

Calendar No. 517

105TH CONGRESS
2^D Session

S. 2400

[Report No. 105-280]

A BILL

To authorize the negotiation of reciprocal trade agreements, implement certain trade agreements, extend trade preferences to certain developing countries, extend the trade adjustment assistance programs, and for other purposes.

JULY 31, 1998

Read twice and placed on the calendar

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IN THE SENATE OF THE UNITED STATES

JULY 31, 1998

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

A BILL

To authorize the negotiation of reciprocal trade agreements, implement certain trade agreements, extend trade preferences to certain developing countries, extend the trade adjustment assistance programs, and for other purposes.

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

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Trade and Tariff Act of 1998”.

1 (b) TABLE OF CONTENTS.—

Sec. 1. Short title; table of contents.

TITLE I—TRADE AND DEVELOPMENT

Subtitle A—Trade Policy for Sub-Saharan Africa

- Sec. 1001. Short title.
- Sec. 1002. Findings.
- Sec. 1003. Statement of policy.
- Sec. 1004. Eligibility for certain benefits.
- Sec. 1005. Treatment of certain textiles and apparel.
- Sec. 1006. United States-Sub-Saharan African Trade and Economic Cooperation Forum.
- Sec. 1007. United States-sub-Saharan Africa free trade area.
- Sec. 1008. Reporting requirement.
- Sec. 1009. Sub-Saharan Africa defined.

Subtitle B—Generalized System of Preferences.

- Sec. 1101. Extension of duty-free treatment under general system of preferences
- Sec. 1102. Effective date.

Subtitle C—United States-Caribbean Trade Enhancement

- Sec. 1201. Short title.
- Sec. 1202. Findings and policy.
- Sec. 1203. Definitions.
- Sec. 1204. Temporary provisions to provide additional trade benefits to certain beneficiary countries.
- Sec. 1205. Adequate and effective protection for intellectual property rights.

TITLE II—RECIPROCAL TRADE AGREEMENTS

- Sec. 2001. Short title.
- Sec. 2002. Trade negotiating objectives of the United States.
- Sec. 2003. Trade agreement negotiating authority.
- Sec. 2004. Notice and consultations.
- Sec. 2005. Implementation of trade agreements.
- Sec. 2006. Treatment of certain trade agreements.
- Sec. 2007. Conforming amendments.
- Sec. 2008. Definitions.

TITLE III—TRADE ADJUSTMENT ASSISTANCE

- Sec. 3001. Trade adjustment assistance.

TITLE IV—MARKET ACCESS IDENTIFICATION FOR CERTAIN AGRICULTURAL PRODUCTS

- Sec. 4001. Short title.
- Sec. 4002. Purposes.
- Sec. 4003. Identification of countries that deny market access.
- Sec. 4004. Investigations.

TITLE V—APPROVAL AND IMPLEMENTATION OF OECD
SHIPBUILDING AGREEMENT

Sec. 5001. Short title; purposes.

Subtitle A—General Provisions

- Sec. 5101. Approval of the Shipbuilding Agreement.
- Sec. 5102. Injurious pricing and countermeasures relating to shipbuilding.
- Sec. 5103. Enforcement of countermeasures.
- Sec. 5104. Judicial review in injurious pricing and countermeasure proceedings.

Subtitle B—Other Provisions

- Sec. 5201. Equipment and repair of vessels.
- Sec. 5202. Effect of Shipbuilding Agreement with respect to private remedies.
- Sec. 5203. Implementing regulations.
- Sec. 5204. Amendments to the Merchant Marine Act, 1936.
- Sec. 5205. Applicability of title XI amendments.
- Sec. 5206. Monitoring and enforcement.
- Sec. 5207 Jones Act and related laws not affected.
- Sec. 5208. Withdrawal from Shipbuilding Agreement.
- Sec. 5209. Expanding membership in the Shipbuilding Agreement.
- Sec. 5210. Protection of United States security interests.
- Sec. 5211. Definitions.

Subtitle C—Effective Date

- Sec. 5301. Effective date.

TITLE VI—MISCELLANEOUS TRADE AND TARIFF PROVISIONS

Subtitle A—Extension of Normal Trade Relations to Mongolia

- Sec. 6001. Congressional findings.
- Sec. 6002. Termination of application of title IV of the Trade Act of 1974 to Mongolia.

Subtitle B—Miscellaneous Tariff Provisions

- Sec. 6101. Duty treatment of certain fabrics.
- Sec. 6102. Temporary duty suspension for personal effects of participants in certain world athletic events.
- Sec. 6103. Extension of United States Insular Possession Program.
- Sec. 6104. Gum arabic.
- Sec. 6105. Mobile offshore drilling units.

TITLE VII—REVENUE PROVISIONS

- Sec. 7001. Capital construction fund conforming amendment.
- Sec. 7002. Modification to foreign tax credit carryback and carryover periods.

1 **TITLE I—TRADE AND**
2 **DEVELOPMENT**
3 **Subtitle A—Trade Policy for Sub-**
4 **Saharan Africa**

5 **SEC. 1001. SHORT TITLE.**

6 This subtitle may be cited as the “African Growth
7 and Opportunity Act”.

8 **SEC. 1002. FINDINGS.**

9 Congress finds that—

10 (1) it is in the mutual interest of the United
11 States and the countries of sub-Saharan Africa to
12 promote stable and sustainable economic growth and
13 development in sub-Saharan Africa;

14 (2) the 48 countries of sub-Saharan Africa
15 form a region richly endowed with both natural and
16 human resources;

17 (3) sub-Saharan Africa represents a region of
18 enormous economic potential and of enduring politi-
19 cal significance to the United States;

20 (4) the region has experienced a rise in both
21 economic development and political freedom as coun-
22 tries in sub-Saharan Africa have taken steps toward
23 liberalizing their economies and encouraged broader
24 participation in the political process;

1 (5) the countries of sub-Saharan Africa have
2 made progress toward regional economic integration
3 that can have positive benefits for the region;

4 (6) despite those gains, the per capita income
5 in sub-Saharan Africa averages less than \$500 an-
6 nually;

7 (7) United States foreign direct investment in
8 the region has fallen in recent years and the sub-Sa-
9 haran African region receives only minor inflows of
10 direct investment from around the world;

11 (8) trade between the United States and sub-
12 Saharan Africa, apart from the import of oil, re-
13 mains an insignificant part of total United States
14 trade;

15 (9) trade and investment, as the American ex-
16 perience has shown, can represent powerful tools
17 both for economic development and for building a
18 stable political environment in which political free-
19 dom can flourish;

20 (10) increased trade and investment flows have
21 the greatest impact in an economic environment in
22 which trading partners eliminate barriers to trade
23 and capital flows and encourage the development of
24 a vibrant private sector that offers individual Afri-

1 can citizens the freedom to expand their economic
2 opportunities and provide for their families;

3 (11) offering the countries of sub-Saharan Afri-
4 ca enhanced trade preferences will encourage both
5 higher levels of trade and direct investment in sup-
6 port of the positive economic and political develop-
7 ments under way throughout the region; and

8 (12) encouraging the reciprocal reduction of
9 trade and investment barriers in Africa will enhance
10 the benefits of trade and investment for the region
11 as well as enhance commercial and political ties be-
12 tween the United States and sub-Saharan Africa.

13 **SEC. 1003. STATEMENT OF POLICY.**

14 Congress supports—

15 (1) encouraging increased trade and investment
16 between the United States and sub-Saharan Africa;

17 (2) reducing tariff and nontariff barriers and
18 other obstacles to sub-Saharan African and United
19 States trade;

20 (3) expanding United States assistance to sub-
21 Saharan Africa's regional integration efforts;

22 (4) negotiating reciprocal and mutually bene-
23 ficial trade agreements, including the possibility of
24 establishing free trade areas that serve the interests

1 of both the United States and the countries of sub-
 2 Saharan Africa;

3 (5) focusing on countries committed to account-
 4 able government, economic reform, and the eradi-
 5 cation of poverty;

6 (6) strengthening and expanding the private
 7 sector in sub-Saharan Africa;

8 (7) supporting the development of civil societies
 9 and political freedom in sub-Saharan Africa; and

10 (8) establishing a United States-Sub-Saharan
 11 African Economic Cooperation Forum.

12 **SEC. 1004. ELIGIBILITY FOR CERTAIN BENEFITS.**

13 (a) IN GENERAL.—Title V of the Trade Act of 1974
 14 is amended by inserting after section 506 the following
 15 new section:

16 **“SEC. 506A. DESIGNATION OF SUB-SAHARAN AFRICAN**
 17 **COUNTRIES FOR CERTAIN BENEFITS.**

18 **“(a) AUTHORITY TO DESIGNATE.—**

19 **“(1) IN GENERAL.—**Notwithstanding any other
 20 provision of law, the President is authorized to des-
 21 ignate a country listed in section 1009 of the Afri-
 22 can Growth and Opportunity Act as a beneficiary
 23 sub-Saharan African country eligible for the benefits
 24 described in subsection (b), if the President deter-
 25 mines that the country—

1 “(A) has established, or is making contin-
2 ual progress toward establishing—

3 “(i) a market-based economy, where
4 private property rights are protected and
5 the principles of an open, rules-based trad-
6 ing system are observed;

7 “(ii) a democratic society, where the
8 rule of law, political freedom, participatory
9 democracy, and the right to due process
10 and a fair trial are observed;

11 “(iii) an open trading system through
12 the elimination of barriers to United States
13 trade and investment and the resolution of
14 bilateral trade and investment disputes;
15 and

16 “(iv) economic policies to reduce pov-
17 erty, increase the availability of health care
18 and educational opportunities, expand
19 physical infrastructure, and promote the
20 establishment of private enterprise;

21 “(B) does not engage in gross violations of
22 internationally recognized human rights or pro-
23 vide support for international terrorism and co-
24 operates in international efforts to eliminate

1 human rights violations and terrorist activities;
2 and

3 “(C) subject to the authority granted to
4 the President under section 502 (a), (d), and
5 (e), otherwise satisfies the eligibility criteria set
6 forth in section 502.

7 “(2) MONITORING AND REVIEW OF CERTAIN
8 COUNTRIES.—The President shall monitor and re-
9 view the progress of each country listed in section
10 1009 of the African Growth and Opportunity Act in
11 meeting the requirements described in paragraph (1)
12 in order to determine the current or potential eligi-
13 bility of each country to be designated as a bene-
14 ficiary sub-Saharan African country for purposes of
15 subsection (a). The President shall include the rea-
16 sons for the President’s determinations in the an-
17 nual report required by section 1008 of the African
18 Growth and Opportunity Act.

19 “(3) CONTINUING COMPLIANCE.—If the Presi-
20 dent determines that a beneficiary sub-Saharan Afri-
21 can country is not making continual progress in
22 meeting the requirements described in paragraph
23 (1), the President shall terminate the designation of
24 that country as a beneficiary sub-Saharan African
25 country for purposes of this section, effective on

1 January 1 of the year following the year in which
2 such determination is made.

3 “(b) PREFERENTIAL TARIFF TREATMENT FOR CER-
4 TAIN ARTICLES.—

5 “(1) IN GENERAL.—The President may provide
6 duty-free treatment for any article described in sec-
7 tion 503(b)(1) (B) through (G) (except for textile
8 luggage) that is the growth, product, or manufacture
9 of a beneficiary sub-Saharan African country de-
10 scribed in subsection (a), if, after receiving the ad-
11 vice of the International Trade Commission in ac-
12 cordance with subsection (e) of section 503, the
13 President determines that such article is not import-
14 sensitive in the context of imports from beneficiary
15 sub-Saharan African countries.

16 “(2) RULES OF ORIGIN.—The duty-free treat-
17 ment provided under paragraph (1) shall apply to
18 any article described in that paragraph that meets
19 the requirements of section 503(a)(2), except that—

20 “(A) if the cost or value of materials pro-
21 duced in the customs territory of the United
22 States is included with respect to that article,
23 an amount not to exceed 15 percent of the ap-
24 praised value of the article at the time it is en-
25 tered that is attributed to such United States

1 cost or value may be applied toward determin-
 2 ing the percentage referred to in subparagraph
 3 (A) of section 503(a)(2); and

4 “(B) the cost or value of the materials in-
 5 cluded with respect to that article that are pro-
 6 duced in one or more beneficiary sub-Saharan
 7 African countries shall be applied in determin-
 8 ing such percentage.

9 “(c) BENEFICIARY SUB-SAHARAN AFRICAN COUN-
 10 TRIES, ETC.—For purposes of this title, the terms ‘bene-
 11 ficiary sub-Saharan African country’ and ‘beneficiary sub-
 12 Saharan African countries’ means a country or countries
 13 listed in section 1009 of the African Growth and Oppor-
 14 tunity Act that the President has determined is eligible
 15 under subsection (a) of this section.”.

16 (b) WAIVER OF COMPETITIVE NEED LIMITATION.—
 17 Section 503(c)(2)(D) of the Trade Act of 1974 (19 U.S.C.
 18 2463(c)(2)(D)) is amended to read as follows:

19 “(D) LEAST-DEVELOPED BENEFICIARY
 20 DEVELOPING COUNTRIES AND BENEFICIARY
 21 SUB-SAHARAN AFRICAN COUNTRIES.—Subpara-
 22 graph (A) shall not apply to any least-developed
 23 beneficiary developing country or any bene-
 24 ficiary sub-Saharan African country.”.

1 (c) CLERICAL AMENDMENT.—The table of contents
 2 for title V of the Trade Act of 1974 is amended by insert-
 3 ing after the item relating to section 506 the following
 4 new item:

“506A. Designation of sub-Saharan African countries for certain benefits.”.

5 (d) EFFECTIVE DATE.—The amendments made by
 6 this section take effect January 1, 1999.

7 **SEC. 1005. TREATMENT OF CERTAIN TEXTILES AND AP-**
 8 **PAREL.**

9 (a) PREFERENTIAL TREATMENT.—Notwithstanding
 10 any other provision of law, textile and apparel articles de-
 11 scribed in subsection (b) (including textile luggage) im-
 12 ported from a beneficiary sub-Saharan African country,
 13 described in section 506A(c) of the Trade Act of 1974,
 14 shall enter the United States free of duty and free of any
 15 quantitative limitations, if—

16 (1) the country adopts an efficient visa system
 17 to guard against unlawful transshipment of textile
 18 and apparel goods and the use of counterfeit docu-
 19 ments; and

20 (2) the country enacts legislation or regulations
 21 that would permit United States Customs verifica-
 22 tion teams to have the access necessary to inves-
 23 tigate thoroughly allegations of transshipment
 24 through such country.

1 (b) PRODUCTS COVERED.—The preferential treat-
 2 ment described in subsection (a) shall apply only to the
 3 following textile and apparel products:

4 (1) APPAREL ARTICLES ASSEMBLED IN BENE-
 5 FICIARY SUB-SAHARAN AFRICAN COUNTRIES.—Ap-
 6 parel articles assembled in one or more beneficiary
 7 sub-Saharan African countries from fabrics wholly
 8 formed and cut in the United States, from yarns
 9 wholly formed in the United States that are—

10 (A) entered under subheading 9802.00.80
 11 of the Harmonized Tariff Schedule of the
 12 United States; or

13 (B) entered under chapter 61 or 62 of the
 14 Harmonized Tariff Schedule of the United
 15 States, if, after such assembly, the articles
 16 would have qualified for entry under sub-
 17 heading 9802.00.80 of the Harmonized Tariff
 18 Schedule of the United States but for the fact
 19 that the articles were subjected to stone-wash-
 20 ing, enzyme-washing, acid washing, perma-
 21 pressing, oven-baking, bleaching, garment-dye-
 22 ing, or other similar processes.

23 (2) APPAREL ARTICLES CUT AND ASSEMBLED
 24 IN BENEFICIARY SUB-SAHARAN AFRICAN COUN-
 25 TRIES.—Apparel articles cut in one or more bene-

1 ficiary sub-Saharan African countries from fabric
2 wholly formed in the United States from yarns whol-
3 ly formed in the United States, if such articles are
4 assembled in one or more beneficiary sub-Saharan
5 African countries with thread formed in the United
6 States.

7 (3) HANDLOOMED, HANDMADE, AND FOLKLORE
8 ARTICLES.—A handloomed, handmade, or folklore
9 article of a beneficiary sub-Saharan African country
10 or countries that is certified as such by the com-
11 petent authority of such beneficiary country or coun-
12 tries. For purposes of this paragraph, the President,
13 after consultation with the beneficiary sub-Saharan
14 African country or countries concerned, shall deter-
15 mine which, if any, particular textile and apparel
16 goods of the country (or countries) shall be treated
17 as being handloomed, handmade, or folklore goods.

18 (c) PENALTIES FOR TRANSSHIPMENTS.—

19 (1) PENALTIES FOR EXPORTERS.—If the Presi-
20 dent determines, based on sufficient evidence, that
21 an exporter has engaged in transshipment with re-
22 spect to textile or apparel products from a bene-
23 ficiary sub-Saharan African country, then the Presi-
24 dent shall deny all benefits under this section and
25 section 506A of the Trade Act of 1974 to such ex-

1 porter, any successor of such exporter, and any
2 other entity owned or operated by the principal of
3 the exporter for a period of 2 years.

4 (2) TRANSSHIPMENT DESCRIBED.—Trans-
5 shipment within the meaning of this subparagraph
6 has occurred when preferential treatment for a tex-
7 tile or apparel article under subsection (a) has been
8 claimed on the basis of material false information
9 concerning the country of origin, manufacture, proc-
10 essing, or assembly of the article or any of its com-
11 ponents. For purposes of this clause, false informa-
12 tion is material if disclosure of the true information
13 would mean or would have meant that the article is
14 or was ineligible for preferential treatment under
15 subsection (a).

16 (d) TECHNICAL ASSISTANCE.—The Customs Service
17 shall provide technical assistance to the beneficiary sub-
18 Saharan African countries for the implementation of the
19 requirements set forth in subsection (a)(1) and (2).

20 (e) MONITORING AND REPORTS TO CONGRESS.—The
21 Customs Service shall monitor and the Commissioner of
22 Customs shall submit to Congress, not later than March
23 31 of each year, a report on the effectiveness of the anti-
24 circumvention systems described in this section and on
25 measures taken by countries in sub-Saharan Africa which

1 export textiles or apparel to the United States to prevent
 2 circumvention as described in article 5 of the Agreement
 3 on Textiles and Clothing.

4 (f) SAFEGUARD.—The President shall have the au-
 5 thority to impose appropriate remedies, including restric-
 6 tions on or the removal of quota-free and duty-free treat-
 7 ment provided under this section, in the event that textile
 8 and apparel articles from a beneficiary sub-Saharan Afri-
 9 can country are being imported in such increased quan-
 10 tities as to cause serious damage, or actual threat thereof,
 11 to the domestic industry producing like or directly com-
 12 petitive articles. The President shall exercise his authority
 13 under this subsection consistent with the Agreement on
 14 Textiles and Clothing.

15 (g) DEFINITIONS.—In this section:

16 (1) BENEFICIARY SUB-SAHARAN AFRICAN
 17 COUNTRY, ETC.—The terms “beneficiary sub-Saha-
 18 ran African country” and “beneficiary sub-Saharan
 19 African countries” have the same meaning as such
 20 terms have under section 506A(c) of the Trade Act
 21 of 1974.

22 (2) AGREEMENT ON TEXTILES AND CLOTH-
 23 ING.—The term “Agreement on Textiles and Cloth-
 24 ing” means the Agreement on Textiles and Clothing

1 referred to in section 101(d)(4) of the Uruguay
2 Round Agreements Act (19 U.S.C. 3511(d)(4)).

3 (h) EFFECTIVE DATE.—The amendments made by
4 this section take effect January 1, 1999 and shall remain
5 in effect through June 30, 2008.

6 **SEC. 1006. UNITED STATES-SUB-SAHARAN AFRICAN TRADE**
7 **AND ECONOMIC COOPERATION FORUM.**

8 (a) DECLARATION OF POLICY.—The President shall
9 convene annual meetings between senior officials of the
10 United States Government and officials of the govern-
11 ments of sub-Saharan African countries in order to foster
12 close economic ties between the United States and sub-
13 Saharan Africa.

14 (b) ESTABLISHMENT.—Not later than 12 months
15 after the date of enactment of this Act, the President,
16 after consulting with the officials of interested sub-Saha-
17 ran African governments, shall establish a United States-
18 Sub-Saharan African Trade and Economic Cooperation
19 Forum (in this section referred to as the “Forum”).

20 (c) REQUIREMENTS.—In creating the Forum, the
21 President shall meet the following requirements:

22 (1) FIRST MEETING.—The President shall di-
23 rect the Secretary of Commerce, the Secretary of the
24 Treasury, the Secretary of State, and the United
25 States Trade Representative to invite their counter-

1 parts from interested sub-Saharan African govern-
2 ments and representatives of appropriate regional
3 organizations to participate in the first annual meet-
4 ing to discuss expanding trade and investment rela-
5 tions between the United States and sub-Saharan
6 Africa.

7 (2) NONGOVERNMENTAL ORGANIZATIONS.—

8 (A) IN GENERAL.—The President, in con-
9 sultation with Congress, shall invite United
10 States nongovernmental organizations to host
11 meetings with their counterparts from sub-Sa-
12 haran Africa in conjunction with meetings of
13 the Forum for the purpose of discussing the
14 issues described in paragraph (1).

15 (B) PRIVATE SECTOR.—The President, in
16 consultation with Congress, shall invite United
17 States representatives of the private sector to
18 host meetings with their counterparts from sub-
19 Saharan Africa in conjunction with meetings of
20 the Forum for the purpose of discussing the
21 issues described in paragraph (1).

22 (3) ANNUAL MEETINGS.—As soon as prac-
23 ticable after the date of enactment of this Act, the
24 President shall meet with the heads of the govern-
25 ments of interested sub-Saharan African countries

1 for the purpose of discussing the issues described in
2 paragraph (1).

3 **SEC. 1007. UNITED STATES-SUB-SAHARAN AFRICA FREE**
4 **TRADE AREA.**

5 (a) IN GENERAL.—The President shall examine the
6 feasibility of negotiating a free trade agreement (or agree-
7 ments) with interested sub-Saharan African countries.

8 (b) REPORT TO CONGRESS.—The President shall,
9 within 12 months of the date of enactment of this Act,
10 report to the Committee on Finance of the Senate and
11 the Committee on Ways and Means of the House of Rep-
12 resentatives regarding the President’s conclusions on the
13 feasibility of negotiating such agreement (or agreements).
14 If the President determines that the negotiation of any
15 such free trade agreement is feasible, the President shall
16 provide a detailed plan for such negotiation that outlines
17 the objectives, timing, any potential benefits to the United
18 States and sub-Saharan Africa, and the likely economic
19 impact of any such agreement.

20 **SEC. 1008. REPORTING REQUIREMENT.**

21 The President shall submit to Congress, not later
22 than 1 year after the date of enactment of this Act, and
23 annually thereafter for 4 years, a report on the implemen-
24 tation of this subtitle.

1 **SEC. 1009. SUB-SAHARAN AFRICA DEFINED.**

2 For purposes of this subtitle, the terms “sub-Saharan
3 Africa”, “sub-Saharan African country”, “country in sub-
4 Saharan Africa”, and “countries in sub-Saharan Africa”
5 refer to the following:

- 6 (1) Republic of Angola (Angola).
- 7 (2) Republic of Botswana (Botswana).
- 8 (3) Republic of Burundi (Burundi).
- 9 (4) Republic of Cape Verde (Cape Verde).
- 10 (5) Republic of Chad (Chad).
- 11 (6) Democratic Republic of Congo.
- 12 (7) Republic of the Congo (Congo).
- 13 (8) Republic of Djibouti (Djibouti).
- 14 (9) State of Eritrea (Eritrea).
- 15 (10) Gabonese Republic (Gabon).
- 16 (11) Republic of Ghana (Ghana).
- 17 (12) Republic of Guinea-Bissau (Guinea-
18 Bissau).
- 19 (13) Kingdom of Lesotho (Lesotho).
- 20 (14) Republic of Madagascar (Madagascar).
- 21 (15) Republic of Mali (Mali).
- 22 (16) Republic of Mauritius (Mauritius).
- 23 (17) Republic of Namibia (Namibia).
- 24 (18) Federal Republic of Nigeria (Nigeria).
- 25 (19) Democratic Republic of Sao Tome and
26 Principe (Sao Tome and Principe).

- 1 (20) Republic of Sierra Leone (Sierra Leone).
- 2 (21) Somalia.
- 3 (22) Kingdom of Swaziland (Swaziland).
- 4 (23) Republic of Togo (Togo).
- 5 (24) Republic of Zimbabwe (Zimbabwe).
- 6 (25) Republic of Benin (Benin).
- 7 (26) Burkina Faso (Burkina).
- 8 (27) Republic of Cameroon (Cameroon).
- 9 (28) Central African Republic.
- 10 (29) Federal Islamic Republic of the Comoros
- 11 (Comoros).
- 12 (30) Republic of Cote d'Ivoire (Cote d'Ivoire).
- 13 (31) Republic of Equatorial Guinea (Equatorial
- 14 Guinea).
- 15 (32) Ethiopia.
- 16 (33) Republic of the Gambia (Gambia).
- 17 (34) Republic of Guinea (Guinea).
- 18 (35) Republic of Kenya (Kenya).
- 19 (36) Republic of Liberia (Liberia).
- 20 (37) Republic of Malawi (Malawi).
- 21 (38) Islamic Republic of Mauritania (Mauri-
- 22 tania).
- 23 (39) Republic of Mozambique (Mozambique).
- 24 (40) Republic of Niger (Niger).
- 25 (41) Republic of Rwanda (Rwanda).

- 1 (42) Republic of Senegal (Senegal).
- 2 (43) Republic of Seychelles (Seychelles).
- 3 (44) Republic of South Africa (South Africa).
- 4 (45) Republic of Sudan (Sudan).
- 5 (46) United Republic of Tanzania (Tanzania).
- 6 (47) Republic of Uganda (Uganda).
- 7 (48) Republic of Zambia (Zambia).

8 **Subtitle B—Generalized System of** 9 **Preferences.**

10 **SEC. 1101. EXTENSION OF DUTY-FREE TREATMENT UNDER** 11 **GENERAL SYSTEM OF PREFERENCES**

12 Section 505 of the Trade Act of 1974 (19 U.S.C.
13 2465) is amended to read as follows:

14 **“SEC. 505. DATE OF TERMINATION.**

15 “(a) IN GENERAL.—Except as provided in subsection
16 (b), the duty-free treatment provided under this title shall
17 remain in effect through December 31, 2000, with respect
18 to beneficiary developing countries.

19 “(b) COUNTRIES IN SUB-SAHARAN AFRICA.—In the
20 case of a country listed in section 1009 of the African
21 Growth and Opportunity Act that is a beneficiary develop-
22 ing country, duty-free treatment provided under this title
23 shall remain in effect through June 30, 2008.”.

1 **SEC. 1102. EFFECTIVE DATE.**

2 (a) IN GENERAL.—The amendments made by this
3 subtitle apply to articles entered on or after October 1,
4 1998.

5 (b) RETROACTIVE APPLICATION FOR CERTAIN LIQ-
6 UIDATIONS AND RELIQUIDATIONS.—

7 (1) GENERAL RULE.—Notwithstanding section
8 514 of the Tariff Act of 1930 or any other provision
9 of law and subject to subsection (c), any article that
10 was entered—

11 (A) after June 30, 1998, and

12 (B) before October 1, 1998, and

13 to which duty-free treatment under title V of the
14 Trade Act of 1974 would have applied if the entry
15 had been made on June 30, 1998, shall be liquidated
16 or reliquidated as free of duty, and the Secretary of
17 the Treasury shall refund any duty paid with respect
18 to such entry.

19 (2) LIMITATIONS ON REFUNDS.—No refund
20 shall be made pursuant to this subsection before Oc-
21 tober 1, 1998.

22 (3) ENTRY.—As used in this subsection, the
23 term “entry” includes a withdrawal from warehouse
24 for consumption.

25 (c) REQUESTS.—Liquidation or reliquidation may be
26 made under subsection (b) with respect to an entry only

1 if a request therefor is filed with the Customs Service,
2 within 180 days after the date of enactment of this Act,
3 that contains sufficient information to enable the Customs
4 Service—

5 (1) to locate the entry; or

6 (2) to reconstruct the entry if it cannot be lo-
7 cated.

8 **Subtitle C—United States-**
9 **Caribbean Trade Enhancement**

10 **SEC. 1201. SHORT TITLE.**

11 This subtitle may be cited as the “United States-Car-
12ibbean Basin Trade Enhancement Act”.

13 **SEC. 1202. FINDINGS AND POLICY.**

14 (a) FINDINGS.—Congress makes the following find-
15 ings:

16 (1) The Caribbean Basin Economic Recovery
17 Act (referred to in this subtitle as “CBERA”) rep-
18 resents a permanent commitment by the United
19 States to encourage the development of strong demo-
20 cratic governments and revitalized economies in
21 neighboring countries in the Caribbean Basin.

22 (2) Thirty-four democratically elected leaders
23 agreed at the 1994 Summit of the Americas to con-
24 clude negotiation of a Free Trade Area of the Amer-

1 icas (referred to in this subtitle as “FTAA”) by the
2 year 2005.

3 (3) The economic security of the countries in
4 the Caribbean Basin will be enhanced by the comple-
5 tion of the FTAA.

6 (4) Offering temporary benefits to Caribbean
7 Basin countries will enhance trade between the
8 United States and the Caribbean Basin, encourage
9 development of trade and investment policies that
10 will facilitate participation of Caribbean Basin coun-
11 tries in the FTAA, preserve the United States com-
12 mitment to Caribbean Basin beneficiary countries,
13 help further economic development in the Caribbean
14 Basin region, and accelerate the trend toward more
15 open economies in the region.

16 (5) Promotion of the growth of free enterprise
17 and economic opportunity in the Caribbean Basin
18 will enhance the national security interests of the
19 United States.

20 (6) Increased trade and economic activity be-
21 tween the United States and Caribbean Basin bene-
22 ficiary countries will create expanding export oppor-
23 tunities for United States businesses and workers.

24 (b) POLICY.—It is the policy of the United States
25 to—

1 (1) offer Caribbean Basin beneficiary countries
 2 willing to prepare to become a party to the FTAA
 3 or a comparable trade agreement, tariff treatment
 4 essentially equivalent to that accorded to products of
 5 NAFTA countries for certain products not currently
 6 eligible for duty-free treatment under the CBERA;
 7 and

8 (2) seek the participation of Caribbean Basin
 9 beneficiary countries in the FTAA or a trade agree-
 10 ment comparable to the FTAA at the earliest pos-
 11 sible date, with the goal of achieving full participa-
 12 tion in such agreement not later than 2005.

13 **SEC. 1203. DEFINITIONS.**

14 In this subtitle:

15 (1) **BENEFICIARY COUNTRY.**—The term “bene-
 16 ficiary country” has the meaning given the term in
 17 section 212(a)(1)(A) of the Caribbean Basin Eco-
 18 nomic Recovery Act (19 U.S.C. 2702(a)(1)(A)).

19 (2) **CBTEA.**—The term “CBTEA” means the
 20 United States-Caribbean Basin Trade Enhancement
 21 Act.

22 (3) **NAFTA.**—The term “NAFTA” means the
 23 North American Free Trade Agreement entered into
 24 between the United States, Mexico, and Canada on
 25 December 17, 1992.

1 (4) NAFTA COUNTRY.—The term “NAFTA
2 country” means any country with respect to which
3 the NAFTA is in force.

4 (5) WTO AND WTO MEMBER.—The terms
5 “WTO” and “WTO member” have the meanings
6 given those terms in section 2 of the Uruguay
7 Round Agreements Act (19 U.S.C. 3501).

8 **SEC. 1204. TEMPORARY PROVISIONS TO PROVIDE ADDI-**
9 **TIONAL TRADE BENEFITS TO CERTAIN BENE-**
10 **FICIARY COUNTRIES.**

11 (a) TEMPORARY PROVISIONS.—Section 213(b) of the
12 Caribbean Basin Economic Recovery Act (19 U.S.C.
13 2703(b)) is amended to read as follows:

14 “(b) IMPORT-SENSITIVE ARTICLES.—

15 “(1) IN GENERAL.—Subject to paragraphs (2)
16 through (5), the duty-free treatment provided under
17 this title does not apply to—

18 “(A) textile and apparel articles which
19 were not eligible articles for purposes of this
20 title on January 1, 1994, as this title was in ef-
21 fect on that date;

22 “(B) footwear not designated at the time
23 of the effective date of this title as eligible arti-
24 cles for the purpose of the generalized system

1 of preferences under title V of the Trade Act of
2 1974;

3 “(C) tuna, prepared or preserved in any
4 manner, in airtight containers;

5 “(D) petroleum, or any product derived
6 from petroleum, provided for in headings 2709
7 and 2710 of the HTS;

8 “(E) watches and watch parts (including
9 cases, bracelets, and straps), of whatever type
10 including, but not limited to, mechanical, quartz
11 digital or quartz analog, if such watches or
12 watch parts contain any material which is the
13 product of any country with respect to which
14 HTS column 2 rates of duty apply; or

15 “(F) articles to which reduced rates of
16 duty apply under subsection (h).

17 “(2) TRANSITION PERIOD TREATMENT OF CER-
18 TAIN TEXTILE AND APPAREL ARTICLES.—

19 “(A) PRODUCTS COVERED.—During the
20 transition period, the preferential treatment de-
21 scribed in subparagraph (B) shall apply to the
22 following products:

23 “(i) APPAREL ARTICLES ASSEMBLED
24 IN A CBTEA BENEFICIARY COUNTRY.—Ap-
25 parel articles assembled in a CBTEA bene-

1 ficiary country from fabrics wholly formed
2 and cut in the United States, from yarns
3 wholly formed in the United States that
4 are—

5 “(I) entered under subheading
6 9802.00.80 of the HTS; or

7 “(II) entered under chapter 61
8 or 62 of the HTS, if, after such as-
9 sembly, the articles would have quali-
10 fied for entry under subheading
11 9802.00.80 of the HTS but for the
12 fact that the articles were subjected to
13 stone-washing, enzyme-washing, acid
14 washing, perma-pressing, oven-baking,
15 bleaching, garment-dyeing, or other
16 similar processes.

17 “(ii) APPAREL ARTICLES CUT AND AS-
18 SEMBLED IN A CBTEA BENEFICIARY COUN-
19 TRY.—Apparel articles cut in a CBTEA
20 beneficiary country from fabric wholly
21 formed in the United States from yarns
22 wholly formed in the United States, if such
23 articles are assembled in such country with
24 thread formed in the United States.

1 “(iii) HANDLOOMED, HANDMADE, AND
 2 FOLKLORE ARTICLES.—A handloomed,
 3 handmade, or folklore article of a CBTEA
 4 beneficiary country identified under sub-
 5 paragraph (C) that is certified as such by
 6 the competent authority of such beneficiary
 7 country.

8 “(iv) TEXTILE LUGGAGE.—Textile
 9 luggage—

10 “(I) assembled in a CBTEA ben-
 11 eficiary country from fabric wholly
 12 formed and cut in the United States,
 13 from yarns wholly formed in the
 14 United States, that is entered under
 15 subheading 9802.00.80 of the HTS;
 16 or

17 “(II) assembled from fabric cut
 18 in a CBTEA beneficiary country from
 19 fabric wholly formed in the United
 20 States from yarns wholly formed in
 21 the United States, if such luggage is
 22 assembled in such country with thread
 23 formed in the United States.

24 “(B) PREFERENTIAL TREATMENT.—Ex-
 25 cept as provided in subparagraph (E), during

the transition period, the articles described in subparagraph (A) shall enter the United States free of duty and free of any quantitative limitations.

“(C) HANDLOOMED, HANDMADE, AND FOLKLORE ARTICLES DEFINED.—For purposes of subparagraph (A)(iii), the President, after consultation with the CBTEA beneficiary country concerned, shall determine which, if any, particular textile and apparel goods of the country shall be treated as being handloomed, handmade, or folklore goods of a kind described in section 2.3 (a), (b), or (c) or Appendix 3.1.B.11 of the Annex.

“(D) PENALTIES FOR TRANSHIPMENTS.—

“(i) PENALTIES FOR EXPORTERS.—If the President determines, based on sufficient evidence, that an exporter has engaged in transshipment with respect to textile or apparel products from a CBTEA beneficiary country, then the President shall deny all benefits under this title to such exporter, and any successor of such exporter, for a period of 2 years.

1 “(ii) PENALTIES FOR COUNTRIES.—

2 Whenever the President finds, based on
3 sufficient evidence, that transshipment has
4 occurred, the President shall request that
5 the CBTEA beneficiary country or coun-
6 tries through whose territory the trans-
7 shipment has occurred take all necessary
8 and appropriate actions to prevent such
9 transshipment. If the President determines
10 that a country is not taking such actions,
11 the President shall reduce the quantities of
12 textile and apparel articles that may be im-
13 ported into the United States from such
14 country by the quantity of the trans-
15 shipped articles multiplied by 3.

16 “(iii) TRANSSHIPMENT DESCRIBED.—

17 Transshipment within the meaning of this
18 subparagraph has occurred when pref-
19 erential treatment for a textile or apparel
20 article under subparagraph (B) has been
21 claimed on the basis of material false in-
22 formation concerning the country of origin,
23 manufacture, processing, or assembly of
24 the article or any of its components. For
25 purposes of this clause, false information is

1 material if disclosure of the true informa-
2 tion would mean or would have meant that
3 the article is or was ineligible for pref-
4 erential treatment under subparagraph
5 (B).

6 “(E) BILATERAL EMERGENCY ACTIONS.—

7 “(i) IN GENERAL.—The President
8 may take bilateral emergency tariff actions
9 of a kind described in section 4 of the
10 Annex with respect to any apparel article
11 imported from a CBTEA beneficiary coun-
12 try if the application of tariff treatment
13 under subparagraph (B) to such article re-
14 sults in conditions that would be cause for
15 the taking of such actions under such sec-
16 tion 4 with respect to a like article de-
17 scribed in the same 8-digit subheading of
18 the HTS that is imported from Mexico.

19 “(ii) RULES RELATING TO BILATERAL
20 EMERGENCY ACTION.—For purposes of ap-
21 plying bilateral emergency action under
22 this subparagraph—

23 “(I) the requirements of para-
24 graph (5) of section 4 of the Annex

1 (relating to providing compensation)
 2 shall not apply;

3 “(II) the term ‘transition period’
 4 in section 4 of the Annex shall have
 5 the meaning given that term in para-
 6 graph (5)(D) of this subsection; and

7 “(III) the requirements to con-
 8 sult specified in section 4 of the
 9 Annex shall be treated as satisfied if
 10 the President requests consultations
 11 with the beneficiary country in ques-
 12 tion and the country does not agree to
 13 consult within the time period speci-
 14 fied under section 4.

15 “(3) PREFERENTIAL TARIFF TREATMENT OF
 16 CERTAIN OTHER ARTICLES ORIGINATING IN CBTEA
 17 BENEFICIARY COUNTRIES.—

18 “(A) IN GENERAL.—During the transition
 19 period, the President shall proclaim a rate of
 20 duty, with respect to any article referred to in
 21 any of subparagraphs (B) through (F) of para-
 22 graph (1) that is a CBTEA originating good,
 23 equal to the lesser of—

24 “(i) ‘x’, or

1 “(ii) the amount determined by using
2 the formula $.5(x-y)+y$.

3 For purposes of the preceding sentence, the
4 terms ‘x’ and ‘y’ have the meanings given such
5 terms in subparagraph (C).

6 “(B) ADDITIONAL REDUCTIONS.—

7 “(i) IN GENERAL.—The President
8 may proclaim further reductions in the
9 rate of duty for any article described in
10 subparagraph (A) in accordance with this
11 subparagraph if the President determines
12 that the performance of the country is sat-
13 isfactory under the criteria listed in para-
14 graph (5)(B)(ii).

15 “(ii) RATE OF DUTY.—The rate of
16 duty proclaimed by the President under
17 this subparagraph shall be no less than the
18 lesser of—

19 “(I) the rate of duty that would
20 apply to the article at the time of im-
21 portation from the country but for the
22 enactment of the CBTEA, or

23 “(II) the rate of duty that ap-
24 plies to a like article of Mexico under
25 Annex 302.2 of NAFTA as imple-

1 mented pursuant to United States
2 law.

3 “(C) CERTAIN DEFINITIONS.—For pur-
4 poses of subparagraph (A), the term ‘x’ means
5 the rate of duty described in subparagraph
6 (B)(ii)(I) and the term ‘y’ means the rate of
7 duty described in subparagraph (B)(ii)(II).

8 “(D) EXCEPTION.—Subparagraphs (A)
9 and (B) do not apply to any article accorded
10 duty-free treatment under U.S. Note 2(b) to
11 subchapter II of chapter 98 of the HTS.

12 “(E) RELATIONSHIP TO DUTY REDUC-
13 TIONS UNDER SUBSECTION (h).—If at any time
14 during the transition period the rate of duty
15 that would (but for action taken under subpara-
16 graph (A) or (B)) apply with respect to any ar-
17 ticle under subsection (h) is a rate of duty that
18 is lower than the rate of duty resulting from
19 such action, then such lower rate of duty shall
20 be applied.

21 “(4) CUSTOMS PROCEDURES.—

22 “(A) IN GENERAL.—

23 “(i) REGULATIONS.—Any importer
24 that claims preferential treatment under
25 paragraph (2) or (3) shall comply with

1 customs procedures similar in all material
 2 respects to the requirements of Article
 3 502(1) of the NAFTA as implemented
 4 pursuant to United States law, in accord-
 5 ance with regulations promulgated by the
 6 Secretary of the Treasury.

7 “(ii) DETERMINATION.—

8 “(I) IN GENERAL.—In order to
 9 qualify for the preferential treatment
 10 under paragraph (2) or (3) and for a
 11 Certificate of Origin to be valid with
 12 respect to any article for which such
 13 treatment is claimed, there shall be in
 14 effect a determination by the Presi-
 15 dent that each country described in
 16 subclause (II)—

17 “(aa) has implemented and
 18 follows, or

19 “(bb) is making substantial
 20 progress toward implementing
 21 and following,

22 procedures and requirements similar
 23 in all material respects to the relevant
 24 procedures and requirements under
 25 chapter 5 of the NAFTA.

1 “(II) COUNTRY DESCRIBED.—A
2 country is described in this subclause
3 if it is a CBTEA beneficiary coun-
4 try—

5 “(aa) from which the article
6 is exported, or

7 “(bb) in which materials
8 used in the production of the ar-
9 ticle originate or in which the ar-
10 ticle or such materials undergo
11 production that contributes to a
12 claim that the article is eligible
13 for preferential treatment.

14 “(B) CERTIFICATE OF ORIGIN.—The Cer-
15 tificate of Origin that otherwise would be re-
16 quired pursuant to the provisions of subpara-
17 graph (A) shall not be required in the case of
18 an article imported under paragraph (2) or (3)
19 if such Certificate of Origin would not be re-
20 quired under Article 503 of the NAFTA (as im-
21 plemented pursuant to United States law), if
22 the article were imported from Mexico.

23 “(5) DEFINITIONS AND SPECIAL RULES.—For
24 purposes of this subsection—

1 “(A) ANNEX.—The term ‘the Annex’
2 means Annex 300–B of the NAFTA.

3 “(B) CBTEA BENEFICIARY COUNTRY.—

4 “(i) IN GENERAL.—The term
5 ‘CBTEA beneficiary country’ means any
6 ‘beneficiary country’, as defined by section
7 212(a)(1)(A) of this title, which the Presi-
8 dent determines has demonstrated a com-
9 mitment to—

10 “(I) undertake its obligations
11 under the WTO on or ahead of sched-
12 ule;

13 “(II) participate in negotiations
14 toward the completion of the FTAA
15 or a comparable trade agreement; and

16 “(III) undertake other steps nec-
17 essary for that country to become a
18 party to the FTAA or a comparable
19 trade agreement.

20 “(ii) CRITERIA FOR DETERMINA-
21 TION.—In making the determination under
22 clause (i), the President may consider the
23 criteria in sections 212 (b) and (c) and
24 other appropriate criteria, including—

1 “(I) the extent to which the
2 country follows accepted rules of
3 international trade provided for under
4 the agreements listed in section
5 101(d) of the Uruguay Round Agree-
6 ments Act;

7 “(II) the extent to which the
8 country provides protection of intellec-
9 tual property rights—

10 “(aa) in accordance with
11 standards established in the
12 Agreement on Trade-Related As-
13 pects of Intellectual Property
14 Rights described in section
15 101(d)(15) of the Uruguay
16 Round Agreements Act;

17 “(bb) in accordance with
18 standards established in chapter
19 17 of the NAFTA; and

20 “(cc) by granting the hold-
21 ers of copyrights the ability to
22 control the importation and sale
23 of products that embody copy-
24 righted works, extending the pe-
25 riod set forth in Article 1711(6)

1 of NAFTA for protecting test
2 data for agricultural chemicals to
3 10 years, protecting trademarks
4 regardless of their subsequent
5 designation as geographic indica-
6 tions, and providing enforcement
7 against the importation of in-
8 fringing products at the border;

9 “(III) the extent to which the country
10 provides protections to investors and in-
11 vestments of the United States substan-
12 tially equivalent to those set forth in chap-
13 ter 11 of the NAFTA;

14 “(IV) the extent to which the country
15 provides the United States and other WTO
16 members nondiscriminatory, equitable, and
17 reasonable market access with respect to
18 the products for which benefits are pro-
19 vided under paragraphs (2) and (3), and in
20 other relevant product sectors as deter-
21 mined by the President;

22 “(V) the extent to which the country
23 provides internationally recognized worker
24 rights, including—

1 “(aa) the right of associa-
2 tion,

3 “(bb) the right to organize
4 and bargain collectively,

5 “(cc) prohibition on the use
6 of any form of coerced or com-
7 pulsory labor,

8 “(dd) a minimum age for
9 the employment of children, and

10 “(ee) acceptable conditions
11 of work with respect to minimum
12 wages, hours of work, and occu-
13 pational safety and health;

14 “(VI) whether the country has
15 met the counter-narcotics certification
16 criteria set forth in section 490 of the
17 Foreign Assistance Act of 1961 (22
18 U.S.C. 2291j) for eligibility for
19 United States assistance;

20 “(VII) the extent to which the
21 country becomes a party to and imple-
22 ments the Inter-American Convention
23 Against Corruption, and becomes
24 party to a convention regarding the
25 extradition of its nationals;

1 “(VIII) the extent to which the
2 country—

3 “(aa) supports the multilat-
4 eral and regional objectives of the
5 United States with respect to
6 government procurement, includ-
7 ing the negotiation of government
8 procurement provisions as part of
9 the FTAA and conclusion of a
10 WTO transparency agreement as
11 provided in the declaration of the
12 WTO Ministerial Conference held
13 in Singapore on December 9
14 through 13, 1996, and

15 “(bb) applies transparent
16 and competitive procedures in
17 government procurement equiva-
18 lent to those contained in the
19 WTO Agreement on Government
20 Procurement (described in sec-
21 tion 101(d)(17) of the Uruguay
22 Round Agreements Act);

23 “(IX) the extent to which the
24 country follows the rules on customs
25 valuation set forth in the WTO Agree-

1 ment on Implementation of Article
2 VII of the GATT 1994 (described in
3 section 101(d)(8) of the Uruguay
4 Round Agreements Act);

5 “(X) the extent to which the
6 country affords to products of the
7 United States which the President de-
8 termines to be of commercial impor-
9 tance to the United States with re-
10 spect to such country, and on a non-
11 discriminatory basis to like products
12 of other WTO members, tariff treat-
13 ment that is no less favorable than
14 the most favorable tariff treatment
15 provided by the country to any other
16 country pursuant to any free trade
17 agreement to which such country is a
18 party, other than the Central Amer-
19 ican Common Market or the Carib-
20 bean Community and Common Mar-
21 ket.

22 “(C) CBTEA ORIGINATING GOOD.—

23 “(i) IN GENERAL.—The term
24 ‘CBTEA originating good’ means a good
25 that meets the rules of origin for a good

1 set forth in chapter 4 of the NAFTA as
 2 implemented pursuant to United States
 3 law.

4 “(ii) APPLICATION OF CHAPTER 4.—
 5 In applying chapter 4 with respect to a
 6 CBTEA beneficiary country for purposes
 7 of this subsection—

8 “(I) no country other than the
 9 United States and a CBTEA bene-
 10 ficiary country may be treated as
 11 being a party to the NAFTA;

12 “(II) any reference to trade be-
 13 tween the United States and Mexico
 14 shall be deemed to refer to trade be-
 15 tween the United States and a
 16 CBTEA beneficiary country;

17 “(III) any reference to a party
 18 shall be deemed to refer to a CBTEA
 19 beneficiary country or the United
 20 States; and

21 “(IV) any reference to parties
 22 shall be deemed to refer to any com-
 23 bination of CBTEA beneficiary coun-
 24 tries or to the United States and a

1 CBTEA beneficiary country (or any
2 combination thereof).

3 “(D) TRANSITION PERIOD.—The term
4 ‘transition period’ means, with respect to a
5 CBTEA beneficiary country, the period that be-
6 gins on January 1, 1999, and ends on the ear-
7 lier of—

8 “(i) December 31, 2001, or

9 “(ii) the date on which the FTAA or
10 a comparable trade agreement enters into
11 force with respect to the United States and
12 the CBTEA beneficiary country.

13 “(E) CBTEA.—The term ‘CBTEA’ means
14 the United States-Caribbean Basin Trade En-
15 hancement Act.

16 “(F) FTAA.—The term ‘FTAA’ means
17 the Free Trade Area of the Americas.”.

18 (b) DETERMINATION REGARDING RETENTION OF
19 DESIGNATION.—Section 212(e) of the Caribbean Basin
20 Economic Recovery Act (19 U.S.C. 2702(e)) is amended—

21 (1) in paragraph (1)—

22 (A) by redesignating subparagraphs (A)
23 and (B) as clauses (i) and (ii), respectively;

24 (B) by inserting “(A)” after “(1)”;

(C) by striking “would be barred” and all that follows through the end period and inserting: “no longer satisfies one or more of the conditions for designation as a beneficiary country set forth in subsection (b) or such country fails adequately to meet one or more of the criteria set forth in subsection (c).”; and

(D) by adding at the end the following:

“(B) The President may, after the requirements of subsection (a)(2) and paragraph (2) have been met—

“(i) withdraw or suspend the designation of any country as a CBTEA beneficiary country, or

“(ii) withdraw, suspend, or limit the application of preferential treatment under section 213(b) (2) and (3) to any article of any country, if, after such designation, the President determines that as a result of changed circumstances, the performance of such country is not satisfactory under the criteria set forth in section 213(b)(5)(B).”; and

(2) by adding after paragraph (2) the following new paragraph:

1 “(3) If preferential treatment under section
 2 213(b) (2) and (3) is withdrawn, suspended, or lim-
 3 ited with respect to a CBTEA beneficiary country,
 4 such country shall not be deemed to be a ‘party’ for
 5 the purposes of applying section 213(b)(5)(C) to im-
 6 ports of articles for which preferential treatment has
 7 been withdrawn, suspended, or limited with respect
 8 to such country.”.

9 (c) REPORTING REQUIREMENTS.—Section 212(f) of
 10 the Caribbean Basin Economic Recovery Act (19 U.S.C.
 11 2702(f)) is amended to read as follows:

12 “(f) REPORTING REQUIREMENTS.—

13 “(1) IN GENERAL.—Not later than December
 14 31, 1998, and at the end of each 3-year period
 15 thereafter, the President shall submit to Congress a
 16 report regarding the operation of this title, includ-
 17 ing—

18 “(A) with respect to subsections (b) and
 19 (c), the results of a general review of bene-
 20 ficiary countries based on the considerations de-
 21 scribed in such subsections; and

22 “(B) the performance of each beneficiary
 23 country or CBTEA beneficiary country, as the
 24 case may be, under the criteria set forth in sec-
 25 tion 213(b)(5)(B)(ii).

1 “(2) PUBLIC COMMENT.—Before submitting the
 2 report described in paragraph (1), the United States
 3 Trade Representative shall publish a notice in the
 4 Federal Register requesting public comments on
 5 whether beneficiary countries are meeting the cri-
 6 teria listed in section 213(b)(5)(B)(i), and on the
 7 performance of each beneficiary country or CBTEA
 8 beneficiary country, as the case may be, with respect
 9 to the criteria listed in section 213(b)(5)(B)(ii).”.

10 (d) INTERNATIONAL TRADE COMMISSION RE-
 11 PORTS.—

12 (1) Section 215(a) of the Caribbean Basin Eco-
 13 nomic Recovery Act (19 U.S.C. 2704(a)) is amended
 14 to read as follows:

15 “(a) REPORTING REQUIREMENT.—

16 “(1) IN GENERAL.—The United States Inter-
 17 national Trade Commission (in this section referred
 18 to as the ‘Commission’) shall submit to Congress
 19 and the President, biennial reports regarding the
 20 economic impact of this title on United States indus-
 21 tries and consumers.

22 “(2) FIRST REPORT.—The first report shall be
 23 submitted not later than September 30 of the year
 24 following the year in which the United States-Carib-
 25 bean Basin Trade Enhancement Act is enacted. No

1 report shall be required under this section after Sep-
 2 tember 30, 2006.

3 “(3) TREATMENT OF PUERTO RICO, ETC.—For
 4 purposes of this section, industries in the Common-
 5 wealth of Puerto Rico and the insular possessions of
 6 the United States are considered to be United States
 7 industries.”.

8 (2) Section 206(a) of the Andean Trade Pref-
 9 erence Act (19 U.S.C. 3204(a)) is amended to read
 10 as follows:

11 “(a) REPORTING REQUIREMENTS.—

12 “(1) IN GENERAL.—The United States Inter-
 13 national Trade Commission (in this section referred
 14 to as the ‘Commission’) shall submit to Congress
 15 and the President, biennial reports regarding the
 16 economic impact of this title on United States indus-
 17 tries and consumers, and, in conjunction with other
 18 agencies, the effectiveness of this title in promoting
 19 drug-related crop eradication and crop substitution
 20 efforts of the beneficiary countries.

21 “(2) SUBMISSION.—During the period that this
 22 title is in effect, the report required by paragraph
 23 (1) shall be submitted on September 30 of each year
 24 that the report required by section 215 of the Carib-
 25 bean Basin Economic Recovery Act is not submitted.

1 “(3) TREATMENT OF PUERTO RICO, ETC.—For
 2 purposes of this section, industries in the Common-
 3 wealth of Puerto Rico and the insular possessions of
 4 the United States are considered to be United States
 5 industries.”.

6 (e) TECHNICAL AND CONFORMING AMENDMENTS.—

7 (1) IN GENERAL.—

8 (A) Section 211 of the Caribbean Basin
 9 Economic Recovery Act (19 U.S.C. 2701) is
 10 amended by inserting “(or other preferential
 11 treatment)” after “treatment”.

12 (B) Section 213(a)(1) of the Caribbean
 13 Basin Economic Recovery Act (19 U.S.C.
 14 2703(a)(1)) is amended by inserting “and ex-
 15 cept as provided in subsection (b) (2) and (3),”
 16 after “Tax Reform Act of 1986,”.

17 (2) DEFINITIONS.—Section 212(a)(1) of the
 18 Caribbean Basin Economic Recovery Act (19 U.S.C.
 19 2702(a)(1)) is amended by adding at the end the
 20 following new subparagraphs:

21 “(D) The term ‘NAFTA’ means the North
 22 American Free Trade Agreement entered into
 23 between the United States, Mexico, and Canada
 24 on December 17, 1992.

1 “(E) The terms ‘WTO’ and ‘WTO mem-
 2 ber’ have the meanings given those terms in
 3 section 2 of the Uruguay Round Agreements
 4 Act (19 U.S.C. 3501).”.

5 **SEC. 1205. ADEQUATE AND EFFECTIVE PROTECTION FOR**
 6 **INTELLECTUAL PROPERTY RIGHTS.**

7 Section 212(c) of the Caribbean Basin Economic Re-
 8 covery Act (19 U.S.C. 2702(c)) is amended by adding at
 9 the end the following flush sentence:
 10 “Notwithstanding any other provision of law, the Presi-
 11 dent may determine that a country is not providing ade-
 12 quate and effective protection of intellectual property
 13 rights under paragraph (9), even if the country is in com-
 14 pliance with the country’s obligations under the Agree-
 15 ment on Trade-Related Aspects of Intellectual Property
 16 Rights described in section 101(d)(15) of the Uruguay
 17 Round Agreements Act (19 U.S.C. 3511(d)(15)).”.

18 **TITLE II—RECIPROCAL TRADE**
 19 **AGREEMENTS**

20 **SEC. 2001. SHORT TITLE.**

21 This title may be cited as the “Reciprocal Trade
 22 Agreements Act of 1998”.

1 **SEC. 2002. TRADE NEGOTIATING OBJECTIVES OF THE**
 2 **UNITED STATES.**

3 (a) STATEMENT OF PURPOSES.—The purposes of
 4 this title are to achieve, through trade agreements afford-
 5 ing mutual benefits—

6 (1) more open, equitable, and reciprocal market
 7 access for United States goods, services, and invest-
 8 ment;

9 (2) the reduction or elimination of barriers and
 10 other trade-distorting policies and practices;

11 (3) a more effective system of international
 12 trading disciplines and procedures; and

13 (4) economic growth, higher living standards,
 14 and full employment in the United States, and eco-
 15 nomic growth and development among United States
 16 trading partners.

17 (b) PRINCIPAL TRADE NEGOTIATING OBJECTIVES.—
 18 The principal trade negotiating objectives of the United
 19 States for agreements subject to the provisions of section
 20 2003 include the following:

21 (1) REDUCTION OF BARRIERS TO TRADE IN
 22 GOODS.—The principal negotiating objective of the
 23 United States regarding barriers to trade in goods
 24 is to obtain competitive opportunities for United
 25 States exports in foreign markets substantially
 26 equivalent to the opportunities afforded foreign ex-

ports to United States markets, including the reduction or elimination of tariff and nontariff trade barriers, including—

(A) tariff and nontariff disparities remaining from previous rounds of multilateral trade negotiations that have put United States exports at a competitive disadvantage in world markets;

(B) measures identified in the annual report prepared under section 181 of the Trade Act of 1974 (19 U.S.C. 2241); and

(C) tariff elimination for products identified in section 111(b) of the Uruguay Round Agreements Act (19 U.S.C. 3521(b)) and the accompanying Statement of Administrative Action related to that section.

(2) TRADE IN SERVICES.—

(A) The principal negotiating objectives of the United States regarding trade in services are—

(i) to reduce or eliminate barriers to, or other distortions of, international trade in services, including regulatory and other barriers that deny national treatment or unreasonably restrict the establishment

1 and operation of service suppliers in for-
2 eign markets; and

3 (ii) to develop internationally agreed
4 rules, including dispute settlement proce-
5 dures, that—

6 (I) are consistent with the com-
7 mercial policies of the United States,
8 and

9 (II) will reduce or eliminate such
10 barriers or distortions, and help en-
11 sure fair, equitable opportunities for
12 foreign markets.

13 (B) In pursuing the negotiating objectives
14 described in subparagraph (A), United States
15 negotiators shall take into account legitimate
16 United States domestic objectives, including
17 protection of legitimate health, safety, essential
18 security, environmental, consumer, and employ-
19 ment opportunity interests. The preceding sen-
20 tence shall not be construed to authorize any
21 modification of United States law.

22 (3) FOREIGN INVESTMENT.—

23 (A) The principal negotiating objectives of
24 the United States regarding foreign investment
25 are—

1 (i) to reduce or eliminate artificial or
2 trade-distorting barriers to foreign invest-
3 ment, to expand the principle of national
4 treatment, and to reduce unreasonable bar-
5 riers to establishment; and

6 (ii) to develop internationally agreed
7 rules through the negotiation of investment
8 agreements, including dispute settlement
9 procedures, that—

10 (I) will help ensure a free flow of
11 foreign investment, and

12 (II) will reduce or eliminate the
13 trade distortive effects of certain
14 trade-related investment measures.

15 (B) In pursuing the negotiating objectives
16 described in subparagraph (A), United States
17 negotiators shall take into account legitimate
18 United States domestic objectives, including
19 protection of legitimate health, safety, essential
20 security, environmental, consumer, and employ-
21 ment opportunity interests. The preceding sen-
22 tence shall not be construed to authorize any
23 modification of United States law.

1 (4) INTELLECTUAL PROPERTY.—The principal
2 negotiating objectives of the United States regarding
3 intellectual property are—

4 (A) to further promote adequate and effective
5 protection of intellectual property rights,
6 by—

7 (i) seeking the enactment and effective
8 enforcement by foreign countries of
9 laws that—

10 (I) recognize and adequately protect
11 intellectual property, including
12 copyrights, patents, trademarks, semiconductor
13 chip layout designs, and
14 trade secrets, and

15 (II) provide protection against
16 unfair competition;

17 (ii) accelerating and ensuring the full
18 implementation of the Agreement on
19 Trade-Related Aspects of Intellectual
20 Property Rights referred to in section
21 101(d)(15) of the Uruguay Round Agree-
22 ments Act (19 U.S.C. 3511(d)(15)), and
23 achieving improvements in the standards
24 of that Agreement;

1 (iii) providing strong protection for
2 new and emerging technologies and new
3 methods of transmitting and distributing
4 products embodying intellectual property;

5 (iv) preventing or eliminating dis-
6 crimination with respect to matters affect-
7 ing the availability, acquisition, scope,
8 maintenance, use, and enforcement of in-
9 tellectual property rights; and

10 (v) providing for strong enforcement
11 of intellectual property rights through ac-
12 cessible, expeditious, and effective civil, ad-
13 ministrative, and criminal enforcement
14 mechanisms;

15 (B) to secure fair, equitable, and non-
16 discriminatory market access opportunities for
17 United States persons that rely on intellectual
18 property protection; and

19 (C) to recognize that the inclusion in the
20 WTO of—

21 (i) adequate and effective substantive
22 norms and standards for the protection
23 and enforcement of intellectual property
24 rights, and

1 (ii) dispute settlement provisions and
2 enforcement procedures,
3 is without prejudice to other complementary ini-
4 tiatives undertaken in other international orga-
5 nizations.

6 (5) AGRICULTURE.—The principal negotiating
7 objectives of the United States with respect to agri-
8 culture are, in addition to those set forth in section
9 1123(b) of the Food Security Act of 1985 (7 U.S.C.
10 1736r(b)), to achieve, on an expedited basis to the
11 maximum extent feasible, more open and fair condi-
12 tions of trade in agricultural commodities by—

13 (A) developing, strengthening, and clarify-
14 ing rules for agricultural trade, including dis-
15 ciplines on restrictive or trade-distorting import
16 and export practices such as those that would
17 impact perishable or cyclical products;

18 (B) increasing United States agricultural
19 exports by eliminating barriers to trade (includ-
20 ing transparent and nontransparent barriers)
21 and reducing or eliminating the subsidization of
22 agricultural production consistent with the
23 United States policy of agricultural stabilization
24 in cyclical and unpredictable markets;

1 (C) creating a free and more open world
2 agricultural trading system by resolving ques-
3 tions pertaining to export and other trade-dis-
4 torting subsidies, market pricing, and market
5 access;

6 (D) eliminating or reducing substantially
7 other specific constraints to fair trade and more
8 open market access, such as tariffs, quotas, and
9 other nontariff practices; and

10 (E) developing, strengthening, and clarify-
11 ing rules that address practices that unfairly
12 decrease United States market access opportu-
13 nities or distort agricultural markets to the det-
14 riment of the United States, including—

15 (i) unfair or trade-distorting activities
16 of state trading enterprises and other ad-
17 ministrative mechanisms, including lack of
18 price transparency;

19 (ii) unjustified restrictions or commer-
20 cial requirements affecting new tech-
21 nologies, including biotechnology;

22 (iii) unjustified sanitary or
23 phytosanitary restrictions;

24 (iv) other unjustified technical bar-
25 riers to trade; and

1 (v) restrictive rules in the administra-
2 tion of tariff-rate quotas.

3 (6) UNFAIR TRADE PRACTICES.—The principal
4 negotiating objectives of the United States with re-
5 spect to unfair trade practices are—

6 (A) to enhance the operation and effective-
7 ness of the relevant Uruguay Round Agree-
8 ments and any other agreements designed to
9 define, deter, discourage the persistent use of,
10 and otherwise discipline, unfair trade practices
11 having adverse trade effects, including forms of
12 subsidy and dumping not adequately dis-
13 ciplined, such as resource input subsidies, diver-
14 sionary dumping, dumped or subsidized inputs,
15 third country dumping, circumvention of anti-
16 dumping or countervailing duty orders, and ex-
17 port targeting practices; and

18 (B) to obtain the enforcement of WTO
19 rules against—

20 (i) trade-distorting practices of state
21 trading enterprises, and

22 (ii) the acts, practices, or policies of
23 any foreign government which, as a prac-
24 tical matter, unreasonably require that—

1 (I) substantial direct investment
2 in the foreign country be made,

3 (II) intellectual property be li-
4 censed to the foreign country or to
5 any firm of the foreign country, or

6 (III) other collateral concessions
7 be made,

8 as a condition for the importation of any
9 product or service of the United States
10 into the foreign country or as a condition
11 for carrying on business in the foreign
12 country.

13 (7) SAFEGUARDS.—The principal negotiating
14 objectives of the United States regarding safeguards
15 are—

16 (A) to improve and expand rules and pro-
17 cedures covering safeguard measures;

18 (B) to ensure that safeguard measures
19 are—

20 (i) transparent,

21 (ii) temporary,

22 (iii) degressive, and

23 (iv) subject to review and termination
24 when no longer necessary to remedy injury
25 and to facilitate adjustment; and

1 (C) to require notification of, and to mon-
2 itor the use by, WTO members of import relief
3 actions for their domestic industries.

4 (8) IMPROVEMENT OF THE WTO AND MULTI-
5 LATERAL TRADE AGREEMENTS.—The principal ne-
6 gotiating objectives of the United States regarding
7 the improvement of the WTO and other multilateral
8 trade agreements are—

9 (A) to improve the operation and extend
10 the coverage of the WTO and such agreements
11 to products, sectors, and conditions of trade not
12 adequately covered; and

13 (B) to expand country participation in par-
14 ticular agreements, where appropriate.

15 (9) DISPUTE SETTLEMENT.—The principal ne-
16 gotiating objectives of the United States with respect
17 to dispute settlement are—

18 (A) to provide for effective and expeditious
19 dispute settlement mechanisms and procedures
20 in any trade agreement entered into under this
21 authority; and

22 (B) to ensure that such mechanisms within
23 the WTO and agreements concluded under the
24 auspices of the WTO provide for more effective

1 and expeditious resolution of disputes and en-
2 able better enforcement of United States rights.

3 (10) TRANSPARENCY.—The principal negotiat-
4 ing objective of the United States regarding trans-
5 parency is to obtain broader application of the prin-
6 ciple of transparency through increased public access
7 to information regarding trade issues, clarification of
8 the costs and benefits of trade policy actions, and
9 the observance of open and equitable procedures by
10 United States trading partners and within the WTO.

11 (11) DEVELOPING COUNTRIES.—The principal
12 negotiating objectives of the United States regarding
13 developing countries are—

14 (A) to ensure that developing countries
15 promote economic development by assuming the
16 fullest possible measure of responsibility for
17 achieving and maintaining an open inter-
18 national trading system by providing reciprocal
19 benefits and assuming equivalent obligations
20 with respect to their import and export prac-
21 tices; and

22 (B) to establish procedures for reducing
23 nonreciprocal trade benefits for the more ad-
24 vanced developing countries.

1 (12) CURRENT ACCOUNT SURPLUSES.—The
2 principal negotiating objective of the United States
3 regarding current account surpluses is to promote
4 policies to address large and persistent global cur-
5 rent account imbalances of countries (including im-
6 balances which threaten the stability of the inter-
7 national trading system), by imposing greater re-
8 sponsibility on such countries to undertake policy
9 changes aimed at restoring current account equi-
10 librium through expedited implementation of trade
11 agreements where feasible and appropriate.

12 (13) ACCESS TO HIGH TECHNOLOGY.—

13 (A) The principal negotiating objective of
14 the United States regarding access to high
15 technology is to obtain the elimination or reduc-
16 tion of foreign barriers to, and acts, policies, or
17 practices by foreign governments which limit,
18 equitable access by United States persons to
19 foreign-developed technology, including barriers,
20 acts, policies, or practices which have the effect
21 of—

22 (i) restricting the participation of
23 United States persons in government-sup-
24 ported research and development projects;

1 (ii) denying equitable access by
2 United States persons to government-held
3 patents;

4 (iii) requiring the approval of govern-
5 ment entities, or imposing other forms of
6 government intervention, as a condition of
7 granting licenses to United States persons
8 by foreign persons (other than approval
9 which may be necessary for national secu-
10 rity purposes to control the export of criti-
11 cal military technology); and

12 (iv) otherwise denying equitable access
13 by United States persons to foreign-devel-
14 oped technology or contributing to the in-
15 equitable flow of technology between the
16 United States and its trading partners.

17 (B) In pursuing the negotiating objective
18 described in subparagraph (A), the United
19 States negotiators shall take into account
20 United States Government policies in licensing
21 or otherwise making available to foreign per-
22 sons technology and other information devel-
23 oped by United States laboratories.

24 (14) BORDER TAXES.—The principal negotiat-
25 ing objective of the United States regarding border

1 taxes is, within the WTO, to obtain a revision of the
2 treatment of border adjustments for internal taxes
3 in order to redress the disadvantage to countries
4 that rely primarily on direct taxes rather than indi-
5 rect taxes for revenue.

6 (15) REGULATORY COMPETITION.—The prin-
7 cipal trade negotiating objectives of the United
8 States regarding the use of government regulation or
9 other practices by foreign governments to provide a
10 competitive advantage to their domestic producers,
11 service providers, or investors and thereby reduce
12 market access for United States goods, services, and
13 investment are—

14 (A) to ensure that government regulation
15 and other government practices do not unfairly
16 discriminate against United States goods, serv-
17 ices, or investment; and

18 (B) to prevent the use of foreign govern-
19 ment regulation and other government prac-
20 tices, including the lowering of, or derogation
21 from, existing labor (including child labor),
22 health and safety, or environmental standards,
23 for the purpose of attracting investment or in-
24 hibiting United States exports.

1 Nothing in subparagraph (B) shall be construed to
2 authorize in an implementing bill, or in an agree-
3 ment subject to an implementing bill, the inclusion
4 of provisions that would restrict the autonomy of the
5 United States in these areas.

6 (c) INTERNATIONAL ECONOMIC POLICY OBJECTIVES
7 DESIGNED TO REINFORCE THE TRADE AGREEMENTS
8 PROCESS.—

9 (1) IN GENERAL.—It is the policy of the United
10 States to reinforce the trade agreements process
11 by—

12 (A) fostering stability in international cur-
13 rency markets and developing mechanisms to
14 assure greater coordination, consistency, and
15 cooperation between international trade and
16 monetary systems and institutions in order to
17 protect against the trade consequences of sig-
18 nificant and unanticipated currency movements;

19 (B) supplementing and strengthening
20 standards for protection of intellectual property
21 rights under conventions designed to protect
22 such rights that are administered by inter-
23 national organizations other than the WTO, ex-
24 panding the conventions to cover new and
25 emerging technologies, and eliminating discrimi-

1 nation and unreasonable exceptions or pre-
2 conditions to such protection;

3 (C) promoting respect for workers' rights,
4 by—

5 (i) reviewing the relationship between
6 workers' rights and the operation of inter-
7 national trading systems and specific trade
8 arrangements; and

9 (ii) seeking the effective implementa-
10 tion in the International Labor Organiza-
11 tion (referred to in this title as the "ILO")
12 of the Declaration on Fundamental Prin-
13 ciples and Rights at Work and its monitor-
14 ing mechanism to ensure the systematic
15 examination of, and reporting on, the ex-
16 tent to which ILO members promote and
17 enforce the freedom of association, the
18 right to organize and bargain collectively, a
19 prohibition on the use of forced labor, a
20 prohibition on exploitative child labor, and
21 a prohibition on discrimination in employ-
22 ment; and

23 (D) expanding the production of goods and
24 trade in goods and services to ensure the opti-
25 mal use of the world's resources, while seeking

1 to protect and preserve the environment and to
 2 enhance the international means for doing so.

3 (2) APPLICATION OF PROCEDURES.—Nothing
 4 in this subsection shall be construed to authorize the
 5 use of the trade agreement approval procedures de-
 6 scribed in section 2003 to modify United States law.

7 **SEC. 2003. TRADE AGREEMENT NEGOTIATING AUTHORITY.**

8 (a) AGREEMENTS REGARDING TARIFF BARRIERS.—

9 (1) IN GENERAL.—Whenever the President de-
 10 termines that 1 or more existing duties or other im-
 11 port restrictions of any foreign country or the
 12 United States are unduly burdening and restricting
 13 the foreign trade of the United States and that the
 14 purposes, policies, and objectives of this title will be
 15 promoted thereby, the President—

16 (A) may enter into trade agreements with
 17 foreign countries before—

18 (i) October 1, 2001, or

19 (ii) October 1, 2005, if the authority
 20 provided by this title is extended under
 21 subsection (c); and

22 (B) may, consistent with paragraphs (2)
 23 through (5), proclaim—

24 (i) such modification or continuance
 25 of any existing duty,

1 (ii) such continuance of existing duty-
2 free or excise treatment, or

3 (iii) such additional duties,
4 as the President determines to be required or
5 appropriate to carry out any such trade agree-
6 ment.

7 (2) LIMITATIONS.—No proclamation may be
8 made under paragraph (1) that—

9 (A) reduces any rate of duty (other than a
10 rate of duty that does not exceed 5 percent ad
11 valorem on the date of enactment of this Act)
12 to a rate which is less than 50 percent of the
13 rate of such duty that applies on such date of
14 enactment;

15 (B) provides for a reduction of duty on an
16 article to take effect on a date that is more
17 than 10 years after the first reduction that is
18 proclaimed to carry out a trade agreement with
19 respect to such article; or

20 (C) increases any rate of duty above the
21 rate that applied on the date of enactment of
22 this Act.

23 (3) AGGREGATE REDUCTION; EXEMPTION FROM
24 STAGING.—

1 (A) AGGREGATE REDUCTION.—Except as
2 provided in subparagraph (B), the aggregate re-
3 duction in the rate of duty on any article which
4 is in effect on any day pursuant to a trade
5 agreement entered into under paragraph (1)
6 shall not exceed the aggregate reduction which
7 would have been in effect on such day if—

8 (i) a reduction of 3 percent ad valo-
9 rem or a reduction of one-tenth of the total
10 reduction, whichever is greater, had taken
11 effect on the effective date of the first re-
12 duction proclaimed under paragraph (1) to
13 carry out such agreement with respect to
14 such article; and

15 (ii) a reduction equal to the amount
16 applicable under clause (i) had taken effect
17 at 1-year intervals after the effective date
18 of such first reduction.

19 (B) EXEMPTION FROM STAGING.—No
20 staging under subparagraph (A) is required
21 with respect to a rate reduction that is pro-
22 claimed under paragraph (1) for an article of a
23 kind that is not produced in the United States.
24 The United States International Trade Com-
25 mission shall advise the President of the iden-

1 tity of articles that may be exempted from stag-
2 ing under this subparagraph.

3 (4) ROUNDING.—If the President determines
4 that such action will simplify the computation of re-
5 ductions under paragraph (3), the President may
6 round an annual reduction by the lesser of—

7 (A) the difference between the reduction
8 without regard to this paragraph and the next
9 lower whole number; or

10 (B) one-half of 1 percent ad valorem.

11 (5) OTHER LIMITATIONS.—A rate of duty re-
12 duction or increase that may not be proclaimed by
13 reason of paragraph (2) may take effect only if a
14 provision authorizing such reduction or increase is
15 included within an implementing bill provided for
16 under section 2005 and that bill is enacted into law.

17 (6) EXPANDED TARIFF PROCLAMATION AU-
18 THORITY.—

19 (A) IN GENERAL.—Notwithstanding the
20 provisions of paragraphs (1) through (5), before
21 October 1, 2001 (or before October 1, 2005, if
22 the authority provided by this title is extended
23 under subsection (c)), and subject to the con-
24 sultation and layover requirements of section
25 115 of the Uruguay Round Agreements Act (19

1 U.S.C. 3524) and the notification and consulta-
2 tion requirements of section 2004(a) of this
3 title, the President may proclaim the modifica-
4 tion of any duty or staged rate reduction of any
5 duty set forth in Schedule XX, as defined in
6 section 2(5) of the Uruguay Round Agreements
7 Act, if the United States has agreed to such
8 modification or staged rate reduction in a nego-
9 tiation for the reciprocal elimination or harmo-
10 nization of duties, within the same tariff cat-
11 egories, under the auspices of the World Trade
12 Organization or as part of an interim agree-
13 ment leading to the formation of a regional
14 free-trade area.

15 (B) NOTICE REQUIRED.—The modification
16 or staged rate reduction authorized under sub-
17 paragraph (A) with respect to any negotiation
18 initiated after the date of enactment of this Act
19 may be proclaimed only on articles in tariff cat-
20 egories with respect to which the President has
21 provided notice in accordance with section
22 2004(a).

23 (7) TARIFF MODIFICATIONS UNDER URUGUAY
24 ROUND AGREEMENTS ACT.—Nothing in this sub-
25 section shall limit the authority provided to the

1 President under section 111(b) of the Uruguay
2 Round Agreements Act.

3 (b) AGREEMENTS REGARDING TARIFF AND NON-
4 TARIFF BARRIERS.—

5 (1) IN GENERAL.—

6 (A) DETERMINATION BY PRESIDENT.—

7 Whenever the President determines that—

8 (i) any duty or other import restric-
9 tion imposed by any foreign country or the
10 United States or any other barrier to, or
11 other distortion of, international trade—

12 (I) unduly burdens or restricts
13 the foreign trade of the United States
14 or adversely affects the United States
15 economy, or

16 (II) is likely to result in such a
17 burden, restriction, or effect, and

18 (ii) the purposes, policies, and objec-
19 tives of this title will be promoted thereby,
20 the President may, before October 1, 2001 (or
21 before October 1, 2005, if the authority pro-
22 vided under this title is extended under sub-
23 section (c)) enter into a trade agreement de-
24 scribed in subparagraph (B).

1 (B) TRADE AGREEMENT DESCRIBED.—A
2 trade agreement described in this subparagraph
3 means an agreement with a foreign country
4 that provides for—

5 (i) the reduction or elimination of
6 such duty, restriction, barrier, or other dis-
7 tortion; or

8 (ii) the prohibition of, or limitation on
9 the imposition of, such barrier or other dis-
10 tortion.

11 (2) CONDITIONS.—A trade agreement may be
12 entered into under this subsection only if—

13 (A) such agreement makes progress in
14 meeting the applicable objectives described in
15 section 2002(b); and

16 (B) the President satisfies the conditions
17 set forth in section 2004 with respect to such
18 agreement.

19 (3) BILLS QUALIFYING FOR TRADE AGREEMENT
20 APPROVAL PROCEDURES.—The provisions of section
21 151 of the Trade Act of 1974 (in this title referred
22 to as “trade agreement approval procedures”) apply
23 to implementing bills submitted with respect to trade
24 agreements entered into under this subsection, ex-
25 cept that, for purposes of applying section

1 151(b)(1), such implementing bills shall contain
2 only—

3 (A) provisions that approve a trade agree-
4 ment entered into under this subsection that
5 achieves one or more of the principal negotiat-
6 ing objectives set forth in section 2002(b) and
7 the statement of administrative action (if any)
8 proposed to implement such trade agreement;

9 (B) provisions that are—

10 (i) necessary to implement such agree-
11 ment; or

12 (ii) otherwise related to the implemen-
13 tation, enforcement, and adjustment to the
14 effects of such trade agreement and are di-
15 rectly related to trade; and

16 (C) provisions necessary for purposes of
17 complying with section 252 of the Balanced
18 Budget and Emergency Deficit Control Act of
19 1985 in implementing the applicable trade
20 agreement.

21 (c) EXTENSION PROCEDURES.—

22 (1) IN GENERAL.—Except as provided in sec-
23 tion 2005(b)—

1 (A) subsections (a) and (b) shall apply
 2 with respect to agreements entered into before
 3 October 1, 2001; and

4 (B) subsections (a) and (b) shall be ex-
 5 tended to apply with respect to agreements en-
 6 tered into on or after October 1, 2001, and be-
 7 fore October 1, 2005, if (and only if)—

8 (i) the President requests such exten-
 9 sion under paragraph (2); and

10 (ii) neither House of Congress adopts
 11 an extension disapproval resolution under
 12 paragraph (5) before October 1, 2001.

13 (2) REPORT TO CONGRESS BY THE PRESI-
 14 DENT.—If the President is of the opinion that the
 15 authority under subsections (a) and (b) should be
 16 extended, the President shall submit to Congress,
 17 not later than July 1, 2001, a written report that
 18 contains a request for such extension, together
 19 with—

20 (A) a description of all trade agreements
 21 that have been negotiated under subsections (a)
 22 and (b) and, where applicable, the anticipated
 23 schedule for submitting such agreements to
 24 Congress for approval;

1 (B) a description of the progress that has
2 been made in negotiations to achieve the pur-
3 poses, policies, and objectives set out in section
4 2002 (a) and (b) of this title, and a statement
5 that such progress justifies the continuation of
6 negotiations; and

7 (C) a statement of the reasons why the ex-
8 tension is needed to complete the negotiations.

9 (3) REPORT TO CONGRESS BY THE ADVISORY
10 COMMITTEE.—The President shall promptly inform
11 the Advisory Committee for Trade Policy and Nego-
12 tiations established under section 135 of the Trade
13 Act of 1974 (19 U.S.C. 2155) of the President’s de-
14 cision to submit a report to Congress under para-
15 graph (2). The Advisory Committee shall submit to
16 Congress as soon as practicable, but not later than
17 August 1, 2001, a written report that contains—

18 (A) its views regarding the progress that
19 has been made in negotiations to achieve the
20 purposes, policies, and objectives of this title;
21 and

22 (B) a statement of its views, and the rea-
23 sons therefor, regarding whether the extension
24 requested under paragraph (2) should be ap-
25 proved or disapproved.

1 (4) REPORTS MAY BE CLASSIFIED.—The re-
 2 ports submitted to Congress under paragraphs (2)
 3 and (3), or any portion of the reports, may be classi-
 4 fied to the extent the President determines appro-
 5 prium.

6 (5) EXTENSION DISAPPROVAL RESOLUTIONS.—

7 (A) IN GENERAL.—For purposes of this
 8 subsection, the term “extension disapproval res-
 9 olution” means a resolution of either House of
 10 Congress, the sole matter after the resolving
 11 clause of which is as follows: “That the ____
 12 disapproves the request of the President for an
 13 extension, under section 2003(c) of the Recip-
 14 rocal Trade Agreements Act of 1998, of
 15 _____ after September 30,
 16 2001.”, with the first blank space being filled
 17 with the name of the resolving House of Con-
 18 gress and the second blank space being filled
 19 with one or both of the following phrases: “the
 20 tariff proclamation authority provided under
 21 section 2003(a) of the Reciprocal Trade Agree-
 22 ments Act of 1998” or “the trade agreement
 23 approval procedures provided under section
 24 2003(b) of the Reciprocal Trade Agreements
 25 Act of 1998”.

1 (B) INTRODUCTION AND REFERRAL.—Ex-
 2 tension disapproval resolutions—

3 (i) may be introduced in either House
 4 of Congress by any member of such House;

5 (ii) shall be jointly referred, in the
 6 House of Representatives, to the Commit-
 7 tee on Ways and Means and the Commit-
 8 tee on Rules; and

9 (iii) shall be referred, in the Senate,
 10 to the Committee on Finance.

11 (C) FLOOR CONSIDERATION.—The provi-
 12 sions of sections 152 (d) and (e) of the Trade
 13 Act of 1974 (19 U.S.C. 2192(d) and (e)) (relat-
 14 ing to the floor consideration of certain resolu-
 15 tions in the House and Senate) apply to exten-
 16 sion disapproval resolutions.

17 (D) COMMITTEE ACTION REQUIRED.—It is
 18 not in order for—

19 (i) the Senate to consider any exten-
 20 sion disapproval resolution not reported by
 21 the Committee on Finance;

22 (ii) the House of Representatives to
 23 consider any extension disapproval resolu-
 24 tion not reported by the Committee on

1 Ways and Means and the Committee on
2 Rules; or

3 (iii) either House of Congress to con-
4 sider an extension disapproval resolution
5 after September 30, 2001.

6 **SEC. 2004. NOTICE AND CONSULTATIONS.**

7 (a) NOTICE AND CONSULTATION BEFORE NEGOTIA-
8 TION.—With respect to any agreement subject to the pro-
9 visions of section 2003 (a) or (b), the President shall—
10 (1) not later than 90 calendar days before initi-
11 ating negotiations, provide written notice to Con-
12 gress regarding—

13 (A) the President’s intent to initiate the
14 negotiations;

15 (B) the date the President intends to initi-
16 ate such negotiations;

17 (C) the specific United States objectives
18 for the negotiations; and

19 (D) whether the President intends to seek
20 an agreement or changes to an existing agree-
21 ment;

22 (2) consult regarding the negotiations—

23 (A) before and promptly after submission
24 of the notice described in paragraph (1), with
25 the Committee on Finance of the Senate, the

1 Committee on Ways and Means of the House of
 2 Representatives, and such other committees of
 3 the House and Senate as the President deems
 4 appropriate; and

5 (B) with any other committee that re-
 6 quests consultations in writing; and

7 (3) consult with the appropriate industry sector
 8 advisory groups established under section 135 of the
 9 Trade Act of 1974 before initiating negotiations.

10 (b) CONSULTATION WITH CONGRESS BEFORE
 11 AGREEMENT ENTERED INTO.—

12 (1) CONSULTATION.—Before entering into any
 13 trade agreement under section 2003 (a) or (b), the
 14 President shall consult with—

15 (A) the Committee on Ways and Means of
 16 the House of Representatives and the Commit-
 17 tee on Finance of the Senate; and

18 (B) each other committee of the House
 19 and the Senate, and each joint committee of
 20 Congress, which has jurisdiction over legislation
 21 involving subject matters that would be affected
 22 by the trade agreement.

23 (2) SCOPE.—The consultation described in
 24 paragraph (1) shall include consultation with respect
 25 to—

1 (A) the nature of the agreement;

2 (B) how and to what extent the agreement
3 will achieve the applicable purposes, policies,
4 and objectives of this title;

5 (C) where applicable, the implementation
6 of the agreement under section 2005, including
7 whether the agreement includes subject matter
8 for which supplemental implementing legislation
9 may be required which is not subject to trade
10 agreement approval procedures; and

11 (D) any other agreement the President has
12 entered into or intends to enter into with the
13 country or countries in question.

14 (c) ADVISORY COMMITTEE REPORTS.—The report
15 required under section 135(e)(1) of the Trade Act of 1974
16 regarding any trade agreement entered into under section
17 2003(b) of this title shall be provided to the President,
18 Congress, and the United States Trade Representative not
19 later than 30 calendar days after the date on which the
20 President notifies Congress under section 2005(a)(1)(A)
21 of the President's intention to enter into the agreement.

22 (d) CONSULTATION BEFORE AGREEMENT INI-
23 TIALED.—In the course of negotiations conducted under
24 this title, the United States Trade Representative shall
25 consult closely and on a timely basis (including imme-

1 diately before initialing an agreement) with, and keep fully
 2 apprised of the negotiations, the congressional advisers for
 3 trade policy and negotiations appointed under section 161
 4 of the Trade Act of 1974 (19 U.S.C. 2211), the Commit-
 5 tee on Finance of the Senate, and the Committee on Ways
 6 and Means of the House of Representatives.

7 (e) ITC ASSESSMENT.—

8 (1) IN GENERAL.—The President, at least 90
 9 calendar days before the day on which the President
 10 enters into a trade agreement under section
 11 2003(b), shall provide the International Trade Com-
 12 mission (referred to in this subsection as “the Com-
 13 mission”) with the details of the agreement as it ex-
 14 ists at that time and request the Commission to pre-
 15 pare and submit an assessment of the agreement as
 16 described in paragraph (2). Between the time the
 17 President makes the request under this paragraph
 18 and the time the Commission submits the assess-
 19 ment, the President shall keep the Commission cur-
 20 rent with respect to the details of the agreement.

21 (2) ITC ASSESSMENT.—Not later than 90 cal-
 22 endar days after the President enters into the agree-
 23 ment, the Commission shall submit to the President
 24 and Congress a report assessing the likely impact of
 25 the agreement on the United States economy as a

1 whole and on specific industry sectors, including the
 2 impact the agreement will have on the gross domes-
 3 tic product, exports and imports, aggregate employ-
 4 ment and employment opportunities, the production,
 5 employment, and the competitive position of indus-
 6 tries likely to be significantly affected by the agree-
 7 ment, and the impact on United States consumers.

8 (3) REVIEW OF EMPIRICAL LITERATURE.—In
 9 preparing the assessment, the Commission shall re-
 10 view available economic assessments regarding the
 11 agreement, including literature regarding any sub-
 12 stantially equivalent proposed agreement, and shall
 13 provide in its assessment a description of the analy-
 14 ses used and conclusions drawn in such literature,
 15 and a discussion of areas of consensus and diver-
 16 gence between the various analyses and conclusions,
 17 including those of the Commission regarding the
 18 agreement.

19 **SEC. 2005. IMPLEMENTATION OF TRADE AGREEMENTS.**

20 (a) IN GENERAL.—

21 (1) NOTIFICATION AND SUBMISSION.—Any
 22 agreement entered into under section 2003(b) shall
 23 enter into force with respect to the United States if
 24 (and only if)—

1 (A) the President, at least 90 calendar
2 days before the day on which the President en-
3 ters into the trade agreement, notifies the
4 House of Representatives and the Senate of the
5 President's intention to enter into the agree-
6 ment, and promptly thereafter publishes notice
7 of such intention in the Federal Register;

8 (B) within 60 calendar days after entering
9 into the agreement, the President submits to
10 Congress a description of those changes to ex-
11 isting laws that the President considers would
12 be required in order to bring the United States
13 into compliance with the agreement;

14 (C) after entering into the agreement, the
15 President submits a copy of the final legal text
16 of the agreement, together with—

17 (i) a draft of an implementing bill de-
18 scribed in section 2003(b)(3);

19 (ii) a statement of any administrative
20 action proposed to implement the trade
21 agreement; and

22 (iii) the supporting information de-
23 scribed in paragraph (2); and

24 (D) the implementing bill is enacted into
25 law.

1 (2) SUPPORTING INFORMATION.—The support-
2 ing information required under paragraph (1)(C)(iii)
3 consists of—

4 (A) an explanation as to how the imple-
5 menting bill and proposed administrative action
6 will change or affect existing law; and

7 (B) a statement—

8 (i) asserting that the agreement
9 makes progress in achieving the applicable
10 purposes, policies, and objectives of this
11 title; and

12 (ii) setting forth the reasons of the
13 President regarding—

14 (I) how and to what extent the
15 agreement makes progress in achiev-
16 ing the applicable purposes, policies,
17 and objectives referred to in clause (i),
18 and why and to what extent the
19 agreement does not achieve other ap-
20 plicable purposes, policies, and objec-
21 tives;

22 (II) whether and how the agree-
23 ment changes provisions of an agree-
24 ment previously negotiated;

1 (III) how the agreement serves
2 the interests of United States com-
3 merce;

4 (IV) why the implementing bill
5 qualifies for trade agreement approval
6 procedures under section 2003(b)(3);
7 and

8 (V) any proposed administrative
9 action.

10 (3) RECIPROCAL BENEFITS.—To ensure that a
11 foreign country which receives benefits under a trade
12 agreement entered into under section 2003 (a) or
13 (b) is subject to the obligations imposed by such
14 agreement, the President shall recommend to Con-
15 gress in the implementing bill and statement of ad-
16 ministrative action submitted with respect to such
17 agreement that the benefits and obligations of such
18 agreement apply solely to the parties to such agree-
19 ment, if such application is consistent with the terms
20 of such agreement. The President may also rec-
21 ommend with respect to any such agreement that
22 the benefits and obligations of such agreement not
23 apply uniformly to all parties to such agreement, if
24 such application is consistent with the terms of such
25 agreement.

1 (b) LIMITATIONS ON TRADE AGREEMENT APPROVAL
2 PROCEDURES.—

3 (1) DISAPPROVAL OF THE NEGOTIATION.—The
4 trade agreement approval procedures shall not apply
5 to any implementing bill that contains a provision
6 approving any trade agreement that is entered into
7 under section 2003(b) with any foreign country if
8 the Committee on Finance of the Senate and the
9 Committee on Ways and Means of the House of
10 Representatives disapprove of the negotiation of the
11 agreement before the close of the 90-calendar day
12 period that begins on the date notice is provided
13 under section 2004(a)(1) with respect to the nego-
14 tiation of such agreement.

15 (2) FOR LACK OF NOTICE OR CONSULTA-
16 TIONS.—

17 (A) IN GENERAL.—The trade agreement
18 approval procedures shall not apply to any im-
19 plementing bill submitted with respect to a
20 trade agreement entered into under section
21 2003(b) if during the 60-day period beginning
22 on the date that one House of Congress agrees
23 to a procedural disapproval resolution for lack
24 of notice or consultations with respect to that
25 trade agreement, the other House separately

1 agrees to a procedural disapproval resolution
2 with respect to that agreement.

3 (B) PROCEDURAL DISAPPROVAL RESOLU-
4 TION.—For purposes of this paragraph, the
5 term “procedural disapproval resolution” means
6 a resolution of either House of Congress, the
7 sole matter after the resolving clause of which
8 is as follows: “That the President has failed or
9 refused to notify or consult (as the case may
10 be) with Congress in accordance with sections
11 2004 and 2005 of the Reciprocal Trade Agree-
12 ments Act of 1998 with respect to ____ and,
13 therefore, the trade agreement approval proce-
14 dures set forth in section 2003(b) of that Act
15 shall not apply to any implementing bill submit-
16 ted with respect to that trade agreement.”, with
17 the blank space being filled with a description
18 of the trade agreement with respect to which
19 the President is considered to have failed or re-
20 fused to notify or consult.

21 (C) COMPUTATION OF CERTAIN PERIODS
22 OF TIME.—The 60-day period of time described
23 in subparagraph (A) shall be computed without
24 regard to—

(i) the days on which either House of Congress is not in session because of an adjournment of more than 3 days to a day certain or an adjournment of the Congress sine die; and

(ii) any Saturday and Sunday, not excluded under clause (i), when either House of Congress is not in session.

(3) PROCEDURES FOR CONSIDERING PROCEDURAL DISAPPROVAL RESOLUTIONS.—

(A) PROCEDURAL DISAPPROVAL RESOLUTIONS.—Procedural disapproval resolutions—

(i) in the House of Representatives—

(I) shall be introduced by the chairman or ranking minority member of the Committee on Ways and Means or the chairman or ranking minority member of the Committee on Rules;

(II) shall be jointly referred to the Committee on Ways and Means and the Committee on Rules; and

(III) may not be amended by either Committee; and

(ii) in the Senate shall be original resolutions of the Committee on Finance.

1 (B) FLOOR CONSIDERATION.—The provi-
 2 sions of section 152 (d) and (e) of the Trade
 3 Act of 1974 (19 U.S.C. 2192 (d) and (e)) (re-
 4 lating to the floor consideration of certain reso-
 5 lutions in the House and Senate) apply to pro-
 6 cedural disapproval resolutions.

7 (C) COMMITTEE ACTION REQUIRED.—

8 (i) HOUSE OF REPRESENTATIVES.—It
 9 is not in order for the House of Represent-
 10 atives to consider any procedural dis-
 11 approval resolution not reported by the
 12 Committee on Ways and Means and the
 13 Committee on Rules.

14 (ii) SENATE.—It is not in order for
 15 the Senate to consider any procedural dis-
 16 approval resolution not reported by the
 17 Committee on Finance.

18 (c) RULES OF HOUSE OF REPRESENTATIVES AND
 19 SENATE.—Subsection (b) of this section and section
 20 2003(c) are enacted by Congress—

21 (1) as an exercise of the rulemaking power of
 22 the House of Representatives and the Senate, re-
 23 spectively, and as such are deemed a part of the
 24 rules of each House, respectively, and such proce-

1 dures supersede other rules only to the extent that
2 they are inconsistent with such other rules; and

3 (2) with the full recognition of the constitu-
4 tional right of either House to change the rules (so
5 far as relating to the procedures of that House) at
6 any time, in the same manner, and to the same ex-
7 tent as any other rule of that House.

8 **SEC. 2006. TREATMENT OF CERTAIN TRADE AGREEMENTS.**

9 (a) IN GENERAL.—Notwithstanding section
10 2003(a)(6)(B) and section 2003(b)(2), the provisions of
11 section 2004(a) shall not apply with respect to agreements
12 that result from—

13 (1) negotiations under the auspices of the
14 World Trade Organization regarding trade in infor-
15 mation technology products;

16 (2) negotiations or work programs initiated
17 pursuant to a Uruguay Round Agreement, as de-
18 fined in section 2 of the Uruguay Round Agree-
19 ments Act;

20 (3) negotiations with Chile; or

21 (4) negotiations to achieve a free trade area of
22 the Americas,

23 that were commenced before the date of enactment of this
24 Act, and the applicability of trade agreement approval pro-
25 cedures with respect to such agreements shall be deter-

1 mined without regard to the requirements of section
2 2004(a).

3 (b) PROCEDURAL DISAPPROVAL RESOLUTION NOT
4 IN ORDER.—A procedural disapproval resolution under
5 section 2005(b) shall not be in order with respect to an
6 agreement described in subsection (a) of this section based
7 on a failure or refusal to comply with section 2004(a).

8 **SEC. 2007. CONFORMING AMENDMENTS.**

9 (a) IN GENERAL.—Title I of the Trade Act of 1974
10 (19 U.S.C. 2111 et seq.) is amended as follows:

11 (1) IMPLEMENTING BILL.—

12 (A) Section 151(b)(1) (19 U.S.C.
13 2191(b)(1)) is amended—

14 (i) by striking “section 1103(a)(1) of
15 the Omnibus Trade and Competitiveness
16 Act of 1988, or section 282 of the Uru-
17 guay Round Agreements Act” and insert-
18 ing “section 282 of the Uruguay Round
19 Agreements Act, or section 2005(a)(1) of
20 the Reciprocal Trade Agreements Act of
21 1998”; and

22 (ii) by adding after subparagraph (C)
23 the following flush sentence:

24 “For purposes of applying this paragraph to imple-
25 menting bills submitted with respect to trade agree-

ments entered into under section 2003(b) of the Reciprocal Trade Agreements Act of 1998, subparagraphs (A), (B), and (C) of section 2003(b)(3) of such Act shall be substituted for subparagraphs (A), (B), and (C) of this paragraph.”.

(B) Section 151(c)(1) (19 U.S.C. 2191(c)(1)) is amended by striking “or section 282 of the Uruguay Round Agreements Act” and inserting “, section 282 of the Uruguay Round Agreements Act, or section 2005(a)(1) of the Reciprocal Trade Agreements Act of 1998”.

(2) ADVICE FROM INTERNATIONAL TRADE COMMISSION.—Section 131 (19 U.S.C. 2151) is amended—

(A) in subsection (a)—

(i) in paragraph (1), by striking “section 123 of this Act or section 1102 (a) or (c) of the Omnibus Trade and Competitiveness Act of 1988,” and inserting “section 123 of this Act or section 2003 (a) or (b) of the Reciprocal Trade Agreements Act of 1998,”; and

(ii) in paragraph (2), by striking “section 1102 (b) or (c) of the Omnibus Trade

and Competitiveness Act of 1988” and inserting “section 2003(b) of the Reciprocal Trade Agreements Act of 1998”;

(B) in subsection (b), by striking “section 1102(a)(3)(A)” and inserting “section 2003(a)(3)(A) of the Reciprocal Trade Agreements Act of 1998” before the end period; and

(C) in subsection (c), by striking “section 1102 of the Omnibus Trade and Competitiveness Act of 1988,” and inserting “section 2003 of the Reciprocal Trade Agreements Act of 1998,”.

(3) HEARINGS AND ADVICE.—Sections 132, 133(a), and 134(a) (19 U.S.C. 2152, 2153(a), and 2154(a)) are each amended by striking “section 1102 of the Omnibus Trade and Competitiveness Act of 1988,” each place it appears and inserting “section 2003 of the Reciprocal Trade Agreements Act of 1998,”.

(4) PREREQUISITES FOR OFFERS.—Section 134(b) (19 U.S.C. 2154(b)) is amended by striking “section 1102 of the Omnibus Trade and Competitiveness Act of 1988” and inserting “section 2003 of the Reciprocal Trade Agreements Act of 1998”.

1 (5) ADVICE FROM PRIVATE AND PUBLIC SEC-
2 TORS.—Section 135 (19 U.S.C. 2155) is amended—

3 (A) in subsection (a)(1)(A), by striking
4 “section 1102 of the Omnibus Trade and Com-
5 petitiveness Act of 1988” and inserting “section
6 2003 of the Reciprocal Trade Agreements Act
7 of 1998”;

8 (B) in subsection (e)(1)—

9 (i) by striking “section 1102 of the
10 Omnibus Trade and Competitiveness Act
11 of 1988” each place it appears and insert-
12 ing “section 2003 of the Reciprocal Trade
13 Agreements Act of 1998”; and

14 (ii) by striking “section 1103(a)(1)(A)
15 of such Act of 1988” and inserting “sec-
16 tion 2005(a)(1)(A) of the Reciprocal Trade
17 Agreements Act of 1998”; and

18 (C) in subsection (e)(2), by striking “the
19 applicable overall and principal negotiating ob-
20 jectives set forth in section 1101 of the Omni-
21 bus Trade and Competitiveness Act of 1988”
22 and inserting “the purposes, policies, and objec-
23 tives set forth in section 2002 (a) and (b) of
24 the Reciprocal Trade Agreements Act of 1998”.

1 (6) TRANSMISSION OF AGREEMENTS TO CON-
2 GRESS.—Section 162(a) (19 U.S.C. 2212(a)) is
3 amended by striking “or under section 1102 of the
4 Omnibus Trade and Competitiveness Act of 1988”
5 and inserting “or under section 2003 of the Recip-
6 rocal Trade Agreements Act of 1998”.

7 (b) APPLICATION OF CERTAIN PROVISIONS.—For
8 purposes of applying sections 125, 126, and 127 of the
9 Trade Act of 1974 (19 U.S.C. 2135, 2136(a), and
10 2137)—

11 (1) any trade agreement entered into under sec-
12 tion 2003 shall be treated as an agreement entered
13 into under section 101 or 102, as appropriate, of the
14 Trade Act of 1974 (19 U.S.C. 2111 or 2112); and

15 (2) any proclamation or Executive order issued
16 pursuant to a trade agreement entered into under
17 section 2003 shall be treated as a proclamation or
18 Executive order issued pursuant to a trade agree-
19 ment entered into under section 102 of the Trade
20 Act of 1974.

21 **SEC. 2008. DEFINITIONS.**

22 In this title:

23 (1) DISTORTION.—The term “distortion” in-
24 cludes, but is not limited to, a subsidy.

1 (2) TRADE.—The term “trade” includes, but is
2 not limited to—

3 (A) trade in both goods and services; and

4 (B) foreign investment by United States
5 persons, especially if such investment has impli-
6 cations for trade in goods and services.

7 (3) URUGUAY ROUND AGREEMENTS.— The
8 term “Uruguay Round Agreements” has the mean-
9 ing given such term in section 2(7) of the Uruguay
10 Round Agreements Act (19 U.S.C. 3501(7)).

11 (4) WORLD TRADE ORGANIZATION.—The term
12 “World Trade Organization” means the organization
13 established pursuant to the WTO Agreement.

14 (5) WTO AGREEMENT.—The term “WTO
15 Agreement” means the Agreement Establishing the
16 World Trade Organization entered into on April 15,
17 1994.

18 (6) WTO AND WTO MEMBER.—The terms
19 “WTO” and “WTO member” have the meanings
20 given those terms in section 2 of the Uruguay
21 Round Agreements Act (19 U.S.C. 3501).

22 **TITLE III—TRADE ADJUSTMENT** 23 **ASSISTANCE**

24 **SEC. 3001. TRADE ADJUSTMENT ASSISTANCE.**

25 (a) AUTHORIZATION OF APPROPRIATIONS.—

1 (1) IN GENERAL.—Section 245 of the Trade
2 Act of 1974 (19 U.S.C. 2317) is amended—

3 (A) in subsection (a), by striking “1993,
4 1994, 1995, 1996, 1997, and” and inserting
5 “1999, and 2000,” after “1998,”; and

6 (B) in subsection (b), by striking “1994,
7 1995, 1996, 1997, and” and inserting “1999,
8 and 2000,” after “1998.”.

9 (2) ASSISTANCE FOR FIRMS.—Section 256(b) of
10 the Trade Act of 1974 (19 U.S.C. 2346(b)) is
11 amended by striking “1993, 1994, 1995, 1996,
12 1997, and” and inserting “, 1999, and 2000,” after
13 “1998”.

14 (b) TERMINATION.—Section 285(c) of the Trade Act
15 of 1974 (19 U.S.C. 2271 note preceding) is amended—

16 (1) in paragraph (1), by striking “1998” and
17 inserting “2000”; and

18 (2) in paragraph (2)(A), by striking “the day
19 that is” and all that follows through “effective” and
20 inserting “September 30, 2000”.

1 **TITLE IV—MARKET ACCESS**
2 **IDENTIFICATION FOR CER-**
3 **TAIN AGRICULTURAL PROD-**
4 **UCTS**

5 **SEC. 4001. SHORT TITLE.**

6 This title may be cited as the “United States Agricul-
7 tural Products Market Access Act of 1998”.

8 **SEC. 4002. PURPOSES.**

9 The purposes of this title are—

10 (1) to reduce or eliminate foreign unfair trade
11 practices and to remove constraints on fair and open
12 trade in agricultural products;

13 (2) to ensure fair and equitable market access
14 for exports of United States agricultural products;
15 and

16 (3) to promote free and fair trade in agricul-
17 tural products.

18 **SEC. 4003. IDENTIFICATION OF COUNTRIES THAT DENY**
19 **MARKET ACCESS.**

20 (a) IDENTIFICATION REQUIRED.—Chapter 8 of title
21 I of the Trade Act of 1974 is amended by adding at the
22 end the following:

1 **“SEC. 183. IDENTIFICATION OF COUNTRIES THAT DENY**
 2 **MARKET ACCESS FOR AGRICULTURAL PROD-**
 3 **UCTS.**

4 “(a) IN GENERAL.—Not later than the date that is
 5 30 days after the date on which the annual report is re-
 6 quired to be submitted to Congressional committees under
 7 section 181(b), the United States Trade Representative
 8 (hereafter in this section referred to as the ‘Trade Rep-
 9 resentative’) shall identify—

10 “(1) those foreign countries that—

11 “(A) deny fair and equitable market access
 12 to United States agricultural products, or

13 “(B) apply unjustified sanitary or
 14 phytosanitary standards to agricultural prod-
 15 ucts imported from the United States;

16 “(2) those foreign countries identified under
 17 paragraph (1) that are determined by the Trade
 18 Representative to be priority foreign countries.

19 “(b) SPECIAL RULES FOR IDENTIFICATION.—

20 “(1) CRITERIA.—In identifying priority foreign
 21 countries under subsection (a)(2), the Trade Rep-
 22 resentative shall only identify those foreign coun-
 23 tries—

24 “(A) that engage in or have the most oner-
 25 ous or egregious acts, policies, or practices that

1 deny fair and equitable market access to United
 2 States agricultural products,

3 “(B) whose acts, policies, or practices de-
 4 scribed in subparagraph (A) have the greatest
 5 adverse impact (actual or potential) on the rel-
 6 evant United States products, and

7 “(C) that are not—

8 “(i) entering into good faith negotia-
 9 tions, or

10 “(ii) making significant progress in
 11 bilateral or multilateral negotiations,
 12 to provide fair and equitable market access to
 13 United States agricultural products.

14 “(2) CONSULTATION AND CONSIDERATION RE-
 15 QUIREMENTS.—In identifying priority foreign coun-
 16 tries under subsection (a)(2), the Trade Representa-
 17 tive shall—

18 “(A) consult with the Secretary of Agri-
 19 culture and other appropriate officers of the
 20 Federal Government, and

21 “(B) take into account information from
 22 such sources as may be available to the Trade
 23 Representative and such information as may be
 24 submitted to the Trade Representative by inter-
 25 ested persons, including information contained

1 in reports submitted under section 181(b) and
2 petitions submitted under section 302.

3 “(3) FACTUAL BASIS REQUIREMENT.—The
4 Trade Representative may identify a foreign country
5 under subsection (a)(1) only if the Trade Represent-
6 ative finds that there is a factual basis for the denial
7 of fair and equitable market access as a result of the
8 violation of international law or agreement, or the
9 existence of barriers, referred to in subsection (d).

10 “(4) CONSIDERATION OF HISTORICAL FAC-
11 TORS.—In identifying foreign countries under para-
12 graphs (1) and (2) of subsection (a), the Trade Rep-
13 resentative shall take into account—

14 “(A) the history of agricultural trade rela-
15 tions with the foreign country, including any
16 previous identification under subsection (a)(2),
17 and

18 “(B) the history of efforts of the United
19 States, and the response of the foreign country,
20 to achieve fair and equitable market access for
21 United States agricultural products.

22 “(c) REVOCATIONS AND ADDITIONAL IDENTIFICA-
23 TIONS.—

24 “(1) AUTHORITY TO ACT AT ANY TIME.—If in-
25 formation available to the Trade Representative indi-

1 cates that such action is appropriate, the Trade
 2 Representative may at any time—

3 “(A) revoke the identification of any for-
 4 eign country as a priority foreign country under
 5 this section, or

6 “(B) identify any foreign country as a pri-
 7 ority foreign country under this section.

8 “(2) REVOCATION REPORTS.—The Trade Rep-
 9 resentative shall include in the semiannual report
 10 submitted to the Congress under section 309(3) a
 11 detailed explanation of the reasons for the revocation
 12 under paragraph (1) of the identification of any for-
 13 eign country as a priority foreign country under this
 14 section.

15 “(d) DEFINITION AND SPECIAL RULE.—For pur-
 16 poses of this section:

17 “(1) AGRICULTURAL PRODUCTS.—The term
 18 ‘agricultural products’ includes forest products, fish,
 19 and seafood products.

20 “(2) FAIR AND EQUITABLE MARKET ACCESS.—
 21 A foreign country denies fair and equitable market
 22 access if the foreign country effectively denies access
 23 to a market for a product through the use of laws,
 24 procedures, practices, or regulations which—

1 “(A) violate provisions of international law
2 or international agreements to which both the
3 United States and the foreign country are par-
4 ties, or

5 “(B) constitute discriminatory nontariff
6 trade barriers.

7 “(e) PUBLICATION.—The Trade Representative shall
8 publish in the Federal Register a list of foreign countries
9 identified under subsection (a) and shall make such revi-
10 sions to the list as may be required by reason of the action
11 under subsection (c).

12 “(f) ANNUAL REPORT.—The Trade Representative
13 shall, not later than the date by which countries are identi-
14 fied under subsection (a), transmit to the Committee on
15 Ways and Means and the Committee on Agriculture of the
16 House of Representatives and the Committee on Finance
17 and the Committee on Agriculture, Nutrition, and For-
18 estry of the Senate, a report on the actions taken under
19 this section during the 12 months preceding such report,
20 and the reasons for such actions, including a description
21 of progress made in achieving fair and equitable market
22 access for United States agricultural products.”.

23 (b) CLERICAL AMENDMENT.—The table of contents
24 for the Trade Act of 1974 is amended by inserting after
25 the item relating to section 182 the following:

“Sec. 183. Identification of countries that deny market access for agricultural products.”.

1 **SEC. 4004. INVESTIGATIONS.**

2 (a) INVESTIGATION REQUIRED.—Subparagraph (A)
3 of section 302(b)(2) of the Trade Act of 1974 (19 U.S.C.
4 2412(b)(2)) is amended by inserting “or 183(a)(2)” after
5 “section 182(a)(2)” in the matter preceding clause (i).

6 (b) CONFORMING AMENDMENTS.—

7 (1) Subparagraph (D) of section 302(b)(2) of
8 such Act is amended by inserting “concerning intel-
9 lectual property rights that is” after “any investiga-
10 tion”.

11 (2) Subparagraph (B) of section 304(a)(3) of
12 such Act is amended—

13 (A) by striking “or” at the end of clause
14 (ii),

15 (B) by inserting “or” at the end of clause
16 (iii), and

17 (C) by inserting immediately after clause
18 (iii) the following new clause:

19 “(iv) the foreign country involved in
20 the investigation is making substantial
21 progress in drafting or implementing legis-
22 lative or administrative measures that will
23 provide fair and equitable market access to
24 United States agricultural products,”.

1 **TITLE V—APPROVAL AND IM-**
2 **PLEMENTATION OF OECD**
3 **SHIPBUILDING AGREEMENT**

4 **SEC. 5001. SHORT TITLE; PURPOSES.**

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

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

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

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

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

21 **Subtitle A—General Provisions**

22 **SEC. 5101. APPROVAL OF THE SHIPBUILDING AGREEMENT.**

23 The Congress approves The Agreement Respecting
24 Normal Competitive Conditions in the Commercial Ship-
25 building and Repair Industry (referred to in this Act as

1 the “Shipbuilding Agreement”), a reciprocal trade agree-
 2 ment which resulted from negotiations under the auspices
 3 of the Organization for Economic Cooperation and Devel-
 4 opment, and was entered into on December 21, 1994.

5 **SEC. 5102. INJURIOUS PRICING AND COUNTERMEASURES**
 6 **RELATING TO SHIPBUILDING.**

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

9 **“TITLE VIII—INJURIOUS PRIC-**
 10 **ING AND COUNTERMEASURES**
 11 **RELATING TO SHIPBUILDING**

“Subtitle A—Imposition of Injurious Pricing Charge and Countermeasures

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

“Subtitle B—Special Rules

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

“Subtitle C—Procedures

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

“Subtitle D—Definitions

- “Sec. 861. Definitions.

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

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

5 “(a) BASIS FOR CHARGE.—If—

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

10 “(2) the Commission determines that—

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

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

13 or

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

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

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

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

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

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

11 “(a) INITIATION BY ADMINISTERING AUTHORITY.—

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

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

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

5 “(b) INITIATION BY PETITION.—

6 “(1) PETITION REQUIREMENTS.—

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

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

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

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

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

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

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

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

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

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

1 tioner had regular contacts or deal-
2 ings.

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

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

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

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

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

9 “(3) DEADLINE FOR FILING PETITION.—

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

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

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

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

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

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

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

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

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

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

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

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

15 “(d) PETITION DETERMINATION.—

16 “(1) TIME FOR INITIAL DETERMINATION.—

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

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

charge under section 801(a) and the elements required under subsection (b)(1) (B), (C), (D), or (E), and contains information reasonably available to the petitioner supporting the allegations; and

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

“(B) CALCULATION OF 45-DAY PERIOD.—

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

“(2) AFFIRMATIVE DETERMINATIONS.—If the

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

“(3) NEGATIVE DETERMINATIONS.—If—

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

“(B) paragraph (6)(B) applies,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 “(1) IN GENERAL.—If—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 “(d) PROCEEDINGS BY WTO MEMBERS.—

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

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

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

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

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

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

4 If such a proceeding—

5 “(i) is concluded by a result other 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
16 issued 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
 13 issuing 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
 15 issuing 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
8 respect to the sale of the vessel under the law of
9 the country of that Party consistent with the terms
10 of 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 at
15 the time of such sale. For purposes of the preceding
16 sentence, a ‘reasonable period of time’ shall not, ex-
17 cept where otherwise appropriate, exceed 6 months
18 before, or 6 months after, the sale of the subject ves-
19 sel. In calculating profit under this paragraph, any
20 distortion which would result in other than a profit
21 which is reasonable at the time of the sale shall be
22 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,
13 United 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
 20 United States under the Shipbuilding Agreement,
 21 the Trade Representative may request the Commis-
 22 sion to issue an advisory report on whether this title
 23 permits 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
5 issued 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
16 ‘United States buyer’ means a buyer that is any of
17 the 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-

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

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

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

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

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

“(7) OWNERSHIP INTEREST.—An ‘ownership interest’ in a vessel includes any contractual or proprietary interest which allows the beneficiary or beneficiaries of such interest to take advantage of the operation of the vessel in a manner substantially comparable to the way in which an owner may benefit from the operation of the vessel. In determining whether such substantial comparability exists, the administering authority shall consider—

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

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

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

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

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

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

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

10 “(16) MATERIAL INJURY.—

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

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

17 “(i) shall consider—

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

19 “(II) the effect of the sale of the
20 subject vessel on prices in the United

21 States for a domestic like vessel, and

22 “(III) the impact of the sale of
23 the subject vessel on domestic produc-
24 ers of a domestic like vessel, but only

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

8 In the notification required under section
9 805(d), the Commission shall explain its analy-
10 sis of each factor considered under clause (i),
11 and identify each factor considered under clause
12 (ii) and explain in full its relevance to the deter-
13 mination.

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

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

23 “(ii) PRICE.—In evaluating the effect
24 of the sale of the subject vessel on prices,
25 the Commission shall consider whether—

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

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

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

19 “(I) actual and potential decline
20 in output, sales, market share, profits,
21 productivity, return on investments,
22 and utilization of capacity,

23 “(II) factors affecting domestic
24 prices, including with regard to sales,

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

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

11 “(V) the magnitude of the injuri-
12 ous pricing margin.

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

18 “(D) STANDARD FOR DETERMINATION.—

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

24 “(E) THREAT OF MATERIAL INJURY.—

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

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

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

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

domestic prices, and are likely to increase demand for further sales,

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

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

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

“(ii) BASIS FOR DETERMINATION.—

The Commission shall consider the factors set forth in clause (i) as a whole. The presence or absence of any factor which the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 “(20) NONMARKET ECONOMY COUNTRY.—

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

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

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

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

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

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

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

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

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

22 “(C) DETERMINATION IN EFFECT.—

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

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

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

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

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

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

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

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

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

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

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

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

21 “(C) Partners.

22 “(D) Employer and employee.

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

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

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

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

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

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

15 “(28) INJURIOUS PRICING MARGIN.—

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

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

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

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

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

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

23 “(30) ANTIDUMPING.—

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

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

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

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

15 **SEC. 5103. ENFORCEMENT OF COUNTERMEASURES.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 **SEC. 5104. JUDICIAL REVIEW IN INJURIOUS PRICING AND**
2 **COUNTERMEASURE PROCEEDINGS.**

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

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

8 “(a) REVIEW OF DETERMINATION.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 “(C) a determination by the administering
24 authority under section 845(b), with respect to

1 a matter described in paragraph (1)(A) of that
2 section, and

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

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

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

18 “(b) STANDARDS OF REVIEW.—

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

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

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

“(2) RECORD FOR REVIEW.—

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

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

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

“(B) CONFIDENTIAL OR PRIVILEGED MATERIAL.—The confidential or privileged status accorded to any documents, comments, or information shall be preserved in any action under this section. Notwithstanding the preceding sen-

1 tence, the court may examine, in camera, the
2 confidential or privileged material, and may dis-
3 close such material under such terms and con-
4 ditions as it may order.

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

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

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

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

20 “(3) INTERESTED PARTY.—The term ‘inter-
21 ested party’ means any person described in section
22 861(17).”.

23 (b) CONFORMING AMENDMENTS.—

1 (1) JURISDICTION OF THE COURT.—Section
 2 1581(c) of title 28, United States Code, is amended
 3 by inserting “or 516B” after “section 516A”.

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

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

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

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

16 **Subtitle B—Other Provisions**

17 **SEC. 5201. EQUIPMENT AND REPAIR OF VESSELS.**

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

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

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

1 “(A) self-propelled seagoing vessels of 100
 2 gross tons or more that are used for transpor-
 3 tation of goods or persons or for performance
 4 of a specialized service (including, but not lim-
 5 ited to, ice breakers and dredges);

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

7 “(C) integrated tug-barges or tug-barge
 8 combinations.

9 “(2) SELF-PROPELLED SEAGOING; INTEGRATED
 10 TUG-BARGE.—

11 “(A) SELF-PROPELLED SEAGOING.—A ves-
 12 sel shall be considered ‘self-propelled seagoing’
 13 if its permanent propulsion and steering provide
 14 it all the characteristics of self-navigability in
 15 the high seas.

16 “(B) INTEGRATED TUG-BARGE.—An inte-
 17 grated tug-barge or tug-barge combination
 18 means a vessel that is designed to operate to-
 19 gether in either the push mode or pull mode, if
 20 the barge is of 100 gross tons or more and the
 21 tug is of 365 kilowatts or more.”.

22 **SEC. 5202. EFFECT OF SHIPBUILDING AGREEMENT WITH**
 23 **RESPECT TO PRIVATE REMEDIES.**

24 No person other than the United States—

1 (1) shall have any cause of action or defense
2 under the Shipbuilding Agreement or by virtue of
3 congressional approval of the Shipbuilding Agree-
4 ment, or

5 (2) may challenge, in any action brought under
6 any provision of law, any action or inaction by any
7 department, agency, or other instrumentality of the
8 United States, the District of Columbia, any State,
9 any political subdivision of a State, or any territory
10 or possession of the United States on the ground
11 that such action or inaction is inconsistent with such
12 Shipbuilding Agreement.

13 **SEC. 5203. IMPLEMENTING REGULATIONS.**

14 After the date of enactment of this Act, the heads
15 of agencies with functions under this subtitle and the
16 amendments made by this subtitle may issue such regula-
17 tions as may be necessary to ensure that this subtitle is
18 appropriately implemented on the date the Shipbuilding
19 Agreement enters into force with respect to the United
20 States.

21 **SEC. 5204. AMENDMENTS TO THE MERCHANT MARINE ACT,**

22 **1936.**

23 The Merchant Marine Act, 1936, is amended as fol-
24 lows:

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

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

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

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

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

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

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

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

15 “(ii) that is a Shipbuilding Agreement ves-
16 sel and is constructed in a Shipbuilding Agree-
17 ment Party and, if reconstructed, is recon-
18 structed in a Shipbuilding Agreement Party or
19 in the United States,”.

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

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

1 “(ii) that is a Shipbuilding Agreement ves-
2 sel and is constructed in a Shipbuilding Agree-
3 ment Party and, if reconstructed, is recon-
4 structed in a Shipbuilding Agreement Party or
5 in the United States, but only with regard to
6 moneys deposited into the fund on or after the
7 date on which the OECD Shipbuilding Trade
8 Agreement Act takes effect,”.

9 (5) Section 610 (46 App. U.S.C. 1180) is
10 amended by striking “shall be built in a domestic
11 yard or shall have been documented under the laws
12 of the United States not later than February 1,
13 1928, or actually ordered and under construction for
14 the account of citizens of the United States prior to
15 such date,” and inserting “shall be built in the
16 United States or, if the vessel is a Shipbuilding
17 Agreement vessel, in a Shipbuilding Agreement
18 Party,”.

19 (6) Section 901(b)(1) (46 App. U.S.C.
20 1241(b)(1)) is amended by striking the third sen-
21 tence and inserting the following: “For purposes of
22 this section, the term ‘privately owned United
23 States-flag commercial vessels’ shall be deemed to
24 include—

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

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

16 The term ‘privately owned United States-flag com-
17 mercial vessels’ shall also be deemed to include any
18 cargo vessel that so qualified pursuant to section
19 615 of this Act or this paragraph before the date on
20 which the OECD Shipbuilding Trade Agreement Act
21 takes effect. The term ‘privately owned United
22 States-flag commercial vessels’ shall not be deemed
23 to include any liquid bulk cargo vessel that does not
24 meet the requirements of section 3703a of title 46,
25 United States Code.”.

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

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

9 “(i) The term ‘Shipbuilding Agreement Party’ means
10 a state or separate customs territory that is a Party to
11 the Shipbuilding Agreement, and with respect to which the
12 United States applies the Shipbuilding Agreement.

13 “(j) The term ‘Shipbuilding Agreement vessel’ means
14 a vessel to which the Secretary determines Article 2.1 of
15 the Shipbuilding Agreement applies.

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

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

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

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

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

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

21 (B) by amending subsection (i) to read as
22 follows:

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

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

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

6 “(C) the 80 percent or less limitation in the 3rd
7 proviso to subsection (b)(2),
8 establish by rule, regulation, or procedure any percentage
9 within any such limitation that is, or is intended to be,
10 applied uniformly to all guarantees or commitments to
11 guarantee made under this section that are subject to the
12 limitation.

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

20 (C) by adding at the end the following new
21 subsection:

22 “(k) The Secretary shall establish by rule, regulation,
23 or procedure a uniform percentage with respect to inte-
24 grated tug-barges that the Secretary determines to be con-
25 sistent with the percentages applied with respect to Export

1 Credit Understanding vessels and Shipbuilding Agreement
 2 vessels under subsections (b)(5) and (i)(2).”.

3 (9) Section 1104B(b) (46 App. U.S.C.
 4 1274a(b)) is amended by striking the period at the
 5 end and inserting the following: “, except that, with
 6 respect to Export Credit Understanding vessels and
 7 Shipbuilding Agreement vessels, the Secretary may
 8 establish by rule, regulation, or procedure a uniform
 9 percentage that the Secretary determines to be con-
 10 sistent with obligations of the United States under
 11 the Export Credit Understanding or the Shipbuild-
 12 ing Agreement, as the case may be. With respect to
 13 integrated tug-barges, the Secretary shall establish
 14 by rule, regulation, or procedure a uniform percent-
 15 age that the Secretary determines to be consistent
 16 with the percentages applied with respect to Export
 17 Credit Understanding vessels and Shipbuilding
 18 Agreement vessels pursuant to the preceding sen-
 19 tence.”.

20 **SEC. 5205. APPLICABILITY OF TITLE XI AMENDMENTS.**

21 (a) EFFECTIVE DATE.—

22 (1) IN GENERAL.—Notwithstanding any provi-
 23 sion of the Shipbuilding Agreement or the Export
 24 Credit Understanding, the amendments made by
 25 paragraphs (8) and (9) of section 5204 shall not

1 apply with respect to any commitment to guarantee
 2 made under title XI of the Merchant Marine Act,
 3 1936, before January 1, 2001, with respect to a ves-
 4 sel delivered—

5 (A) before January 1, 2004, or

6 (B) in the case of unusual circumstances
 7 (as described in paragraph (2)), as soon after
 8 December 31, 2003, as practicable.

9 (2) UNUSUAL CIRCUMSTANCES DESCRIBED.—

10 As used in this subsection, the term “unusual cir-
 11 cumstances” means an act of God (other than ordi-
 12 nary storms or inclement weather conditions) labor
 13 strikes, acts of sabotage, explosions, fires, or vandal-
 14 ism, and similar circumstances beyond the control of
 15 the parties concerned which prevent the delivery of
 16 a vessel before January 1, 2004.

17 (b) MATCHING COMPETITION BY NONMEMBERS.—

18 Section 5204 shall not prevent the Secretary of Transpor-
 19 tation from exercising the Secretary’s full discretion and
 20 authority under title XI of the Merchant Marine Act,
 21 1936, consistent with clause 8 and Annex III of the Ex-
 22 port Credit Understanding, to assist United States ship-
 23 yards in meeting unfairly subsidized bids by foreign yards
 24 in countries not covered by the Shipbuilding Agreement.

1 **SEC. 5206. MONITORING AND ENFORCEMENT.**

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

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

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

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

18 (4) regular consultations with representatives of
19 industry, labor, and other interested parties regard-
20 ing policies and practices of Shipbuilding Agreement
21 Parties and of other countries with significant com-
22 mercial shipbuilding industries;

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

1 (6) taking of any other appropriate action to
2 monitor compliance of Shipbuilding Agreement Par-
3 ties.

4 (b) REPORT TO CONGRESS.—Before the end of each
5 12-month period in which the United States is a Party
6 to the Shipbuilding Agreement, the United States Trade
7 Representative shall report to Congress on—

8 (1) the activities undertaken as part of its mon-
9 itoring program;

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

12 (3) compliance with the provisions of the Ship-
13 building Agreement.

14 (c) ACTION IF VIOLATION.—If the United States
15 Trade Representative receives information, including in-
16 formation provided by representatives of industry, labor,
17 and other interested parties, indicating that a Shipbuild-
18 ing Agreement Party is in material violation of the Ship-
19 building Agreement in a manner that is detrimental to the
20 interests of the United States, the United States Trade
21 Representative should use vigorously the consultation pro-
22 cedures under the Shipbuilding Agreement. If the matter
23 is not otherwise resolved, the United States Trade Rep-
24 resentative should use the dispute settlement procedures

1 under the Shipbuilding Agreement to redress the situa-
2 tion.

3 **SEC. 5207. JONES ACT AND RELATED LAWS NOT AFFECTED.**

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

14 (b) RELATION TO GATT 1994.—Nothing in the
15 Shipbuilding Agreement shall be construed to provide a
16 mechanism for withdrawal of concessions under GATT
17 1994 or any World Trade Organization Agreement be-
18 cause of the construction of vessels by United States ship-
19 builders for operation in the coastwise trade of the United
20 States.

21 (c) ANNUAL REVIEW; NOTIFICATION.—As part of the
22 annual review of all trade agreements conducted under
23 section 163 of the Trade Act of 1974, the United States
24 Trade Representative shall—

1 (1) review the impact, if any, of the Shipbuild-
 2 ing Agreement on the operation or implementation
 3 of any of the provisions of law listed in subsection
 4 (a);

5 (2) in conducting the review, consult with the
 6 Secretary of Transportation, the Secretary of De-
 7 fense, United States industry, labor groups, and
 8 other interested parties; and

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

11 **SEC. 5208. WITHDRAWAL FROM SHIPBUILDING AGREE-**
 12 **MENT.**

13 (a) WITHDRAWAL BY PRESIDENT.—

14 (1) NOTICE.—The President shall give notice,
 15 under Article 14 of the Shipbuilding Agreement, of
 16 intent of the United States to withdraw from the
 17 Shipbuilding Agreement, as soon as is practicable
 18 after one or more Shipbuilding Agreement Parties
 19 gives notice, under such Article, of intent to with-
 20 draw from the Shipbuilding Agreement, if the cir-
 21 cumstances described in paragraph (2) apply, except
 22 that the President may not implement the notice of
 23 withdrawal of the United States from the Shipbuild-
 24 ing Agreement under this subsection until the with-
 25 drawal of one or more Shipbuilding Agreement Par-

1 ties described in this paragraph is in effect and the
2 circumstances described in paragraph (2) apply to
3 the Shipbuilding Agreement Parties whose with-
4 drawal from the Shipbuilding Agreement is in effect.

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

9 (A) were constructed in all Shipbuilding
10 Agreement Parties who have given notice to
11 withdraw from the Shipbuilding Agreement,
12 and

13 (B) were delivered in the calendar year
14 preceding the calendar year in which the notice
15 is given,

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

21 (3) TERMINATION OF WITHDRAWAL.—If a
22 Shipbuilding Agreement Party described in para-
23 graph (2) takes action to terminate its withdrawal
24 from the Shipbuilding Agreement, so that paragraph
25 (2) would not apply if that Party had not given the

1 notice to withdraw, the President may take the nec-
2 essary steps to terminate the notice of withdrawal of
3 the United States from the Shipbuilding Agreement.

4 (4) NOTICE TO CONGRESS.—The President
5 shall notify the appropriate committees as soon as
6 practicable of any notice given under paragraph (1)
7 and of any termination of such notice under para-
8 graph (3).

9 (b) CONGRESSIONAL RESOLUTION WITHDRAWING
10 APPROVAL OF THE SHIPBUILDING AGREEMENT.—

11 (1) NOTIFICATION BY THE PRESIDENT.—The
12 President shall notify the appropriate committees as
13 soon as practicable of any decision by a Shipbuilding
14 Agreement Party to apply responsive measures
15 under the provisions of paragraph 2.e of Annex II
16 B of the Shipbuilding Agreement against the United
17 States and the applicable date of such measures.

18 (2) CONGRESSIONAL ACTION.—If Congress re-
19 ceives a notification described in paragraph (1), the
20 approval of Congress, provided under section 5101
21 of this Act, shall cease to be effective if, and only
22 if, a joint resolution is enacted into law pursuant to
23 the provisions of paragraphs (3) and (4).

24 (3) PROCEDURAL PROVISIONS.—

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

4 (i) Congress transmits the joint reso-
5 lution to the President before the end of
6 the 90-day period, beginning on the appli-
7 cable date referred to in paragraph (1),
8 and

9 (ii) if the President vetoes the joint
10 resolution, each House of Congress votes
11 to override that veto on or before the later
12 of—

13 (I) the last day of the 90-day pe-
14 riod referred to in clause (i), or

15 (II) the last day of the 15-day
16 period beginning on the date on which
17 Congress receives the veto message
18 from the President.

19 (B) INTRODUCTION.—A joint resolution to
20 which this subsection applies may be introduced
21 at any time on or after the applicable date re-
22 ferred to in paragraph (1).

23 (4) JOINT RESOLUTION.—

24 (A) JOINT RESOLUTION.—For purposes of
25 this subsection, the term “joint resolution”

1 means only a joint resolution of the 2 Houses
2 of Congress, the matter after the resolving
3 clause of which is as follows: “That Congress
4 withdraws its approval, provided under section
5 5101 of the OECD Shipbuilding Trade Agree-
6 ment Act, of the Shipbuilding Agreement de-
7 scribed in section 5101 of that Act.”.

8 (B) PROCEDURES.—

9 (i) IN GENERAL.—Joint resolutions
10 may be introduced in either House of Con-
11 gress by any Member of such House.

12 (ii) APPLICATION OF SECTION 152 OF
13 THE TRADE ACT OF 1974.—Subject to the
14 provisions of this subsection, the provisions
15 of subsections (b), (d), (e), and (f) of sec-
16 tion 152 of the Trade Act of 1974 (19
17 U.S.C. 2192 (b), (d), (e), and (f)) apply to
18 joint resolutions to the same extent as
19 such provisions apply to resolutions under
20 such section.

21 (iii) DISCHARGE OF COMMITTEE.—If
22 a committee of either House to which a
23 joint resolution has been referred has not
24 reported it by the close of the 45th day
25 after its introduction, such committee shall

1 be automatically discharged from further
2 consideration of the joint resolution and it
3 shall be placed on the appropriate cal-
4 endar.

5 (iv) FLOOR CONSIDERATION.—It is
6 not in order for—

7 (I) the Senate to consider any
8 joint resolution unless it has been re-
9 ported by the Committee on Finance
10 or the committee has been discharged
11 under clause (iii);

12 (II) the House of Representatives
13 to consider any joint resolution unless
14 it has been reported by the Committee
15 on Ways and Means or the committee
16 has been discharged under clause (iii);
17 or

18 (III) either House to consider
19 any joint resolution or take any action
20 under paragraph (3)(A) (i) or (ii), if
21 the President has notified the appro-
22 priate committees that the decision to
23 apply responsive measures described
24 in paragraph (1) has been withdrawn

1 and the responsive measures have not
2 actually been applied.

3 (v) CONSIDERATION IN THE HOUSE.—

4 A motion in the House of Representatives
5 to proceed to the consideration of a joint
6 resolution may only be made on the second
7 legislative day after the calendar day on
8 which the Member making the motion an-
9 nounces his or her intention to do so.

10 (C) CONSIDERATION OF SECOND RESOLU-
11 TION NOT IN ORDER.—It shall not be in order
12 in either the House of Representatives or the
13 Senate to consider another joint resolution
14 under this subsection (other than a joint resolu-
15 tion received from the other House), if that
16 House has previously voted on a joint resolution
17 under this subsection with respect to the same
18 Presidential notification described in paragraph
19 (1).

20 (5) APPLICABLE DATE.—For purposes of this
21 subsection, the term “applicable date” means the
22 date on which the responsive measures described in
23 paragraph (1) are first scheduled to be applied by
24 the Shipbuilding Agreement Party.

25 (c) SNAPBACK IMPLEMENTATION BILLS.—

1 (1) IN GENERAL.—

2 (A) REPORTING BY COMMITTEES.—Not
3 later than 45 days after the date the President
4 notifies Congress under subsection (a)(4) of the
5 intent to withdraw from the Shipbuilding
6 Agreement or a joint resolution is introduced
7 under subsection (b), the Committee on Com-
8 merce, Science, and Transportation of the Sen-
9 ate or the Committee on National Security of
10 the House of Representatives may report an
11 original snapback implementing bill to their re-
12 spective Houses.

13 (B) SNAPBACK IMPLEMENTING BILL.—For
14 purposes of this section, the term “snapback
15 implementing bill” means a bill that—

16 (i) contains only provisions that—

17 (I) are necessary to reinstate the
18 requirements regarding ships built in
19 the United States that were amended
20 by section 5204 and would not other-
21 wise be reinstated pursuant to the
22 provisions of section 5301; and

23 (II) take effect on the date of the
24 withdrawal of the United States from
25 the Shipbuilding Agreement; and

1 (ii) is enacted pursuant to the proce-
2 dures described in this subsection and
3 meets the requirements described in para-
4 graph (3).

5 (2) EXPEDITED PROCEDURES.—

6 (A) IN GENERAL.—Subject to the provi-
7 sions of this subsection, the provisions of sub-
8 sections (d), (e), and (f) (1)(A)(ii), (1)(B), (2),
9 and (3) of section 152 of the Trade Act of 1974
10 (19 U.S.C. 2192 (d), (e), and (f) (1)(A)(ii),
11 (1)(B), (2), and (3)) apply to snapback imple-
12 menting bills under this subsection to the same
13 extent as such provisions apply to resolutions
14 under such section.

15 (B) TIME FOR FLOOR ACTION.—Except as
16 provided in subparagraph (C), if a snapback
17 implementing bill is reported by a committee re-
18 ferred to in paragraph (1), a vote on final pas-
19 sage of the bill described in paragraph (1) shall
20 be taken in each House on or before the 15th
21 day after the bill is reported by the committee
22 of that House.

23 (C) EXCEPTION.—In the case of with-
24 drawal based on a joint resolution described in
25 subsection (b), final passage of the bill de-

scribed in paragraph (1) shall not occur in a House until after the date that that House has adopted a joint resolution, but shall occur not later than the later of—

(i) 5 days after the date the joint resolution is adopted; or

(ii) the 15th day described in subparagraph (B).

(3) PRESIDENTIAL ACTION.—The requirements described in this paragraph are met—

(A) if a snapback implementing bill is enacted under paragraph (2) and Congress transmits the snapback implementing bill to the President not later than 5 days after the date described in paragraph (2)(B) or paragraph (2)(C), whichever is applicable; and

(B) if the President vetoes the snapback implementing bill, each House of Congress votes to override that veto on or before the last day of the 15-day period beginning on the date on which Congress receives the veto message from the President.

(d) SPECIAL RULES.—

(1) COMPUTATION OF TIME PERIODS.—The 90-day period in subsection (b)(3)(A) (i) and (ii), the

1 45-day period in subsection (b)(4)(B)(iii) and sub-
 2 section (c)(1)(A), the 15-day period in subsection
 3 (b)(3)(A)(ii) and subsection (c) (2)(B) and (3)(B),
 4 and the 5-day periods described in subsection
 5 (c)(2)(C) and (c)(3)(A), shall be computed by ex-
 6 cluding—

7 (A) the days on which either House is not
 8 in session because of an adjournment of more
 9 than 3 days to a day certain or an adjournment
 10 of the Congress sine die, and

11 (B) any Saturday and Sunday, not ex-
 12 cluded under subparagraph (A), when either
 13 House is not in session.

14 (2) RULES OF HOUSE OF REPRESENTATIVES
 15 AND SENATE.—Subsections (b) and (c) are enacted
 16 by Congress—

17 (A) as an exercise of the rulemaking power
 18 of the House of Representatives and the Sen-
 19 ate, respectively, and such procedures supersede
 20 other rules only to the extent that such proce-
 21 dures are inconsistent with such other rules;
 22 and

23 (B) with the full recognition of the con-
 24 stitutional right of either House to change the
 25 rules (so far as relating to the procedures of

1 that House) at any time, in the same manner,
2 and to the same extent as any other rule of that
3 House.

4 **SEC. 5209. EXPANDING MEMBERSHIP IN THE SHIPBUILD-**
5 **ING AGREEMENT.**

6 (a) MONITORING.—The United States Trade Rep-
7 resentative shall monitor the impact of the policies and
8 practices pursued by countries that are not Shipbuilding
9 Agreement Parties, and shall seek the prompt accession
10 to the Shipbuilding Agreement of countries that have sig-
11 nificant commercial shipbuilding and repair industries, in-
12 cluding, but not limited to, Australia, Brazil, India, the
13 People’s Republic of China, Poland, Romania, the Russian
14 Federation, Singapore, and Ukraine.

15 (b) REPORT.—The United States Trade Representa-
16 tive shall report to Congress annually on the results of
17 efforts to expand the membership of the Shipbuilding
18 Agreement. If it is determined that the continuing failure
19 of a country to adopt the disciplines of the Shipbuilding
20 Agreement is undermining the effectiveness of the Ship-
21 building Agreement and placing United States shipyards
22 at a competitive disadvantage, the United States Trade
23 Representative shall take vigorous action to redress the
24 situation by—

- 1 (1) using mechanisms available under United
- 2 States trade laws,
- 3 (2) seeking consultations with the country in-
- 4 volved, and
- 5 (3) initiating dispute settlement under applica-
- 6 ble international agreements.

7 The United States Trade Representative may also take ac-

8 tion with other Shipbuilding Agreement Parties.

9 **SEC. 5210. PROTECTION OF UNITED STATES SECURITY IN-**

10 **TERESTS.**

11 Nothing in the Shipbuilding Agreement shall be con-

12 strued to prevent the United States from taking any ac-

13 tion which the United States considers necessary for the

14 protection of the essential security interests of the United

15 States, including invoking its sovereign authority to de-

16 fine, for purposes of exclusion from coverage under the

17 Shipbuilding Agreement and from any dispute or chal-

18 lenge based on Annex I to the Shipbuilding Agreement,

19 “military vessel”, “military reserve vessel”, and “essential

20 security interest”, on a case-by-case basis, as determined

21 by the Secretary of Defense.

22 **SEC. 5211. DEFINITIONS.**

23 In this title:

- 24 (1) **APPROPRIATE COMMITTEES.**—The term
- 25 “appropriate committees” means the Committees on

1 Finance and Commerce, Science, and Transpor-
 2 tation of the Senate, and the Committees on Ways
 3 and Means and National Security of the House of
 4 Representatives.

5 (2) SHIPBUILDING AGREEMENT, ETC.—The
 6 terms “Shipbuilding Agreement”, “Shipbuilding
 7 Agreement Party”, “Shipbuilding Agreement ves-
 8 sels”, and “Export Credit Understanding” have the
 9 meanings given those terms in subsections (h), (i),
 10 (j), and (k), respectively, of section 905 of the Mer-
 11 chant Marine Act, 1936, as added by section
 12 5204(7) of this Act.

13 (3) GATT 1994.—The term “GATT 1994” has
 14 the meaning given that term in section 2 of the Uru-
 15 guay Round Agreements Act (19 U.S.C. 3501).

16 (4) MILITARY VESSEL.—The term “military
 17 vessel” means a vessel that, according to its basic
 18 structural characteristics and ability, is intended to
 19 be used exclusively for military purposes.

20 **Subtitle C—Effective Date**

21 **SEC. 5301. EFFECTIVE DATE.**

22 (a) IN GENERAL.—Except as otherwise provided in
 23 this title, this title and the amendments made by this title
 24 take effect on the date that the Shipbuilding Agreement
 25 enters into force with respect to the United States.

1 (b) TERMINATION OF TITLE AND AMENDMENTS.—

2 (1) IN GENERAL.—This title and the amend-
3 ments made by this title shall cease to be effective
4 on the date the withdrawal of the United States
5 from the Shipbuilding Agreement becomes effective.

6 (2) TREATMENT OF PRIVATELY-OWNED UNITED
7 STATES-FLAG VESSEL.—Notwithstanding the provi-
8 sions of paragraph (1), any vessel deemed to be a
9 privately-owned United States-flag vessel for the
10 purposes of sections 901(b)(1) and 901b of the Mer-
11 chant Marine Act, 1936 (46 U.S.C. App. 1241(b)(1)
12 and 1241f) on the date the withdrawal of the United
13 States from the Shipbuilding Agreement becomes ef-
14 fective shall continue to be deemed a privately-owned
15 United States-flag vessel for the purposes of sections
16 901(b)(1) and 901b of the Merchant Marine Act,
17 1936 (46 U.S.C. App. 1241(b)(1) and 1241f) after
18 the date of withdrawal of the United States from the
19 Shipbuilding Agreement.

20 **TITLE VI—MISCELLANEOUS**
21 **TRADE AND TARIFF PROVISIONS**
22 **Subtitle A—Extension of Normal**
23 **Trade Relations to Mongolia**

24 **SEC. 6001. CONGRESSIONAL FINDINGS.**

25 Congress makes the following findings:

1 (1) Mongolia has received normal trade rela-
2 tions treatment since 1991 and has been found to be
3 in full compliance with the freedom of emigration re-
4 quirements under title IV of the Trade Act of 1974.

5 (2) Mongolia has, since ending its nearly 70
6 years of dependence on the former Soviet Union,
7 made remarkable progress in establishing a demo-
8 cratic political system and creating a free-market
9 economic system.

10 (3) In 1996 Mongolia held its third election
11 under its new constitution, resulting in a parliamen-
12 tary majority for the coalition of democratic opposi-
13 tion parties and a peaceable transfer of power to the
14 new government.

15 (4) Mongolia has concluded a bilateral trade
16 treaty with the United States in 1991, and a bilat-
17 eral investment treaty in 1994.

18 (5) Mongolia has acceded to the Agreement Es-
19 tablishing the World Trade Organization.

20 (6) Mongolia has demonstrated a strong desire
21 to build a friendly and cooperative relationship with
22 the United States on trade matters.

23 (7) The extension of unconditional normal trade
24 relations treatment to the products of Mongolia
25 would enable the United States to avail itself of all

1 rights under the World Trade Organization with re-
2 spect to Mongolia.

3 **SEC. 6002. TERMINATION OF APPLICATION OF TITLE IV OF**
4 **THE TRADE ACT OF 1974 TO MONGOLIA.**

5 (a) PRESIDENTIAL DETERMINATIONS AND EXTEN-
6 SIONS OF NORMAL TRADE RELATIONS TREATMENT.—

7 Notwithstanding any provision of title IV of the Trade Act
8 of 1974 (19 U.S.C. 2431 et seq.), the President may—

9 (1) determine that such title should no longer
10 apply to Mongolia; and

11 (2) after making a determination under para-
12 graph (1) with respect to Mongolia, proclaim the ex-
13 tension of normal trade relations treatment to the
14 products of that country.

15 (b) TERMINATION OF APPLICATION OF TITLE IV.—

16 On or after the effective date of the extension under sub-
17 section (a)(2) of nondiscriminatory treatment (normal
18 trade relations treatment) to the products of Mongolia,
19 title IV of the Trade Act of 1974 shall cease to apply to
20 that country.

1 **Subtitle B—Miscellaneous Tariff**

2 **Provisions**

3 **SEC. 6101. DUTY TREATMENT OF CERTAIN FABRICS.**

4 (a) IN GENERAL.—Subchapter II of chapter 99 of
 5 the Harmonized Tariff Schedule of the United States is
 6 amended—

7 (1) by adding at the end of the U.S. notes the
 8 following new note:

9 “13. For purposes of headings 9902.51.11 and
 10 9902.51.12, the term ‘suit’ has the same meaning such
 11 term has for purposes of headings 6203 and 6204.”; and

12 (2) by inserting in numerical sequence the fol-
 13 lowing new headings:

“	9902.51.11	Fabrics, of carded or combed wool or fine animal hair, all the foregoing certified by the importer as ‘Super 70’s’ or ‘Super 80’s’ intended for use in making suits, suit-type jackets or trousers (provided for in subheadings 5111.11.70, 5111.19.60, 5112.11.20, or 5112.19.90) ..	20.2%	No change	No change	On or before 12/31/2004	
	9902.51.12	Fabrics, of carded or combed wool or fine animal hair, all the foregoing certified by the importer as ‘Super 90’s’ or higher grade intended for use in making suits, suit-type jackets or trousers (provided for in subheadings 5111.11.70, 5111.19.60, 5112.11.20, or 5112.19.90) ..	Free	Free (CA,IL,MX)	No change	On or before 12/31/2004	”.

14 (b) STAGED RATE REDUCTION.—Any staged reduc-
 15 tion of a rate of duty set forth in heading 6203.31.00 of
 16 the Harmonized Tariff Schedule of the United States that
 17 is proclaimed by the President shall also apply to the cor-

1 responding rate of duty set forth in heading 9902.51.11
 2 of such Schedule (as added by subsection (a)).

3 (c) **EFFECTIVE DATE.**—The amendments made by
 4 subsection (a) apply with respect to goods entered, or
 5 withdrawn from warehouse for consumption, on or after
 6 October 1, 1998.

7 **SEC. 6102. TEMPORARY DUTY SUSPENSION FOR PERSONAL**
 8 **EFFECTS OF PARTICIPANTS IN CERTAIN**
 9 **WORLD ATHLETIC EVENTS.**

10 (a) **IN GENERAL.**—Subchapter II of chapter 99 of
 11 the Harmonized Tariff Schedule of the United States is
 12 amended by inserting in numerical sequence the following
 13 new heading:

“	9902.98.08	Any of the following articles not intended for sale or distribution to the public: personal effects of aliens who are participants in, officials of, or accredited members of delegations to, the 1999 International Special Olympics, the 1999 Women's World Cup Soccer, the 2001 International Special Olympics, the 2002 Salt Lake City Winter Olympics, and the 2002 Winter Paralympic Games, and of persons who are immediate family members of or servants to any of the foregoing persons; equipment and materials imported in connection with the foregoing events by or on behalf of the foregoing persons or the organizing committees of such events; articles to be used in exhibitions depicting the culture of a country participating in any such event; and, if consistent with the foregoing, such other articles as the Secretary of Treasury may allow	Free	No change	Free	On or before 1/1/2003	”.
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14 (b) **TAXES AND FEES NOT TO APPLY.**—The articles
 15 described in heading 9902.98.08 of the Harmonized Tariff

1 Schedule of the United States (as added by subsection (a))
 2 shall be free of taxes and fees which may be otherwise
 3 applicable.

4 (c) NO EXEMPTION FROM CUSTOMS INSPECTIONS.—
 5 The articles described in heading 9902.98.08 of the Har-
 6 monized Tariff Schedule of the United States (as added
 7 by subsection (a)) shall not be free or otherwise exempt
 8 or excluded from routine or other inspections as may be
 9 required by the Customs Service.

10 (d) EFFECTIVE DATE.—The amendment made by
 11 this section applies to articles entered, or withdrawn from
 12 warehouse, for consumption on or after October 1, 1998.

13 **SEC. 6103. EXTENSION OF UNITED STATES INSULAR POS-**
 14 **SESSION PROGRAM.**

15 (a) IN GENERAL.—The additional U.S. notes to
 16 chapter 71 of the Harmonized Tariff Schedule of the
 17 United States are amended by adding at the end the fol-
 18 lowing new note:

19 “3.(a) Notwithstanding any provision in additional
 20 U.S. note 5 to chapter 91, any article of jewelry provided
 21 for in heading 7113 which is the product of the Virgin
 22 Islands, Guam, or American Samoa (including any such
 23 article which contains any foreign component) shall be eli-
 24 gible for the benefits provided in paragraph (h) of addi-
 25 tional U.S. note 5 to chapter 91, subject to the provisions

1 and limitations of that note and of paragraphs (b), (c),
2 and (d) of this note.

3 “(b) Nothing in this note shall result in an increase
4 or a decrease in the aggregate amount referred to in para-
5 graph (h)(iii) of, or the quantitative limitation otherwise
6 established pursuant to the requirements of, additional
7 U.S. note 5 to chapter 91.

8 “(c) Nothing in this note shall be construed to permit
9 a reduction in the amount available to watch producers
10 under paragraph (h)(iv) of additional U.S. note 5 to chap-
11 ter 91.

12 “(d) The Secretary of Commerce and the Secretary
13 of the Interior shall issue such regulations, not inconsis-
14 ent with the provisions of this note and additional U.S.
15 note 5 to chapter 91, as the Secretaries determine nec-
16 essary to carry out their respective duties under this note.
17 Such regulations shall not be inconsistent with substantial
18 transformation requirements established by the United
19 States Customs Service but may define the circumstances
20 under which articles of jewelry shall be deemed to be
21 ‘units’ for purposes of the benefits, provisions, and limita-
22 tions of additional U.S. note 5 to chapter 91.”.

23 (b) EFFECTIVE DATE.—The amendment made by
24 this section takes effect October 1, 1998.

1 **SEC. 6104. GUM ARABIC.**

2 Notwithstanding any other provision of law, Execu-
3 tive Order 13067 shall not apply to the importation into
4 the United States on or before December 31, 2002, of any
5 article of Sudanese origin that is described in subheading
6 1301.20.00 or 1301.90.90 of the Harmonized Tariff
7 Schedule of the United States.

8 **SEC. 6105. MOBILE OFFSHORE DRILLING UNITS.**

9 Section 313 of the Tariff Act of 1930 (19 U.S.C.
10 1313) is amended by adding at the end the following new
11 subsection:

12 “(x) MOBILE OFFSHORE DRILLING UNITS.—The
13 provisions of this section shall apply to materials imported
14 and used in the construction and equipment of a mobile
15 offshore drilling unit operated outside the exclusive eco-
16 nomic zone of the United States for the unit’s useful life,
17 notwithstanding that such unit may not within the strict
18 meaning of the term be an article exported. Nothing in
19 this subsection shall be construed to modify customs entry
20 procedures or any antidumping or countervailing duty im-
21 posed under title VII with respect to imported materials
22 used in the construction of a unit.”.

TITLE VII—REVENUE PROVISIONS

SEC. 7001. CAPITAL CONSTRUCTION FUND CONFORMING AMENDMENT.

(a) IN GENERAL.—Section 7518(i) of the Internal Revenue Code of 1986 is amended by inserting before the end period the following: “, except that in the case of the terms ‘eligible vessel’ and ‘qualified vessel’, the amendments to such section by the OECD Shipbuilding Trade Agreement Act shall be taken into account”.

(b) EFFECTIVE DATE.—

(1) GENERAL RULE.—The amendment made by this section takes effect on the date that the Shipbuilding Agreement enters into force with respect to the United States.

(2) SHIPBUILDING AGREEMENT.—For purposes of this subsection, the term “Shipbuilding Agreement” means the Agreement Respecting Normal Competitive Conditions in the Commercial Shipbuilding and Repair Industry, which resulted from negotiations under the auspices of the Organization for Economic Cooperation and Development, and was entered into on December 21, 1994.

1 **SEC. 7002. MODIFICATION TO FOREIGN TAX CREDIT**

2 **CARRYBACK AND CARRYOVER PERIODS.**

3 (a) IN GENERAL.—Section 904(c) of the Internal
4 Revenue Code of 1986 (relating to limitation on credit)
5 is amended—

6 (1) by striking “in the second preceding taxable
7 year,”, and

8 (2) by striking “or fifth” and inserting “fifth,
9 sixth, or seventh”.

10 (b) EFFECTIVE DATE.—The amendments made by
11 subsection (a) apply to credits arising in taxable years be-
12 ginning after December 31, 1998.