

Calendar No. 293

105TH CONGRESS  
1ST Session

**S. 1216**

[Report No. 105-84]  
[Report No. 105-154]

**A BILL**

To approve and implement the OECD Shipbuilding  
Trade Agreement.

NOVEMBER 10, 1997

Reported with amendments

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To approve and implement the OECD Shipbuilding Trade Agreement.

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IN THE SENATE OF THE UNITED STATES

SEPTEMBER 24, 1997

Mr. ROTH, from the Committee on Finance, reported the following original bill; which was read twice and placed on the calendar

NOVEMBER 9, 1997

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

NOVEMBER 10, 1997

Reported by Mr. MCCAIN, with amendments

[Omit the part struck through and insert the part printed in *italic*]

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**A BILL**

To approve and implement the OECD Shipbuilding Trade Agreement.

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

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

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

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

6 (1) to enhance the competitiveness of United  
 7 States shipbuilders which has been diminished as a  
 8 result of foreign subsidies and predatory pricing  
 9 practices;

10 (2) to ensure that United States ownership,  
 11 manning, registry, and construction requirements for  
 12 coastwise trade vessels, which have provided the De-  
 13 partment of Defense with mariners and assets in  
 14 time of national emergency, cannot be compromised  
 15 by the Shipbuilding Agreement; and

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

19 (c) **TABLE OF CONTENTS.**—The table of contents for  
 20 this Act is as follows:

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

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

**Subtitle A—General Provisions**

Sec. 101. Approval of the Shipbuilding Agreement.

Sec. 102. Injurious pricing and countermeasures relating to shipbuilding.

Sec. 103. Enforcement of countermeasures.

Sec. 104. Judicial review in injurious pricing and countermeasure proceedings.

**Subtitle B—Other Provisions**

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

#### Subtitle C—Effective Date

- Sec. 131. Effective date.

#### TITLE II—INTERNATIONAL SHIPPING INCOME DISCLOSURE

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

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

### **4 Subtitle A—General Provisions**

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

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

1 **SEC. 102. INJURIOUS PRICING AND COUNTERMEASURES**  
 2 **RELATING TO SHIPBUILDING.**

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

5 **“TITLE VIII—INJURIOUS PRIC-**  
 6 **ING AND COUNTERMEASURES**  
 7 **RELATING TO SHIPBUILDING**

“Subtitle A—Imposition of Injurious Pricing Charge and Countermeasures

- “Sec. 801. Injurious pricing charge.
- “Sec. 802. Procedures for initiating an injurious pricing investigation.
- “Sec. 803. Preliminary determinations.
- “Sec. 804. Termination or suspension of investigation.
- “Sec. 805. Final determinations.
- “Sec. 806. Imposition and collection of injurious pricing charge.
- “Sec. 807. Imposition of countermeasures.
- “Sec. 808. Injurious pricing petitions by third countries.
- “Sec. 809. Third country injurious pricing.

“Subtitle B—Special Rules

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

“Subtitle C—Procedures

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

“Subtitle D—Definitions

- “Sec. 861. Definitions.

8 **“Subtitle A—Imposition of Injuri-**  
 9 **ous Pricing Charge and Coun-**  
 10 **termeasures**

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

12 **“(a) BASIS FOR CHARGE.—If—**

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

5           “(2) the Commission determines that—

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

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

8                           or

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

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

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

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

5       **“SEC. 802. PROCEDURES FOR INITIATING AN INJURIOUS**  
6                   **PRICING INVESTIGATION.**

7       “(a) INITIATION BY ADMINISTERING AUTHORITY.—

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

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

1 “(b) INITIATION BY PETITION.—

2 “(1) PETITION REQUIREMENTS.—

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

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

19 “(i) IN GENERAL.—If the petitioner is  
 20 a producer described in section  
 21 861(17)(C), and—

22 “(I) if the vessel was sold  
 23 through a broad multiple bid, the peti-  
 24 tion shall include information indicat-  
 25 ing that the petitioner was invited to



1 tender a bid on the contract at issue,  
2 the petitioner actually did so, and the  
3 bid of the petitioner substantially met  
4 the delivery date and technical re-  
5 quirements of the bid,

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

16 “(III) except in a case in which  
17 the vessel was sold through a broad  
18 multiple bid, if there is no invitation  
19 to tender a bid, the petition shall in-  
20 clude information indicating that the  
21 petitioner was capable of building the  
22 vessel concerned and, if the petitioner  
23 knew or should have known of the  
24 proposed purchase, it made demon-  
25 strable efforts to conclude a sale with

1 the United States buyer consistent  
 2 with the delivery date and technical  
 3 requirements of the buyer.

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

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

15 “(II) general information on the  
 16 sale was available from brokers, fin-  
 17 anciers, classification societies,  
 18 charterers, trade associations, or other  
 19 entities normally involved in shipbuild-  
 20 ing transactions with whom the peti-  
 21 tioner had regular contacts or deal-  
 22 ings.

23 “(C) PETITIONERS DESCRIBED IN SECTION  
 24 861(17)(D).—If the petitioner is an interested  
 25 party described in section 861(17)(D), the peti-

1           tion shall include information indicating that  
2           members of the union or group of workers de-  
3           scribed in that section are employed by a pro-  
4           ducer that meets the requirements of subpara-  
5           graph (B) of this paragraph.

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

14          “(E) PETITIONERS DESCRIBED IN SECTION  
15          861(17)(F).—If the petitioner is an interested  
16          party described in section 861(17)(F), the peti-  
17          tion shall include information indicating that a  
18          member of the association described in that sec-  
19          tion meets the requirements of subparagraph  
20          (C) or (D) of this paragraph.

21          “(F) AMENDMENTS.—The petition may be  
22          amended at such time, and upon such condi-  
23          tions, as the administering authority and the  
24          Commission may permit.

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

5           “(3) DEADLINE FOR FILING PETITION.—

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

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

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

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

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

22                           “(II) submit to the administering au-  
 23                   thority a notice of intent to file a petition  
 24                   no later than 6 months after the time that  
 25                   the petitioner first knew or should have

1 known of the sale (unless the petition itself  
2 is filed within that 6-month period).

3 “(B) PRESUMPTION OF KNOWLEDGE.—

4 For purposes of this paragraph, if the existence  
5 of the sale, together with general information  
6 concerning the vessel, is published in the inter-  
7 national trade press, there is a rebuttable pre-  
8 sumption that the petitioner knew or should  
9 have known of the sale of the vessel from the  
10 date of that publication.

11 “(c) ACTIONS BEFORE INITIATING INVESTIGA-  
12 TIONS.—

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

20 “(2) ACCEPTANCE OF COMMUNICATIONS.—The  
21 administering authority shall not accept any unsolic-  
22 ited oral or written communication from any person  
23 other than an interested party described in section  
24 861(17) (C), (D), (E), or (F) before the administer-  
25 ing authority makes its decision whether to initiate

1 an investigation pursuant to a petition, except for  
2 inquiries regarding the status of the administering  
3 authority's consideration of the petition or a request  
4 for consultation by the government of the exporting  
5 country.

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

11 “(d) PETITION DETERMINATION.—

12 “(1) TIME FOR INITIAL DETERMINATION.—

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

20 “(i) alleges the elements necessary for  
21 the imposition of an injurious pricing  
22 charge under section 801(a) and the ele-  
23 ments required under subsection (b)(1)  
24 (B), (C), (D), or (E), and contains infor-

1                   mation reasonably available to the peti-  
2                   tioner supporting the allegations; and

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

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

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

15                  “(3) NEGATIVE DETERMINATIONS.—If—

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

18                         “(B) paragraph (6)(B) applies,  
19                  the administering authority shall dismiss the peti-  
20                  tion, terminate the proceeding, and notify the peti-  
21                  tioner in writing of the reasons for the determina-  
22                  tion.

23                  “(4) DETERMINATION OF INDUSTRY SUP-  
24                  PORT.—

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

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

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

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



1           ducers would be adversely affected by the im-  
2           position of an injurious pricing charge.

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

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

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

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

1 makes a determination with respect to initiating  
 2 an investigation, the determination regarding  
 3 industry support shall not be reconsidered.

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

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

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

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

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

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

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

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

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

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

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

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

25 or

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

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

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

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

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

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

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

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.

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

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

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

16               “(1) IN GENERAL.—If—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

9 “(d) PROCEEDINGS BY WTO MEMBERS.—

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

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

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

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

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

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

4 If such a proceeding—

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

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

9 then the administering authority and the Commis-  
 10 sion shall terminate the suspension and continue the  
 11 investigation. The period in which the investigation  
 12 was suspended shall not be included in calculating  
 13 deadlines applicable with respect to the investigation.

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

19 **“SEC. 805. FINAL DETERMINATIONS.**

20 “(a) DETERMINATIONS BY ADMINISTERING AUTHOR-  
 21 ITY.—

22 “(1) IN GENERAL.—Within 75 days after the  
 23 date of its preliminary determination under section  
 24 803(b), the administering authority shall make a  
 25 final determination of whether the vessel which is

1 the subject of the investigation has been sold in the  
2 United States at less than its fair value.

3 “(2) EXTENSION OF PERIOD FOR DETERMINA-  
4 TION.—

5 “(A) GENERAL RULE.—The administering  
6 authority may postpone making the final deter-  
7 mination under paragraph (1) until not later  
8 than 290 days after—

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

12 “(ii) the date of delivery of the subject  
13 vessel, in an investigation to which section  
14 803(b)(1)(C) applies, or

15 “(iii) the date on which the admin-  
16 istering authority initiates the investigation  
17 under section 802, in an investigation to  
18 which section 803(b)(1)(D) applies.

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

22 “(i) the producer of the subject vessel,  
23 in a proceeding in which the preliminary  
24 determination by the administering author-

1                   ity under section 803(b) was affirmative,  
2                   or

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

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

12               “(b) FINAL DETERMINATION BY COMMISSION.—

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

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

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

18                       “(ii) is threatened with material in-  
19                       jury, or

20               “(B) the establishment of an industry in  
21               the United States is or has been materially re-  
22               tarded,

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

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

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

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

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

24           “(c) EFFECT OF FINAL DETERMINATIONS.—

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

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

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

20           “(2) ISSUANCE OF ORDER; EFFECT OF NEGA-  
 21          TIVE DETERMINATION.—If the determinations of the  
 22          administering authority and the Commission under  
 23          subsections (a)(1) and (b)(1) are affirmative, then  
 24          the administering authority shall issue an injurious  
 25          pricing order under section 806. If either of such de-

1 terminations is negative, the investigation shall be  
2 terminated upon the publication of notice of that  
3 negative determination.

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

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



1 **“SEC. 806. IMPOSITION AND COLLECTION OF INJURIOUS**  
2 **PRICING CHARGE.**

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

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

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

19 “(3) informs the foreign producer that—

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

24 “(B) payment made after the deadline de-  
25 scribed in paragraph (1) shall be subject to in-

1           terest charges at the Commercial Interest Ref-  
2           erence Rate (CIRR), and

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

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

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

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

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

6       “(d) REVOCATION OF ORDER.—The administering  
 7 authority—

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

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

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

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

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

23                       “(D) if, with respect to the vessel sale that  
 24 was at issue in the investigation that resulted  
 25 in the injurious pricing order, an antidumping

1 proceeding conducted by a WTO member who  
2 is not a Shipbuilding Agreement Party has been  
3 completed and resulted in the imposition of  
4 antidumping measures.

5 “(e) ALTERNATIVE EQUIVALENT REMEDY.—

6 “(1) AGREEMENT FOR ALTERNATE REMEDY.—

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

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

15 “(B) is in the public interest,

16 “(C) can be effectively monitored and en-  
17 forced, and

18 “(D) is otherwise consistent with the do-  
19 mestic law and international obligations of the  
20 United States.

21 “(2) PRIOR CONSULTATIONS AND SUBMISSION  
22 OF COMMENTS.—Before entering into an agreement  
23 under paragraph (1), the administering authority  
24 shall consult with the industry, and provide for the

1 submission of comments by interested parties, with  
2 respect to the agreement.

3 “(3) MATERIAL VIOLATIONS OF AGREEMENT.—

4 If the injurious pricing order has been suspended  
5 under paragraph (1), and the administering author-  
6 ity determines that the foreign producer concerned  
7 has materially violated the terms of the agreement  
8 under paragraph (1), the administering authority  
9 shall terminate the suspension.

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

11 “(a) GENERAL RULE.—

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

17 “(2) CONTENTS OF ORDER.—The counter-  
18 measure order shall—

19 “(A) state that, as provided in section 468,  
20 a permit to lade or unlade passengers or mer-  
21 chandise may not be issued with respect to ves-  
22 sels contracted to be built by the foreign pro-  
23 ducer of the vessel with respect to which an in-  
24 jurious pricing order was issued under section  
25 806, and

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

4           “(b) NOTICE OF INTENT TO IMPOSE COUNTER-  
 5 MEASURES.—

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

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

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

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

22                   “(ii) with respect to which the mate-  
 23                   rial terms of sale are established within a  
 24                   period of 4 consecutive years beginning on  
 25                   the date that is 30 days after publication

1 in the Federal Register of the notice of in-  
2 tent described in paragraph (1).

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

8 “(c) DETERMINATION TO IMPOSE COUNTER-  
9 MEASURES; ORDER.—

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

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

24 “(3) CONTENT OF THE DETERMINATION.—In  
25 the determination imposing countermeasures, the

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

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

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

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

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

23              “(B) a hearing in connection with such a  
 24      review.



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

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

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

13           “(3) TIME FOR REVIEW.—The administering  
14           authority shall make its determination under para-  
15           graph (2)(B) within 90 days after the date on which  
16           the notice of initiation of the review is published. If  
17           the determination under paragraph (2)(B) is affirm-  
18           ative, the administering authority shall amend the  
19           order accordingly. The administering authority shall  
20           promptly publish the determination and any amend-  
21           ment to the order in the Federal Register, and shall  
22           provide a copy of any amended order to the Customs  
23           Service. In extraordinary circumstances, the admin-  
24           istering authority may extend the time for its deter-  
25           mination under paragraph (2)(B) to not later than

1       150 days after the date on which the notice of initi-  
2       ation of the review is published.

3       “(e) EXTENSION OF COUNTERMEASURES.—

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

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

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

23               “(B) OTHER REQUESTS.—If the request  
24       seeks an extension under paragraph (1) other  
25       than one described in subparagraph (A), the re-

1           quest shall be filed not earlier than the date  
2           that is 6 months, and not later than a date that  
3           is 3 months, before the date that marks the end  
4           of the period referred to in subparagraph (A).

5           “(3) DETERMINATION.—

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

13           “(B) PROCEDURES.—

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

19                   “(ii) OTHER REQUESTS.—If para-  
20          graph (2)(B) applies to the request, the  
21          administering authority shall determine,  
22          within 90 days after the date on which the  
23          notice of initiation of the proceeding is  
24          published, whether the requesting party  
25          has demonstrated that the scope or dura-

1           tion of the countermeasures is inadequate  
2           in light of all of the circumstances. If the  
3           administering authority determines that an  
4           extension is warranted, it shall amend the  
5           countermeasure order accordingly. The ad-  
6           ministering authority shall promptly pub-  
7           lish the determination and any amendment  
8           to the order in the Federal Register, and  
9           shall provide a copy of any amended order  
10          to the Customs Service.

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

20           “(5) DECISION NOT TO REQUEST PANEL.—If,  
21          based on consultations under paragraph (4), the  
22          Trade Representative decides not to request estab-  
23          lishment of a panel, the Trade Representative shall  
24          inform the party requesting the extension of the  
25          countermeasures of the reasons for its decision in

1 writing. The decision shall not be subject to judicial  
2 review.

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

13 “(f) LIST OF VESSELS SUBJECT TO COUNTER-  
14 MEASURES.—

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

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

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

3           “(B) The vessel identification number.

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

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

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

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

10          “(G) The remaining duration of counter-  
11          measures on the vessel.

12          “(H) Any other identifying information  
13          available.

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

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

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

23                         “(i) the petitioner under section  
24                         802(b),

1 “(ii) the United States Customs Serv-  
2 ice,

3 “(iii) the Secretariat of the Organiza-  
4 tion for Economic Cooperation and Devel-  
5 opment,

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

7 “(v) the shipyards on the list, and

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

10 “(B) SERVICE OF AMENDMENTS.—The ad-  
11 ministering authority shall serve a copy of any  
12 amendments to the list under paragraph (3) or  
13 subsection (g)(3) on—

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

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

19 “(g) ADMINISTRATIVE REVIEW OF LIST OF VESSELS  
20 SUBJECT TO COUNTERMEASURES.—

21 “(1) REQUEST FOR REVIEW.—

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

1 “(i) a vessel included in the list does  
2 not fall within the scope of the applicable  
3 countermeasure order and should be de-  
4 leted, or

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

9 “(B) TIME FOR MAKING REQUEST.—Any  
10 request seeking a determination described in  
11 subparagraph (A)(i) shall be made within 90  
12 days after the date of publication of the appli-  
13 cable list.

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

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

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

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



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

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

5                   “(ii) a vessel not included in the list  
6                   qualifies for inclusion.

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

17                  “(h) EXPIRATION OF COUNTERMEASURES.—Upon  
18                  expiration of a countermeasure order imposed under this  
19                  section, the administering authority shall promptly publish  
20                  a notice of the expiration in the Federal Register.

21                  “(i) SUSPENSION OR TERMINATION OF PROCEED-  
22                  INGS OR COUNTERMEASURES; TEMPORARY REDUCTION  
23                  OF COUNTERMEASURES.—

24                  “(1) IF INJURIOUS PRICING ORDER REVOKED  
25                  OR SUSPENDED.—If an injurious pricing order has

1       been revoked or suspended under section 806 (d) or  
 2       (e), the administering authority shall, as appro-  
 3       priate, suspend or terminate proceedings under this  
 4       section with respect to that order, or suspend or re-  
 5       voke a countermeasure order issued with respect to  
 6       that injurious pricing order.

7               “(2) IF PAYMENT DATE AMENDED.—

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

17              “(B) DATE FOR APPLICATION OF COUN-  
 18      TERMEASURE.—In taking action under sub-  
 19      paragraph (A), the administering authority  
 20      shall ensure that countermeasures are not ap-  
 21      plied before the date that is 30 days after publi-  
 22      cation in the Federal Register of the amended  
 23      payment date.

24              “(C) REINSTITUTION OF PROCEEDINGS.—  
 25      If—

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

6 “(ii) the administering authority de-  
 7 termines that the period of time between  
 8 the original payment date and the amend-  
 9 ed payment date is significant for purposes  
 10 of determining the appropriate scope or  
 11 duration of countermeasures,

12 the administering authority may, in lieu of act-  
 13 ing under subparagraph (A), reinstitute pro-  
 14 ceedings under subsection (c) for purposes of is-  
 15 suing a new determination under that sub-  
 16 section.

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

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

22 “(2)(A) in a proceeding under subsection (c),  
 23 (d), or (e), upon the request of an interested party,  
 24 shall hold a hearing in accordance with section  
 25 841(b) in connection with that proceeding, or

1           “(B) in a proceeding under subsection (g), upon  
 2           the request of an interested party, may hold a hear-  
 3           ing in accordance with section 841(b) in connection  
 4           with that proceeding.

5   **“SEC. 808. INJURIOUS PRICING PETITIONS BY THIRD COUN-**  
 6                           **TRIES.**

7           “(a) FILING OF PETITION.—The government of a  
 8   Shipbuilding Agreement Party may file with the Trade  
 9   Representative a petition requesting that an investigation  
 10 be conducted to determine if—

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

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

18           “(b) INITIATION.—The Trade Representative, after  
 19   consultation with the administering authority and the  
 20   Commission and obtaining the approval of the Parties  
 21   Group under the Shipbuilding Agreement, shall determine  
 22   whether to initiate an investigation described in subsection  
 23   (a).

24           “(c) DETERMINATIONS.—Upon initiation of an inves-  
 25   tigation under subsection (a), the Trade Representative

1 shall request the following determinations be made in ac-  
2 cordance with substantive and procedural requirements  
3 specified by the Trade Representative, notwithstanding  
4 any other provision of this title:

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

8           “(2) INJURY TO INDUSTRY.—The Commission  
9           shall determine whether an industry in the petition-  
10          ing country is or has been materially injured by rea-  
11          son of the sale of the subject vessel in the United  
12          States.

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

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

17               “(2) by the administering authority and the  
18               Commission, in making the determinations required  
19               by subsection (c).

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

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

3           “(2) make such determinations and take such  
4           other actions as are required by sections 806 and  
5           807, as if affirmative determinations had been made  
6           under subsections (a) and (b) of section 805.

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

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

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

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

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

23           “(a) **PETITION BY DOMESTIC INDUSTRY.**—

24           “(1) With respect to the sale of a vessel to a  
25           buyer in a Shipbuilding Agreement Party, any inter-

1       ested party who would be eligible to file a petition  
 2       under section 802(b)(1) with respect to the sale if  
 3       it had been to a United States buyer, if it has rea-  
 4       son to believe that—

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

7               “(B) an industry in the United States is or  
 8               has been materially injured, or is threatened  
 9               with material injury by reason of the sale of the  
 10              vessel,

11       may submit a petition to the Trade Representative  
 12       that alleges the elements referred to in subpara-  
 13       graphs (A) and (B) and requests the Trade Rep-  
 14       resentative to take action under subsection (b) of  
 15       this section on behalf of the domestic industry.

16              “(2) A petition submitted under paragraph (1)  
 17       shall contain such detailed information as the Trade  
 18       Representative may require in support of the allega-  
 19       tions in the petition.

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

22              “(1) If the Trade Representative, on the basis  
 23       of the information contained in a petition submitted  
 24       under subsection (a), determines that there is a rea-  
 25       sonable basis for the allegations in the petition, the

1 Trade Representative shall submit to the appro-  
2 priate authority of the Shipbuilding Agreement  
3 Party where the alleged injurious pricing is occur-  
4 ring an application pursuant to Article 10 of Annex  
5 III of the Shipbuilding Agreement. The application  
6 shall request that appropriate injurious pricing ac-  
7 tion be taken on behalf of the United States with re-  
8 spect to the sale of the vessel under the law of the  
9 country of that Party consistent with the terms of  
10 the Shipbuilding Agreement.

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

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

23 “(d) ACTION UPON REFUSAL OF SHIPBUILDING  
24 AGREEMENT PARTY TO ACT.—If the appropriate author-  
25 ity of the Shipbuilding Agreement Party refuses to under-



1 take injurious pricing measures in response to a request  
 2 made by the Trade Representative under subsection (b),  
 3 the Trade Representative promptly shall consult with the  
 4 domestic industry on whether action under any other law  
 5 of the United States is appropriate.

## 6 **“Subtitle B—Special Rules**

### 7 **“SEC. 821. EXPORT PRICE.**

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

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

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

1 “(2) reduced by—

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

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

11 “(C) all other expenses incidental to plac-  
12 ing the vessel in condition for delivery to the  
13 buyer.

14 **“SEC. 822. NORMAL VALUE.**

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

21 “(1) DETERMINATION OF NORMAL VALUE.—

22 “(A) IN GENERAL.—The normal value of  
23 the subject vessel shall be the price described in  
24 subparagraph (B), at a time reasonably cor-

1           responding to the time of the sale used to deter-  
2           mine the export price under section 821(a).

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

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

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

15                         “(I) such price is representative,  
16                         and

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

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

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

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

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

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

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

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

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

7                   “(A) reduced by—

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

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

21                          “(iii) the amount of all other expenses  
22                          incidental to placing the foreign like vessel  
23                          in condition for delivery to the buyer, and

24                          “(B) increased or decreased by the amount  
25                          of any difference (or lack thereof) between the

1 export price and the price described in para-  
2 graph (1)(B) (other than a difference for which  
3 allowance is otherwise provided under this sec-  
4 tion) that is established to the satisfaction of  
5 the administering authority to be wholly or  
6 partly due to—

7 “(i) physical differences between the  
8 subject vessel and the vessel used in deter-  
9 mining normal value, or

10 “(ii) other differences in the cir-  
11 cumstances of sale.

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

13 The price described in paragraph (1)(B) shall also  
14 be increased or decreased to make due allowance for  
15 any difference (or lack thereof) between the export  
16 price and the price described in paragraph (1)(B)  
17 (other than a difference for which allowance is oth-  
18 erwise made under this section) that is shown to be  
19 wholly or partly due to a difference in level of trade  
20 between the export price and normal value, if the  
21 difference in level of trade—

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

24 “(B) is demonstrated to affect price com-  
25 parability, based on a pattern of consistent

1 price differences between sales at different lev-  
2 els of trade in the country in which normal  
3 value is determined.

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

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

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

13 “(1) DETERMINATION; SALES DISREGARDED.—

14 Whenever the administering authority has reason-  
15 able grounds to believe or suspect that the sale of  
16 the foreign like vessel under consideration for the  
17 determination of normal value has been made at a  
18 price which represents less than the cost of produc-  
19 tion of the foreign like vessel, the administering au-  
20 thority shall determine whether, in fact, such sale  
21 was made at less than the cost of production. If the  
22 administering authority determines that the sale was  
23 made at less than the cost of production and was  
24 not at a price which permits recovery of all costs  
25 within 5 years, such sale may be disregarded in the

1 determination of normal value. Whenever such a sale  
2 is disregarded, normal value shall be based on an-  
3 other sale of a foreign like vessel in the ordinary  
4 course of trade. If no sales made in the ordinary  
5 course of trade remain, the normal value shall be  
6 based on the constructed value of the subject vessel.

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

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

22 “(B) RECOVERY OF COSTS.—If the price is  
23 below the cost of production at the time of sale  
24 but is above the weighted average cost of pro-  
25 duction for the period of investigation, such



1 price shall be considered to provide for recovery  
2 of costs within 5 years.

3 “(3) CALCULATION OF COST OF PRODUCTION.—For purposes of this section, the cost of pro-  
4 duction shall be an amount equal to the sum of—

5  
6 “(A) the cost of materials and of fabrica-  
7 tion or other processing of any kind employed  
8 in producing the foreign like vessel, during a  
9 period which would ordinarily permit the pro-  
10 duction of that vessel in the ordinary course of  
11 business, and

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

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

23 “(c) NONMARKET ECONOMY COUNTRIES.—

24 “(1) IN GENERAL.—If—

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

3           “(B) the administering authority finds that  
4           available information does not permit the nor-  
5           mal value of the subject vessel to be determined  
6           under subsection (a), the administering author-  
7           ity shall determine the normal value of the sub-  
8           ject vessel on the basis of the value of the fac-  
9           tors of production utilized in producing the ves-  
10          sel and to which shall be added an amount for  
11          general expenses and profit plus the cost of ex-  
12          penses incidental to placing the vessel in a con-  
13          dition for delivery to the buyer. Except as pro-  
14          vided in paragraph (2), the valuation of the fac-  
15          tors of production shall be based on the best  
16          available information regarding the values of  
17          such factors in a market economy country or  
18          countries considered to be appropriate by the  
19          administering authority.

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

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

2 “(B) produced in one or more market  
3 economy countries that are at a level of eco-  
4 nomic development comparable to that of the  
5 nonmarket economy country,

6 is sold in other countries, including the United  
7 States.

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

12 “(A) hours of labor required,

13 “(B) quantities of raw materials employed,

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

16 “(D) representative capital cost, including  
17 depreciation.

18 “(4) VALUATION OF FACTORS OF PRODUC-  
19 TION.—The administering authority, in valuing fac-  
20 tors of production under paragraph (1), shall utilize,  
21 to the extent possible, the prices or costs of factors  
22 of production in one or more market economy coun-  
23 tries that are—

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

4           “(B) significant producers of comparable  
5           vessels.

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

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

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

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

22           the administering authority shall determine the normal  
23           value of the subject vessel by reference to the normal value  
24           at which a foreign like vessel is sold from one or more  
25           facilities outside the exporting country. The administering

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

9 “(e) CONSTRUCTED VALUE.—

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

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

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

1 market of the country of origin of the subject  
2 vessel, or

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

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

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

23 “(III) if data are not available under  
24 subclause (I) or (II), the amounts incurred  
25 and realized for selling, general, and ad-

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

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

23           “(2) COSTS AND PROFITS BASED ON OTHER  
24       REASONABLE METHODS.—When costs and profits  
25       are determined under paragraph (1)(B)(ii)(III), such

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

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

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

18 “(1) COSTS.—

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



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

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

14 “(C) STARTUP COSTS.—

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

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

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

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

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

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

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

1           sonably can obtain, analyze, and verify  
2           without delaying the timely completion of  
3           the investigation.

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

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

18          “(2) TRANSACTIONS DISREGARDED.—A trans-  
19          action directly or indirectly between affiliated per-  
20          sons may be disregarded if, in the case of any ele-  
21          ment of value required to be considered, the amount  
22          representing that element does not fairly reflect the  
23          amount usually reflected in sales of a like vessel in  
24          the market under consideration. If a transaction is  
25          disregarded under the preceding sentence and no

1 other transactions are available for consideration,  
2 the determination of the amount shall be based on  
3 the information available as to what the amount  
4 would have been if the transaction had occurred be-  
5 tween persons who are not affiliated.

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

18 **“SEC. 823. CURRENCY CONVERSION.**

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

1 spect to such foreign currency in the forward sale agree-  
 2 ment shall be used to convert the foreign currency.

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

## 14 **“Subtitle C—Procedures**

### 15 **“SEC. 841. HEARINGS.**

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

21 “(b) PROCEDURES.—Any hearing required or per-  
 22 mitted under this title shall be conducted after notice pub-  
 23 lished in the Federal Register, and a transcript of the  
 24 hearing shall be prepared and made available to the public.  
 25 The hearing shall not be subject to the provisions of sub-

1 chapter II of chapter 5 of title 5, United States Code, or  
2 to section 702 of such title.

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

5 “(a) IN GENERAL.—If—

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

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

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

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

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

19 “(D) provides such information but the in-  
20 formation cannot be verified as provided in sec-  
21 tion 844(g), the administering authority and  
22 the Commission shall, subject to section 844(c),  
23 use the facts otherwise available in reaching the  
24 applicable determination under this title.

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

12               “(1) the petition, or

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

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

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

24       “(a) INFORMATION GENERALLY MADE AVAIL-  
 25 ABLE.—

1           “(1) PROGRESS OF INVESTIGATION REPORTS.—

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

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

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

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

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



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

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

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

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

22          “(b) PROPRIETARY INFORMATION.—

23                   “(1) PROPRIETARY STATUS MAINTAINED.—

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

tion submitted to the administering authority or the Commission which is designated as proprietary by the person submitting the information shall not be disclosed to any person without the consent of the person submitting the information, other than—

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

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

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

“(i) either—

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

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

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

9           “(ii) either—

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

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

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

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

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

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

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

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

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

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

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

20               “(ii) if—

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

24                   “(II) the information is unusu-  
25                   ally voluminous or complex, not later

1                   than 30 days (10 days if the submis-  
 2                   sion pertains to a proceeding under  
 3                   section 803(a)) after the date on  
 4                   which the information is submitted.

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 “(b) DIFFICULTIES IN MEETING REQUIREMENTS.—

19 “(1) NOTIFICATION BY INTERESTED PARTY.—

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

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

10       “(2) ASSISTANCE TO INTERESTED PARTIES.—

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

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

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

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

9 “(2) such response is not submitted within the  
10 applicable time limits, then the administering au-  
11 thority or the Commission (as the case may be) may,  
12 subject to subsection (d), disregard all or part of the  
13 original and subsequent responses.

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

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

23 “(2) the information can be verified,

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

17 “(b) ACTION BY ADMINISTERING AUTHORITY.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## 14                   **“Subtitle D—Definitions**

### 15       **“SEC. 861. DEFINITIONS.**

16       “In this title:

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

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

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

9           “(4) INDUSTRY.—

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

18 “(A) A United States citizen.

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

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

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

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

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

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

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

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

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

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

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

13           “(8) VESSEL.—

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

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

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

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

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

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

9                   “(ii) any military vessel or any mili-  
 10                  tary reserve vessel, and

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

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

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

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

7 “(E) MILITARY RESERVE VESSEL.—A  
8 ‘military reserve vessel’ is a vessel that has been  
9 constructed with national defense features and  
10 characteristics required by the Secretary of De-  
11 fense for the purpose of supporting the United  
12 States Armed Forces in a contingency, if the  
13 vessel (without regard to such features and  
14 characteristics) is otherwise subject to the  
15 terms and conditions of the Shipbuilding Agree-  
16 ment.

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

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

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

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

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

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

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

19          “(16) MATERIAL INJURY.—

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

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

1 “(i) shall consider—

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

3 “(II) the effect of the sale of the

4 subject vessel on prices in the United

5 States for a domestic like vessel, and

6 “(III) the impact of the sale of

7 the subject vessel on domestic produc-

8 ers of a domestic like vessel, but only

9 in the context of production oper-

10 ations within the United States, and

11 “(ii) may consider such other eco-

12 nomic factors as are relevant to the deter-

13 mination regarding whether there is or has

14 been material injury by reason of the sale

15 of the subject vessel.

16 In the notification required under section

17 805(d), the Commission shall explain its analy-

18 sis of each factor considered under clause (i),

19 and identify each factor considered under clause

20 (ii) and explain in full its relevance to the deter-

21 mination.

22 “(C) EVALUATION OF RELEVANT FAC-

23 TORS.—For purposes of subparagraph (B)—

24 “(i) SALE OF THE SUBJECT VES-

25 SEL.—In evaluating the sale of the subject



1 vessel, the Commission shall consider  
2 whether the sale, either in absolute terms  
3 or relative to production or demand in the  
4 United States, in terms of either volume or  
5 value, is or has been significant.

6 “(ii) PRICE.—In evaluating the effect  
7 of the sale of the subject vessel on prices,  
8 the Commission shall consider whether—

9 “(I) there has been significant  
10 price underselling of the subject vessel  
11 as compared with the price of a do-  
12 mestic like vessel, and

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

19 “(iii) IMPACT ON AFFECTED DOMES-  
20 TIC INDUSTRY.—In examining the impact  
21 required to be considered under subpara-  
22 graph (B)(i)(III), the Commission shall  
23 evaluate all relevant economic factors  
24 which have a bearing on the state of the

1 industry in the United States, including,  
2 but not limited to—

3 “(I) actual and potential decline  
4 in output, sales, market share, profits,  
5 productivity, return on investments,  
6 and utilization of capacity,

7 “(II) factors affecting domestic  
8 prices, including with regard to sales,

9 “(III) actual and potential nega-  
10 tive effects on cash flow, employment,  
11 wages, growth, ability to raise capital,  
12 and investment,

13 “(IV) actual and potential nega-  
14 tive effects on the existing develop-  
15 ment and production efforts of the do-  
16 mestic industry, including efforts to  
17 develop a derivative or more advanced  
18 version of a domestic like vessel, and

19 “(V) the magnitude of the injuri-  
20 ous pricing margin.

21 The Commission shall evaluate all relevant  
22 economic factors described in this clause  
23 within the context of the business cycle  
24 and conditions of competition that are dis-  
25 tinctive to the affected industry.

1           “(D) STANDARD FOR DETERMINATION.—

2           The presence or absence of any factor which the  
3           Commission is required to evaluate under sub-  
4           paragraph (C) shall not necessarily give decisive  
5           guidance with respect to the determination by  
6           the Commission of material injury.

7           “(E) THREAT OF MATERIAL INJURY.—

8           “(i) IN GENERAL.—In determining  
9           whether an industry in the United States  
10          is threatened with material injury by rea-  
11          son of the sale of the subject vessel, the  
12          Commission shall consider, among other  
13          relevant economic factors—

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

23                 “(II) whether the sale of a for-  
24                 eign like vessel or other factors indi-

1 cate the likelihood of significant addi-  
2 tional sales to United States buyers,

3 “(III) whether sale of the subject  
4 vessel or sale of a foreign like vessel  
5 by the foreign producer are at prices  
6 that are likely to have a significant  
7 depressing or suppressing effect on  
8 domestic prices, and are likely to in-  
9 crease demand for further sales,

10 “(IV) the potential for product-  
11 shifting if production facilities in the  
12 exporting country, which can pres-  
13 ently be used to produce a foreign like  
14 vessel or could be adapted in a timely  
15 manner to produce a foreign like ves-  
16 sel, are currently being used to  
17 produce other types of vessels,

18 “(V) the actual and potential  
19 negative effects on the existing devel-  
20 opment and production efforts of the  
21 domestic industry, including efforts to  
22 develop a derivative or more advanced  
23 version of a domestic like vessel, and

24 “(VI) any other demonstrable ad-  
25 verse trends that indicate the prob-

1 ability that there is likely to be mate-  
 2 rial injury by reason of the sale of the  
 3 subject vessel.

4 “(ii) BASIS FOR DETERMINATION.—

5 The Commission shall consider the factors  
 6 set forth in clause (i) as a whole. The pres-  
 7 ence or absence of any factor which the  
 8 Commission is required to consider under  
 9 clause (i) shall not necessarily give decisive  
 10 guidance with respect to the determination.  
 11 Such a determination may not be made on  
 12 the basis of mere conjecture or suppo-  
 13 sition.

14 “(iii) EFFECT OF INJURIOUS PRICING  
 15 IN THIRD-COUNTRY MARKETS.—

16 “(I) IN GENERAL.—The Commis-  
 17 sion shall consider whether injurious  
 18 pricing in the markets of foreign  
 19 countries (as evidenced by injurious  
 20 pricing findings or injurious pricing  
 21 remedies of other Shipbuilding Agree-  
 22 ment Parties, or antidumping deter-  
 23 minations of, or measures imposed by,  
 24 other countries, against a like vessel  
 25 produced by the producer under inves-

1                   tigation) suggests a threat of material  
 2                   injury to the domestic industry. In the  
 3                   course of its investigation, the Com-  
 4                   mission shall request information  
 5                   from the foreign producer or United  
 6                   States buyer concerning this issue.

7                   “(II)       EUROPEAN       COMMU-  
 8                   NITIES.—For purposes of this clause,  
 9                   the European Communities as a whole  
 10                  shall be treated as a single foreign  
 11                  country.

12                  “(F) CUMULATION FOR DETERMINING MA-  
 13                  TERIAL INJURY.—

14                  “(i) IN GENERAL.—For purposes of  
 15                  clauses (i) and (ii) of subparagraph (C),  
 16                  and subject to clause (ii) of this subpara-  
 17                  graph, the Commission shall cumulatively  
 18                  assess the effects of sales of foreign like  
 19                  vessels from all foreign producers with re-  
 20                  spect to which—

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

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

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

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

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

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

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

23 “(iii) RECORDS IN FINAL INVESTIGA-  
24 TIONS.—In each final determination in  
25 which it cumulatively assesses the effects

1 of sales under clause (i), the Commission  
2 may make its determinations based on the  
3 record compiled in the first investigation in  
4 which it makes a final determination, ex-  
5 cept that when the administering authority  
6 issues its final determination in a subse-  
7 quently completed investigation, the Com-  
8 mission shall permit the parties in the sub-  
9 sequent investigation to submit comments  
10 concerning the significance of the admin-  
11 istering authority's final determination,  
12 and shall include such comments and the  
13 administering authority's final determina-  
14 tion in the record for the subsequent inves-  
15 tigation.

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

23 “(i) petitions were filed under section  
24 802(b) on the same day,



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

3 “(iii) petitions were filed under sec-  
4 tion 802(b) and investigations were initi-  
5 ated under section 802(a) on the same  
6 day,

7 if, with respect to such vessels, the foreign pro-  
8 ducers compete with each other and with pro-  
9 ducers of a domestic like vessel in the United  
10 States market.

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

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

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

21 “(B) the government of the country in  
22 which the subject vessel is produced or manu-  
23 factured,

24 “(C) a producer that is a member of an in-  
25 dustry,

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

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

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

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

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

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

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

3           “(C) material retardation of the establish-  
4           ment of an industry in the United States,  
5           by reason of the sale of the subject vessel, an affirm-  
6           ative vote on any of the issues shall be treated as  
7           a vote that the determination should be affirmative.

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

16               “(A) Sales disregarded under section  
17               822(b)(1).

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

20           “(20) NONMARKET ECONOMY COUNTRY.—

21               “(A) IN GENERAL.—The term ‘nonmarket  
22               economy country’ means any foreign country  
23               that the administering authority determines  
24               does not operate on market principles of cost or  
25               pricing structures, so that sales of vessels in

1           such country do not reflect the fair value of the  
2           vessels.

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

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

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

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

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

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

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

1 “(C) DETERMINATION IN EFFECT.—

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

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

10 “(D) DETERMINATIONS NOT IN ISSUE.—

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

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

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

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

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

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

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

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

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

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

24 “(C) Partners.

25 “(D) Employer and employee.

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

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

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

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

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

18          “(28) INJURIOUS PRICING MARGIN.—

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

23                 “(B) MAGNITUDE OF THE INJURIOUS  
 24                 PRICING MARGIN.—The magnitude of the inju-

rious 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



1       Organization for Economic Cooperation, and entered  
2       into on December 21, 1994.

3               “(30) ANTIDUMPING.—

4               “(A) WTO MEMBERS.—In the case of a  
5       WTO member, the term ‘antidumping’ refers to  
6       action taken pursuant to the Agreement on Im-  
7       plementation of Article VI of the General  
8       Agreement on Tariffs and Trade 1994.

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

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

20   **SEC. 103. ENFORCEMENT OF COUNTERMEASURES.**

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

1   **“SEC. 468. SHIPBUILDING AGREEMENT COUNTER-**  
2                   **MEASURES.**

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

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

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

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

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

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

25           “(5) To lade or unlade such other merchandise,  
26 baggage, or passenger as the Customs Service shall

1       determine necessary to protect the immediate health,  
2       safety, or welfare of a human being.

3       “(c) CORRECTION OF MINISTERIAL OR CLERICAL  
4 ERRORS.—

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

13          “(2) INAPPLICABILITY OF SECTIONS 514 AND  
14      520.—Notwithstanding paragraph (1), imposition of  
15      countermeasures under this section shall not be  
16      deemed an exclusion or other protestable decision  
17      under section 514, and shall not be subject to cor-  
18      rection under section 520.

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

24          “(d) PENALTIES.—In addition to any other provision  
25      of law, the Customs Service may impose a civil penalty

1 of not to exceed \$10,000 against the master of any ves-  
 2 sel—

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

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

8 **SEC. 104. JUDICIAL REVIEW IN INJURIOUS PRICING AND**  
 9 **COUNTERMEASURE PROCEEDINGS.**

10 (a) JUDICIAL REVIEW.—Part III of title IV of the  
 11 Tariff Act of 1930 is amended by inserting after section  
 12 516A the following:

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

15 “(a) REVIEW OF DETERMINATION.—

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

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

21 “(ii) a negative determination by the Com-  
 22 mission under section 803(a) as to whether  
 23 there is or has been reasonable indication of  
 24 material injury, threat of material injury, or  
 25 material retardation,

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

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

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

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

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

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

17           “(ix) a determination by the administering  
18 authority under section 807(i) to terminate pro-  
19 ceedings, or to amend or revoke a counter-  
20 measure order,

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

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

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

6 “(iii) notice of implementation of a deter-  
 7 mination described in subparagraph (C) of  
 8 paragraph (2), or

9 “(iv) notice of revocation of an injurious  
 10 pricing order based on a determination de-  
 11 scribed in subparagraph (D) of paragraph (2),  
 12 an interested party who is a party to the pro-  
 13 ceeding in connection with which the matter  
 14 arises may commence an action in the United  
 15 States Court of International Trade by filing  
 16 concurrently a summons and complaint, each  
 17 with the content and in the form, manner, and  
 18 style prescribed by the rules of that court, con-  
 19 testing any factual findings or legal conclusions  
 20 upon which the determination is based.

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

23 “(A) a final affirmative determination by  
 24 the administering authority or by the Commis-  
 25 sion under section 805, including any negative

1 part of such a determination (other than a part  
2 referred to in subparagraph (B)),

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

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

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

13 “(3) EXCEPTION.—Notwithstanding the 30-day  
14 limitation imposed by paragraph (1) with regard to  
15 an order described in paragraph (1)(B)(i), a final af-  
16 firmative determination by the administering author-  
17 ity under section 805 may be contested by commene-  
18 ing an action, in accordance with the provisions of  
19 paragraph (1), within 30 days after the date of pub-  
20 lication in the Federal Register of a final negative  
21 determination by the Commission under section 805.

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

25 “(b) STANDARDS OF REVIEW.—

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

3           “(A) in an action brought under subpara-  
4 graph (A) of subsection (a)(1), to be arbitrary,  
5 capricious, an abuse of discretion, or otherwise  
6 not in accordance with law, or

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

11           “(2) RECORD FOR REVIEW.—

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

15           “(i) a copy of all information pre-  
16 sented to or obtained by the administering  
17 authority or the Commission during the  
18 course of the administrative proceeding, in-  
19 cluding all governmental memoranda per-  
20 taining to the case and the record of ex  
21 parte meetings required to be kept by sec-  
22 tion 843(a)(2); and

23           “(ii) a copy of the determination, all  
24 transcripts or records of conferences or



1                   hearings, and all notices published in the  
2                   Federal Register.

3                   “(B) CONFIDENTIAL OR PRIVILEGED MA-  
4                   TERIAL.—The confidential or privileged status  
5                   accorded to any documents, comments, or infor-  
6                   mation shall be preserved in any action under  
7                   this section. Notwithstanding the preceding sen-  
8                   tence, the court may examine, in camera, the  
9                   confidential or privileged material, and may dis-  
10                  close such material under such terms and con-  
11                  ditions as it may order.

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

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

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

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

4           “(3) INTERESTED PARTY.—The term ‘inter-  
 5       ested party’ means any person described in section  
 6       861(17).”.

7       (b) CONFORMING AMENDMENTS.—

8           (1) JURISDICTION OF THE COURT.—Section  
 9       1581(c) of title 28, United States Code, is amended  
 10      by inserting “or 516B” after “section 516A”.

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

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

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

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

## 1       **Subtitle B—Other Provisions**

### 2   **SEC. 111. EQUIPMENT AND REPAIR OF VESSELS.**

3       (a) IN GENERAL.—Section 466 of the Tariff Act of  
4   1930 (19 U.S.C. 1466), is amended by adding at the end  
5   the following new subsection:

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

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

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

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

17               “(C) integrated tug-barges or tug-barge  
18       combinations.

19       “(2) SELF-PROPELLED SEAGOING; INTEGRATED  
20      TUG-BARGE.—

21               “(A) SELF-PROPELLED SEAGOING.—A ves-  
22       sel shall be considered ‘self-propelled seagoing’  
23       if its permanent propulsion and steering provide  
24       it all the characteristics of self-navigability in  
25       the high seas.

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

7 **SEC. 112. EFFECT OF SHIPBUILDING TRADE AGREEMENT**  
 8 **WITH RESPECT TO PRIVATE REMEDIES.**

9       No person other than the United States—

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

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

22 **SEC. 113. IMPLEMENTING REGULATIONS.**

23       After the date of the enactment of this title, the heads  
 24       of agencies with functions under this title and the amend-  
 25       ments made by this title may issue such regulations as

1 may be necessary to ensure that this title is appropriately  
2 implemented on the date the Shipbuilding Agreement en-  
3 ters into force with respect to the United States.

4 **SEC. 114. AMENDMENTS TO THE MERCHANT MARINE ACT,**  
5 **1936.**

6 The Merchant Marine Act, 1936, is amended as fol-  
7 lows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

24                       (B) by amending subsection (i) to read as  
25 follows:

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

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

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

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

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

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

22               (C) by adding at the end the following new  
23 subsection:

24       “(k) The Secretary shall establish by rule, regulation,  
25 or procedure a uniform percentage with respect to inte-

1 grated tug-barges that the Secretary determines to be con-  
 2 sistent with the percentages applied with respect to Export  
 3 Credit Understanding vessels and Shipbuilding Agreement  
 4 vessels under subsections (b)(5) and (i)(2).”.

5           (9) Section 1104B(b) (46 App. U.S.C.  
 6 1274a(b)) is amended by striking the period at the  
 7 end and inserting the following: “, except that, with  
 8 respect to Export Credit Understanding vessels and  
 9 Shipbuilding Agreement vessels, the Secretary may  
 10 establish by rule, regulation, or procedure a uniform  
 11 percentage that the Secretary determines to be con-  
 12 sistent with obligations of the United States under  
 13 the Export Credit Understanding or the Shipbuild-  
 14 ing Agreement, as the case may be. With respect to  
 15 integrated tug-barges, the Secretary shall establish  
 16 by rule, regulation, or procedure a uniform percent-  
 17 age that the Secretary determines to be consistent  
 18 with the percentages applied with respect to Export  
 19 Credit Understanding vessels and Shipbuilding  
 20 Agreement vessels pursuant to the preceding sen-  
 21 tence.”.

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

23 (a) EFFECTIVE DATE.—

24           (1) IN GENERAL.—Notwithstanding any provi-  
 25 sion of the Shipbuilding Agreement or the Export

Credit Understanding, the amendments made by paragraphs ~~(9) and (10)~~ (8) and (9) of section 114 shall not apply with respect to any commitment to guarantee made under title XI of the Merchant Marine Act, 1936, before ~~January 1, 2000~~, *January 1, 2001*, with respect to a vessel delivered—

(A) before ~~January 1, 2003~~, *January 1, 2004*, or

(B) in the case of unusual circumstances (as described in paragraph (2)), as soon after ~~December 31, 2002~~, *December 31, 2003*, as practicable.

(2) UNUSUAL CIRCUMSTANCES DESCRIBED.—

As used in this subsection, the term “unusual circumstances” means an act of God (other than ordinary storms or inclement weather conditions) labor strikes, acts of sabotage, explosions, fires, or vandalism, and similar circumstances beyond the control of the parties concerned which prevent the delivery of a vessel before ~~January 1, 2003~~, *January 1, 2004*.

(b) MATCHING COMPETITION BY NONMEMBERS.—

Section 114 shall not prevent the Secretary of Transportation from exercising the Secretary’s full discretion and authority under title XI of the Merchant Marine Act, 1936, consistent with clause 8 and Annex III of the Ex-

1 port Credit Understanding, to assist United States ship-  
2 yards in meeting unfairly subsidized bids by foreign yards  
3 in countries not covered by the Shipbuilding Agreement.

4 **SEC. 116. MONITORING AND ENFORCEMENT.**

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

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

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

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

21 (4) regular consultations with representatives of  
22 industry, labor, and other interested parties regard-  
23 ing policies and practices of Shipbuilding Agreement  
24 Parties and of other countries with significant com-  
25 mercial shipbuilding industries;

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

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

8       (b) REPORT TO CONGRESS.—Before the end of each  
9       12-month period in which the United States is a Party  
10      to the Shipbuilding Agreement, the United States Trade  
11      Representative shall report to Congress on—

12           (1) the activities undertaken as part of its mon-  
13      itoring program;

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

16           (3) compliance with the provisions of the Ship-  
17      building Agreement.

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

cedures under the Shipbuilding Agreement. If the matter is not otherwise resolved, the United States Trade Representative should use the dispute settlement procedures under the Shipbuilding Agreement to redress the situation.

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

(a) IN GENERAL.—Nothing in the Shipbuilding Agreement shall be construed to amend, alter, or modify in any manner the Merchant Marine Act, 1920 (46 App. U.S.C. 861 et seq.), the Act of June 19, 1886 (46 App. U.S.C. 289), or any other provision of law set forth in Accompanying Note 2 to Annex II of the Shipbuilding Agreement. Nor shall the Shipbuilding Agreement be interpreted to undermine the operation or administration of any of the foregoing provisions of law or impede the objectives of such laws.

(b) RELATION TO GATT 1994.—Nothing in the Shipbuilding Agreement shall be construed to provide a mechanism for withdrawal of concessions under GATT 1994 *or any World Trade Organization Agreement* because of the construction of vessels by United States shipbuilders for operation in the coastwise trade of the United States.

(c) ANNUAL REVIEW; NOTIFICATION.—As part of the annual review of all trade agreements conducted under



1 section 163 of the Trade Act of 1974, the United States  
2 Trade Representative shall—

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

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

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

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

14 (a) **WITHDRAWAL BY PRESIDENT.**—

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

23 (2) **TONNAGE OF NEW CONSTRUCTION IN WITH-**  
24 **DRAWING PARTIES.**—The circumstances described in

1 this paragraph are that the combined gross tonnage  
2 of Shipbuilding Agreement vessels that—

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

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

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

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

23 (b) CONGRESSIONAL RESOLUTION WITHDRAWING

24 APPROVAL OF THE SHIPBUILDING AGREEMENT.—

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

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

14           (3) PROCEDURAL PROVISIONS.—

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

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

23                   (ii) if the President vetoes the joint  
24                   resolution, each House of Congress votes

1 to override that veto on or before the later  
2 of—

3 (I) the last day of the 90-day pe-  
4 riod referred to in clause (i), or

5 (II) the last day of the 15-day  
6 period beginning on the date on which  
7 Congress receives the veto message  
8 from the President.

9 (B) INTRODUCTION.—A joint resolution to  
10 which this subsection applies may be introduced  
11 at any time on or after the applicable date re-  
12 ferred to in paragraph (1).

13 (4) JOINT RESOLUTION.—

14 (A) JOINT RESOLUTION.—For purposes of  
15 this subsection, the term “joint resolution”  
16 means only a joint resolution of the 2 Houses  
17 of Congress, the matter after the resolving  
18 clause of which is as follows: “That Congress  
19 withdraws its approval, provided under section  
20 101 of the OECD Shipbuilding Trade Agree-  
21 ment Act, of the Shipbuilding Agreement de-  
22 scribed in section 101 of that Act.”.

23 (B) PROCEDURES.—

1 (i) IN GENERAL.—Joint resolutions  
2 may be introduced in either House of Con-  
3 gress by any Member of such House.

4 (ii) APPLICATION OF SECTION 152 OF  
5 THE TRADE ACT OF 1974.—Subject to the  
6 provisions of this subsection, the provisions  
7 of subsections (b), (d), (e), and (f) of sec-  
8 tion 152 of the Trade Act of 1974 (19  
9 U.S.C. 2192 (b), (d), (e), and (f)) apply to  
10 joint resolutions to the same extent as  
11 such provisions apply to resolutions under  
12 such section.

13 (iii) DISCHARGE OF COMMITTEE.—If  
14 a committee of either House to which a  
15 joint resolution has been referred has not  
16 reported it by the close of the 45th day  
17 after its introduction, such committee shall  
18 be automatically discharged from further  
19 consideration of the joint resolution and it  
20 shall be placed on the appropriate cal-  
21 endar.

22 (iv) FLOOR CONSIDERATION.—It is  
23 not in order for—

24 (I) the Senate to consider any  
25 joint resolution unless it has been re-

1                   ported by the Committee on Finance  
2                   or the committee has been discharged  
3                   under clause (iii);

4                   (II) the House of Representatives  
5                   to consider any joint resolution unless  
6                   it has been reported by the Committee  
7                   on Ways and Means or the committee  
8                   has been discharged under clause (iii);  
9                   or

10                  (III) either House to consider  
11                  any joint resolution or take any action  
12                  under paragraph (3)(A) (i) or (ii), if  
13                  the President has notified the appro-  
14                  priate committees that the decision to  
15                  apply responsive measures described  
16                  in paragraph (1) has been withdrawn  
17                  and the responsive measures have not  
18                  actually been applied.

19                  (v) CONSIDERATION IN THE HOUSE.—

20                  A motion in the House of Representatives  
21                  to proceed to the consideration of a joint  
22                  resolution may only be made on the second  
23                  legislative day after the calendar day on  
24                  which the Member making the motion an-  
25                  nounces his or her intention to do so.

1 (C) CONSIDERATION OF SECOND RESOLU-  
2 TION NOT IN ORDER.—It shall not be in order  
3 in either the House of Representatives or the  
4 Senate to consider another joint resolution  
5 under this subsection (other than a joint resolu-  
6 tion received from the other House), if that  
7 House has previously voted on a joint resolution  
8 under this subsection with respect to the same  
9 Presidential notification described in paragraph  
10 (1).

11 (5) DEFINITION AND SPECIAL RULE.—

12 (A) APPLICABLE DATE.—For purposes of  
13 this subsection, the term “applicable date”  
14 means the date on which the responsive meas-  
15 ures described in paragraph (1) are first sched-  
16 uled to be applied by the Shipbuilding Agree-  
17 ment Party.

18 (B) COMPUTATION OF TIME PERIODS.—  
19 For purposes of paragraph (3)(A) (i) and (ii)  
20 and paragraph (4)(B)(iii), the 90-day period,  
21 the 15-day period, and the 45 days referred to  
22 in such paragraphs shall be computed by ex-  
23 cluding—

24 (i) the days on which either House is  
25 not in session because of an adjournment

1 of more than 3 days to a day certain or an  
 2 adjournment of the Congress sine die, and  
 3 (ii) any Saturday and Sunday, not ex-  
 4 cluded under clause (i), when either House  
 5 is not in session.

6 (6) RULES OF HOUSE OF REPRESENTATIVES  
 7 AND SENATE.—This subsection is enacted by Con-  
 8 gress—

9 (A) as an exercise of the rulemaking power  
 10 of the House of Representatives and the Sen-  
 11 ate, respectively, and such procedures supersede  
 12 other rules only to the extent that such proce-  
 13 dures are inconsistent with such other rules;  
 14 and

15 (B) with the full recognition of the con-  
 16 stitutional right of either House to change the  
 17 rules (so far as relating to the procedures of  
 18 that House) at any time, in the same manner,  
 19 and to the same extent as any other rule of that  
 20 House.

21 **SEC. 119. EXPANDING MEMBERSHIP IN THE SHIPBUILDING**  
 22 **AGREEMENT.**

23 (a) MONITORING.—The United States Trade Rep-  
 24 resentative shall monitor the impact of the policies and  
 25 practices pursued by countries that are not Shipbuilding



1 Agreement Parties, and shall seek the prompt accession  
2 to the Shipbuilding Agreement of countries that have sig-  
3 nificant commercial shipbuilding and repair industries, in-  
4 cluding, but not limited to, Australia, Brazil, India, the  
5 People's Republic of China, Poland, Romania, the Russian  
6 Federation, Singapore, and Ukraine.

7       (b) REPORT.—The United States Trade Representa-  
8 tive shall report to Congress annually on the results of  
9 efforts to expand the membership of the Shipbuilding  
10 Agreement. If it is determined that the continuing failure  
11 of a country to adopt the disciplines of the Shipbuilding  
12 Agreement is undermining the effectiveness of the Ship-  
13 building Agreement and placing United States shipyards  
14 at a competitive disadvantage, the United States Trade  
15 Representative shall take vigorous action to redress the  
16 situation by—

17           (1) using mechanisms available under United  
18 States trade laws,

19           (2) seeking consultations with the country in-  
20 volved, and

21           (3) initiating dispute settlement under applica-  
22 ble international agreements.

23 The United States Trade Representative may also take ac-  
24 tion with other Shipbuilding Agreement Parties.

1 **SEC. 120. PROTECTION OF UNITED STATES SECURITY IN-**  
2 **TERESTS.**

3       Nothing in the Shipbuilding Agreement shall be con-  
4 strued to prevent the United States from taking any ac-  
5 tion which the United States considers necessary for the  
6 protection of the essential security interests of the United  
7 States as determined by the President, including invoking  
8 its sovereign authority to exclude “military vessels” and  
9 “military reserve vessels” from coverage under the Ship-  
10 building Agreement and from any dispute or challenge  
11 based on Annex I to the Shipbuilding Agreement. If the  
12 United States takes action under the preceding sentence,  
13 the Secretary of Defense shall designate the “military ves-  
14 sels” and “military reserve vessels” to be excluded on a  
15 case-by-case basis.

16       *Nothing in the Shipbuilding Agreement shall be con-*  
17 *strued to prevent the United States from taking any action*  
18 *which the United States considers necessary for the protec-*  
19 *tion of the essential security interests of the United States,*  
20 *including invoking its sovereign authority to define, for*  
21 *purposes of exclusion from coverage under the Shipbuilding*  
22 *Agreement and from any dispute or challenge based on*  
23 *Annex I to the Shipbuilding Agreement, “military vessel”,*  
24 *“military reserve vessel”, and “essential security interest”,*  
25 *on a case-by-case basis, as determined by the Secretary of*  
26 *Defense.*

1 **SEC. 121. DEFINITIONS.**

2 In this subtitle:

3 (1) *COMMITTEE OF EITHER HOUSE TO WHICH A*  
 4 *JOINT RESOLUTION HAS BEEN REFERRED.*—The term  
 5 “a committee of either House to which a joint resolu-  
 6 tion has been referred” means the Senate Committee  
 7 on Commerce, Science, and Transportation, the Sen-  
 8 ate Committee on Finance, the House Committee on  
 9 National Security, or the House Committee on Ways  
 10 and Means.

11 ~~(1)~~ (2) *APPROPRIATE COMMITTEES.*—The term  
 12 “appropriate committees” means the Committees on  
 13 Finance and Commerce, Science, and Transpor-  
 14 tation of the Senate, and the Committees on Ways  
 15 and Means and National Security of the House of  
 16 Representatives.

17 ~~(2)~~ (3) *SHIPBUILDING AGREEMENT, ETC.*—The  
 18 terms “Shipbuilding Agreement”, “Shipbuilding  
 19 Agreement Party”, “Shipbuilding Agreement ves-  
 20 sels”, and “Export Credit Understanding” have the  
 21 meanings given those terms in subsections (h), (i),  
 22 (j), and (k), respectively, of section 905 of the Mer-  
 23 chant Marine Act, 1936, as added by section ~~114~~(8)  
 24 114(7) of this Act.

1           ~~(3)~~ (4) GATT 1994.—The term “GATT 1994”  
 2           has the meaning given that term in section 2 of the  
 3           Uruguay Round Agreements Act (19 U.S.C. 3501).

4           ~~(4)~~ (5) MILITARY VESSEL.—The term “military  
 5           vessel” means a vessel that, according to its basic  
 6           structural characteristics and ability, is intended to  
 7           be used exclusively for military purposes.

8           ~~(5)~~ (6) MILITARY RESERVE VESSEL.—The term  
 9           “military reserve vessel” means a vessel that has  
 10          been constructed with national defense features and  
 11          characteristics required by the Secretary of Defense  
 12          for the purpose of supporting the United States  
 13          Armed Forces in a contingency, if the vessel (with-  
 14          out regard to such features and characteristics) is  
 15          otherwise subject to the terms and conditions of the  
 16          Shipbuilding Agreement.

17 **SEC. 122. CAPITAL CONSTRUCTION FUND CONFORMING**  
 18 **AMENDMENT.**

19          Subsection (i) of section 7518 of the Internal Reve-  
 20 nue Code of 1986 is amended by inserting before the pe-  
 21 riod the following: “, except that in the case of the terms  
 22 ‘eligible vessel’ and ‘qualified vessel’, the amendments to  
 23 such section by the OECD Shipbuilding Trade Agreement  
 24 Act shall be taken into account”.

## 1           **Subtitle C—Effective Date**

### 2   **SEC. 131. EFFECTIVE DATE.**

3           (a) IN GENERAL.—Except as otherwise provided in  
 4 this title, this title and the amendments made by this title  
 5 take effect on the date that the Shipbuilding Agreement  
 6 enters into force with respect to the United States.

7           (b) TERMINATION OF TITLE AND AMENDMENTS.—  
 8 This title and the amendments made by this title shall  
 9 cease to be effective on the date the withdrawal of the  
 10 United States from the Shipbuilding Agreement becomes  
 11 effective.

## 12           **TITLE II—INTERNATIONAL** 13           **SHIPPING INCOME DISCLOSURE**

### 14   **SEC. 201. PENALTIES FOR FAILURE TO DISCLOSE POSITION** 15                   **THAT CERTAIN INTERNATIONAL SHIPPING** 16                   **INCOME IS NOT INCLUDIBLE IN GROSS IN-** 17                   **COME.**

18           (a) IN GENERAL.—Section 883 of the Internal Reve-  
 19 nue Code of 1986 is amended by adding at the end the  
 20 following new subsection:

21           “(d) PENALTIES FOR FAILURE TO DISCLOSE POSI-  
 22 TION THAT CERTAIN INTERNATIONAL SHIPPING INCOME  
 23 IS NOT INCLUDIBLE IN GROSS INCOME.—

24                   “(1) IN GENERAL.—A taxpayer who, with re-  
 25 spect to any tax imposed by this title, takes the posi-

tion 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.

1           “(3) REASONABLE CAUSE EXCEPTION.—This  
2       subsection shall not apply to a failure to disclose a  
3       position if it is shown that such failure is due to rea-  
4       sonable cause and not due to willful neglect.”

5       (b) CONFORMING AMENDMENTS.—

6           (1) Paragraph (1) of section 872(b) of such  
7       Code is amended by striking “Gross income” and in-  
8       serting “Except as provided in section 883(d), gross  
9       income”.

10          (2) Paragraph (1) of section 883(a) of such  
11       Code is amended by striking “Gross income” and in-  
12       serting “Except as provided in subsection (d), gross  
13       income”.

14       (c) EFFECTIVE DATE.—

15          (1) IN GENERAL.—The amendments made by  
16       this section shall apply to taxable years beginning  
17       after December 31, 1997.

18          (2) COORDINATION WITH TREATIES.—The  
19       amendments made by this section shall not apply in  
20       any case where their application would be contrary  
21       to any treaty obligation of the United States.

22       (d) INFORMATION TO BE PROVIDED BY CUSTOMS  
23       SERVICE.—The United States Custom Service shall pro-  
24       vide the Secretary of the Treasury or his delegate with  
25       such information as may be specified by such Secretary

1 in order to enable such Secretary to determine whether  
2 ships which are not registered in the United States are  
3 engaged in transportation to or from the United States.