

104<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 2754

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IN THE SENATE OF THE UNITED STATES

JUNE 14, 1996

Received; read twice and referred to the Committee on Finance

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## AN ACT

To approve and implement the OECD Shipbuilding Trade  
Agreement.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Shipbuilding Trade  
3 Agreement Act”.

4 **SEC. 2. APPROVAL OF THE SHIPBUILDING AGREEMENT.**

5 The Congress approves The Agreement Respecting  
6 Normal Competitive Conditions in the Commercial Ship-  
7 building and Repair Industry (hereafter in this Act re-  
8 ferred to as the “Shipbuilding Agreement”), a reciprocal  
9 trade agreement which resulted from negotiations under  
10 the auspices of the Organization for Economic Coopera-  
11 tion and Development, and was entered into on December  
12 21, 1994.

13 **SEC. 3. EFFECTIVE DATE.**

14 Except as provided in section 206, this Act and the  
15 amendments made by this Act take effect on the date that  
16 the Shipbuilding Agreement enters into force with respect  
17 to the United States.

18 **TITLE I—INJURIOUS PRICING**  
19 **AND COUNTERMEASURES**

20 **SEC. 101. INJURIOUS PRICING AND COUNTERMEASURES**  
21 **PROCEEDINGS.**

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

1 **“TITLE VIII—INJURIOUS PRIC-**  
 2 **ING AND COUNTERMEASURES**  
 3 **RELATING TO SHIPBUILDING**

“Subtitle A—Injurious Pricing Charge and Countermeasures

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

“Subtitle B—Special Rules

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

“Subtitle C—Procedures

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

“Subtitle D—Definitions

- “Sec. 861. Definitions.

4 **“Subtitle A—Injurious Pricing**  
 5 **Charge and Countermeasures**

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

7 “(a) BASIS FOR CHARGE.—If—

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

12 “(2) the Commission determines that—

1           “(A) an industry in the United States—  
2                   “(i) is or has been materially injured,  
3                   or  
4                   “(ii) is threatened with material in-  
5                   jury, or  
6           “(B) the establishment of an industry in  
7           the United States is or has been materially re-  
8           tarded,  
9           by reason of the sale of such vessel, then there shall  
10          be imposed upon the foreign producer of the subject  
11          vessel an injurious pricing charge, in an amount  
12          equal to the amount by which the normal value ex-  
13          ceeds the export price for the vessel. For purposes  
14          of this subsection and section 805(b)(1), a reference  
15          to the sale of a foreign vessel includes the creation  
16          or transfer of an ownership interest in the vessel, ex-  
17          cept for an ownership interest created or acquired  
18          solely for the purpose of providing security for a  
19          normal commercial loan.  
20          “(b) FOREIGN VESSELS NOT MERCHANDISE.—No  
21          foreign vessel may be considered to be, or to be part of,  
22          a class or kind of merchandise for purposes of subtitle B  
23          of title VII.

1 **“SEC. 802. PROCEDURES FOR INITIATING AN INJURIOUS**  
2 **PRICING INVESTIGATION.**

3 “(a) INITIATION BY ADMINISTERING AUTHORITY.—

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

14 “(2) TIME FOR INITIATION BY ADMINISTERING  
15 AUTHORITY.—An investigation may only be initiated  
16 under paragraph (1) within 6 months after the time  
17 the administering authority first knew or should  
18 have known of the sale of the vessel. Any period in  
19 which subsection (d)(6)(A) applies shall not be in-  
20 cluded in calculating that 6-month period.

21 “(b) INITIATION BY PETITION.—

22 “(1) PETITION REQUIREMENTS.—(A) Except in  
23 a case in which subsection (d)(6) applies, an injuri-  
24 ous pricing proceeding shall be initiated whenever an  
25 interested party, as defined in subparagraph (C),  
26 (D), (E), or (F) of section 861(17), files a petition

1 with the administering authority, on behalf of an in-  
2 dustry, which alleges the elements necessary for the  
3 imposition of an injurious pricing charge under sec-  
4 tion 801(a) and the elements required under sub-  
5 paragraph (B), (C), (D), or (E) of this paragraph,  
6 and which is accompanied by information reasonably  
7 available to the petitioner supporting those allega-  
8 tions and identifying the transaction concerned.

9 “(B)(i) If the petitioner is a producer described  
10 in section 861(17)(C), and—

11 “(I) if the petitioner was invited to tender  
12 a bid on the contract at issue, the petition shall  
13 include information indicating that the peti-  
14 tioner actually did so and the bid of the peti-  
15 tioner substantially met the delivery date and  
16 technical requirements of the bid, or

17 “(II) if the petitioner was not invited to  
18 tender a bid, the petition shall include informa-  
19 tion indicating that the petitioner was capable  
20 of building the vessel concerned and, if the peti-  
21 tioner knew or should have known of the pro-  
22 posed purchase, it made demonstrable efforts to  
23 conclude a sale with the United States buyer  
24 consistent with the delivery date and technical  
25 requirements of the buyer.

1           “(ii) For purposes of clause (i)(II), there is a  
2           rebuttable presumption that the petitioner knew or  
3           should have known of the proposed purchase if it is  
4           demonstrated that—

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

9                   “(II) general information on the sale was  
10          available from brokers, financiers, classification  
11          societies, charterers, trade associations, or other  
12          entities normally involved in shipbuilding trans-  
13          actions with whom the petitioner had regular  
14          contacts or dealings.

15           “(C) If the petitioner is an interested party de-  
16          scribed in section 861(17)(D), the petition shall in-  
17          clude information indicating that members of the  
18          union or group of workers described in that section  
19          are employed by a producer that meets the require-  
20          ments of subparagraph (B) of this paragraph.

21           “(D) If the petitioner is an interested party de-  
22          scribed in section 861(17)(E), the petition shall in-  
23          clude information indicating that a member of the  
24          association described in that section is a producer

1 that meets the requirements of subparagraph (B) of  
2 this paragraph.

3 “(E) If the petitioner is an interested party de-  
4 scribed in section 861(17)(F), the petition shall in-  
5 clude information indicating that a member of the  
6 association described in that section meets the re-  
7 quirements of subparagraph (C) or (D) of this para-  
8 graph.

9 “(F) The petition may be amended at such  
10 time, and upon such conditions, as the administering  
11 authority and the Commission may permit.

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

16 “(3) DEADLINE FOR FILING PETITION.—

17 “(A) DEADLINE.—(i) A petitioner to which  
18 paragraph (1)(B)(i)(I) applies shall file the pe-  
19 tition no later than the earlier of—

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

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



1           “(ii) A petitioner to which paragraph  
2 (1)(B)(i)(II) applies shall—

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

9           “(II) submit to the administering au-  
10 thority a notice of intent to file a petition  
11 no later than 6 months after the time that  
12 the petitioner first knew or should have  
13 known of the sale (unless the petition itself  
14 is filed within that 6-month period).

15           “(B) PRESUMPTION OF KNOWLEDGE.—  
16 For purposes of this paragraph, if the existence  
17 of the sale, together with general information  
18 concerning the vessel, is published in the inter-  
19 national trade press, there is a rebuttable pre-  
20 sumption that the petitioner knew or should  
21 have known of the sale of the vessel from the  
22 date of that publication.

23           “(c) ACTIONS BEFORE INITIATING INVESTIGA-  
24 TIONS.—

1           “(1) NOTIFICATION OF GOVERNMENTS.—Before  
2           initiating an investigation under either subsection  
3           (a) or (b), the administering authority shall notify  
4           the government of the exporting country of the in-  
5           vestigation. In the case of the initiation of an inves-  
6           tigation under subsection (b), such notification shall  
7           include a public version of the petition.

8           “(2) ACCEPTANCE OF COMMUNICATIONS.—The  
9           administering authority shall not accept any unsolic-  
10          ited oral or written communication from any person  
11          other than an interested party described in section  
12          861(17)(C), (D), (E), or (F) before the administer-  
13          ing authority makes its decision whether to initiate  
14          an investigation pursuant to a petition, except for  
15          inquiries regarding the status of the administering  
16          authority’s consideration of the petition or a request  
17          for consultation by the government of the exporting  
18          country.

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

24          “(d) PETITION DETERMINATION.—

1           “(1) TIME FOR INITIAL DETERMINATION.—(A)  
2           Within 45 days after the date on which a petition  
3           is filed under subsection (b), the administering au-  
4           thority shall, after examining, on the basis of  
5           sources readily available to the administering au-  
6           thority, the accuracy and adequacy of the evidence  
7           provided in the petition, determine whether the peti-  
8           tion—

9                   “(i) alleges the elements necessary for the  
10                   imposition of an injurious pricing charge under  
11                   section 801(a) and the elements required under  
12                   subsection (b)(1)(B), (C), (D), or (E), and con-  
13                   tains information reasonably available to the pe-  
14                   titioner supporting the allegations; and

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

17                   “(B) Any period in which paragraph (6)(A) ap-  
18                   plies shall not be included in calculating the 45-day  
19                   period described in subparagraph (A).

20           “(2) AFFIRMATIVE DETERMINATIONS.—If the  
21           determinations under clauses (i) and (ii) of para-  
22           graph (1)(A) are affirmative, the administering au-  
23           thority shall initiate an investigation to determine  
24           whether the vessel was sold at less than fair value,  
25           unless paragraph (6) applies.

1           “(3) NEGATIVE DETERMINATIONS.—If—

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

4                   “(B) paragraph (6)(B) applies,

5           the administering authority shall dismiss the peti-  
6           tion, terminate the proceeding, and notify the peti-  
7           tioner in writing of the reasons for the determina-  
8           tion.

9           “(4) DETERMINATION OF INDUSTRY SUP-  
10          PORT.—

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

15                           “(i) the domestic producers or work-  
16                           ers who support the petition collectively ac-  
17                           count for at least 25 percent of the total  
18                           capacity of domestic producers capable of  
19                           producing a like vessel, and

20                           “(ii) the domestic producers or work-  
21                           ers who support the petition collectively ac-  
22                           count for more than 50 percent of the total  
23                           capacity to produce a like vessel of that  
24                           portion of the domestic industry expressing  
25                           support for or opposition to the petition.

1                   “(B) CERTAIN POSITIONS DIS-  
2 REGARDED.—In determining industry support  
3 under subparagraph (A), the administering au-  
4 thority shall disregard the position of domestic  
5 producers who oppose the petition, if such pro-  
6 ducers are related to the foreign producer or  
7 United States buyer of the subject vessel, or the  
8 domestic producer is itself the United States  
9 buyer, unless such domestic producers dem-  
10 onstrate that their interests as domestic pro-  
11 ducers would be adversely affected by the impo-  
12 sition of an injurious pricing charge.

13                   “(C) POLLING THE INDUSTRY.—If the pe-  
14 tition does not establish support of domestic  
15 producers or workers accounting for more than  
16 50 percent of the total capacity to produce a  
17 like vessel—

18                   “(i) the administering authority shall  
19 poll the industry or rely on other informa-  
20 tion in order to determine if there is sup-  
21 port for the petition as required by sub-  
22 paragraph (A), or

23                   “(ii) if there is a large number of pro-  
24 ducers in the industry, the administering  
25 authority may determine industry support

1           for the petition by using any statistically  
2           valid sampling method to poll the industry.

3           “(D) COMMENTS BY INTERESTED PAR-  
4           TIES.—Before the administering authority  
5           makes a determination with respect to initiating  
6           an investigation, any person who would qualify  
7           as an interested party under section 861(17) if  
8           an investigation were initiated, may submit  
9           comments or information on the issue of indus-  
10          try support. After the administering authority  
11          makes a determination with respect to initiating  
12          an investigation, the determination regarding  
13          industry support shall not be reconsidered.

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

19          “(6) PROCEEDINGS BY WTO MEMBERS.—The  
20          administering authority shall not initiate an inves-  
21          tigation under this section if, with respect to the ves-  
22          sel sale at issue, an antidumping proceeding con-  
23          ducted by a WTO member who is not a Shipbuilding  
24          Agreement Party—

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

3           “(B) has been completed and resulted in  
4           the imposition of antidumping measures or a  
5           negative determination with respect to whether  
6           the sale was at less than fair value or with re-  
7           spect to injury.

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

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

13           “(2) if the determination is affirmative, make  
14           available to the Commission such information as it  
15           may have relating to the matter under investigation,  
16           under such procedures as the administering author-  
17           ity and the Commission may establish to prevent  
18           disclosure, other than with the consent of the party  
19           providing it or under protective order, of any infor-  
20           mation to which confidential treatment has been  
21           given by the administering authority.

22           **“SEC. 803. PRELIMINARY DETERMINATIONS.**

23           “(a) DETERMINATION BY COMMISSION OF REASON-  
24           ABLE INDICATION OF INJURY.—

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

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

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

10                           or

11                           “(ii) is threatened with material in-  
12 jury, or

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

16 by reason of the sale of the subject vessel. If the  
17 Commission makes a negative determination under  
18 this paragraph, the investigation shall be termi-  
19 nated.

20           “(2) TIME FOR COMMISSION DETERMINA-  
21 TION.—The Commission shall make the determina-  
22 tion described in paragraph (1) within 90 days after  
23 the date on which the petition is filed or, in the case  
24 of an investigation initiated under section 802(a),  
25 within 90 days after the date on which the Commis-



1 sion receives notice from the administering authority  
2 that the investigation has been initiated.

3 “(b) PRELIMINARY DETERMINATION BY ADMIN-  
4 ISTERING AUTHORITY.—

5 “(1) PERIOD OF INJURIOUS PRICING INVES-  
6 TIGATION.—(A) The administering authority shall  
7 make a determination, based upon the information  
8 available to it at the time of the determination, of  
9 whether there is a reasonable basis to believe or sus-  
10 pect that the subject vessel was sold at less than fair  
11 value.

12 “(B) If cost data is required to determine nor-  
13 mal value on the basis of a sale of a foreign like ves-  
14 sel that has not been delivered on or before the date  
15 on which the administering authority initiates the  
16 investigation, the administering authority shall make  
17 its determination within 160 days after the date of  
18 delivery of the foreign like vessel.

19 “(C) If normal value is to be determined on the  
20 basis of constructed value, the administering author-  
21 ity shall make its determination within 160 days  
22 after the date of delivery of the subject vessel.

23 “(D) In cases in which subparagraph (B) or  
24 (C) does not apply, the administering authority shall  
25 make its determination within 160 days after the

1 date on which the administering authority initiates  
2 the investigation under section 802.

3 “(E) In no event shall the administering au-  
4 thority make its determination before an affirmative  
5 determination is made by the Commission under  
6 subsection (a).

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

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

17 “(1) IN GENERAL.—If—

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

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

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

1                   “(II) the nature and extent of  
2                   the information required, and

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

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

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

10                  “(2) LENGTH OF POSTPONEMENT.—The pre-  
11                  liminary determination may be postponed under  
12                  paragraph (1)(A) or (B) until not later than the  
13                  190th day after—

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

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

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

22                  “(3) NOTICE OF POSTPONEMENT.—The admin-  
23                  istering authority shall notify the parties to the in-  
24                  vestigation, not later than 20 days before the date  
25                  on which the preliminary determination would other-

1 wise be required under subsection (b)(1), if it in-  
2 tends to postpone making the preliminary deter-  
3 mination under paragraph (1). The notification shall  
4 include an explanation of the reasons for the post-  
5 ponement, and notice of the postponement shall be  
6 published in the Federal Register.

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

11 “(1) determine an estimated injurious pricing  
12 margin, and

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

22 “(e) NOTICE OF DETERMINATION.—Whenever the  
23 Commission or the administering authority makes a deter-  
24 mination under this section, the Commission or the admin-  
25 istering authority, as the case may be, shall notify the pe-

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

10 **“SEC. 804. TERMINATION OR SUSPENSION OF INVESTIGA-**  
11 **TION.**

12 “(a) **TERMINATION OF INVESTIGATION UPON WITH-**  
13 **DRAWAL OF PETITION.—**

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

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

1       “(b) TERMINATION OF INVESTIGATIONS INITIATED  
2 BY ADMINISTERING AUTHORITY.—The administering au-  
3 thority may terminate any investigation initiated by the  
4 administering authority under section 802(a) after provid-  
5 ing notice of such termination to all parties to the inves-  
6 tigation.

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

12       “(d) PROCEEDINGS BY WTO MEMBERS.—

13               “(1) SUSPENSION OF INVESTIGATION.—The ad-  
14 ministering authority and the Commission shall sus-  
15 pend an investigation under this section if a WTO  
16 member that is not a Shipbuilding Agreement Party  
17 initiates an antidumping proceeding described in sec-  
18 tion 861(29)(A) with respect to the sale of the sub-  
19 ject vessel.

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

23                       “(A) the imposition of antidumping meas-  
24 ures, or

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

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

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

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

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

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

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

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

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

7           “(2) EXTENSION OF PERIOD FOR DETERMINA-  
8 TION.—(A) The administering authority may post-  
9 pone making the final determination under para-  
10 graph (1) until not later than 290 days after—

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

14               “(ii) the date of delivery of the subject ves-  
15 sel, in an investigation to which section  
16 803(b)(1)(C) applies, or

17               “(iii) the date on which the administering  
18 authority initiates the investigation under sec-  
19 tion 802, in an investigation to which section  
20 803(b)(1)(D) applies.

21           “(B) The administering authority may apply  
22 subparagraph (A) if a request in writing is made  
23 by—

24               “(i) the producer of the subject vessel, in  
25 a proceeding in which the preliminary deter-



1           mination by the administering authority under  
2           section 803(b) was affirmative, or

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

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

12          “(b) FINAL DETERMINATION BY COMMISSION.—

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

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

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

17           or

18           “(ii) is threatened with material in-

19           jury, or

20           “(B) the establishment of an industry in

21           the United States is or has been materially re-

22           tarded,

23          by reason of the sale of the vessel with respect to

24          which the administering authority has made an af-

25          firmative determination under subsection (a)(1).

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

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

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

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

24           “(c) EFFECT OF FINAL DETERMINATIONS.—

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

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

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

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

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

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

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

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

3 “(a) IN GENERAL.—Within 10 days after being noti-  
4 fied by the Commission of an affirmative determination  
5 under section 805(b), the administering authority shall  
6 publish an order imposing an injurious pricing charge on  
7 the foreign producer of the subject vessel which—

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

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

19 “(3) informs the foreign producer that—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 “(e) ALTERNATIVE EQUIVALENT REMEDY.—

6 “(1) AGREEMENT FOR ALTERNATE REMEDY.—

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

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

15 “(B) is in the public interest,

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

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

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



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

3 “(3) MATERIAL VIOLATIONS OF AGREEMENT.—

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

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

11 “(a) GENERAL RULE.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 “(e) EXTENSION OF COUNTERMEASURES.—

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

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

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

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

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

5           “(3) DETERMINATION.—

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

13                  “(B) PROCEDURES.—

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

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

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

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

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



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

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

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

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

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

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

3           “(B) The vessel identification number.

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

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

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

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

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

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

14          “(3) AMENDMENT OF LIST.—The administer-  
15 ing authority may amend the list from time to time  
16 to reflect new information that comes to its atten-  
17 tion and shall publish any amendments in the Fed-  
18 eral Register.

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

20          (A) The administering authority shall serve a copy  
21 of the list described in paragraph (1) on—

22                 “(i) the petitioner under section 802(b),

23                 “(ii) the United States Customs Service,

24                 “(iii) the Secretariat of the Organization  
25 for Economic Cooperation and Development,

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

2 “(v) the shipyards on the list, and

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

5 “(B) The administering authority shall serve a  
6 copy of any amendments to the list under paragraph  
7 (3) or subsection (g)(3) on—

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

10 “(ii) if the amendment affects their inter-  
11 ests, the parties listed in clauses (iv), (v), and  
12 (vi) of subparagraph (A).

13 “(g) ADMINISTRATIVE REVIEW OF LIST OF VESSELS  
14 SUBJECT TO COUNTERMEASURES.—

15 “(1) REQUEST FOR REVIEW.—(A) An inter-  
16 ested party may request in writing a review of the  
17 list described in subsection (f)(1), including any  
18 amendments thereto, to determine whether—

19 “(i) a vessel included in the list does not  
20 fall within the scope of the applicable counter-  
21 measure order and should be deleted, or

22 “(ii) a vessel not included in the list falls  
23 within the scope of the applicable counter-  
24 measure order and should be added.

1           “(B) Any request seeking a determination de-  
2           scribed in subparagraph (A)(i) shall be made within  
3           90 days after the date of publication of the applica-  
4           ble list.

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

8                   “(A) publish notice of initiation of a review  
9                   in the Federal Register—

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

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

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

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

20                                   “(ii) a vessel not included in the list  
21                                   qualifies for inclusion.

22           “(3) TIME FOR DETERMINATION.—The admin-  
23           istering authority shall make its determination under  
24           paragraph (2)(B) within 90 days after the date on  
25           which the notice of initiation of such review is pub-

1 lished. If the administering authority determines  
2 that a vessel should be added or deleted from the  
3 list, the administering authority shall amend the list  
4 accordingly. The administering authority shall  
5 promptly publish in the Federal Register the deter-  
6 mination and any such amendment to the list.

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

11 “(i) SUSPENSION OR TERMINATION OF PROCEED-  
12 INGS OR COUNTERMEASURES; TEMPORARY REDUCTION  
13 OF COUNTERMEASURES.—

14 “(1) IF INJURIOUS PRICING ORDER REVOKED  
15 OR SUSPENDED.—If an injurious pricing order has  
16 been revoked or suspended under section 806(d) or  
17 (e), the administering authority shall, as appro-  
18 priate, suspend or terminate proceedings under this  
19 section with respect to that order, or suspend or re-  
20 voke a countermeasure order issued with respect to  
21 that injurious pricing order.

22 “(2) IF PAYMENT DATE AMENDED.—(A) Sub-  
23 ject to subparagraph (C), if the payment date under  
24 an injurious pricing order is amended under section  
25 845, the administering authority shall, as appro-

1        piate, suspend proceedings or modify deadlines  
2        under this section, or suspend or amend a counter-  
3        measure order issued with respect to that injurious  
4        pricing order.

5            “(B) In taking action under subparagraph (A),  
6        the administering authority shall ensure that coun-  
7        termeasures are not applied before the date that is  
8        30 days after publication in the Federal Register of  
9        the amended payment date.

10          “(C) If—

11            “(i) a countermeasure order is issued  
12          under subsection (c) before an amendment is  
13          made under section 845 to the payment date of  
14          the injurious pricing order to which the coun-  
15          termeasure order applies, and

16            “(ii) the administering authority deter-  
17          mines that the period of time between the origi-  
18          nal payment date and the amended payment  
19          date is significant for purposes of determining  
20          the appropriate scope or duration of counter-  
21          measures,

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

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

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

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

10 “(B) in a proceeding under subsection (e) or  
11 (g), upon the request of an interested party, may  
12 hold a hearing in accordance with section 841(b) in  
13 connection with that proceeding.

14 **“SEC. 808. INJURIOUS PRICING PETITIONS BY THIRD COUN-**  
15 **TRIES.**

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

20 “(1) a vessel from another Shipbuilding Agree-  
21 ment Party has been sold in the United States at  
22 less than fair value, and

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

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

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

13           “(1) The administering authority shall deter-  
14 mine whether the subject vessel has been sold at less  
15 than fair value.

16           “(2) The Commission shall determine whether  
17 an industry in the petitioning country is materially  
18 injured by reason of the sale of the subject vessel in  
19 the United States.

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

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



1           “(2) by the administering authority and the  
2           Commission, in making the determinations required  
3           by subsection (c).

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

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

11          “(2) make such determinations and take such  
12          other actions as are required by sections 806 and  
13          807, as if affirmative determinations had been made  
14          under subsections (a) and (b) of section 805.

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

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

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

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

5 **“SEC. 809. THIRD COUNTRY SALES.**

6       “(a) FILING OF PETITION.—Any interested party  
7 that would be eligible to file a petition under section  
8 802(b)(1) with respect to a sale if such sale had been to  
9 a United States buyer may, with respect to a sale of a  
10 vessel by a foreign producer in a Shipbuilding Agreement  
11 Party to a buyer in a third country that is a Shipbuilding  
12 Agreement Party, file with the Trade Representative a pe-  
13 tition alleging that—

14               “(1) such vessel has been sold at less than fair  
15 value; and

16               “(2) the industry in the United States produc-  
17 ing or capable of producing a like vessel is materially  
18 injured by reason of such sale.

19       “(b) DETERMINATION.—Upon receipt of a petition  
20 under subsection (a), the Trade Representative shall re-  
21 quest the following determinations to be made in accord-  
22 ance with substantive and procedural requirements speci-  
23 fied by the Trade Representative, notwithstanding any  
24 other provision of this title:

1           “(1) The administering authority shall deter-  
2           mine whether there is reasonable cause to believe  
3           that the subject vessel has been sold at less than fair  
4           value.

5           “(2) The Commission shall determine whether  
6           there is reasonable cause to believe that the industry  
7           in the United States is materially injured by reason  
8           of such sale.

9           “(c) COMPLAINT BY TRADE REPRESENTATIVE.—If  
10          the administering authority makes an affirmative deter-  
11          mination under paragraph (1) of subsection (b), and the  
12          Commission makes an affirmative determination under  
13          paragraph (2) of subsection (b), the Trade Representative  
14          shall make application to the country of the buyer of the  
15          subject vessel for an injurious pricing action and relief  
16          similar to that available under section 808. The Trade  
17          Representative shall advise the petitioner of the proceed-  
18          ings undertaken by the third country in response to such  
19          application and shall permit the petitioner to participate  
20          in such proceedings to the greatest extent practicable.

## 21           **“Subtitle B—Special Rules**

22          **“SEC. 821. EXPORT PRICE.**

23           “(a) EXPORT PRICE.—For purposes of this title, the  
24          term ‘export price’ means the price at which the subject  
25          vessel is first sold (or agreed to be sold) by or for the

1 account of the foreign producer of the subject vessel to  
2 an unaffiliated United States buyer. The term ‘sold (or  
3 agreed to be sold) by or for the account of the foreign  
4 producer’ includes any transfer of an ownership interest,  
5 including by way of lease or long-term bareboat charter,  
6 in conjunction with the original transfer from the pro-  
7 ducer, either directly or indirectly, to a United States  
8 buyer.

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

11 “(1) increased by the amount of any import du-  
12 ties imposed by the country of exportation which  
13 have been rebated, or which have not been collected,  
14 by reason of the exportation of the subject vessel,  
15 and

16 “(2) reduced by—

17 “(A) the amount, if any, included in such  
18 price, attributable to any additional costs,  
19 charges, or expenses which are incident to  
20 bringing the subject vessel from the shipyard in  
21 the exporting country to the place of delivery,

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

1                   “(C) all other expenses incidental to plac-  
2                   ing the vessel in condition for delivery to the  
3                   buyer.

4 **“SEC. 822. NORMAL VALUE.**

5                   “(a) DETERMINATION.—In determining under this  
6 title whether a subject vessel has been sold at less than  
7 fair value, a fair comparison shall be made between the  
8 export price and normal value of the subject vessel. In  
9 order to achieve a fair comparison with the export price,  
10 normal value shall be determined as follows:

11                   “(1) DETERMINATION OF NORMAL VALUE.—

12                   “(A) IN GENERAL.—The normal value of  
13 the subject vessel shall be the price described in  
14 subparagraph (B), at a time reasonably cor-  
15 responding to the time of the sale used to deter-  
16 mine the export price under section 821(a).

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

19                   “(i) the price at which a foreign like  
20 vessel is first sold in the exporting country,  
21 in the ordinary course of trade and, to the  
22 extent practicable, at the same level of  
23 trade, or

24                   “(ii) in a case to which subparagraph  
25 (C) applies, the price at which a foreign

1           like vessel is so sold for consumption in a  
2           country other than the exporting country  
3           or the United States, if—

4                   “(I) such price is representative,  
5                   and

6                   “(II) the administering authority  
7                   does not determine that the particular  
8                   market situation in such other coun-  
9                   try prevents a proper comparison with  
10                  the export price.

11                  “(C) THIRD COUNTRY SALES.—This sub-  
12                  paragraph applies when—

13                   “(i) a foreign like vessel is not sold in  
14                   the exporting country as described in sub-  
15                   paragraph (B)(i), or

16                   “(ii) the particular market situation  
17                   in the exporting country does not permit a  
18                   proper comparison with the export price.

19                  “(D) CONTEMPORANEOUS SALE.—For  
20                  purposes of subparagraph (A), ‘a time reason-  
21                  ably corresponding to the time of the sale’  
22                  means within 3 months before or after the sale  
23                  of the subject vessel or, in the absence of such  
24                  sales, such longer period as the administering  
25                  authority determines would be appropriate.

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

5           “(3) USE OF CONSTRUCTED VALUE.—If the ad-  
6 ministering authority determines that the normal  
7 value of the subject vessel cannot be determined  
8 under paragraph (1)(B) or (1)(C), then the normal  
9 value of the subject vessel shall be the constructed  
10 value of that vessel, as determined under subsection  
11 (e).

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

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

18                   “(A) reduced by—

19                           “(i) the amount, if any, included in  
20 the price described in paragraph (1)(B),  
21 attributable to any costs, charges, and ex-  
22 penses incident to bringing the foreign like  
23 vessel from the shipyard to the place of de-  
24 livery to the purchaser,

1           “(ii) the amount of any taxes imposed  
2           directly upon the foreign like vessel or  
3           components thereof which have been re-  
4           bated, or which have not been collected, on  
5           the subject vessel, but only to the extent  
6           that such taxes are added to or included in  
7           the price of the foreign like vessel, and

8           “(iii) the amount of all other expenses  
9           incidental to placing the foreign like vessel  
10          in condition for delivery to the buyer, and

11          “(B) increased or decreased by the amount  
12          of any difference (or lack thereof) between the  
13          export price and the price described in para-  
14          graph (1)(B) (other than a difference for which  
15          allowance is otherwise provided under this sec-  
16          tion) that is established to the satisfaction of  
17          the administering authority to be wholly or  
18          partly due to—

19                 “(i) physical differences between the  
20                 subject vessel and the vessel used in deter-  
21                 mining normal value, or

22                 “(ii) other differences in the cir-  
23                 cumstances of sale.

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

25                 The price described in paragraph (1)(B) shall also



1 be increased or decreased to make due allowance for  
2 any difference (or lack thereof) between the export  
3 price and the price described in paragraph (1)(B)  
4 (other than a difference for which allowance is oth-  
5 erwise made under this section) that is shown to be  
6 wholly or partly due to a difference in level of trade  
7 between the export price and normal value, if the  
8 difference in level of trade—

9 “(A) involves the performance of different  
10 selling activities, and

11 “(B) is demonstrated to affect price com-  
12 parability, based on a pattern of consistent  
13 price differences between sales at different lev-  
14 els of trade in the country in which normal  
15 value is determined.

16 In a case described in the preceding sentence, the  
17 amount of the adjustment shall be based on the  
18 price differences between the two levels of trade in  
19 the country in which normal value is determined.

20 “(7) ADJUSTMENTS TO CONSTRUCTED  
21 VALUE.—Constructed value as determined under  
22 subsection (d) may be adjusted, as appropriate, pur-  
23 suant to this subsection.

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

1           “(1) DETERMINATION; SALES DISREGARDED.—  
2           Whenever the administering authority has reason-  
3           able grounds to believe or suspect that the sale of  
4           the foreign like vessel under consideration for the  
5           determination of normal value has been made at a  
6           price which represents less than the cost of produc-  
7           tion of the foreign like vessel, the administering au-  
8           thority shall determine whether, in fact, such sale  
9           was made at less than the cost of production. If the  
10          administering authority determines that the sale was  
11          made at less than the cost of production and was  
12          not at a price which permits recovery of all costs  
13          within 5 years, such sale may be disregarded in the  
14          determination of normal value. Whenever such a sale  
15          is disregarded, normal value shall be based on an-  
16          other sale of a foreign like vessel in the ordinary  
17          course of trade. If no sales made in the ordinary  
18          course of trade remain, the normal value shall be  
19          based on the constructed value of the subject vessel.

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

22           “(A) REASONABLE GROUNDS TO BELIEVE  
23          OR SUSPECT.—There are reasonable grounds to  
24          believe or suspect that the sale of a foreign like  
25          vessel was made at a price that is less than the

1 cost of production of the vessel, if an interested  
2 party described in subparagraph (C), (D), (E),  
3 or (F) of section 861(17) provides information,  
4 based upon observed prices or constructed  
5 prices or costs, that the sale of the foreign like  
6 vessel under consideration for the determination  
7 of normal value has been made at a price which  
8 represents less than the cost of production of  
9 the vessel.

10 “(B) RECOVERY OF COSTS.—If the price is  
11 below the cost of production at the time of sale  
12 but is above the weighted average cost of pro-  
13 duction for the period of investigation, such  
14 price shall be considered to provide for recovery  
15 of costs within 5 years.

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

19 “(A) the cost of materials and of fabrica-  
20 tion or other processing of any kind employed  
21 in producing the foreign like vessel, during a  
22 period which would ordinarily permit the pro-  
23 duction of that vessel in the ordinary course of  
24 business, and

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

5           For purposes of subparagraph (A), if the normal  
6           value is based on the price of the foreign like vessel  
7           sold in a country other than the exporting country,  
8           the cost of materials shall be determined without re-  
9           gard to any internal tax in the exporting country im-  
10          posed on such materials or on their disposition  
11          which are remitted or refunded upon exportation.

12          “(c) NONMARKET ECONOMY COUNTRIES.—

13                 “(1) IN GENERAL.—If—

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

16                         “(B) the administering authority finds that  
17                         available information does not permit the nor-  
18                         mal value of the subject vessel to be determined  
19                         under subsection (a),

20           the administering authority shall determine the nor-  
21           mal value of the subject vessel on the basis of the  
22           value of the factors of production utilized in produc-  
23           ing the vessel and to which shall be added an  
24           amount for general expenses and profit plus the cost  
25           of expenses incidental to placing the vessel in a con-

1       dition for delivery to the buyer. Except as provided  
2       in paragraph (2), the valuation of the factors of pro-  
3       duction shall be based on the best available informa-  
4       tion regarding the values of such factors in a market  
5       economy country or countries considered to be ap-  
6       propriate by the administering authority.

7               “(2) EXCEPTION.—If the administering author-  
8       ity finds that the available information is inadequate  
9       for purposes of determining the normal value of the  
10      subject vessel under paragraph (1), the administer-  
11      ing authority shall determine the normal value on  
12      the basis of the price at which a vessel that is—

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

14                       “(B) produced in one or more market  
15      economy countries that are at a level of eco-  
16      nomic development comparable to that of the  
17      nonmarket economy country,

18      is sold in other countries, including the United  
19      States.

20               “(3) FACTORS OF PRODUCTION.—For purposes  
21      of paragraph (1), the factors of production utilized  
22      in producing the vessel include, but are not limited  
23      to—

24                       “(A) hours of labor required,

25                       “(B) quantities of raw materials employed,

1           “(C) amounts of energy and other utilities  
2 consumed, and

3           “(D) representative capital cost, including  
4 depreciation.

5           “(4) VALUATION OF FACTORS OF PRODUC-  
6 TION.—The administering authority, in valuing fac-  
7 tors of production under paragraph (1), shall utilize,  
8 to the extent possible, the prices or costs of factors  
9 of production in one or more market economy coun-  
10 tries that are—

11           “(A) at a level of economic development  
12 comparable to that of the nonmarket economy  
13 country, and

14           “(B) significant producers of comparable  
15 vessels.

16           “(d) SPECIAL RULE FOR CERTAIN MULTINATIONAL  
17 CORPORATIONS.—Whenever, in the course of an investiga-  
18 tion under this title, the administering authority deter-  
19 mines that—

20           “(1) the subject vessel was produced in facilities  
21 which are owned or controlled, directly or indirectly,  
22 by a person, firm, or corporation which also owns or  
23 controls, directly or indirectly, other facilities for the  
24 production of a foreign like vessel which are located  
25 in another country or countries,

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

2           “(3) the normal value of a foreign like vessel  
3       produced in one or more of the facilities outside the  
4       exporting country is higher than the normal value of  
5       the foreign like vessel produced in the facilities lo-  
6       cated in the exporting country,

7 the administering authority shall determine the normal  
8 value of the subject vessel by reference to the normal value  
9 at which a foreign like vessel is sold from one or more  
10 facilities outside the exporting country. The administering  
11 authority, in making any determination under this sub-  
12 section, shall make adjustments for the difference between  
13 the costs of production (including taxes, labor, materials,  
14 and overhead) of the foreign like vessel produced in facili-  
15 ties outside the exporting country and costs of production  
16 of the foreign like vessel produced in facilities in the ex-  
17 porting country, if such differences are demonstrated to  
18 its satisfaction.

19       “(e) CONSTRUCTED VALUE.—

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

23           “(A) the cost of materials and fabrication  
24       or other processing of any kind employed in  
25       producing the subject vessel, during a period

1 which would ordinarily permit the production of  
2 the vessel in the ordinary course of business,  
3 and

4 “(B)(i) the actual amounts incurred and  
5 realized by the foreign producer of the subject  
6 vessel for selling, general, and administrative  
7 expenses, and for profits, in connection with the  
8 production and sale of a foreign like vessel, in  
9 the ordinary course of trade, in the domestic  
10 market of the country of origin of the subject  
11 vessel, or

12 “(ii) if actual data are not available with  
13 respect to the amounts described in clause (i),  
14 then—

15 “(I) the actual amounts incurred and  
16 realized by the foreign producer of the sub-  
17 ject vessel for selling, general, and admin-  
18 istrative expenses, and for profits, in con-  
19 nection with the production and sale of the  
20 same general category of vessel in the do-  
21 mestic market of the country of origin of  
22 the subject vessel,

23 “(II) the weighted average of the ac-  
24 tual amounts incurred and realized by pro-  
25 ducers in the country of origin of the sub-



1           ject vessel (other than the producer of the  
2           subject vessel) for selling, general, and ad-  
3           ministrative expenses, and for profits, in  
4           connection with the production and sale of  
5           a foreign like vessel, in the ordinary course  
6           of trade, in the domestic market, or

7           “(III) if data is not available under  
8           subclause (I) or (II), the amounts incurred  
9           and realized for selling, general, and ad-  
10          ministrative expenses, and for profits,  
11          based on any other reasonable method, ex-  
12          cept that the amount allowed for profit  
13          may not exceed the amount normally real-  
14          ized by foreign producers (other than the  
15          producer of the subject vessel) in connec-  
16          tion with the sale of vessels in the same  
17          general category of vessel as the subject  
18          vessel in the domestic market of the coun-  
19          try of origin of the subject vessel.

20          The profit shall, for purposes of this paragraph, be  
21          based on the average profit realized over a reason-  
22          able period of time before and after the sale of the  
23          subject vessel and shall reflect a reasonable profit at  
24          the time of such sale. For purposes of the preceding  
25          sentence, a ‘reasonable period of time’ shall not, ex-

1       cept where otherwise appropriate, exceed 6 months  
2       before, or 6 months after, the sale of the subject ves-  
3       sel. In calculating profit under this paragraph, any  
4       distortion which would result in other than a profit  
5       which is reasonable at the time of the sale shall be  
6       eliminated.

7               “(2) COSTS AND PROFITS BASED ON OTHER  
8       REASONABLE METHODS.—When costs and profits  
9       are determined under paragraph (1)(B)(ii)(III), such  
10      determination shall, except where otherwise appro-  
11      priate, be based on appropriate export sales by the  
12      producer of the subject vessel or, absent such sales,  
13      to export sales by other producers of a foreign like  
14      vessel or the same general category of vessel as the  
15      subject vessel in the country of origin of the subject  
16      vessel.

17              “(3) COSTS OF MATERIALS.—For purposes of  
18      paragraph (1)(A), the cost of materials shall be de-  
19      termined without regard to any internal tax in the  
20      exporting country imposed on such materials or their  
21      disposition which are remitted or refunded upon ex-  
22      portation of the subject vessel produced from such  
23      materials.

1           “(f) SPECIAL RULES FOR CALCULATION OF COST OF  
2 PRODUCTION AND FOR CALCULATION OF CONSTRUCTED  
3 VALUE.—For purposes of subsections (b) and (e)—

4           “(1) COSTS.—

5                   “(A) IN GENERAL.—Costs shall normally  
6 be calculated based on the records of the for-  
7 eign producer of the subject vessel, if such  
8 records are kept in accordance with the gen-  
9 erally accepted accounting principles of the ex-  
10 porting country and reasonably reflect the costs  
11 associated with the production and sale of the  
12 vessel. The administering authority shall con-  
13 sider all available evidence on proper allocation  
14 of costs, including that which is made available  
15 by the foreign producer on a timely basis, if  
16 such allocations have been historically used by  
17 the foreign producer, in particular for establish-  
18 ing appropriate amortization and depreciation  
19 periods, and allowances for capital expenditures  
20 and other development costs.

21                   “(B) NONRECURRING COSTS.—Costs shall  
22 be adjusted appropriately for those non-  
23 recurring costs that benefit current or future  
24 production, or both.

25                   “(C) STARTUP COSTS.—

1           “(i) IN GENERAL.—Costs shall be ad-  
2           justed appropriately for circumstances in  
3           which costs incurred during the time pe-  
4           riod covered by the investigation are af-  
5           fected by startup operations.

6           “(ii) STARTUP OPERATIONS.—Adjust-  
7           ments shall be made for startup operations  
8           only where—

9                   “(I) a producer is using new pro-  
10                  duction facilities or producing a new  
11                  type of vessel that requires substantial  
12                  additional investment, and

13                   “(II) production levels are limited  
14                  by technical factors associated with  
15                  the initial phase of commercial pro-  
16                  duction.

17           For purposes of subclause (II), the initial  
18           phase of commercial production ends at  
19           the end of the startup period. In determin-  
20           ing whether commercial production levels  
21           have been achieved, the administering au-  
22           thority shall consider factors unrelated to  
23           startup operations that might affect the  
24           volume of production processed, such as  
25           demand, seasonality, or business cycles.

1                   “(iii) ADJUSTMENT FOR STARTUP OP-  
2                   ERATIONS.—The adjustment for startup  
3                   operations shall be made by substituting  
4                   the unit production costs incurred with re-  
5                   spect to the vessel at the end of the start-  
6                   up period for the unit production costs in-  
7                   curred during the startup period. If the  
8                   startup period extends beyond the period  
9                   of the investigation under this title, the ad-  
10                  ministering authority shall use the most  
11                  recent cost of production data that it rea-  
12                  sonably can obtain, analyze, and verify  
13                  without delaying the timely completion of  
14                  the investigation. For purposes of this sub-  
15                  paragraph, the startup period ends at the  
16                  point at which the level of commercial pro-  
17                  duction that is characteristic of the vessel,  
18                  the producer, or the industry is achieved.

19                  “(D) COSTS DUE TO EXTRAORDINARY CIR-  
20                  CUMSTANCES NOT INCLUDED.—Costs shall not  
21                  include actual costs which are due to extraor-  
22                  dinary circumstances (including, but not limited  
23                  to, labor disputes, fire, and natural disasters)  
24                  and which are significantly over the cost in-  
25                  crease which the shipbuilder could have reason-

1 ably anticipated and taken into account at the  
2 time of sale.

3 “(2) TRANSACTIONS DISREGARDED.—A trans-  
4 action directly or indirectly between affiliated per-  
5 sons may be disregarded if, in the case of any ele-  
6 ment of value required to be considered, the amount  
7 representing that element does not fairly reflect the  
8 amount usually reflected in sales of a like vessel in  
9 the market under consideration. If a transaction is  
10 disregarded under the preceding sentence and no  
11 other transactions are available for consideration,  
12 the determination of the amount shall be based on  
13 the information available as to what the amount  
14 would have been if the transaction had occurred be-  
15 tween persons who are not affiliated.

16 “(3) MAJOR INPUT RULE.—If, in the case of a  
17 transaction between affiliated persons involving the  
18 production by one of such persons of a major input  
19 to the subject vessel, the administering authority has  
20 reasonable grounds to believe or suspect that an  
21 amount represented as the value of such input is  
22 less than the cost of production of such input, then  
23 the administering authority may determine the value  
24 of the major input on the basis of the information  
25 available regarding such cost of production, if such

1 cost is greater than the amount that would be deter-  
2 mined for such input under paragraph (2).

3 **“SEC. 823. CURRENCY CONVERSION.**

4 “(a) IN GENERAL.—In an injurious pricing proceed-  
5 ing under this title, the administering authority shall con-  
6 vert foreign currencies into United States dollars using the  
7 exchange rate in effect on the date of sale of the subject  
8 vessel, except that if it is established that a currency  
9 transaction on forward markets is directly linked to a sale  
10 under consideration, the exchange rate specified with re-  
11 spect to such foreign currency in the forward sale agree-  
12 ment shall be used to convert the foreign currency.

13 “(b) DATE OF SALE.—For purposes of this section,  
14 ‘date of sale’ means the date of the contract of sale or,  
15 where appropriate, the date on which the material terms  
16 of sale are otherwise established. If the material terms of  
17 sale are significantly changed after such date, the date of  
18 sale is the date of such change. In the case of such a  
19 change in the date of sale, the administering authority  
20 shall make appropriate adjustments to take into account  
21 any unreasonable effect on the injurious pricing margin  
22 due only to fluctuations in the exchange rate between the  
23 original date of sale and the new date of sale.

1                   **“Subtitle C—Procedures**

2   **“SEC. 841. HEARINGS.**

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

8           “(b) PROCEDURES.—Any hearing required or per-  
9 mitted under this title shall be conducted after notice pub-  
10 lished in the Federal Register, and a transcript of the  
11 hearing shall be prepared and made available to the public.  
12 The hearing shall not be subject to the provisions of sub-  
13 chapter II of chapter 5 of title 5, United States Code, or  
14 to section 702 of such title.

15   **“SEC. 842. DETERMINATIONS ON THE BASIS OF THE FACTS**  
16                   **AVAILABLE.**

17           “(a) IN GENERAL.—If—

18                   “(1) necessary information is not available on  
19 the record, or

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

21                           “(A) withholds information that has been  
22 requested by the administering authority or the  
23 Commission under this title,

24                           “(B) fails to provide such information by  
25 the deadlines for the submission of the informa-



1           tion or in the form and manner requested, sub-  
2           ject to subsections (b)(1) and (d) of section  
3           844,

4                   “(C) significantly impedes a proceeding  
5           under this title, or

6                   “(D) provides such information but the in-  
7           formation cannot be verified as provided in sec-  
8           tion 844(g),

9           the administering authority and the Commission  
10          shall, subject to section 844(e), use the facts other-  
11          wise available in reaching the applicable determina-  
12          tion under this title.

13          “(b) ADVERSE INFERENCES.—If the administering  
14          authority or the Commission (as the case may be) finds  
15          that an interested party has failed to cooperate by not act-  
16          ing to the best of its ability to comply with a request for  
17          information from the administering authority or the Com-  
18          mission, the administering authority or the Commission  
19          (as the case may be), in reaching the applicable determina-  
20          tion under this title, may use an inference that is adverse  
21          to the interests of that party in selecting from among the  
22          facts otherwise available. Such adverse inference may in-  
23          clude reliance on information derived from—

24                   “(1) the petition, or

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

3           “(c) CORROBORATION OF SECONDARY INFORMA-  
4           TION.—When the administering authority or the Commis-  
5           sion relies on secondary information rather than on infor-  
6           mation obtained in the course of an investigation under  
7           this title, the administering authority and the Commis-  
8           sion, as the case may be, shall, to the extent practicable,  
9           corroborate that information from independent sources  
10          that are reasonably at their disposal.

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

12          “(a) INFORMATION GENERALLY MADE AVAIL-  
13          ABLE.—

14                 “(1) PROGRESS OF INVESTIGATION REPORTS.—  
15                 The administering authority and the Commission  
16                 shall, from time to time upon request, inform the  
17                 parties to an investigation under this title of the  
18                 progress of that investigation.

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

22                         “(A) interested parties or other persons  
23                         providing factual information in connection with  
24                         a proceeding under this title, and

1           “(B) the person charged with making the  
2           determination, or any person charged with mak-  
3           ing a final recommendation to that person, in  
4           connection with that proceeding,  
5           if information relating to that proceeding was pre-  
6           sented or discussed at such meeting. The record of  
7           such an ex parte meeting shall include the identity  
8           of the persons present at the meeting, the date,  
9           time, and place of the meeting, and a summary of  
10          the matters discussed or submitted. The record of  
11          the ex parte meeting shall be included in the record  
12          of the proceeding.

13           “(3) SUMMARIES; NON-PROPRIETARY SUBMIS-  
14          SIONS.—The administering authority and the Com-  
15          mission shall disclose—

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

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

24           “(4) MAINTENANCE OF PUBLIC RECORD.—The  
25          administering authority and the Commission shall

1 maintain and make available for public inspection  
2 and copying a record of all information which is ob-  
3 tained by the administering authority or the Com-  
4 mission, as the case may be, in a proceeding under  
5 this title to the extent that public disclosure of the  
6 information is not prohibited under this chapter or  
7 exempt from disclosure under section 552 of title 5,  
8 United States Code.

9 “(b) PROPRIETARY INFORMATION.—

10 “(1) PROPRIETARY STATUS MAINTAINED.—

11 “(A) IN GENERAL.—Except as provided in  
12 subsection (a)(4) and subsection (c), informa-  
13 tion submitted to the administering authority or  
14 the Commission which is designated as propri-  
15 etary by the person submitting the information  
16 shall not be disclosed to any person without the  
17 consent of the person submitting the informa-  
18 tion, other than—

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

1           “(ii) to an officer or employee of the  
2           United States Customs Service who is di-  
3           rectly involved in conducting an investiga-  
4           tion regarding fraud under this title.

5           “(B) ADDITIONAL REQUIREMENTS.—The  
6           administering authority and the Commission  
7           shall require that information for which propri-  
8           etary treatment is requested be accompanied  
9           by—

10           “(i) either—

11           “(I) a nonproprietary summary  
12           in sufficient detail to permit a reason-  
13           able understanding of the substance  
14           of the information submitted in con-  
15           fidence, or

16           “(II) a statement that the infor-  
17           mation is not susceptible to summary,  
18           accompanied by a statement of the  
19           reasons in support of the contention,  
20           and

21           “(ii) either—

22           “(I) a statement which permits  
23           the administering authority or the  
24           Commission to release under adminis-  
25           trative protective order, in accordance

1 with subsection (c), the information  
2 submitted in confidence, or

3 “(II) a statement to the admin-  
4 istering authority or the Commission  
5 that the business proprietary informa-  
6 tion is of a type that should not be re-  
7 leased under administrative protective  
8 order.

9 “(2) UNWARRANTED DESIGNATION.—If the ad-  
10 ministering authority or the Commission determines,  
11 on the basis of the nature and extent of the informa-  
12 tion or its availability from public sources, that des-  
13 ignation of any information as proprietary is unwar-  
14 ranted, then it shall notify the person who submitted  
15 it and ask for an explanation of the reasons for the  
16 designation. Unless that person persuades the ad-  
17 ministering authority or the Commission that the  
18 designation is warranted, or withdraws the designa-  
19 tion, the administering authority or the Commission,  
20 as the case may be, shall return it to the party sub-  
21 mitting it. In a case in which the administering au-  
22 thority or the Commission returns the information  
23 to the person submitting it, the person may there-  
24 after submit other material concerning the subject  
25 matter of the returned information if the submission

1 is made within the time otherwise provided for sub-  
2 mitting such material.

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

5 “(1) DISCLOSURE BY ADMINISTERING AUTHOR-  
6 ITY OR COMMISSION.—

7 “(A) IN GENERAL.—Upon receipt of an  
8 application (before or after receipt of the infor-  
9 mation requested) which describes in general  
10 terms the information requested and sets forth  
11 the reasons for the request, the administering  
12 authority or the Commission shall make all  
13 business proprietary information presented to,  
14 or obtained by it, during a proceeding under  
15 this title (except privileged information, classi-  
16 fied information, and specific information of a  
17 type for which there is a clear and compelling  
18 need to withhold from disclosure) available to  
19 all interested parties who are parties to the pro-  
20 ceeding under a protective order described in  
21 subparagraph (B), regardless of when the infor-  
22 mation is submitted during the proceeding.  
23 Customer names (other than the name of the  
24 United States buyer of the subject vessel) ob-  
25 tained during any investigation which requires

1 a determination under section 805(b) may not  
2 be disclosed by the administering authority  
3 under protective order until either an order is  
4 published under section 806(a) as a result of  
5 the investigation or the investigation is sus-  
6 pended or terminated. The Commission may  
7 delay disclosure of customer names (other than  
8 the name of the United States buyer of the sub-  
9 ject vessel) under protective order during any  
10 such investigation until a reasonable time be-  
11 fore any hearing provided under section 841 is  
12 held.

13 “(B) PROTECTIVE ORDER.—The protective  
14 order under which information is made avail-  
15 able shall contain such requirements as the ad-  
16 ministering authority or the Commission may  
17 determine by regulation to be appropriate. The  
18 administering authority and the Commission  
19 shall provide by regulation for such sanctions as  
20 the administering authority and the Commis-  
21 sion determine to be appropriate, including dis-  
22 barment from practice before the agency.

23 “(C) TIME LIMITATIONS ON DETERMINA-  
24 TIONS.—The administering authority or the  
25 Commission, as the case may be, shall deter-



1 mine whether to make information available  
2 under this paragraph—

3 “(i) not later than 14 days (7 days if  
4 the submission pertains to a proceeding  
5 under section 803(a)) after the date on  
6 which the information is submitted, or

7 “(ii) if—

8 “(I) the person submitting the  
9 information raises objection to its re-  
10 lease, or

11 “(II) the information is unusu-  
12 ally voluminous or complex,  
13 not later than 30 days (10 days if the sub-  
14 mission pertains to a proceeding under sec-  
15 tion 803(a)) after the date on which the  
16 information is submitted.

17 “(D) AVAILABILITY AFTER DETERMINA-  
18 TION.—If the determination under subpara-  
19 graph (C) is affirmative, then—

20 “(i) the business proprietary informa-  
21 tion submitted to the administering au-  
22 thority or the Commission on or before the  
23 date of the determination shall be made  
24 available, subject to the terms and condi-

1           tions of the protective order, on such date,  
2           and

3           “(ii) the business proprietary informa-  
4           tion submitted to the administering au-  
5           thority or the Commission after the date of  
6           the determination shall be served as re-  
7           quired by subsection (d).

8           “(E) FAILURE TO DISCLOSE.—If a person  
9           submitting information to the administering au-  
10          thority refuses to disclose business proprietary  
11          information which the administering authority  
12          determines should be released under a protec-  
13          tive order described in subparagraph (B), the  
14          administering authority shall return the infor-  
15          mation, and any nonconfidential summary  
16          thereof, to the person submitting the informa-  
17          tion and summary and shall not consider either.

18          “(2) DISCLOSURE UNDER COURT ORDER.—If  
19          the administering authority or the Commission de-  
20          nies a request for information under paragraph (1),  
21          then application may be made to the United States  
22          Court of International Trade for an order directing  
23          the administering authority or the Commission, as  
24          the case may be, to make the information available.  
25          After notification of all parties to the investigation

1 and after an opportunity for a hearing on the  
2 record, the court may issue an order, under such  
3 conditions as the court deems appropriate, which  
4 shall not have the effect of stopping or suspending  
5 the investigation, directing the administering author-  
6 ity or the Commission to make all or a portion of  
7 the requested information described in the preceding  
8 sentence available under a protective order and set-  
9 ting forth sanctions for violation of such order if the  
10 court finds that, under the standards applicable in  
11 proceedings of the court, such an order is warranted,  
12 and that—

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

16 “(B) the person on whose behalf the infor-  
17 mation is requested is an interested party who  
18 is a party to the investigation in connection  
19 with which the information was obtained or de-  
20 veloped, and

21 “(C) the party which submitted the infor-  
22 mation to which the request relates has been  
23 notified, in advance of the hearing, of the re-  
24 quest made under this section and of its right  
25 to appear and be heard.

1           “(d) SERVICE.—Any party submitting written infor-  
2 mation, including business proprietary information, to the  
3 administering authority or the Commission during a pro-  
4 ceeding shall, at the same time, serve the information  
5 upon all interested parties who are parties to the proceed-  
6 ing, if the information is covered by a protective order.  
7 The administering authority or the Commission shall not  
8 accept any such information that is not accompanied by  
9 a certificate of service and a copy of the protective order  
10 version of the document containing the information. Busi-  
11 ness proprietary information shall only be served upon in-  
12 terested parties who are parties to the proceeding that are  
13 subject to protective order, except that a nonconfidential  
14 summary thereof shall be served upon all other interested  
15 parties who are parties to the proceeding.

16           “(e) INFORMATION RELATING TO VIOLATIONS OF  
17 PROTECTIVE ORDERS AND SANCTIONS.—The administer-  
18 ing authority and the Commission may withhold from dis-  
19 closure any correspondence, private letters of reprimand,  
20 settlement agreements, and documents and files compiled  
21 in relation to investigations and actions involving a viola-  
22 tion or possible violation of a protective order issued under  
23 subsection (c), and such information shall be treated as  
24 information described in section 552(b)(3) of title 5, Unit-  
25 ed States Code.

1           “(f) OPPORTUNITY FOR COMMENT BY VESSEL BUY-  
2 ERS.—The administering authority and the Commission  
3 shall provide an opportunity for buyers of subject vessels  
4 to submit relevant information to the administering au-  
5 thority concerning a sale at less than fair value or counter-  
6 measures, and to the Commission concerning material in-  
7 jury by reason of the sale of a vessel at less than fair  
8 value.

9           “(g) PUBLICATION OF DETERMINATIONS; REQUIRE-  
10 MENTS FOR FINAL DETERMINATIONS.—

11           “(1) IN GENERAL.—Whenever the administer-  
12 ing authority makes a determination under section  
13 802 whether to initiate an investigation, or the ad-  
14 ministering authority or the Commission makes a  
15 preliminary determination under section 803, a final  
16 determination under section 805, a determination  
17 under subsection (b), (c), (d), (e)(3)(B)(ii), (g), or  
18 (i) of section 807, or a determination to suspend an  
19 investigation under this title, the administering au-  
20 thority or the Commission, as the case may be, shall  
21 publish the facts and conclusions supporting that de-  
22 termination, and shall publish notice of that deter-  
23 mination in the Federal Register.

24           “(2) CONTENTS OF NOTICE OR DETERMINA-  
25 TION.—The notice or determination published under

1 paragraph (1) shall include, to the extent applica-  
2 ble—

3 “(A) in the case of a determination of the  
4 administering authority—

5 “(i) the names of the foreign producer  
6 and the country of origin of the subject  
7 vessel,

8 “(ii) a description sufficient to iden-  
9 tify the subject vessel,

10 “(iii) with respect to an injurious pric-  
11 ing charge, the injurious pricing margin  
12 established and a full explanation of the  
13 methodology used in establishing such  
14 margin,

15 “(iv) with respect to countermeasures,  
16 the scope and duration of countermeasures  
17 and, if applicable, any changes thereto,  
18 and

19 “(v) the primary reasons for the de-  
20 termination, and

21 “(B) in the case of a determination of the  
22 Commission—

23 “(i) considerations relevant to the de-  
24 termination of injury, and

1                   “(ii) the primary reasons for the de-  
2                   termination.

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

6                   “(A) the administering authority shall in-  
7                   clude in a final determination under section 805  
8                   or 807(c) an explanation of the basis for its de-  
9                   termination that addresses relevant arguments,  
10                  made by interested parties who are parties to  
11                  the investigation, concerning the establishment  
12                  of the injurious pricing charge with respect to  
13                  which the determination is made, and

14                  “(B) the Commission shall include in a  
15                  final determination of injury an explanation of  
16                  the basis for its determination that addresses  
17                  relevant arguments that are made by interested  
18                  parties who are parties to the investigation con-  
19                  cerning the effects and impact on the industry  
20                  of the sale of the subject vessel.

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

22                  “(a) CERTIFICATION OF SUBMISSIONS.—Any person  
23                  providing factual information to the administering author-  
24                  ity or the Commission in connection with a proceeding  
25                  under this title on behalf of the petitioner or any other

1 interested party shall certify that such information is ac-  
2 curate and complete to the best of that person’s knowl-  
3 edge.

4 “(b) DIFFICULTIES IN MEETING REQUIREMENTS.—

5 “(1) NOTIFICATION BY INTERESTED PARTY.—

6 If an interested party, promptly after receiving a re-  
7 quest from the administering authority or the Com-  
8 mission for information, notifies the administering  
9 authority or the Commission (as the case may be)  
10 that such party is unable to submit the information  
11 requested in the requested form and manner, to-  
12 gether with a full explanation and suggested alter-  
13 native forms in which such party is able to submit  
14 the information, the administering authority or the  
15 Commission (as the case may be) shall consider the  
16 ability of the interested party to submit the informa-  
17 tion in the requested form and manner and may  
18 modify such requirements to the extent necessary to  
19 avoid imposing an unreasonable burden on that  
20 party.

21 “(2) ASSISTANCE TO INTERESTED PARTIES.—

22 The administering authority and the Commission  
23 shall take into account any difficulties experienced  
24 by interested parties, particularly small companies,  
25 in supplying information requested by the admin-



1       istering authority or the Commission in connection  
2       with investigations under this title, and shall provide  
3       to such interested parties any assistance that is  
4       practicable in supplying such information.

5       “(c) DEFICIENT SUBMISSIONS.—If the administering  
6       authority or the Commission determines that a response  
7       to a request for information under this title does not com-  
8       ply with the request, the administering authority or the  
9       Commission (as the case may be) shall promptly inform  
10      the person submitting the response of the nature of the  
11      deficiency and shall, to the extent practicable, provide that  
12      person with an opportunity to remedy or explain the defi-  
13      ciency in light of the time limits established for the com-  
14      pletion of investigations or reviews under this title. If that  
15      person submits further information in response to such  
16      deficiency and either—

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

20               “(2) such response is not submitted within the  
21               applicable time limits,

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

1       “(d) USE OF CERTAIN INFORMATION.—In reaching  
2 a determination under section 803, 805, or 807, the ad-  
3 ministering authority and the Commission shall not de-  
4 cline to consider information that is submitted by an inter-  
5 ested party and is necessary to the determination but does  
6 not meet all the applicable requirements established by the  
7 administering authority or the Commission if—

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

10              “(2) the information can be verified,

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

14              “(4) the interested party has demonstrated that  
15 it acted to the best of its ability in providing the in-  
16 formation and meeting the requirements established  
17 by the administering authority or the Commission  
18 with respect to the information, and

19              “(5) the information can be used without undue  
20 difficulties.

21       “(e) NONACCEPTANCE OF SUBMISSIONS.—If the ad-  
22 ministering authority or the Commission declines to accept  
23 into the record any information submitted in an investiga-  
24 tion under this title, it shall, to the extent practicable, pro-  
25 vide to the person submitting the information a written

1 explanation of the reasons for not accepting the informa-  
2 tion.

3 “(f) PUBLIC COMMENT ON INFORMATION.—Informa-  
4 tion that is submitted on a timely basis to the administer-  
5 ing authority or the Commission during the course of a  
6 proceeding under this title shall be subject to comment  
7 by other parties within such reasonable time as the admin-  
8 istering authority or the Commission shall provide. The  
9 administering authority and the Commission, before mak-  
10 ing a final determination under section 805 or 807, shall  
11 cease collecting information and shall provide the parties  
12 with a final opportunity to comment on the information  
13 obtained by the administering authority or the Commis-  
14 sion (as the case may be) upon which the parties have  
15 not previously had an opportunity to comment. Comments  
16 containing new factual information shall be disregarded.

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

20 **“SEC. 845. ADMINISTRATIVE ACTION FOLLOWING SHIP-**  
21 **BUILDING AGREEMENT PANEL REPORTS.**

22 “(a) ACTION BY UNITED STATES INTERNATIONAL  
23 TRADE COMMISSION.—

24 “(1) ADVISORY REPORT.—If a dispute settle-  
25 ment panel under the Shipbuilding Agreement finds

1 in a report that an action by the Commission in con-  
2 nection with a particular proceeding under this title  
3 is not in conformity with the obligations of the Unit-  
4 ed States under the Shipbuilding Agreement, the  
5 Trade Representative may request the Commission  
6 to issue an advisory report on whether this title per-  
7 mits the Commission to take steps in connection  
8 with the particular proceeding that would render its  
9 action not inconsistent with the findings of the panel  
10 concerning those obligations. The Trade Representa-  
11 tive shall notify the Committee on Ways and Means  
12 of the House of Representatives and the Committee  
13 on Finance of the Senate of such request.

14 “(2) TIME LIMITS FOR REPORT.—The Commis-  
15 sion shall transmit its report under paragraph (1) to  
16 the Trade Representative within 30 calendar days  
17 after the Trade Representative requests the report.

18 “(3) CONSULTATIONS ON REQUEST FOR COM-  
19 MISSION DETERMINATION.—If a majority of the  
20 Commissioners issues an affirmative report under  
21 paragraph (1), the Trade Representatives shall con-  
22 sult with the congressional committees listed in  
23 paragraph (1) concerning the matter.

24 “(4) COMMISSION DETERMINATION.—Notwith-  
25 standing any other provision of this title, if a major-

1       ity of the Commissioners issues an affirmative report  
2       under paragraph (1), the Commission, upon the  
3       written request of the Trade Representative, shall  
4       issue a determination in connection with the particu-  
5       lar proceeding that would render the Commission’s  
6       action described in paragraph (1) not inconsistent  
7       with the findings of the panel. The Commission shall  
8       issue its determination not later than 120 calendar  
9       days after the request from the Trade Representa-  
10      tive is made.

11           “(5) CONSULTATIONS ON IMPLEMENTATION OF  
12      COMMISSION DETERMINATION.—The Trade Rep-  
13      resentative shall consult with the congressional com-  
14      mittees listed in paragraph (1) before the Commis-  
15      sion’s determination under paragraph (4) is imple-  
16      mented.

17           “(6) REVOCATION OF ORDER.—If, by virtue of  
18      the Commission’s determination under paragraph  
19      (4), an injurious pricing order is no longer sup-  
20      ported by an affirmative Commission determination  
21      under this title, the Trade Representative may, after  
22      consulting with the congressional committees under  
23      paragraph (5), direct the administering authority to  
24      revoke the injurious pricing order.

25           “(b) ACTION BY ADMINISTERING AUTHORITY.—

1           “(1) CONSULTATIONS WITH ADMINISTERING  
2           AUTHORITY AND CONGRESSIONAL COMMITTEES.—  
3           Promptly after a report or other determination by a  
4           dispute settlement panel under the Shipbuilding  
5           Agreement is issued that contains findings that—

6                   “(A) an action by the administering au-  
7                   thority in a proceeding under this title is not in  
8                   conformity with the obligations of the United  
9                   States under the Shipbuilding Agreement,

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

13                   “(C) countermeasures provided for in an  
14                   order issued under section 807 should be provi-  
15                   sionally suspended or reduced pending the final  
16                   decision of the panel, or

17                   “(D) the scope or duration of counter-  
18                   measures imposed under section 807 should be  
19                   narrowed or shortened,

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

23           “(2) DETERMINATION BY ADMINISTERING AU-  
24           THORITY.—Notwithstanding any other provision of  
25           this title, the administering authority shall, in re-

1        sponse to a written request from the Trade Rep-  
2        resentative, issue a determination, or an amendment  
3        to or suspension of an injurious pricing or counter-  
4        measure order, as the case may be, in connection  
5        with the particular proceeding that would render the  
6        administering authority’s action described in para-  
7        graph (1) not inconsistent with the findings of the  
8        panel.

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

12            “(A) with respect to a matter described in  
13        subparagraph (A) of paragraph (1), within 180  
14        calendar days after the request from the Trade  
15        Representative is made, and

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

20            “(4) CONSULTATIONS BEFORE IMPLEMENTA-  
21        TION.—Before the administering authority imple-  
22        ments any determination, amendment, or suspension  
23        under paragraph (2), the Trade Representative shall  
24        consult with the administering authority and the  
25        congressional committees listed in subsection (a)(1)

1 with respect to such determination, amendment, or  
2 suspension.

3 “(5) IMPLEMENTATION OF DETERMINATION.—  
4 The Trade Representative may, after consulting with  
5 the administering authority and the congressional  
6 committees under paragraph (4), direct the admin-  
7 istering authority to implement, in whole or in part,  
8 the determination, amendment, or suspension made  
9 under paragraph (2).

10 “(6) IMPLEMENTATION OF DETERMINATION;  
11 NOTICE OF IMPLEMENTATION.—The administering  
12 authority shall implement the determination, amend-  
13 ment, or suspension under paragraph (2)—

14 “(A) with respect to a matter described in  
15 subparagraph (A) of paragraph (1), only if the  
16 injurious pricing margin determined under  
17 paragraph (2) differs from the injurious pricing  
18 margin in the determination reviewed by the  
19 panel, and

20 “(B) with respect to a matter described in  
21 subparagraph (B), (C), or (D) of paragraph  
22 (1), upon issuance of the determination, amend-  
23 ment, or suspension under paragraph (2).

24 The administering authority shall publish notice of  
25 such implementation in the Federal Register.



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

## 9                   **“Subtitle D—Definitions**

### 10 **“SEC. 861. DEFINITIONS.**

11       “For purposes of this title:

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

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

21               “(3) COUNTRY.—The term ‘country’ means a  
22 foreign country, a political subdivision, dependent  
23 territory, or possession of a foreign country and, ex-  
24 cept as provided in paragraph (16)(E)(iii), may not  
25 include an association of 2 or more foreign coun-

1 tries, political subdivisions, dependent territories, or  
2 possessions of countries into a customs union out-  
3 side the United States.

4 “(4) INDUSTRY.—

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

12 “(B) PRODUCER.—A ‘producer’ of a do-  
13 mestic like vessel includes an entity that is pro-  
14 ducing the domestic like vessel and an entity  
15 with the capability to produce the domestic like  
16 vessel.

17 “(C) CAPABILITY TO PRODUCE A DOMES-  
18 TIC LIKE VESSEL.—A producer has the ‘capa-  
19 bility to produce a domestic like vessel’ if it is  
20 capable of producing a domestic like vessel with  
21 its present facilities or could adapt its facilities  
22 in a timely manner to produce a domestic like  
23 vessel.

24 “(D) RELATED PARTIES.—(i) In an inves-  
25 tigation under this title, if a producer of a do-

1           mestic like vessel and the foreign producer, sell-  
2           er (other than the foreign producer), or United  
3           States buyer of the subject vessel are related  
4           parties, or if a producer of a domestic like ves-  
5           sel is also a United States buyer of the subject  
6           vessel, the domestic producer may, in appro-  
7           priate circumstances, be excluded from the in-  
8           dustry.

9           “(ii) For purposes of clause (i), a domestic  
10          producer and the foreign producer, seller, or  
11          United States buyer shall be considered to be  
12          related parties, if—

13               “(I) the domestic producer directly or  
14               indirectly controls the foreign producer,  
15               seller or United States buyer,

16               “(II) the foreign producer, seller, or  
17               United States buyer directly or indirectly  
18               controls the domestic producer,

19               “(III) a third party directly or indi-  
20               rectly controls the domestic producer and  
21               the foreign producer, seller, or United  
22               States buyer, or

23               “(IV) the domestic producer and the  
24               foreign producer, seller, or United States  
25               buyer directly or indirectly control a third

1 party and there is reason to believe that  
2 the relationship causes the producer to act  
3 differently than a nonrelated producer.

4 For purposes of this subparagraph, a party  
5 shall be considered to directly or indirectly con-  
6 trol another party if the party is legally or oper-  
7 ationally in a position to exercise restraint or  
8 direction over the other party.

9 “(E) PRODUCT LINES.—In an investiga-  
10 tion under this title, the effect of the sale of the  
11 subject vessel shall be assessed in relation to  
12 the United States production (or production ca-  
13 pability) of a domestic like vessel if available  
14 data permit the separate identification of pro-  
15 duction (or production capability) in terms of  
16 such criteria as the production process or the  
17 producer’s profits. If the domestic production  
18 (or production capability) of a domestic like  
19 vessel has no separate identity in terms of such  
20 criteria, then the effect of the sale shall be as-  
21 sessed by the examination of the production (or  
22 production capability) of the narrowest group or  
23 range of vessels, which includes a domestic like  
24 vessel, for which the necessary information can  
25 be provided.

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

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

12                   “(A) A United States citizen.

13                   “(B) A juridical entity, including any cor-  
14                   poration, company, association, or other organi-  
15                   zation, that is legally constituted under the laws  
16                   and regulations of the United States or a politi-  
17                   cal subdivision thereof, regardless of whether  
18                   the entity is organized for pecuniary gain, pri-  
19                   vately or government owned, or organized with  
20                   limited or unlimited liability.

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

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

3           “(ii) the term ‘control’ means the ac-  
4           tual ability to have substantial influence on  
5           corporate behavior, and control is pre-  
6           sumed to exist where there is at least a 25  
7           percent interest.

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

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

20                 “(A) the terms and circumstances of the  
21                 transaction which conveys the interest,

22                 “(B) commercial practice,

23                 “(C) whether the vessel subject to the  
24                 transaction is integrated into the operations of  
25                 the beneficiary or beneficiaries, and

1           “(D) whether in practice there is a likeli-  
2 hood that the beneficiary or beneficiaries of  
3 such interests will take advantage of and the  
4 risk for the operation of the vessel for a signifi-  
5 cant part of the life-time of the vessel.

6           “(8) VESSEL.—

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

10           “(i) a self-propelled seagoing vessel of  
11 100 gross tons or more used for transpor-  
12 tation of goods or persons or for perform-  
13 ance of a specialized service (including, but  
14 not limited to, ice breakers and dredgers),  
15 and

16           “(ii) a tug of 365 kilowatts or more,  
17 that is produced in a Shipbuilding Agreement  
18 Party or a country that is not a Shipbuilding  
19 Agreement Party and not a WTO member.

20           “(B) EXCLUSIONS.—The term ‘vessel’ does  
21 not include—

22           “(i) any fishing vessel destined for the  
23 fishing fleet of the country in which the  
24 vessel is built,

25           “(ii) any military vessel,

1           “(iii) a military reserve vessel, and

2           “(iv) any vessel sold before the date  
3           that the Shipbuilding Agreement enters  
4           into force with respect to the United  
5           States, except that any vessel sold after  
6           December 21, 1994, for delivery more than  
7           5 years after the date of the contract of  
8           sale shall be a ‘vessel’ for purposes of this  
9           title unless the shipbuilder demonstrates to  
10          the administering authority that the ex-  
11          tended delivery date was for normal com-  
12          mercial reasons and not to avoid applica-  
13          bility of this title.

14          “(C) SELF-PROPELLED SEAGOING VES-  
15          SEL.—A vessel is ‘self-propelled seagoing’ if its  
16          permanent propulsion and steering provide it all  
17          the characteristics of self-navigability in the  
18          high seas.

19          “(D) MILITARY VESSEL.—A ‘military ves-  
20          sel’ is a vessel which, according to its basic  
21          structural characteristics and ability, is in-  
22          tended to be used exclusively for military pur-  
23          poses.

24          “(E) MILITARY RESERVE VESSEL.—A  
25          ‘military reserve vessel’ is a vessel that has been



1           constructed with national defense features and  
2           characteristics required by the Secretary of De-  
3           fense for the purpose of supporting the United  
4           States Armed Forces in a contingency.

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

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

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

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

22           “(13) SUBJECT VESSEL.—The term ‘subject  
23           vessel’ means a vessel subject to investigation under  
24           section 801, 808, or 809.

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

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

7           “(16) MATERIAL INJURY.—

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

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

14                   “(i) shall consider—

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

16                         “(II) the effect of the sale of the  
17 subject vessel on prices in the United  
18 States for a domestic like vessel, and

19                         “(III) the impact of the sale of  
20 the subject vessel on domestic produc-  
21 ers of the domestic like vessel, but  
22 only in the context of production oper-  
23 ations within the United States, and

24                         “(ii) may consider such other eco-  
25 nomic factors as are relevant to the deter-

1           mination regarding whether there is or has  
2           been material injury by reason of the sale  
3           of the subject vessel.

4           In the notification required under section  
5           805(d), the Commission shall explain its analy-  
6           sis of each factor considered under clause (i),  
7           and identify each factor considered under clause  
8           (ii) and explain in full its relevance to the deter-  
9           mination.

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

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

19           “(ii) PRICE.—In evaluating the effect  
20           of the sale of the subject vessel on prices,  
21           the Commission shall consider whether—

22           “(I) there has been significant  
23           price underselling of the subject vessel  
24           as compared with the price of a do-  
25           mestic like vessel, and

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

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

15                 “(I) actual and potential decline  
16                 in output, sales, market share, profits,  
17                 productivity, return on investments,  
18                 and utilization of capacity,

19                 “(II) factors affecting domestic  
20                 prices, including with regard to sales,

21                 “(III) actual and potential nega-  
22                 tive effects on cash flow, employment,  
23                 wages, growth, ability to raise capital,  
24                 and investment,

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

7                   “(V) the magnitude of the injuri-  
8                   ous pricing margin.

9                   The Commission shall evaluate all relevant  
10                  economic factors described in this clause  
11                  within the context of the business cycle  
12                  and conditions of competition that are dis-  
13                  tinctive to the affected industry.

14                  “(D) STANDARD FOR DETERMINATION.—

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

20                  “(E) THREAT OF MATERIAL INJURY.—

21                  “(i) IN GENERAL.—In determining  
22                  whether an industry in the United States  
23                  is threatened with material injury by rea-  
24                  son of the sale of the subject vessel, the

1 Commission shall consider, among other  
2 relevant economic factors—

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

12 “(II) whether the sale of a for-  
13 eign like vessel or other factors indi-  
14 cate the likelihood of significant addi-  
15 tional sales to United States buyers,

16 “(III) whether sale of the subject  
17 vessel or sale of a foreign like vessel  
18 by the foreign producer are at prices  
19 that are likely to have a significant  
20 depressing or suppressing effect on  
21 domestic prices, and are likely to in-  
22 crease demand for further sales,

23 “(IV) the potential for product-  
24 shifting if production facilities in the  
25 exporting country, which can pres-

1           ently be used to produce a foreign like  
2           vessel or could be adapted in a timely  
3           manner to produce a foreign like ves-  
4           sel, are currently being used to  
5           produce other types of vessels,

6                   “(V) the actual and potential  
7           negative effects on the existing devel-  
8           opment and production efforts of the  
9           domestic industry, including efforts to  
10          develop a derivative or more advanced  
11          version of a domestic like vessel, and

12                   “(VI) any other demonstrable ad-  
13          verse trends that indicate the prob-  
14          ability that there is likely to be mate-  
15          rial injury by reason of the sale of the  
16          subject vessel.

17                   “(ii) BASIS FOR DETERMINATION.—

18          The Commission shall consider the factors  
19          set forth in clause (i) as a whole. The pres-  
20          ence or absence of any factor which the  
21          Commission is required to consider under  
22          clause (i) shall not necessarily give decisive  
23          guidance with respect to the determination.  
24          Such a determination may not be made on

1 the basis of mere conjecture or suppo-  
2 sition.

3 “(iii) EFFECT OF INJURIOUS PRICING  
4 IN THIRD-COUNTRY MARKETS.—

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

21 “(II) EUROPEAN COMMU-  
22 NITIES.—For purposes of this clause,  
23 the European Communities as a whole  
24 shall be treated as a single foreign  
25 country.



1                   “(F) CUMULATION FOR DETERMINING MA-  
2                   TERIAL INJURY.—

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

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

12                   “(II) investigations were initiated  
13                   under section 802(a) on the same day,  
14                   or

15                   “(III) petitions were filed under  
16                   section 802(b) and investigations were  
17                   initiated under section 802(a) on the  
18                   same day,

19                   if, with respect to such vessels, the foreign  
20                   producers compete with each other and  
21                   with producers of a domestic like vessel in  
22                   the United States market.

23                   “(ii) EXCEPTIONS.—The Commission  
24                   shall not cumulatively assess the effects of  
25                   sales under clause (i)—

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

9                   “(II) from any producer with re-  
10                  spect to which the investigation has  
11                  been terminated.

12                  “(iii) RECORDS IN FINAL INVESTIGA-  
13                  TIONS.—In each final determination in  
14                  which it cumulatively assesses the effects  
15                  of sales under clause (i), the Commission  
16                  may make its determinations based on the  
17                  record compiled in the first investigation in  
18                  which it makes a final determination, ex-  
19                  cept that when the administering authority  
20                  issues its final determination in a subse-  
21                  quently completed investigation, the Com-  
22                  mission shall permit the parties in the sub-  
23                  sequent investigation to submit comments  
24                  concerning the significance of the admin-  
25                  istering authority’s final determination,

1           and shall include such comments and the  
2           administering authority’s final determina-  
3           tion in the record for the subsequent inves-  
4           tigation.

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

12                   “(i) petitions were filed under section  
13                   802(b) on the same day,

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

16                   “(iii) petitions were filed under sec-  
17                   tion 802(b) and investigations were initi-  
18                   ated under section 802(a) on the same  
19                   day,

20          if, with respect to such vessels, the foreign pro-  
21          ducers compete with each other and with pro-  
22          ducers of a domestic like vessel in the United  
23          States market.

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

4                   “(A)(i) the foreign producer, seller (other  
5                   than the foreign producer), and the United  
6                   States buyer of the subject vessel, or

7                   “(ii) a trade or business association a ma-  
8                   jority of the members of which are the foreign  
9                   producer, seller, or United States buyer of the  
10                  subject vessel,

11                  “(B) the government of the country in  
12                  which the subject vessel is produced or manu-  
13                  factured,

14                  “(C) a producer that is a member of an in-  
15                  dustry,

16                  “(D) a certified union or recognized union  
17                  or group of workers which is representative of  
18                  an industry,

19                  “(E) a trade or business association a ma-  
20                  jority of whose members are producers in an in-  
21                  dustry,

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

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

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

15                 “(A) material injury to an industry in the  
16                 United States,

17                 “(B) threat of material injury to such an  
18                 industry, or

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

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

24           “(19) ORDINARY COURSE OF TRADE.—The  
25           term ‘ordinary course of trade’ means the conditions

1 and practices which, for a reasonable time before the  
2 sale of the subject vessel, have been normal in the  
3 shipbuilding industry with respect to a like vessel.  
4 The administering authority shall consider the fol-  
5 lowing sales and transactions, among others, to be  
6 outside the ordinary course of trade:

7 “(A) Sales disregarded under section  
8 822(b)(1).

9 “(B) Transactions disregarded under sec-  
10 tion 822(f)(2).

11 “(20) NONMARKET ECONOMY COUNTRY.—

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

19 “(B) FACTORS TO BE CONSIDERED.—In  
20 making determinations under subparagraph (A)  
21 the administering authority shall take into ac-  
22 count—

23 “(i) the extent to which the currency  
24 of the foreign country is convertible into  
25 the currency of other countries,

1           “(ii) the extent to which wage rates in  
2           the foreign country are determined by free  
3           bargaining between labor and manage-  
4           ment,

5           “(iii) the extent to which joint ven-  
6           tures or other investments by firms of  
7           other foreign countries are permitted in  
8           the foreign country,

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

11          “(v) the extent of government control  
12          over the allocation of resources and over  
13          the price and output decisions of enter-  
14          prises, and

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

17          “(C) DETERMINATION IN EFFECT.—

18           “(i) Any determination that a foreign  
19           country is a nonmarket economy country  
20           shall remain in effect until revoked by the  
21           administering authority.

22           “(ii) The administering authority may  
23           make a determination under subparagraph  
24           (A) with respect to any foreign country at  
25           any time.

1           “(D) DETERMINATIONS NOT IN ISSUE.—

2           Notwithstanding any other provision of law, any  
3           determination made by the administering au-  
4           thority under subparagraph (A) shall not be  
5           subject to judicial review in any investigation  
6           conducted under subtitle A.

7           “(21) SHIPBUILDING AGREEMENT.—The term  
8           ‘Shipbuilding Agreement’ means The Agreement Re-  
9           specting Normal Competitive Conditions in the Com-  
10          mercial Shipbuilding and Repair Industry, resulting  
11          from negotiations under the auspices of the Organi-  
12          zation for Economic Cooperation and Development,  
13          and entered into on December 21, 1994.

14          “(22) SHIPBUILDING AGREEMENT PARTY.—The  
15          term ‘Shipbuilding Agreement Party’ means a state  
16          or separate customs territory that is a Party to the  
17          Shipbuilding Agreement, and with respect to which  
18          the United States applies the Shipbuilding Agree-  
19          ment.

20          “(23) WTO AGREEMENT.—The term ‘WTO  
21          Agreement’ means the Agreement defined in section  
22          2(9) of the Uruguay Round Agreements Act.

23          “(24) WTO MEMBER.—The term ‘WTO mem-  
24          ber’ means a state, or separate customs territory  
25          (within the meaning of Article XII of the WTO



1 Agreement), with respect to which the United States  
2 applies the WTO Agreement.

3 “(25) TRADE REPRESENTATIVE.—The term  
4 ‘Trade Representative’ means the United States  
5 Trade Representative.

6 “(26) AFFILIATED PERSONS.—The following  
7 persons shall be considered to be ‘affiliated’ or ‘af-  
8 filiated persons’:

9 “(A) Members of a family, including broth-  
10 ers and sisters (whether by the whole or half  
11 blood), spouse, ancestors, and lineal descend-  
12 ants.

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

15 “(C) Partners.

16 “(D) Employer and employee.

17 “(E) Any person directly or indirectly own-  
18 ing, controlling, or holding with power to vote,  
19 5 percent or more of the outstanding voting  
20 stock or shares of any organization, and such  
21 organization.

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

1           “(G) Any person who controls any other  
2           person, and such other person.

3           For purposes of this paragraph, a person shall be  
4           considered to control another person if the person is  
5           legally or operationally in a position to exercise re-  
6           straint or direction over the other person.

7           “(27) INJURIOUS PRICING.—The term ‘injury-  
8           ous pricing’ refers to the sale of a vessel at less than  
9           fair value.

10          “(28) INJURIOUS PRICING MARGIN.—

11           “(A) IN GENERAL.—The term ‘injurious  
12           pricing margin’ means the amount by which the  
13           normal value exceeds the export price of the  
14           subject vessel.

15           “(B) MAGNITUDE OF THE INJURIOUS  
16           PRICING MARGIN.—The magnitude of the inju-  
17           rious pricing margin used by the Commission  
18           shall be—

19           “(i) in making a preliminary deter-  
20           mination under section 803(a) in an inves-  
21           tigation (including any investigation in  
22           which the Commission cumulatively as-  
23           sesses the effect of sales under paragraph  
24           (16)(F)(i)), the injurious pricing margin or  
25           margins published by the administering

1 authority in its notice of initiation of the  
2 investigation; and

3 “(ii) in making a final determination  
4 under section 805(b), the injurious pricing  
5 margin or margins most recently published  
6 by the administering authority before the  
7 closing of the Commission’s administrative  
8 record.

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

18 “(30) ANTIDUMPING.—

19 “(A) WTO MEMBERS.—In the case of a  
20 WTO member, the term ‘antidumping’ refers to  
21 action taken pursuant to the Agreement on Im-  
22 plementation of Article VI of the General  
23 Agreement on Tariffs and Trade 1994.

24 “(B) OTHER CASES.—In the case of any  
25 country that is not a WTO member, the term

1           ‘antidumping’ refers to action taken by the  
2           country against the sale of a vessel at less than  
3           fair value that is comparable to action described  
4           in subparagraph (A).

5           “(31) BROAD MULTIPLE BID.—The term ‘broad  
6           multiple bid’ means a bid in which the proposed  
7           buyer extends an invitation to at least all the pro-  
8           ducers in the industry known by the buyer to be ca-  
9           pable of building the subject vessel.”.

10 **SEC. 102. ENFORCEMENT OF COUNTERMEASURES.**

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

13 **“SEC. 468. SHIPBUILDING AGREEMENT COUNTER-**  
14 **MEASURES.**

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

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

23           “(1) To unlade any United States citizen or  
24 permanent legal resident alien from a vessel included  
25 in the list described in subsection (a), or to unlade

1 any refugee or any alien who would otherwise be eli-  
2 gible to apply for asylum and withholding of depor-  
3 tation under the Immigration and Nationality Act.

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

6 “(3) To lade or unlade coal and other fuel sup-  
7 plies (for the operation of the listed vessel), ships’  
8 stores, sea stores, and the legitimate equipment of  
9 such vessel.

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

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

16 “(c) CORRECTION OF MINISTERIAL OR CLERICAL  
17 ERRORS.—

18 “(1) PETITION FOR CORRECTION.—If the mas-  
19 ter of any vessel whose application for a permit to  
20 lade or unlade has been denied under this section be-  
21 lieves that such denial resulted from a ministerial or  
22 clerical error, not amounting to a mistake of law,  
23 committed by any Customs officer, the master may  
24 petition the Customs Service for correction of such  
25 error, as provided by regulation.

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

7           “(3) PETITIONS SEEKING ADMINISTRATIVE RE-  
8           VIEW.—Any petition seeking administrative review  
9           of any matter regarding the Secretary of Com-  
10          merce’s decision to list a vessel under section 807  
11          must be brought under that section.

12          “(d) PENALTIES.—In addition to any other provision  
13          of law, the Customs Service may impose a civil penalty  
14          of not to exceed \$10,000 against the master of any ves-  
15          sel—

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

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

21 **SEC. 103. JUDICIAL REVIEW IN INJURIOUS PRICING AND**  
22 **COUNTERMEASURE PROCEEDINGS.**

23           (a) JUDICIAL REVIEW.—Part III of title IV of the  
24          Tariff Act of 1930 is amended by inserting after section  
25          516A the following:

1 **“SEC. 516B. JUDICIAL REVIEW IN INJURIOUS PRICING AND**  
2 **COUNTERMEASURE PROCEEDINGS.**

3 “(a) REVIEW OF DETERMINATION.—

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

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

9 “(ii) a negative determination by the Com-  
10 mission under section 803(a) as to whether  
11 there is or has been reasonable indication of  
12 material injury, threat of material injury, or  
13 material retardation,

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

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

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

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

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

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

6           “(ix) a determination by the administering  
7 authority under section 807(i) to terminate pro-  
8 ceedings, or to amend or revoke a counter-  
9 measure order,

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

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

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

19           “(iii) notice of implementation of a deter-  
20 mination described in subparagraph (C) of  
21 paragraph (2), or

22           “(iv) notice of revocation of an injurious  
23 pricing order based on a determination de-  
24 scribed in subparagraph (D) of paragraph (2),



1 an interested party who is a party to the proceeding  
2 in connection with which the matter arises may com-  
3 mence an action in the United States Court of Inter-  
4 national Trade by filing concurrently a summons  
5 and complaint, each with the content and in the  
6 form, manner, and style prescribed by the rules of  
7 that court, contesting any factual findings or legal  
8 conclusions upon which the determination is based.

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

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

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

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

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

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

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

13           “(b) STANDARDS OF REVIEW.—

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

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

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

24           “(2) RECORD FOR REVIEW.—

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

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

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

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

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

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

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

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

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

19       (b) CONFORMING AMENDMENTS.—

20           (1) JURISDICTION OF THE COURT.—Section  
21 1581(c) of title 28, United States Code, is amended  
22 by inserting “or 516B” after “section 516A”.

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

1 (A) in subsection (e)(1) by striking “and  
2 (5)” and inserting “(5), and (6)”; and

3 (B) in subsection (e) by adding at the end  
4 the following new paragraph:

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

## 11 **TITLE II—OTHER PROVISIONS**

### 12 **SEC. 201. EQUIPMENT AND REPAIR OF VESSELS.**

13 Section 466 of the Tariff Act of 1930 (19 U.S.C.  
14 1466), is amended by adding at the end the following new  
15 subsection:

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

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

25 “(2) tugs of 365 kilowatts or more.

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

4 **SEC. 202. EFFECT OF AGREEMENT WITH RESPECT TO PRI-**  
5 **VATE REMEDIES.**

6 No person other than the United States—

7 (1) shall have any cause of action or defense  
8 under the Shipbuilding Agreement or by virtue of  
9 congressional approval of the agreement, or

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

18 **SEC. 203. IMPLEMENTING REGULATIONS.**

19 After the date of the enactment of this Act, the heads  
20 of agencies with functions under this Act and the amend-  
21 ments made by this Act may issue such regulations as may  
22 be necessary to ensure that this Act is appropriately im-  
23 plemented on the date the Shipbuilding Agreement enters  
24 into force with respect to the United States.

1 **SEC. 204. AMENDMENTS TO THE MERCHANT MARINE ACT,**  
2 **1936.**

3 The Merchant Marine Act, 1936, is amended as fol-  
4 lows:

5 (1) Section 511(a)(2) (46 App. U.S.C.  
6 1161(a)(2)) is amended by inserting after “1939,”  
7 the following: “or, if the vessel is a Shipbuilding  
8 Agreement vessel, constructed in a Shipbuilding  
9 Agreement Party, but only with regard to moneys  
10 deposited, on or after the date on which the Ship-  
11 building Trade Agreement Act takes effect, into a  
12 construction reserve fund established under sub-  
13 section (b)”.

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

25 (3) Section 606(6) (46 App. U.S.C. 1176(6)) is  
26 amended by inserting “or, if the vessel is a Ship-

1 building Agreement vessel, in a Shipbuilding Agree-  
2 ment Party or in the United States” before “, except  
3 in an emergency.”.

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

6 (A) Subsection (a) is amended by inserting  
7 “or, if the vessel is a Shipbuilding Agreement  
8 vessel, in a Shipbuilding Agreement Party,”  
9 after “built in the United States”.

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

11 (i) Paragraph (1) is amended by  
12 striking subparagraph (A) and inserting  
13 the following:

14 “(A)(i) constructed in the United States and, if  
15 reconstructed, reconstructed in the United States or  
16 in a Shipbuilding Agreement Party, or

17 “(ii) that is a Shipbuilding Agreement vessel  
18 and is constructed in a Shipbuilding Agreement  
19 Party and, if reconstructed, is reconstructed in a  
20 Shipbuilding Agreement Party or in the United  
21 States,”.

22 (ii) Paragraph (2)(A) is amended to  
23 read as follows:



1           “(A)(i) constructed in the United States and, if  
2           reconstructed, reconstructed in the United States or  
3           in a Shipbuilding Agreement Party, or

4           “(ii) that is a Shipbuilding Agreement vessel  
5           and is constructed in a Shipbuilding Agreement  
6           Party and, if reconstructed, is reconstructed in a  
7           Shipbuilding Agreement Party or in the United  
8           States, but only with regard to moneys deposited  
9           into the fund on or after the date on which the Ship-  
10          building Trade Agreement Act takes effect,”.

11          (5) Section 610 (46 App. U.S.C. 1180) is  
12          amended by striking “shall be built in a domestic  
13          yard or shall have been documented under the laws  
14          of the United States not later than February 1,  
15          1928, or actually ordered and under construction for  
16          the account of citizens of the United States prior to  
17          such date,” and inserting “shall be built in the Unit-  
18          ed States or, if the vessel is a Shipbuilding Agree-  
19          ment vessel, in a Shipbuilding Agreement Party,”.

20          (6) Section 901(b)(1) (46 App. U.S.C.  
21          1241(b)(1)) is amended by striking the third sen-  
22          tence and inserting the following:

23          “For purposes of this section, the term ‘privately owned  
24          United States-flag commercial vessels’ shall be deemed to  
25          include—

1           “(A) any privately owned United States-flag  
2           commercial vessel constructed in the United States,  
3           and if rebuilt, rebuilt in the United States or in a  
4           Shipbuilding Agreement Party on or after the date  
5           on which the Shipbuilding Trade Agreement Act  
6           takes effect, and

7           “(B) any privately owned vessel constructed in  
8           a Shipbuilding Agreement Party on or after the date  
9           on which the Shipbuilding Trade Agreement Act  
10          takes effect, and if rebuilt, rebuilt in a Shipbuilding  
11          Agreement Party or in the United States, that is  
12          documented pursuant to chapter 121 of title 46,  
13          United States Code.

14       The term ‘privately owned United States-flag commercial  
15       vessels’ shall also be deemed to include any cargo vessel  
16       that so qualified pursuant to section 615 of this Act or  
17       this paragraph before the date on which the Shipbuilding  
18       Trade Agreement Act takes effect. The term ‘privately  
19       owned United States-flag commercial vessels’ shall not be  
20       deemed to include any liquid bulk cargo vessel that does  
21       not meet the requirements of section 3703a of title 46,  
22       United States Code.”.

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

1       “(h) The term ‘Shipbuilding Agreement’ means the  
2 Agreement Respecting Normal Competitive Conditions in  
3 the Commercial Shipbuilding and Repair Industry, which  
4 resulted from negotiations under the auspices of the Orga-  
5 nization for Economic Cooperation and Development, and  
6 was entered into on December 21, 1994.

7       “(i) The term ‘Shipbuilding Agreement Party’ means  
8 a state or separate customs territory that is a Party to  
9 the Shipbuilding Agreement, and with respect to which the  
10 United States applies the Shipbuilding Agreement.

11       “(j) The term ‘Shipbuilding Agreement vessel’ means  
12 a vessel to which the Secretary determines Article 2.1 of  
13 the Shipbuilding Agreement applies.

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

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

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

24                       (A) Paragraph (5) of subsection (b) is  
25 amended to read as follows:

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

14                   (B) Subsection (i) is amended to read as  
15                   follows:

16           “(i)(1) Except as provided in paragraph (2), the Sec-  
17          retary may not, with respect to—

18                   “(A) the general 75 percent or less limitation  
19                   contained in subsection (b)(2),

20                   “(B) the 87½ percent or less limitation con-  
21                   tained in the 1st, 2nd, 4th, or 5th proviso to sub-  
22                   section (b)(2) or in section 1112(b), or

23                   “(C) the 80 percent or less limitation in the 3rd  
24                   proviso to such subsection,

1 establish by rule, regulation, or procedure any percentage  
2 within any such limitation that is, or is intended to be,  
3 applied uniformly to all guarantees or commitments to  
4 guarantee made under this section that are subject to the  
5 limitation.

6 “(2) With respect to Export Credit Understanding  
7 vessels and Shipbuilding Agreement vessels, the Secretary  
8 may establish by rule, regulation, or procedure a uniform  
9 percentage that the Secretary determines to be consistent  
10 with obligations of the United States under the Export  
11 Credit Understanding or the Shipbuilding Agreement, as  
12 the case may be.”.

13 (C) Section 1104B(b) (46 App. U.S.C.  
14 1274a(b)) is amended by striking the period at  
15 the end and inserting the following:

16 “, except that, with respect to Export Credit Understand-  
17 ing vessels and Shipbuilding Agreement vessels, the Sec-  
18 retary may establish by rule, regulation, or procedure a  
19 uniform percentage that the Secretary determines to be  
20 consistent with obligations of the United States under the  
21 Export Credit Understanding or the Shipbuilding Agree-  
22 ment, as the case may be.”.

23 **SEC. 205. WITHDRAWAL FROM THE AGREEMENT.**

24 (a) WITHDRAWAL.—

1           (1) NOTICE.—The President shall give notice,  
2           under Article 14 of the Shipbuilding Agreement, of  
3           intent of the United States to withdraw from the  
4           Shipbuilding Agreement, as soon as is practicable  
5           after one or more Shipbuilding Agreement Parties  
6           give notice, under such article, of intent to withdraw  
7           from the Shipbuilding Agreement, if paragraph (2)  
8           applies.

9           (2) TONNAGE OF NEW CONSTRUCTION IN WITH-  
10          DRAWING PARTIES.—This paragraph applies if the  
11          combined gross tonnage of new Shipbuilding Agree-  
12          ment vessels constructed in all Shipbuilding Agree-  
13          ment Parties who have given notice to withdraw  
14          from the Shipbuilding Agreement, which were deliv-  
15          ered in the calendar year preceding the calendar  
16          year in which the notice is given, is 15 percent or  
17          more of the gross tonnage of new Shipbuilding  
18          Agreement vessels that were constructed in all Ship-  
19          building Agreement Parties and were delivered in  
20          the calendar year preceding the calendar year in  
21          which the notice is given.

22          (3) TERMINATION OF WITHDRAWAL.—If a  
23          Shipbuilding Agreement Party described in para-  
24          graph (2) takes action to terminate its withdrawal  
25          from the Shipbuilding Agreement, so that paragraph

1 (2) would not apply if that Party had not given the  
2 notice to withdraw, the President may take the nec-  
3 essary steps to terminate the notice of withdrawal of  
4 the United States from the Shipbuilding Agreement.

5 (b) REINSTATEMENT OF LAWS.—If the United  
6 States withdraws from the Shipbuilding Agreement, on  
7 the date on which such withdrawal becomes effective, the  
8 amendments made by section 204 shall be deemed not to  
9 have been made, and the provisions of law amended by  
10 section 204 shall, on and after such date, be effective as  
11 if this Act had not been enacted.

12 **SEC. 206. APPLICABILITY OF TITLE XI AMENDMENTS.**

13 (a) EFFECTIVE DATE.—

14 (1) IN GENERAL.—Notwithstanding any provi-  
15 sion of the Shipbuilding Agreement or the Export  
16 Credit Understanding, the amendments made by  
17 paragraph (8) of section 204 shall not apply with re-  
18 spect to any commitment to guarantee made under  
19 title XI of the Merchant Marine Act, 1936, before  
20 January 1, 1999, with respect to a vessel deliv-  
21 ered—

22 (A) before January 1, 2002, or

23 (B) in the case of unusual circumstances  
24 to which paragraph (2) applies, as soon after  
25 January 1, 2002, as is practicable.

1           (2) UNUSUAL CIRCUMSTANCES.—This para-  
2           graph applies in a case in which unusual cir-  
3           cumstances beyond the control of the parties con-  
4           cerned prevent the delivery of a vessel by January  
5           1, 2002. As used in this paragraph, the term “un-  
6           usual circumstances” means acts of God (other than  
7           ordinary storms or inclement weather conditions),  
8           labor strikes, acts of sabotage, explosions, fires, or  
9           vandalism, and similar circumstances.

10 **SEC. 207. OTHER LAWS NOT AFFECTED.**

11           The Shipbuilding Agreement shall not affect, directly  
12           or indirectly, the Merchant Marine Act, 1920, the Act of  
13           June 19, 1886 (46 U.S.C. App. 289), or any other provi-  
14           sion of law set forth in Accompanying Note 2 to Annex  
15           II to the Shipbuilding Agreement, and shall not provide  
16           any mechanism to subject any producer of vessels in the  
17           United States to financial penalties, duties, bid restric-  
18           tions, unfavorable bid preferences, or withdrawal of con-  
19           cessions under the GATT 1994 or other Uruguay Round  
20           Agreements, in the competition for international commer-  
21           cial vessel construction or reconstruction orders because  
22           of construction of vessels by United States shipbuilders  
23           for operation in the coastwise trade of the United States.



1 **SEC. 208. PROTECTION OF UNITED STATES INTERESTS.**

2       Nothing in the Shipbuilding Agreement shall be con-  
3       strued to prevent the United States from taking any ac-  
4       tion which it considers necessary for the protection of es-  
5       sential security interests or from invoking its sovereign au-  
6       thority to define, for purposes of exclusion from coverage  
7       under the Shipbuilding Agreement and from any dispute  
8       or challenge based on Annex I to the Shipbuilding Agree-  
9       ment, “military vessel”, “military reserve vessel”, or “es-  
10      sential security interest” on a case by case basis, as deter-  
11      mined by the Secretary of Defense.

12 **SEC. 209. DEFINITIONS.**

13       As used in this title—

14           (1) the terms “Shipbuilding Agreement”,  
15       “Shipbuilding Agreement Party”, “Shipbuilding  
16       Agreement vessel”, and “Export Credit Understand-  
17       ing” have the meanings given those terms in sub-  
18       sections (h), (i), (j), and (k), respectively, of section  
19       905 of the Merchant Marine Act, 1936, as added by  
20       section 204(7) of this Act; and

21           (2) the terms “GATT 1994” and “Uruguay  
22       Round Agreements” have the meanings given those  
23       terms in section 2 of the Uruguay Round Agree-  
24       ments Act.

**1 TITLE III—REVENUE OFFSET****2 SEC. 301. PENALTIES FOR FAILURE TO DISCLOSE POSITION**  
**3 THAT CERTAIN INTERNATIONAL SHIPPING**  
**4 INCOME IS NOT INCLUDIBLE IN GROSS IN-**  
**5 COME.**

6 (a) IN GENERAL.—Section 883 of the Internal Reve-  
7 nue Code of 1986 is amended by adding at the end the  
8 following new subsection:

9 “(d) PENALTIES FOR FAILURE TO DISCLOSE POSI-  
10 TION THAT CERTAIN INTERNATIONAL SHIPPING INCOME  
11 IS NOT INCLUDIBLE IN GROSS INCOME.—

12 “(1) IN GENERAL.—A taxpayer who, with re-  
13 spect to any tax imposed by this title, takes the posi-  
14 tion that any of its gross income derived from the  
15 international operation of a ship or ships is not in-  
16 cludible in gross income by reason of subsection  
17 (a)(1) or section 872(b)(1) shall be entitled to such  
18 treatment only if such position is disclosed (in such  
19 manner as the Secretary may prescribe) on the re-  
20 turn of tax for such tax (or any statement attached  
21 to such return).

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

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

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

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

7 shall be treated for purposes of this title as ef-  
8 fectively connected with the conduct of a trade  
9 or business within the United States, and

10           “(B) no deductions or credits shall be al-  
11 lowed which are attributable to income from the  
12 international operation of a ship or ships.

13           “(3) REASONABLE CAUSE EXCEPTION.—This  
14 subsection shall not apply to a failure to disclose a  
15 position if it is shown that such failure is due to rea-  
16 sonable cause and not due to willful neglect.”

17 (b) CONFORMING AMENDMENTS.—

18           (1) Paragraph (1) of section 872(b) of such  
19 Code is amended by striking “Gross income” and in-  
20 sserting “Except as provided in section 883(d), gross  
21 income”.

22           (2) Paragraph (1) of section 883(a) of such  
23 Code is amended by striking “Gross income” and in-  
24 sserting “Except as provided in subsection (d), gross  
25 income”.

1 (c) EFFECTIVE DATE.—

2 (1) IN GENERAL.—Notwithstanding section 3,  
3 the amendments made by this section shall apply to  
4 taxable years beginning after the later of—

5 (A) December 31, 1996, or

6 (B) the date that the Shipbuilding Agree-  
7 ment enters into force with respect to the Unit-  
8 ed States.

9 (2) COORDINATION WITH TREATIES.—The  
10 amendments made by this section shall not apply in  
11 any case where their application would be contrary  
12 to any treaty obligation of the United States.

13 (d) INFORMATION TO BE PROVIDED BY CUSTOMS  
14 SERVICE.—The United States Custom Service shall pro-  
15 vide the Secretary of the Treasury or his delegate with  
16 such information as may be specified by such Secretary  
17 in order to enable such Secretary to determine whether  
18 ships which are not registered in the United States are  
19 engaged in transportation to or from the United States.

Passed the House of Representatives June 13, 1996.

Attest:

ROBIN H. CARLE,

*Clerk.*

By LINDA NAVE,

*Deputy Clerk.*