Government of the Commonwealth of the Phillipines and the Philippine Scouts to have been active service for purposes of benefits under programs administered by the Secretary of Veterans Affairs; to the Committee on Veterans Affairs.

THE FILIPINO VETERANS EQUITY ACT OF 1997

Mr. INOUYE. Mr. President, I rise to introduce legislation which amends title 38, United States Code, to restore full veterans' benefits, by reason of service to certain organized military forces of the Philippine Commonwealth Army and the Philippine Scouts.

On July 26, 1942, President Roosevelt issued a military order that called members of the Philippine Commonwealth Army into the service of the U.S. Forces of the Far East. Under the command of Gen. Douglas MacArthur, our Filipino allies joined American soldiers in fighting some of the most fiercest battles of World War II.

From the onset of the war through February 18, 1946, Filipinos who were called into service under President Roosevelt's order were entitled to full veterans' benefits by reason of their active service in our Armed Forces. Unfortunately, on February 18, 1946, the Congress enacted the Rescission Act of 1946 (now codified as section 107, title 38, United States Code), which states that service performed by these Filipino veterans is not deemed as active service for purposes of any law of the United States conferring rights, privileges, or benefits. On May 27, 1946, the Congress extended the limitation on benefits to the new Philippine Scouts units.

Interestingly enough, section 107 denied Filipino veterans access to health care, particularly for nonservice connected disability, and denied them other benefits such as pensions and home loan guarantees. Additionally, section 107 limited the benefits received for service-connected disabilities and death compensation to 50 percent of what was received by their American counterparts.

As a result, Filipino veterans sued to obtain relief from this discriminatory treatment. The U.S. District Court for the District of Columbia, on May 12, 1989, in Quiban versus U.S. Veterans Administration, declared section 107 unconstitutional. However, the U.S. Court of Appeals for the District of Columbia reversed that ruling and the veterans did not file a petition for certiorari to the U.S. Supreme Court. Thus, the Congress is the only hope for rectifying this injustice.

For many years, Filipino veterans of World War II have sought to correct this injustice by seeking equal treatment for their valiant military service in our Armed Forces. We must not ignore the recognition they duly deserve as U.S. veterans. Accordingly, I urge my colleagues to support this measure which would restore full veterans' benefits, by reason of service, to our Filipino allies of World War II.

Mr. President, I ask unanimous consent that the text of my bill be placed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 623

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Filipino Veterans Equity Act of 1997''.

SEC. 2. CERTAIN SERVICE IN THE ORGANIZED MILITARY FORCES OF THE PHILIPPINES AND THE PHILIPPINE SCOUTS DEEMED TO BE ACTIVE SERVICE.

(a) IN GENERAL.—Section 107 of title 38, United States Code, is amended—

(1) in subsection (a)—

(A) by striking out ''not'' after ''Army of the United States, shall''; and

(B) by striking out '', except benefits under—'' and all that follows and inserting in lieu thereof a period; and

(2) in subsection (b)—

(A) by striking out ''not'' after ''Armed Forces Voluntary Recruitment Act of 1945 shall''; and

(B) by striking out ''except—'' and all that follows and inserting in lieu thereof a period.

(b) CONFORMING AMENDMENTS.—(1) The heading of such section is amended to read as follows:

§107. Certain service deemed to be active service: service in organized military forces of the Philippines and in the Philippine Scouts".

(2) The item relating to such section in the table of sections at the beginning of chapter 1 of such title is amended to read as follows: ''107. Certain service deemed to be active service: service in organized military forces of the Philippines and in the Philippine Scouts.''.

SEC. 3. EFFECTIVE DATE.

(a) IN GENERAL.—The amendments made by this Act shall take effect on the date of enactment of this Act.

(b) APPLICABILITY.—No benefits shall accrue to any person for any period before the effective date of this Act by reason of the amendments made by this Act.

By Mr. BUMPERS:

S. 624. A bill to establish a competitive process for the awarding of concession contracts in units of the National Park System, and for other purposes; to the Committee on Energy and Natural Resources.

THE NATIONAL PARK SERVICE CONCESSION POLICY REFORM ACT OF 1997

Mr. BUMPERS. Mr. President, as a part of the Earth Day celebration, I am, once again, introducing legislation to reform the concessions policies of the National Park Service. This bill is very similar to a bill I sponsored in the 103d Congress—listen to this—which passed the Senate 90 to 9 and passed the House 386 to 30, but it is not yet law. It repeals the 1965 Concessions Policy Act which has been over a 30-year-old outrage.

My legislation would establish an open competitive process for awarding concessions contracts in units of the National Park System. It will be a competitive process for the first time. These contracts are very lucrative the way they are let under the 1965 act, and the American people are getting shafted and have been for a very long time.

Instead of putting the money that we get today back into the Treasury for general purposes, under my bill, the money we get from the contracts will go to a special account for the use of the National Park Service, and Lord only knows every study shows they need it.

This will be the 18th year that I have worked to reform the concession policies of this country. The very first oversight hearing I ever held upon becoming chairman of the Parks Subcommittee in 1979 was on this very issue. One has to have a lot of patience to operate around here.

Since that time, there has been no telling how many reports, hearings, markups, floor debates there have been. Everybody agrees the existing law ought to be changed, but in 18 years, with the most diligent efforts I can put into it, it has not been changed, simply because the park concessioners have more clout with some Members of the Senate than have I. They have more clout than the American people have with the U.S. Senate.

Mr. President, let me just tell you what has been happening.

In 1995—that is the latest year for which we have complete information on these concession contracts—in 1995, the United States received just under $16 million in franchise fees on gross concession revenues of $676 million, a whopping 2.4-percent return.

These contracts are almost handed down from generation to generation. They probably put them in their will and give them to their first-born son. It is almost impossible to undo one. But the U.S. taxpayer had a 2.4 percent return on $676 million of national park concessions fees last year.

In all fairness, let me add this. Under the existing law, a concessioner can also make improvements in the parks in consultation and agreement with the National Park Service. He can make improvements, he might even build a new hotel—all kinds of things like that—and he is entitled then to take that into consideration as a part of his fee. But even when you add that in, even when you add in the amount that concessioners spend to improve the park, which, incidentally, is to their benefit because it invariably increases revenues, that increases the amount we received to $40 million on $676 million, still only a 5.9-percent return.

You can invest in a T-bill and do as well, but this is our land, our property, the reason tourists go there and spend their money, because it is a park that Congress, in its infinite wisdom, established. Any property owner in the United States should ask yourself this question: Would you lease your property out for that kind of return when it was producing that kind of revenue for the lessee? You would not even consider it.

A 5.9-percent return we are getting now is better than we have received in the past, but listen to this, just to show you how ridiculous the current policy is. You will recall that Matsushita bought MCA, which owned the Yosemite Park and Curry Co., the concessioner at Yosemite. So Matsushita, when they bought this company, inherited the concessions contract at Yosemite, which produces the most concessions revenue of any park in the United States.

This will show what happens when you have competition. The people in this place, incidentally, are supposed to believe in capitalism. They believe in competition. They believe if you leave it to the marketplace, everything will work out just hunky-dory, except, it seems, for mining and concessions.

So, here was a contract that Matsushita gave up, and whoever got the new contract was going to have to pay off a $62 million note.

What happened in this contract, Matsushita gave up the contract, the National Park Foundation took it for 1 day just for transition purposes, and then Delaware North bid and was awarded the new contract, the first time, I believe, in the history of the National Park Service, since the old law, that a contract had been let competitively.

Would you like to know what happened? The year before this contract was let, the taxpayers got a return from the Yosemite concessions operations of three-quarters of 1 percent. And the first year—the first year—Delaware North had it under the new, actually competitively let contract; on over $80 million of gross revenues, the taxpayers received about a 16-percent return.

Why, Mr. President, do we continue to beat this dog about how important it is to rebuild these facilities in the parks and give a concessioner credit for it and all that?

My bill eliminates the anticompetitive measures of the 1965 act, but it also recognizes that all concessions are not the same.

People come to me and say, ''How about the small operators? They're struggling to make ends meet.'' Under my bill small family operations grossing less than $500,000 a year would retain a preference to renew their contracts—so would outfitters and guide operators. Even though they are not a major share of the revenue, we probably exempt 80 to 90 percent of the concession operations because most of them are admittedly rather small. But my bill ensures that there will be open competition for the large contracts which generate over 90 percent of the total concessions revenue.

As I have already pointed out, the revenues that we get under this bill will go straight into a special account to be used by the National Park Service, similar to the entrance fee legislation just enacted last Congress.

Mr. President, one of the major changes that is made in this bill is the elimination of what is known as possessory interest. And here is the way it has been working. A concessioner goes to the National Park Service—this is just a hypothetical case—and says, ''We want to build a hotel for $10 million.'' They work out the deal and the Park Service approves it.

What happens at that point is, they start depreciating that hotel. Any businessman does that, of course. So the concessioner starts depreciating this $10 million hotel over a 30- or 40-year period, whatever the IRS requires—let us assume it is a 40-year depreciation—and at the end of 20 years he has depreciated $5 million and has $5 million left to recover.

Under existing law, he is entitled to receive whatever he can get for that hotel. If he surrenders the contract, or is kicked out, or for any other reason, loses his contract, he can receive literally the fair market value of the hotel, which may very well be $15 million. He only paid $10 million, he has a tax deduction of $5 million, and he can turn right around and sell it for $15 million and make that an obligation of the next concessioner.

How much nonsense can you put in one law? You think about that. Now, you talk about a bird's nest on the ground, that is possessory interest.

Mr. President, there is one other provision in the old law that is equally as egregious. And that is the preferential right an incumbent concessioner gets to renew his contract. Another hypothetical case—you have a 15-year contract, we will say, in Yellowstone National Park. At the end of the 15 years, the Park Service will put out a notice to anybody who might be interested to let them know if they would like to bid on the concessions operation at Yellowstone.

So let us assume that I would kind of like to have the Yellowstone contract, so I go to the Park Service and say, ''I would like to bid on this.'' And the Park Service says, ''That's just jakey. You go ahead and bid. Tell us what you would give us for it.'' But let me tell you something, whatever you bid, the guy who has the contract now is entitled meet your bid, and if so, he gets it.

You tell me, why would I spend a half-million dollars or whatever it takes preparing a bid on something as significant as the concessions in Yelowstone National Park, knowing that the person who has that contract now need only meet my bid?

He may have paid a 2-percent return to the Federal Government last year. I may be willing to pay 10 percent. And the incumbent concessioner knows what the contract is worth. So he comes in and says, ''Well, I'll give you 10 percent, too.'' So I ask you, if you are a businessman, who in his right mind is going to go out there and spend a lot of money preparing a bid, knowing that the person who has the contract right now only need match your bid?

I hear a lot of talk on the floor of the Senate about good old capitalism and good old competition and how it solves all problems. This is the most egregious policy I can imagine and yet it has been going on for years and years.

But if we pass this bill it will not go on any more.

Mr. President, we have made some progress through the efforts of the administration. However, they have gone about as far as they can go just doing things by regulation. They cannot do very much more. But I give a lot of credit to Bruce Babbitt and President Clinton for at least trying to bring some equity into this without changing the law.

But you know, we have a lot of Senators here who have good friends who had the concession contract on some park in their State for 40 years, and they just cannot see fit to change the law.

You know, the other night I was watching some show on NBC about mining and how egregious our mining policies are. I have worked on that for about 8 years. And I think this year may finally be the year because it is getting to be a kind of a political hot potato for people who are not from mining States to continue to allow that kind of ripoff, rape, and pillage of the taxpayers. But I can tell you it is not a bit worse than this concessions policy we have had for all these years.

Mr. President, I ask unanimous consent that the full text of the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

S. 624

Be it enacted in the Senate and the House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''National Park Service Concession Policy Reform Act of 1997''.

SEC. 2. FINDINGS AND POLICY.

(a) FINDINGS.—In furtherance of the Act of August 25, 1916 (39 Stat. 535), as amended (16 U.S.C. 1, 2–4), which directs the Secretary of the Interior to administer areas of the National Park System in accordance with the fundamental purpose of preserving their scenery, wildlife, natural and historic objects, and providing for their enjoyment in a manner that will leave them unimpaired for the enjoyment of future generations, the Congress finds that the preservation and conservation of park resources and values requires that such public accommodations, facilities, and services as the Secretary determines are necessary and appropriate in accordance with this Act—

(1) should be provided only under carefully controlled safeguards against unregulated and indiscriminate use so that visitation will not unduly impair these values; and

(2) should be limited to locations and designs consistent to the highest practicable degree with the preservation and conservation of park resources and values.

(b) POLICY.—It is the policy of the Congress that—

(1) development on Federal lands within a park shall be limited to those facilities and services that the Secretary determines are necessary and appropriate for public use and enjoyment of the park in which such facilities and services are located;

(2) development of such facilities and services within a park should be consistent to

the highest practicable degree with the preservation and conservation of the park's resources and values;

(3) such facilities and services should be provided by private persons, corporations, or other entities, except when no qualified private interest is willing to provide such facilities and services;

(4) if the Secretary determines that development should be provided within a park, such development shall be designed, located, and operated in a manner that is consistent with the purposes for which such park was established;

(5) the right to provide such services and to develop or utilize such facilities should be awarded to the person, corporation, or entity submitting the best proposal through a competitive selection process; and

(6) such facilities or services should be provided to the public at reasonable rates.

SEC. 3. DEFINITIONS.

As used in this Act, the term—

(1) ''concessioner'' means a person, corporation, or other entity to whom a concession contract has been awarded;

(2) ''concession contract'' means a contract or permit (but not a commercial use authorization issued pursuant to section 6) to provide facilities or services, or both, at a park;

(3) ''facilities'' means improvements to real property within parks used to provide accommodations, facilities, or services to park visitors;

(4) ''park'' means a unit of the National Park System;

(5) ''proposal'' means the complete proposal for a concession contract offered by a potential or existing concessioner in response to the minimum requirements for the contract established by the Secretary; and

(6) ''Secretary'' means the Secretary of the Interior.

SEC. 4. REPEAL OF CONCESSION POLICY ACT OF 1965.

(a) REPEAL.—The Act of October 9, 1965, Public Law 89–249 (79 Stat. 969, 16 U.S.C. 20–20g), entitled ''An Act relating to the establishment of concession policies administered in the areas administered by the National Park Service and for other purposes'', is hereby repealed. The repeal of such Act shall not affect the validity of any contract entered into under such Act, but the provisions of this Act shall apply to any such contract except to the extent such provisions are inconsistent with the express terms and conditions of the contract.

(b) CONFORMING AMENDMENT.—The fourth sentence of section 3 of the Act of August 25, 1916 (16 U.S.C. 3; 39 Stat. 535) is amended by striking all through ''no natural'' and inserting in lieu thereof, ''No natural''.

SEC. 5. CONCESSION POLICY.

Subject to the findings and policy stated in section 2, and upon a determination by the Secretary that facilities or services are necessary and appropriate for the accommodation of visitors at a park, the Secretary shall, consistent with the provisions of this Act, laws relating generally to the administration and management of units of the National Park System, and the park's general management plan, concession plan, and other applicable plans, authorize private persons, corporations, or other entities to provide and operate such facilities or services as the Secretary deems necessary and appropriate.

SEC. 6. COMMERCIAL USE AUTHORIZATIONS

(a) IN GENERAL.—To the extent specified in this section, the Secretary, upon request, may authorize a private person, corporation, or other entity to provide services to park visitors through a commercial use authorization.

(b) CRITERIA FOR ISSUANCE OF AUTHORIZATION.—(1) The authority of this section may be used only to authorize provision of services that the Secretary determines will have minimal impact on park resources and values and which are consistent with the purposes for which the park was established and with all applicable management plans for such park.

(2) The Secretary—

(A) shall require payment of a reasonable fee for issuance of an authorization under this section, such fees to remain available without further appropriation to be used, at a minimum, to recover associated management and administration costs;

(B) shall require that the provision of services under such an authorization be accomplished in a manner consistent to the highest practicable degree with the preservation and conservation of park resources and values;

(C) shall take appropriate steps to limit the liability of the United States arising from the provision of services under such an authorization; and

(D) shall have no authority under this section to issue more authorizations than are consistent with the preservation and proper management of park resources and values, and shall establish such other conditions for issuance of such an authorization as the Secretary determines appropriate for the protection of visitors, provision of adequate and appropriate visitor services, and protection and proper management of the resources and values of the park.

(c) LIMITATIONS.—Any authorization issued under this section shall be limited to—

(1) commercial operations with annual gross revenues of not more than $25,000 resulting from services originating and provided solely within a park pursuant to such authorization; or

(2) the incidental use of park resources by commercial operations which provide services originating outside of the park's boundaries: *Provided*, That such authorization shall not provide for the construction of any structure, fixture, or improvement on Federal lands within the park.

(d) DURATION.—The term of any authorization issued under this section shall not exceed two years.

(e) OTHER CONTRACTS.—A person, corporation, or other entity seeking or obtaining an authorization pursuant to this section shall not be precluded from also submitting proposals for concession contracts.

SEC. 7. COMPETITIVE SELECTION PROCESS.

(a) IN GENERAL.—(1) Except as provided in subsection (b), and consistent with the provisions of subsection (g), any concession contract entered into pursuant to this Act shall be awarded to the person, corporation, or other entity submitting the best proposal as determined by the Secretary, through a competitive selection process, as provided in this section.

(2)(A) As soon as practicable after the date of enactment of this Act, the Secretary shall promulgate appropriate regulations establishing the competitive selection process.

(B) The regulations shall include provisions for establishing a procedure for the resolution of disputes between the Secretary and a concessioner in those instances where the Secretary has been unable to meet conditions or requirements or provide such services, if any, as set forth in a prospectus pursuant to sections 7(c)(2) (D) and (E).

(b) TEMPORARY CONTRACT.—Notwithstanding the provisions of subsection (a), the Secretary may award a temporary concession contract in order to avoid interruption of services to the public at a park, except that prior to making such a determination, the Secretary shall take all reasonable and appropriate steps to consider alternatives to avoid such an interruption.

(c) PROSPECTUS.—(1)(A) Prior to soliciting proposals for a concession contract at a park, the Secretary shall prepare a prospectus soliciting proposals, and shall publish a notice of its availability at least once in local or national newspapers or trade publications, as appropriate, and shall make such prospectus available upon request to all interested parties.

(B) A prospectus shall assign a weight to each factor identified therein related to the importance of such factor in the selection process. Points shall be awarded for each such factor, based on the relative strength of the proposal concerning that factor.

(2) The prospectus shall include, but need not be limited to, the following information—

(A) the minimum requirements for such contract, as set forth in subsection (d);

(B) the terms and conditions of the existing concession contract awarded for such park, if any, including all fees and other forms of compensation provided to the United States by the concessioner;

(C) other authorized facilities or services which may be provided in a proposal;

(D) facilities and services to be provided by the Secretary to the concessioner, if any, including but not limited to, public access, utilities, and buildings;

(E) minimum public services to be offered within a park by the Secretary, including but not limited to, interpretive programs, campsites, and visitor centers; and

(F) such other information related to the proposed concession operation as is provided to the Secretary pursuant to a concession contract or is otherwise available to the Secretary, as the Secretary determines is necessary to allow for the submission of competitive proposals.

(d) MINIMUM PROPOSAL REQUIREMENTS.—(1) No proposal shall be considered which fails to meet the minimum requirements as determined by the Secretary. Such minimum requirements shall include, but need not be limited to—

(A) the minimum acceptable franchise fee;

(B) any facilities, services, or capital investment required to be provided by the concessioner; and

(C) measures necessary to ensure the protection and preservation of park resources.

(2) The Secretary shall reject any proposal, notwithstanding the franchise fee offered, if the Secretary determines that the person, corporation, or entity is not qualified, is likely to provide unsatisfactory service, or that the proposal is not responsive to the objectives of protecting and preserving park resources and of providing necessary and appropriate facilities or services to the public at reasonable rates.

(3) If all proposals submitted to the Secretary either fail to meet the minimum requirements or are rejected by the Secretary, the Secretary shall establish new minimum contract requirements and re-initiate the competitive selection process pursuant to this section.

(e) SELECTION OF BEST PROPOSAL.—(1) In selecting the best proposal, the Secretary shall consider the following principal factors:

(A) the responsiveness of the proposal to the objectives of protecting and preserving park resources and of providing necessary and appropriate facilities and services to the public at reasonable rates;

(B) the experience and related background of the person, corporation, or entity submitting the proposal, including but not limited to, the past performance and expertise of such person, corporation, or entity in providing the same or similar facilities or services;

(C) the financial capability of the person, corporation, or entity submitting the proposal; and

(D) the proposed franchise fee: *Provided*, That consideration of revenue to the United States shall be subordinate to the objectives of protecting and preserving park resources and of providing necessary and appropriate facilities or services to the public at reasonable rates.

(2) The Secretary may also consider such secondary factors as the Secretary deems appropriate.

(3) In developing regulations to implement this Act, the Secretary shall consider the extent to which plans for employment of Indians (including Native Alaskans) and involvement of businesses owned by Indians, Indian tribes, or Native Alaskans in the operation of concession contracts should be identified as a factor in the selection of a best proposal under this section.

(f) CONGRESSIONAL NOTIFICATION.—(1) The Secretary shall submit any proposed concession contract with anticipated annual gross receipts in excess of $5,000,000 or a duration of ten or more years to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Resources of the United States House of Representatives.

(2) The Secretary shall not award any such proposed contract until at least 60 days subsequent to the notification of both Committees.

(g) NO PREFERENTIAL RIGHT OF RENEWAL.—(1) Except as provided in paragraph (2), the Secretary shall not grant a preferential right to a concessioner to renew a concession contract entered into pursuant to this Act.

(2) The Secretary shall grant a preferential right of renewal with respect to a concession contract covered by subsections (h) and (i), subject to the requirements of the appropriate subsection.

(A) As used in this subsection, and subsections (h) and (i), the term ''preferential right of renewal'' means that the Secretary shall allow a concessioner satisfying the requirements of this subsection (and subsections (h) or (i), as appropriate) the opportunity to match the terms and conditions of any competing proposal which the Secretary determines to be the best proposal.

(B) A concessioner who exercises a preferential right of renewal in accordance with the requirements of this paragraph shall be entitled to award of the new concession contract with respect to which such right is exercised.

(h) OUTFITTING AND GUIDE CONTRACTS.—(1) The provisions of paragraph (g)(2) shall apply only—

(A) to a concession contract—

(i) which solely authorizes a concessioner to provide outfitting, guide, river running, or other substantially similar services within a park; and

(ii) which does not grant such concessioner any interest in any structure, fixture, or improvement pursuant to section 12; and

(B) where the Secretary determines that the concessioner has operated satisfactorily during the term of the contract (including any extensions thereof); and

(C) where the Secretary determines that the concessioner has submitted a responsive proposal for a new contract which satisfies the minimum requirements established by the Secretary pursuant to section 7.

(2) With respect to a concession contract (or extension thereof) covered by this subsection which is in effect on the date of enactment of this Act, the provisions of this paragraph shall apply if the holder of such contract, under the laws and policies in effect on the day before the date of enactment of this Act, would have been entitled to a preferential right to renew such contract upon its expiration.

(i) CONTRACTS WITH ANNUAL GROSS RECEIPTS UNDER $500,000.—(1) The provisions of paragraph (g)(2) shall also apply to a concession contract—

(A) which the Secretary estimates will result in annual gross receipts of less than $500,000;

(B) where the Secretary has determined that the concessioner has operated satisfactorily during the term of the contract (including any extensions thereof); and

(C) that the concessioner has submitted a responsive proposal for a new concession contract which satisfies the minimum requirements established by the Secretary pursuant to section 7.

(2) The provisions of this subsection shall not apply to a concession contract which solely authorizes a concessioner to provide outfitting, guide, river running, or other substantially similar services within a park pursuant to subsection (h).

(j) NO PREFERENTIAL RIGHT TO ADDITIONAL SERVICES.—The Secretary shall not grant a preferential right to a concessioner to provide new or additional services at a park.

SEC. 8. FRANCHISE FEES.

(a) IN GENERAL.—Franchise fees shall not be less than the minimum fee established by the Secretary of each contract. The minimum fee shall be determined in a manner that will provide the concessioner with a reasonable opportunity to realize a profit on the operation as a whole, commensurate with the capital invested and the obligations assumed under the contract.

(b) MULTIPLE CONTRACTS WITHIN A PARK.—If multiple concession contracts are awarded to authorize concessioners to provide the same or similar outfitting, guide, river running, or other similar services at the same approximate location or resource within a specific park, the Secretary shall establish an identical franchise fee for all such contracts, subject to periodic review and revision by the Secretary. Such fee shall reflect fair market value.

(c) ADJUSTMENT OF FRANCHISE FEES.—The amount of any franchise fee for the term of the concession contract shall be specified in the concession contract and may only be modified to reflect substantial changes from the conditions specified or anticipated in the contract.

SEC. 9. USE OF FRANCHISE FEES.

(a) DEPOSITS TO TREASURY.—All receipts collected pursuant to this Act shall be covered into a special account established in the Treasury of the United States. Except as provided in subsection (b), amounts covered into such account in a fiscal year shall be available for expenditure, subject to appropriation, solely as follows:

(1) Fifty percent shall be allocated among the units of the National Park System in the same proportion as franchise fees collected from a specific unit bears to the total amount covered into the account for each fiscal year, to be used for resource management and protection, maintenance activities, interpretation, and research.

(2) Fifty percent shall be allocated among the units of the National Park System on the basis of need, in a manner to be determined by the Secretary, to be used for resource management and protection, maintenance activities, interpretation, and research.

(b) SPECIAL ACCOUNT.—(1) Beginning in fiscal year 1998, all receipts collected in the previous year in excess of the following amounts shall be made available from the special account to the Secretary without further appropriation, to be allocated among the units of the National Park System on the basis of need, in a manner to be determined by the Secretary, to be used for resource management and protection, maintenance activities, interpretation, and research:

(1) $17,000,000 for fiscal year 1998.
(2) $18,000,000 for fiscal year 1999.
(3) $18,000,000 for fiscal year 2000.
(4) $18,000,000 for fiscal year 2001.
(5) $18,000,000 for fiscal year 2002.

(c) EXISTING CONCESSIONER IMPROVEMENT FUNDS.—Nothing in this section shall affect or restrict the use of funds maintained by a concessioner in an existing concessioner improvement account pursuant to a concession contract in effect as of the date of enactment of this Act. No new, renewed, or extended contracts entered into after the date of enactment of this Act shall provide for or authorize the use of such concessioner improvement accounts.

(d) INSPECTOR GENERAL AUDITS.—Beginning in fiscal year 1998, the Inspector General of the Department of the Interior shall conduct a biennial audit of the concession fees generated pursuant to this Act. The Inspector General shall make a determination as to whether concession fees are being collected and expended in accordance with this Act and shall submit copies of each audit to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Resources of the United States House of Representatives.

SEC. 10. DURATION OF CONTRACT.

(a) MAXIMUM TERM.—A concession contract entered into pursuant to this Act shall be awarded for a term not to exceed ten years: *Provided, however,* That the Secretary may award a contract for a term of up to twenty years if the Secretary determines that the contract terms and conditions necessitate a longer term.

(b) TEMPORARY CONTRACT.—A temporary concession contract awarded on a non-competitive basis pursuant to section 7(b) shall be for a term not to exceed two years.

SEC. 11. TRANSFER OF CONTRACT.

(a) IN GENERAL.—No concession contract may be transferred, assigned, sold, or otherwise conveyed by a concessioner without prior written notification to, and approval of the Secretary.

(b) APPROVAL OF TRANSFER.—The Secretary shall not unreasonably withhold approval of a transfer, assignment, sale, or conveyance of a concession contract, but shall not approve the transfer, assignment, sale, or conveyance of a concession contract to any individual, corporation or other entity if the Secretary determines that—

(1) such individual, corporation or entity is, or is likely to be, unable to completely satisfy all of the requirements, terms, and conditions of the contract;

(2) such transfer, assignment, sale or conveyance is not consistent with the objectives of protecting and preserving park resources, and of providing necessary and appropriate facilities or services to the public at reasonable rates;

(3) such transfer, assignment, sale, or conveyance relates to a concession contract which does not provide to the United States consideration commensurate with the probable value of the privileges granted by the contract; or

(4) the terms of such transfer, assignment, sale, or conveyance directly or indirectly attribute a significant value to intangible assets or otherwise may so reduce the opportunity for a reasonable profit over the remaining term of the contract that the United States may be required to make substantial additional expenditures in order to avoid interruption of services to park visitors.

SEC. 12. PROTECTION OF CONCESSIONER INVESTMENT.

(a) CURRENT CONTRACT.—(1) A concessioner who before the date of the enactment of this Act has acquired or constructed, or is required under an existing concession contract

to commence acquisition or construction of any structure, fixture, or improvement upon land owned by the United States within a park, pursuant to such contract, shall have a possessory interest therein, to the extent provided by such contract.

(2) Unless otherwise provided in such contract, said possessory interest shall not be extinguished by the expiration or termination of the contract and may not be taken for public use without just compensation. Such possessory interest may be assigned, transferred, encumbered, or relinquished.

(3) Upon the termination of a concession contract in effect before the date of enactment of this title, the Secretary shall determine the value of any outstanding possessory interest applicable to the contract, such value to be determined for all purposes on the basis of applicable laws and contracts in effect on the day before the date of enactment of this Act.

(4) Nothing in this subsection shall be construed to grant a possessory interest to a concessioner whose contract in effect on the date of enactment of this Act does not include recognition of a possessory interest.

(b) NEW CONTRACTS.—(1)(A) With respect to a concession contract entered into on or after the date of enactment of this Act, the value of any outstanding possessory interest associated with such contract shall be set at the value determined by the Secretary pursuant to subsection (a)(3).

(B) As a condition of entering into a concession contract, the value of any outstanding possesory interest shall be reduced on an annual basis, in equal portions, over the same number of years as the time period associated with the straight line depreciation of the structure, fixture, or improvement associated with such possessory interest, as provided by applicable Federal income tax laws and regulations in effect on the day before the date of enactment of this Act.

(C) In the event that the contract expires or is terminated prior to the elimination of any outstanding possessory interest, the concessioner shall be entitled to receive from the United States or the successor concessioner payment equal to the remaining value of the possessory interest.

(D) A successor concessioner may not revalue any outstanding possessory interest, nor the period of time over which such interest is reduced.

(E) Title to any structure, fixture, or improvement associated with any outstanding possessory interest shall be vested in the United States.

(2)(A) If the Secretary determines during the competitive selection process that all proposals submitted either fail to meet the minimum requirements or are rejected (as provided in section 7), the Secretary may, solely with respect to any outstanding possessory interest associated with the contract and established pursuant to a concession contract entered into prior to the date of enactment of this Act, suspend the reduction provisions of subsection (b)(1)(B) for the duration of the contract, and re-initiate the competitive selection process as provided in section 7.

(B) The Secretary may suspend such reduction provisions only if the Secretary determines that the establishment of other new minimum contract requirements is not likely to result in the submission of satisfactory proposals, and that the suspension of the reduction provisions is likely to result in the submission of satisfactory proposals: *Provided, however,* That nothing in this paragraph shall be construed to require the Secretary to establish a minimum franchise fee at a level below the franchise fee in effect for such contract on the day before the expiration date of the previous contract.

(c) NEW STRUCTURES.—(1) On or after the date of enactment of this Act, a concessioner who constructs or acquires a new, additional, or replacement structure, fixture, or improvement upon land owned by the United States within a park, pursuant to a concession contract, shall have an interest in such structure, fixture, or improvement equivalent to the actual original cost of acquiring or constructing such structure, fixture, or improvement, less straight line depreciation over the estimated useful life of the asset according to Generally Accepted Accounting Principles: *Provided,* That in no event shall the estimated useful life of such asset exceed the depreciation period used for such asset for Federal income tax purposes.

(2) In the event that the contract expires or is terminated prior to the recovery of such costs, the concessioner shall be entitled to receive from the United States or the successor concessioner payment equal to the value of the concessioner's interest in such structure, fixture, or improvement. A successor concessioner may not revalue the interest in such structure, fixture, or improvement, the method of depreciation, or the estimated useful life of the asset.

(3) Title to any such structure, fixture, or improvement shall be vested in the United States.

(d) INSURANCE, MAINTENANCE AND REPAIR.—Nothing in this section shall affect the obligation of a concessioner to insure, maintain, and repair any structure, fixture, or improvement assigned to such concessioner and to insure that such structure, fixture, or improvement fully complies with applicable safety and health laws and regulations.

SEC. 13. RATES AND CHARGES TO PUBLIC.

The reasonableness of a concessioner's rates and charges to the public shall, unless otherwise provided in the bid specifications and contract, be judged primarily by comparison with those rates and charges for facilities and services of comparable character under similar conditions, with due consideration for length of season, seasonal variance, average percentage of occupancy, accessibility, availability and costs of labor and materials, type of patronage, and other factors deemed significant by the Secretary.

SEC. 14. CONCESSIONER PERFORMANCE EVALUATION.

(a) REGULATIONS.—as soon as practicable after the date of enactment of this Act, the Secretary shall publish, after an appropriate period for public comment, regulations establishing standards and criteria for evaluating the performance of concessions operating within parks.

(b) PERIODIC EVALUATION.—(1) The Secretary shall periodically conduct an evaluation of each concessioner operating under a concession contract pursuant to this Act, as appropriate, to determine whether such concessioner has performed satisfactorily. In evaluating a concessioner's performance, the Secretary shall seek and consider applicable reports and comments from appropriate Federal, State, and local regulatory agencies, and shall seek and consider the applicable views of park visitors and concession customers. If the Secretary's performance evaluation results in an unsatisfactory rating of the concessioner's overall operation, the Secretary shall provide the concessioner with a list of the minimum requirements necessary for the operation to be rated satisfactory, and shall so notify the concessioner in writing.

(2) The Secretary may terminate a concession contract if the concessioner fails to meet the minimum operational requirements identified by the Secretary within the time limitations established by the Secretary at the time notice of the unsatisfactory rating is provided to the concessioner.

(3) If the Secretary terminates a concession contract pursuant to this section, the Secretary shall solicit proposals for a new contract consistent with the provisions of this Act.

SEC. 15. RECORDKEEPING REQUIREMENTS.

(a) IN GENERAL.—Each concessioner shall keep such records as the Secretary may prescribe to enable the Secretary to determine that all terms of the concessioner's contract have been, and are being faithfully performed, and the Secretary or any of the Secretary's duly authorized representatives shall, for the purpose of audit and examination, have access to such records and to other books, documents and papers of the concessioner pertinent to the contract and all the terms and conditions thereof as the Secretary deems necessary.

(b) GENERAL ACCOUNTING OFFICE REVIEW.—The Comptroller General of the United States or any of his or her duly authorized representatives shall, until the expiration of five calendar years after the close of the business year for each concessioner, have access to and the right to examine any pertinent books, documents, papers, and records of the concessioner related to the contracts or contracts involved.

SEC. 16. EXEMPTION FROM CERTAIN LEASE REQUIREMENTS.

The provisions of section 321 of the Act of June 30, 1932 (47 Stat. 412; 40 U.S.C. 303b), relating to the leasing of buildings and properties of the United States, shall not apply to contracts awarded by the Secretary pursuant to this Act.

SEC. 17. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated such sums as may be necessary to carry out this Act.

By Mr. MCCONNELL (for himself, Mr. MOYNIHAN, Mr. LIEBERMAN, Mr. GORTON and Mr. GRAMS):

S. 625. A bill to provide for competition between forms of motor vehicle insurance, to permit an owner of a motor vehicle to choose the most appropriate form on insurance for that person, to guarantee affordable premiums, to provide for more adequate and timely compensation for accident victims, and for other purposes; to the Committee on Commerce, Science, and Transportation.

THE AUTO CHOICE REFORM ACT OF 1997

Mr. MCCONNELL. Mr. President, I am happy today to join with my esteemed colleagues, Senator MOYNIHAN and Senator LIEBERMAN, to announce the introduction of the Auto Choice Reform Act. As you know, we introduced this bill in the last Congress, along with Senator Dole. We are proud to announce that Senator SLADE GORTON and Senator ROD GRAMS have also joined us as original cosponsors.

You will hear lots of discussion today, and in the coming months, about various aspects of automobile insurance and tort liability. But, everything you will hear about Auto Choice can be summed up in two words: choice and savings.

Consumers want, need, and deserve both.

Very simply, the Auto Choice Reform Act offers consumers the choice of opting out of the pain and suffering litigation lottery. The consumers who make this choice will achieve a substantial

savings on automobile insurance premiums.

Based on an analysis by the Rand Institute for Civil Justice, the Joint Economic Committee estimates that, under Auto Choice, consumers could save a total of $45 billion nationwide in 1997—at no cost to the Government. And, over 5 years, Auto Choice could make available a total of $246 billion in savings. Now, that's better than any tax cut that either party has proposed.

What does a $45 billion annual savings mean to the average driver? Well, that savings is colorfully and clearly illustrated behind me with this check: ''Pay to the Order of the American Driver—$243.'' And this check is not a one-time payment. Motorists could achieve this type of savings every year.

However, before you can truly comprehend the benefits of Auto Choice, you must understand the terrible costs of the current tort liability system.

The Nation's auto insurance system desperately needs an overhaul. And nobody knows this better than the American motorist—who is now paying on average $757 for automobile insurance. Between 1987 and 1994, average premiums rose 44 percent—nearly 1½ times the rate of inflation.

Why are consumers forced to pay so much?

Because the auto insurance system is clogged and bloated by fraud, wasteful litigation, and abuse.

First, let's talk about fraud. In 1995, the F.B.I. announced a wave of indictments stemming from Operation Sudden Impact, the most wide-ranging investigation of criminal fraud schemes involving staged car accidents and massive fraud in the health care system. The F.B.I. uncovered criminal enterprises staging bus and car accidents in order to bring lawsuits and collect money from innocent people, businesses and governments. F.B.I. Director Louis Freeh estimates that every American household is burdened by an additional $200 in unnecessary insurance premiums to cover this enormous amount of fraud.

In addition to the pervasive criminal fraud that exists, the incentives of our litigation system encourage injured parties to make excessive medical claims to drive up their damage claims in lawsuits. The Rand Institute for Civil Justice, in a study released in 1995, concluded that 35 to 42 percent of claimed medical costs in car accident cases are excessive and unnecessary. Let me repeat that in simple English: well over one-third of doctor, hospital, physical therapy, and other medical costs claimed in car accident cases are for nonexistent injuries or for unnecessary treatment.

The value of this wasteful health care? Four billion dollars annually. I don't need to remind anyone of the ongoing local and national debate over our health care system. While people have strongly-held differences over the causes and solutions to that problem, the Rand data make one thing certain—lawsuits, and the potential for hitting the jackpot, drive overuse and abuse of the health care system. Reducing those costs by $4 billion annually, without depriving one person of needed medical care, is clearly in our national interest.

Why would an injured party inflate their medical claims, you might ask. It's simple arithmetic. For every $1 of economic loss, a party stands to recover up to $3 in pain and suffering awards. In short, the more you go to the doctor, the more you get from the jury. And, the more you get from the jury, the more money your attorney puts in his own pocket.

In addition to the massive fraud encouraged by the liability system, seriously injured people are grossly undercompensated under the tort system. A 1991 Rand study reveals that people with economic losses between $25,000 and $100,000 recover on the average only 50 percent of their economic losses. People with losses in excess of $100,000 recover only 9 percent.

Moreover, liability insurance does not pay until the claim is resolved. Studies show that the average time to recover is 16 months, and it takes longer in serious injury cases.

The Auto Choice bill gives consumers a way out of this system of high premiums, rampant fraud, and slow, inequitable compensation. Our bill would remove the perverse incentives of lawsuits, while ensuring that car accident victims recover fully for their economic loss.

Now, I'd like to answer the question: what is Auto Choice? Let me first answer with what it is not. It does not abolish lawsuits, and it does not eliminate the concept of fault within the legal system. There will no doubt be less reason to go to court, but the right to sue is absolutely not abolished.

What it does do is allow drivers to decide how they want to be insured. In establishing the choice mechanism, the bill unbundles economic and noneconomic losses and allows the driver to choose whether to be covered for noneconomic losses—that is, pain and suffering losses.

In other words, if a driver wants to be covered for pain and suffering, he stays in the current State system. If he wants to opt-out of the pain and suffering regime, he chooses the personal protection system.

This choice, which sounds amazingly simple and imminently reasonable, is, believe it or not, currently unavailable for over ninety percent of all motorists. Auto Choice will change that.

Let me briefly explain the choices that our bill will offer every consumer. A consumer will be able to choose one of two insurance systems.

The first choice is the tort maintenance system. Drivers who wish to stay in their current system would choose this system and be able to sue and be sued for pain and suffering. These drivers would essentially buy the same type of insurance that they currently carry—and would recover, or fail to recover, in the same way that they do today. The only change for tort drivers would be that, in the event that they are hit by a personal protection driver, the tort driver would recover both economic and noneconomic damages from his own insurance policy. This supplemental first-party policy for tort drivers will be called tort maintenance coverage.

The second choice is the personal protection system. Consumers choosing this system would be guaranteed prompt recovery of their economic losses, up to the levels of their own insurance policy. These drivers would give up recovery of pain and suffering damages in exchange for being immune from pain and suffering lawsuits. Personal protection drivers would achieve substantially reduced premiums because the personal protection system would dramatically reduce: First, pain and suffering damages, second, fraud, and third, the bulk of attorney fees.

Under both insurance systems—tort maintenance and personal protection—the injured party whose economic losses exceed his own coverage will have the right to sue the responsible party for the excess. Moreover, tort drivers will retain the right to sue each other for both economic and noneconomic loss. Critics who say the right to sue is abolished by this bill are plain wrong.

The advantages of personal protection coverage are enormous.

First, personal protection coverage assures that those who suffer injury, regardless of whether someone else is responsible, will be paid for their economic losses. The driver does not have to leave compensation up to the vagaries of how an accident occurs and how much coverage the other driver has. A driver whose car goes off a slippery road will be able to recover for his economic losses. Such a blameless driver could not recover under the tort system because no other person was at fault. No matter when and how a driver or a member of his family is injured, the driver knows his insurance will protect his family.

Second, the choice as to how much insurance protection to purchase is in the hands of the driver, who is in the best position to know how much coverage he and his family need. He can choose as much or as little insurance as his circumstances require, from $20,000 of protection to $1 million of coverage.

Third, people who elect the personal protection option will, in the event they are injured, be paid promptly, as their losses accrue.

Fourth, we will have more rational use of precious health care resources. Insuring on a first-party basis eliminates the incentives for excess medical claiming. When a person chooses to be compensated for actual economic loss, the tort system's incentives for padding one's claims disappear.

Fifth, Auto Choice offers real benefits for low-income drivers because the

savings are progressive. Low-income drivers will see the biggest savings because they pay a higher proportion of their disposable income in insurance costs. A study of low income residents of Maricopa County, AZ, revealed that households below 50 percent of the poverty line spent an amazing 31.6 percent of their disposable income on car insurance.

For many low-income families the choices are stark: car insurance and the ability to get to the job, or medicine, new clothing or extra food for the children. Or, they choose the worst alternative of all—driving without any insurance. Should we allow our litigation system to promote such unlawful conduct?

Moreover, Auto Choice offers benefits to all taxpayers, even those who don't drive. For example, local governments will save taxpayer dollars through decreased insurance and litigation costs. This will allow governments to use our tax dollars to more directly benefit the community. Think of all the additional police and firefighters that could be hired with money now spent on lawsuits. Or, schools and playgrounds that could be better equipped. New York City spends more on liability claims than it spends on libraries, botanical gardens, the Bronx Zoo, the Metropolitan Museum of Art and the Department of Youth Services, combined. Imagine the improved quality of life in our urban areas if governments were free of spending on needless lawsuits.

Last, we will create incentives for safer cars. Now, it actually costs more to insure a safer car. That's because a driver in a bigger car who is responsible for another's injury may have a bigger claim to pay. After all, the bigger, safer car may cause more damage to the person in a smaller, less safe car. So insuring a bigger, safer car costs more. But under auto choice and first-party coverage, insurance companies would reward customers with lower premiums for safer cars.

The bottom line? We think that consumers should be able to make one simple choice: ''Do you want to continue to pay $757 a year for auto insurance and have the right to recover pain and suffering damages? Or would you rather save $243 a year on your premiums, be promptly reimbursed for your economic losses, and forego pain and suffering damages?''

It's really that simple. And, we're not even going to tell them which answer is the right one. Because that's not up to us. It's up to the consumer. We simply want to give them the choice.

In closing, I'd like to do something I rarely do—quote the New York Times—which summed up the benefits, and indeed, the simplicity of Auto Choice: Auto Choice ''would give families the option of foregoing suits for nonmonetary losses in exchange for quick and complete reimbursement for every blow to their pocketbook. Everyone would win—except the lawyers.''

Now, before I turn over the floor to Senator MOYNIHAN, I'd like to share with you a scathing indictment of the tort liability system that was written more than a quarter of a century ago by a true visionary:

No one involved has an incentive to moderation or reasonableness. The victim has every reason to exaggerate his losses. It is some other person's insurance company that must pay. The company has every reason to resist. It is somebody else's customer who is making the claim. Delay, fraud, contentiousness are maximized, and in the process the system becomes grossly inefficient and expensive. Automobile accident litigation has become a 20th-Century equivalent of Dickens's Court of Chancery, eating up the pittance of widows and orphans, a vale from which few return with their respect for just[ice] undiminished.

Well, those insightful and prophetic words were spoken by none other than the man who stands here with me as an original cosponsor today, my colleague from the State of New York, PAT MOYNIHAN. PAT, it's taken over 25 years, but I think we're finally going to overhaul this broken-down auto insurance system.

Mr. President, this bill has broad support from across the spectrum. It should be obvious by the support and endorsements that this bill has already received that this is not conservative or liberal legislation. It is consumer legislation. I ask unanimous consent that the text of the bill and statements in support of Auto Choice from the Republican mayor of New York City, Rudolph Giuliani, the former Massachusetts Governor and Democratic presidential candidate, Michael Dukakis, and the executive director of the Reform Party, Russ Verney, be printed in the RECORD.

There being no objection, the items were ordered to be printed in the RECORD, as follows:

S. 625

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Auto Choice Reform Act of 1997''.

SEC. 2. FINDINGS.

Congress finds that—

(1) the costs of operating a motor vehicle are excessive due in substantial part to the legal and administrative costs associated with the resolution of claims under the tort liability insurance system;

(2) the tort liability insurance system often results in—

(A) the failure to provide compensation commensurate with loss;

(B) an unreasonable delay in the payment of benefits; and

(C) the expenditure of an excessive amount for legal fees;

(3) the incentives of the tort liability insurance system for motor vehicles are distorted, and result in—

(A) significant fraud in the claims process, which exacerbates the level of distrust of many individuals in the United States with respect to the legal process and the rule of law;

(B) significant, wasteful, fraudulent, and costly overuse and abuse of scarce health care resources and services;

(C) unbearable cost burdens on low-income individuals, imposing on them the Hobson's choice of driving on an unlawful, uninsured basis or foregoing essential needs, such as food and adequate shelter;

(D) significant reductions in, access to, and purchases of, motor vehicles, which—

(i) damage the economic well-being of many low-income individuals; and

(ii) cause unnecessary harm to a critical component of the economy of the United States;

(E) significant deterioration of the economic well-being of the majority of major cities in the United States through the imposition of a massive tort tax that—

(i) places a disproportionate burden on urban residents; and

(ii) contributes to the abandonment of the cities by many taxpayers who are able to achieve substantial after-tax savings on automobile insurance premiums by moving to adjacent suburban communities; and

(F) significant inability to achieve market-based discounts in insurance rates for owners of safer cars, which reduces the level of safety for drivers and passengers of motor vehicles;

(4) insurance to indemnify individuals for personal injuries arising from motor vehicle collisions is frequently unavailable at a reasonable cost because of the potential liability for third-party tort claims;

(5) a system that gives consumers the opportunity to insure themselves and that separates economic and noneconomic damages for the purposes of purchasing insurance would provide significant cost savings to drivers of motor vehicles;

(6) a system that enables individuals to choose the form of motor vehicle insurance that best suits their needs would—

(A) enhance individual freedom;

(B) reduce the cost of motor vehicle insurance; and

(C) increase average compensation in the event of an accident; and

(7) a system that targets and emphasizes the scourge of those individuals who drive under the influence of drugs or alcohol will further deter such dangerous and unlawful conduct.

SEC. 3. PURPOSE.

The purpose of this Act is to allow consumers of motor vehicle insurance to choose between—

(1) an insurance system that provides substantially the same remedies as are available under applicable State law; and

(2) a predominately first-party insurance system that provides for—

(A) more comprehensive recovery of economic loss in a shorter period of time; and

(B) the right to sue negligent drivers for any uncompensated economic losses.

SEC. 4. DEFINITIONS.

In this Act:

(1) ACCIDENT.—The term ''accident'' means an unforeseen or unplanned event that—

(A) causes loss or injury; and

(B) arises from the operation, maintenance, or use of a motor vehicle.

(2) ADD-ON LAW.—The term ''add-on law'' means a State law that provides that persons injured in motor vehicle accidents—

(A) are compensated without regard to fault for economic loss; and

(B) have the right to claim without any limitation for noneconomic loss based on fault.

(3) ECONOMIC LOSS.—The term ''economic loss'' means any objectively verifiable pecuniary loss resulting from an accident, including—

(A) reasonable and necessary medical and rehabilitation expenses;

(B) loss of earnings;

(C) burial costs;

(D) replacement services loss;

(E) costs of making reasonable accommodations to a personal residence to make the residence more habitable for an injured individual; and

(F) loss of employment, and loss of business or employment opportunities, to the extent recovery for such losses is allowed under applicable State law.

(4) FINANCIAL RESPONSIBILITY LAW.—The term ''financial responsibility law'' means a law (including a law requiring compulsory coverage) penalizing motorists for failing to carry defined limits of tort liability insurance covering motor vehicle accidents.

(5) INJURY.—The term ''injury'' means bodily injury, sickness, disease, or death.

(6) INSURER.—The term ''insurer'' means—

(A) any person who is engaged in the business of issuing or delivering motor vehicle insurance policies (including an insurance agent); or

(B) any person who is self-insured within the meaning of applicable State law.

(7) INTENTIONAL MISCONDUCT.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the term ''intentional misconduct'' means conduct—

(i) with respect to which harm is intentionally caused or attempted to be caused by a person who acts or fails to act for the purpose of causing harm, or with knowledge that harm is substantially certain to result from that action or failure to act; and

(ii) that causes or substantially contributes to the harm that is the subject of a claim.

(B) CLARIFICATION.—For purposes of this paragraph, a person does not intentionally cause or attempt to cause harm—

(i) solely because that person acts or fails to act with the understanding that the action or failure to act creates a grave risk of causing harm; or

(ii) if the act or omission by that person causing bodily harm is for the purpose of averting bodily harm to that person or another person.

(8) MOTOR VEHICLE.—The term ''motor vehicle'' means a vehicle of any kind required to be registered under the provisions of the applicable State law relating to motor vehicles.

(9) NO-FAULT MOTOR VEHICLE LAW.—The term ''no-fault motor vehicle law'' means a State law that provides that—

(A) persons injured in motor vehicle accidents are paid compensation without regard to fault for their economic loss that results from injury; and

(B) in return for the payment referred to in subparagraph (A), claims based on fault including claims for noneconomic loss, are limited to a defined extent.

(10) NONECONOMIC LOSS.—The term ''noneconomic loss'' means subjective, nonmonetary losses including pain, suffering, inconvenience, mental suffering, emotional distress, loss of society and companionship, loss of consortium, hedonic damages, injury to reputation, and humiliation.

(11) OCCUPY.—The term ''occupy'' means, with respect to the operation, maintenance, or use of a motor vehicle, to be in or on a motor vehicle or to be engaged in the immediate act of entering into or alighting from a motor vehicle before or after its use for transportation.

(12) OPERATION, MAINTENANCE, OR USE OF A MOTOR VEHICLE.—

(A) IN GENERAL.—The term ''operation, maintenance, or use of a motor vehicle'' means occupying a motor vehicle.

(B) EXCLUSIONS.—The term ''operation, maintenance, or use of a motor vehicle'' does not include—

(i) conduct within the course of a business of manufacturing, sale, repairing, servicing, or otherwise maintaining motor vehicles, unless the conduct occurs outside of the scope of the business activity; or

(ii) conduct within the course of loading or unloading a motor vehicle, unless the conduct occurs while occupying the motor vehicle.

(13) PERSON.—The term ''person'' means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity, including any governmental entity.

(14) PERSONAL PROTECTION INSURANCE.—The term ''personal protection insurance'' means insurance that provides for—

(A) benefits to an insured person for economic loss without regard to fault for injury resulting from a motor vehicle accident; and

(B) a waiver of tort claims in accordance with this Act.

(15) REPLACEMENT SERVICES LOSS.—The term ''replacement services loss'' means expenses reasonably incurred in obtaining ordinary and necessary services from other persons who are not members of the injured person's household, in lieu of the services the injured person would have performed for the benefit of the household.

(16) RESIDENT RELATIVE OR DEPENDENT.—The term ''resident relative or dependent'' means a person who—

(A) is related to the owner of a motor vehicle by blood, marriage, adoption, or otherwise (including a dependent receiving financial services or support from such owner); and

(B)(i) resides in the same household as the owner of the motor vehicle at the time of the accident; or

(ii) usually makes a home in the same family unit as that owner, even though that person may temporarily live elsewhere.

(17) STATE.—The term ''State'' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the United States Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territories of the Pacific Islands, and any other territory or possession of the United States.

(18) TORT LIABILITY.—The term ''tort liability'' means the legal obligation to pay damages for an injury adjudged to have been committed by a tort-feasor.

(19) TORT LIABILITY INSURANCE.—The term ''tort liability insurance'' means a contract of insurance under which an insurer agrees to pay, on behalf of an insured, damages that the insured is obligated to pay to a third person because of the liability of the insured to that person.

(20) TORT MAINTENANCE COVERAGE.—

(A) IN GENERAL.—The term ''tort maintenance coverage'' means insurance coverage under which a person described in subparagraph (B), if involved in an accident with a person covered by personal protection insurance, retains a right to claim for injury based on fault for economic and noneconomic losses under applicable State law, without modification by any other provision of this Act.

(B) TORT MAINTENANCE INSURED.—A person described in this subparagraph is a person covered by the form of insurance described in section 5(a)(2).

(C) RESPONSIBILITY FOR PAYMENT.—The responsibility for payment for any claim under subparagraph (A) is assumed by the insurer of the person with tort maintenance coverage to the extent of such coverage.

(21) UNCOMPENSATED ECONOMIC LOSS.—

(A) IN GENERAL.—The term ''uncompensated economic loss'' means economic loss payable based on fault.

(B) ATTORNEYS' FEES.—The term includes a reasonable attorney's fee calculated on the basis of the value of the attorney's efforts as reflected in payment to the attorney's client.

(C) EXCLUSIONS.—The term does not include amounts paid under—

(i) personal protection insurance;

(ii) tort maintenance coverage;

(iii) no-fault or add-on motor vehicle insurance;

(iv) Federal, State, or private disability or sickness programs;

(v) Federal, State, or private health insurance programs;

(vi) employer wage continuation programs; or

(vii) workers' compensation or similar occupational compensation laws.

(22) UNINSURED MOTORIST.—The term ''uninsured motorist'' means the owner of a motor vehicle, including the resident relatives or dependents of the owner, who is uninsured under either the personal protection system or the tort maintenance system described in section 5(a)—

(A) at the limits prescribed by the applicable State financial responsibility law; or

(B) an amount prescribed under section 5(b)(1)(A).

SEC. 5. AUTO CHOICE INSURANCE SYSTEM.

(a) OPERATION OF THE RIGHT TO CHOOSE.—Under this Act, a person shall have the right to choose between the following insurance systems:

(1) PERSONAL PROTECTION SYSTEM.—A person may choose insurance under a system that provides for personal protection insurance for that person and any resident relative or dependent of that person.

(2) TORT MAINTENANCE SYSTEM.—A person may choose insurance under a system that provides for the form of motor vehicle insurance (including tort liability, no-fault, add-on, or uninsured motor vehicle insurance) that is otherwise required in the State in which the person is insured.

(b) PERSONAL PROTECTION SYSTEM.—

(1) MINIMUM POLICY REQUIREMENTS.—In order for a personal protection insurance policy to be covered by this Act, a motor vehicle insurance policy issued by an insurer shall, at a minimum—

(A) provide personal protection insurance coverage—

(i) with no per accident limit; and

(ii) in coverage amounts equal to the greater of—

(I) the minimum per person limits of liability insurance for personal injury under the applicable State financial responsibility law; or

(II) in a State covered by a no-fault motor vehicle insurance law, the minimum level of insurance required for no-fault benefits;

(B) contain provisions for a waiver of certain tort rights in accordance with this Act; and

(C) contain provisions under the applicable State financial responsibility law relating to liability for—

(i) property damage; and

(ii) bodily injury to protect third parties whose rights to recover both economic and noneconomic loss are not affected by the immunities provided under this Act for those persons choosing personal protection insurance coverage.

(2) SUPERSEDING PROVISION.—This Act supersedes a State law to the extent that, with respect to the issuance of a personal protection insurance policy, the State law—

(A) would otherwise bar a provision that provides for the personal protection authorizations and accompanying immunities set forth in this Act; or

(B) is otherwise inconsistent with the requirements of this Act.

(3) PRIMACY OF PAYMENT.—

(A) IN GENERAL.—Personal protection insurance benefits shall be reduced by an amount equal to any benefits provided or required to be provided under an applicable Federal or State law for workers' compensation or any State-required nonoccupational disability insurance.

(B) REIMBURSEMENT OF PAYORS.—

(i) IN GENERAL.—A personal protection insurer may take appropriate measures to ensure that any person otherwise eligible for personal protection benefits who has been paid or is being paid for losses payable by personal protection insurance from a source other than the applicable personal protection insurer shall not receive multiple payment for those losses.

(ii) ACCRUAL OF RIGHTS.—Any right to payment for losses referred to in clause (i) from a personal protection insurer accrues only to that payor. Payments by a payor referred to in clause (i) shall not be counted against personal protection limits for personal protection insurance until such time as the payor is reimbursed under this subparagraph.

(4) PROMPT AND PERIODIC PAYMENT.—

(A) IN GENERAL.—A personal protection insurer may pay personal protection benefits periodically as losses accrue.

(B) LATE PAYMENT.—Unless the treatment or expenses related to the treatment are in reasonable dispute, a personal protection insurer who does not pay a claim for economic loss covered by a personal protection insurance policy issued under this Act within 30 days after payment is due, shall pay—

(i) the loss compounded at a rate of 24 percent per annum, as liquidated damages and in lieu of any penalty or exemplary damages; and

(ii) a reasonable attorney's fee calculated on the basis of the value of the attorney's efforts as reflected in payment to the attorney's client.

(C) ADMINISTRATION OF PERSONAL PROTECTION BENEFITS.—To the extent consistent with this Act, any applicable provision of a State no-fault motor vehicle law or add-on law governing the administration of payment of benefits without reference to fault shall apply to the payment of benefits under personal protection insurance under this subsection.

(5) MOTOR VEHICLES WITH FEWER THAN 4 LOAD-BEARING WHEELS.—A personal protection insurer may offer, but shall not require, personal protection coverage of any motor vehicle that has fewer than 4 load-bearing wheels, not including the wheels of an attachment to the motor vehicle.

(6) AUTHORIZATIONS FOR PERSONAL PROTECTION INSURERS.—A personal protection insurer may write personal protection coverage—

(A)(i) without any deductible; or

(ii) subject to a reasonable deductible, applicable in an amount not to exceed $1,000 per person per accident;

(B) with an exclusion of coverage for persons whose losses are caused by driving under the influence of alcohol or illegal drugs;

(C) at appropriately reduced premium rates, deductibles and exclusions reasonably related to health, disability, and accident coverage on an insured person; and

(D) the deductibles and exclusions described in subparagraphs (A) and (C) shall apply only to—

(i) the person named in the applicable insurance policy; and

(ii) the resident relatives or dependents of the person described in clause (i).

(c) TORT MAINTENANCE SYSTEM.—

(1) REQUIRED TORT MAINTENANCE COVERAGE.—The coverage for a person who chooses insurance under subsection (a)(2) shall include tort maintenance coverage at a level that is at least equivalent to the level of insurance required under the applicable State financial responsibility law for bodily injury liability.

(2) ADMINISTRATION OF TORT MAINTENANCE COVERAGE BENEFITS.—To the extent consistent with this Act, any applicable provision of a State law governing the administration of payment of benefits under uninsured or underinsured motorist coverage applies to the payment of benefits under tort maintenance coverage under section 5(c).

(d) EFFECT OF CHOICE ON RESIDENT RELATIVES AND DEPENDENTS.—

(1) IN GENERAL.—Except as provided in paragraph (2), a person who chooses either personal protection insurance or tort maintenance coverage also binds the resident relatives and dependents of that person.

(2) EXCEPTION.—An adult resident relative or a dependent of a person described in paragraph (1) may select the form of insurance that that person does not select if the adult relative makes that selection expressly in writing.

(3) IMPLIED CONSENT.—In any case in which the resident relative or dependent is injured in a motor vehicle accident, the coverage of such person shall be the same as the person described in paragraph (1).

(4) TERMS AND CONDITIONS.—Insurers may specify reasonable terms and conditions governing the commencement, duration, and application of the chosen coverage depending on the number of motor vehicles and owners thereof in a household.

(e) RULES TO ENCOURAGE UNIFORMITY OF CHOICE.—In order to minimize conflict between the 2 options described in subsection (d), insurers may maintain and apply underwriting rules that encourage uniformity within a household.

(f) FAILURE TO ELECT TYPE OF INSURANCE.—

(1) IN GENERAL.—Any person who fails to elect a type of insurance under this section shall be deemed to have elected insurance under the tort maintenance system in effect in that State.

(2) RULE OF CONSTRUCTION.—This subsection shall not be construed to prevent a State from enacting a law that deems a person who fails to elect a type of insurance under this section to have elected insurance under the personal protection system.

(g) CONSUMER INFORMATION PROGRAM.—The State official charged with jurisdiction over insurance rates for motor vehicles shall establish and maintain a program designed to ensure that consumers are adequately informed about—

(1) the comparative cost of insurance under the personal protection system and the tort maintenance system; and

(2) the benefits, rights, and obligations of insurers and insureds under each system.

SEC. 6. SOURCE OF COMPENSATION IN CASES OF ACCIDENTAL INJURY.

(a) ACCIDENTS INVOLVING PERSONS CHOOSING THE TORT MAINTENANCE SYSTEM.—A person described in section 5(a)(2) who is involved in an accident with another person shall be subject to applicable tort law for injury except that, based on fault, that person—

(1) may claim against any person covered by personal protection insurance only for uncompensated economic loss; and

(2) may be claimed against by a person covered by personal protection insurance only for uncompensated economic loss.

(b) ACCIDENTS INVOLVING PERSONS WITH PERSONAL PROTECTION INSURANCE.—

(1) RIGHT TO RECOVER ECONOMIC LOSS.—A person covered by a personal protection insurance policy who is injured in an accident is compensated under that policy only for economic loss, without regard to fault.

(2) RIGHT TO SUE FOR UNCOMPENSATED ECONOMIC LOSS BASED ON FAULT.—If a person who chooses personal protection insurance is—

(A) involved in an accident with a person insured under either the personal protection system or tort maintenance system under section 5(a); and

(B) sustains uncompensated economic loss, that person shall have the right to claim against the other person involved in the accident for that loss based on fault.

(c) ACCIDENTS INVOLVING PERSONS WITH PERSONAL PROTECTION INSURANCE AND PERSONS WHO ARE UNLAWFULLY UNINSURED.—

(1) IN GENERAL.—A person covered by personal protection insurance who is involved in an accident with an uninsured motorist shall—

(A) be compensated under that insured person's insurance policy for economic loss without regard to fault; and

(B) have the right to claim against the uninsured motorist for economic loss and for noneconomic loss based on fault.

(2) FORFEITURE OF RIGHTS.—An uninsured motorist forfeits the right to claim against a motorist who has chosen personal protection insurance for—

(A) noneconomic loss; and

(B) economic loss in an amount up to the amount of per-person bodily injury limits mandated by the applicable State financial responsibility law.

(d) ACCIDENTS INVOLVING MOTORISTS UNDER THE INFLUENCE OF ALCOHOL OR ILLEGAL DRUGS OR ENGAGING IN INTENTIONAL MISCONDUCT.—A person who is insured under personal protection insurance shall have the right to claim, and be subject to a claim, for—

(1) driving under the influence of alcohol or illegal drugs (as those terms are defined under applicable State law); or

(2) intentional misconduct.

(e) PRIORITY OF BENEFITS.—A person who is insured under the personal protection system or tort maintenance system under section 5(a) may only claim benefits under such coverage up to the limits selected by or on behalf of such person in the following priority:

(1) The coverage under which the injured person was an insured at the time of the accident.

(2) The coverage of a motor vehicle involved in the accident, if the person injured was an occupant of, or was struck as a pedestrian by, such motor vehicle at the time of the accident, except that such person shall not recover under the coverage of both paragraph (1) and this paragraph.

(f) SUBROGATION RIGHTS.—A personal protection insurer is subrogated, to the extent of the obligations of that insurer, to all of the rights of the persons insured with personal protection insurance issued by the insurer with respect to an accident caused in whole or in part, as determined by applicable State law, by—

(1) the negligence of an uninsured motorist;

(2) operating a motor vehicle under the influence of alcohol or illegal drugs;

(3) intentional misconduct; or

(4) any other person who is not affected by the limitations on tort rights and liabilities under this Act.

(g) RIGHTS OF LAWFULLY UNINSURED PERSONS.—Nothing in this Act shall be construed to affect the tort rights of any person lawfully uninsured under the terms of an applicable State law for insurance under either the personal protection system or tort maintenance system under section 5(a).

(h) RIGHTS OF PERSONS OCCUPYING MOTOR VEHICLES WITH FEWER THAN 4 LOAD-BEARING WHEELS.—Nothing in this Act shall be construed to affect the tort rights of a person

who occupies a motor vehicle with fewer than 4 load-bearing wheels or an attachment thereto, unless an applicable contract for personal protection insurance under which that person is insured specifies otherwise. The preceding sentence applies without regard to whether the person is otherwise legally insured for personal protection insurance or tort maintenance coverage.

(i) RENEWAL OR CANCELLATION.—An insurer shall not cancel, fail to renew, or increase the premium of a person insured by the insurer solely because that insured person or any other injured person made a claim—

(1) for personal protection insurance benefits; or

(2) if there is no basis for ascribing fault to the insured or one for whom the insured is vicariously liable, for tort maintenance coverage.

(j) IMMUNITY.—Unless an insurer or an insurance agent willfully misrepresents the available choices or fraudulently induces the election of one motor vehicle insurance system described in paragraph (1) over the other, no insurer or insurance agent, employee of such insurer or agent, insurance producer representing a motor vehicle insurer, automobile residual market plan, or attorney licensed to practice law within a State, shall be liable in an action for damages on account of—

(1) an election of—

(A) the tort maintenance system under section 5(a); or

(B) the personal protection system under section 5(a); or

(2) a failure to make a required election.

SEC. 7. RULES OF CONSTRUCTION.

Nothing in this Act shall be construed—

(1) to waive or affect any defense of sovereign immunity asserted by any State under any law or by the United States;

(2) to affect the awarding of punitive damages under any State law;

(3) to preempt State choice-of-law rules with respect to claims brought by a foreign nation or a citizen of a foreign nation;

(4) to affect the right of any court to transfer venue, to apply the law of a foreign nation, or to dismiss a claim of a foreign nation or of a citizen of a foreign nation on the ground of inconvenient forum;

(5) subject to paragraph (1), to create or vest jurisdiction in the district courts of the United States over any motor vehicle accident liability or damages action subject to this Act which is not otherwise properly in the United States District Court;

(6) to prevent insurers and insureds from contracting to limit recovery for lost wages and income under personal protection coverage in such manner that only 60 percent or more of lost wages or income is covered;

(7) to prevent an insurer from contracting with personal protection insureds, as permitted by applicable State law, to have submitted to arbitration any dispute with respect to payment of personal protection benefits;

(8) to relieve a motorist of the obligations imposed by applicable State law to purchase tort liability insurance for bodily injury to protect third parties who are not affected by the immunities under this Act;

(9) to preclude a State from enacting, for all motor vehicle accident cases including cases covered by this Act, a minimum dollar value for defined classes of cases involving death or serious bodily injury;

(10) to preclude a State from providing that forms of insurance other than those listed in section 5(b)(3) shall be subtracted from personal protection insurance benefits otherwise payable for injury;

(11) to preclude a State from enacting a law that—

(A) allows litigation by tort maintenance insureds against personal protection insureds for economic and noneconomic loss; and

(B) assures through a reallocation device that the advantage of tort claim waivers by personal protection insureds against tort maintenance insureds is reflected in the premiums of personal protection insureds; or

(12) to alter or diminish the authority or obligation of the Federal courts to construe the terms of this Act.

SEC. 8. APPLICABILITY TO STATES; CHOICE OF LAW; AND JURISDICTION.

(a) ELECTION OF NONAPPLICABILITY BY STATES.—This Act shall not apply with respect to a State if such State enacts a statute that—

(1) cites the authority of this subsection;

(2) declares the election of such State that this Act shall not apply; and

(3) contains no other provision.

(b) NONAPPLICABILITY BASED ON STATE FINDING.—

(1) IN GENERAL.—This Act shall not apply with respect to a State, if—

(A) the State official charged with jurisdiction over insurance rates for motor vehicles makes a finding that the statewide average motor vehicle premiums for bodily injury insurance in effect immediately before the effective date of this Act will not be reduced by an average of at least 30 percent for persons choosing personal protection insurance (without including in the calculation for personal protection insureds any cost for uninsured, underinsured, or medical payments coverages);

(B) a finding described under subparagraph (A) is supported by evidence adduced in a public hearing and reviewable under the applicable State administrative procedure law; and

(C) a finding described under subparagraph (A) and any review of such finding under subparagraph (B) occurs not later than 90 days after the date of enactment of this Act.

(2) COMPARISON OF BODILY INJURY PREMIUMS.—For purposes of making a comparison under paragraph (1)(A) of premiums for personal protection insurance with preexisting premiums for bodily injury insurance (in effect immediately before the date of enactment of this Act), the preexisting bodily injury insurance premiums shall include premiums for—

(A) bodily injury liability, uninsured and underinsured motorists' liability, and medical payments coverage; and

(B) if applicable, no-fault benefits under a no-fault motor vehicle law or add-on law.

(c) CHOICE OF LAW.—In disputes between citizens of States that elect nonapplicability under subsection (a) and citizens of States that do not make such an election, ordinary choice of law principles shall apply.

(d) JURISDICTION.—This Act shall not confer jurisdiction on the district courts of the United States under section 1331 or 1337 of title 28, United States Code.

(e) STATUTES OF LIMITATIONS.—Nothing in this Act shall supersede an applicable State law that imposes a statute of limitations for claims related to an injury caused by an accident, except that such statute shall be tolled during the period wherein any personal protection or tort maintenance benefits are paid.

SEC. 9. EFFECTIVE DATE.

This Act shall take effect 90 days after the date of enactment of this Act.

STATEMENT OF MAYOR RUDOLPH W. GIULIANI

Today, members of Congress and other leaders from across the political spectrum, representing diverse populations and constituencies, unite in expressing support for the introduction and passage of bold, necessary federal legislation reforming auto insurance and tort law in America.

The introduction of auto-choice legislation marks a milestone in the nation's response to motorist demands for fair, equitable and cost-effective insurance coverage. Millions of drivers are presently paying excessive insurance premiums because of inflated claims and huge pain and suffering awards. Under this legislation proposed by Senators Lieberman, McConnell and Moynihan, among others, the nation as a whole stands to save $45 billion in insurance premiums this year alone, with the average driver nationwide saving $243 per year. That amounts to the equivalent of a $243 tax cut without any corresponding cut in services. The newly released report by the Joint Economic Committee of the United States Congress on ''The Benefits and Savings of Auto-Choice'' estimates that with auto choice, New York City motorists will see an average decrease of $417 per driver per year.

The genius of this bill is the unbundling of pain and suffering coverage from insurance premiums and the switch to first party coverage—similar to no-fault coverage. Moreover, people who want coverage for pain and suffering—and are willing to pay for it—can obtain it. But, they will not recover pain and suffering damages at the expense of third parties, or at the expense of our court system where sympathetic juries often grant windfalls for being injured in the form of subjective non-economic damages. There is simply no justification for many of the enormous awards to the injured who—though rightfully compensated for objective pecuniary loss—are rewarded for unsubstantiated pain and suffering damages, often with no regard for the relationship to the fault of the parties concerned.

Over the years, New York City has risked losing the valuable civic contributions of many of its residents to the suburbs where insurance rates are usually more affordable. Coupled with the reduction in crime our City has experienced, reduced insurance premiums would provide added incentive for City residents to keep their homes and their businesses in the City. These reforms come at no cost to City residents nor would they diminish governmental services. Motorists in municipalities and urban centers across the land stand to reap these enormous savings.

When we value the productivity of our urban residents and demonstrate our respect for their contributions, we improve the quality of life for the City as a whole and ensure its prosperity for years to come. Auto-choice assists in doing precisely that. It demonstrates our leaders' respect for the economic well being of even the most hard pressed motorist.

But equally as important, the bill would help restore a little faith in our courts and judicial system, which have been increasingly plagued with criticism by, and stands to lose the confidence of, ordinary citizens. When people see some lawyers running from the hospital to the court to the insurance company, they understand why their premiums are so high. Plaintiffs receive barely one-half of all settlements after lawyers, experts and court fees are paid. Under existing law, plaintiff attorneys have tremendous incentive to shoot for the gold—that giant pain and suffering cash cow—paid for by the American motorist through excessive insurance premiums.

People wonder: why can't this process be controlled? Today, we tell these people that they, not special interests, are in charge. We assure them that money which should not be unjustly taken from them, will not be. We give them the chance to determine for themselves how much insurance coverage is

enough coverage for them and their families. And, keep in mind, under auto-choice, all motorists obtain coverage for objective economic loss, such as medical bills or lost wages.

The bill is sensible and fair, and I respectfully urge Congress to pass this important legislation.

NORTHEASTERN UNIVERSITY, COLLEGE OF ARTS AND SCIENCES, DEPARTMENT OF POLITICAL SCIENCE,
April 17, 1997.

I enthusiastically endorse the ''choice'' auto insurance bill you are jointly sponsoring. Your action is an important act of bipartisan leadership on an issue that significantly affects all Americans.

The issue you address has been a great concern of mine throughout my political career ever since I sponsored the first no-fault auto insurance bill in the nation.

Given the horrendous high costs of auto insurance, coupled with its long delays, high overhead, and rank unfairness when it comes to payment, your ''choice'' reform takes the sensible approach of allowing consumes to choose how to insure themselves. In other words, your reform trust the American people to decide for themselves whether to spend their money on ''pain and suffering'' coverage of food, medicine, life insurance or any other expenditure they deem more valuable for themselves and their families.

The bill is a particularly important to the people who live in American cities where premiums are the highest. It is no surprise that the cost studies done by the Joint Economic Committee indicate that while your reform will make stunning cost savings available to all American consumers, its largest benefits will go to the low income drivers living in urban areas.

The bill will also help resolve the country's problems with runaway health costs. By allowing consumer to remove themselves from a system whose perverse incentives trigger the cost of health care costs, your reform will lower the cost of health care for all Americans while ensuring that health care expenditure are more clearly targeted to health care needs.

I look forward to assisting you to the fullest possible degree as you exercise your vitally need leadership on behalf of America's consumers.

MICHAEL S. DUKAKIS.

STATEMENT OF REFORM PARTY CHAIRMAN RUSSELL J. VERNEY

Only on rare occasions does Congress have the opportunity to stimulate our national economy without adding to the $5.2 trillion debt burden this generation is leaving to our children and grandchildren.

Auto Choice Reform is one of those rare opportunities. It allows the owners of automobiles the choice of the level of insurance coverage they wish to provide for their own losses. protects an injured or harmed person's right to collect for their losses and can cut the average automobile owner's annual insurance rate by an average of $243 per year.

Auto Choice Reform is an idea whose time has come. Unfortunately, it will also stimulate a new furious round of campaign (investments) contributions by special interests who benefit from the current high cost of auto insurance rates and protracted litigation associated with automobile insurance and accidents injuries.

As list of top donors to political parities and candidates during 1995 and 1996, published by Mother Jones Magazine listed numerous individuals from the insurance industry and trial lawyers who have established their right of access to our top political leaders in this country.

The sponsors and promoters of the common sense Auto Choice Reform Act will have to overcome the easy access special interests have to our country's decision makers if this $44 billion per year cost savings for motorists in this country is to be achieved.

Mr. MOYNIHAN. Mr. President, I am pleased to be an original cosponsor of the Auto Choice Reform Act of 1997, a bill submitted by my distinguished colleague, Senator MCCONNELL.

This legislation is designed to create a new option in auto insurance for consumers who would prefer a system that guarantees quick and complete compensation. This alternative system would change most insurance coverage to a first-party system from a third-party system and it would separate economic and noneconomic compensation by unbundling the premium. Therefore, drivers would be allowed to insure themselves for only economic loss or for both economic and noneconomic loss.

In the 1950's, I first became interested in the issue of auto insurance reform as a member of New York Gov. Averell Harriman's Traffic Safety Policy Coordinating Committee. At that time, while working on auto safety issues, I became convinced that as the number of automobiles increased, the number of automobile accidents would, inexorably, also increase. And the problem with the current state of the insurance system begins right there. A driver buys protection against the risk that he will negligently cause an accident that will injure another person. If that should occur, the driver's insurance company is responsible for compensating the victim. But this contradicts the very nature of traffic accidents. If they were orderly events, in which cause and effect could be clearly discerned and ascribed, then the present insurance system could work. But accidents are nothing of the sort. It is often very difficult to determine fault in traffic accidents. It is the role of the liable party's insurance company to argue that the plaintiff's injuries—no matter how hideous—are not as serious as he or she claims. These cases overwhelm the court system and in so doing, they prevent real justice from occurring. Justice is possible only when it is done quickly and reflects the sense of what is right and what is wrong, as I wrote in ''Next: A New Auto Insurance Policy,'' which appeared in the August 27, 1967 New York Times magazine:

The most serious secondary effect of the existing insurance system, however, lies in its impact on the courts. This process begins with the use of the police to enforce the traffic laws, as a result of which the incidence of arrest by armed police in the United States is the highest of any society in history. The jam starts there, and is followed by a flood of accident litigation cases that derive, in part at least, from the original criminal case. We have now reached the point where accident litigation accounts for an estimated 65 to 80 percent of the total civil court cases tried in the United States. This in turn has brought us to the point where delays in justice here are the longest of any democracy on earth. It now takes an average of 30.1 months to obtain a jury trial in the metropolitan areas of the nation. In Westchester and Kings counties, it is 50 months plus. In Chicago it is 60 months plus.

A legal expert in the field, James Marshall, has argued that persons involved in or witnessing an automobile accident are not really capable of reconstructing it in court. The event is too complex, and levels of perception too low. (How would a witness to a shooting respond to a question as to which way the bullet was traveling?) *A fortiori* the attempt to reconstruct such an episode three, four, or five years afterward is nigh impossible. Thus the question must be asked whether a social concern of the highest order—the administration of justice—is not being sacrificed to one of a much lower priority, the reenactment of traffic accidents. (As indeed the whole cops-and-robbers, shoot-'em-up paradigm for managing the road system must be questioned. It was not just chance that the riots in Watts and Newark began with police arresting a motorist.)

There is little likelihood, however, that greater efforts toward the administration of justice—more judges, or whatever—would change matters. A New York survey has shown that of 220,000 annual claims of victims seeking to recover damages caused by another's fault, only 7,000 reach trial, and 2,500 reach verdict. Given the number and rate of accidents in the existing transport system, a kind of Malthusian principle governs the courts: the number of litigated cases will automatically increase to use up all the available judicial facilities and maintain a permanent backlog. At a time when issues of justice, violence, and civic peace are of immediate and pressing concern, to devote the better part of the judicial (and an enormous portion of the legal) resources of the nation to managing the road system is the kind of incompetence that societies end up paying for.

Only one adult response is possible: the present automobile insurance system has to change . . .

In that article, 30 years ago, I proposed two alternatives to traditional tort coverage as solutions for the problem. One was to have the Federal Government provide insurance—financed by a penny or so increases in the Federal gasoline tax—for injuries and economic losses, with claims being adjusted in a fashion similar to the workers' compensation system. The second alternative was along the lines of the current legislation. For the past 35 years, Jeffrey O'Connell, the Samuel McCoy Professor of Law at the University of Virginia, has been figuring out the permutations of this second type of reform. It is his recommendations that shape today's legislation.

Over 16 million motor vehicle accidents occur every year. The average amount of time it takes to receive compensation for losses in a tort case is over 18 months. Minimally injured parties are overcompensated while victims of serious injuries often fail to receive full restitution. According to a study by the RAND Institute, people with economic losses of under $5,000 receive over two to three times that amount in compensation. People with $25,000 to $100,000 worth of losses, however, currently are compensated for just over one-half of their losses, on average. The very seriously injured—

those with economic losses of over $100,000—receive compensation worth only 9 percent of their damages, on average. The current system does not work.

This legislation is called Auto Choice because drivers would have a choice between this new system, called personal protection insurance [PPI], or they could remain insured under the system currently operating in their State—the tort maintenance system [TM]. For people who choose to insure themselves for only economic damages, this is akin to a $243 tax cut, according to a recent report by the Joint Economic Committee, only without any impact on the Federal budget. Our legislation would ensure more complete and more rapid recovery of losses for the people who incur them, and it would reduce the number of cases that presently overwhelm the courts.

I thank my friend from Kentucky for inviting me to cosponsor this legislation, and hope other Senators agree with us that the time for auto choice has come.

Mr. LIEBERMAN. Mr. President, I am here today with Senators MCCONNELL, MOYNIHAN, GORTON, and GRAMS to introduce the Auto Choice Reform Act of 1997. If enacted, this bill would save American consumers tens of billions of dollars, while at the same time producing an auto insurance system that operates more efficiently and promises drivers better and quicker compensation.

America's drivers are plagued today by an auto accident insurance and compensation system that is too expensive and that does not work. Each of us currently pays an average of $785 annually for our auto insurance per car. This is an extraordinarily large sum, and one that is particularly difficult for people of modest means—and almost impossible for poor people—to afford. A study of Maricopa County, AZ drives this point home. That study found that families living below 50 percent of the poverty line spend nearly one-third of their household income on premiums when they purchase auto insurance.

Perhaps those costs would be worth it if they meant that people injured in car accidents were fully compensated for their injuries. But under our current tort system, that often is not the case, particularly for people who are seriously injured. Because of the need to prove fault and the ability to receive compensation only through someone else's insurance policy, some injured drivers—like those in one car accidents or those who are found to have been at fault themselves—are left without any compensation at all. Others must endure years of litigation before receiving any compensation for their injuries. In the end, people who suffer minimal injuries in auto accidents generally end up overcompensated, while victims of serious injuries often fail to receive full restitution. According to a study by Rand's Institute for Civil Justice, people who suffer economic losses—lost wages and medical bills, for example—in the range of $25,000 to $100,000 currently are compensated for just over one-half of their losses on average. The very seriously injured—those with economic losses of over $100,000—receive compensation worth just 9 percent of those damages on average. Much of this shortfall is due to the high transaction costs—the 33-percent attorneys' fee regularly taken out of a plaintiff's recovery, for one thing—associated with the current system.

These statistics show that our auto insurance and compensation laws violate the cardinal rule I think those of us in the business legislating have a duty to follow: to draft our laws to encourage people to minimize their disputes, and to encourage those who do have disputes to resolve them as efficiently, as economically, and as quickly as possible. This is particularly true when we are dealing with laws impacting on people who are physically injured, because injured people simply—and literally—cannot afford to wait the years it often takes for a lawsuit to wind its way through our legal system. The laws governing our auto accident and insurance system do not now meet those simple criteria. They instead require consumers to pay extraordinarily high premiums to purchase auto insurance. That auto insurance, in turn and as a result of our broken legal system, does not bring seriously injured people either speedy or full compensation for their injuries.

My colleagues and I set out to rethink the legal framework governing our car insurance and compensation system. We asked ourselves whether we could write a law that would both lower premiums and better compensate people for injuries suffered in car accidents. Why, we wondered, should people hurt in car crashes—people who have bought and paid for insurance policies—not be able to receive compensation for their injuries unless they find someone else who was at fault, sue them, engage in potentially years of litigation, and collect from that other person? Why, we asked, couldn't auto insurance instead be more like health and homeowner insurance, where people know when they buy their policies that they will be compensated immediately for any covered injury, regardless of who caused the injury and without having to find and pay a lawyer and often suffer through years of litigation?

The answer we came up with was that there is no reason not to change our auto insurance and compensation laws to address these problems. Our Auto Choice proposal would address these problems by introducing reason into our auto insurance and accident laws. The bill would produce a system that would guarantee immediate compensation to injured people. At the same time, it would bring tremendous savings to the system—up to $45 billion annually according to a recent study. And, it would do so, not by forcing people to do something they do not want to do, but by giving them the choice—the right to determine for themselves what is in their best interests.

Here's how our plan would work: All drivers would be required to purchase a certain minimum level of insurance, but they would get to choose the type of coverage they want. Those drivers who value immediate compensation for their injuries and lower premiums would be able to purchase what we call personal protection insurance. If the driver with that type of coverage is injured in an accident, he or she would get immediate compensation for all economic losses—things like lost wages, medical bills and attorneys fees—up to the limits of his or her policy, without regard to who was at fault in the accident.

If their economic losses exceeded those policy limits, the injured party could sue the other driver for the extra economic loss on a fault basis. The only thing the plaintiff could not do is sue the other driver for noneconomic losses, the so-called pain and suffering damages.

Those drivers who did not want to give up the ability to collect pain and suffering damages could choose a different option, called tort maintenance coverage. Drivers with that type of policy would be able to cover themselves for whatever level of economic and noneconomic damages they want, and they would then be able to collect those damages, also from their own insurance company, after proving fault.

As I mentioned earlier, the savings from this new Choice system would be dramatic. According to a newly released report from the Joint Economic Committee, if all American drivers opted for personal protection insurance, they would save an average of $243 annually on their auto insurance premiums. Drivers in my home State of Connecticut would see even better savings, putting an additional $383 per year into their pockets. All told, the American economy could save up to $45 billion each and every year under our proposal.

Our Auto Choice plan, I think, both serves the reform goals I discussed above and incorporates all of the lessons we learned during our past experiences with no-fault laws. It ensures that most injured people would be compensated immediately and that we all can purchase auto insurance at a reasonable rate. As I said at the outset, we as legislators do our best when we make sure that our legal system minimizes the potential for disputes in society and facilitates the resolution of those disputes that exist. The Auto Choice law would do exactly that. It would ensure that something tens of thousands of us now have disputes about—who should compensate whom for car accidents—no longer would be the subject of disputes because everyone who is injured will know from the outset that they will be compensated, they will know by whom they will be compensated, and they will know they will be compensated without having to sue someone else first. Mr. President,

this bill would be a boon to the American driver and to the American economy. I look forward to working with my colleagues to see it enacted into law.

Mr. GORTON. Mr. President, I am pleased to join Senators MCCONNELL, GRAMS, MOYNIHAN, and LIEBERMAN in cosponsoring the Auto Choice Reform Act, a measure that offers consumers a quick-pay, low-cost policy to replace their current policies—policies that are grossly inflated by the costs of damage claims for pain and suffering.

Auto Choice Reform Act. Choice. Removing the perverse incentives to inflate damages that our current system creates, and allowing consumers to make rational choices, lies at the heart of this bill. Unlike some other no-fault measures, the Auto Choice Reform Act gives consumers, and States, choices. Choices which, if exercised, should significantly lower insurance premiums. For States, the choice is whether or not to offer the no-fault option to residents. A State can opt out legislatively, or if the State commissioner of insurance shows that a no-fault system will not result in a 30 percent decrease in bodily injury premiums for those who choose PPI. If States choose to offer the no-fault option, however, consumers still have the choice of whether or not to participate in the no-fault system. No driver will be deprived of her ability to sue, but instead, can choose between two systems.

If they want, consumers can avail themselves of the new no-fault insurance system that the bill creates. If a consumer elects the personal protection insurance [PPI] system, then, in the event of an accident, and regardless of fault, she is compensated by her own insurer for economic losses, such as car repair, medical expenses or lost wages, up to her policy limit. She does not, however, recover for noneconomic losses, pain and suffering, and she may not be sued for pain and suffering damages. If her economic damages exceed her policy limit, however, she may sue for economic damages. By taking the often-inflated damages for pain and suffering out of the equation, consumers choosing PPI should see a significant savings in their insurance premiums—a savings that has been estimated at $243 per policy.

Motorists who choose not to participate in the no-fault system are allowed that option under this legislation. Again, the choice is with the consumer. By opting for what the bill refers to as tort maintenance coverage, a TMC driver can keep her traditional liability policy under which she can sue other TMC drivers for both economic and noneconomic damages. To cover noneconomic damages in accidents with PPI drivers, who TMC drivers cannot sue for noneconomic damages, the TMC driver can purchase a supplemental policy and recover the noneconomic damages from her own insurer.

What does all of this mean? The New York Times perhaps summed it up best in an editorial that predicted that Auto Choice ''would give families the option of forgoing suits for non-monetary losses in exchange for quick and complete reimbursement for every blow to their pocketbook. Everyone would win—except the lawyers.'' Mr. President, I hope the Senate will act promptly to pass this bill.

By Mr. KENNEDY:

S. 626. A bill to amend the Fair Labor Standards Act of 1938 to provide for legal accountability for sweatshop conditions in the garment industry, and for other purposes; to the Committee on Labor and Human Resources.

STOP THE SWEATSHOPS ACT OF 1997

Mr. KENNEDY. Mr. President, last Monday, President Clinton announced an agreement by the Apparel Industry Partnership that establishes a workplace code of conduct for the industry. I commend this agreement, which is the product of a presidential task force on the exploitation of garment industry workers by unscrupulous clothing manufacturers. The agreement is designed to encourage voluntary compliance with labor standards in all countries that manufacture clothing sold in the United States.

Congress can build on this agreement by acting to abolish sweatshops in our own country. Last year, Congressman BILL CLAY and I introduced the Stop the Sweatshops Act. Today I am introducing that legislation to help fulfill the promise of the Apparel Industry Partnership agreement. This bill will reinforce that agreement by making clothing manufacturers liable for sweatshop practices by contractors. This liability will help to ensure that honest employers who obey our laws will not lose out in competition with dishonest employers who do not. Without this bill, economic forces in the clothing industry make it unlikely that the Apparel Industry Partnership agreement will be fully effective in protecting American workers.

Sweatshops continue to plague the garment industry. As important as the Apparel Industry Partnership agreement is, it has a significant deficiency. It has no enforcement mechanism. It applies only to manufacturers who agree to its terms and it does not specify how violations will be remedied or what penalties will be imposed. The Stop the Sweatshops Act remedies these deficiencies for all clothing manufacturing done in this country.

This bill will require manufacturers to exert their considerable economic power to ensure fair treatment of garment workers. It will prevent manufacturers from playing one contractor against another, which drives down the prices of their goods. It is the cutthroat competition resulting from such practices that causes dangerous and unhealthy working conditions, brutally long hours, and inadequate pay.

The record of worker exploitation in the garment industry shows that effective enforcement is crucial. Of the 22,000 manufacturers of clothing and accessories in the United States, the Department of Labor finds that more than half are paying wages substantially below the minimum wage, and a third are exposing their workers to serious safety and health risks.

Sweatshops run by unscrupulous contractors have a long and sordid history in this country. In 1911, a tragic fire at the Triangle Shirtwaist Co. on Lower East Side in New York City killed 146 young immigrant women. They suffocated or were burned to death because the exits had been locked or blocked.

Eighty-six years later, we still find too often that conditions have not improved. In August 1996, four Brooklyn garment factories were closed and their owners were arrested for operating sweatshops. Serious fire code violations were found, including locked exit doors, obstructed aisles, and violations of sprinkler system requirements. In addition, the contractors maintained two sets of accounting records, one showing that workers were being paid as little as $2.67 per hour—far less than the minimum wage. The workers were all Asian immigrants making clothes for K-Mart.

K-Mart requires its garment contractors to identify all subcontractors they employ, and to make ''regular and surprise inspections'' of manufacturing operations. But this requirement did not prevent the fire code violations, wage violations, and other illegal practices of the contractors arrested in Brooklyn last summer. This example shows that voluntary codes of conduct and monitoring programs, as the Apparel Industry Partnership agreement encourages, cannot, by themselves, eradicate the problem.

Another sweatshop scandal came to light last spring, with respect to clothing made for Wal-Mart. It shows how far some manufacturers are willing to go to cut costs, and the terrible human toll that follows. In August 1995, Federal investigators raided a sewing factory outside Los Angeles. In a compound surrounded by barbed wire, agents found dozens of Thai and Mexican immigrant women working 20-hour days for as little as $1.00 per hour. The women were held captive at their sewing tables by guards who threatened them if they tried to escape.

American consumers do not want their clothing produced in this way. A U.S. News and World Report poll showed that 6 in 10 Americans are concerned about working conditions in U.S. manufacturing firms. A poll reported in Newsday showed that 83 percent of consumers would be willing to pay an extra $1 on a $20 item if they knew the garment wasn't made in a sweatshop.

Many law-abiding manufacturers already recognize the need to stamp out sweatshops in the United States. But, as these examples make clear, current law and voluntary codes of conduct are not adequate to prevent abuses. The 800 investigators of the Department of

Labor who monitor compliance with wage and hour laws cannot do the job alone. Manufacturers have the economic muscle and market power to end these abuses. But, under the current system, the market power works in the wrong direction—it encourages contractors to inflict sweatshop conditions on employees, rather than pay fair wages and maintain proper working conditions.

The most effective way to enlist manufacturers in the battle against sweatshops is to make them liable along with their contractors for violations of the law. Manufacturers who know they will face liability will take the steps necessary to ensure that their contractors comply with applicable laws.

Our Stop the Sweatshops Act does just that. It amends the Fair Labor Standards Act to make manufacturers in the garment industry liable, along with their contractors, for violations of these laws.

Manufacturers will be liable for injunctive relief and civil penalties assessed against a contractor found to have broken the law. They will also be liable for back pay owed to employees for such violations. Manufacturers will be liable only for violations committed on work done for that manufacturer.

The bill also authorizes the Secretary of Labor to assess a civil penalty of up to $1,000 for each employee in cases where contractors fail to keep required payroll records. If the records are fraudulent, the Secretary can assess penalties up to $10,000 for the first offense and $15,000 for further offenses. These penalties will give employers an incentive to keep proper records, and punish contractors who attempt to conceal abuses by maintaining two sets of records.

This bill sends a clear message to garment industry employers. Exploitation of workers will not be tolerated. Sweatshops are unacceptable. We intend to do all we can to stamp them out, and this legislation will help us achieve that goal.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 626

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE AND REFERENCE.

(a) SHORT TITLE.—This Act may be cited as the ''Stop Sweatshops Act of 1997''.

(b) REFERENCE.—Whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.).

SEC. 2. FINDINGS.

The Congress makes the following findings:

(1) The production of garments in violation of minimum labor standards burdens commerce and the free flow of goods in commerce by spreading and perpetuating labor conditions that undermine minimum living standards and by providing an unfair means of competition to the detriment of employers who comply with the law.

(2) The existence of working conditions detrimental to fair competition and the maintenance of minimum standards of living necessary for health, efficiency, and general well-being of workers is a continuing and growing problem in the domestic garment industry.

(3) The Congress concurs in the findings of the Comptroller General that most sweatshop employers violate the recordkeeping requirements of the Fair Labor Standards Act of 1938 and that the failure of such employers to maintain adequate records has affected, and continues to affect adversely, the ability of the Department of Labor to collect wages due to workers.

(4) The amendment of the Fair Labor Standards Act of 1938 to provide for legal responsibility on the part of manufacturers for compliance with such Act's wage and hour, child labor, and industrial homework provisions by contractors in the garment industry and to provide civil penalties for violations of that Act's recordkeeping requirements is necessary to promote fair competition and working conditions that are not detrimental to the maintenance of health, efficiency, and general well-being of workers in the garment industry.

SEC. 3. LEGAL RESPONSIBILITY FOR COMPLIANCE WITH WAGE AND HOUR PROVISIONS IN THE GARMENT INDUSTRY.

(a) AMENDMENT.—The Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) is amended by inserting after section 14 the following:

''LEGAL RESPONSIBILITY FOR COMPLIANCE IN THE GARMENT INDUSTRY WITH SECTIONS 6 AND 7

''SEC. 14A. (a) Every manufacturer engaged in the garment industry who contracts to have garment manufacturing operations performed by another person as a contractor—

''(1) shall be civilly liable, with respect to those garment manufacturing operations, to the same extent as the contractor for any violation by the contractor of section 6 (except for violations of subsection (d)) or 7, for any violation by the contractor of the provisions of section 11 regulating, restricting, or prohibiting industrial homework, and for violation by the contractor of section 12; and

''(2) shall be subject to the same civil penalties assessed against the contractor for violations of such sections.

''(b) In this section:

''(1) The term 'contractor' means any person who contracts, directly or indirectly through an intermediary or otherwise, with a manufacturer to perform the cutting, sewing, dyeing, washing, finishing, assembling, pressing, or otherwise producing of any men's, women's, children's, or infants' apparel (including clothing, knit goods, hats, gloves, handbags, hosiery, ties, scarves, and belts, or a section or component of apparel, except for premanufactured items such as buttons, zippers, snaps, and studs) that is designed or intended to be worn by any individual and that is to be sold or offered for sale.

''(2) The term 'garment industry' means the designing, cutting, sewing, dyeing, washing, finishing, assembling, pressing, or otherwise producing of men's, women's, children's, or infants' apparel (including clothing, knit goods, hats, gloves, handbags, hosiery, ties, scarves, and belts, or a section or component of apparel, except for premanufactured items such as buttons, zippers, snaps, and studs) that is designed or intended to be worn by any individual and that is to be sold or offered for sale.

''(3) The term 'manufacturer' means any person, including a retailer, who—

''(A) contracts, directly or indirectly through an intermediary or otherwise, with a contractor to perform the cutting, sewing, dyeing, washing, finishing, assembling, pressing, or otherwise producing of any men's, women's, children's, or infants' apparel (including clothing, knit goods, hats, gloves, handbags, hosiery, ties, scarves, and belts, or a section or component of apparel, except for premanufactured items such as buttons, zippers, snaps, and studs) that is designed or intended to be worn by any individual and that is to be sold or offered for sale; or

''(B) designs, cuts, sews, dyes, washes, finishes, assembles, presses, or otherwise produces or is responsible for the production of any men's, women's, children's, or infants' apparel (including clothing, knit goods, hats, gloves, handbags, hosiery, ties, scarves, and belts, or a section or component of apparel, except for premanufactured items such as buttons, zippers, snaps, and studs) that is designed or intended to be worn by any individual and that is to be sold or offered for sale.

''(4) The term 'retailer' means any person engaged in the sale of apparel to the ultimate consumer for personal use.''.

(b) LIABILITY TO EMPLOYEES.—Section 16 (29 U.S.C. 216) is amended—

(1) in subsection (b), by inserting after the first sentence the following: ''A manufacturer in the garment industry (as defined in section 14A(b)(3)) shall also be jointly and severally liable to such an employee to the same extent as the contractor in the garment industry (as defined in section 14A(b)(1)) who employed such employee if the contractor violated section 6 (other than subsection (d)) or 7 in the production of apparel or components of apparel for such manufacturer.'';

(2) in subsection (b), by inserting in the last sentence ''or by a manufacturer in the garment industry'' after ''by an employer''; and

(3) in subsection (c)—

(A) in the third sentence, by striking ''first sentence'' and inserting ''first or second sentence''; and

(B) in the third sentence, by inserting ''or by a manufacturer in the garment industry'' before ''liable''.

SEC. 4. RECORDKEEPING.

Section 16(e) (29 U.S.C. 216(e)) is amended by inserting after the first sentence the following: ''Any person who fails to establish, maintain, and preserve payroll records as required under section 11(c) shall be subject to a civil penalty of not to exceed $1,000 for each employee who was the subject of such a violation. The Secretary may, in the Secretary's discretion, impose civil penalties under this subsection for willful violations. Any person who submits fraudulent payroll records to the agencies enforcing this Act in any of the agencies' investigations or hearings, or as evidence in a court action, that conceal the actual hours of labor worked by employees or the violation of section 6, 7, 11(d), or 12 shall be subject to a civil penalty of $10,000 for each act of fraud and $15,000 for each act of fraud for a second offense.''.

SEC. 5. EFFECTIVE DATE.

The amendments made by this Act shall take effect upon the expiration of 30 days after the date of enactment of this Act.

By Mr. JEFFORDS (for himself, Mr. MURKOWSKI, Mr. CHAFEE, Mr. COCHRAN, Mr. LEAHY and Mr. WELLSTONE):

S. 627. A bill to reauthorize the African Elephant Conservation Act; to the Committee on Environment and Public Works.

THE AFRICAN ELEPHANT CONSERVATION ACT REAUTHORIZATION ACT OF 1997

Mr. JEFFORDS. Mr. President, I rise today in celebration of Earth Day to introduce legislation to reauthorize the African Elephant Conservation Act of 1988, a historic conservation measure that continues to successfully preserve the African elephant in its natural environment. This legislation will extend the act through September of the year 2002.

The African Elephant Conservation Act has resulted in the stabilization of elephant populations on the African Continent. By the late 1980's, the population of African elephants had dramatically declined from approximately 1.3 million animals in 1979 to less than 700,000 in 1987. The primary reason for this decline was the poaching and illegal slaughter of elephants for their tusks, which fueled the international trade in ivory.

To address this problem, the U.S. Congress enacted the African Elephant Conservation Act to provide assistance to African nations in their efforts to stop poaching and to develop and implement effective conservation programs. To accomplish this goal, the legislation created the African elephant conservation fund. Since 1988, Congress has appropriated over $6 million to fund 48 conservation projects in 17 range states throughout Africa, with additional contributions of $7 million through private matching moneys.

The African elephant conservation fund has resulted in the development and implementation of various elephant conservation plans. Today, elephant populations have stabilized and are on the increase in southern Africa, the international ivory trade has been dramatically reduced, and wildlife rangers are better equipped to stop illegal poaching activities. The conservation fund originally focused on antipoaching efforts. Over the last several years, the projects have diversified to include elephant population research, efforts to mitigate elephant and human conflicts, the cataloging of ivory stockpiles, and the identification of new techniques for effective elephant management. It is important, however, to keep in mind that, while the African elephant conservation fund has resulted in several successful conservation projects, much work remains to be done to ensure that the African elephant continues to survive in its natural environment.

We must work to ensure that the African elephant does not once again decline and disappear from its historic range. I am confident that additional conservation projects funded through the legislation will help to preserve this flagship species for many future generations. I urge my colleagues to join me in supporting the African Elephant Conservation Reauthorization Act of 1997.

By Mr. GRAMM (for himself and Mrs. HUTCHISON):

S. 628. A bill to designate the United States courthouse to be constructed at the corner of 7th Street and East Jackson Street in Brownsville, Texas, as the ''Reynaldo G. Garza United States Courthouse''; to the Committee on Environment and Public Works.

THE REYNALDO G. GARZA U.S. COURTHOUSE DESIGNATION ACT OF 1997

Mr. GRAMM. Mr. President, along with my colleague, Senator HUTCHISON, I am proud to introduce legislation that would name the Federal courthouse in Brownsville, TX after a man who has been involved in the administration of justice throughout South Texas for nearly 60 years, Judge Reynaldo G. Garza.

Judge Garza was the first Mexican-American to be appointed to a Federal judgeship in the history of our country, when President Kennedy appointed him to a district court bench in 1961. Judge Garza served as a U.S. District Judge until 1979, when President Carter appointed him to the Fifth Circuit Court of Appeals, where he still serves, at the age of 81, in senior status.

Besides being named a the first Mexican-American Federal district judge, he was the first Mexican-American chief district judge, and the first Mexican-American Federal circuit court judge. He would have been the first Mexican-American ever to have been appointed to a President's Cabinet if he had accepted President Carter's request to serve as the Nation's attorney general in 1977. Sensibly, however, Judge Garza didn't want to move from Brownsville to Washington, DC.

Judge Garza's life has been filled with extraordinary accomplishments. Born in 1915 in Brownsville to Ygnacio and Zoila Garza, both Mexican immigrants, he was the sixth of eight children. Judge Garza reached adulthood during the Depression and, through sheer ability, hard work and determination, graduated from the University of Texas Law School in 1939. He then established a law practice in Brownsville, mixing his work with the demands of raising five children and serving his community in capacities ranging from the local school board and city commission to the Knights of Columbus.

Following the Japanese attack on Pearl Harbor in December of 1941, Reynaldo Garza enlisted in the U.S. Army and served until the war's end in 1945 as a gunnery sergeant and in other capacities. In 1943, Garza was selected to serve as translator in a meeting between President Franklin D. Roosevelt and Mexican President Miguel Avila Camacho, marking the first time a U.S. president had met with a Mexican president on Mexican soil.

Judge Garza's selfless commitment to his family, his community and his Nation is exemplary, and today, he serves as a role model for people both inside and outside of the legal profession.

I am privileged to introduce this legislation in Judge Garza's honor today and look forward to working with my colleagues to make the Reynaldo G. Garza Federal courthouse a reality.

Mrs. HUTCHISON. Madam President, today we honor our Nation's first Mexican-American Federal judge, Judge Reynaldo G. Garza. I am proud to cosponsor legislation with Senator GRAMM to name the new Federal courthouse in Brownsville for Judge Garza. In this way, we will record for generations to come Judge Garza's selfless service to the city of Brownsville, to Texas and to our Nation.

Traditionally, we reserve this honor for judges who no longer walk the courthouse halls. However, we wish to grant an exception for this exceptional man. Born of immigrant parents, Reynaldo Garza has paved a hopeful path for other immigrant sons. After distinguishing himself as a lawyer, he served on the U.S. District Court for the Southern District until his appointment to the U.S. Court of Appeals for the Fifth Circuit in 1979 by President Carter. As the first Mexican-American to achieve these distinctions, Judge Garza truly personifies the pioneer spirit of this great Nation.

I would like Judge Garza to be remembered as well for his gracious response to this action. Upon learning that the courthouse might be named for him, Judge Garza said simply, ''I'm humbled by the fact that somebody would even think I'm worthy of it.'' Indeed, no one is worthier than Judge Garza of this small token of our respect and admiration.

By Mr. BREAUX (by request):

S. 629. A bill entitled the ''OECD Shipbuilding Agreement Act''; to the Committee on Commerce, Science, and Transportation.

THE OECD SHIPBUILDING AGREEMENT ACT

Mr. BREAUX. Mr. President: today I introduce a bill to implement the OECD shipbuilding agreement to end foreign shipbuilding subsidies. This bill is an administration draft that I submit to better focus upcoming congressional discussion of the issues. With Europe just announcing $2.1 billion in new subsidies for its shipyards, the United States cannot afford to delay action on this agreement any longer.

The United States has taken a leadership role in pushing for the elimination of unfair subsidies in the international commercial shipbuilding sector. In 1981, the United States unilaterally eliminated its own commercial shipbuilding subsidies. In October 1989, the United States, at the request of the six defense-oriented shipyards and the smaller commercial shipyards, initiated negotiations in the OECD aimed at eliminating trade distorting foreign shipbuilding subsidies. After 5 years of negotiations and constant prodding by the U.S. Congress, the OECD shipbuilding agreement was signed by the European Union, Japan, the Republic of Korea, Finland, Norway, and the United States on December 21, 1994.

The OECD shipbuilding agreement, which covers over 80 percent of the

world's commercial shipbuilding and repair capacity, would prohibit government subsidies to the shipbuilding industry, as well as discipline export credits, set common rules for government financing programs, and establish a mechanism for addressing injurious pricing, that is, dumping. As of June 1, 1996, all signatories, except the United States, had ratified the agreement.

In the last Congress, several parties expressed serious concerns about certain aspects of the agreement and the proposed implementing legislation which we were unable to address before the end of the last session. As a result, the agreement's entry into force has been delayed by more than a year. I am hopeful that an agreement on implementing legislation can be reached early this session and I think the bill I am introducing today is a huge step in that direction.

I am very concerned, however, that further delay in confirming United States commitment to this agreement will seriously undermine U.S. long-term efforts to eliminate foreign shipbuilding subsidies, especially as other countries face increased pressure to resume the granting of subsidies to their shipbuilding industries. The United States can't afford a shipbuilding subsidies race. We are cutting funding of important domestic programs now. The United States needs to approve and implement the shipbuilding agreement in order to give us the tools to challenge foreign subsidies and protect our shipbuilding industry against unfair foreign competition.

I ask you to join the battle against unfair international shipbuilding subsidies by supporting the swift passage of legislation approving and implementing the OECD shipbuilding agreement.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 629

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

PART 1—GENERAL PROVISIONS

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

(a) SHORT TITLE.—This Act may be cited as the ''OECD Shipbuilding Agreement Act''.

(b) TABLE OF CONTENTS.—

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

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

(2) to ensure that U.S. ownership, manning, and construction of coastwise trade (Jones Act) vessels, which have provided the Department of Defense with mariners and assets in time of national emergency, cannot be compromised by the OECD Shipbuilding Agreement; and

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

SEC. 102. APPROVAL OF THE SHIPBUILDING AGREEMENT.

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

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

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

''TITLE VIII—INJURIOUS PRICING AND COUNTERMEASURES RELATING TO SHIPBUILDING

''Subtitle A—Imposition of Injurious Pricing Charge and Countermeasures

''SEC. 801. INJURIOUS PRICING CHARGE.

''(a) BASIS FOR CHARGE.—If—

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

''(2) the Commission determines that—

''(A) an industry in the United States—

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

''(ii) is threatened with material injury, or

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

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

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

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

''(a) INITIATION BY ADMINISTERING AUTHORITY.—

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

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

''(b) INITIATION BY PETITION.—

''(1) PETITION REQUIREMENTS.—

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

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

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

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

''(II) if the vessel was sold through any bidding process other than a broad multiple bid and the petitioner was invited to tender a

bid on the contract at issue, the petition shall include information indicating that the petitioner actually did so and the bid of the petitioner substantially met the delivery date and technical requirements of the bid, or

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

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

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

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

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

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

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

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

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

''(3) DEADLINE FOR FILING PETITION.—

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

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

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

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

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

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

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

''(c) ACTIONS BEFORE INITIATING INVESTIGATIONS.—

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

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

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

''(d) PETITION DETERMINATION.—

''(1) TIME FOR INITIAL DETERMINATION.—

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

''(i) alleges the elements necessary for the imposition of an injurious pricing charge under section 801(a) and the elements required under subsection (b)(1)(B), (C), (D), or (E), and contains information reasonably available to the petitioner supporting the allegation; 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 DETERMINATION.—If the determinations under clauses (i) and (ii) of paragraph (1)(A) are affirmative, the administering authority shall initiate an investigation to determine whether the vessel was sold at less than fair value, unless paragraph (6) applies.

''(3) NEGATIVE DETERMINATIONS.—If—

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

''(B) paragraph (6)(B) applies, the administering authority shall dismiss the petition, terminate the proceeding, and notify the petitioner in writing of the reasons for the determination.

''(4) DETERMINATION OF INDUSTRY SUPPORT.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

''SEC. 803. PRELIMINARY DETERMINATIONS.

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

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

''(A) an industry in the United States—

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

''(ii) is threatened with material injury, or

''(B) the establishment of an industry in the United States is or has been materially retarded, by reason of the sale of the subject vessel. If the Commission makes a negative determination under this paragraph, the investigation shall be terminated.

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

''(b) PRELIMINARY DETERMINATION BY ADMINISTERING AUTHORITY.—

''(1) PERIOD OF INJURIOUS PRICING INVESTIGATION.—

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

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

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

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

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

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

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

''(1) IN GENERAL.—If—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

''SEC. 804. TERMINATION OR SUSPENSION OF INVESTIGATION.

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

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

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

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

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

''(d) PROCEEDINGS BY WTO MEMBERS.—

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

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

''(A) the imposition of antidumping measures, or

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

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

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

''(ii) is not concluded within one year from the date of the initiation of the proceeding, then the administering authority and the Commission shall terminate the suspension and continue the investigation. The period in which the investigation was suspended shall not be included in calculating deadlines applicable with respect to the investigation.

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

''SEC. 805. FINAL DETERMINATIONS.

''(a) DETERMINATIONS BY ADMINISTERING AUTHORITY.—

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

''(2) EXTENSION OF PERIOD FOR DETERMINATION.—

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

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

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

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

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

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

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

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

''(b) FINAL DETERMINATION BY COMMISSION.—

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

''(A) an industry in the United States—

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

''(ii) is threatened with material injury, or

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

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

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

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

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

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

''(c) EFFECT OF FINAL DETERMINATIONS.—

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

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

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

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

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

''(e) CORRECTION OF MINISTERIAL ERRORS.—The administering authority shall establish procedures for the correction of ministerial errors in final determinations within a reasonable time after the determinations are issued under this section. Such procedures shall ensure opportunity for interested parties to present their views regarding any such errors. As used in this subsection, the term 'ministerial error' includes errors in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the administering authority considers ministerial.

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

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

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

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

''(3) informs the foreign producer that—

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

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

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

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

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

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

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

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

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

''(2) shall revoke an injurious pricing order—

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

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

''(C) upon full implementation of an alternative equivalent remedy described in subsection (e), or

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

''(e) ALTERNATIVE EQUIVALENT REMEDY.—

''(1) AGREEMENT FOR ALTERNATE REMEDY.—The administering authority may suspend an injurious pricing order if the administering authority enters into an agreement with the foreign producer subject to the order on an alternative equivalent remedy, that the administering authority determines—

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

''(B) is in the public interest,

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

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

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

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

''SEC. 807. IMPOSITION OF COUNTERMEASURES.

''(a) GENERAL RULE.—

''(1) ISSUANCE OF ORDER IMPOSING COUNTERMEASURES.—Unless an injurious pricing order is revoked or suspended under section 806(d) or (e), the administering authority shall issue an order imposing countermeasures.

''(2) CONTENTS OF ORDER.—The countermeasure order shall—

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

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

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

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

''(2) ELEMENTS OF THE NOTICE OF INTENT.—The notice of intent shall contain at least the following elements:

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

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

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

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

''(c) DETERMINATION TO IMPOSE COUNTERMEASURES; ORDER.—

''(1) GENERAL RULE.—The administering authority shall, within the time specified in paragraph (2), issue a determination and order imposing countermeasures.

''(2) TIME FOR DETERMINATION.—The determination shall be issued within 90 days after

the date on which the notice of intent to impose countermeasures under subsection (b) is published in the Federal Register. The administering authority shall publish the determination, and the order described in paragraph (4), in the Federal Register within 7 days after issuing the final determination, and shall provide a copy of the determination and order to the Customs Service.

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

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

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

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

''(A) a review of the scope or duration of the countermeasures determined under subsection (c)(3), and

''(B) a hearing in connection with such a review.

''(2) REVIEW.—If a proper request has been received under paragraph (1), the administering authority shall—

''(A) publish notice of initiation of a review in the Federal Register not later than 15 days after the end of the anniversary month of the issuance of the order imposing countermeasures, and

''(B) review and determine whether the requesting party has demonstrated that the scope or duration of the countermeasures is excessive in light of all of the circumstances.

''(3) TIME FOR REVIEW.—The administering authority shall make its determination under paragraph (2)(B) within 90 days after the date on which the notice of initiation of the review is published. If the determination under paragraph (2)(B) is affirmative, the administering authority shall amend the order accordingly. The administering authority shall promptly publish the determination and any amendment to the order in the Federal Register, and shall provide a copy of any amended order to the Customs Service. In extraordinary circumstances, the administering authority may extend the time for its determination under paragraph (2)(B) to not later than 150 days after the date on which the notice of initiation of the review is published.

''(e) EXTENSION OF COUNTERMEASURES.—

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

''(2) DEADLINE FOR REQUEST FOR EXTENSION.—

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

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

''(3) DETERMINATION.—

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

''(B) PROCEDURES.—

''(i) REQUEST FOR EXTENSION BEYOND 4 YEARS.—If paragraph (2)(A) applies to the request, the administering authority shall consult with the Trade Representative under paragraph (4).

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

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

''(5) DECISION NOT TO REQUEST PANEL.—If, based on consultations under paragraph (4), the Trade Representative decides not to request establishment of a panel, the Trade Representative shall inform the party requesting the extension of the countermeasures of the reasons for its decision in writing. The decision shall not be subject to judicial review.

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

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

''(1) GENERAL RULE.—At least once during each 12-month period beginning on the anniversary date of a determination to impose countermeasures under this section, the administering authority shall publish in the Federal Register a list of all delivered vessels subject to countermeasures under the determination.

''(2) CONTENT OF LIST.—The list under paragraph (1) shall include the following information for each vessel, to the extent the information is available:

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

''(B) The vessel identification number.

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

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

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

''(F) The delivery date of the vessel.

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

''(H) Any other identifying information available.

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

''(4) SERVICE OF LIST AND AMENDMENTS.—

''(A) SERVICE OF LIST.—The administering authority shall serve a copy of the list described in paragraph (1) on—

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

''(ii) the United States Customs Service,

''(iii) the Secretariat of the Organization for Economic cooperation and Development,

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

''(v) the shipyards on the list, and.

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

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

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

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

''(g) ADMINISTRATIVE REVIEW OF LIST OF VESSELS SUBJECT TO COUNTERMEASURES.—

''(1) REQUEST FOR REVIEW.—

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

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

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

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

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

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

''(i) not later than 15 days after the request is received, or

''(ii) if the request seeks a determination described in paragraph (1)(A)(i), not later than 15 days after the deadline described in paragraph (1)(B), and

''(B) review and determine whether the requesting party has demonstrated that—

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

''(ii) a vessel not included in the list qualifies for inclusion.

''(3) TIME FOR DETERMINATION.—The administering authority shall make its determination under paragraph (2)(B) within 90 days after the date on which the notice of initiation of such review is published. If the administering authority determines that a vessel should be added or deleted from the list, the administering authority shall amend the list accordingly. The administering authority shall promptly publish in the Federal Register the determination and any such amendment to the list.

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

''(i) SUPENSION OR TERMINATION OF PROCEEDINGS OR COUNTERMEASURES; TEMPORARY REDUCTION OF COUNTERMEASURES.—

''(1) IF INJURIOUS PRICING ORDER REVOKED OR SUSPENDED.—If an injurious pricing order had been revoked or suspended under section 806(d) or (e), the administering authority shall, as appropriate, suspend or terminate proceedings under this section with respect to that order, or suspend or revoke a countermeasure order issued with respect to that injurious pricing order.

''(2) IF PAYMENT DATE AMENDED.—

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

''(B) DATE FOR APPLICATION OF COUNTERMEASURE.—In taking action under subparagraph (A), the administering authority shall ensure that countermeasures are not applied before the date that is 30 days after publication in the Federal Register of the amended payment date.

''(C) REINSTITUTION OF PROCEEDINGS.—If—

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

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

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

''(j) COMMENT AND HEARING.—In the course of any proceeding under subsection (c), (d), (e), or (g), the administering authority—

''(1) shall solicit comments from interested parties, and

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

''(B) in a proceeding under subsection (g), upon the request of an interested party, may hold a hearing in accordance with section 841(b) in connection with that proceeding.

"SEC. 808. INJURIOUS PRICING PETITIONS BY THIRD COUNTRIES.

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

''(1) a vessel from another Shipbuilding Agreement Party has been sold directly or indirectly to one or more United States buyers at less than fair value, and

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

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

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

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

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

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

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

''(2) by the administering authority and the Commission, in making the determination required by subsection (c).

''(e) ISSUANCE OF ORDER.—If the administering authority makes an affirmative determination under paragraph (1) of subsection (c) and the Commission makes an affirmative determination under paragraph (2) of subsection (c), the administering authority shall—

''(1) order an injurious pricing charge in accordance with section 806, and

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

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

''(1) the final determinations of the administering authority and the Commission under subsection (c) shall be treated as final determinations made under section 805, and

''(2) determinations of the administering authority under subsection (e)(2) shall be treated as determinations made under section 806 and 807, as the case may be.

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

"SEC. 809. THIRD COUNTRY INJURIOUS PRICING.

''(a) PETITION BY DOMESTIC INDUSTRY.—

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

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

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

may submit a petition to the Trade Representative that alleges the elements referred to in subparagraphs (A) and (B) and requests the Trade Representative to take action under subsection (b) of this section on behalf of the domestic industry.

''(2) A petition submitted under paragraph (1) shall contain such detailed information as the Trade Representative may require in support of the allegations in the petition.

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

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

''(2) At the request of the Trade Representative, the appropriate officers of the Department of Commerce and the United States International Trade Commission shall assist the Trade Representative in preparing the application under paragraph (1).

''(c) CONSULTATION AFTER SUBMISSION OF APPLICATION.—After submitting an application under subsection (b)(1), the Trade Representative shall seek consultations with the appropriate authority of the Shipbuilding Agreement Party regarding the request for injurious pricing action.

''(d) ACTION UPON REFUSAL OF SHIPBUILDING AGREEMENT PARTY TO ACT.—If the appropriate authority of the Shipbuilding Agreement Party refuses to undertake injurious pricing measures in response to a request made therefor by the Trade Representative under subsection (b) of this section, the Trade Representative promptly shall consult with the domestic industry on whether action under any other law of the United States is appropriate.

"Subtitle B—Special Rules

"SEC. 821. EXPORT PRICE.

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

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

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

''(2) reduced by—

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

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

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

"SEC. 822. NORMAL VALUE.

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

''(1) DETERMINATION OF NORMAL VALUE.—

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

''(B) PRICE.—The price referred to in subparagraph (A) is—

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

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

''(I) such price is representative, and

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

''(C) THIRD COUNTRY SALES.—This subparagraph applies when—

''(i) a foreign like vessel is not sold in the exporting country as described in subparagraph (B)(i), or

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

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

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

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

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

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

''(A) reduced by—

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

''(ii) the amount of any taxes imposed directly upon the foreign like vessel or components thereof which have been rebated, or which have not been collected, on the subject vessel, but only to the extent that such taxes are added to or included in the price of the foreign like vessel, and

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

''(B) increased or decreased by the amount of any difference (or lack thereof) between the export price and the price described in paragraph (1)(B) (other than a difference for which allowance is otherwise provided under this section) that is established to the satisfaction of the administering authority to be wholly or partly due to—

''(i) physical differences between the subject vessel and the vessel used in determining normal value, or

''(ii) other differences in the circumstances of sale.

''(6) ADJUSTMENTS FOR LEVEL OF TRADE.—The price described in paragraph (1)(B) shall also be increased or decreased to make due allowance for any difference (or lack thereof) between the export price and the price described in paragraph (1)(B) (other than a difference for which allowance is otherwise made under this section) that is shown to be wholly or partly due to a difference in level of trade between the export price and normal value, if the difference in level of trade—

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

''(B) is demonstrated to affect price comparability, based on a pattern of consistent price differences between sales at different levels of trade in the country in which normal value is determined.

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

''(7) ADJUSTMENTS TO CONSTRUCTED VALUE.—Constructed value as determined under subsection (e) may be adjusted, as appropriate, pursuant to this subsection.

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

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

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

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

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

''(3) CALCULATION OF COST OF PRODUCTION.—For purposes of this section, the cost of production shall be an amount equal to the sum of—

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

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

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

''(c) NONMARKET ECONOMY COUNTRIES.—

''(1) IN GENERAL.—If—

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

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

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

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

''(A) comparable to the subject vessel, and

''(B) produced in one or more market economy countries that are at a level of economic development comparable to that of the nonmarket economy country, is sold in other countries, including the United States.

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

''(A) hours of labor required,

''(B) quantities of raw materials employed,

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

''(D) representative capital cost, including depreciation.

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

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

''(B) significant producers of comparable vessels.

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

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

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

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

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

''(e) CONSTRUCTED VALUE.—

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

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

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

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

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

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

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

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

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

''(3) COSTS OF MATERIALS.—For purposes of paragraph (1)(A), the cost of materials shall be determined without regard to any internal tax in the exporting country imposed on such materials or their disposition which are remitted or refunded upon exportation of the subject vessel produced from such materials.

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

''(1) COSTS.—

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

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

''(C) STARTUP COSTS.—

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

''(ii) STARTUP OPERATIONS.—Adjustments shall be made for startup operations only where—

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

''(II) production levels are limited by technical factors associated with the initial phase of commercial production.

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

''(iii) ADJUSTMENT FOR STARTUP OPERATIONS.—The adjustment for startup operations shall be made by substituting the unit production costs incurred with respect to the vessel at the end of the startup period for the unit production costs incurred during the startup period. If the startup period extends beyond the period of the investigation under this title, the administering authority shall use the most recent cost of production data that it reasonably can obtain, analyze, and verify without delaying the timely completion of the investigation.

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

''(D) COSTS DUE TO EXTRAORDINARY CIRCUMSTANCES NOT INCLUDED.—Costs shall not include actual costs which are due to extraordinary circumstances (including, but not limited to, labor disputes, fire, and natural disasters) and which are significantly over the cost increase which the shipbuilder could have reasonably anticipated and taken into account at the time of sale.

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

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

''SEC. 823. CURRENCY CONVERSION.

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

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

''Subtitle C—Procedures

''SEC. 841. HEARINGS.

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

''(b) PROCEDURES.—Any hearing required or permitted under this title shall be conducted after notice published in the Federal Register, and a transcript of the hearing shall be prepared and made available to the public. The hearing shall not be subject to the provisions of subchapter II of chapter 5 of title 5, United States Code, or to section 702 of such title.

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

''(a) IN GENERAL.—

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

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

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

''(B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (b)(1) and (d) of section 844,

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

''(D) provides such information but the information cannot be verified as provided in section 844(g),

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

''(b) ADVERSE INFERENCES.—If the administering authority or the Commission (as the case may be) finds that an interested party has failed to cooperate by not acting to the

best of its ability to comply with a request for information from the administering authority or the Commission, the administering authority or the Commission (as the case may be), in reaching the applicable determination under this title, may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available. Such adverse inference may include reliance on information derived from—

''(1) the petition, or

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

''(c) CORROBORATION OF SECONDARY INFORMATION.—When the administering authority or the Commission relies on secondary information rather than on information obtained in the course of an investigation under this title, the administering authority and the Commission, as the case may be, shall, to the extent practicable, corroborate that information from independent sources that are reasonably at their disposal.

''SEC. 843. ACCESS TO INFORMATION.

''(a) INFORMATION GENERALLY MADE AVAILABLE.—

''(1) PROGRESS OF INVESTIGATION REPORTS.—The administering authority and the Commission shall, from time to time upon request, inform the parties to an investigation under this title of the progress of that investigation.

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

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

''(B) the person charged with making the determination, or any person charged with making a final recommendation to that person, in connection with that proceeding, if information relating to that proceeding was presented or discussed at such meeting. The record of such an ex parte meeting shall include the identity of the persons present at the meeting, the date, time, and place of the meeting, and a summary of the matters discussed or submitted. The record of the ex parte meeting shall be included in the record of the proceeding.

''(3) SUMMARIES; NONPROPRIETARY SUBMISSIONS.—The administering authority and the Commission shall disclose—

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

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

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

''(b) PROPRIETARY INFORMATION.—

''(1) PROPRIETARY STATUS MAINTAINED.—

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

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

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

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

''(i) either—

''(I) a nonproprietary summary in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence, or

''(II) a statement that the information is not susceptible to summary, accompanied by a statement of the reasons in support of the contention, and

''(ii) either—

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

''(II) a statement to the administering authority or the Commission that the business proprietary information is of a type that should not be released under administrative protective order.

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

''(c) LIMITED DISCLOSURE OF CERTAIN PROPRIETARY INFORMATION UNDER PROTECTIVE ORDER.—

''(1) DISCLOSURE BY ADMINISTERING AUTHORITY OR COMMISSION.—

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

''(B) PROTECTIVE ORDER.—The protective order under which information is made available shall contain such requirements as the administering authority or the Commission may determine by regulation to be appropriate. The administering authority and the Commission shall provide by regulation for such sanctions as the administering authority and the Commission determine to be appropriate, including disbarment from practice before the agency.

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

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

''(ii) if—

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

''(II) the information is unusually voluminous or complex,

not later than 30 days (10 days if the submission pertains to a proceeding under section 803(a)) after the date on which the information is submitted.

''(D) AVAILABILITY AFTER DETERMINATION.—If the determination under subparagraph (C) is affirmative, then—

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

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

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

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

''(A) the administering authority or the Commission has denied access to the information under subsection (b)(1),

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

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

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

''(e) INFORMATION RELATING TO VIOLATIONS OF PROTECTIVE ORDERS AND SANCTIONS.—The administering authority and the Commission may withhold from disclosure any correspondence, private letters of reprimand, settlement agreements, and documents and files compiled in relation to investigations and actions involving a violation or possible violation of a protective order issued under subsection (c), and such information shall be treated as information described in section 552(b)(3) of title 5, United States Code.

''(f) OPPORTUNITY FOR COMMENT BY VESSEL BUYERS.—The administering authority and the Commission shall provide an opportunity for buyers of subject vessels to submit relevant information to the administering authority concerning a sale at less than fair value or countermeasures, and to the Commission concerning material injury by reason of the sale of a vessel at less than fair value.

''(g) PUBLICATION OF DETERMINATIONS; REQUIREMENTS FOR FINAL DETERMINATIONS.—

''(1) IN GENERAL.—Whenever the administering authority makes a determination under section 802 whether to initiate an investigation, or the administering authority or the Commission makes a preliminary determination under section 803, a final determination under section 805, a determination under subsection (b), (c), (d), (e)(3)(B)(ii), (g), or (i) of section 807, or a determination to suspend an investigation under this title, the administering authority or the Commission, as the case may be, shall publish the facts and conclusions supporting that determination, and shall publish notice of that determination in the Federal Register.

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

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

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

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

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

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

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

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

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

''(ii) the primary reasons for the determination.

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

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

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

''SEC. 844. CONDUCT OF INVESTIGATIONS.

''(a) CERTIFICATION OF SUBMISSIONS.—Any person providing factual information to the administering authority or the Commission in connection with a proceeding under this title on behalf of the petitioner or any other interested party shall certify that such information is accurate and complete to the best of that person's knowledge.

''(b) DIFFICULTIES IN MEETING REQUIREMENTS.—

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

''(2) ASSISTANCE TO INTERESTED PARTIES.—The administering authority and the Commission shall take into account any difficulties experience by interested parties, particularly small companies, in supplying information requested by the administering authority or the Commission in connection with investigations under this title, and shall provide to such interested parties any assistance that is practicable in supplying such information.

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

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

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

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

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

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

''(2) the information can be verified,

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

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

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

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

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

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

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

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

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

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

''(3) CONSULTATIONS ON REQUEST FOR COMMISSION DETERMINATION.—If a majority of the

Commissioners issues an affirmative report under paragraph (1), the Trade Representatives shall consult with the congressional committees listed in paragraph (1) concerning the matter.

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

''(5) CONSULTATIONS ON IMPLEMENTATION OF COMMISSION DETERMINATION.—The Trade Representative shall consult with the congressional committees listed in paragraph (1) before the Commission's determination under paragraph (4) is implemented.

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

''(b) ACTION BY ADMINISTERING AUTHORITY.—

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

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

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

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

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

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

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

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

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

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

''(4) CONSULTATIONS BEFORE IMPLEMENTATION.—Before the administering authority implements any determination, amendment, or suspension under paragraph (2), the Trade Representative shall consult with the administering authority and the congressional committees listed in subsection (a)(1) with respect to such determination, amendment, or suspension.

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

''(c) OPPORTUNITY FOR COMMENT BY INTERESTED PARTIES.—Before issuing a determination, amendment, or suspension, the administering authority, in a matter described in subsection (b)(1)(A), or the Commission, in a matter described in subsection (a)(1), as the case may be, shall provide interested parties with an opportunity to submit written comments and, in appropriate cases, may hold a hearing, with respect to the determination.

''Subtitle D—Definitions

''SEC. 861. DEFINITIONS.

''For purposes of this subtitle:

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

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

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

''(4) INDUSTRY.—

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

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

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

''(D) RELATED PARTIES.—(i) In an investigation under this title, if a producer of a domestic like vessel and the foreign producer, seller (other than the foreign producer), or United States buyer of the subject vessel are related parties, or if a producer of a domestic like vessel is also a United States buyer of the subject vessel, the domestic producer may, in appropriate circumstances, be excluded from the industry.

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

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

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

''(III) a third party directly or indirectly controls the domestic producer and the foreign producer, seller, or United States buyer, or

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

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

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

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

''(6) UNITED STATES BUYER.—The term 'United States buyer' means a buyer that is any of the following:

''(A) A United States citizen.

''(B) A juridical entity, including any corporation, company, association, or other organization, that is legally constituted under the laws and regulations of the United States or a political subdivision thereof, regardless of whether the entity is organized for pecuniary gain, privately or government owned, or organized with limited or unlimited liability.

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

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

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

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

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

''(A) the terms and circumstances of the transaction which conveys the interest,

''(B) commercial practice within the industry,

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

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

''(8) VESSEL.—

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

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

''(ii) a tug of 365 kilowatts or more,

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

''(B) EXCLUSIONS.—The term 'vessel' does not include—

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

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

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

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

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

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

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

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

''(11) FOREIGN LIKE VESSEL.—Except as used in section 822(e)(1)(B)(ii)(II), the term 'foreign like vessel' means a like vessel produced by the foreign producer of the subject vessel for sale in the producer's domestic market or in a third country.

''(12) SAME GENERAL CATEGORY OF VESSEL.—The term 'same general category of vessel' means a vessel of the same type and purpose as the subject vessel, but of a significantly different size.

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

''(14) FOREIGN PRODUCER.—The term 'foreign producer' means the producer or producers of the subject vessel.

''(15) EXPORTING COUNTRY.—The term 'exporting country' means the country in which the subject vessel was built.

''(16) MATERIAL INJURY.—

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

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

''(i) shall consider—

''(I) the sale of the subject vessel,

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

''(III) the impact of the sale of the subject vessel on domestic producers of a domestic like vessel, but only in the context of production operations within the United States, and

''(ii) may consider such other economic factors as are relevant to the determination regarding whether there is or has been material injury by reason of the sale of the subject vessel.

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

''(C) EVALUATION OF RELEVANT FACTORS.—For purposes of subparagraph (B)—

''(i) SALE OF THE SUBJECT VESSEL.—In evaluating the sale of the subject vessel, the Commission shall consider whether the sale, either in absolute terms or relative to production or demand in the United States, in terms of either volume or value, is or has been significant.

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

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

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

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

''(I) actual and potential decline in output, sales, market share, profits, productivity, return on investments, and utilization of capacity,

''(II) factors affecting domestic prices, including with regard to sales,

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

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

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

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

''(D) STANDARD FOR DETERMINATION.—The presence or absence of any factor which the Commission is required to evaluate under subparagraph (C) shall not necessarily give decisive guidance with respect to the determination by the Commission of material injury.

''(E) THREAT OF MATERIAL INJURY.—

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

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

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

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

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

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

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

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

''(iii) EFFECT OF INJURIOUS PRICING IN THIRD-COUNTRY MARKETS.—

''(I) IN GENERAL.—The Commission shall consider whether injurious pricing in the markets of foreign countries (as evidenced by injurious pricing findings or injurious pricing remedies of other Shipbuilding Agreement Parties, or antidumping determinations of, or measures imposed by, other countries, against a like vessel produced by the producer under investigation) suggests a threat of material injury to the domestic industry. In the course of its investigation, the Commission shall request information from the foreign producer or United States buyer concerning this issue.

''(II) EUROPEAN COMMUNITIES.—For purposes of the clause, the European Communities as a whole shall be treated as a single foreign country.

''(F) CUMULATION FOR DETERMINING MATERIAL INJURY.—

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

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

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

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

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

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

''(I) with respect to which the administering authority has made a preliminary negative determination, unless the administering

authority subsequently made a final affirmative determination with respect to those sales before the Commission's final determination is made, or

''(II) from any producer with respect to which the investigation has been terminated.

''(iii) RECORDS IN FINAL INVESTIGATIONS.—In each final determination in which it cumulatively assesses the effects of sales under clause (i), the Commission may make its determinations based on the record compiled in the first investigation in which it makes a final determination, except that when the administering authority issues its final determination is a subsequently completed investigation, the Commission shall permit the parties in the subsequent investigation to submit comments concerning the significance of the administering authority's final determination, and shall include such comments and the administering authority's final determination in the record for the subsequent investigation.

''(G) CUMULATION FOR DETERMINING THREAT OF MATERIAL INJURY.—To the extent practicable and subject to subparagraph (F)(ii), for purposes of clause (i) (II) and (III) of subparagraph (E), the Commission may cumulatively assess the effects of sales of like vessels from all countries with respect to which—

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

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

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

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

''(17) INTERESTED PARTY.—the term 'interested party' means, in a proceeding under this title—

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

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

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

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

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

''(E) a trade or business association a majority of whose members are producers in an industry,

''(F) an association, a majority of whose members is composed of interested parties described in subparagraph (C), (D), or (E), and

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

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

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

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

''(C) material retardation of the establishment of an industry in the United States,

by reason of the sale of the subject vessel, an affirmative vote on any of the issues shall be treated as a vote that the determination should be affirmative.

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

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

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

''(20) NONMARKET ECONOMY COUNTRY.—

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

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

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

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

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

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

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

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

''(C) DETERMINATION IN EFFECT.—

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

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

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

''(21) SHIPBUILDING AGREEMENT.—The term 'Shipbuilding Agreement' means The Agreement Respecting Normal Competitive Conditions in the Commercial Shipbuilding and Repair Industry, resulting from negotiations under the auspices of the Organization for Economic Cooperation and Development, and entered into on December 21, 1994.

''(22) SHIPBUILDING AGREEMENT PARTY.—The term 'Shipbuilding Agreement Party' means a state or separate customs territory that is a Party to the Shipbuilding Agreement, and with respect to which the United States applies the Shipbuilding Agreement.

''(23) WTO AGREEMENT.—The term 'WTO Agreement' means the Agreement defined in section 2(9) of the Uruguay Round Agreements Act.

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

''(25) TRADE REPRESENTATIVE.—The term 'Trade Representative' means the United States Trade Representative.

''(26) AFFILIATED PERSONS.—The following persons shall be considered to be 'affiliated' or 'affiliated persons':

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

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

''(C) Partners.

''(D) Employer and employee.

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

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

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

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

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

''(28) INJURIOUS PRICING MARGIN.—

''(A) IN GENERAL.—The term 'injurious pricing margin' means the amount by which the normal value exceeds the export price of the subject vessel.

''(B) MAGNITUDE OF THE INJURIOUS PRICING MARGIN.—The magnitude of the injurious pricing margin used by the Commission shall be—

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

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

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

''(30) ANTIDUMPING.—

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

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

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

SEC. 104. ENFORCEMENT OF COUNTERMEASURES.

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

''SEC. 468. SHIPBUILDING AGREEMENT COUNTERMEASURES.

''(a) IN GENERAL.—Notwithstanding any other provision of law, upon receiving from

the Secretary of Commerce a list of vessels subject to countermeasures under section 807, the Customs Service shall deny any request for a permit to lade or unlade passengers, merchandise, or baggage from or onto those vessels so listed.

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

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

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

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

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

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

''(c) CORRECTION OF MINISTERIAL OR CLERICAL ERRORS.—

''(1) PETITION FOR CORRECTION.—If the master of any vessel whose application for a permit to lade or unlade has been denied under this section believes that such denial resulted from a ministerial or clerical error, no amounting to a mistake of law, committed by any Customs officer, the master may petition the Customs Service for correction of such error, as provided by regulation.

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

''(3) PETITIONS SEEKING ADMINISTRATIVE REVIEW.—Any petition seeking administrative review of any matter regarding the Secretary of Commerce's decision to list a vessel under section 807 mut be brought under that section.

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

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

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

SEC. 105. JUDICIAL REVIEW IN INJURIOUS PRICING AND COUNTERMEASURE PROCEEDINGS.

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

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

''(a) REVIEW OF DETERMINATION.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

''(b) STANDARDS OF REVIEW.—

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

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

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

''(2) RECORD FOR REVIEW.—

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

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

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

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

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

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

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

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

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

(b) CONFORMING AMENDMENTS.—

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

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

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

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

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

PART 2—OTHER PROVISIONS

SEC. 111. EQUIPMENT AND REPAIR OF VESSELS.

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

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

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

''(2) tugs of 365 kilowatts or more.

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

SEC. 112. EFFECT OF AGREEMENT WITH RESPECT TO PRIVATE REMEDIES.

No person other than the United States—

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

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

SEC. 113. IMPLEMENTING REGULATIONS.

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

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

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

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

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

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

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

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

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

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

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

''(ii) that is a Shipbuilding Agreement vessel and is constructed in a Shipbuilding Agreement Party and, if reconstructed, is reconstructed in a Shipbuilding Agreement Party or in the United States,''.

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

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

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

(5) Section 610 (46 App. U.S.C. 1180) is amended by striking ''shall be built in a domestic yard or shall have been documented under the laws of the United States not later than February 1, 1928, or actually ordered and under construction for the account of citizens of the United States prior to such date,'' and inserting ''shall be built in the United States or, if the vessel is a Shipbuilding Agreement vessel, in a Shipbuilding Agreement Party,''.

(6) Section 901(b)(1) (46 App. U.S.C. 1241(b)(1)) is amended by striking the third sentence and inserting the following:

''For purposes of this section, the term 'privately owned United States-flag commercial vessels' shall be deemed to include—

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

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

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

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

''(h) The term 'Shipbuilding Agreement' means the Agreement Respecting Normal Competitive Conditions in the Commercial Shipbuilding and Repair Industry, which resulted from negotiations under the auspices of the Organization for Economic Cooperation and Development, and was entered into on December 21, 1994.

''(i) The term 'Shipbuilding Agreement Party' means a state or separate customs territory that is a Party to the Shipbuilding Agreement, and with respect to which the United States applies the Shipbuilding Agreement.

''(j) The term 'Shipbuilding Agreement vessel' means a vessel to which the Secretary determines Article 2.1 of the Shipbuilding Agreement applies.

''(k) The term 'Export Credit Understanding' means the Understanding on Export Credits for Ships which resulted from negotiations under the auspices of the Organization for Economic Cooperation and Development and was entered into on December 21, 1994.

''(l) The term 'Export Credit Understanding vessel' means a vessel to which the Secretary determines the Export Credit Understanding applies.''.

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

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

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

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

''(i)(1) Except as provided in paragraph (2), the Secretary may not, with respect to—

''(A) the general 75 percent or less limitation contained in subsection (b)(2),

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

''(C) the 80 percent or less limitation in the 3rd proviso to such subsection, establish by rule, regulation, or procedure any percentage within any such limitation that is, or is intended to be, applied uniformly to all guarantees or commitments to guarantee made under this section that are subject to the limitation.

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

(C) Section 1104B(b) (46 App. U.S.C. 1274a(b)) is amended by striking the period at the end and inserting the following:

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

SEC. 115. APPLICABILITY OF TITLE XI AMENDMENTS

(a) EFFECTIVE DATE.—

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

(A) before January 1, 2002, or

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

(2) UNUSUAL CIRCUMSTANCES.—This paragraph applies in a case in which unusual circumstances beyond the control of the parties concerned prevent the delivery of a vessel by January 1, 2002. As used in this paragraph, the term ''unusual circumstances'' means acts of God (other than ordinary storms or inclement weather conditions) labor strikes, acts of sabotage, explosions, fires, or vandalism, and similar circumstances.

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

SEC. 116. WITHDRAWAL FROM AGREEMENT.

(a) WITHDRAWAL.—

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

(2) TONNAGE OF NEW CONSTRUCTION IN WITHDRAWING PARTIES.—This paragraph applies if the combined gross tonnage of new Shipbuilding Agreement vessels that were constructed in all Shipbuilding Agreement Parties who have given notice to withdraw from the Shipbuilding Agreement, and that were delivered in the calendar year preceding the calendar year in which the notice is given, is 15 percent or more of the gross tonnage of new Shipbuilding Agreement vessels that were constructed in all Shipbuilding Agreement Parties and were delivered in the calendar year preceding the calendar year in which the notice is given.

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

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

SEC. 117. MONITORING AND ENFORCEMENT.

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

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

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

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

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

(5) annual publication of a notice in the Federal Register affording an opportunity for interested parties to comment on the implementation of the Agreement; and

(6) the taking of any other appropriate action to monitor compliance of Shipbuilding Agreement Parties.

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

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

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

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

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

SEC. 118. JONES ACT AND RELATED LAWS NOT AFFECTED.

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

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

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

SEC. 119. EXPANDING MEMBERSHIP IN THE SHIPBUILDING AGREEMENT.

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

SEC. 120. PROTECTION OF UNITED STATES SECURITY INTERESTS.

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

(b) MILITARY VESSELS AND REQUIREMENTS.—Nothing in the Agreement and in this Act shall be construed to amend or modify any laws or programs relating to U.S. military vessels (including military reserve vessels) or the military requirements of the United States. As used in this section—

(1) MILITARY VESSEL.—A ''military vessel'' is a vessel which, according to its basic structural characteristics and ability, is intended to be used exclusively for military purposes;

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

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

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

(C) ''Sustainment (Phase) Vessels'', which are privately owned merchant marine vessels and are chartered on a long-term basis by the Department of Defense for the purpose of carrying military cargo or personnel including the ''Military Sealift Command Controlled Fleet''; and

(3) MILITARY REQUIREMENTS.—''Laws or programs relating to the military requirements of the United States'' include any program which, consistent with Article 2(2) of the Agreement, provides for modifications made or features added to vessels to make them more capable of carrying military equipment in a contingency provided that the vessels constructed or modified by such programs are under long-term contractual arrangement with the Department of Defense for their call up in the event of contingency.

SEC. 121. DEFINITIONS.

Except as otherwise provided, as used in this part—

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

(2) the term ''GATT 1994'' has the meaning given that term in section 2 of the Uruguay Round Agreements Act.

PART 3—EFFECTIVE DATE

SEC. 131. EFFECTIVE DATE.

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

By Mr. BYRD:

S. 630. A bill to amend the Internal Revenue Code of 1986 to deposit in the highway trust fund the receipts of the 4.3-cent increase in the fuel tax rates enacted by the Omnibus Budget Reconciliation Act of 1993; to the Committee on Finance.

FEDERAL HIGHWAY TRUST FUND LEGISLATION

Mr. BYRD. Mr. President, I rise to introduce a bill today to ensure that adequate resources are available to reverse the very destructive trend of Federal disinvestment in our Nation's critical infrastructure of highways and bridges. The bill that I introduce would place into the highway trust fund the 4.3-

cents-per-gallon gas tax that is currently used for our deficit reduction.

Senators will recall that back in May and June of last year, there was much debate on this 4.3-cent gas tax, which was first imposed by the Omnibus Budget Reconciliation Act of 1993.

During this past summer, I deferred offering this bill as an amendment to two separate tax bills, and I did so at the request of both the majority and the minority leaders. But unfortunately, another opportunity to offer the amendment to a tax bill did not arise.

By depositing this additional 4.3-cents per gallon gas tax into the highway trust fund, Congress will have the resources to better meet the true needs of our Nation's transportation infrastructure.

Our Federal investment in infrastructure as a percentage of the total Federal budget has declined significantly since 1980. Few economics would disagree that adequate long-term investment in infrastructure is critical to a nation's economic well-being. Only through investment here at home, only through investment to maintain and renew our own physical plant, can our economy grow and generate good wages for our citizens.

Even so, our Nation's investment in infrastructure as a percentage of our gross domestic product has almost been cut in half since 1980. As a nation, we invest a considerably smaller percentage of our gross domestic product in infrastructure than our economic competitors invest in economic infrastructure in Europe and in Asia.

Nowhere do we pay a greater price for inadequate infrastructure investment than in our Nation's highways. Our National Highway System carries nearly 80 percent of U.S. interstate commerce and nearly 80 percent of intercity passenger and tourist traffic. Yet, we have allowed segments of our National Highway System to fall into disrepair.

The Department of Transportation recently released its latest report on the condition of the Nation's highways. Its findings are even more disturbing than earlier reports. The Department of Transportation currently classified less than half of the mileage on our interstate system as being in good condition and only 39 percent of our entire National Highway System is rated in good condition. Fully 61 percent of our Nation's highways are rated in either fair condition or in poor condition. Almost one in four of our Nation's highway bridges are now categorized as either structurally deficient or functionally obsolete.

According to the Department of Transportation, investment in our Nation's highways is a full $15 billion short each year just to maintain these current inadequate conditions—just to maintain them. Put another way, we would have to increase our national highway investment by more than $15 billion a year just to avoid further deterioration of our national highway network.

It should be noted that, while our highway infrastructure continue to deteriorate, highway use is on the rise. Indeed, it is growing at a very rapid pace. The number of vehicle miles traveled has grown by roughly 40 percent in just the last decade. As a result, we are witnessing new highs in the levels of highway congestion, causing delays in the movement of goods and people that costs our national economy more than $40 billion a year.

So, Mr. President, it is clear that the requirement that we place on our National Highway System are growing while our investment continues to decline. We are simply digging ourselves a deeper and deeper hole. Six years ago, in 1991, it was estimated that an investment of $47.5 billion would be necessary on an annual basis to ensure that highway conditions would not deteriorate any further than existed in that year—that it would not get any worse. By 1993, that figure grew to $51.6 billion. And 2 years ago, that figure grew to $54.8 billion. Ergo, the longer we delay increasing Federal highway spending, the more expensive it will be to reverse this destructive trend, which costs our Nation dearly.

Productivity improvements are the key to global competitiveness, rising standards of living and economic growth. Investments in highways result in significant, nationwide improvements in productivity. According to the Federal Highway Administration, every $1 billion invested in highways creates and sustains over 40,000 full-time jobs. Furthermore, the very same $1 billion also results in a $240 million reduction in overall production costs for American manufacturers.

While we can easily see the economic impact of disinvestment in our Nation's highways, we must not lose sight of the fact that deteriorating highways have a direct relationship to safety as well. We may be talking about your life. We may be talking about your life. And we are. Almost 42,000 people died on our Nation's highways in 1996. That equates to having a mid-sized passenger aircraft crash every day, killing all of its occupants. The National Highway Traffic Safety Administration counts poor road conditions as a contributing factor in a large percentage of these fatal accidents, as well as those in which there are serious injuries. The economic impact of these highway accidents cost our Nation $150 billion a year, and that figure is growing. More importantly, this wasteful carnage brings incredible sorrow to affected families and friends, and the Nation loses the skills, the talents, and the contributions of the victims.

The Senate will soon take up legislation to reauthorize the Intermodal Surface Transportation Efficiency Act, or ISTEA. This bill will be one of the most important pieces of legislation that we consider this session. Many Members, including myself, have introduced legislation to address specific transportation needs in their States and regions. Also, many Members have spoken of the need for formula changes to bring about what they perceive to be a more equitable distribution of funds from the highway program.

However, we must face the fact that, absent a substantial increase in the current level of spending on our highway program, we will not have the resources available to address the many important, but often competing, needs for our Nation's highway requirements in all regions of the country.

So in the coming weeks, Mr. President, I look forward to working with all of my colleagues toward the enactment of substantially increased authorizations and appropriations for our Nation's highway system. And the bill that I have introduced today will provide a very helpful tool with which to do that.

ADDITIONAL COSPONSORS

S. 28

At the request of Mr. THURMOND, the name of the Senator from Idaho [Mr. CRAIG] was added as a cosponsor of S. 28, a bill to amend title 17, United States Code, with respect to certain exemptions from copyright, and for other purposes.

S. 194

At the request of Mr. CHAFEE, the name of the Senator from Washington [Mr. GORTON] was added as a cosponsor of S. 194, a bill to amend the Internal Revenue Code of 1986 to make permanent the section 170(e)(5) rules pertaining to gifts of publicly-traded stock to certain private foundations and for other purposes.

S. 224

At the request of Mr. WARNER, the name of the Senator from South Carolina [Mr. HOLLINGS] was added as a cosponsor of S. 224, a bill to amend title 10, United States Code, to permit covered beneficiaries under the military health care system who are also entitled to Medicare to enroll in the Federal Employees Health Benefits program, and for other purposes.

S. 278

At the request of Mr. GRAMM, the name of the Senator from Montana [Mr. BURNS] was added as a cosponsor of S. 278, a bill to guarantee the right of all active duty military personnel, merchant mariners, and their dependents to vote in Federal, State, and local elections.

S. 370

At the request of Mr. GRASSLEY, the names of the Senator from New York [Mr. D'AMATO] and the Senator from South Dakota [Mr. DASCHLE] were added as cosponsors of S. 370, a bill to amend title XVIII of the Social Security Act to provide for increased Medicare reimbursement for nurse practitioners and clinical nurse specialists to increase the delivery of health services in health professional shortage areas, and for other purposes.