exceptions in the first two years, that the interest rate not be lower than the Commercial Interest Reference Rate (CIRR) of the currency of credit.

3. Subtitle C—Effective Date.

(Section 221)

Section 221 provides that the amendments made by the OECD Shipbuilding Act take effect on the date that the Shipbuilding Agreement enters into force with respect to the United States.

D. CONGRESSIONAL ACTION

On October 23, 1995, Senator Breaux introduced legislation (S. 1354) to implement the Shipbuilding Agreement. On December 11, 1995, similar legislation (H.R. 2754) was introduced in the House.

The Committee on Finance held a hearing on the Shipbuilding Agreement on December 5, 1995. During this hearing, the Committee heard testimony from the Administration in support of the Shipbuilding Agreement and other testimony from supporters and opponents of the Shipbuilding Agreement.

PART III: TITLE III—GENERALIZED SYSTEM OF PREFERENCES

I. BACKGROUND

A. U.S. GENERALIZED SYSTEM OF PREFERENCES (GSP) BASIC AUTHORITY

Statutory authority for the GSP program is set forth in Title V of the Trade Act of 1974, as amended. Authority to grant GSP duty-free treatment on eligible articles from beneficiary developing countries (BDCs) became effective under that Act on January 3, 1975, for a 10-year period expiring on January 3, 1985. The program was actually implemented on January 1, 1976 under Executive Order 11888. Relatively minor amendments to the statute were made under section 1802 of the Tax Reform Act of 1976 and section 1111 of the Trade Agreements Act of 1979. Title V of the Trade and Tariff Act of 1984 renewed the GSP program for 8½ years until January 4, 1993, with significant amendments effective on January 4, 1985, particularly with respect to the criteria for designating beneficiary countries and limitations on duty-free treatment.

The GSP program was extended without amendment for 15 months, until September 30, 1994, by section 13802 of the Omnibus Budget Reconciliation Act of 1993. The program was again extended without amendment for 10 months, until July 31, 1995, by section 601 of the Uruguay Round Agreements Act. Authority for the GSP program expired on July 31, 1995.

The GSP program provides unilateral, nonreciprocal duty-free treatment to approximately 4,500 articles from 148 beneficiary developing countries and territories to promote their economic development and increase diversification of their economies through

preferential market access. Title V specifies criteria for determining GSP country and product eligibility and limitations on the extension of GSP treatment. In 1994, the program provided duty-free treatment on imports valued at approximately $18.4 billion from BDCs.

B. GSP IN THE INTERNATIONAL TRADING SYSTEM

The concept of the GSP program was first proposed in 1964 at the United Nations Conference on Trade and Development (UNCTAD). At the conference, developing countries maintained that one of the major obstacles to their economic growth and development was their inability to compete on an equal basis with developed countries in the international trading system.

Through tariff preferences in developed country markets, developing countries claimed they could increase exports and foreign exchange earnings needed to diversify their economies and reduce dependence on foreign aid. In 1968, the United States joined other industrialized countries in supporting the concept of GSP and, as noted above, authorized a GSP program in 1974. In the early 1970s, 19 other members of the Organization for Economic Cooperation and Development (OECD) also instituted and have since renewed GSP programs.

Because GSP is a unilateral grant of duty-free treatment, developing countries are not required to extend reciprocal tariff reductions. The statute implementing the U.S. GSP program, however, does set forth certain conditions for designation of beneficiary status.

The preferential and unilateral aspects of GSP are an exception to the most-favored-nation (MFN) and nondiscrimination principles of the General Agreement on Tariffs and Trade (GATT) and the World Trade Organization (WTO). To implement their GSP programs, the developed countries had to obtain a waiver of these trade principles. The GATT contracting parties granted a 10-year MFN waiver in June 1971 which provided that GSP schemes must be generalized, nondiscriminatory and nonreciprocal. This waiver was extended on a permanent basis in the 1979 GATT Tokyo Round Agreements.

C. SENATE ACTION

On August 1, 1995, the Finance Committee's Subcommittee on International Trade held a public hearing on the GSP program. The Subcommittee received testimony in support of extending GSP from the Administration, AFL–CIO, and from U.S. companies. A proposal to reauthorize the GSP program was included as Subtitle L of the Revenue Title (Title XI) in the Balanced Budget Act of 1995 (H.R. 2491), which passed the Congress on November 20, 1995 but was vetoed by the President on December 6, 1995.

II. SUMMARY OF THE BILL

Title I—Reauthorization of the GSP Program

The Committee bill would reauthorize the GSP program through May 12, 1997. The effective date of the extension of the GSP pro-

gram is October 1, 1996. So that there will be no gap in duty-free treatment provided under the GSP program, the bill would provide for refunds upon request of any duty paid between July 31, 1995, and the effective date of the Committee bill. Although importers would be able to request such refunds after the date of enactment of this bill, reimbursement of duties would occur only after the beginning of fiscal year 1997 (October 1, 1996).

In general, the Committee bill would make modest reforms and technical changes to Title V of the Trade Act of 1974, which are intended to simplify and improve the administration of the GSP program. For example, the bill would codify a "three-year rule" that would prohibit consideration of a specific article for designation of GSP eligibility for three years following formal consideration and denial of that article. The Committee bill also would exclude "high-income" countries (as designated by the World Bank) from the GSP program. This change would have the effect of reducing the per capita Gross National Product (GNP) threshold for graduation of a BDC from the GSP program from $11,800 (in 1994) to $8,600. BDCs that exceed the per capita GNP limit must be removed from the GSP program.

The Committee bill would clarify that the President has the authority to designate any article from a least developed developing country (LDDC) as an eligible article under the GSP program, if the President determines that the article is not import-sensitive in the context of imports from LDDCs. This authority does not apply to certain statutorily exempt articles, namely textiles, footwear, and watches.

The Committee bill would reduce the annual competitive need limit (CNL) in the expired law from approximately $122 million (in 1995) to $75 million, beginning January 1, 1996. The bill substitutes an annual increase in the CNL of $5 million for the indexing formula in current law, but would retain the competitive need waiver authority. It would also retain the de minimis import provision, but substitutes a de minimis threshold of $13 million in 1996 and a standard annual increase of $500,000, beginning January 1, 1997 for the indexing formula in current law.

In addition to the foregoing modifications of the GSP program, the Committee bill also contains several technical amendments which harmonize the text of the GSP statute with recent developments in world trade and politics. For example, the bill would amend the GSP so that it refers to the WTO instead of the GATT. Similarly, the Committee bill changes the GSP statute to reflect the fact that Austria, Sweden, and Finland recently have joined the European Union (EU).

The Committee believes that reauthorization of the GSP program, with the modest reforms provided for in the Committee bill, will further three policy goals: (1) foster economic development in developing countries through increased trade rather than foreign aid; (2) promote U.S. trade interests by encouraging beneficiaries to open their markets and comply more fully with international trading rules; and (3) help maintain U.S. international competitiveness by lowering costs for U.S. business, as well as lowering prices for American consumers.

III. General Description of the Bill

Short Title

(Section ——)

Explanation of provision.—Section ——— of the Committee bill provides that the bill may be cited as the "Generalized System of Preferences Renewal Act of 1996."

Generalized System of Preferences

(Section ——)

A. AUTHORITY TO EXTEND PREFERENCES

Present law

Section 501 of the Trade Act of 1974 authorizes the President to proclaim duty-free treatment for any eligible articles from any beneficiary country in accordance with the provisions of Title V.

Explanation of provision

The Committee bill makes no change to this section of Title V.

B. DESIGNATION OF BDCS

1. Definition of Country

Present law

Section 502 of the Trade Act of 1974 currently sets forth both the procedures for designating countries as BDCs and the conditions for such designation. It establishes conditions for designation which are mandatory and others which are discretionary. With regard to the mandatory conditions, the President is prohibited from designating any country for GSP benefits which is a developed country listed in section 502(b). Further, the term "country" is defined as any foreign country, any overseas dependent territory or possession of a foreign country, or the Trust Territory of the Pacific Islands.

Explanation of provision

The Committee bill amends the definition of "country" to include any territory.

Reason for change

This change makes clear that the President has the authority to designate territories such as the territory of the West Bank and the Gaza Strip as eligible for GSP benefits.

2. Ineligible Countries

Present law

Under section 502(b), the President is prohibited from designating specific developed countries as BDCs: Australia, Austria, Canada, EU member states, Finland, Iceland, Japan, Monaco, New Zealand, Norway, Sweden, and Switzerland.

Explanation of provision

The Committee bill would delete the reference to Austria, Finland, and Sweden.

Reason for change

Austria, Finland, and Sweden are now EU member states as a result of enlargement of the EU on January 1, 1995.

3. Mandatory Conditions

Present law

Under section 502(c) the President is prohibited from designating as a BDC a country which:

(a) is a Communist country, unless (i) its products receive nondiscriminatory (MFN) treatment; (ii) it is a GATT contracting party and a member of the International Monetary Fund (IMF); and (iii) it is not dominated or controlled by international communism;

(b) is an OPEC member, or a party to another arrangement and participates in action the effect of which is to withhold supplies of vital commodity resources from international trade or raise their price to an unreasonable level and to cause disruption of the world economy, subject to trade agreement exemptions consistent with objectives under the Trade Act of 1974;

(c) affords reverse preferences having or likely to have a significant adverse effect on U.S. commerce, unless the President receives satisfactory assurances of elimination before January 1, 1976;

(d) has nationalized or expropriated U.S. property, or taken similar actions, unless compensation is made, being negotiated, or in arbitration;

(e) fails to recognize as binding or to enforce arbitral awards in favor of U.S. citizens;

(f) aids or abets, by granting sanctuary from prosecution to, any individual or group which has committed an act of international terrorism; and

(g) has not taken or is not taking steps to afford internationally recognized worker rights to its workers.

Explanation of provision

The Committee bill retains present law, except, with respect to mandatory conditions:

In (a)(ii), replaces "is a GATT contracting party" with "is a member of the World Trade Organization";

In (b), deletes the reference to OPEC member and the exemption authority; and

In (c), deletes the satisfactory assurances exemption for reverse preferences.

Reason for change

These changes revise the statute to reflect the establishment of the WTO and to delete an unnecessary reference to OPEC and an

outdated reference to January 1, 1976 regarding reverse preferences.

4. Discretionary Criteria

Present law

Under section 502(c) the President must take into account a list of factors in determining whether to designate a country as a BDC, including whether or not other major developed countries are granting GSP to the country, whether or not the country has taken or is taking steps to afford its workers internationally recognized worker rights, and the extent to which the country is providing adequate and effective intellectual property protection.

Explanation of provision

The Committee bill makes no substantive changes to this provision, but makes a technical change to the intellectual property rights criterion.

Reason for change

The change simplifies the reference to the intellectual property rights criterion.

5. Graduation of BDCs

Present law

Countries are graduated from GSP eligibility if the per capita GNP of any BDC for any year exceeds a dollar limit ($11,800 in 1994) indexed annually under a formula starting with the base figure of $8,500 in 1984. When the BDC's income level reaches this amount, such country is subject to a 25, rather than 50, percent competitive need import share limit on all eligible articles for the following two years. After that time, the country is no longer treated as a BDC.

Explanation of provision

The Committee bill substitutes "high income" country as designated by the World Bank in any calendar year ($8,600 per capita GNP in 1994), for the per capita GNP indexing formula in current law. Thus, if the President determines that a BDC has become a "high income" country as designated by the World Bank, the President would be required to remove the country from eligibility under the program. Although the bill would retain a transition period of up to two years for country graduation from the GSP program, it would eliminate application of the 25 percent CNL during this period.

Reason for change

In 1994, the top 10 BDCs accounted for over 80 percent of U.S. GSP imports. In light of the Committee's concern that a large share of GSP imports come from a small number of the more advanced developing countries, the Committee believes it is advisable to lower the per capita income threshold from approximately $11,800 to $8,600. Although statistics indicate that few countries would be affected immediately by this change, in the longer term

the result will be to graduate countries earlier from GSP than would be the case under current law. Using a readily available definition of high income country also will make the administration of the program more transparent and predictable for users of the GSP program.

Although the President retains discretionary authority to impose a lower CNL for countries that have reached the per capita GNP limit, the Committee bill simplifies the law by eliminating this as a statutory requirement.

C. DESIGNATION OF ELIGIBLE ARTICLES

1. Exempted Products

Present law

Under section 503, the President may not designate any article as GSP eligible within the following categories of import-sensitive articles:

(a) textile and apparel articles which are subject to textile agreements;

(b) watches, except watches entered after June 30, 1989, that the President determines will not cause material injury to watch or watch band, strap, or bracelet manufacturing and assembly operations in the United States or U.S. insular possessions;

(c) import-sensitive electronic articles;

(d) import-sensitive steel articles;

(e) footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel which were not GSP eligible articles on April 1, 1984;

(f) import-sensitive semi-manufactured and manufactured glass products; and

(g) any other articles the President determines to be import sensitive in the context of GSP.

Explanation of provision

The Committee bill retains all provisions of present law, except, with respect to statutory exemptions:

In (a), replaces the present provision with exemption of textile and apparel articles which were not GSP eligible on January 1, 1994; and

In (e), applies exemption to footwear and related articles which were not GSP eligible on January 1, 1995.

Reason for change

These changes update the statutory exemptions and ensure that all products which are currently excluded from GSP eligibility remain excluded.

2. Three-Year Rule

Present law

Each year the U.S. Trade Representative (USTR) conducts an interagency review process in which products can be added to or removed from the GSP program, or in which a country's compliance with eligibility requirements can be reviewed. The reviews are nor-

mally based on petitions filed by interested parties, but may also be self-initiated by the USTR.

Explanation of provision

The Committee bill would prohibit reconsideration of an article for designation of eligibility for three years following formal consideration and denial of that article.

Reason for change

The Committee wants to ensure that the reviews of petitions and the self-initiation of investigations to add the same item to the list of eligible articles occur no more than once every three years. However, petitions to remove products from the list of eligible articles shall continue to be entertained annually. This statutory provision will prevent a situation whereby a U.S. industry is faced with the burden of responding annually to a petition to add the same item to the list of eligible articles, even though such petitions may have little merit.

3. Least Developed Developing Countries (LDDCs)

Present law

No provision.

Explanation of provision

The Committee's bill clarifies that the President has the authority to designate any article that is the growth, product, or manufacture of an LDDC as an eligible article with respect to imports from LDDCs, if, after receiving advice from the International Trade Commission (ITC), the President determines such article is not import-sensitive in the context of imports from LDDCs. This authority does not apply to certain statutorily exempt articles—textiles, footwear, and watches. The President shall notify Congress at least 60 days in advance of LDDC designations. LDDC designations will be based on overall economic and discretionary criteria for country designation under the GSP program.

Reason for change

The Committee believes that clarification of this authority will promote the goal of expanding the share of GSP benefits that can be granted to the poorest countries in the world. A product may be import-sensitive in the context of all GSP imports. If imports from only LDDCs are considered, however, import sensitivity may not be a problem. This authority should provide LDDCs with an additional competitive opportunity and thereby increase the share of GSP imports from LDDCs.

4. Limits on Preferential Treatment

a. General Authority

Present law

Under section 504, the President may withdraw, suspend, or limit GSP duty-free treatment with respect to any article or any country, except that no rate of duty may be established other than

the rate which would otherwise apply (the MFN rate), after considering both the policy objectives and the discretionary BDC designation factors of the GSP program. The President shall withdraw or suspend the BDC designation of any country if he determines that, as a result of changed circumstances, the country would be barred from designation.

Explanation of provision

The Committee bill retains present law.

b. Reporting Requirement

Present law

The President shall, as necessary, advise the Congress, and by no later than January 4, 1988, submit to the Congress a report on the application of the overall GSP and discretionary country designation factors, and the actions the President has taken to withdraw, suspend, or limit the GSP treatment with respect to any country which has failed to adequately meet the discretionary designation factors.

Explanation of provision

The Committee bill deletes this reporting requirement.

Reason for change

The statutory reporting requirement has been satisfied.

c. Competitive Need Limits

Present law

Whenever the President determines that annual exports by any BDC to the United States of a GSP eligible article during any year:

(i) Exceed a dollar limit ($122 million in 1995) based on $25 million adjusted annually relative to changes in the U.S. GNP since 1974; or

(ii) Equal or exceed a 50-percent share of the total value of U.S. imports of the article, then, not later than July 1 of the next year, the country is not treated as a BDC with respect to such article.

Explanation of provision

The Committee bill reduces the basic CNL to $75 million for any year beginning January 1, 1996, and substitutes a standard annual increase of $5 million for the indexing formula in current law. The bill preserves the 50 percent import share CNL.

Reason for change

Reducing the basic CNL will have the effect of increasing the opportunities for BDCs other than the top beneficiaries to obtain a larger share of GSP benefits. The standard annual increase of $5 million a year is a simplification of current law that will make the implementation of CNLs more predictable for users of the GSP program.

d. General Review

Present law

Not later than January 4, 1987, and periodically thereafter, the President must conduct a general review of eligible articles and, if he determines that a BDC has demonstrated a sufficient degree of competitiveness relative to other BDCs on any eligible article, then a lower competitive need dollar limit ($41.9 million in 1993, indexed annually from a 1984 base) and 25 percent total import share limit shall apply.

Explanation of provision

The Committee bill deletes the general review requirement and the lower CNLs.

Reason for change

Although the Administration would retain authority to conduct reviews of the program it considers appropriate, the Committee believes this should be a matter left to the judgment of the Administration.

The Committee believes that resources used to conduct a general review of all products on GSP may be better used elsewhere in administration of the program. Deleting the lower CNLs is another change which simplifies the administration of the program.

D. WAIVER AUTHORITY

1. General Authority

Present law

The President may waive the dollar and import share CNLs on any eligible article of any BDC if he (1) receives advice from the ITC on whether any U.S. industry is likely to be adversely affected by the waiver; (2) determines, based on the overall GSP and discretionary country designation considerations and the ITC advice, that the waiver is in the U.S. national economic interest; and (3) publishes the determination in the *Federal Register*.

Explanation of provision

The Committee bill retains the present waiver authority.

2. Historical Preferences

Present law

Except where sufficient competitiveness has been demonstrated, the President may waive CNLs if: (1) there has been a historical preferential trade relationship between the United States and the country; (2) there is a treaty or trade agreement in force covering such bilateral economic relations; and (3) the country does not maintain unfair trade barriers on U.S. commerce.

Explanation of provision

The Committee bill retains present law.

3. No Domestic Production

Present law

The import share CNL does not apply to an eligible article if a like or directly competitive article is not produced in the United States as of January 3, 1985.

Explanation of provision

Under the Committee bill, the import share CNL does not apply if the article is not produced in the United States as of January 1, 1995.

Reason for change

This change updates the provision.

4. De Minimis Imports

Present law

The import share CNL may be disregarded if total U.S. imports of the eligible article during the preceding year do not exceed a *de minimis* amount of $5 million adjusted annually ($13.4 million in 1994) according to changes in U.S. GNP since 1979.

Explanation of provision

The Committee bill retains the *de minimis* import provision, but substitutes $13 million in 1996 and a standard annual increase of $500,000 beginning January 1, 1997 for the indexing formula in current law.

Reason for change

This change is intended to simplify and make more predictable the calculation of the level of imports deemed to be *de minimis*.

5. Waiver Trade Limits

Present law

The President may not exercise the waiver authority in any year on imports of eligible articles exceeding: (1) 30 percent of total GSP duty-free imports during the preceding year, or (2) 15 percent of total GSP duty-free imports during the preceding year from BDCs which had (a) a per capita GNP of $5,000 or more, or (b) exported to the United States more than 10 percent of total GSP duty-free imports during that year.

Explanation of provision

The Committee bill retains the waiver trade limits.

E. PROVISIONS REGARDING TERMINATION, REPORTS, AND AGRICULTURE EXPORTS

1. Termination

Present law

No duty-free treatment shall remain in effect after July 31, 1995.

Explanation of provision

The Committee bill would reauthorize the program for one year, nine months, and twelve days, to terminate on May 12, 1997. The effective date of the extension of the GSP program is October 1, 1996. However, the Committee bill also provides that, notwithstanding section 514 of the Tariff Act of 1930 or any other provision of law, the entry (1) of any article to which duty-free treatment under Title V of the Trade Act of 1974 would have applied if the entry had been made on July 31, 1995, and (2) that was made after July 31, 1995, and before January 1, 1996, shall be liquidated or reliquidated as free of duty and the Secretary of the Treasury shall refund any duty paid, upon proper request filed with the appropriate customs officer, within 180 days after the date of enactment. Further, the Committee bill provides that notwithstanding section 514 of the Tariff Act of 1930 or any other provision of law, the entry (1) of any article to which duty-free treatment under Title V of the Trade Act of 1974 (as amended by this Title) would have applied if the entry had been made on or after October 1, 1996, and (2) that was made after December 31, 1995, and before October 1, 1996, shall be liquidated or reliquidated as free of duty and the Secretary of the Treasury shall refund any duty paid, upon proper request filed with the appropriate customs officer, within 180 days after the date of enactment. Although importers would be entitled to request such refunds after the date of enactment of the Committee bill, reimbursement of duties would occur only after the beginning of fiscal year 1997 (October 1, 1996).

Reason for change

The Committee believes that recent short-term extensions of the program have been highly disruptive to U.S. companies which rely on the GSP program, and to the economic development of BDCs. The budgetary effects of the program, however, continue to preclude an extension of the program beyond May 12, 1997. So that there will be no gap in duty-free treatment of eligible articles under the program, the Committee bill provides for a retroactive extension of the program.

2. Report on Workers Rights

Present law

The President must submit an annual report to the Congress on the status of internationally recognized workers' rights within each BDC.

Explanation of provision

The Committee bill retains present law.

3. Agriculture Exports

Present law

Section 506 requires that appropriate U.S. agencies assist BDCs in developing and implementing measures designed to ensure that the production of agricultural sectors of their economies is not di-

rected to export markets, to the detriment of the foodstuff production for their citizens.

Explanation of provision

The Committee bill retains present law.

PART IV: TITLE IV—REVENUE OFFSETS

I. SUMMARY

A. TREATMENT OF FOREIGN TRUSTS

The bill modifies the tax treatment of trusts in several respects. First, the grantor trust rules generally apply only to the extent that they result, directly or indirectly, in income or other amounts (if any) being currently taken into account in computing the income of a U.S. person. Second, beginning on January 1, 1996, the interest rate applicable to accumulation distributions from foreign nongrantor trusts is the rate imposed on underpayments of tax under section 6621(a)(2), with compounding. The full amount of certain loans of cash or marketable securities by a foreign nongrantor trust to a U.S. grantor or a U.S. beneficiary (or a U.S. person related to such a grantor or beneficiary) generally is treated as a distribution to the grantor or beneficiary. Third, a nonresident alien who transfers property to a foreign trust and then becomes a U.S. resident within 5 years after the transfer is treated as making a transfer to the foreign trust on his residency starting date. In determining whether a foreign trust paid fair market value to the transferor for property transferred to the trust, certain obligations issued by the trust, by any grantor or beneficiary of the trust, or by any person related to any grantor or beneficiary generally are not taken into account. Fourth, a two-part objective test is established for determining whether a trust is foreign or domestic for tax purposes. Further, the bill expands the reporting requirements with respect to foreign trusts if there is a U.S. grantor of the foreign trust or a distribution from the foreign trust to a U.S. person. A failure to comply with the reporting requirements results in increased monetary penalties. Special sanctions apply unless a U.S. owner of any portion of a foreign trust appoints a limited agent to accept service of process with respect to requests and summons by the Treasury Department in connection with the tax treatment of items relating to the trust. In addition, any U.S. person (other than certain tax-exempt organizations) that receives purported gifts or bequests from foreign sources totaling more than $10,000 during the year is required to report the gift to the Treasury Department. Monetary penalties and other sanctions apply to a failure to comply with the reporting requirement.

B. PENALTY FOR FAILURE TO FILE DISCLOSURE OF EXEMPTION FOR SHIPPING INCOME OF FOREIGN PERSONS

The bill imposes penalties for a failure to satisfy the filing requirements for claiming the exemption from U.S. tax that is available to certain foreign persons with respect to income from the international operation of ships.

II. General Explanation

A. MODIFY TREATMENT OF FOREIGN TRUSTS (SECS. 401-407 OF THE BILL AND SECS. 643, 665, 668(a), 672, 679, 1491, 1494, 6038, 6039G, 6677, 7701(a) AND 7872(f) OF THE CODE)

Present Law

a. Inbound grantor trusts with foreign grantors.

Under the grantor trust rules (secs. 671–679), a grantor that retains certain rights or powers generally is treated as the owner of the trust's assets without regard to whether the grantor is a domestic or foreign person. Under these rules, U.S. trust beneficiaries are not subject to U.S. tax on distributions from a trust where a foreign grantor is treated as owner of the trust, even though no tax may be imposed on the trust income by any jurisdiction. In addition, a special rule provides that if a U.S. beneficiary of an inbound grantor trust transfers property to the foreign grantor by gift, that U.S. beneficiary is treated as the grantor of the trust to the extent of the transfer.

b. Foreign trusts that are not grantor trusts.

Under the accumulation distribution rules (which generally apply to distributions from a trust in excess of the trust's distributable net income for the taxable year), a distribution by a foreign nongrantor trust of previously accumulated income generally is taxed at the U.S. beneficiary's average marginal rate for the prior 5 years, plus interest (secs. 666 and 667). Interest is computed at a fixed annual rate of 6 percent, with no compounding (sec. 668). If adequate records of the trust are not available to determine the proper application of the rules relating to accumulation distributions to any distribution from a trust, the distribution is treated as an accumulation distribution out of income earned during the first year of the trust (sec. 666(d)).

If a foreign nongrantor trust makes a loan to one of its beneficiaries, the principal of such a loan generally is not taxable as income to the beneficiary.

c. Outbound foreign grantor trusts with U.S. grantors.

Under the grantor trust rules, a U.S. person that transfers property to a foreign trust generally is treated as the owner of the portion of the trust comprising that property for any taxable year in which there is a U.S. beneficiary of any portion of the trust (sec. 679(a)). This treatment generally does not apply, however, to transfers by reason of death, to transfers made before the transferor became a U.S. person, or to transfers that represent sales or exchanges of property at fair market value where gain is recognized to the transferor.

d. Residence of trusts.

A trust is treated as foreign if it is not subject to U.S. income taxation on its income that is neither derived from U.S. sources nor effectively connected with the conduct of a U.S. trade or business. Thus, if a trust is taxed in a manner similar to a nonresident alien

individual, it is considered to be a foreign trust. Any other trust is treated as domestic.

Section 1491 generally imposes a 35-percent excise tax on a U.S. person that transfers appreciated property to certain foreign entities, including a foreign trust. In the case of a domestic trust that changes its situs and becomes a foreign trust, it is unclear whether property has been transferred from a U.S. person to a foreign entity and, thus, whether the transfer is subject to the excise tax.

e. Information reporting and penalties related to foreign trusts.

Any U.S. person that creates a foreign trust or transfers money or property to a foreign trust is required to report that event to the Treasury Department without regard to whether the trust is a grantor trust or a nongrantor trust. Similarly, any U.S. person that transfers property to a foreign trust that has one or more U.S. beneficiaries is required to report annually to the Treasury Department. In addition, any U.S. person that makes a transfer described in section 1491 is required to report the transfer to the Treasury Department.

Any person that fails to file a required report with respect to the creation of, or a transfer to, a foreign trust may be subject to a penalty of 5 percent of the amount transferred to the foreign trust. Similarly, any person that fails to file a required annual report with respect to a foreign trust with U.S. beneficiaries may be subject to a penalty of 5 percent of the value of the corpus of the trust at the close of the taxable year. The maximum amount of the penalty imposed under either case may not exceed $1,000. A reasonable cause exception is available.

f. Reporting of foreign gifts.

There is no requirement to report gifts or bequests from foreign sources.

Reasons for Change

a. Grantor trust rules.—

(i) Inbound grantor trusts.

The Committee has learned that the U.S. grantor trust provisions are being used as a vehicle to avoid U.S. tax. If a trust is treated as a grantor trust, only the owner of the trust is taxable on the trust's income and not the trust's beneficiaries. Thus, if a foreign person creates a trust with U.S. beneficiaries that is treated as a grantor trust for U.S. tax purposes and if the foreign person's home country does not tax the income, the income of the trust would not be subject to tax by either the United States or the foreign country. The Committee believes that the income derived through these types of arrangements should be subject to tax by at least one jurisdiction.

(ii) Outbound grantor trusts.

The Committee understands that taxpayers have avoided the application of the outbound grantor trust rules of section 679. For example, a transfer of property to a foreign trust may be structured

as a sale in exchange for a note issued by the trust or a person related to the trust where the note will not be repaid. The Committee believes that it is appropriate to disregard notes that do not reflect arm's-length terms in determining whether the transferor received fair market value for the property transferred.

b. Foreign nongrantor trust rules.

The 6-percent simple interest charge applicable to accumulation distributions has not been updated since 1976. The Committee believes that it is appropriate to charge a current rate of interest on accumulation distributions, with compounding. In light of the change in the interest rate, the Committee also believes that it is appropriate, in computing this interest charge, to allocate the accumulation distribution proportionately to prior trust years in which the trust has undistributed net income, rather than to the earliest of such years.

Under current law, a U.S. beneficiary of a foreign trust may avoid U.S. tax on the income accumulated through the trust by obtaining a "loan" of cash or marketable securities from the trust in lieu of an actual distribution. The Committee believes that it is appropriate to treat loans that do not reflect arm's-length terms as distributions to the borrower.

c. Residence of trusts.

Because the U.S. tax treatment of a trust (and the beneficiaries of a trust) depends on the residence of the trust, the Committee believes that it is appropriate to provide objective criteria for determining the residence of trusts.

d. Information reporting requirements and associated penalties.

The Committee has learned that certain U.S. settlors have established foreign trusts, including grantor trusts, in tax haven jurisdictions. Income from such foreign grantor trusts is taxable currently to the U.S. grantor, but the Committee understands that there is noncompliance in this regard. The Committee is concerned that the present-law civil penalties for failure to comply with the reporting requirements applicable to foreign trusts established by U.S. persons have proven to be ineffective. In order to deter noncompliance, the Committee believes that it is appropriate to expand the reporting requirements relating to activities of foreign trusts with U.S. grantors or U.S. beneficiaries and to increase the civil penalties applicable to a failure to comply with such reporting requirements.

The Committee understands that some of the jurisdictions in which U.S. settlors have established foreign trusts have strict secrecy laws. The Committee is concerned that the secrecy laws may effectively preclude the Treasury Department from obtaining information necessary to determine the tax liabilities of the U.S. grantors or U.S. beneficiaries with respect to items related to such foreign trusts. The Committee believes that it is useful in the case of a foreign trust with a U.S. grantor, to provide an incentive for the trust to have a limited U.S. agent to accept service of process

in order to improve the administrability of the tax law applicable to taxation of income derived from foreign trusts.

Explanation of Provisions

Overview

The bill modifies the tax treatment of trusts as follows:

The grantor trust rules generally apply only to the extent that they result, directly or indirectly, in income or other amounts (if any) being currently taken into account in computing the income of a U.S. person.

Beginning on January 1, 1996, the interest rate applicable to accumulation distributions from foreign nongrantor trusts is the rate imposed on underpayment of tax under section 6621(a)(2), with compounding. The accumulation distribution generally is allocated proportionately to prior trust years in which the trust had undistributed net income. The full amount of a loan of cash or marketable securities by a foreign nongrantor trust to a U.S. grantor or a U.S. beneficiary (or a U.S. person related to such a grantor or beneficiary) generally is treated as a distribution to the grantor or beneficiary.

A nonresident alien who transfers property to a foreign trust and then becomes a U.S. resident within 5 years after the transfer is treated as making a transfer to the foreign trust on his residency starting date. In determining whether a foreign trust paid fair market value to the transferor for property transferred to the trust, obligations issued by the trust, by any grantor or beneficiary of the trust, or by any person related to any grantor or beneficiary generally are not taken into account.

The bill authorizes the Secretary of the Treasury to issue regulations to prevent abusive transactions to avoid the purposes of these rules.

A two-part objective test is established for determining whether a trust is foreign or domestic for tax purposes.

The bill expands the reporting requirements with respect to foreign trusts if there is a U.S. grantor of the foreign trust or a distribution from the foreign trust to a U.S. person. The bill requires the responsible parties to file information returns with the Treasury Department upon the occurrence of certain events. A failure to comply with the reporting requirements results in increased monetary penalties. Special sanctions apply unless a U.S. owner of any portion of a foreign trust appoints a limited agent to accept service of process with respect to requests and summons by the Treasury Department in connection with the tax treatment of items relating to the trust.

Any U.S. person (other than certain tax-exempt organizations) that receives purported gifts or bequests from foreign sources totaling more than $10,000 during the year is required to report the gift to the Treasury Department. Monetary penalties and other sanctions apply to a failure to comply with the reporting requirement.

The provisions are described in more detail below.

a. Inbound grantor trusts with foreign grantors

(i) Foreign grantors not treated as owners.

Under the bill, the grantor trust rules generally apply only to the extent that they result, directly or indirectly, in income or other amounts (if any) being currently taken into account in computing the income of a U.S. citizen or resident or a domestic corporation. Thus, the grantor trust rules generally do not apply to any portion of a trust where their effect is to treat a foreign person as owner of that portion.

The bill provides certain exceptions to the rule described above. Under one exception, the grantor trust rules continue to apply to the portion of a trust where that portion of the trust is revocable by the grantor either without approval of another person or with the consent of a related or subordinate party who is subservient to the grantor (as defined in sec. 672(c)). Under another exception, the grantor trust rules continue to apply to the portion of a trust where the only amounts distributable from that portion during the lifetime of the grantor are to the grantor or the grantor's spouse. The general rule denying grantor trust status does not apply to trusts established to pay compensation, and certain trusts in existence as of September 19, 1995, provided that such trust is treated as owned by the grantor under section 676 or 677 (other than sec. 677(a)(3)).[1] In addition, the grantor trust rules generally apply where the grantor is a controlled foreign corporation (as defined in sec. 957). Finally, the grantor trust rules continue to apply in determining whether a foreign corporation is characterized as a passive foreign investment company ("PFIC"). Thus, a foreign corporation cannot avoid PFIC status by transferring its assets to a grantor trust.

If a U.S. beneficiary, or a family member of such a beneficiary,[2] of an inbound grantor trust transfers property to the foreign grantor, such beneficiary generally is treated as a grantor of a portion of the trust to the extent of the transfer. This rule applies without regard to whether the foreign grantor is otherwise treated as the owner of any portion of such trust. However, this rule does not apply if the transfer is a sale of the property for full and adequate consideration or if the transfer is a gift that qualifies for the annual exclusion described in section 2503(b).

The bill provides a special rule that allows the Secretary of the Treasury to recharacterize a transfer, directly or indirectly, from a partnership or foreign corporation which the transferee treats as a gift or bequest, to prevent the avoidance of the purpose of section 672(f).[3]

In a case where a foreign person (that would be treated as the owner of a trust but for the above rule) actually pays tax on the income of the trust to a foreign country, the Committee anticipates that Treasury regulations will provide that, for foreign tax credit purposes, U.S. beneficiaries that are subject to U.S. income tax on

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[1] The exception does not apply to the portion of any such trust attributable to any transfers made after September 19, 1995.

[2] For this purpose, a family member is generally defined as a brother, sister, spouse, ancestor or lineal descendant.

[3] See discussion below for reporting requirements under the bill with respect to certain foreign gifts and bequests received by a U.S. person.

the same income will be treated as having paid the foreign taxes which are paid by the foreign grantor. Any resulting foreign tax credits would be subject to applicable foreign tax credit limitations.

The bill provides a transition rule for any domestic trust that has a foreign grantor that is treated as the owner of the trust under present law, but becomes a nongrantor trust under the bill. If such a trust becomes a foreign trust before January 1, 1997, or if the assets of such a trust are transferred to a foreign trust before that date, such trust is exempt from the excise tax on transfers to a foreign trust otherwise imposed by section 1491. However, the bill's new reporting requirements and penalties are applicable to such a trust and its beneficiaries. In addition, the assets of such a trust will be treated as if they were recontributed to a nongrantor trust by the foreign grantor, with no recognition of gain or loss, on the date the trust ceases to be treated as a grantor trust. The nongrantor trust will have the same basis in such assets as did the grantor on the date the trust ceases to be treated as a grantor trust.

(ii) Distributions by foreign trusts through nominees

The bill generally treats any amount paid to a U.S. person, where the amount was derived (directly or indirectly) from a foreign trust, as if paid by the foreign trust directly to the U.S. person. This rule disregards the role of an intermediary or nominee that may be interposed between a foreign trust and a U.S. beneficiary. Unlike present law, however, the rule applies whether or not the trust was created by a U.S. person. The rule does not apply to a withdrawal from a foreign trust by its grantor, with a subsequent gift or other payment to a U.S. person.

(iii) Effective date

The provisions discussed in this part are effective on the date of enactment.

b. Foreign trusts that are not grantor trusts

(i) Interest charge on accumulation distributions

The bill changes the interest rate applicable to accumulation distributions from foreign trusts from simple interest at a fixed rate of 6 percent to compound interest determined in the same manner as interest imposed on underpayments of tax under section 6621(a)(2). Simple interest is accrued at the rate of 6 percent through 1995. Beginning on January 1, 1996, however, compound interest based on the underpayment rate is imposed not only on tax amounts determined under the accumulation distribution rules but also on the total simple interest for pre-1996 periods, if any. For purposes of computing the interest charge, the accumulation distribution is allocated proportionately to prior trust years in which the trust has undistributed net income (and the beneficiary receiving the distribution was a U.S. citizen or resident), rather than to the earliest of such years. An accumulation distribution is treated as reducing proportionately the undistributed net income from prior years.

The bill includes a formula to determine the period for which interest is charged using the underpayment rates under section 6621(a)(2). Under the formula, for example, if a foreign nongrantor trust had $100 of undistributed net income each year in years 1 through 3 and the trust distributes $100 of accumulated income to its U.S. beneficiary in year 4, the taxpayer has to pay interest using the section 6621(a)(2) interest rates as if the income accrued for 2 years.[4] In addition, the $100 accumulation distribution reduces the trust's undistributed net income by $33 each year for years 1 through 3.[5]

(ii) Loans to grantors or beneficiaries

In the case of a loan of cash or marketable securities by the foreign trust to a U.S. grantor or a U.S. beneficiary (or a U.S. person related to such grantor or beneficiary[6]), except to the extent provided by Treasury regulations, the bill treats the full amount of the loan as distributed to the grantor or beneficiary. The Committee expects that the Treasury regulations will provide an exception from this treatment for loans with arm's-length terms. In applying this exception, the Committee further expects consideration to be given to whether there is a reasonable expectation that a loan will be repaid. In addition, any subsequent transaction between the trust and the original borrower regarding the principal of the loan (e.g., repayment) is disregarded for all purposes of the Code. This provision does not apply to loans made to persons that are exempt from U.S. income tax.

(iii) Effective date

The provision to modify the interest charge on accumulation distributions applies to distributions after the date of enactment. The provision with respect to loans to U.S. grantors, U.S. beneficiaries or a related U.S. person related to such a grantor or beneficiary applies to loans made after September 19, 1995.

c. Outbound foreign grantor trusts with U.S. grantors

The bill makes several modifications to the general rule of section 679(a)(1) under which a U.S. person who transfers property to a foreign trust generally is treated as the owner of the portion of the trust comprising that property for any taxable year in which there is a U.S. beneficiary of the trust. The bill also contains an amendment to conform the definition of certain foreign corporations the income of which is deemed to be accumulated for the benefit of a U.S. beneficiary to the definition of controlled foreign corporations (as defined in sec. 957(a)).

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[4] The number of years is determined as a weighted average as follows:
($100×3 years)+($100×2 years)+($100×1 year)/$300=2

[5] That is, one-third of the $100 of distribution reduces the $100 of undistributed net income for each of years 1, 2 and 3.

[6] For this purpose, a person generally would be treated as related to the grantor or beneficiary if the relationship between such person and the grantor or beneficiary would result in a disallowance of losses under section 267 or 707(b), except that in applying section 267(c)(4) an individual's family includes the spouses of the members of the family.

(i) Sale or exchange at market value

Present law contains several exceptions to grantor trust treatment under section 679(a)(1) described above. Under one of the exceptions, grantor trust treatment does not result from a transfer of property by a U.S. person to a foreign trust in the form of a sale or exchange at fair market value where gain is recognized to the transferor. In determining whether the trust paid fair market value to the transferor, the bill provides that obligations issued (or, to the extent provided by regulations, guaranteed) by the trust, by any grantor or beneficiary of the trust, or by any person related to any grantor or beneficiary[7] (referred to as "trust obligations") generally are not taken into account except as provided in Treasury regulations. The Committee expects that the Treasury regulations will provide an exception from this treatment for loans with arm's-length terms. In applying this exception, the Committee further expects consideration to be given to whether there is a reasonable expectation that a loan will be repaid. Principal payments by the trust on any such trust obligations generally will reduce the portion of the trust attributable to the property transferred (i.e., the portion of which the transferor is treated as the grantor).

(ii) Other transfers

The bill adds a new exception to the general rule of section 679(a)(1) described above. Under the bill, a transfer of property to certain charitable trusts is exempt from the application of the rules treating foreign trusts with U.S. grantors and U.S. beneficiaries as grantor trusts.

(iii) Transferors or beneficiaries who become U.S. persons

The bill applies the rule of section 679(a)(1) to certain foreign persons who transfer property to a foreign trust and subsequently become U.S. persons. A nonresident alien individual who transfers property, directly or indirectly, to a foreign trust and then becomes a resident of the United States within 5 years after the transfer generally is treated as making a transfer to the foreign trust on the individual's U.S. residency starting date (as defined in sec. 7701(b)(2)(A)). The amount of the deemed transfer is the portion of the trust (including undistributed earnings) attributable to the property previously transferred. Consequently, the individual generally is treated under section 679(a)(1) as the owner of that portion of the trust in any taxable year in which the trust has U.S. beneficiaries. The bill's reporting requirements and penalties (discussed below) also are applicable.

Under the bill, a beneficiary is not treated as a U.S. person for purposes of determining whether the transferor of property to a foreign trust is taxed as a grantor with respect to any portion of a foreign trust if such beneficiary first became a U.S. person more than 5 years after the transfer.

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[7] For this purpose, a person is treated as related to the grantor or beneficiary if the relationship between such person and the grantor or beneficiary would result in a disallowance of losses under section 267 or 707(b), except that in applying section 267(c)(4) an individual's family includes the spouses of the members of the family.

(iv) Outbound trust migrations

The bill applies the rules of section 679(a)(1) to a U.S. person that transferred property to a domestic trust if the trust subsequently becomes a foreign trust while the transferor is still alive. Such a person is deemed to make a transfer to the foreign trust on the date of the migration. The amount of the deemed transfer is the portion of the trust (including undistributed earnings) attributable to the property previously transferred. Consequently, the individual generally is treated under the rules of section 679(a)(1) as the owner of that portion of the trust in any taxable year in which the trust has U.S. beneficiaries. The bill's reporting requirements and penalties (discussed below) also are applicable.

(v) Effective date

The provisions to amend section 679 apply to transfers of property after February 6, 1995.

d. Anti-abuse regulatory authority

(i) In general

The bill includes an anti-abuse rule which authorizes the Secretary of the Treasury to issue regulations, on or after the date of enactment, that may be necessary or appropriate to carry out the purposes of the rules applicable to estates, trusts and beneficiaries, including regulations to prevent the avoidance of those purposes.

(ii) Effective date

The provision is effective on the date of enactment.

e. Residence of trusts

(i) Treatment as U.S. person

The bill establishes a two-part objective test for determining for tax purposes whether a trust is foreign or domestic. If both parts of the test are satisfied, the trust is treated as domestic.

Under the first part of the proposed test, in order for a trust to be treated as domestic, a U.S. court (i.e., Federal, State, or local) must be able to exercise primary supervision over the administration of the trust. The Committee expects that this test generally will be satisfied by any trust instrument that specifies that the trust is to be governed by the laws of any State.

Under the second part of the proposed test, in order for a trust to be treated as domestic, one or more U.S. fiduciaries must have the authority to control all substantial decisions of the trust. The Committee expects that this test will be satisfied in any case where fiduciaries that are U.S. persons hold a majority of the fiduciary power (whether by vote or otherwise), and where no foreign fiduciary, such as a "trust protector" or other trust advisor, has the power to veto important decisions of the U.S. fiduciaries. The Committee further expects that, in applying this test, a reasonable period of time will be allowed for a trust to replace a U.S. fiduciary that resigns or dies before the trust is treated as foreign.

Under the bill, a foreign trust is defined as a trust other than a trust that is determined to be domestic under both the court-supervision test and the U.S. fiduciary test.

(ii) Outbound migration of domestic trusts

Under the bill, if a domestic trust changes its situs and becomes a foreign trust, the trust is treated as having made a transfer of its assets to a foreign trust and is subject to the 35-percent excise tax imposed by present-law section 1491 unless one of the exceptions to this excise tax is applicable. The U.S. grantor also is required to report the transfer under the reporting requirements described below. Failure to report such a transfer would result in penalties (discussed below).

(iii) Effective date

The provision to modify the treatment of a trust as a U.S. person applies to taxable years beginning after December 31, 1996. In addition, if the trustee of a trust so elects, the provision would apply to taxable years ending after the date of enactment. The amendment to section 1491 is effective on the date of enactment.

f. Information reporting and penalties relating to foreign trusts

The bill expands the reporting requirements with respect to foreign trusts if there is a U.S. grantor of the foreign trust or a distribution from the foreign trust to a U.S. person. The bill requires the responsible parties to file information returns with the Treasury Department upon the occurrence of certain events. A failure to comply with the reporting requirements will result in increased monetary penalties.

(i) Information reporting requirements

First, the bill requires the grantor, transferor or executor (i.e., the "responsible party") to notify the Treasury Department upon the occurrence of certain reportable events. The term "reportable event" means the creation of any foreign trust by a U.S. person, the direct and indirect transfer of any money or property to a foreign trust, including a transfer by reason of death, and the death of a U.S. citizen or resident if any portion of a foreign trust was included in the gross estate of the decedent. A reportable event does not include any transfer of property to a foreign trust in exchange for consideration of at least the fair market value of the property.[8] Also excluded are transfers to certain pension trusts, nonexempt employees' trusts described in section 402(b), and charitable trusts. The required return provides information regarding the amount of money or other property transferred to the trust, the identities of the trustee and beneficiaries of the foreign trust, and other items as prescribed by the Secretary of the Treasury.

Second, a U.S. person that is treated as the owner of any portion of a foreign trust is required to ensure that the trust files an annual return to provide full accounting of all the trust activities for

[8] For this purpose, consideration other than cash is taken into account at its fair market value and the rules of section 679(a)(3), as modified by the bill, apply (see discussion above).

the taxable year, the name of the U.S. agent for the trust, and other information as prescribed by the Secretary of the Treasury.[9] In addition, unless a U.S. person is authorized to accept service of process as the trust's limited agent with respect to any request by the Treasury Department to examine records or to take testimony, and any summons for such records or testimony, in connection with the tax treatment of any items related to the trust, the Secretary is entitled to determine the tax consequences of amounts to be taken into account under the grantor trust rules (secs. 671 through 679). This limited agency relationship does not constitute an agency relationship for any other purpose under Federal or State law. The Committee intends that the Secretary's exercise of its authority to make such a determination will be subject to judicial review under an arbitrary or capricious standard, which provides a high degree of deference to such determination. For this purpose, rules similar to the rules of sections 6038A(e)(2) and (4) with respect to enforcement of requests for certain records apply.

Third, any U.S. person that receives (directly or indirectly) any distribution from a foreign trust is required to file a return to report the name of the trust, the aggregate amount of the distributions received, and other information that the Secretary of the Treasury may prescribe. In cases where adequate records are not provided to the Secretary to determine the proper treatment of any distributions from a foreign trust, the distribution is includible in the gross income of the U.S. distributee and is treated as an accumulation distribution from the middle year of a foreign trust (i.e., computed by taking the number of years that the trust has been in existence divided by 2) for purposes of computing the interest charge applicable to such distribution, unless the foreign trust elects to have a U.S. agent for the limited purpose of accepting service of process (as described above).

(ii) Monetary penalties for failure to report

Under the bill, a person that fails to provide the required notice or return in cases involving the transfer of property to a new or existing foreign trust, or a distribution by a foreign trust to a U.S. person, is subject to an initial penalty equal to 35 percent of the gross reportable amount. A failure to provide an annual reporting of trust activities will result in an initial penalty equal to 5 percent of the gross reportable amount.

In cases involving a transfer of property to a foreign trust, the gross reportable amount is the gross value of the property transferred. In cases involving the death of a U.S. citizen or resident whose estate includes any portion of a foreign trust, the gross amount is the greater of: (a) the amount the decedent is treated as owning under the grantor trust rules or (b) the value of the property includible in the gross estate of the decedent. In cases where annual reporting of trust activities is required, the gross reportable amount is the gross value of the portion of the foreign trust's assets treated as owned by the U.S. grantor at the close of the year, and in cases involving a distribution to a U.S. beneficiary of a foreign

[9] The Committee intends that the Treasury regulations would require the trust to furnish information to U.S. grantors and beneficiaries concerning income reportable by such persons in a manner similar to that used to report the items on schedule K–1 of Form 1041.

trust, the gross reportable amount is the amount of the distribution to the beneficiary. An additional $10,000 penalty is imposed for continued failure for each 30-day period (or fraction thereof) beginning 90 days after the Treasury Department notifies the responsible party of such failure. The same penalties are applicable to a failure to report (as required by present law) certain transfers to other foreign entities. Such penalties are subject to a reasonable cause exception. The Committee intends that the reasonable cause standard will be satisfied upon the showing of reasonable efforts to comply with the reporting requirements. In no event will the total amount of penalties exceed the gross reportable amount.

(iii) Effective date

The reporting requirements and applicable penalties generally apply to reportable events occurring or distributions received after the date of enactment. The annual reporting requirement and penalties applicable to U.S. grantors apply to taxable years of such persons beginning after December 31, 1995.

g. Reporting of foreign gifts

The bill generally requires any U.S. person (other than certain tax-exempt organizations) that receives purported gifts or bequests from foreign sources total more than $10,000 during the taxable year to report them to the Treasury Department. The threshold for this reporting requirement is indexed for inflation. The definition of a gift to a U.S. person for this purpose excludes amounts that are qualified tuition or medical payments made on behalf of the U.S. person, as defined for gift tax purposes (sec. 2503(e)(2)), and amounts that are distributions to a U.S. beneficiary of a foreign trust if such amounts are properly disclosed under the reporting requirements of the bill. If the U.S. person fails, without reasonable cause, to report foreign gifts as required, the Secretary of the Treasury is authorized to determine the tax treatment of the unreported gifts. The Committee intends that the Secretary's exercise of its authority to make such a determination will be subject to judicial review under an arbitrary or capricious standard, which provides a high degree of deference to such determination. In addition, the U.S. person is subject to a penalty equal to 5 percent of the amount of the gift for each month that the failure continues, with the total penalty not to exceed 25 percent of such amount.

Effective date

The provision applies to amounts received after the date of enactment.

B. PENALTY FOR FAILURE TO FILE DISCLOSURE OF EXEMPTION FOR SHIPPING INCOME OF FOREIGN PERSONS (SEC. 411 OF THE BILL AND SECS. 872 AND 883 OF THE CODE)

Present Law

The United States imposes a 4-percent tax on the U.S.-source gross transportation income of foreign persons[10] (sec. 887). This tax does not apply to income that is effectively connected with the foreign person's conduct of a U.S. trade or business. Foreign persons are subject to U.S. tax at regular graduated rates on net income that is effectively connected with a U.S. trade or business (secs. 871(b) and 882). The U.S. taxation of a foreign person may be altered by the provisions of an applicable tax treaty.

Transportation income is any income derived from, or in connection with, the use (or hiring or leasing for use) of a vessel or aircraft (or a container used in connection therewith) or the performance of services directly related to such use (sec. 863(c)(3)). Transportation income attributable to transportation that begins and ends in the United States is treated as derived from sources in the United States (sec. 863(c)(1)). In the case of transportation income attributable to transportation that begins in, and ends outside, the United States or that begins outside, and ends in, the United States, generally 50 percent is treated as U.S. source and 50 percent is treated as foreign source (sec. 863(c)(2)). U.S.-source transportation income is treated as effectively connected with a foreign person's conduct of a U.S. trade or business only if the foreign person has a fixed place of business in the United States that is involved in the earning of such income and substantially all of such income of the foreign person is attributable to regularly scheduled transportation (sec. 887(b)(4)).

An exemption from U.S. tax is provided for gross income derived by a nonresident alien individual from the international operation of a ship, provided that the foreign country in which such individual is resident grants an equivalent exemption to individual residents of the United States (sec. 872(b)(1)). A similar exemption from U.S. tax is provided for gross income derived by a foreign corporation from the international operation of a ship, provided that the foreign country in which the corporation is organized grants an equivalent exemption to corporations organized in the United States (sec. 883(a)(1)).

Pursuant to guidance published by the Internal Revenue Service, a foreign person that is entitled to an exemption from U.S. tax for its income from the international operation of a ship must file a U.S. income tax return and must attach to such return a statement claiming the exemption (Rev. Proc. 91-12, 1991–1 C.B. 473). If the foreign person is claiming an exemption based on an applicable income tax treaty, the foreign person must disclose that fact as required by the Secretary of the Treasury (sec. 6114). The penalty for failure to make disclosure of a treaty-based position as required under section 6114 is $1,000 for an individual and $10,000 for a corporation (sec. 6712).

[10] For this purpose, foreign persons refers to nonresident alien individuals and foreign corporations.

At the time the 4-percent tax on U.S.-source gross transportation income was enacted, concern was expressed about whether compliance with the tax, which is collected by return, would be adequate. It was intended that the tax-writing committees of Congress and the Secretary of the Treasury would study the issue of compliance and that the Secretary would make recommendations if compliance did not prove adequate. Joint Committee on Taxation, *General Explanation of the Tax Reform Act of 1986* (JCS–10–87), May 4, 1987, at 930.

Reasons for Change

The Committee understands that there is a very high level of noncompliance by foreign persons that have U.S.-source shipping income. The Committee believes that, in order to address this noncompliance problem, it is appropriate to impose significant penalties for a failure to satisfy the filing requirements for claiming the exemption from U.S. tax that is available to certain foreign persons with respect to income from the international operation of ships.

Explanation of Provision

Under the provision, a foreign person that claims exemption from U.S. tax for income from the international operation of ships and otherwise qualifies for such exemption, but does not satisfy the filing requirements for claiming such exemption, is subject to the penalty of the denial of such exemption and any deductions or credits otherwise allowable in determining the U.S. tax liability with respect to such income. In addition, under the provision, if a foreign person that has a fixed place of business in the United States fails to satisfy the filing requirements for claiming an exemption from U.S. tax for its income from the international operation of ships, such person is subject to the additional penalty that foreign source income from the international operation of ships is treated as effectively connected with the conduct of a U.S. trade or business, but only to the extent that such income is attributable to such fixed place of business in the United States. Income so treated as effectively connected with a U.S. business is subject to U.S. tax at graduated rates (and is subject to the disallowance of deductions and credits described above). The Secretary of the Treasury may waive all or part of these penalties upon a showing by the foreign person that there was reasonable cause for the failure and the person acted in good faith. In particular, the Committee intends that the Secretary of the Treasury liberally construe the reasonable cause exception such that the latter penalty will be applied only in egregious cases (e.g., intentional disregard of these rules). The provision does not apply to the extent the application would be contrary to any treaty obligation of the United States.

Under the provision, the U.S. Customs Service will provide to the Secretary of the Treasury the information specified by the Secretary to enable the Secretary to identify foreign-flag ships engaged in shipping to or from the United States.

Effective Date

The provision is effective for taxable years beginning after the later of the date the Shipbuilding Agreement takes effect or December 31, 1996.

VI. VOTES OF THE COMMITTEE

A. AMENDMENTS

An amendment offered by Mr. Graham regarding a change in section 202 of the Trade Act of 1974 to clarify the definitions of domestic industry and like articles in certain investigations involving perishable agricultural products, was defeated in a roll-call vote (9 yeas and 11 nays). The roll-call vote on the amendment was as follows:

YEAS	NAYS
Mr. Baucus	Mr. Breaux
Mr. Bradley	Mr. Chafee
Mr. Conrad	Mr. Gramm
Mr. Dole	Mr. Grassley
Mr. D'Amato	Ms. Moseley-Braun
Mr. Graham	Mr. Moynihan
Mr. Hatch	Mr. Murkowski
Mr. Pryor	Mr. Nickles
Mr. Rockefeller	Mr. Pressler
	Mr. Roth
	Mr. Simpson

An amendment offered by Mr. Conrad, as modified by Mr. Roth, to remove the proposal to repeal advance refunds of the diesel fuel tax for diesel automobiles, vans, and light trucks, which was in the revenue offset provisions of the Committee substitute, and to shorten the extension of the Generalized System of Preferences program so that its termination date will be May 12, 1997, was approved by voice vote.

B. MOTION TO REPORT THE BILL

In compliance with section 133 of the Legislative Reorganization Act of 1946, the Committee states that H.R. 3074, as amended, was ordered favorably reported unanimously by voice vote on May 8, 1996.

VII. BUDGETARY IMPACT

In compliance with sections 308 and 403 of the Congressional Budget Act of 1974, and paragraph 11(a) of Rule XXVI of the Standing Rules of the Senate, the following letter has been received from the Congressional Budget Office on the budgetary impact of the legislation:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 9, 1996.

Hon. WILLIAM V. ROTH, Jr.,
Chairman, Committee on Finance, U.S. Senate,
Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 3074, as amended and ordered reported by the Senate Committee on Finance, on May 8, 1996. CBO and JCT estimate that the bill would increase governmental receipts by $50 million in fiscal year 1996, by $1 million over fiscal years 1996–2000, and by $1.111 billion over fiscal years 1996–2005, net of payroll and income tax offsets. Because enacting H.R. 3074 would affect receipts, pay-as-you-go procedures would apply to the bill.

BILL PURPOSE

H.R. 3074 includes a number of provisions that would affect governmental receipts. The trade and tax provisions of the bill would:

Provide the President with the authority to eliminate or modify the existing duty on articles imported from the West Bank, Gaza Strip, and qualifying industrial zones (designated territory of Israel and Jordan or Israel and Egypt).

Implement the OECD Shipbuilding Trade Agreement which was signed on December 21, 1994, by the following countries: The Commission of the European Communities, Japan, South Korea, Norway, and the United States. As mandated by the OECD agreement, the proposed legislation would exempt repairs to U.S. flag vessels done in OECD signatory countries from the existing 50 percent ad valorem vessel repair duty.

Renew the Generalized System of Preferences (GSP), which affords nonreciprocal tariff preferences to approximately 145 developing countries to aid their economic development and to diversify and expand their production and exports.

Modify certain aspects of the tax treatment of foreign trusts.

Expand penalties for the failure to satisfy the filing requirements for claiming the exemption from U.S. tax that is available to certain foreign persons with respect to income from international operation of ships. Under the proposal, foreign source income from the international operation of ships that is attributable to a fixed place of business would be subject to U.S. tax at graduated rates.

ESTIMATED EFFECT ON GOVERNMENTAL RECEIPTS

The revenue effects of H.R. 3074 are summarized in the table below. Please refer to the attached table for a more detailed estimate of the bill.

REVENUE EFFECTS OF H.R. 3074

[By fiscal year, in billions of dollars]

	1996	1997	1998	1999	2000	2001–2005
Projected revenues: Under current law [1]	1,417.583	1,475.172	1,546.085	1,617.979	1,697.166	9,914.671
Proposed changes	0.050	−0.598	0.165	0.185	0.199	1.110

REVENUE EFFECTS OF H.R. 3074—Continued

[By fiscal year, in billions of dollars]

	1996	1997	1998	1999	2000	2001–2005
Projected revenues: Under H.R. 3074	1,417.633	1,474.574	1,546.250	1,618.164	1,697.365	9,915.781

[1] Includes the revenue effects of P.L. 104–7 (H.R. 831), P.L. 104–117 (H.R. 2778), P.L. 104–121 (H.R. 3136), P.L. 104–132 (S. 735), and P.L. 104–134 (H.R. 3019).

BASIS OF THE ESTIMATE

West Bank and Gaza Strip.—CBO believes that the Administration intends to utilize the proclamation authority established in the bill to extend the U.S.-Israel free trade agreement to the Palestinian territories without further legislation. Currently, the U.S. Customs Service collects less than $1,000 annually from the West Bank, Gaza Strip, and the qualified industrial zones. Therefore, the elimination or modification of such duties by Presidential proclamation would lead to a negligible reduction in revenues.

OECD Shipbuilding Trade Agreement.—CBO estimates that the vessel repair provisions of the bill would decrease governmental receipts by $2 million in fiscal year 1996 and by $74 million over the fiscal years 1996–2005, net of income and payroll tax offsets. Aside from this provision, the implementation of the agreement would have no significant budgetary effects. –

The estimate of revenue loss is based on historical collections of the vessel repair duty. Over the past several years, collections have been between $15 million and $25 million annually. According to the US Maritime Administration (MARAD), in December 1995 there were 141 vessels in the US flag fleet. However, MARAD predicts a steady decline in the size of the US fleet due to the impending expiration and expected termination of the operating-differential subsidy program, through which payments are made to US vessels on specified trade routes. This estimate assumes that future collections of the vessel repair duty would decline as a result of this reduction in the size of the fleet. CBO also assumes that additional US vessel repairs would be diverted to ports in OECD countries to take advantage of the duty-free repair treatment. This estimate assumes that the bill will be effective on July 15, 1996. The revenue effects of the provision are detailed in the table below.

Extend GSP through 5/12/97.—CBO estimates that the proposal to renew GSP would reduce revenues by $734 million in fiscal year 1997, net of income and payroll tax offsets.

The United States GSP expired on July 31, 1995. The proposed legislation would retroactively apply GSP from July 31, 1995, and extend the program through May 12, 1997. The estimate of revenue loss is based on 1993 trade data and accounts for the graduation of Malaysia from GSP on January 1, 1997, as recommended by the USTR on August 15, 1995. Malaysia has been a top beneficiary of GSP accounting for about a quarter of total GSP imports. Because the proposal would not permit the Customs Service to refund eligible duties until October 1, 1996, the entire revenue loss would occur in fiscal year 1997.

Modify Treatment of foreign trusts.—JCT estimates that this proposal would increase governmental receipts by $52 million in fiscal

year 1996, and by $1.819 billion over fiscal years 1996–2005, net of income and payroll tax offsets. CBO concurs with this estimate.

Reporting requirement for shippers claiming exemption (includes force-of-attraction rule).—JCT estimates that this proposal would raise governmental receipts by $3 million in 1997, and by $101 million over fiscal years 1996–2005, net of income and payroll tax offsets. CBO concurs with this estimate.

PAY-AS-YOU-GO CONSIDERATIONS

Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting receipts or direct spending through 1998. Because this bill would affect receipts, pay-as-you-go procedures would apply. These effects are summarized in the table below.

PAY-AS-YOU-GO CONSIDERATIONS

[By fiscal year, in millions of dollars]

	1996	1997	1998
Changes in receipts	50	−598	165
Changes in outlays	(1)	(1)	(1)

[1] Not applicable.

INTERGOVERNMENTAL AND PRIVATE SECTOR MANDATES

H.R. 3074 contains no intergovernmental mandates as defined in Public Law 104–4 and would impose no direct costs on state, local, or tribal governments.

JCT has determined that one revenue provision of the bill, the provision to modify foreign trusts, would contain Federal private sector mandates above the threshold as defined by Public Law 104–4. The aggregate amounts that the private sector will be required to spend to comply with the Federal private sector mandates are estimated to be no greater than the amounts reflected in the table below. CBO concurs with this estimate.

FEDERAL PRIVATE SECTOR MANDATES

[By fiscal year, in millions of dollars]

	1996	1997	1998	1999	2000
Modify treatment of foreign trusts	52	143	171	180	188

If you would like further details, please feel free to contact me or your staff may wish to contact Stephanie Weiner.

Sincerely,

JAMES L. BLUM
(For June E. O'Neill, Director).

ESTIMATED BUDGET EFFECTS OF H.R. 3074 AS PASSED BY THE SENATE FINANCE COMMITTEE ON MAY 8, 1996; FISCAL YEAR 1996–2005

[In millions of dollars]

Provision	Effective	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	1996–00	1996–05
1. Tariff treatment of imports from the West Bank and the Gaza Strip [1]	.....	Negligible Loss											
2. The OECD Shipbuilding Agreement [1]	[2]	−2	−10	−12	−7	−4	−9	−6	−7	−11	−7	−35	−75
3. Extend GSP through 5/12/97 [1] [3]	.....	.....	−734	.....	.....	.....	.....	.....	.....	.....	.....	−734	−734
4. Modify treatment of foreign trusts	[4]	52	143	171	180	188	197	206	214	223	245	737	1,819
5. Shipping income reporting, with potential exemption denial and resourcing	[5]	.....	3	6	12	15	15	14	13	12	11	36	101
Net totals	.....	50	−598	165	185	199	203	214	220	224	249	1	1,111

[1] Estimate provided by the Congressional Budget Office.
[2] Assumed to be effective 7/15/96.
[3] Amounts are payable after 9/30/96.
[4] Various effective dates depending on provisions.
[5] Effective beginning after the later of the date H.R. 2754 takes effect or 12/31/96.
Note: Details may not add to totals due to rounding.

VIII. Regulatory Impact and Other Matters

A. Regulatory Impact

1. Titles I through III

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee states that the legislation will not significantly regulate any individuals or businesses, will not impact on the personal privacy of individuals, and will result in no significant additional paperwork.

2. Title IV

a. Impact on Individuals and Businesses

Title IV of the bill as reported provides two revenue-offset provisions to pay for the other provisions of the bill: (1) modification of the tax treatment of foreign trusts, and (2) penalty for failure to file disclosure of exemption for shipping income of foreign persons.

The foreign trust provisions will increase the tax liabilities of certain taxpayers and will also impose costs on affected taxpayers related to the new recordkeeping and reporting requirements. These rules are designed to limit the avoidance of U.S. taxes through the use of trusts.

The penalty provision imposes penalties on certain foreign persons that do not satisfy the filing requirements for claiming an available exemption from U.S. tax for income from the international operation of ships.

b. Impact on Personal Privacy and Paperwork

Title IV of the bill will have little impact on personal privacy of taxpayers. Title IV will result in increased recordkeeping and reporting requirements for taxpayers involved with foreign trusts.

B. Information Relating to Unfunded Mandates

This information is provided in accordance with section 423 of the Unfunded Mandates Act of 1995 (P.L. 104–4).

The Committee has determined that one revenue provision of the bill contains Federal mandates on the private sector; this is the provision to modify the treatment of foreign trusts. The provision changes the tax treatment applicable to trusts and modifies the information reporting requirements and penalties applicable to foreign trusts. This provision will increase the Federal tax liabilities of certain taxpayers and will also impose costs related to the new recordkeeping and reporting requirements imposed by the bill.

The cost required to comply with the Federal private sector mandate generally is no greater than the revenue estimate for the provision. Benefits from the provision include improved administration of the Federal income tax laws and a more accurate measurement of gross income for Federal income tax purposes. The Committee believes the benefits of the bill are greater than the costs required to comply with the Federal private sector mandates contained in the bill.

The provisions contain Federal private sector mandates to the extent the provisions impose new reporting requirements and recharacterize the income of trusts to ensure that U.S. Federal in-

come tax is paid. In general, these rules are designed to limit the avoidance of U.S. taxes through the use of trusts.

The revenue provisions of the bill do not contain any intergovernmental mandates.

The revenue provisions of the bill affect activities that are only engaged in by the private sector and, thus, do not affect the competitive balance between State, local, or tribal governments and the private sector.

IX. CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, changes in existing law made by the legislation are shown as follows (new matter is printed in italics):

INTERNAL REVENUE CODE OF 1986

Subtitle A—Income Taxes

* * * * * * *

CHAPTER 1—NORMAL TAXES AND SURTAXES

* * * * * * *

Subchapter J—Estates, Trusts, Beneficiaries, and Decedents

PART I—ESTATES, TRUSTS, AND BENEFICIARIES

Subpart A—General Rules for Taxation of Estates and Trusts

* * * * * * *

SEC. 643. DEFINITIONS APPLICABLE TO SUBPARTS A, B, C, AND D.

(a) DISTRIBUTABLE NET INCOME.—For purposes of this part, the term "distributable net income" means, with respect to any taxable year, the taxable income of the estate or trust computed with the following modifications—

* * * * * * *

(7) ABUSIVE TRANSACTIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this part, including regulations to prevent avoidance of such purposes.

* * * * * * *

(h) DISTRIBUTIONS BY CERTAIN FOREIGN TRUSTS THROUGH NOMINEES.—For purposes of this part, any amount paid to a United States person which is derived directly or indirectly from a foreign trust of which the payor is not the grantor shall be deemed in the year of payment to have been directly paid by the foreign trust to such United States person.

(i) LOANS FROM FOREIGN TRUSTS.—For purposes of subparts B, C, and D—

(1) GENERAL RULE.—Except as provided in regulations, if a foreign trust makes a loan of cash or marketable securities directly or indirectly to—

(A) any grantor or beneficiary of such trust who is a United States person, or

(B) any United States person not described in subparagraph (A) who is related to such grantor or beneficiary,

the amount of such loan shall be treated as a distribution by such trust to such grantor or beneficiary (as the case may be).

(2) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

(A) CASH.—The term "cash" includes foreign currencies and cash equivalents.

(B) RELATED PERSON.—

(i) IN GENERAL.—A person is related to another person if the relationship between such persons would result in a disallowance of losses under section 267 or 707(b). In applying section 267 for purposes of the preceding sentence, section 267(c)(4) shall be applied as if the family of an individual includes the spouses of the members of the family.

(ii) ALLOCATION.—If any person described in paragraph (1)(B) is related to more than one person, the grantor or beneficiary to whom the treatment under this subsection applies shall be determined under regulations prescribed by the Secretary.

(C) EXCLUSION OF TAX-EXEMPTS.—The term "United States person" does not include any entity exempt from tax under this chapter.

(D) TRUST NOT TREATED AS SIMPLE TRUST.—Any trust which is treated under this subsection as making a distribution shall be treated as not described in section 651.

(3) SUBSEQUENT TRANSACTIONS REGARDING LOAN PRINCIPAL.—If any loan is taken into account under paragraph (1), any subsequent transaction between the trust and the original borrower regarding the principal of the loan (by way of complete or partial repayment, satisfaction, cancellation, discharge, or otherwise) shall be disregarded for purposes of this title.

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Subpart D—Treatment of excess distribution by trusts

SEC. 665. DEFINITIONS APPLICABLE TO SUBPART D.

* * * * * * *

[(c) SPECIAL RULE APPLICABLE TO DISTRIBUTIONS BY CERTAIN FOREIGN TRUSTS.—

[For purposes of this subpart, any amount paid to a United States person which is from a payor who is not a United States person and which is derived directly or indirectly from a foreign trust created by a United States person shall be deemed in the year of payment to have been directly paid by the foreign trust.]

(d) TAXES IMPOSED ON THE TRUST.—

For purposes of this subpart—

(1) IN GENERAL.—The term "taxes imposed on the trust" means the amount of the taxes which are imposed for any taxable year of the trust under this chapter (without regard to this subpart or part IV of subchapter A) and which, under regulations prescribed by the Secretary, are properly allocable to the undistributed portions of distributable net income and gains in excess of losses from sales or exchanges of capital assets. The amount determined in the preceding sentence shall be reduced by any amount of such taxes deemed distributed under section 666(b) and (c) or 669(d) and (e) to any beneficiary.

(2) FOREIGN TRUSTS.—In the case of any foreign trust, the term "taxes imposed on the trust" includes the amount, reduced as provided in the last sentence of paragraph (1), of any income, war profits, and excess profits taxes imposed by any foreign country or possession of the United States on such foreign trust which, as determined under paragraph (1), are so properly allocable. *Under rules or regulations prescribed by the Secretary, in the case of any foreign trust of which the settlor or another person could be treated as owner of any portion of the trust under subpart E but for section 672(f), the term "taxes imposed on the trust" includes the allocable amount of any income, war profits, and excess profits taxes imposed by any foreign country or possession of the United States on the settlor or such other person in respect of trust income.*

* * * * * * *

SEC. 668. INTEREST CHARGE ON ACCUMULATION DISTRIBUTIONS FROM FOREIGN TRUSTS.

[(a) GENERAL RULE.—For purposes of the tax determined under section 667(a), the interest charge is an amount equal to 6 percent of the partial tax computed under section 667(b) multiplied by a fraction—

[(1) the numerator of which is the sum of the number of taxable years between each taxable year to which the distribution is allocated under section 666(a) and the taxable year of the distribution (counting in each case the taxable year to which the distribution is allocated but not counting the taxable year of the distribution), and

[(2) the denominator of which is the number of taxable years to which the distribution is allocated under section 666(a).]

(a) GENERAL RULE.—For purposes of the tax determined under section 667(a)—

(1) INTEREST DETERMINED USING UNDERPAYMENT RATES.—The interest charge determined under this section with respect to any distribution is the amount of interest which would be determined on the partial tax computed under section 667(b) for the period described in paragraph (2) using the rates and the method under section 6621 applicable to underpayments of tax.

(2) PERIOD.—For purposes of paragraph (1), the period described in this paragraph is the period which begins on the date which is the applicable number of years before the date of the distribution and which ends on the date of the distribution.

(3) APPLICABLE NUMBER OF YEARS.—For purposes of paragraph (2)—

(A) IN GENERAL.—The applicable number of years with respect to a distribution is the number determined by dividing—

(i) the sum of the products described in subparagraph (B) with respect to each undistributed income year, by

(ii) the aggregate undistributed net income.

The quotient determined under the preceding sentence shall be rounded under procedures prescribed by the Secretary.

(B) PRODUCT DESCRIBED.—For purposes of subparagraph (A), the product described in this subparagraph with respect to any undistributed income year is the product of—

(i) the undistributed net income for such year, and

(ii) the sum of the number of taxable years between such year and the taxable year of the distribution (counting in each case the undistributed income year but not counting the taxable year of the distribution).

(4) UNDISTRIBUTED INCOME YEAR.—For purposes of this subsection, the term 'undistributed income year' means any prior taxable year of the trust for which there is undistributed net income, other than a taxable year during all of which the beneficiary receiving the distribution was not a citizen or resident of the United States.

(5) DETERMINATION OF UNDISTRIBUTED NET INCOME.—Notwithstanding section 666, for purposes of this subsection, an accumulation distribution from the trust shall be treated as reducing proportionately the undistributed net income for undistributed income years.

(6) PERIODS BEFORE 1996.—Interest for the portion of the period described in paragraph (2) which occurs before January 1, 1996, shall be determined—

(A) by using an interest rate of 6 percent, and

(B) without compounding until January 1, 1996.

(b) LIMITATION.—The total amount of the interest charge shall not, when added to the total partial tax computed under section 667(b), exceed the amount of the accumulation distribution (other than the amount of tax deemed distributed by section 666 (b) or (c)) in respect of which such partial tax was determined.

(c) INTEREST CHARGE NOT DEDUCTIBLE.—The interest charge determined under this section shall not be allowed as a deduction for purposes of any tax imposed by this title.

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SUBPART E—GRANTORS AND OTHERS TREATED AS SUBSTANTIAL OWNERS

* * * * * * *

SEC. 672. DEFINITIONS AND RULES.

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(c) RELATED OR SUBORDINATE PARTY.—For purposes of this subpart, the term "related or subordinate party" means any nonadverse party who is—

(1) the grantor's spouse if living with the grantor;

(2) any one of the following: The grantor's father, mother, issue, brother or sister, an employee of the grantor, a corporation or any employee of a corporation in which the stock holdings of the grantor and the trust are significant from the viewpoint of voting control; a subordinate employee of a corporation in which the grantor is an executive.

For purposes of subsection (f) and sections 674 and 675, a realted or subordinate party shall be presumed to be subservient to the grantor in respect of the exercise or nonexercise of the powers conferred on him unless such party is shown not to be subservient by a preponderance of the evidence.

* * * * * * *

[(f) SPECIAL RULE WHERE GRANTOR IS FOREIGN PERSON.—

[(1) IN GENERAL.—If—

[(A) but for this subsection, a foreign person would be treated as the owner of any portion of a trust, and

[(B) such trust has a beneficiary who is a United States person.

[such beneficiary shall be treated as the grantor of such portion to the extent such beneficiary has made transfers of property by gift (directly or indirectly) to such foreign person. For purposes of the preceding sentence, any gift shall not be taken into account to the extent such gift would be excluded from taxable gifts under section 2503(b).

[(2) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection.]

(f) SUBPART NOT TO RESULT IN FOREIGN OWNERSHIP.—

(1) IN GENERAL.—Notwithstanding any other provision of this subpart, this subpart shall apply only to the extent such application results in an amount (if any) being currently taken into account (directly or through 1 or more entities) under this chapter in computing the income of a citizen or resident of the United States or a domestic corporation.

(2) EXCEPTIONS.—

(A) CERTAIN REVOCABLE AND IRREVOCABLE TRUSTS.—Paragraph (1) shall not apply to any portion of a trust if—

(i) the power to revest absolutely in the grantor title to the trust property to which such portion is attributable is exercisable solely by the grantor without the approval or consent of any other person or with the consent of a related or subordinate party who is subservient to the grantor, or

(ii) the only amounts distributable from such portion (whether income or corpus) during the lifetime of the grantor are amounts distributable to the grantor or the spouse of the grantor.

(B) COMPENSATORY TRUSTS.—Except as provided in regulations, paragraph (1) shall not apply to any portion of a

trust distributions from which are taxable as compensation for services rendered.

(3) SPECIAL RULES.—Except as otherwise provided in regulations prescribed by the Secretary—

(A) a controlled foreign corporation (as defined in section 957) shall be treated as a domestic corporation for purposes of paragraph (1), and

(B) paragraph (1) shall not apply for purposes of applying section 1296.

(4) RECHARACTERIZATION OF PURPORTED GIFTS.—In the case of any transfer directly or indirectly from a partnership or foreign corporation which the transferee treats as a gift or bequest, the Secretary may recharacterize such transfer in such circumstances as the Secretary determines to be appropriate to prevent the avoidance of the purposes of this subsection.

(5) SPECIAL RULE WHERE GRANTOR IS FOREIGN PERSON.—If—

(A) but for this subsection, a foreign person would be treated as the owner of any portion of a trust, and

(B) such trust has a beneficiary who is a United States person,

such beneficiary shall be treated as the grantor of such portion to the extent such beneficiary or any member of such beneficiary's family (within the meaning of section 267(c)(4)) has made (directly or indirectly) transfers of property (other than in a sale for full and adequate consideration) to such foreign person. For purposes of the preceding sentence, any gift shall not be taken into account to the extent such gift would be excluded from taxable gifts under section 2503(b).

(6) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection, including regulations providing that paragraph (1) shall not apply in appropriate cases.

* * * * * * *

SEC. 679. FOREIGN TRUSTS HAVING ONE OR MORE UNITED STATES BENEFICIARIES.

(a) TRANSFEROR TREATED AS OWNER.—

(1) IN GENERAL.—A United States person who directly or indirectly transfers property to a foreign trust (other than a trust described in [section 404(a)(4) or section 404A] *section 6048(a)(3)(B)(ii)* shall be treated as the owner for his taxable year of the portion of such trust attributable to such property if for such year there is a United States beneficiary of any portion of such trust.

(2) EXCEPTIONS. Paragraph (1) shall not apply—

(A) TRANSFERS BY REASON OF DEATH. To any transfer by reason of death of the transferror.

[(B) TRANSFERS WHERE GAIN IS RECOGNIZED TO TRANSFEROR. To any sale or exchange of the property at its fair market value in a transaction in which all of the gain to the transferor is realized at the time of the transfer and is recognized either at such time or is returned as provided in section 453.]

(B) TRANSFERS AT FAIR MARKET VALUE.—To any transfer of property to a trust in exchange for consideration of at least the fair market value of the transferred property. For purposes of the preceding sentence, consideration other than cash shall be taken into account at its fair market value.

(3) CERTAIN OBLIGATIONS NOT TAKEN INTO ACCOUNT UNDER FAIR MARKET VALUE EXCEPTION.—

(A) IN GENERAL.—In determining whether paragraph (2)(B) applies to any transfer by a person described in clause (ii) or (iii) of subparagraph (C), there shall not be taken into account—

(i) except as provided in regulations, any obligation of a person described in subparagraph (C), and

(ii) to the extent provided in regulations, any obligation which is guaranteed by a person described in subparagraph (C).

(B) TREATMENT OF PRINCIPAL PAYMENTS ON OBLIGATION.—Principal payments by the trust on any obligation referred to in subparagraph (A) shall be taken into account on and after the date of the payment in determining the portion of the trust attributable to the property transferred.

(C) PERSONS DESCRIBED.—The persons described in this subparagraph are—

(i) the trust,

(ii) any grantor or beneficiary of the trust, and

(iii) any person who is related (within the meaning of section 643(i)(2)(B)) to any grantor or beneficiary of the trust.

(4) SPECIAL RULES APPLICABLE TO FOREIGN GRANTOR WHO LATER BECOMES A UNITED STATES PERSON.—

(A) IN GENERAL.—If a nonresident alien individual has a residency starting date within 5 years after directly or indirectly transferring property to a foreign trust, this section and section 6048 shall be applied as if such individual transferred to such trust on the residency starting date an amount equal to the portion of such trust attributable to the property transferred by such individual to such trust in such transfer.

(B) TREATMENT OF UNDISTRIBUTED INCOME.—For purposes of this section, undistributed net income for periods before such individual's residency starting date shall be taken into account in determining the portion of the trust which is attributable to property transferred by such individual to such trust but shall not otherwise be taken into account.

(C) RESIDENCY STARTING DATE.—For purposes of this paragraph, an individual's residency starting date is the residency starting date determined under section 7701(b)(2)(A).

(5) OUTBOUND TRUST MIGRATIONS.—If—

(A) an individual who is a citizen or resident of the United States transferred property to a trust which was not a foreign trust, and

(B) such trust becomes a foreign trust while such individual is alive,

then this section and section 6048 shall be applied as if such individual transferred to such trust on the date such trust becomes a foreign trust an amount equal to the portion of such trust attributable to the property previously transferred by such individual to such trust. A rule similar to the rule of paragraph (4)(B) shall apply for purposes of this paragraph.

(b) TRUSTS ACQUIRING UNITED STATES BENEFICIARIES.—If—

(1) subsection (a) applies to a trust for the transferor's taxable year, and

(2) subsection (a) would have applied to the trust for his immediately preceding taxable year but for the fact that for such preceding taxable year there was no United States beneficiary for any portion of the trust,

then, for purposes of this subtitle, the transferor shall be treated as having income for the taxable year (in addition to his other income for such year) equal to the undistributed net income (at the close of such immediately preceding taxable year) attributable to the portion of the trust referred to in subsection (a).

(c) TRUSTS TREATED AS HAVING A UNITED STATES BENEFICIARY.—

(1) IN GENERAL. For purposes of this section, a trust shall be treated as having a United States beneficiary for the taxable year unless—

(A) under the terms of the trust, no part of the income or corpus of the trust may be paid or accumulated during the taxable year to or for the benefit of a United States person, and

(B) if the trust were terminated at any time during the taxable year, no part of the income or corpus of such trust could be paid to or for the benefit of a United States person.

(2) ATTRIBUTION OF OWNERSHIP.—For purposes of paragraph (1), an amount shall be treated as paid or accumulated to or for the benefit of a United States person if such amount is paid to or accumulated for a foreign corporation, foreign partnership, or foreign trust or estate, and—

[(A) in the case of a foreign corporation, more than 50 percent of the total combined voting power of all classes of stock entitled to vote of such corporation is owned (within the meaning of section 958(a)) or is considered to be owned (within the meaning of section 958(b)) by United States shareholders (as defined in section 951(b)),]

(A) in the case of a foreign corporation, such corporation is a controlled foreign corporation (as defined in section 957(a)),

(B) in the case of foreign partnership, a United States person is a partner of such partnership, or

(C) in the case of a foreign trust or estate, such trust or estate has a United States beneficiary (within the meaning of paragraph (1)).

(3) CERTAIN UNITED STATES BENEFICIARIES DISREGARDED.—A beneficiary shall not be treated as a United States person in ap-

plying this section with respect to any transfer of property to foreign trust if such beneficiary first became a United States person more than 5 years after the date of such transfer.

(d) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.

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Subchapter N—Tax Based on Income From Sources Within or Without the United States

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PART II—NONRESIDENT ALIENS AND FOREIGN CORPORATION

Subpart A—Nonresident alien individuals

SEC. 871. TAX ON NONRESIDENT ALIEN INDIVIDUALS.

(a) * * *

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(f) CERTAIN ANNUITIES RECEIVED UNDER QUALIFIED PLANS.

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(2) EXCLUSION.—Income received during the taxable year which would be excluded from gross income under this subsection but for the requirement of paragraph (1)(B) shall not be included in gross income if—

(A) the recipient's country of residence grants a substantially equivalent exclusion to residents and citizens of the United States; or

(B) the recipient's country of residence is a beneficiary developing country **[**within the meaning of section 502**]** of the Trade Act of 1974 (19 U.S.C. 2462).

* * * * * * *

SEC. 872. GROSS INCOME.

(a) GENERAL RULE.—In the case of a nonresident alien individual, except where the context clearly indicates otherwise gross income includes only—

(1) gross income which is derived from sources within the United States and which is not effectively connected with the conduct of a trade or business within the United States, and

(2) gross income which is effectively connected with the conduct of a trade or business within the United States.

(b) EXCLUSIONS.—The following items shall not be included in gross income of a nonresident alien individual, and shall be exempt from taxation under this subtitle:

(1) Ships operated by certain nonresidents. **[**Gross income**]** *Except as provided in section 883(d), gross income* derived by an individual resident of a foreign country from the international operation of a ship or ships if such foreign country

grants an equivalent exemption to individual residents of the United States.

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SUBPART B—FOREIGN CORPORATIONS

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SEC. 883. EXCLUSIONS FROM GROSS INCOME.

(a) INCOME OF FOREIGN CORPORATIONS FROM SHIPS AND AIRCRAFT.—The following items shall not be included in gross income of a foreign corporation, and shall be exempt from taxation under this subtitle:

(1) SHIPS OPERATED BY CERTAIN FOREIGN CORPORATIONS. [Gross income] *Except as provided in subsection (d), gross income* derived by a corporation organized in a foreign country from the international operation of a ship or ships if such foreign country grants an equivalent exemption to corporations organized in the United States.

* * * * * * *

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

(1) IN GENERAL.—A taxpayer who, with respect to any tax imposed by this title, takes the position that any of its gross income derived from the international operation of a ship or ships is not includible in gross income by reason of subsection (a)(1) or section 872(b)(1) (or by reason of any applicable treaty) shall be entitled to such treatment only if such position is disclosed (in such manner as the Secretary may prescribe) on the return of tax for such tax (or any statement attached to such return).

(2) ADDITIONAL PENALTIES FOR FAILING TO DISCLOSE POSITION.—If a taxpayer fails to meet the requirement of paragraph (1) with respect to any taxable year—

(A) the amount of the income from the international operation of a ship or ships—

(i) which is from sources without the United States, and

(ii) which is attributable to a fixed place of business in the United States,

shall be treated for purposes of this title as effectively connected with the conduct of a trade or business within the United States, and

(B) no deductions or credits shall be allowed which are attributable to income from the international operation of a ship or ships.

(3) REASONABLE CAUSE EXCEPTION.—This subsection shall not apply to a failure to disclose a position if it is shown that such failure is due to reasonable cause and not due to willful neglect.

* * * * * * *

PART III—INCOME FROM SOURCES WITHOUT THE UNITED STATES

Subpart A—Foreign Tax Credit

SEC. 901. TAXES OF FOREIGN COUNTRIES AND OF POSSESSIONS OF UNITED STATES.

(a) ALLOWANCE OF CREDIT.—If the taxpayer chooses to have the benefits of this subpart, the tax imposed by this chapter shall, subject to limitation of section 904, be credited with the amounts provided in the applicable paragraph of subsection (b) plus, in the case of a corporation, the taxes deemed to have been paid under sections 902 and 960. Such choice for any taxable year may be made or changed at any time before the expiration of the period prescribed for making a claim for credit or refund of the tax imposed by this chapter for such taxable year. The credit shall not be allowed against any tax treated as a tax not imposed by this chapter under section 26(b).

(b) AMOUNT ALLOWED.—Subject to the limitation of section 904, the following amounts shall be allowed as the credit under subsection (a): *Under rules or regulations prescribed by the Secretary, in the case of any foreign trust of which the settlor or another person would be treated as owner of any portion of the trust under subpart E but for section 672(f), the allocable amount of any income, war profits, and excess profits taxes imposed by any foreign country or possession of the United States on the settlor or such other person in respect of trust income.*

* * * * * * *

CHAPTER 5—TAX ON TRANSFERS TO AVOID INCOME TAX

SEC. 1491. IMPOSITION OF TAX.

There is hereby imposed on the transfer of property by a citizen or resident of the United States, or by a domestic corporation or partnership, or by an estate or trust which is not a foreign estate or trust, to a foreign corporation as paid in surplus or as a contribution to capital, or to a foreign estate or trust, or to a foreign partnership, an excise tax equal to 35 percent of the excess of—

(1) the fair market value of the property so transferred, over

(2) the sum of—

(A) the adjusted basis (for determining gain) of such property in the hands of the transferor, plus

(B) the amount of the gain recognized to the transferor at the time of the transfer.

If a trust which is not a foreign trust becomes a foreign trust, such trust shall be treated for purposes of this section as having transferred, immediately before becoming a foreign trust, all of its assets to a foreign trust.

* * * * * * *

SEC. 1494. PAYMENT AND COLLECTION.

(a) TIME FOR PAYMENT.—The tax imposed by section 1491 shall, without assessment or notice and demand, be due and payable by

the transferor at the time of the transfer, and shall be assessed, collected, and paid under regulations prescribed by the Secretary.

(b) ABATEMENT OR REFUND.—Under regulations prescribed by the Secetary, the tax may be abated, remitted, or refunded if the taxpayer, after the transfer, elects the application of principles similar to the principles of section 367.

(c) PENALTY.—In the case of any failure to file a return required by the Secretary with respect to any transfer described in section 1491, the person required to file such return shall be liable for the penalties provided in section 6677 in the same manner as if such failure were a failure to file a notice under section 6048(a).

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Subtitle F—Procedure and Administration

CHAPTER 61—INFORMATION AND RETURNS

Subchapter A—Returns and Records

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PART III—INFORMATION RETURNS

Subpart A—Information Concerning Persons Subject to Special Provisions

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SEC. 6031. RETURN OF PARTNERSHIP INCOME.

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SEC. 6039F. NOTICE OF LARGE GIFTS RECEIVED FROM FOREIGN PERSONS.

(a) IN GENERAL.—If the value of the aggregate foreign gifts received by a United States person (other than an organization described in section 501(c) and exempt from tax under section 501(a)) during any taxable year exceeds $10,000, such United States person shall furnish (at such time and in such manner as the Secretary shall prescribe) such information as the Secretary may prescribe regarding each foreign gift received during such year.

(b) FOREIGN GIFT.—For purposes of this section, the term "foreign gift" means any amount received from a person other than a United States person which the recipient treats as a gift or bequest. Such term shall not include any qualified transfer (within the meaning of section 2503(e)(2)) or any distribution properly disclosed in a return under section 6048(c).

(c) PENALTY FOR FAILURE TO FILE INFORMATION.—

(1) IN GENERAL.—If a United States person fails to furnish the information required by subsection (a) with respect to any foreign gift within the time prescribed therefor (including extensions)—

(A) the tax consequences of the receipt of such gift shall be determined by the Secretary, and

(B) such United States person shall pay (upon notice and demand by the Secretary and in the same manner as tax) an amount equal to 5 percent of the amount of such foreign

gift for each month for which the failure continues (not to exceed 25 percent of such amount in the aggregate).

* * * * * * *

(2) REASONABLE CAUSE EXCEPTION.—Paragraph (1) shall not apply to any failure to report a foreign gift if the United States person shows that the failure is due to reasonable cause and not due to willful neglect.

(d) COST-OF-LIVING ADJUSTMENT.—In the case of any taxable year beginning after December 31, 1996, the $10,000 amount under subsection (a) shall be increased by an amount equal to the product of such amount and the cost-of-living adjustment for such taxable year under section 1(f)(3), except that subparagraph (B) thereof shall be applied by substituting "1995" for "1992".

(e) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.

Subpart B—Information Concerning Transactions With Other Persons

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SEC. 6041. INFORMATION AT SOURCE.

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[SEC. 6048. RETURNS AS TO CERTAIN FOREIGN TRUSTS.]

SEC. 6048. INFORMATION WITH RESPECT TO CERTAIN FOREIGN TRUSTS.

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[(a) GENERAL RULE.—On or before the 90th day (or on or before such later day as the Secretary may by regulations prescribe) after—

[(1) the creation of any foreign trust by a United States person, or

[(2) the transfer of any money or property to a foreign trust by a United States person,

[the grantor in the case of an inter vivos trust, the fiduciary of an estate in the case of a testamentary trust, or the transferor, as the case may be, shall make a return in compliance with the provisions of subsection (b).

[(b) FORM AND CONTENTS OF RETURNS.—The returns required by subsection (a) shall be in such form and shall set forth, in respect of the foreign trust, such information as the Secretary prescribes by regulation as necessary for carrying out the provisions of the income tax laws.

[(c) ANNUAL RETURNS FOR FOREIGN TRUSTS HAVING ONE OR MORE UNITED STATES BENEFICIARIES.—Each taxpayer subject to tax under section 679 (relating to foreign trusts having one or more United States beneficaries) for his taxable year with respect to any trust shall make a return with respect to such trust for such year at such time and in such manner, and setting forth such information, as the Secretary may by regulations prescribed.

[(d) CROSS REFERENCE.—For provisions relating to penalties for violation of this section, see sections 6677 and 7203.]

(a) NOTICE OF CERTAIN EVENTS.—

(1) GENERAL RULE.—On or before the 90th day (or such later day as the Secretary may prescribe) after any reportable event, the responsible party shall provide written notice of such event to the Secretary in accordance with paragraph (2).

(2) CONTENTS OF NOTICE.—The notice required by paragraph (1) shall contain such information as the Secretary may prescribe, including—

(A) the amount of money or other property (if any) transferred to the trust in connection with the reportable event, and

(B) the identity of the trust and of each trustee and beneficiary (or class of beneficiaries) of the trust.

(3) REPORTABLE EVENT.—For purposes of this subsection—

(A) IN GENERAL.—The term 'reportable event' means—

(i) the creation of any foreign trust by a United States person,

(ii) the transfer of any money or property (directly or indirectly) to a foreign trust by a United States person, including a transfer by reason of death, and

(iii) the death of a citizen or resident of the United States if—

(I) the decedent was treated as the owner of any portion of a foreign trust under the rules of subpart E of part I of subchapter J of chapter 1, or

(II) any portion of a foreign trust was included in the gross estate of the decedent.

(B) EXCEPTIONS.—

(i) FAIR MARKET VALUE SALES.—Subparagraph (A)(ii) shall not apply to any transfer of property to a trust in exchange for consideration of at least the fair market value of the transferred property. For purposes of the preceding sentence, consideration other than cash shall be taken into account at its fair market value and the rules of section 679(a)(3) shall apply.

(ii) DEFERRED COMPENSATION AND CHARITABLE TRUSTS.—Subparagraph (A) shall not apply with respect to a trust which is—

(I) described in section 402(b), 404(a)(4), or 404A, or

(II) determined by the Secretary to be described in section 501(c)(3).

(4) RESPONSIBLE PARTY.—For purposes of this subsection, the term "responsible party" means—

(A) the grantor in the case of the creation of an inter vivos trust,

(B) the transferor in the case of a reportable event described in paragraph (3)(A)(ii) other than a transfer by reason of death, and

(C) the executor of the decedent's estate in any other case.

(b) UNITED STATES GRANTOR OF FOREIGN TRUST.—

(1) IN GENERAL.—If, at any time during any taxable year of a United States person, such person is treated as the owner of any portion of a foreign trust under the rules of subpart E of

part I of subchapter J of chapter 1, such person shall be responsible to ensure that—

(A) such trust makes a return for such year which sets forth a full and complete accounting of all trust activities and operations for the year, the name of the United States agent for such trust, and such other information as the Secretary may prescribe, and

(B) such trust furnishes such information as the Secretary may prescribe to each United States person (i) who is treated as the owner of any portion of such trust or (ii) who receives (directly or indirectly) any distribution from the trust.

(2) TRUSTS NOT HAVING UNITED STATES AGENT.—

(A) IN GENERAL.—If the rules of this paragraph apply to any foreign trust, the determination of amounts required to be taken into account with respect to such trust by a United States person under the rules of subpart E of part I of subchapter J of chapter 1 shall be determined by the Secretary.

(B) UNITED STATES AGENT REQUIRED.—The rules of this paragraph shall apply to any foreign trust to which paragraph (1) applies unless such trust agrees (in such manner, subject to such conditions, and at such time as the Secretary shall prescribe) to authorize a United States person to act as such trust's limited agent solely for purposes of applying sections 7602, 7603, and 7604 with respect to—

(i) any request by the Secretary to examine records or produce testimony related to the proper treatment of amounts required to be taken into account under the rules referred to in subparagraph (A), or

(ii) any summons by the Secretary for such records or testimony.

The appearance of persons or production of records by reason of a United States person being such an agent shall not subject such persons or records to legal process for any purpose other than determining the correct treatment under this title of the amounts required to be taken into account under the rules referred to in subparagraph (A). A foreign trust which appoints an agent described in this subparagraph shall not be considered to have an office or a permanent establishment in the United States, or to be engaged in a trade or business in the United States, solely because of the activities of such agent pursuant to this subsection.

(C) OTHER RULES TO APPLY.—Rules similar to the rules of paragraphs (2) and (4) of section 6038A(e) shall apply for purposes of this paragraph.

(c) REPORTING BY UNITED STATES BENEFICIARIES OF FOREIGN TRUSTS.—

(1) IN GENERAL.—If any United States person receives (directly or indirectly) during any taxable year of such person any distribution from a foreign trust, such person shall make a return with respect to such trust for such year which includes—

(A) the name of such trust,

(B) the aggregate amount of the distributions so received from such trust during such taxable year, and

(C) such other information as the Secretary may prescribe.

(2) INCLUSION IN INCOME IF RECORDS NOT PROVIDED.—

(A) IN GENERAL.—If adequate records are not provided to the Secretary to determine the proper treatment of any distribution from a foreign trust, such distribution shall be treated as an accumulation distribution includible in the gross income of the distributee under chapter 1. To the extent provided in regulations, the preceding sentence shall not apply if the foreign trust elects to be subject to rules similar to the rules of subsection (b)(2)(B).

(B) APPLICATION OF ACCUMULATION DISTRIBUTION RULES.—For purposes of applying section 668 in a case to which subparagraph (A) applies, the applicable number of years for purposes of section 668(a) shall be ½ of the number of years the trust has been in existence.

(d) SPECIAL RULES.—

(1) DETERMINATION OF WHETHER UNITED STATES PERSON MAKES TRANSFER OR RECEIVES DISTRIBUTION.—For purposes of this section, in determining whether a United States person makes a transfer to, or receives a distribution from, a foreign trust, the fact that a portion of such trust is treated as owned by another person under the rules of subpart E of part I of subchapter J of chapter 1 shall be disregarded.

(2) DOMESTIC TRUSTS WITH FOREIGN ACTIVITIES.—To the extent provided in regulations, a trust which is a United States person shall be treated as a foreign trust for purposes of this section and section 6677 if such trust has substantial activities, or holds substantial property, outside the United States.

(3) TIME AND MANNER OF FILING INFORMATION.—Any notice or return required under this section shall be made at such time and in such manner as the Secretary shall prescribe.

(4) MODIFICATION OF RETURN REQUIREMENTS.—The Secretary is authorized to suspend or modify any requirement of this section if the Secretary determines that the United States has no significant tax interest in obtaining the required information.

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CHAPTER 68—ADDITIONS TO THE TAX, ADDITIONAL AMOUNTS, AND ASSESSABLE PENALTIES

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Subchapter B—Assessable Penalties

PART I—GENERAL PROVISIONS

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SEC. 6671. RULES FOR APPLICATION OF ASSESSABLE PENALTIES.

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[SEC. 6677. FAILURE TO FILE INFORMATION RETURNS WITH RESPECT TO CERTAIN FOREIGN TRUSTS.]

SEC. 6677. FAILURE TO FILE INFORMATION WITH RESPECT TO CERTAIN FOREIGN TRUSTS.

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[SEC. 6677. FAILURE TO FILE INFORMATION RETURNS WITH RESPECT TO CERTAIN FOREIGN TRUSTS.

[(a) CIVIL PENALTY.—In addition to any criminal penalty provided by law, any person required to file a return under section 6048 who fails to file such return at the time provided in such section, or who files a return which does not show the information required pursuant to such section, shall pay a penalty equal to 5 percent of the amount transferred to a trust (or, in the case of a failure with respect to section 6048(c), equal to 5 percent of the value of the corpus of the trust at the close of the taxable year), but not more than $1,000, unless it is shown that such failure is due to reasonable cause.

[(b) DEFICIENCY PROCEDURES NOT TO APPLY.—Subchapter B of chapter 63 (relating to deficiency procedures for income, estate, gift, and certain excise taxes) shall not apply in respect of the assessment or collection of any penalty imposed by subsection (a).**]**

SEC. 6677. FAILURE TO FILE INFORMATION WITH RESPECT TO CERTAIN FOREIGN TRUSTS.

(a) CIVIL PENALTY.—In addition to any criminal penalty provided by law, if any notice or return required to be filed by section 6048—

(1) is not filed on or before the time provided in such section, or

(2) does not include all the information required pursuant to such section or includes incorrect information,

the person required to file such notice or return shall pay a penalty equal to 35 percent of the gross reportable amount. If any failure described in the preceding sentence continues for more than 90 days after the day on which the Secretary mails notice of such failure to the person required to pay such penalty, such person shall pay a penalty (in addition to the amount determined under the preceding sentence) of $10,000 for each 30-day period (or fraction thereof) during which such failure continues after the expiration of such 90-day period. In no event shall the penalty under this subsection with respect to any failure exceed the gross reportable amount.

(b) SPECIAL RULES FOR RETURNS UNDER SECTION 6048(b).—In the case of a return required under section 6048(b)—

(1) the United States person referred to in such section shall be liable for the penalty imposed by subsection (a), and

(2) subsection (a) shall be applied by substituting "5 percent" for "35 percent".

(c) GROSS REPORTABLE AMOUNT.—For purposes of subsection (a), the term "gross reportable amount" means—

(1) the gross value of the property involved in the event (determined as of the date of the event) in the case of a failure relating to section 6048(a),

(2) the gross value of the portion of the trust's assets at the close of the year treated as owned by the United States person in the case of a failure relating to section 6048(b)(1), and

(3) the gross amount of the distributions in the case of a failure relating to section 6048(c).

(d) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed by this section on any failure which is shown to be due to reasonable cause and not due to willful neglect. The fact that a foreign jurisdiction would impose a civil or criminal penalty on the taxpayer (or any other person) for disclosing the required information is not reasonable cause.

(e) DEFICIENCY PROCEDURES NOT TO APPLY.—Subchapter B of chapter 63 (relating to deficiency procedures for income, estate, gift, and certain excise taxes) shall not apply in respect of the assessment or collection of any penalty imposed by subsection (a).

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PART II—FAILURE TO FILE CERTAIN INFORMATION RETURNS OF STATEMENTS

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SEC. 6724. WAIVER; DEFINITIONS AND SPECIAL RULES.

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(d) DEFINITIONS.—For purposes of this part—

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(2) PAYEE STATEMENT.—The term "payee statement" means any statement required to be furnished under—

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(S) section 6053(b) or (c) (relating to reports of tips), **[**or**]**

(T) section 4093(c)(4)(B) (relating to certain purchasers of diesel and aviation fuels)**[**.**]** *, or*

(U) section 6048(b)(1)(B) (relating to foreign trust reporting requirements).

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SUBTITLE F—PROCEDURE AND ADMINISTRATION

CHAPTER 79—DEFINITIONS

SEC. 7701. DEFINITIONS.

(a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof—

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(30) UNITED STATES PERSON.—The term "United States person" means—

(A) a citizen or resident of the United States,

(B) a domestic partnership,

(C) a domestic corporation, **[**and**]**

[(D) any estate or trust (other than a foreign estate or foreign trust, within the meaning of section 7701(a)(31)).**]**

(D) any estate (other than a foreign estate, within the meaning of paragraph (31)), and

(E) any trust if—

(i) a court within the United States is able to exercise primary supervision over the administration of the trust, and

(ii) one or more United States fiduciaries have the authority to control all substantial decisions of the trust.

[(31) FOREIGN ESTATE OR TRUST.—The terms "foreign estate" and "foreign trust" mean an estate or trust, as the case may be, the income of which, from sources without the United States which is not effectively connected with the conduct of a trade or business within the United States, is not includible in gross income under subtitle A.]

(31) FOREIGN ESTATE OR TRUST.—

(A) FOREIGN ESTATE.—The term "foreign estate" means an estate the income of which, from sources without the United States which is not effectively connected with the conduct of a trade or business within the United States, is not includible in gross income under subtitle A.

(B) FOREIGN TRUST.—The term "foreign trust" means any trust other than a trust described in subparagraph (E) of paragraph (30).

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CHAPTER 80—GENERAL RULES

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Subchapter C—Provisions Affecting More Than One Subtitle

SEC. 7872. TREATMENT OF LOANS WITH BELOW-MARKET INTEREST RATES.

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(f) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

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(8) Loans to which section 483*, 643(i),* or 1274 applies. This section shall not apply to any loan to which section 483*, 643(i),* or 1274 applies.

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TARIFF ACT OF 1930

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TITLE IV—ADMINISTRATIVE PROVISIONS

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PART II—REPORT, ENTRY, AND UNLADING OF VESSELS AND VEHICLES

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SEC. 466. EQUIPMENT AND REPAIRS OF VESSELS.

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

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

(2) tugs of 365 kilowatts or more.

A vessel shall be considered "self-propelled seagoing" if its permanent propulsion and steering provide it all the characteristics of self-navigability in the high seas.

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SEC. 468. SHIPBUILDING AGREEMENT COUNTERMEASURES.

(a) IN GENERAL.—Notwithstanding any other provision of law, upon receiving from the Secretary of Commerce a list of vessels subject to countermeasures under section 807, the Customs Service shall deny any request for a permit to lade or unlade passengers, merchandise, or baggage from or onto those vessels so listed.

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

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

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

(3) To lade or unlade coal and other fuel supplies (for the operation of the listed vessel), ships' stores, sea stores, and the legitimate equipment of such vessel.

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

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

(c) CORRECTION OF MINISTERIAL OR CLERICAL ERRORS.—

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

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

(3) PETITIONS SEEKING ADMINISTRATIVE REVIEW.—Any petition seeking administrative review of any matter regarding the

Secretary of Commerce's decision to list a vessel under section 807 must be brought under that section.

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

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

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

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PART III—ASCERTAINMENT, COLLECTION, AND RECOVERY OF DUTIES

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SEC. 516A. JUDICIAL REVIEW IN COUNTERVAILING DUTY AND ANTIDUMPING DUTY PROCEEDINGS.

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

(a) REVIEW OF DETERMINATION.—

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) notice of implementation of a determination described in subparagraph (C) of paragraph (2), or

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

an interested party who is a party to the proceeding in connection with which the matter arises may commence an action in the United States Court of International Trade by filing concurrently a summons and complaint, each with the content and in the form, manner, and style prescribed by the rules of that court, contesting any factual findings or legal conclusions upon which the determination is based.

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

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

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

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

(D) a determination by the Commission under section 845(a) that results in the revocation of an injurious pricing order.

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

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

(b) STANDARDS OF REVIEW.—

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

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

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

(2) RECORD FOR REVIEW.—

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

(i) a copy of all information presented to or obtained by the administering authority or the Commission during the course of the administrative proceeding, including all governmental memoranda pertaining to the case

and the record of ex parte meetings required to be kept by section 843(a)(2); and

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

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

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

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

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

(2) COMMISSION.—The term "Commission" means the United States International Trade Commission.

(3) INTERESTED PARTY.—The term "interested party" means any person described in section 861(17).

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TITLE VIII—INJURIOUS PRICING AND COUNTERMEASURES RELATING TO SHIPBUILDING

Subtitle A—Imposition of Injurious Pricing Charge and Countermeasures

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

Subtitle B—Special Rules

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

Subtitle C—Procedures

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

Subtitle D—Definitions

Sec. 861. Definitions.

Subtitle A—Imposition of Injurious Pricing Charge and Countermeasures

SEC. 801. INJURIOUS PRICING CHARGE.

(a) BASIS FOR CHARGE.—If—

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

(2) the Commission determines that—

(A) an industry in the United States—

(i) is or has been materially injured, or

(ii) is threatened with material injury, or

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

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

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

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

(a) INITIATION BY ADMINISTERING AUTHORITY.—

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

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

(b) INITIATION BY PETITION.—

(1) PETITION REQUIREMENTS.—

(A) IN GENERAL.—Except in a case in which subsection (d)(6) applies, an injurious pricing proceeding shall be initiated whenever an interested party, as defined in subparagraph (C), (D), (E), or (F) of section 861(17), files a petition with the administering authority, on behalf of an industry, which alleges the elements necessary for the imposition of an injurious pricing charge under section 801(a) and the

elements required under subparagraph (B), (C), (D), or (E) of this paragraph, and which is accompanied by information reasonably available to the petitioner supporting those allegations and identifying the transaction concerned.

(B) PETITIONERS DESCRIBED IN SECTION 861(17)(C).—

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

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

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

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

(ii) REBUTTABLE PRESUMPTION REGARDING KNOWLEDGE OF PROPOSED PURCHASE.—For purposes of clause (i)(III), there is a rebuttable presumption that the petitioner knew or should have known of the proposed purchase if it is demonstrated that—

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

(II) general information on the sale was available from brokers, financiers, classification societies, charterers, trade associations, or other entities normally involved in shipbuilding transactions with whom the petitioner had regular contacts or dealings.

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

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

(E) PETITIONERS DESCRIBED IN SECTION 861(17)(F).—If the petitioner is an interested party described in section 861(17)(F), the petition shall include information indicating that a member of the association described in that section meets the requirements of subparagraph (C) or (D) of this paragraph.

(F) AMENDMENTS.—The petition may be amended at such time, and upon such conditions, as the administering authority and the Commission may permit.

(2) SIMULTANEOUS FILING WITH COMMISSION.—The petitioner shall file a copy of the petition with the Commission on the same day as it is filed with the administering authority.

(3) DEADLINE FOR FILING PETITION.—

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

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

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

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

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

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

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

(c) ACTIONS BEFORE INITIATING INVESTIGATIONS.—

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

(2) ACCEPTANCE OF COMMUNICATIONS.—The administering authority shall not accept any unsolicited oral or written communication from any person other than an interested party described in section 861(17) (C), (D), (E), or (F) before the admin-

istering authority makes its decision whether to initiate an investigation pursuant to a petition, except for inquiries regarding the status of the administering authority's consideration of the petition or a request for consultation by the government of the exporting country.

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

(d) PETITION DETERMINATION.—

(1) TIME FOR INITIAL DETERMINATION.—

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

(i) alleges the elements necessary for the imposition of an injurious pricing charge under section 801(a) and the elements required under subsection (b)(1)(B), (C), (D), or (E), and contains information reasonably available to the petitioner supporting the allegations; and

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

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

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

(3) NEGATIVE DETERMINATIONS.—If—

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

(B) paragraph (6)(B) applies,

the administering authority shall dismiss the petition, terminate the proceeding, and notify the petitioner in writing of the reasons for the determination.

(4) DETERMINATION OF INDUSTRY SUPPORT.—

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

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

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

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

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

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

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

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

(5) DEFINITION OF DOMESTIC PRODUCERS OR WORKERS.—For purposes of this subsection, the term 'domestic producers or workers' means interested parties as defined in section 861(17)(C), (D), (E), or (F).

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

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

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

(e) NOTIFICATION TO COMMISSION OF DETERMINATION.—The administering authority shall—

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

(2) if the determination is affirmative, make available to the Commission such information as it may have relating to the matter under investigation, under such procedures as the administering authority and the Commission may establish to

prevent disclosure, other than with the consent of the party providing it or under protective order, of any information to which confidential treatment has been given by the administering authority.

SEC. 803. PRELIMINARY DETERMINATIONS.

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

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

(A) an industry in the United States—

(i) is or has been materially injured, or

(ii) is threatened with material injury, or

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

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

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

(b) PRELIMINARY DETERMINATION BY ADMINISTERING AUTHORITY.—

(1) PERIOD OF INJURIOUS PRICING INVESTIGATION.—

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

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

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

(D) OTHER CASES.—In cases in which subparagraph (B) or (C) does not apply, the administering authority shall make its determination within 160 days after the date on which the administering authority initiates the investigation under section 802.

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

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

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

(1) IN GENERAL.—If—

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

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

(I) the novelty of the issues presented, or

(II) the nature and extent of the information required, and

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

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

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

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

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

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

(C) the date on which the administering authority initiates an investigation under section 802, in a case in which subsection (b)(1)(D) applies.

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

(d) EFFECT OF DETERMINATION BY THE ADMINISTERING AUTHORITY.—If the preliminary determination of the administering authority under subsection (b) is affirmative, the administering authority shall—

(1) determine an estimated injurious pricing margin, and

(2) make available to the Commission all information upon which its determination was based and which the Commission considers relevant to its injury determination, under such procedures as the administering authority and the Commission may

establish to prevent disclosure, other than with the consent of the party providing it or under protective order, of any information to which confidential treatment has been given by the administering authority.

(e) NOTICE OF DETERMINATION.—Whenever the Commission or the administering authority makes a determination under this section, the Commission or the administering authority, as the case may be, shall notify the petitioner, and other parties to the investigation, and the Commission or the administering authority (whichever is appropriate) of its determination. The administering authority shall include with such notification the facts and conclusions on which its determination is based. Not later than 5 days after the date on which the determination is required to be made under subsection (a)(2), the Commission shall transmit to the administering authority the facts and conclusions on which its determination is based.

SEC. 804. TERMINATION OR SUSPENSION OF INVESTIGATION.

(a) TERMINATION OF INVESTIGATION UPON WITHDRAWAL OF PETITION.—

(1) IN GENERAL.—Except as provided in paragraph (2), an investigation under this subtitle may be terminated by either the administering authority or the Commission, after notice to all parties to the investigation, upon withdrawal of the petition by the petitioner.

(2) LIMITATION ON TERMINATION BY COMMISSION.—The Commission may not terminate an investigation under paragraph (1) before a preliminary determination is made by the administering authority under section 803(b).

(b) TERMINATION OF INVESTIGATIONS INITIATED BY ADMINISTERING AUTHORITY.—The administering authority may terminate any investigation initiated by the administering authority under section 802(a) after providing notice of such termination to all parties to the investigation.

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

(d) PROCEEDINGS BY WTO MEMBERS.—

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

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

(A) the imposition of antidumping measures, or

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

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

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

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

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

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

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

SEC. 805. FINAL DETERMINATIONS.

(a) DETERMINATIONS BY ADMINISTERING AUTHORITY.—

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

(2) EXTENSION OF PERIOD FOR DETERMINATION.—

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

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

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

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

(B) REQUEST REQUIRED.—The administering authority may apply subparagraph (A) if a request in writing is made by—

(i) the producer of the subject vessel, in a proceeding in which the preliminary determination by the administering authority under section 803(b) was affirmative, or

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

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

(b) FINAL DETERMINATION BY COMMISSION.—

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

(A) an industry in the United States—

(i) is or has been materially injured, or

(ii) is threatened with material injury, or

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

by reason of the sale of the vessel with respect to which the administering authority has made an affirmative determination under subsection (a)(1).

(2) PERIOD FOR INJURY DETERMINATION FOLLOWING AFFIRMATIVE PRELIMINARY DETERMINATION BY ADMINISTERING AUTHORITY.—If the preliminary determination by the administering authority under section 803(b) is affirmative, then the Commission shall make the determination required by paragraph (1) before the later of—

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

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

(3) PERIOD FOR INJURY DETERMINATION FOLLOWING NEGATIVE PRELIMINARY DETERMINATION BY ADMINISTERING AUTHORITY.—If the preliminary determination by the administering authority under section 803(b) is negative, and its final determination under subsection (a) is affirmative, then the final determination by the Commission under this subsection shall be made within 75 days after the date of that affirmative final determination.

(c) EFFECT OF FINAL DETERMINATIONS.—

(1) EFFECT OF AFFIRMATIVE DETERMINATION BY THE ADMINISTERING AUTHORITY.—If the determination of the administering authority under subsection (a) is affirmative, then the administering authority shall—

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

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

(2) ISSUANCE OF ORDER; EFFECT OF NEGATIVE DETERMINATION.—If the determinations of the administering authority and the Commission under subsections (a)(1) and (b)(1) are affirmative, then the administering authority shall issue an injurious pricing order under section 806. If either of such determinations is negative, the investigation shall be terminated upon the publication of notice of that negative determination.

(d) PUBLICATION OF NOTICE OF DETERMINATIONS.—Whenever the administering authority or the Commission makes a determination under this section, it shall notify the petitioner, other parties to the investigation, and the other agency of its determination and of the facts and conclusions of law upon which the determination is based, and it shall publish notice of its determination in the Federal Register.

(e) CORRECTION OF MINISTERIAL ERRORS.—The administering authority shall establish procedures for the correction of ministerial errors in final determinations within a reasonable time after the determinations are issued under this section. Such procedures shall

ensure opportunity for interested parties to present their views regarding any such errors. As used in this subsection, the term "ministerial error" includes errors in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the administering authority considers ministerial.

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

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

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

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

(3) informs the foreign producer that—

(A) failure to pay the injurious pricing charge in a timely fashion may result in the imposition of countermeasures with respect to that producer under section 807,

(B) payment made after the deadline described in paragraph (1) shall be subject to interest charges at the Commercial Interest Reference Rate (CIRR), and

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

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

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

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

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

(d) REVOCATION OF ORDER.—The administering authority—

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

(2) shall revoke an injurious pricing order—

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

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

(C) upon full implementation of an alternative equivalent remedy described in subsection (e), or

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

(e) ALTERNATIVE EQUIVALENT REMEDY.—

(1) AGREEMENT FOR ALTERNATE REMEDY.—The administering authority may suspend an injurious pricing order if the administering authority enters into an agreement with the foreign producer subject to the order on an alternative equivalent remedy, that the administering authority determines—

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

(B) is in the public interest,

(C) can be effectively monitored and enforced, and

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

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

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

SEC. 807. IMPOSITION OF COUNTERMEASURES.

(a) GENERAL RULE.—

(1) ISSUANCE OF ORDER IMPOSING COUNTERMEASURES.—Unless an injurious pricing order is revoked or suspended under section 806 (d) or (e), the administering authority shall issue an order imposing countermeasures.

(2) CONTENTS OF ORDER.—The countermeasure order shall—

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

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

(b) NOTICE OF INTENT TO IMPOSE COUNTERMEASURES.—

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

(2) ELEMENTS OF THE NOTICE OF INTENT.—The notice of intent shall contain at least the following elements:

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

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

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

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

(c) DETERMINATION TO IMPOSE COUNTERMEASURES; ORDER.—

(1) GENERAL RULE.—The administering authority shall, within the time specified in paragraph (2), issue a determination and order imposing countermeasures.

(2) TIME FOR DETERMINATION.—The determination shall be issued within 90 days after the date on which the notice of intent to impose countermeasures under subsection (b) is published in the Federal Register. The administering authority shall publish the determination, and the order described in paragraph (4), in the Federal Register within 7 days after issuing the final determination, and shall provide a copy of the determination and order to the Customs Service.

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

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

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

(1) REQUEST FOR REVIEW.—Each year, in the anniversary month of the issuance of the order imposing countermeasures under subsection (c), the administering authority shall publish

in the Federal Register a notice providing that interested parties may request—

(A) a review of the scope or duration of the countermeasures determined under subsection (c)(3), and

(B) a hearing in connection with such a review.

(2) REVIEW.—If a proper request has been received under paragraph (1), the administering authority shall—

(A) publish notice of initiation of a review in the Federal Register not later than 15 days after the end of the anniversary month of the issuance of the order imposing countermeasures, and

(B) review and determine whether the requesting party has demonstrated that the scope or duration of the countermeasures is excessive in light of all of the circumstances.

(3) TIME FOR REVIEW.—The administering authority shall make its determination under paragraph (2)(B) within 90 days after the date on which the notice of initiation of the review is published. If the determination under paragraph (2)(B) is affirmative, the administering authority shall amend the order accordingly. The administering authority shall promptly publish the determination and any amendment to the order in the Federal Register, and shall provide a copy of any amended order to the Customs Service. In extraordinary circumstances, the administering authority may extend the time for its determination under paragraph (2)(B) to not later than 150 days after the date on which the notice of initiation of the review is published.

(e) EXTENSION OF COUNTERMEASURES.—

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

(2) DEADLINE FOR REQUEST FOR EXTENSION.—

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

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

(3) DETERMINATION.—

(A) NOTICE OF REQUEST FOR EXTENSION.—If a proper request has been received under paragraph (1), the administering authority shall publish notice of initiation of an extension proceeding in the Federal Register not later than 15

days after the applicable deadline in paragraph (2) for requesting the extension.

(B) PROCEDURES.—

(i) REQUESTS FOR EXTENSION BEYOND 4 YEARS.—If paragraph (2)(A) applies to the request, the administering authority shall consult with the Trade Representative under paragraph (4).

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

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

(5) DECISION NOT TO REQUEST PANEL.—If, based on consultations under paragraph (4), the Trade Representative decides not to request establishment of a panel, the Trade Representative shall inform the party requesting the extension of the countermeasures of the reasons for its decision in writing. The decision shall not be subject to judicial review.

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

(f) LIST OF VESSELS SUBJECT TO COUNTERMEASURES.—

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

(2) CONTENT OF LIST.—The list under paragraph (1) shall include the following information for each vessel, to the extent the information is available:

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

(B) The vessel identification number.

(C) The shipyard where the vessel was constructed.

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

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

(F) The delivery date of the vessel.

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

(H) Any other identifying information available.

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

(4) SERVICE OF LIST AND AMENDMENTS.—

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

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

(ii) the United States Customs Service,

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

(iv) the owners of vessels on the list,

(v) the shipyards on the list, and

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

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

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

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

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

(1) REQUEST FOR REVIEW.—

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

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

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

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

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

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

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

(ii) if the request seeks a determination described in paragraph (1)(A)(i), not later than 15 days after the deadline described in paragraph (1)(B), and

(B) review and determine whether the requesting party has demonstrated that—

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

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

(3) TIME FOR DETERMINATION.—The administering authority shall make its determination under paragraph (2)(B) within 90 days after the date on which the notice of initiation of such review is published. If the administering authority determines that a vessel should be added or deleted from the list, the administering authority shall amend the list accordingly. The administering authority shall promptly publish in the Federal Register the determination and any such amendment to the list.

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

(i) SUSPENSION OR TERMINATION OF PROCEEDINGS OR COUNTERMEASURES; TEMPORARY REDUCTION OF COUNTERMEASURES.—

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

(2) IF PAYMENT DATE AMENDED.—

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

(B) DATE FOR APPLICATION OF COUNTERMEASURE.—In taking action under subparagraph (A), the administering authority shall ensure that countermeasures are not applied before the date that is 30 days after publication in the Federal Register of the amended payment date.

(C) REINSTITUTION OF PROCEEDINGS.—If—

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

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

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

(j) COMMENT AND HEARING.—In the course of any proceeding under subsection (c), (d), (e), or (g), the administering authority—

(1) shall solicit comments from interested parties, and

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

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

SEC. 808. INJURIOUS PRICING PETITIONS BY THIRD COUNTRIES.

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

(1) a vessel from another Shipbuilding Agreement Party has been sold directly or indirectly to one or more United States buyers at less than fair value, and

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

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

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

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

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

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

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

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

(e) ISSUANCE OF ORDER.—If the administering authority makes an affirmative determination under paragraph (1) of subsection (c), and the Commission makes an affirmative determination under paragraph (2) of subsection (c), the administering authority shall—

(1) order an injurious pricing charge in accordance with section 806, and

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

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

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

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

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

Subtitle B—Special Rules

SEC. 821. EXPORT PRICE.

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

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

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

(2) reduced by—

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

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

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

SEC. 822. NORMAL VALUE.

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

(1) DETERMINATION OF NORMAL VALUE.—

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

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

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

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

(I) such price is representative, and

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

(C) THIRD COUNTRY SALES.—This subparagraph applies when—

(i) a foreign like vessel is not sold in the exporting country as described in subparagraph (B)(i), or

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

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

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

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

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

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

(A) reduced by—

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

(ii) the amount of any taxes imposed directly upon the foreign like vessel or components thereof which

have been rebated, or which have not been collected, on the subject vessel, but only to the extent that such taxes are added to or included in the price of the foreign like vessel, and

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

(B) increased or decreased by the amount of any difference (or lack thereof) between the export price and the price described in paragraph (1)(B) (other than a difference for which allowance is otherwise provided under this section) that is established to the satisfaction of the administering authority to be wholly or partly due to—

(i) physical differences between the subject vessel and the vessel used in determining normal value, or

(ii) other differences in the circumstances of sale.

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

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

(B) is demonstrated to affect price comparability, based on a pattern of consistent price differences between sales at different levels of trade in the country in which normal value is determined.

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

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

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

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

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

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

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

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

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

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

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

(c) NONMARKET ECONOMY COUNTRIES.—

(1) IN GENERAL.—If—

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

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

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

(2) EXCEPTION.—If the administering authority finds that the available information is inadequate for purposes of determining

the normal value of the subject vessel under paragraph (1), the administering authority shall determine the normal value on the basis of the price at which a vessel that is—

(A) comparable to the subject vessel, and

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

is sold in other countries, including the United States.

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

(A) hours of labor required,

(B) quantities of raw materials employed,

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

(D) representative capital cost, including depreciation.

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

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

(B) significant producers of comparable vessels.

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

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

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

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

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

(e) CONSTRUCTED VALUE.—

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

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

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

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

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

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

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

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

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

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

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

(1) COSTS.—

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

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

(C) STARTUP COSTS.—

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

(ii) STARTUP OPERATIONS.—Adjustments shall be made for startup operations only where—

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

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

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

(iii) ADJUSTMENT FOR STARTUP OPERATIONS.—The adjustment for startup operations shall be made by substituting the unit production costs incurred with respect to the vessel at the end of the startup period for the unit production costs incurred during the startup period. If the startup period extends beyond the period of the investigation under this title, the administering authority shall use the most recent cost of production data that it reasonably can obtain, analyze, and verify without delaying the timely completion of the investigation.

For purposes of this subparagraph, the startup period ends at the point at which the level of commercial production

that is characteristic of the vessel, the producer, or the industry is achieved.

(D) COSTS DUE TO EXTRAORDINARY CIRCUMSTANCES NOT INCLUDED.—Costs shall not include actual costs which are due to extraordinary circumstances (including, but not limited to, labor disputes, fire, and natural disasters) and which are significantly over the cost increase which the shipbuilder could have reasonably anticipated and taken into account at the time of sale.

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

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

SEC. 823. CURRENCY CONVERSION.

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

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

Subtitle C—Procedures

SEC. 841. HEARINGS.

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

(b) PROCEDURES.—Any hearing required or permitted under this title shall be conducted after notice published in the Federal Register, and a transcript of the hearing shall be prepared and made available to the public. The hearing shall not be subject to the provisions of subchapter II of chapter 5 of title 5, United States Code, or to section 702 of such title.

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

(a) IN GENERAL.—If—

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

(2) an interested party or any other person—

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

(B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (b)(1) and (d) of section 844,

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

(D) provides such information but the information cannot be verified as provided in section 844(g),

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

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

(1) the petition, or

(2) any other information placed on the record.

(c) CORROBORATION OF SECONDARY INFORMATION.—When the administering authority or the Commission relies on secondary information rather than on information obtained in the course of an investigation under this title, the administering authority and the Commission, as the case may be, shall, to the extent practicable, corroborate that information from independent sources that are reasonably at their disposal.

SEC. 843. ACCESS TO INFORMATION.

(a) INFORMATION GENERALLY MADE AVAILABLE.—

(1) PROGRESS OF INVESTIGATION REPORTS.—The administering authority and the Commission shall, from time to time

upon request, inform the parties to an investigation under this title of the progress of that investigation.

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

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

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

if information relating to that proceeding was presented or discussed at such meeting. The record of such an ex parte meeting shall include the identity of the persons present at the meeting, the date, time, and place of the meeting, and a summary of the matters discussed or submitted. The record of the ex parte meeting shall be included in the record of the proceeding.

(3) SUMMARIES; NON-PROPRIETARY SUBMISSIONS.—The administering authority and the Commission shall disclose—

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

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

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

(b) PROPRIETARY INFORMATION.—

(1) PROPRIETARY STATUS MAINTAINED.—

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

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

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

(B) ADDITIONAL REQUIREMENTS.—The administering authority and the Commission shall require that information

for which proprietary treatment is requested be accompanied by—

(i) either—

(I) a nonproprietary summary in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence, or

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

(ii) either—

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

(II) a statement to the administering authority or the Commission that the business proprietary information is of a type that should not be released under administrative protective order.

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

(c) LIMITED DISCLOSURE OF CERTAIN PROPRIETARY INFORMATION UNDER PROTECTIVE ORDER.—

(1) DISCLOSURE BY ADMINISTERING AUTHORITY OR COMMISSION.—

(A) IN GENERAL.—Upon receipt of an application (before or after receipt of the information requested) which describes in general terms the information requested and sets forth the reasons for the request, the administering authority or the Commission shall make all business proprietary information presented to, or obtained by it, during a proceeding under this title (except privileged information, classified information, and specific information of a type for which there is a clear and compelling need to withhold from disclosure) available to all interested parties who are parties to the proceeding under a protective order described in subparagraph (B), regardless of when the information is submitted during the proceeding. Customer names (other than the name of the United States buyer of the subject ves-

sel) obtained during any investigation which requires a determination under section 805(b) may not be disclosed by the administering authority under protective order until either an order is published under section 806(a) as a result of the investigation or the investigation is suspended or terminated. The Commission may delay disclosure of customer names (other than the name of the United States buyer of the subject vessel) under protective order during any such investigation until a reasonable time before any hearing provided under section 841 is held.

(B) PROTECTIVE ORDER.—The protective order under which information is made available shall contain such requirements as the administering authority or the Commission may determine by regulation to be appropriate. The administering authority and the Commission shall provide by regulation for such sanctions as the administering authority and the Commission determine to be appropriate, including disbarment from practice before the agency.

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

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

(ii) if—

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

(II) the information is unusually voluminous or complex,

not later than 30 days (10 days if the submission pertains to a proceeding under section 803(a)) after the date on which the information is submitted.

(D) AVAILABILITY AFTER DETERMINATION.—If the determination under subparagraph (C) is affirmative, then—

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

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

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

(2) DISCLOSURE UNDER COURT ORDER.—If the administering authority or the Commission denies a request for information

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

(A) the administering authority or the Commission has denied access to the information under subsection (b)(1),

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

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

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

(e) INFORMATION RELATING TO VIOLATIONS OF PROTECTIVE ORDERS AND SANCTIONS.—The administering authority and the Commission may withhold from disclosure any correspondence, private letters of reprimand, settlement agreements, and documents and files compiled in relation to investigations and actions involving a violation or possible violation of a protective order issued under subsection (c), and such information shall be treated as information described in section 552(b)(3) of title 5, United States Code.

(f) OPPORTUNITY FOR COMMENT BY VESSEL BUYERS.—The administering authority and the Commission shall provide an opportunity for buyers of subject vessels to submit relevant information to the administering authority concerning a sale at less than fair value or countermeasures, and to the Commission concerning material injury by reason of the sale of a vessel at less than fair value.

(g) PUBLICATION OF DETERMINATIONS; REQUIREMENTS FOR FINAL DETERMINATIONS.—

(1) IN GENERAL.—Whenever the administering authority makes a determination under section 802 whether to initiate an investigation, or the administering authority or the Commission makes a preliminary determination under section 803, a final determination under section 805, a determination under subsection (b), (c), (d), (e)(3)(B)(ii), (g), or (i) of section 807, or a determination to suspend an investigation under this title, the administering authority or the Commission, as the case may be, shall publish the facts and conclusions supporting that determination, and shall publish notice of that determination in the Federal Register.

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

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

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

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

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

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

(v) the primary reasons for the determination, and

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

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

(ii) the primary reasons for the determination.

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

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

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

SEC. 844. CONDUCT OF INVESTIGATIONS.

(a) CERTIFICATION OF SUBMISSIONS.—Any person providing factual information to the administering authority or the Commission in connection with a proceeding under this title on behalf of the pe-

titioner or any other interested party shall certify that such information is accurate and complete to the best of that person's knowledge.

(b) DIFFICULTIES IN MEETING REQUIREMENTS.—

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

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

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

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

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

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

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

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

(2) the information can be verified,

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

(4) the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the

requirements established by the administering authority or the Commission with respect to the information, and

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

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

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

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

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

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

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

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

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

(4) COMMISSION DETERMINATION.—Notwithstanding any other provision of this title, if a majority of the Commissioners issues an affirmative report under paragraph (1), the Commis-

sion, upon the written request of the Trade Representative, shall issue a determination in connection with the particular proceeding that would render the Commission's action described in paragraph (1) not inconsistent with the findings of the panel. The Commission shall issue its determination not later than 120 calendar days after the request from the Trade Representative is made.

(5) CONSULTATIONS ON IMPLEMENTATION OF COMMISSION DETERMINATION.—The Trade Representative shall consult with the congressional committees listed in paragraph (1) before the Commission's determination under paragraph (4) is implemented.

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

(b) ACTION BY ADMINISTERING AUTHORITY.—

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

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

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

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

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

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

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

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

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

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

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

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

(c) OPPORTUNITY FOR COMMENT BY INTERESTED PARTIES.—Before issuing a determination, amendment, or suspension, the administering authority, in a matter described in subsection (b)(1)(A), or the Commission, in a matter described in subsection (a)(1), as the case may be, shall provide interested parties with an opportunity to submit written comments and, in appropriate cases, may hold a hearing, with respect to the determination.

Subtitle D—Definitions

SEC. 861. DEFINITIONS.

For purposes of this title:

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

(2) COMMISSION.—The term "Commission" means the United States International Trade Commission.

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

(4) INDUSTRY.—

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

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

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

(D) RELATED PARTIES.—(i) In an investigation under this title, if a producer of a domestic like vessel and the foreign producer, seller (other than the foreign producer), or United States buyer of the subject vessel are related parties, or if a producer of a domestic like vessel is also a United States buyer of the subject vessel, the domestic producer may, in appropriate circumstances, be excluded from the industry.

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

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

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

(III) a third party directly or indirectly controls the domestic producer and the foreign producer, seller, or United States buyer, or

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

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

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

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

(6) UNITED STATES BUYER.—The term "United States buyer" means a buyer that is any of the following:

(A) A United States citizen.

(B) A juridical entity, including any corporation, company, association, or other organization, that is legally constituted under the laws and regulations of the United States or a political subdivision thereof, regardless of whether the entity is organized for pecuniary gain, privately or government owned, or organized with limited or unlimited liability.

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

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

(ii) the term "control" means the actual ability to have substantial influence on corporate behavior, and control is presumed to exist where there is at least a 25 percent interest.

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

(7) OWNERSHIP INTEREST.—An "ownership interest" in a vessel includes any contractual or proprietary interest which allows the beneficiary or beneficiaries of such interest to take advantage of the operation of the vessel in a manner substantially comparable to the way in which an owner may benefit from the operation of the vessel. In determining whether such substantial comparability exists, the administering authority shall consider—

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

(B) commercial practice within the industry,

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

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

(8) VESSEL.—

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

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

(ii) a tug of 365 kilowatts or more,

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

(B) EXCLUSIONS.—The term "vessel" does not include—

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

(ii) any military vessel, and

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

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

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

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

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

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

(12) SAME GENERAL CATEGORY OF VESSEL.—The term "same general category of vessel" means a vessel of the same type and purpose as the subject vessel, but of a significantly different size.

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

(14) FOREIGN PRODUCER.—The term "foreign producer" means the producer or producers of the subject vessel.

(15) EXPORTING COUNTRY.—The term "exporting country" means the country in which the subject vessel was built.

(16) MATERIAL INJURY.—

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

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

(i) shall consider—

(I) the sale of the subject vessel,

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

(III) the impact of the sale of the subject vessel on domestic producers of a domestic like vessel, but

only in the context of production operations within the United States, and

(ii) may consider such other economic factors as are relevant to the determination regarding whether there is or has been material injury by reason of the sale of the subject vessel.

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

(C) EVALUATION OF RELEVANT FACTORS.—For purposes of subparagraph (B)—

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

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

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

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

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

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

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

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

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

(V) the magnitude of the injurious pricing margin.

The Commission shall evaluate all relevant economic factors described in this clause within the context of the

business cycle and conditions of competition that are distinctive to the affected industry.

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

(E) THREAT OF MATERIAL INJURY.—

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

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

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

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

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

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

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

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

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

(I) IN GENERAL.—The Commission shall consider whether injurious pricing in the markets of foreign countries (as evidenced by injurious pricing findings or injurious pricing remedies of other Shipbuilding Agreement Parties, or antidumping determinations of, or measures imposed by, other countries, against a like vessel produced by the producer under investigation) suggests a threat of material injury to the domestic industry. In the course of its investigation, the Commission shall request information from the foreign producer or United States buyer concerning this issue.

(II) EUROPEAN COMMUNITIES.—For purposes of this clause, the European Communities as a whole shall be treated as a single foreign country.

(F) CUMULATION FOR DETERMINING MATERIAL INJURY.—

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

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

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

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

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

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

(I) with respect to which the administering authority has made a preliminary negative determination, unless the administering authority subsequently made a final affirmative determination with respect to those sales before the Commission's final determination is made, or

(II) from any producer with respect to which the investigation has been terminated.

(iii) RECORDS IN FINAL INVESTIGATIONS.—In each final determination in which it cumulatively assesses the effects of sales under clause (i), the Commission may make its determinations based on the record compiled in the first investigation in which it makes a final determination, except that when the administering authority issues its final determination in a subsequently completed investigation, the Commission shall permit the parties in the subsequent investigation to submit comments concerning the significance of the administering authority's final determination, and shall include such comments and the administering

authority's final determination in the record for the subsequent investigation.

(G) CUMULATION FOR DETERMINING THREAT OF MATERIAL INJURY.—To the extent practicable and subject to subparagraph (F)(ii), for purposes of clause (i) (II) and (III) of subparagraph (E), the Commission may cumulatively assess the effects of sales of like vessels from all countries with respect to which—

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

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

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

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

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

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

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

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

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

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

(E) a trade or business association a majority of whose members are producers in an industry,

(F) an association, a majority of whose members is composed of interested parties described in subparagraph (C), (D), or (E), and

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

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

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

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

(C) material retardation of the establishment of an industry in the United States,

by reason of the sale of the subject vessel, an affirmative vote on any of the issues shall be treated as a vote that the determination should be affirmative.

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

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

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

(20) NONMARKET ECONOMY COUNTRY.—

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

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

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

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

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

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

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

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

(C) DETERMINATION IN EFFECT.—

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

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

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

(21) SHIPBUILDING AGREEMENT.—The term "Shipbuilding Agreement" means The Agreement Respecting Normal Competitive Conditions in the Commercial Shipbuilding and Repair Industry, resulting from negotiations under the auspices of the Organization for Economic Cooperation and Development, and entered into on December 21, 1994.

(22) SHIPBUILDING AGREEMENT PARTY.—The term "Shipbuilding Agreement Party" means a state or separate customs terri-

tory that is a Party to the Shipbuilding Agreement, and with respect to which the United States applies the Shipbuilding Agreement.

(23) WTO AGREEMENT.—The term "WTO Agreement" means the Agreement defined in section 2(9) of the Uruguay Round Agreements Act.

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

(25) TRADE REPRESENTATIVE.—The term 'Trade Representative' means the United States Trade Representative.

(26) AFFILIATED PERSONS.—The following persons shall be considered to be "affiliated" or "affiliated persons":

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

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

(C) Partners.

(D) Employer and employee.

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

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

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

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

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

(28) INJURIOUS PRICING MARGIN.—

(A) IN GENERAL.—The term "injurious pricing margin" means the amount by which the normal value exceeds the export price of the subject vessel.

(B) MAGNITUDE OF THE INJURIOUS PRICING MARGIN.—The magnitude of the injurious pricing margin used by the Commission shall be—

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

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

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

(30) ANTIDUMPING.—

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

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

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

TRADE ACT OF 1974

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[TITLE V—GENERALIZED SYSTEM OF PREFERENCES

[Sec. 501. Authority to extend preferences.
[Sec. 502. Beneficiary developing country.
[Sec. 503. Eligible articles.
[Sec. 504. Limitations on preferential treatment.
[Sec. 505. Termination of duty-free treatment and reports.
[Sec. 506. Agricultural exports of beneficiary developing countries.]

TITLE V—GENERALIZED SYSTEM OF PREFERENCES

Sec. 501. Authority to extend preferences.
Sec. 502. Designation of beneficiary developing countries.
Sec. 503. Designation of eligible articles.
Sec. 504. Review and report to Congress.
Sec. 505. Date of termination.
Sec. 506. Agricultural exports of beneficiary developing countries.
Sec. 507. Definitions.

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[TITLE V—GENERALIZED SYSTEM OF PREFERENCES

[SEC. 501. AUTHORITY TO EXTEND PREFERENCE.

[The President may provide duty-free treatment for any eligible article from any beneficiary developing country in accordance with the provisions of this title. In taking any such action, the President shall have due regard for—

[(1) the effect such action will have on furthering the economic development of developing countries through the expansion of their exports;

[(2) the extent to which other major developed countries are undertaking a comparable effort to assist developing countries by granting generalized preferences with respect to imports of products of such countries;

[(3) the anticipated impact of such action on United States producers of like or directly competitive products; and

[(4) the extent of the beneficiary developing country's competitiveness with respect to eligible articles.

[SEC. 502. BENEFICIARY DEVELOPING COUNTRY.

[(a)(1) For purposes of this title, the term "beneficiary developing country" means any country with respect to which there is in effect an Executive order or Presidential proclamation by the President of the United States designating such country as a beneficiary developing country for purposes of this title. Before the President designates any country as a beneficiary developing country for purposes of this title, he shall notify the House of Representatives and the Senate of his intention to make such designation, together with the considerations entering into such decision.

[(2) If the President has designated any country as a beneficiary developing country for purposes of this title, he shall not terminate such designation (either by issuing an Executive order or Presidential proclamation for that purpose or by issuing an Executive order or Presidential proclamation which has the effect of terminating such designation) unless, at least 60 days before such termination, he has notified the House of Representatives and the Senate and has notified such country of his intention to terminate such designation, together with the consideration entering into such decision.

[(3) For purposes of this title, the term "country" means any foreign country, any overseas dependent territory or possession of a foreign country, or the Trust Territory of the Pacific Islands. In the case of an association of countries which is a free trade area or customs union, or which is contributing to comprehensive regional economic integration among its members through appropriate means, including, but not limited to, the reduction of duties, the President may by Executive order or Presidential proclamation provide that all members of such association other than members which are barred from designation under subsection (b) shall be treated as one country for purposes of this title.

[(4) For purposes of this title, the term "internationally recognized worker rights" includes—

[(A) the right of association;

[(B) the right to organize and bargain collectively;

[(C) a prohibition on the use of any form of forced or compulsory labor;

[(D) a minimum age for the employment of children; and

[(E) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

[(b) No designation shall be made under this section with respect to any of the following:

[Australia
[Austria
[Canada
[European Economic Community member states
[Finland
[Iceland

[Japan
[Monaco
[New Zealand
[Norway
[Sweden
[Switzerland

[In addition, the President shall not designate any country a beneficiary developing country under this section—

[(1) if such country is a Communist country, unless (A) the products of such country receive nondiscriminatory treatment, (B) such country is a contracting party to the General Agreement on Tariffs and Trade and a member of the International Monetary Fund, and (C) such country is not dominated or controlled by international communism;

[(2) if such country is a member of the Organization of Petroleum Exporting Countries, or a party to any other arrangement of foreign countries, and such country participates in any action pursuant to such arrangement the effect of which is to withhold supplies of vital commodity resources from international trade or to raise the price of such commodities to an unreasonable level and to cause serious disruption of the world economy;

[(3) if such country affords preferential treatment to the products of a developed country, other than the United States, which has, or is likely to have, a significant adverse effect on United States commerce, unless the President has received assurances satisfactory to him that such preferential treatment will be eliminated before January 1, 1976, or that action will be taken before January 1, 1976, to assure that there will be no such significant adverse effect, and he reports those assurances to the Congress;

[(4) if such country—

[(A) has nationalized, expropriated, or otherwise seized ownership or control of property, including patents, trademarks, or copyrights owned by a United States citizen or by a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens,

[(B) has taken steps to repudiate or nullify an existing contract or agreement with a United States citizen or a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of property, including patents, trademarks, or copyrights, so owned, or

[(C) has imposed or enforced taxes or other exactions, restrictive maintenance or operational conditions, or other measures with respect to property, including patents, trademarks, or copyrights, so owned, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of such property,

[(D) the President determines that—

[(i) prompt, adequate, and effective compensation has been or is being made to such citizen, corporation, partnership, or association,

[(ii) good faith negotiations to provide prompt, adequate, and effective compensation under the applicable

provisions of international law are in progress, or such country is otherwise taking steps to discharge its obligations under international law with respect to such citizen, corporation, partnership, or association, or

[(iii) a dispute involving such citizen, corporation, partnership, or association over compensation for such a seizure has been submitted to arbitration under the provisions of the Convention for the Settlement of Investment Disputes, or in another mutually agreed upon forum, and

promptly furnishes a copy of such determination to the Senate and House of Representatives;

[(5) if such country fails to act in good faith in recognizing as binding or in enforcing arbitral awards in favor of United States citizens or a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens, which have been made by arbitrators appointed for each case or by permanent arbitral bodies to which the parties involved have submitted their dispute;

[(6) if such country aids or abets, by granting sanctuary from prosecution to, any individual or group which has committed an act of international terrorism; and

[(7) if such country has not taken or is not taking steps to afford internationally recognized worker rights to workers in the country (including any designated zone in that country).

[Paragraphs (4), (6), (7), and (8) shall not prevent the designation of any country as a beneficiary developing country under this section if the President determines that such designation will be in the national economic interest of the United States and reports such determination to the Congress with his reasons therefor.

[(c) In determining whether to designate any country a beneficiary developing country under this section, the President shall take into account—

[(1) an expression by such country of its desire to be so designated;

[(2) the level of economic development of such country, including its per capita gross national product, the living standards of its inhabitants, and any other economic factors which he deems appropriate;

[(3) whether or not the other major developed countries are extending generalized preferential tariff treatment to such country;

[(4) the extent to which such country has assured the United States it will provide equitable and reasonable access to the markets and basic commodity resources of such country and the extent to which such country has assured the United States that it will refrain from engaging in unreasonable export practices;

[(5) the extent to which such country is providing adequate and effective means under its laws for foreign nationals to secure, to exercise, and to enforce exclusive rights in intellectual property, including patents, trademarks, and copyrights;

[(6) the extent to which such country has taken action to—

[(A) reduce trade distorting investment practices and policies (including export performance requirements); and

[(B) reduce or eliminate barriers to trade in services; and

[(7) whether or not such country has taken or is taking steps to afford to workers in that country (including any designated zone in that country) internationally recognized worker rights.

[(d) Amendment of general headnote 3(a) to the Tariff Schedules of the United States relating to products of insular possessions.]

[(e)(1) The President may exempt from the application of paragraph (2) of subsection (b) any country during the period during which such country (A) is a party to a bilateral or multilateral trade agreement to which the United States is also a party if such agreement fulfills the negotiating objectives set forth in section 108 of assuring the United States fair and equitable access at reasonable prices to supplies of articles of commerce important to the economic requirements of the United States and (B) is not in violation of such agreement by action denying the United States such fair and equitable access.

[(2) The President may exempt from the application of paragraph (2) of subsection (b) any country that enters into a bilateral product-specific trade agreement with the United States under section 101 or 102 of the Trade Act of 1974 before January 3, 1980. The President shall terminate the exemption granted to any country under the preceding sentence if that country interrupts or terminates the delivery of supplies of petroleum and petroleum products to the United States.

[(19 U.S.C. 2462)

[SEC. 503. ELIGIBLE ARTICLES.

[(a) The President shall, from time to time, publish and furnish the International Trade Commission with lists of articles which may be considered for designation as eligible articles for purposes of this title. Before any such list is furnished to the Commission, there shall be in effect an Executive order or Presidential proclamation under section 502 designating beneficiary developing countries. The provisions of sections 131, 132, 133, and 134 of this Act shall be complied with as though action under section 501 were action under section 101 of this Act to carry out a trade agreement entered into under section 101. After receiving the advice of the Commission with respect to the listed articles, the President shall designate those articles he considers appropriate to be eligible articles for purposes of this title by Executive order or Presidential proclamation.

[(b)(1) The duty free treatment provided under section 501 shall apply to any eligible article which is the growth, product, or manufacture of a beneficiary developing country if—

[(A) that article is imported directly from a beneficiary developing country into the customs territory of the United States;

[(B) the sum of (i) the cost or value of the materials produced in the beneficiary developing country or any 2 or more countries which are members of the same association of countries which is treated as one country under section 502(a)(3),

plus (ii) the direct costs of processing operations performed in such beneficiary developing country or such member countries is not less than 35 percent of the appraised value of such article at the time of its entry into the customs territory of the United States.

[(2) The Secretary of the Treasury, after consulting with the United States Trade Representative, shall prescribe such regulations as may be necessary to carry out this subsection, including, but not limited to, regulations providing that, in order to be eligible for duty-free treatment under this title, an article must be wholly the growth, product, or manufacture of a beneficiary developing country, or must be a new or different article of commerce which has been grown, produced, or manufactured in the beneficiary developing country; but no article or material of a beneficiary developing country shall be eligible for such treatment by virtue of having merely undergone—

[(A) simple combining of packaging operations, or

[(B) mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article.

[(c)(1) The President may not designate any article as an eligible article under subsection (a) if such article is within one of the following categories of import-sensitive articles—

[(A) textile and apparel articles which are subject to textile agreements,

[(B) watches, except those watches entered after June 30, 1989, that the President specifically determines, after public notice and comment, will not cause material injury to watch or watch band, strap, or bracelet manufacturing and assembly operations in the United States or the United States insular possessions,

[(C) import-sensitive electronic articles,

[(D) import-sensitive steel articles,

[(E) footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel which were not eligible articles for purposes of this article on April 1, 1984,

[(F) import-sensitive semimanufactured and manufactured glass products, and

[(G) any other articles which the President determines to be import-sensitive in the context of the Generalized System of Preferences.

[(2) No article shall be an eligible article for purposes of this title for any period during which such article is the subject of any action proclaimed pursuant to section 203 of this Act or section 232 or 351 of the Trade Expansion Act of 1962.

[(d) TARIFF-RATE QUOTAS.—No quantity of an agricultural product subject to a tariff-rate quota that exceeds the in-quota quantity shall be eligible for duty-free treatment under this title.

[(19 U.S.C. 2463)

[SEC. 504. LIMITATIONS ON PREFERENTIAL TREATMENT.

[(a)(1) The President may withdraw, suspend, or limit the application of the duty-free treatment accorded under section 501 with respect to any article or with respect to any country; except that

no rate of duty may be established in respect of any article pursuant to this section other than the rate which would apply but for this title. In taking any action under this subsection, the President shall consider the factors set forth in sections 501 and 502(c).

[(2) The President shall, as necessary, advise the Congress and, by no later than January 4, 1988, submit to the Congress a report on the application of sections 502 and 502(c), and the actions the President has taken to withdraw, to suspend, or to limit the application of duty-free treatment with respect to any country which has failed to adequately take the actions described in section 502(c).

[(b) The President shall, after complying with the requirements of section 502(a)(2), withdraw or suspend the designation of any country as a beneficiary developing country if, after such designation, he determines that as the result of changed circumstances such country would be barred from designation as a beneficiary developing country under section 502(b). Such country shall cease to be a beneficiary developing country on the day on which the President issues an Executive order or Presidential proclamation revoking his designation of such country under section 502.

[(c)(1) Subject to paragraphs (2) through (7) and subsection (d), whenever the President determines that any country—

[(A) has exported (directly or indirectly) to the United States during a calendar year a quantity of an eligible article having an appraised value in excess of an amount which bears the same ratio to $25,000,000 as the gross national product of the United States for the preceding calendar year (as determined by the Department of Commerce) bears to the gross national product of the United States for calendar year 1974; or

[(B) has exported (either directly or indirectly) to the United States a quantity of any eligible article equal to or exceeding 50 percent of the appraised value of the total imports of such article into the United States during any calendar year;

then, not later than July 1 of the next calendar year, such country shall not be treated as a beneficiary developing country with respect to such article.

[(2)(A) Not later than January 1, 1987, and periodically thereafter, the President shall conduct a general review of eligible articles based on the considerations described in section 501 or 502(c).

[(B) If, after any review under subparagraph (A), the President determines that this subparagraph should apply because a beneficiary developing country has demonstrated a sufficient degree of competitiveness (relative to other beneficiary developing countries) with respect to any eligible article, then paragraph (1) shall be applied to such country with respect to such article by substituting—

[(i) "1984" for "1974" in subparagraph (A), and

[(ii) "25 percent" for "50 percent" in subparagraph (B).

[(3)(A) Not earlier than January 4, 1987, the President may waive the application of this subsection with respect to any eligible article of any beneficiary developing country if, before July 1 of the calendar year beginning after the calendar year for which a determination described in paragraph (1) was made with respect to such eligible article, the President—

[(i) receives the advice of the International Trade Commission on whether any industry in the United States is likely to be adversely affected by such waiver,

[(ii) determines, based on the considerations described in sections 501 and 502(c) and the advice described in clause (i), that such waiver is in the national economic interest of the United States, and

[(iii) publishes the determination described in clause (ii) in the Federal Register.

[(B) In making any determination under subparagraph (A), the President shall give great weight to—

[(i) the extent to which the beneficiary developing country has assured the United States that such country will provide equitable and reasonable access to the markets and basic commodity resources of such country, and

[(ii) the extent to which such country provides adequate and effective means under its law for foreign nationals to secure, to exercise, and to enforce exclusive rights in intellectual property, including patent, trademark, and copyright rights.

[(C) Any waiver granted pursuant to this paragraph shall remain in effect until the President determines that such waiver is no longer warranted due to changed circumstances.

[(D)(i) The President may not exercise the waiver authority provided under subparagraph (A) with respect to a quantity of eligible articles entered in any calendar year which exceeds an aggregate value equal to 30 percent of the total value of all articles which entered duty-free under this title during the preceding calendar year.

[(ii) The President may not exercise the waiver authority provided under subparagraph (A) with respect to a quantity of eligible articles entered during any calendar year beginning after 1986 the aggregate value of which exceeds 15 percent of the total value of all articles that have entered duty-free under this title during the preceding calendar year from those beneficiary developing countries which for the preceding calendar year—

[(I) had a per capita gross national product (calculated on the basis of the best available information, including that of the World Bank) of $5,000 or more; or

[(II) had exported (either directly or indirectly) to the United States a quantity of articles that was duty-free under this title that had an appraised value of more than 10 percent of the total imports of all articles that entered duty-free under this title during that year.

[(iii) There shall be counted against the limitations imposed under clauses (i) and (ii) for any calendar year only that quantity of any eligible article of any country that—

[(I) entered duty-free under this title during such calendar year; and

[(II) is in excess of the quantity of that article that would have been so entered during such calendar year if the 1974 limitation applied under paragraph (1)(A) and the 50 percent limitation applied under paragraph (1)(B).

[(4) Except in any case to which paragraph (2)(B) applies, the President may waive the application of this subsection if, before July 1 of the calendar year beginning after the calendar year for

which a determination described in paragraph (1) was made, the President determines and publishes in the Federal Register that, with respect to such country—

[(A) there has been a historical preferential trade relationship between the United States and such country,

[(B) there is a treaty or trade agreement in force covering economic relations between such country and the United States, and

[(C) such country does not discriminate against, or impose unjustifiable or unreasonable barriers to, United States commerce.

[(5) A country which is no longer treated as a beneficiary developing country with respect to an eligible article by reason of this subsection may be redesignated a beneficiary developing country with respect to such article, subject to the provisions of sections 501 and 502, if imports of such article from such country did not exceed the limitations in paragraph (1) (after application of paragraph (2)) during the preceding calendar year.

[(6)(A) This subsection shall not apply to any beneficiary developing country which the President determines, based on the considerations described in sections 501 and 502(c), to be a least-developed beneficiary developing country.

[(B) The President shall—

[(i) make a determination under subparagraph (A) with respect to each beneficiary developing country before July 4, 1985, and periodically thereafter, and

[(ii) notify the Congress at least 60 days before any such determination becomes final.

[(7) For purposes of this subsection, the term "country" does not include an association of countries which is treated as one country under section 502(a)(3), but does include a country which is a member of any such association.

[(d)(1) Subsection (c)(1)(B) (after application of subsection (c)(2)) shall not apply with respect to any eligible article if a like or directly competitive article is not produced in the United States on January 3, 1985.

[(2) The President may disregard subsection (c)(1)(B) with respect to any eligible article if the appraised value of the total imports of such article into the United States during the preceding calendar year is not in excess of an amount which bears the same ratio to $5,000,000 as the gross national product of the United States for that calendar year (as determined by the Department of Commerce) bears to the gross national product of the United States for calendar year 1979.

[(e) No action pursuant to section 501 may affect any tariff duty imposed by the Legislature of Puerto Rico pursuant to section 319 of the Tariff Act of 1930 (19 U.S.C. sec. 1319) on coffee imported into Puerto Rico.

[(f)(1) If the President determines that the per capita gross national product (calculated on the basis of the best available information, including that of the World Bank) of any beneficiary developing country for any calendar year (hereafter in this subsection referred to as the "determination year") after 1984, exceeds the applicable limit for the determination year—

[(A) subsection (c)(1)(B) shall be applied for the 2-year period beginning on July 1 of the calendar year succeeding the determination year by substituting "25 percent" or "50 percent", and

[(B) such country shall not be treated as a beneficiary developing country under this title after the close of such 2-year period.

[(2)(A) For purposes of this subsection, the term "applicable limit" means a sum of—

[(i) $8,500, plus

[(ii) 50 percent of the amount determined under subparagraph (B) for the determination year.

[(B) The amount determined under this subparagraph for the determination year is an amount equal to—

[(i) $8,500, multiplied by

[(ii) the percentage determined by dividing—

[(I) the excess, if any, of the gross national product of the United States (as determined by the Secretary of Commerce) for the determination year over the gross national product of the United States for 1984, by

[(II) the gross national product for 1984.

[(19 U.S.C. 2464)

[SEC. 505. TERMINATION OF DUTY-FREE TREATMENT AND REPORTS.

[(a) No duty-free treatment provided under this title shall remain in effect after July 31, 1995.

[(b) On or before January 4, 1990, the President shall submit to the Congress a full and complete report regarding the operation of this title.

[(c) The President shall submit an annual report to the Congress on the status of internationally recognized worker rights within each beneficiary developing country.

[(19 U.S.C. 2465)

[SEC. 506. AGRICULTURAL EXPORTS OF BENEFICIARY DEVELOPING COUNTRIES.

[The appropriate agencies of the United States shall assist beneficiary developing countries to develop and implement measures designed to assure that the agricultural sectors of their economies are not directed to export markets to the detriment of the production of foodstuffs for their citizenry.

[(19 U.S.C. 2466)]

TITLE V—GENERALIZED SYSTEM OF PREFERENCES

SEC. 501. AUTHORITY TO EXTEND PREFERENCES.

The President may provide duty-free treatment for any eligible article from any beneficiary developing country in accordance with the provisions of this title. In taking any such action, the President shall have due regard for—

(1) the effect such action will have on furthering the economic development of developing countries through the expansion of their exports;

(2) the extent to which other major developed countries are undertaking a comparable effort to assist developing countries by granting generalized preferences with respect to imports of products of such countries;

(3) the anticipated impact of such action on United States producers of like or directly competitive products; and

(4) the extent of the beneficiary developing country's competitiveness with respect to eligible articles.

SEC. 502. DESIGNATION OF BENEFICIARY DEVELOPING COUNTRIES.

(a) AUTHORITY TO DESIGNATE COUNTRIES.—

(1) BENEFICIARY DEVELOPING COUNTRIES.—The President is authorized to designate countries as beneficiary developing countries for purposes of this title.

(2) LEAST-DEVELOPED BENEFICIARY DEVELOPING COUNTRIES.—The President is authorized to designate any beneficiary developing country as a least-developed beneficiary developing country for purposes of this title, based on the considerations in section 501 and subsection (c) of this section.

(b) COUNTRIES INELIGIBLE FOR DESIGNATION.—

(1) SPECIFIC COUNTRIES.—The following countries may not be designated as beneficiary developing countries for purposes of this title:

(A) Australia.
(B) Canada.
(C) European Union member states.
(D) Iceland.
(E) Japan.
(F) Monaco.
(G) New Zealand.
(H) Norway.
(I) Switzerland.

(2) OTHER BASES FOR INELIGIBILITY.—The President shall not designate any country a beneficiary developing country under this title if any of the following applies:

(A) Such country is a Communist country, unless—

(i) the products of such country receive nondiscriminatory treatment,

(ii) such country is a WTO Member (as such term is defined in section 2(10) of the Uruguay Round Agreements Act) (19 U.S.C. 3501(10)) and a member of the International Monetary Fund, and

(iii) such country is not dominated or controlled by international communism.

(B) Such country is a party to an arrangement of countries and participates in any action pursuant to such arrangement, the effect of which is—

(i) to withhold supplies of vital commodity resources from international trade or to raise the price of such commodities to an unreasonable level, and

(ii) to cause serious disruption of the world economy.

(C) Such country affords preferential treatment to the products of a developed country, other than the United States, which has, or is likely to have, a significant adverse effect on United States commerce.

(D)(i) Such country—

(I) has nationalized, expropriated, or otherwise seized ownership or control of property, including patents, trademarks, or copyrights, owned by a United States citizen or by a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens,

(II) has taken steps to repudiate or nullify an existing contract or agreement with a United States citizen or a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of property, including patents, trademarks, or copyrights, so owned, or

(III) has imposed or enforced taxes or other exactions, restrictive maintenance or operational conditions, or other measures with respect to property, including patents, trademarks, or copyrights, so owned, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of such property,

unless clause (ii) applies.

(ii) This clause applies if the President determines that—

(I) prompt, adequate, and effective compensation has been or is being made to the citizen, corporation, partnership, or association referred to in clause (i),

(II) good faith negotiations to provide prompt, adequate, and effective compensation under the applicable provisions of international law are in progress, or the country described in clause (i) is otherwise taking steps to discharge its obligations under international law with respect to such citizen, corporation, partnership, or association, or

(III) a dispute involving such citizen, corporation, partnership, or association over compensation for such a seizure has been submitted to arbitration under the provisions of the Convention for the Settlement of Investment Disputes, or in another mutually agreed upon forum,

and the President promptly furnishes a copy of such determination to the Senate and House of Representatives.

(E) Such country fails to act in good faith in recognizing as binding or in enforcing arbitral awards in favor of United States citizens or a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens, which have been made by arbitrators appointed for each case or by permanent arbitral bodies to which the parties involved have submitted their dispute.

(F) Such country aids or abets, by granting sanctuary from prosecution to, any individual or group which has committed an act of international terrorism.

(G) Such country has not taken or is not taking steps to afford internationally recognized worker rights to workers in the country (including any designated zone in that country).

Subparagraphs (D), (E), (F), and (G) shall not prevent the designation of any country as a beneficiary developing country under this title if the President determines that such designation will be in the national economic interest of the United States and reports such determination to the Congress with the reasons therefor.

(c) FACTORS AFFECTING COUNTRY DESIGNATION.—In determining whether to designate any country as a beneficiary developing country under this title, the President shall take into account—

(1) an expression by such country of its desire to be so designated;

(2) the level of economic development of such country, including its per capita gross national product, the living standards of its inhabitants, and any other economic factors which the President deems appropriate;

(3) whether or not other major developed countries are extending generalized preferential tariff treatment to such country;

(4) the extent to which such country has assured the United States that it will provide equitable and reasonable access to the markets and basic commodity resources of such country and the extent to which such country has assured the United States that it will refrain from engaging in unreasonable export practices;

(5) the extent to which such country is providing adequate and effective protection of intellectual property rights;

(6) the extent to which such country has taken action to—

(A) reduce trade distorting investment practices and policies (including export performance requirements); and

(B) reduce or eliminate barriers to trade in services; and

(7) whether or not such country has taken or is taking steps to afford to workers in that country (including any designated zone in that country) internationally recognized worker rights.

(d) WITHDRAWAL, SUSPENSION, OR LIMITATION OF COUNTRY DESIGNATION.—

(1) IN GENERAL.—The President may withdraw, suspend, or limit the application of the duty-free treatment accorded under this title with respect to any country. In taking any action under this subsection, the President shall consider the factors set forth in section 501 and subsection (c) of this section.

(2) CHANGED CIRCUMSTANCES.—The President shall, after complying with the requirements of subsection (f)(2), withdraw or suspend the designation of any country as a beneficiary developing country if, after such designation, the President determines that as the result of changed circumstances such country would be barred from designation as a beneficiary developing country under subsection (b)(2). Such country shall cease to be a beneficiary developing country on the day on which the Presi-

dent issues an Executive order or Presidential proclamation revoking the designation of such country under this title.

(3) ADVICE TO CONGRESS.—The President shall, as necessary, advise the Congress on the application of section 501 and subsection (c) of this section, and the actions the President has taken to withdraw, to suspend, or to limit the application of duty-free treatment with respect to any country which has failed to adequately take the actions described in subsection (c).

(e) MANDATORY GRADUATION OF BENEFICIARY DEVELOPING COUNTRIES.—If the President determines that a beneficiary developing country has become a 'high income' country, as defined by the official statistics of the International Bank for Reconstruction and Development, then the President shall terminate the designation of such country as a beneficiary developing country for purposes of this title, effective on January 1 of the second year following the year in which such determination is made.

(f) CONGRESSIONAL NOTIFICATION.—

(1) NOTIFICATION OF DESIGNATION.—

(A) IN GENERAL.—Before the President designates any country as a beneficiary developing country under this title, the President shall notify the Congress of the President's intention to make such designation, together with the considerations entering into such decision.

(B) DESIGNATION AS LEAST-DEVELOPED BENEFICIARY DEVELOPING COUNTRY.—At least 60 days before the President designates any country as a least-developed beneficiary developing country, the President shall notify the Congress of the President's intention to make such designation.

(2) NOTIFICATION OF TERMINATION.—If the President has designated any country as a beneficiary developing country under this title, the President shall not terminate such designation unless, at least 60 days before such termination, the President has notified the Congress and has notified such country of the President's intention to terminate such designation, together with the considerations entering into such decision.

SEC. 503. DESIGNATION OF ELIGIBLE ARTICLES.

(a) ELIGIBLE ARTICLES.—

(1) DESIGNATION.—

(A) IN GENERAL.—Except as provided in subsection (b), the President is authorized to designate articles as eligible articles from all beneficiary developing countries for purposes of this title by Executive order or Presidential proclamation after receiving the advice of the International Trade Commission in accordance with subsection (e).

(B) LEAST-DEVELOPED BENEFICIARY DEVELOPING COUNTRIES.—Except for articles described in subparagraphs (A), (B), and (E) of subsection (b)(1) and articles described in paragraphs (2) and (3) of subsection (b), the President may, in carrying out section 502(d)(1) and subsection (c)(1) of this section, designate articles as eligible articles only for countries designated as least-developed beneficiary developing countries under section 502(a)(2) if, after receiving the advice of the International Trade Commission in accordance with subsection (e) of this section, the President deter-

mines that such articles are not import-sensitive in the context of imports from least-developed beneficiary developing countries.

(C) THREE-YEAR RULE.—If, after receiving the advice of the International Trade Commission under subsection (e), an article has been formally considered for designation as an eligible article under this title and denied such designation, such article may not be reconsidered for such designation for a period of 3 years after such denial.

(2) RULE OF ORIGIN.—

(A) GENERAL RULE.—The duty-free treatment provided under this title shall apply to any eligible article which is the growth, product, or manufacture of a beneficiary developing country if—

(i) that article is imported directly from a beneficiary developing country into the customs territory of the United States; and

(ii) the sum of—

(I) the cost or value of the materials produced in the beneficiary developing country or any two or more such countries that are members of the same association of countries and are treated as one country under section 507(2), plus

(II) the direct costs of processing operations performed in such beneficiary developing country or such member countries,

is not less than 35 percent of the appraised value of such article at the time it is entered.

(B) EXCLUSIONS.—An article shall not be treated as the growth, product, or manufacture of a beneficiary developing country by virtue of having merely undergone—

(i) simple combining or packaging operations, or

(ii) mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article.

(3) REGULATIONS.—The Secretary of the Treasury, after consulting with the United States Trade Representative, shall prescribe such regulations as may be necessary to carry out paragraph (2), including, but not limited to, regulations providing that, in order to be eligible for duty-free treatment under this title, an article—

(A) must be wholly the growth, product, or manufacture of a beneficiary developing country, or

(B) must be a new or different article of commerce which has been grown, produced, or manufactured in the beneficiary developing country.

(b) ARTICLES THAT MAY NOT BE DESIGNATED AS ELIGIBLE ARTICLES.—

(1) IMPORT SENSITIVE ARTICLES.—The President may not designate any article as an eligible article under subsection (a) if such article is within one of the following categories of import-sensitive articles:

(A) Textile and apparel articles which were not eligible articles for purposes of this title on January 1, 1994, as this title was in effect on such date.

(B) Watches, except those watches entered after June 30, 1989, that the President specifically determines, after public notice and comment, will not cause material injury to watch or watch band, strap, or bracelet manufacturing and assembly operations in the United States or the United States insular possessions.

(C) Import-sensitive electronic articles.

(D) Import-sensitive steel articles.

(E) Footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel which were not eligible articles for purposes of this title on January 1, 1995, as this title was in effect on such date.

(F) Import-sensitive semimanufactured and manufactured glass products.

(G) Any other articles which the President determines to be import-sensitive in the context of the Generalized System of Preferences.

(2) ARTICLES AGAINST WHICH OTHER ACTIONS TAKEN.—An article shall not be an eligible article for purposes of this title for any period during which such article is the subject of any action proclaimed pursuant to section 203 of this Act (19 U.S.C. 2253) or section 232 or 351 of the Trade Expansion Act of 1962 (19 U.S.C. 1862, 1981).

(3) AGRICULTURAL PRODUCTS.—No quantity of an agricultural product subject to a tariff-rate quota that exceeds the in-quota quantity shall be eligible for duty-free treatment under this title.

(c) WITHDRAWAL, SUSPENSION, OR LIMITATION OF DUTY-FREE TREATMENT; COMPETITIVE NEED LIMITATION.—

(1) IN GENERAL.—The President may withdraw, suspend, or limit the application of the duty-free treatment accorded under this title with respect to any article, except that no rate of duty may be established with respect to any article pursuant to this subsection other than the rate which would apply but for this title. In taking any action under this subsection, the President shall consider the factors set forth in sections 501 and 502(c).

(2) COMPETITIVE NEED LIMITATION.—

(A) BASIS FOR WITHDRAWAL OF DUTY-FREE TREATMENT.—

(i) IN GENERAL.—Except as provided in clause (ii) and subject to subsection (d), whenever the President determines that a beneficiary developing country has exported (directly or indirectly) to the United States during any calendar year beginning after December 31, 1995—

(I) a quantity of an eligible article having an appraised value in excess of the applicable amount for the calendar year, or

(II) a quantity of an eligible article equal to or exceeding 50 percent of the appraised value of the total imports of that article into the United States during any calendar year,

the President shall, not later than July 1 of the next calendar year, terminate the duty-free treatment for that article from that beneficiary developing country.

(ii) ANNUAL ADJUSTMENT OF APPLICABLE AMOUNT.—For purposes of applying clause (i), the applicable amount is—

(I) for 1996, $75,000,000, and

(II) for each calendar year thereafter, an amount equal to the applicable amount in effect for the preceding calendar year plus $5,000,000.

(B) COUNTRY DEFINED.—For purposes of this paragraph, the term "country" does not include an association of countries which is treated as one country under section 507(2), but does include a country which is a member of any such association.

(C) REDESIGNATIONS.—A country which is no longer treated as a beneficiary developing country with respect to an eligible article by reason of subparagraph (A) may, subject to the considerations set forth in sections 501 and 502, be redesignated a beneficiary developing country with respect to such article if imports of such article from such country did not exceed the limitations in subparagraph (A) during the preceding calendar year.

(D) LEAST-DEVELOPED BENEFICIARY DEVELOPING COUNTRIES.—Subparagraph (A) shall not apply to any least-developed beneficiary developing country.

(E) ARTICLES NOT PRODUCED IN THE UNITED STATES EXCLUDED.—Subparagraph (A)(i)(II) shall not apply with respect to any eligible article if a like or directly competitive article was not produced in the United States on January 1, 1995.

(F) DE MINIMIS WAIVERS.—

(i) IN GENERAL.—The President may disregard subparagraph (A)(i)(II) with respect to any eligible article from any beneficiary developing country if the aggregate appraised value of the imports of such article into the United States during the preceding calendar year does not exceed the applicable amount for such preceding calendar year.

(ii) APPLICABLE AMOUNT.—For purposes of applying clause (i), the applicable amount is—

(I) for calendar year 1996, $13,000,000, and

(II) for each calendar year thereafter, an amount equal to the applicable amount in effect for the preceding calendar year plus $500,000.

(d) WAIVER OF COMPETITIVE NEED LIMITATION.—

(1) IN GENERAL.—The President may waive the application of subsection (c)(2) with respect to any eligible article of any beneficiary developing country if, before July 1 of the calendar year beginning after the calendar year for which a determination described in subsection (c)(2)(A) was made with respect to such eligible article, the President—

(A) receives the advice of the International Trade Commission under section 332 of the Tariff Act of 1930 on

whether any industry in the United States is likely to be adversely affected by such waiver,

(B) determines, based on the considerations described in sections 501 and 502(c) and the advice described in subparagraph (A), that such waiver is in the national economic interest of the United States, and

(C) publishes the determination described in subparagraph (B) in the Federal Register.

(2) CONSIDERATIONS BY THE PRESIDENT.—In making any determination under paragraph (1), the President shall give great weight to—

(A) the extent to which the beneficiary developing country has assured the United States that such country will provide equitable and reasonable access to the markets and basic commodity resources of such country, and

(B) the extent to which such country provides adequate and effective protection of intellectual property rights.

(3) OTHER BASES FOR WAIVER.—The President may waive the application of subsection (c)(2) if, before July 1 of the calendar year beginning after the calendar year for which a determination described in subsection (c)(2) was made with respect to a beneficiary developing country, the President determines that—

(A) there has been a historical preferential trade relationship between the United States and such country,

(B) there is a treaty or trade agreement in force covering economic relations between such country and the United States, and

(C) such country does not discriminate against, or impose unjustifiable or unreasonable barriers to, United States commerce,

and the President publishes that determination in the Federal Register.

(4) LIMITATIONS ON WAIVERS.—

(A) IN GENERAL.—The President may not exercise the waiver authority under this subsection with respect to a quantity of an eligible article entered during any calendar year beginning after 1995, the aggregate appraised value of which equals or exceeds 30 percent of the aggregate appraised value of all articles that entered duty-free under this title during the preceding calendar year.

(B) OTHER WAIVER LIMITS.—The President may not exercise the waiver authority provided under this subsection with respect to a quantity of an eligible article entered during any calendar year beginning after 1995, the aggregate appraised value of which exceeds 15 percent of the aggregate appraised value of all articles that have entered duty-free under this title during the preceding calendar year from those beneficiary developing countries which for the preceding calendar year—

(i) had a per capita gross national product (calculated on the basis of the best available information, including that of the International Bank for Reconstruction and Development) of $5,000 or more; or

(ii) had exported (either directly or indirectly) to the United States a quantity of articles that was duty-free under this title that had an aggregate appraised value of more than 10 percent of the aggregate appraised value of all articles that entered duty-free under this title during that year.

(C) CALCULATION OF LIMITATIONS.—There shall be counted against the limitations imposed under subparagraphs (A) and (B) for any calendar year only that value of any eligible article of any country that—

(i) entered duty-free under this title during such calendar year; and

(ii) is in excess of the value of that article that would have been so entered during such calendar year if the limitations under subsection (c)(2)(A) applied.

(5) EFFECTIVE PERIOD OF WAIVER.—Any waiver granted under this subsection shall remain in effect until the President determines that such waiver is no longer warranted due to changed circumstances.

(e) INTERNATIONAL TRADE COMMISSION ADVICE.—Before designating articles as eligible articles under subsection (a)(1), the President shall publish and furnish the International Trade Commission with lists of articles which may be considered for designation as eligible articles for purposes of this title. The provisions of sections 131, 132, 133, and 134 shall be complied with as though action under section 501 and this section were action under section 123 to carry out a trade agreement entered into under section 123.

(f) SPECIAL RULE CONCERNING PUERTO RICO.—No action under this title may affect any tariff duty imposed by the Legislature of Puerto Rico pursuant to section 319 of the Tariff Act of 1930 on coffee imported into Puerto Rico.

SEC. 504. REVIEW AND REPORT TO CONGRESS.

The President shall submit an annual report to the Congress on the status of internationally recognized worker rights within each beneficiary developing country.

SEC. 505. DATE OF TERMINATION.

No duty-free treatment provided under this title shall remain in effect after May 12, 1997.

SEC. 506. AGRICULTURAL EXPORTS OF BENEFICIARY DEVELOPING COUNTRIES.

The appropriate agencies of the United States shall assist beneficiary developing countries to develop and implement measures designed to assure that the agricultural sectors of their economies are not directed to export markets to the detriment of the production of foodstuffs for their citizenry.

SEC. 507. DEFINITIONS.

For purposes of this title:

(1) BENEFICIARY DEVELOPING COUNTRY.—The term "beneficiary developing country" means any country with respect to which there is in effect an Executive order or Presidential proclamation by the President designating such country as a beneficiary developing country for purposes of this title.

(2) COUNTRY.—The term "country" means any foreign country or territory, including any overseas dependent territory or possession of a foreign country, or the Trust Territory of the Pacific Islands. In the case of an association of countries which is a free trade area or customs union, or which is contributing to comprehensive regional economic integration among its members through appropriate means, including, but not limited to, the reduction of duties, the President may by Executive order or Presidential proclamation provide that all members of such association other than members which are barred from designation under section 502(b) shall be treated as one country for purposes of this title.

(3) ENTERED.—The term "entered" means entered, or withdrawn from warehouse for consumption, in the customs territory of the United States.

(4) INTERNATIONALLY RECOGNIZED WORKER RIGHTS.—The term "internationally recognized worker rights" includes—

(A) the right of association;

(B) the right to organize and bargain collectively;

(C) a prohibition on the use of any form of forced or compulsory labor;

(D) a minimum age for the employment of children; and

(E) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

(5) LEAST-DEVELOPED BENEFICIARY DEVELOPING COUNTRY.—The term "least-developed beneficiary developing country" means a beneficiary developing country that is designated as a least-developed beneficiary developing country under section 502(a)(2).

FOREIGN ASSISTANCE ACT OF 1961

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SEC. 231A. ADDITIONAL REQUIREMENTS.

(a) WORKER RIGHTS.—

(1) LIMITATION ON OPIC ACTIVITIES.—The Corporation may insure, reinsure, guarantee, or finance a project only if the country in which the project is to be undertaken is taking steps to adopt and implement laws that extend internationally recognized worker rights, as defined in section [502(a)(4) of the Trade Act of 1974 (19 U.S.C. 2462(a)(4))] *507(4) of the Trade Act of 1974,* to workers in that country (including any designated zone in that country).

(2) USE OF ANNUAL REPORTS ON WORKERS RIGHTS.—The Corporation shall, in making its determinations under paragraph (1), use the reports submitted to the Congress pursuant to section [505(c) of the Trade Act of 1974 (19 U.S.C. 2465(c))] *504 of the Trade Act of 1974.* The restriction set forth in paragraph (1) shall not apply until the first such report is submitted to the Congress.

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(4) OPERATIONS OF OPIC in the people's republic of china.—In making a determination under this section for the People's Republic of China, the Corporation shall discuss fully and completely the justification for making such determination with respect to each item set forth in subparagraphs (A) through (E) of section [502(a)(4)] *507(4).*

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TITLE 28, UNITED STATES CODE

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PART IV—JUDICIARY AND JUDICIAL PROCEDURE

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CHAPTER 95—COURT OF INTERNATIONAL TRADE

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SEC. 1581. CIVIL ACTIONS AGAINST THE UNITED STATES AND AGENCIES AND OFFICERS THEREOF.

(a) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced to contest the denial of a protest, in whole or in part, under section 515 of the Tariff Act of 1930.

(b) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced under section 516 of the Tariff Act of 1930.

(c) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced under section 516A *or 516B* of the Tariff Act of 1930.

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PART VI—PARTICULAR PROCEEDINGS

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CHAPTER 169—COURT OF INTERNATIONAL TRADE PROCEDURE

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SEC. 2643. RELIEF.

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(c)(1) Except as provided in paragraphs (2), (3), (4), [and (5)] *(5), and (6)* of this subsection, the Court of International Trade may, in addition to the orders specified in subsections (1) and (b) of this section, order any other form of relief that is appropriate in a civil action, including, but not limited to, declaratory judgments, orders of remand, injunctions, and writs of mandamus and prohibition.

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

UNITED STATES-ISRAEL FREE TRADE AREA IMPLEMENTATION ACT OF 1985

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SEC. 9. ADDITIONAL PROCLAMATION AUTHORITY.

(a) ELIMINATION OR MODIFICATIONS OF DUTIES.—The President is authorized to proclaim elimination or modification of any existing duty as the President determines is necessary to exempt any article from duty if—

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

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

(3) the sum of—

(A) the cost or value of the materials produced in the West Bank, the Gaza Strip, Israel, or a qualifying industrial zone, plus

(B) the direct costs of processing operations performed in the West Bank, the Gaza Strip, Israel, or a qualifying industrial zone,

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

For purposes of determining the 35 percent content requirement contained in paragraph (3), the cost or value of materials which are used in the production of an article in the West Bank, the Gaza Strip, or a qualifying industrial zone, and are the products of the United States, may be counted in an amount up to 15 percent of the appraised value of the article.

(b) APPLICABILITY OF CERTAIN PROVISIONS OF THE AGREEMENT.—

(1) NONQUALIFYING OPERATIONS.—No article shall be considered a new or different article of commerce under this section, and no material shall be included for purposes of determining the 35 percent requirement of subsection (a)(3), by virtue of having merely undergone—

(A) simple combining or packaging operations, or

(B) mere dilution with water or with another substance that does not materially alter the characteristics of the article or material.

(2) REQUIREMENTS FOR NEW OR DIFFERENT ARTICLE OF COMMERCE.—For purposes of subsection (a)(1), an article is a 'new or different article of commerce' if it is substantially transformed into an article having a new name, character, or use.

(3) COST OR VALUE OF MATERIALS.—(A) For purposes of this section, the cost or value of materials produced in the West

Bank, the Gaza Strip, or a qualifying industrial zone includes—

(i) the manufacturer's actual cost for the materials;

(ii) when not included in the manufacturer's actual cost for the materials, the freight, insurance, packing, and all other costs incurred in transporting the materials to the manufacturer's plant;

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

(iv) taxes or duties imposed on the materials by the West Bank, the Gaza Strip, or a qualifying industrial zone, if such taxes or duties are not remitted on exportation.

(B) If a material is provided to the manufacturer without charge, or at less than fair market value, its cost or value shall be determined by computing the sum of—

(i) all expenses incurred in the growth, production, or manufacture of the material, including general expenses;

(ii) an amount for profit; and

(iii) freight, insurance, packing, and all other costs incurred in transporting the material to the manufacturer's plant.

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

(4) DIRECT COSTS OF PROCESSING OPERATIONS.—(A) For purposes of this section, the "direct costs of processing operations performed in the West Bank, Gaza Strip, or a qualifying industrial zone" with respect to an article are those costs either directly incurred in, or which can be reasonably allocated to, the growth, production, manufacture, or assembly, of that article. Such costs include, but are not limited to, the following to the extent that they are includible in the appraised value of articles imported into the United States:

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

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

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

(iv) Costs of inspecting and testing the article.

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

(i) profit; and

(ii) general expenses of doing business which are either not allocable to the article or are not related to the growth, production, manufacture, or assembly of the article, such as administrative salaries, casualty and liability insurance, advertising, and salesmen's salaries, commissions, or expenses.

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

(A) articles are "imported directly" if—

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

(ii) if shipment is through the territory of an intermediate country, the articles in the shipment do not enter into the commerce of any intermediate country and the invoices, bills of lading, and other shipping documents specify the United States as the final destination; or

(B) if articles are shipped through an intermediate country and the invoices and other documents do not specify the United States as the final destination, then the articles in the shipment, upon arrival in the United States, are imported directly only if they—

(i) remain under the control of the customs authority in an intermediate country;

(ii) do not enter into the commerce of an intermediate country except for the purpose of a sale other than at retail, but only if the articles are imported as a result of the original commercial transactions between the importer and the producer or the producer's sales agent; and

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

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

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

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

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

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

(iii) A description of any materials used in production of the article which are wholly the growth, product, or manufacture of the West Bank, the Gaza Strip, a qualifying industrial zone, Israel or United States, and a statement as to the cost or value of such materials.

(iv) A description of the operations performed on, and a statement as to the origin and cost or value of, any foreign materials used in the article which are claimed to have been sufficiently processed in the West Bank, the Gaza Strip, a qualifying industrial zone, or

Israel so as to be materials produced in the West Bank, the Gaza Strip, a qualifying industrial zone, or Israel.

(v) A description of the origin and cost or value of any foreign materials used in the article which have not been substantially transformed in the West Bank, the Gaza Strip, or a qualifying industrial zone.

(c) SHIPMENT OF ARTICLES OF ISRAEL THROUGH WEST BANK OR GAZA STRIP.—The President is authorized to proclaim that articles of Israel may be treated as though they were articles directly shipped from Israel for the purposes of the Agreement even if shipped to the United States from the West Bank, the Gaza Strip, or a qualifying industrial zone, if the articles otherwise meet the requirements of the Agreement.

(d) TREATMENT OF COST OR VALUE OF MATERIALS.—The President is authorized to proclaim that the cost or value of materials produced in the West Bank, the Gaza Strip, or a qualifying industrial zone may be included in the cost or value of materials produced in Israel under section 1(c)(i) of Annex 3 of the Agreement, and the direct costs of processing operations performed in the West Bank, the Gaza Strip, or a qualifying industrial zone may be included in the direct costs of processing operations performed in Israel under section 1(c)(ii) of Annex 3 of the Agreement.

(e) QUALIFYING INDUSTRIAL ZONE DEFINED.—For purposes of this section, a "qualifying industrial zone" means any area that—

(1) encompasses portions of the territory of Israel and Jordan or Israel and Egypt;

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

(3) has been specified by the President as a qualifying industrial zone.

MERCHANT MARINE ACT OF 1936

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TITLE V—CONSTRUCTION-DIFFERENTIAL SUBSIDY

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SEC. 511. RESERVE FUNDS FOR CONSTRUCTION OR ACQUISITION OF VESSELS; TAXATION (46 APP. U.S.C. 1161 (1994)).

(a) "NEW VESSEL" DEFINED.—When used in this section the term "new vessel" means any vessel (1) documented or agreed with the Secretary of Transportation to be documented under the laws of the United States; (2) construction in the United States after December 31, 1939 *or, if the vessel is a Shipbuilding Agreement vessel, constructed in a Shipbuilding Agreement Party, but only with regard to moneys deposited, on or after the date on which the Shipbuilding Trade Agreement Act takes effect, into a construction reserve fund established under subsection (b)*, or the construction of which has been financed under Titles V or VII of this Act, as amended, or the construction of which has been aided by a mort-

gage insured under Title XI of this Act as amended; and (3) either (A) of such type, size, and speed as the Secretary of Transportation shall determine to be suitable for use on the high seas or Great Lakes in carrying out the purposes of this Act, but not of less than two thousand gross tons or of less speed than twelve knots, unless the Secretary of Transportation shall determine and certify in each case that a vessel of a specified lesser tonnage or speed is desirable for use by the United States in case of war or national emergency, or (B) constructed to replace a vessel or vessels requisitioned or purchased by the United States.

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TITLE VI—OPERATING-DIFFERENTIAL SUBSIDY

SEC. 601. SUBSIDY AUTHORIZED FOR OPERATION OF VESSELS IN FOREIGN TRADE OR IN OFF-SEASON CRUISES (46 APP. U.S.C. 1171 (1994)).

(a) APPLICATION FOR SUBSIDY; CONDITIONS PRECEDENT TO GRANTING.—The Secretary of Transportation is authorized and directed to consider the application of any citizen of the United States for financial aid in the operation of a vessel or vessels, which are to be used in an essential service in the foreign commerce of the United States or in such service and in cruises authorized under section 613 of this title. In this title VI the term "essential service" means the operation of a vessel on a service, route, or line described in section 211(a) or in bulk cargo carrying service described in section 211(b). No such application shall be approved by the Secretary of Transportation unless he determines that (1) the operation of such vessel or vessels in an essential service is required to meet foreign-flag competition and to promote the foreign commerce of the United States except to the extent such vessels are to be operated on cruises authorized under section 613 of this title[, and that such vessel or vessels were built in the United States, or have been documented under the laws of the United States not later than February 1, 1928, or actually ordered and under construction for the account of citizens of the United States prior to such date;] *and that such vessel or vessels were built in the United States, or, if the vessel or vessels are Shipbuilding Agreement vessels, in a Shipbuilding Agreement Party;* (2) the applicant owns or leases, or can and will build or purchase or lease, a vessel or vessels of the size, type, speed, and number, and with the proper equipment required to enable him to operate in an essential service, in such manner as may be necessary to meet competitive conditions, and to promote foreign commerce; (3) the applicant possesses the ability, experience, financial resources, and other qualifications necessary to enable him to conduct the proposed operations of the vessel or vessels as to meet competitive conditions and promote foreign commerce; (4) the granting of the aid applied for is necessary to place the proposed operations of the vessel or vessels on a parity with those of foreign competitors, and is reasonably calculated to carry out effectively the purposes and policy of this Act. To the extent the application covers cruises, as authorized under section 613

of this title, the Secretary of Transportation may make the portion of this last determination relating to parity on the basis that any foreign flag cruise from the United States competes with any American flag cruise from the United States.

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SEC. 606. READJUSTMENTS; CHANGE IN SERVICE; WITHDRAWAL FROM SERVICE; PAYMENT OF EXCESS PROFITS; WAGES, ETC.; AMERICAN MATERIALS (46 APP. U.S.C. 1176 (1994)).

Every contract for an operating-differential subsidy under this title shall provide (1) that the amount of the future payments to the contractor shall be subject to review and readjustment from time to time, but not more frequently than once a year, at the instance of the Secretary of Transportation or of the contractor. If any such readjustment cannot be reached by mutual agreement, the Secretary of Transportation, on his own motion or on the application of the contractor, shall, after a proper hearing, determine the facts and make such readjustment in the amount of such future payments as he may determine to be fair and reasonable and in the public interest. The testimony in every such proceeding shall be reduced to writing and filed in the office of the Secretary of Transportation. His decision shall be based upon and governed by the changes which may have occurred since the date of the said contract, with respect to the items theretofore considered and on which such contract was based, and other conditions affecting shipping, and shall be promulgated in a formal order, which shall be accompanied by a report in writing in which the Secretary of Transportation shall state his findings of fact; (2) that the compensation to be paid under it shall be reduced, under such terms and in such amounts as the Secretary of Transportation shall determine, for any periods in which the vessel or vessels are laid up; (3) that if the Secretary of Transportation shall determine that a change in an essential service, which is receiving an operating-differential subsidy under this title, is necessary in the accomplishment of the purposes of this Act, he may make such change upon such readjustment of payments to the contractor as shall be arrived at by the method prescribed in clause (1) of these conditions; (4) that if at any time the contractor receiving an operating-differential subsidy claims that he cannot maintain and operate his vessels in such an essential service, with a reasonable profit upon his investment, and applies to the Secretary of Transportation for a modification or rescission of his contract to maintain such essential service, and the Secretary of Transportation determines that such claim is proved, the Secretary of Transportation shall modify or rescind such contract and permit the contractor to withdraw such vessels from such essential service, upon a date fixed by the Secretary of Transportation, and upon the date of such withdrawal the further payment of the operating-differential subsidy shall cease and the contractor be discharged from any further obligation under such contract; (5) that the contractor shall conduct his operations with respect to essential service, and any services authorized under section 613 of this title, covered by his contract in an economical and efficient manner; and (6) that whenever practicable, and operator who receives subsidy with respect to subsistence of officers and crews shall use as such subsistence items only articles,

materials, and supplies of the growth, production, and manufacture of the United States, as defined in section 505 herein, except when it is necessary to purchase supplies outside the United States to enable such vessel to continue and complete here voyage, and an operator who receives subsidy with respect to repairs shall perform such repairs within any of the United States or the Commonwealth of Puerto Rico, *or, if the vessel is a Shipbuilding Agreement vessel, in a Shipbuilding Agreement Party or in the United State* except in an emergency.

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SEC. 607.[7] CAPITAL CONSTRUCTION FUND (46 APP. U.S.C. 1177 (1994)).

(a) AGREEMENT RULES; PERSONS ELIGIBLE; REPLACEMENT, ADDITIONAL, OR RECONSTRUCTED VESSELS FOR PRESCRIBED TRADE AND FISHERY OPERATIONS; AMOUNT OF DEPOSITS, ANNUAL LIMITATION; CONDITIONS AND REQUIREMENTS FOR DEPOSITS AND WITHDRAWALS.—Any citizen of the United States owning or leasing one or more eligible vessels (as defined in subsection (k)(1)) may enter into an agreement with the Secretary under, and as provided in, this section to establish a capital construction fund (hereinafter in this section referred to as the "fund") with respect to any or all of such vessels. Any agreement entered into under this section shall be for the purpose of providing replacement vessels, additional vessels, or reconstructed vessels, built in the United States *or, if the vessel is a Shipbuilding Agreement vessel, in a Shipbuilding Agreement Party,* and documented under the laws of the United States for operation in the United States foreign, Great Lakes, or noncontiguous domestic trade or in the fisheries of the United States and shall provide for the deposit in the fund of the amounts agreed upon as necessary or appropriate to provide for qualified withdrawals under subsection (f). The deposits in the fund, and all withdrawals from the fund, whether qualified or nonqualified, shall be subject to such conditions and requirements as the Secretary may by regulations prescribe or are set forth in such agreement; except that the Secretary may not require any person to deposit in the fund for any taxable year more than 50 percent of that portion of such person's taxable income for such year (computed in the manner provided in subsection (b)(1)(A)) which is attributable to the operation of the agreement vessels.

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(k) DEFINITIONS.—For the purposes of this section—

(1) The term "eligible vessel" means any vessel—

[(A) constructed in the United States and, if reconstructed, reconstructed in the United States,]

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

(ii) that is a Shipbuilding Agreement vessel and is constructed in a Shipbuilding Agreement Party and, if reconstructed, is reconstructed in a Shipbuilding Agreement Party or in the United States,

* * * * * * *

(2) The term "qualified vessel" means any vessel—

[(A) constructed in the United States and, if reconstructed, reconstructed in the United States,]

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

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

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SEC. 610. VESSELS ELIGIBLE TO SUBSIDY (46 APP. U.S.C. 1180 (1994)).

An operating-differential subsidy shall not be paid under authority of this title on account of the operation of any vessel which does not meet the following requirements: (1) The vessel shall be of steel or other acceptable metal, shall be propelled by steam or motor, shall be as nearly fireproof as practicable, [shall be built in a domestic yard or shall have been documented under the laws of the United States not later than February 1, 1928, or actually ordered and under construction for the account of citizens of the United States prior to such date,] *shall be built in the United States or, if the vessel is a Shipbuilding Agreement vessel, in a Shipbuilding Agreement Party,* and shall be documented under the laws of the United States, during the entire life of the subsidy contract; and (2) if the vessel shall be constructed after the passage of this act it shall be either a vessel constructed according to plans and specifications approved by the Secretary of Transportation and the Secretary of the Navy, with particular reference to economic conversion into an auxiliary naval vessel, or a vessel approved by the Secretary of Transportation and the Navy Department as otherwise useful to the United States in time of national emergency.

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TITLE IX—MISCELLANEOUS PROVISIONS

SEC. 901. TRANSPORTATION IN AMERICAN VESSELS OF GOVERNMENT PERSONNEL AND CERTAIN CARGOES (46 APP. U.S.C. 1241 (1994)).

* * * * * * *

(b) CARGOES PROCURED, FURNISHED OR FINANCED BY UNITED STATES; WAIVER IN EMERGENCIES; EXCEPTIONS; DEFINITION.—

(1) Whenever the United States shall procure, contract for, or otherwise obtain for its own account, or shall furnish to or for the account of any foreign nation without provision for reimbursement, any equipment, materials, or commodities, within or without the United States, or shall advance funds or credits or guarantee the convertibility of foreign currencies in connection with the furnishing of such equipment, materials, or commodities, the appropriate agency or agencies shall take such steps as may be necessary and practicable to assure that at least 50 per centum of the gross tonnage of such equipment,

materials, or commodities (computed separately for dry bulk carriers, dry cargo liners, and tankers), which may be transported on ocean vessels shall be transported on privately owned United States-flag commercial vessels, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels, in such manner as will insure a fair and reasonable participation of United States-flag commercial vessels in such cargoes by geographic areas: *Provided,* That the provisions of this subsection may be waived whenever the Congress by concurrent resolution or otherwise, or the President of the United States or the Secretary of Defense declares that an emergency exists justifying a temporary waiver of the provisions of section 901(b)(1) and so notifies the appropriate agency or agencies: *Provided further*, That the provisions of this subsection shall not apply to cargoes carried in the vessels of the Panama Canal Company. Nothing herein shall repeal or otherwise modify the provisions of Public Resolution Numbered 17, Seventy-third Congress (48 Stat. 500), as amended. [For purposes of this section, the term "privately owned United States-flag commercial vessels" shall not be deemed to include any vessel which, subsequent to the date of enactment of this amendment, shall have been either (a) built outside the United States, (b) rebuilt outside the United States, or (c) documented under any foreign registry, until such vessel shall have been documented under the laws of the United States for a period of three years: Provided, however, That the provisions of this amendment shall not apply where, (1) prior to the enactment of this amendment, the owner of a vessel, or contractor for the purchases of a vessel, originally constructed in the United States and rebuilt abroad or contracted to be rebuilt abroad, has notified the Maritime Administration in writing of its intent to document such vessel under United States registry, and such vessel is so documented on its first arrival at a United States port not later than one year subsequent to the date of the enactment of this amendment, or (2) where prior to the enactment of this amendment, the owner of a vessel under United States registry has made a contract for the rebuilding abroad of such vessel and has notified the Maritime Administration of such contract, and such rebuilding is completed and such vessel is thereafter documented under United States registry on its first arrival at a United States port not later than one year subsequent to the date of the enactment of this amendment.]

For purposes of this section, the term "privately owned United States-flag commercial vessels" shall be deemed to include—

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

(B) any privately owned vessel constructed in a Shipbuilding Agreement Party on or after the date on which the Shipbuilding Trade Agreement Act takes effect, and if rebuilt, rebuilt in a Shipbuilding Agreement Party or in the United States, that is

documented pursuant to chapter 121 of title 46, United States Code.

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

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SEC. 905. DEFINITIONS (46 APP. U.S.C. 1244 (1994)).

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(h) The term "Shipbuilding Agreement" means the Agreement Respecting Normal Competitive Conditions in the Commercial Shipbuilding and Repair Industry, which resulted from negotiations under the auspices of the Organization for Economic Cooperation and Development, and was entered into on December 21, 1994.

(i) The term "Shipbuilding Agreement Party" means a state or separate customs territory that is a Party to the Shipbuilding Agreement, and with respect to which the United States applies the Shipbuilding Agreement.

(j) The term "Shipbuilding Agreement vessel" means a vessel to which the Secretary determines Article 2.1 of the Shipbuilding Agreement applies.

(k) The term "Export Credit Understanding" means the Understanding on Export Credits for Ships which resulted from negotiations under the auspices of the Organization for Economic Cooperation and Development and was entered into on December 21, 1994.

(l) The term "Export Credit Understanding vessel" means a vessel to which the Secretary determines the Export Credit Understanding applies.

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TITLE XI—FEDERAL SHIP MORTGAGE INSURANCE

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SEC. 1104A. ELIGIBILITY FOR GUARANTEE (46 APP. U.S.C. 1274 (1994)).

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(b) CONTENTS OF OBLIGATIONS.—Obligations guaranteed under this title—

* * * * * * *

[(5) shall bear interest (exclusive of charges for the guarantee and service charges, if any) at rates not to exceed such per centum per annum on the unpaid principal as the Secretary determines to be reasonable, taking into account the range of interest rates prevailing in the private market for similar loans and the risks assumed by the Secretary;]

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

* * * * * * *

[(i) LIMITATION ON ESTABLISHMENT OF PERCENTAGE.—The Secretary may not with respect to—

(1) the general 75 percent or less limitation in subsection (b)(2);

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

(3) the 80 percent or less limitation in the 3rd proviso to such subsection;

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

(i)(1) Except as provided in paragraph (2), the Secretary may not, with respect to—

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

(B) the 87½ percent or less limitation contained in the 1st, 2nd, 4th, or 5th proviso to subsection (b)(2) or in section 1121(b), or

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

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

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

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SEC. 1104B. FINANCING CONTRACT FOR CONSTRUCTION OR RECONSTRUCTION OF COMMERCIAL VESSEL; VESSEL REPLACEMENT GUARANTEE FUND (46 APP. U.S.C. 1274a (1994)).

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(b) For the purposes of this section—

(1) the maximum term for obligations guaranteed under this program may not exceed 25 years;

(2) obligations guaranteed may not exceed 87½ percent of the actual cost or depreciated actual cost to the applicant for the construction or reconstruction of the vessel; and

(3) reconstruction cost obligations may not be guaranteed unless the vessel after reconstruction will have a useful life of at least 15 years[.], *except that, with respect to Export Credit Understanding vessels and Shipbuilding Agreement vessels, the Secretary may establish by rule, regulation, or procedure a uniform percentage that the Secretary determines to be consistent with obligations of the United States under the Export Credit Understanding or the Shipbuilding Agreement, as the case may be.*

CARIBBEAN BASIN ECONOMIC RECOVERY ACT

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Subtitle A—Duty-Free Treatment

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SEC. 212. BENEFICIARY COUNTRY.

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(b) In designating countries as "beneficiary countries" under this title the President shall consider only the following countries and territories or successor political entities:

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(7) if such country has not or is not taking steps to afford internationally recognized worker rights (as defined in section [502(a)(4)] *507(4)* of the Trade Act of 1974) to workers in the country (including any designated zone in that country).

Paragraphs (1), (2), (3), (5), and (7) shall not prevent the designation of any country as a beneficiary country under this Act if the President determines that such designation will be in the national economic or security interest of the United States and reports such determination to the Congress with his reasons therefor.

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EXPORT ENHANCEMENT ACT OF 1988

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Subchapter II—General Provisions

SEC. 2202. COUNTRY REPORTS ON ECONOMIC POLICY AND TRADE PRACTICES.

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(8) the country's laws, enforcement of those laws, and practices with respect to internationally recognized worker rights (as defined in section [502(a)(4)] *507(4)*) the conditions of worker rights in any sector which produces goods in which

United States capital is invested, and the extent of such investment.

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AGRICULTURAL ACT OF 1949

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SEC. 103B. LOANS, PAYMENTS, AND ACREAGE REDUCTION PROGRAMS FOR THE 1991 THROUGH 1997 CROPS OF UPLAND COTTON.

(a) LOANS.—

(1) IN GENERAL.—* * *

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(5) MARKETING LOAN PROVISIONS.—

(A) IN GENERAL.—* * *

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(F) SPECIAL IMPORT QUOTA.—

(i) ESTABLISHMENT.—* * *

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(v) PREFERENTIAL TARIFF TREATMENT.—The quantity under a special import quota shall be considered to be an in-quota quantity for purposes of section 213(d) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(d)), section 204 of the Andean Trade Preference Act (19 U.S.C. 3203), section [503(d) of the Trade Act of 1974 (19 U.S.C. 2463(d))] *503(b)(3) of the Trade Act of 1974,* and General Note 3(a)(iv) to the HTS.

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(n) LIMITED GLOBAL IMPORT QUOTA.—

(1) IN GENERAL.—* * *

* * * * * * *

(A) QUANTITY.—* * *

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(C) PREFERENTIAL TARIFF TREATMENT.—The quantity under a limited global import quota shall be considered to be an in-quota quantity for purposes of section 213(d) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(d)), section 204 of the Andean Trade Preference Act (19 U.S.C. 3203), section [503(d) of the Trade Act of 1974 (19 U.S.C. 2463(d))] *503 (b)(3) of the Trade Act of 1974,* and General Note 3(a)(iv) to the HTS.

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ANDEAN TRADE PREFERENCE ACT

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TITLE II—TRADE PREFERENCE FOR THE ANDEAN REGION

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SEC. 203. BENEFICIARY COUNTRY.

(a) DEFINITIONS.—* * *

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(c) LIMITATIONS ON DESIGNATION.—The President shall not designate any country a beneficiary country under this title—

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(7) if such country has not or is not taking steps to afford internationally recognized worker rights (as defined in section [502(a)(4)] *507(4)* of the Trade Act of 1974) to workers in the country (including any designated zone in that country).

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HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

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GENERAL NOTES

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3. RATES OF DUTY.—The rates of duty in the "Rates of Duty" columns designated 1 ("General" and "Special") and 2 of the tariff schedule apply to goods imported into the customs territory of the United Sates as hereinafter provided in this note:

(a) *Rate of Duty Column 1.*

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(iv) *Products of Insular Possessions.*

(A) * * *

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(C) Subject to the limitations imposed under [sections 503(b) and 504(c)] *subsections (a), (c), and (d) of section 503* of the Trade Act of 1974, goods designated as eligible under section 503 of such Act which are imported from an insular possession of the United States shall receive duty treatment no less favorable than the treatment afforded such goods imported from a beneficiary developing country under title V of such Act.

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NORTH AMERICAN FREE TRADE AGREEMENT IMPLEMENTATION ACT

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TITLE II—CUSTOMS PROVISIONS

SEC. 201. TARIFF MODIFICATIONS.

(a) TARIFF MODIFICATIONS PROVIDED FOR IN THE AGREEMENT.—

(1) PROCLAMATION AUTHORITY.—The President may proclaim—

(A) such modifications or continuation of any duty,

(B) such continuation of duty-free or excise treatment, or

(C) such additional duties,

as the President determines to be necessary or appropriate to carry out or apply articles 302, 305, 307, 308, and 703 and Annexes 302.2, 307.1, 308.1, 308.2, 300–B, 703.2, and 703.3 of the Agreement.

(2) EFFECT ON MEXICAN GSP STATUS.—Notwithstanding section [502(a)(2) of the Trade Act of 1974 (19 U.S.C. 2462(a)(2))] *502(f)(2) of the Trade Act of 1974*, the President shall terminate the designation of Mexico as a beneficiary developing country for purposes of title V of the Trade Act of 1974 on the date of entry into force of the Agreement between the United States and Mexico.

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OMNIBUS TRADE AND COMPETITIVENESS ACT OF 1988

TITLE I—TRADE, CUSTOMS, AND TARIFF LAWS

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Subtitle B—Implementation of the Harmonized Tariff Schedule

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SEC. 1211. TRANSITION TO THE HARMONIZED TARIFF SCHEDULE.

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(b) GENERALIZED SYSTEM OF PREFERENCES CONVERSION.—

(1) The review of the proposed conversion of the Generalized System of Preferences program to the Convention tariff nomenclature, initiated by the Office of the United States Trade Representative by notice published in the Federal Register on December 8, 1986 (at page 44,163 of volume 51 thereof), shall be treated as satisfying the requirements of sections 503(a) and 504(c)(3) of the Trade Act of 1974 [(19 U.S.C. 2463(a), 2464(c)(3))] *(as in effect on July 31, 1995).*

(2) In applying section 504(c)(1) of the Trade Act of 1974 [(19 U.S.C. 2464(c)(1))] *(as in effect on July 31, 1995)* for calendar year 1989, the reference in such section to July 1, shall be treated as a reference to September 1.

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URUGUAY ROUND AGREEMENTS ACT

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Subtitle D—Related Provisions

SEC. 131. WORKING PARTY ON WORKER RIGHTS.

(a) IN GENERAL.—The President shall seek the establishment in the GATT 1947, and, upon entry into force of the WTO Agreement with respect to the United States, in the WTO, of a working party to examine the relationship of internationally recognized worker rights, as defined in section [502(a)(4)] *507(4)* of the Trade Act of 1974, to the articles, objectives, and related instruments of the GATT 1947 and of the WTO, respectively.

(b) OBJECTIVES OF WORKING PARTY.—The objectives of the United States for the working party described in subsection (a) are to—

(1) explore the linkage between international trade and internationally recognized worker rights, as defined in section [502(a)4)] *507(4)* of the Trade Act of 1974, taking into account differences in the level of development among countries;

(2) examine the effects on international trade of the systematic denial of such rights;

(3) consider ways to address such effects; and

(4) develop methods to coordinate the work program of the working party with the International Labor Organization.

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INTERNATIONAL FINANCIAL INSTITUTIONS ACT

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SEC. 1621. ENCOURAGEMENT OF FAIR LABOR PRACTICES.

(a) ADOPTION OF POLICIES AND PROCEDURES.— The Secretary of the Treasury shall direct the United States Executive directors of the international financial institutions (as defined in section 262r(c)(2) of this title) to use the voice and vote of the United States to urge the respective institution—

(1) to adopt policies to encourage borrowing countries to guarantee internationally recognized worker rights (within the meaning of section [502(a)(4)] *507(4)* and to include the status of such rights as an integral part of the institution's policy dialogue with each borrowing country;

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