

Calendar No. 293

105TH CONGRESS
1ST Session

S. 1216

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

A BILL

To approve and implement the OECD Shipbuilding
Trade Agreement.

NOVEMBER 10, 1997

Reported with amendments

Calendar No. 293105TH CONGRESS
1ST SESSION**S. 1216****[Report No. 105-84]****[Report No. 105-154]**

To approve and implement the OECD Shipbuilding Trade Agreement.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 24, 1997

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

NOVEMBER 9, 1997

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

NOVEMBER 10, 1997

Reported by Mr. McCAIN, with amendments

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

A BILL

To approve and implement the OECD Shipbuilding Trade Agreement.

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

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

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

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

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

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

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

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

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

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

Subtitle A—General Provisions

Sec. 101. Approval of the Shipbuilding Agreement.

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

Sec. 103. Enforcement of countermeasures.

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

Subtitle B—Other Provisions

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

Subtitle C—Effective Date

- Sec. 131. Effective date.

TITLE II—INTERNATIONAL SHIPPING INCOME DISCLOSURE

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

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

4 **Subtitle A—General Provisions**

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

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

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

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

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

“Subtitle A—Imposition of Injurious Pricing Charge and Countermeasures

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

“Subtitle B—Special Rules

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

“Subtitle C—Procedures

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

“Subtitle D—Definitions

- “Sec. 861. Definitions.

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

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

12 “(a) BASIS FOR CHARGE.—If—

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

5 “(2) the Commission determines that—

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

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

8 or

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

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

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

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

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

7 “(a) INITIATION BY ADMINISTERING AUTHORITY.—

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

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

1 “(b) INITIATION BY PETITION.—

2 “(1) PETITION REQUIREMENTS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 “(3) DEADLINE FOR FILING PETITION.—

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

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

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

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

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

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

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

3 “(B) PRESUMPTION OF KNOWLEDGE.—

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

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

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

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

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

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

11 “(d) PETITION DETERMINATION.—

12 “(1) TIME FOR INITIAL DETERMINATION.—

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

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

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

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

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

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

15 “(3) NEGATIVE DETERMINATIONS.—If—
16 “(A) the determination under clause (i) or
17 (ii) of paragraph (1)(A) is negative, or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 “(1) IN GENERAL.—If—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 “(d) PROCEEDINGS BY WTO MEMBERS.—

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

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

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

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

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

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

4 If such a proceeding—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 “(b) FINAL DETERMINATION BY COMMISSION.—

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

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

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

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

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

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

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

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

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

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

24 “(c) EFFECT OF FINAL DETERMINATIONS.—

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

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

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

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

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

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

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

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

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

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

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

19 “(3) informs the foreign producer that—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 “(e) ALTERNATIVE EQUIVALENT REMEDY.—

6 “(1) AGREEMENT FOR ALTERNATE REMEDY.—

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

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

15 “(B) is in the public interest,

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

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

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

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

3 “(3) MATERIAL VIOLATIONS OF AGREEMENT.—

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

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

11 “(a) GENERAL RULE.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 “(e) EXTENSION OF COUNTERMEASURES.—

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

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

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

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

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

5 “(3) DETERMINATION.—

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

13 “(B) PROCEDURES.—

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

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

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

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

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

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

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

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

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

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

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

3 “(B) The vessel identification number.

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

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

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

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

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

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

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

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

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

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

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

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

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

7 “(v) the shipyards on the list, and

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

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

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

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

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

21 “(1) REQUEST FOR REVIEW.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 “(2) IF PAYMENT DATE AMENDED.—

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

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

24 “(C) REINSTITUTION OF PROCEEDINGS.—

25 If—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 **“Subtitle B—Special Rules**

7 **“SEC. 821. EXPORT PRICE.**

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

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

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

1 “(2) reduced by—

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

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

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

14 **“SEC. 822. NORMAL VALUE.**

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

21 “(1) DETERMINATION OF NORMAL VALUE.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 “(A) reduced by—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 “(1) DETERMINATION; SALES DISREGARDED.—

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

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

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

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

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

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

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

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

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

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

23 “(c) NONMARKET ECONOMY COUNTRIES.—

24 “(1) IN GENERAL.—If—

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

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

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

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

2 “(B) produced in one or more market

3 economy countries that are at a level of eco-

4 nomic development comparable to that of the

5 nonmarket economy country,

6 is sold in other countries, including the United

7 States.

8 “(3) FACTORS OF PRODUCTION.—For purposes

9 of paragraph (1), the factors of production utilized

10 in producing the vessel include, but are not limited

11 to—

12 “(A) hours of labor required,

13 “(B) quantities of raw materials employed,

14 “(C) amounts of energy and other utilities

15 consumed, and

16 “(D) representative capital cost, including

17 depreciation.

18 “(4) VALUATION OF FACTORS OF PRODUC-

19 TION.—The administering authority, in valuing fac-

20 tors of production under paragraph (1), shall utilize,

21 to the extent possible, the prices or costs of factors

22 of production in one or more market economy coun-

23 tries that are—

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

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

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

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

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

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

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

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

9 “(e) CONSTRUCTED VALUE.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 “(1) COSTS.—

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

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

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

14 “(C) STARTUP COSTS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 **“Subtitle C—Procedures**

15 **“SEC. 841. HEARINGS.**

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

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

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

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

5 “(a) IN GENERAL.—If—

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

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

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

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

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

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

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

12 “(1) the petition, or

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

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

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

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

1 “(1) PROGRESS OF INVESTIGATION REPORTS.—
2 The administering authority and the Commission
3 shall, from time to time upon request, inform the
4 parties to an investigation under this title of the
5 progress of that investigation.

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

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

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

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

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

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

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

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

22 “(b) PROPRIETARY INFORMATION.—

23 “(1) PROPRIETARY STATUS MAINTAINED.—

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

1 tion submitted to the administering authority or
2 the Commission which is designated as propri-
3 etary by the person submitting the information
4 shall not be disclosed to any person without the
5 consent of the person submitting the informa-
6 tion, other than—

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

14 “(ii) to an officer or employee of the
15 United States Customs Service who is di-
16 rectly involved in conducting an investiga-
17 tion regarding fraud under this title.

18 “(B) ADDITIONAL REQUIREMENTS.—The
19 administering authority and the Commission
20 shall require that information for which propri-
21 etary treatment is requested be accompanied
22 by—

23 “(i) either—

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

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

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

9 “(ii) either—

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

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

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

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

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

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

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

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

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

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

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

20 “(ii) if—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 “(b) DIFFICULTIES IN MEETING REQUIREMENTS.—

19 “(1) NOTIFICATION BY INTERESTED PARTY.—

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

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

10 “(2) ASSISTANCE TO INTERESTED PARTIES.—

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

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

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

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

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

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

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

23 “(2) the information can be verified,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 “(b) ACTION BY ADMINISTERING AUTHORITY.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 **“Subtitle D—Definitions**

15 **“SEC. 861. DEFINITIONS.**

16 “In this title:

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

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

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

9 “(4) INDUSTRY.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 “(A) A United States citizen.

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

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

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

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

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

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

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

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

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

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

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

13 “(8) VESSEL.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 “(16) MATERIAL INJURY.—

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

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

1 “(i) shall consider—

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

3 “(II) the effect of the sale of the
4 subject vessel on prices in the United
5 States for a domestic like vessel, and

6 “(III) the impact of the sale of
7 the subject vessel on domestic produc-
8 ers of a domestic like vessel, but only
9 in the context of production oper-
10 ations within the United States, and

11 “(ii) may consider such other eco-
12 nomic factors as are relevant to the deter-
13 mination regarding whether there is or has
14 been material injury by reason of the sale
15 of the subject vessel.

16 In the notification required under section
17 805(d), the Commission shall explain its analy-
18 sis of each factor considered under clause (i),
19 and identify each factor considered under clause
20 (ii) and explain in full its relevance to the deter-
21 mination.

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

24 “(i) SALE OF THE SUBJECT VES-
25 SEL.—In evaluating the sale of the subject

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 “(ii) BASIS FOR DETERMINATION.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 “(20) NONMARKET ECONOMY COUNTRY.—

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

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

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

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

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

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

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

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

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

1 “(C) DETERMINATION IN EFFECT.—

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

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

10 “(D) DETERMINATIONS NOT IN ISSUE.—

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

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

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

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

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

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

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

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

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

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

24 “(C) Partners.

25 “(D) Employer and employee.

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

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

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

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

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

18 “(28) INJURIOUS PRICING MARGIN.—

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

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

1 rious pricing margin used by the Commission
2 shall be—

3 “(i) in making a preliminary deter-
4 mination under section 803(a) in an inves-
5 tigation (including any investigation in
6 which the Commission cumulatively as-
7 sesses the effect of sales under paragraph
8 (16)(F)(i)), the injurious pricing margin or
9 margins published by the administering
10 authority in its notice of initiation of the
11 investigation; and

12 “(ii) in making a final determination
13 under section 805(b), the injurious pricing
14 margin or margins most recently published
15 by the administering authority before the
16 closing of the Commission’s administrative
17 record.

18 “(29) COMMERCIAL INTEREST REFERENCE
19 RATE.—The term ‘Commercial Interest Reference
20 Rate’ or ‘CIRR’ means an interest rate that the ad-
21 ministering authority determines to be consistent
22 with Annex III, and appendices and notes thereto, of
23 the Understanding on Export Credits for Ships, re-
24 sulting from negotiations under the auspices of the

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

3 “(30) ANTIDUMPING.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 “(a) REVIEW OF DETERMINATION.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 “(b) STANDARDS OF REVIEW.—

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

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

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

11 “(2) RECORD FOR REVIEW.—

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

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

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

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

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

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

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

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

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

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

7 (b) CONFORMING AMENDMENTS.—

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

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

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

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

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

1 **Subtitle B—Other Provisions**

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

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

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

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

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

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

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

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

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

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

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

9 No person other than the United States—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 “(i) The term ‘Shipbuilding Agreement Party’ means
15 a state or separate customs territory that is a Party to
16 the Shipbuilding Agreement, and with respect to which the
17 United States applies the Shipbuilding Agreement.

18 “(j) The term ‘Shipbuilding Agreement vessel’ means
19 a vessel to which the Secretary determines Article 2.1 of
20 the Shipbuilding Agreement applies.

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

1 “(l) The term ‘Export Credit Understanding vessel’
2 means a vessel to which the Secretary determines the Ex-
3 port Credit Understanding applies.

4 “(m) The term ‘integrated tug-barge’ has the mean-
5 ing given such term in section 466(i) of the Tariff Act
6 of 1930 (19 U.S.C. 1466(i)).”.

7 (8) Section 1104A (46 App. U.S.C. 1274) is
8 amended—

9 (A) in subsection (b), by amending para-
10 graph (5) to read as follows:

11 “(5) shall bear interest (exclusive of charges for
12 the guarantee and service charges, if any) at rates
13 not to exceed such percent per annum on the unpaid
14 principal as the Secretary determines to be reason-
15 able, taking into account the range of interest rates
16 prevailing in the private market for similar loans
17 and the risks assumed by the Secretary, except that,
18 with respect to Export Credit Understanding vessels,
19 and Shipbuilding Agreement vessels, the obligations
20 shall bear interest at a rate the Secretary determines
21 to be consistent with obligations of the United
22 States under the Export Credit Understanding or
23 the Shipbuilding Agreement, as the case may be;”;

24 (B) by amending subsection (i) to read as
25 follows:

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

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

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

8 “(C) the 80 percent or less limitation in the 3rd
9 proviso to subsection (b)(2),

10 establish by rule, regulation, or procedure any percentage
11 within any such limitation that is, or is intended to be,
12 applied uniformly to all guarantees or commitments to
13 guarantee made under this section that are subject to the
14 limitation.

15 “(2) With respect to Export Credit Understanding
16 vessels and Shipbuilding Agreement vessels, the Secretary
17 may establish by rule, regulation, or procedure a uniform
18 percentage that the Secretary determines to be consistent
19 with obligations of the United States under the Export
20 Credit Understanding or the Shipbuilding Agreement, as
21 the case may be.”; and

22 (C) by adding at the end the following new
23 subsection:

24 “(k) The Secretary shall establish by rule, regulation,
25 or procedure a uniform percentage with respect to inte-

1 grated tug-barges that the Secretary determines to be con-
 2 sistent with the percentages applied with respect to Export
 3 Credit Understanding vessels and Shipbuilding Agreement
 4 vessels under subsections (b)(5) and (i)(2).”.

5 (9) Section 1104B(b) (46 App. U.S.C.
 6 1274a(b)) is amended by striking the period at the
 7 end and inserting the following: “, except that, with
 8 respect to Export Credit Understanding vessels and
 9 Shipbuilding Agreement vessels, the Secretary may
 10 establish by rule, regulation, or procedure a uniform
 11 percentage that the Secretary determines to be con-
 12 sistent with obligations of the United States under
 13 the Export Credit Understanding or the Shipbuild-
 14 ing Agreement, as the case may be. With respect to
 15 integrated tug-barges, the Secretary shall establish
 16 by rule, regulation, or procedure a uniform percent-
 17 age that the Secretary determines to be consistent
 18 with the percentages applied with respect to Export
 19 Credit Understanding vessels and Shipbuilding
 20 Agreement vessels pursuant to the preceding sen-
 21 tence.”.

22 **SEC. 115. APPLICABILITY OF TITLE XI AMENDMENTS.**

23 (a) EFFECTIVE DATE.—

24 (1) IN GENERAL.—Notwithstanding any provi-
 25 sion of the Shipbuilding Agreement or the Export

1 Credit Understanding, the amendments made by
 2 paragraphs ~~(9) and (10)~~ (8) and (9) of section 114
 3 shall not apply with respect to any commitment to
 4 guarantee made under title XI of the Merchant Ma-
 5 rine Act, 1936, before ~~January 1, 2000~~, *January 1,*
 6 *2001*, with respect to a vessel delivered—

7 (A) before ~~January 1, 2003~~, *January 1,*

8 *2004*, or

9 (B) in the case of unusual circumstances

10 (as described in paragraph (2)), as soon after

11 ~~December 31, 2002~~, *December 31, 2003*, as

12 practicable.

13 (2) UNUSUAL CIRCUMSTANCES DESCRIBED.—

14 As used in this subsection, the term “unusual cir-
 15 cumstances” means an act of God (other than ordi-
 16 nary storms or inclement weather conditions) labor
 17 strikes, acts of sabotage, explosions, fires, or vandal-
 18 ism, and similar circumstances beyond the control of
 19 the parties concerned which prevent the delivery of
 20 a vessel before ~~January 1, 2003~~. *January 1, 2004.*

21 (b) MATCHING COMPETITION BY NONMEMBERS.—

22 Section 114 shall not prevent the Secretary of Transpor-
 23 tation from exercising the Secretary’s full discretion and
 24 authority under title XI of the Merchant Marine Act,
 25 1936, consistent with clause 8 and Annex III of the Ex-

1 port Credit Understanding, to assist United States ship-
2 yards in meeting unfairly subsidized bids by foreign yards
3 in countries not covered by the Shipbuilding Agreement.

4 **SEC. 116. MONITORING AND ENFORCEMENT.**

5 (a) IN GENERAL.—The United States Trade Rep-
6 resentative shall establish a program to monitor the com-
7 pliance of Shipbuilding Agreement Parties with their obli-
8 gations under the Shipbuilding Agreement. The program
9 shall include—

10 (1) the establishment of a task force composed
11 of representatives of the Departments of Commerce,
12 Labor, State, Transportation, and other appropriate
13 agencies;

14 (2) coordination of gathering and analysis of
15 relevant information;

16 (3) consultation with United States embassies
17 located in countries that are Shipbuilding Agreement
18 Parties to assist in obtaining information that is
19 publicly available on the policies and practices in
20 those countries;

21 (4) regular consultations with representatives of
22 industry, labor, and other interested parties regard-
23 ing policies and practices of Shipbuilding Agreement
24 Parties and of other countries with significant com-
25 mercial shipbuilding industries;

1 (5) annual publication of a notice in the Fed-
2 eral Register affording an opportunity for interested
3 parties to comment on the implementation of the
4 Shipbuilding Agreement; and

5 (6) taking of any other appropriate action to
6 monitor compliance of Shipbuilding Agreement Par-
7 ties.

8 (b) REPORT TO CONGRESS.—Before the end of each
9 12-month period in which the United States is a Party
10 to the Shipbuilding Agreement, the United States Trade
11 Representative shall report to Congress on—

12 (1) the activities undertaken as part of its mon-
13 itoring program;

14 (2) the results of its consultations under sub-
15 section (a)(4); and

16 (3) compliance with the provisions of the Ship-
17 building Agreement.

18 (c) ACTION IF VIOLATION.—If the United States
19 Trade Representative receives information, including in-
20 formation provided by representatives of industry, labor,
21 and other interested parties, indicating that a Shipbuild-
22 ing Agreement Party is in material violation of the Ship-
23 building Agreement in a manner that is detrimental to the
24 interests of the United States, the United States Trade
25 Representative should use vigorously the consultation pro-

1 cedures under the Shipbuilding Agreement. If the matter
2 is not otherwise resolved, the United States Trade Rep-
3 resentative should use the dispute settlement procedures
4 under the Shipbuilding Agreement to redress the situa-
5 tion.

6 **SEC. 117. JONES ACT AND RELATED LAWS NOT AFFECTED.**

7 (a) IN GENERAL.—Nothing in the Shipbuilding
8 Agreement shall be construed to amend, alter, or modify
9 in any manner the Merchant Marine Act, 1920 (46 App.
10 U.S.C. 861 et seq.), the Act of June 19, 1886 (46 App.
11 U.S.C. 289), or any other provision of law set forth in
12 Accompanying Note 2 to Annex II of the Shipbuilding
13 Agreement. Nor shall the Shipbuilding Agreement be in-
14 terpreted to undermine the operation or administration of
15 any of the foregoing provisions of law or impede the objec-
16 tives of such laws.

17 (b) RELATION TO GATT 1994.—Nothing in the
18 Shipbuilding Agreement shall be construed to provide a
19 mechanism for withdrawal of concessions under GATT
20 1994 *or any World Trade Organization Agreement* because
21 of the construction of vessels by United States ship-
22 builders for operation in the coastwise trade of the United
23 States.

24 (c) ANNUAL REVIEW; NOTIFICATION.—As part of the
25 annual review of all trade agreements conducted under

1 section 163 of the Trade Act of 1974, the United States
2 Trade Representative shall—

3 (1) review the impact, if any, of the Shipbuild-
4 ing Agreement on the operation or implementation
5 of any of the provisions of law listed in subsection
6 (a);

7 (2) in conducting the review, consult with the
8 Secretary of Transportation, the Secretary of De-
9 fense, United States industry, labor groups, and
10 other interested parties; and

11 (3) report the results of the review to the Presi-
12 dent and the appropriate committees.

13 **SEC. 118. WITHDRAWAL FROM SHIPBUILDING AGREEMENT.**

14 (a) **WITHDRAWAL BY PRESIDENT.**—

15 (1) **NOTICE.**—The President shall give notice,
16 under Article 14 of the Shipbuilding Agreement, of
17 intent of the United States to withdraw from the
18 Shipbuilding Agreement, as soon as is practicable
19 after one or more Shipbuilding Agreement Parties
20 gives notice, under such Article, of intent to with-
21 draw from the Shipbuilding Agreement, if the cir-
22 cumstances described in paragraph (2) apply.

23 (2) **TONNAGE OF NEW CONSTRUCTION IN WITH-**
24 **DRAWING PARTIES.**—The circumstances described in

1 this paragraph are that the combined gross tonnage
2 of Shipbuilding Agreement vessels that—

3 (A) were constructed in all Shipbuilding
4 Agreement Parties who have given notice to
5 withdraw from the Shipbuilding Agreement,
6 and

7 (B) were delivered in the calendar year
8 preceding the calendar year in which the notice
9 is given,

10 is 15 percent or more of the gross tonnage of Ship-
11 building Agreement vessels that were constructed in
12 all Shipbuilding Agreement Parties and were deliv-
13 ered in the calendar year preceding the calendar
14 year in which the notice is given.

15 (3) TERMINATION OF WITHDRAWAL.—If a
16 Shipbuilding Agreement Party described in para-
17 graph (2) takes action to terminate its withdrawal
18 from the Shipbuilding Agreement, so that paragraph
19 (2) would not apply if that Party had not given the
20 notice to withdraw, the President may take the nec-
21 essary steps to terminate the notice of withdrawal of
22 the United States from the Shipbuilding Agreement.

23 (b) CONGRESSIONAL RESOLUTION WITHDRAWING
24 APPROVAL OF THE SHIPBUILDING AGREEMENT.—

1 (1) NOTIFICATION BY THE PRESIDENT.—The
2 President shall notify the appropriate committees as
3 soon as is practicable of any decision by a Shipbuild-
4 ing Agreement Party to apply responsive measures
5 under the provisions of paragraph 2.e of Annex II
6 B of the Shipbuilding Agreement against the United
7 States and the applicable date of such measures.

8 (2) CONGRESSIONAL ACTION.—If Congress re-
9 ceives a notification described in paragraph (1), the
10 approval of Congress, provided under section 101 of
11 this Act, shall cease to be effective if, and only if,
12 a joint resolution is enacted into law pursuant to the
13 provisions of paragraphs (3) and (4).

14 (3) PROCEDURAL PROVISIONS.—

15 (A) IN GENERAL.—The requirements of
16 this paragraph are met if a joint resolution is
17 adopted under paragraph (4), and—

18 (i) Congress transmits the joint reso-
19 lution to the President before the end of
20 the 90-day period, beginning on the appli-
21 cable date referred to in paragraph (1),
22 and

23 (ii) if the President vetoes the joint
24 resolution, each House of Congress votes

1 to override that veto on or before the later
2 of—

3 (I) the last day of the 90-day pe-
4 riod referred to in clause (i), or

5 (II) the last day of the 15-day
6 period beginning on the date on which
7 Congress receives the veto message
8 from the President.

9 (B) INTRODUCTION.—A joint resolution to
10 which this subsection applies may be introduced
11 at any time on or after the applicable date re-
12 ferred to in paragraph (1).

13 (4) JOINT RESOLUTION.—

14 (A) JOINT RESOLUTION.—For purposes of
15 this subsection, the term “joint resolution”
16 means only a joint resolution of the 2 Houses
17 of Congress, the matter after the resolving
18 clause of which is as follows: “That Congress
19 withdraws its approval, provided under section
20 101 of the OECD Shipbuilding Trade Agree-
21 ment Act, of the Shipbuilding Agreement de-
22 scribed in section 101 of that Act.”.

23 (B) PROCEDURES.—

1 (i) IN GENERAL.—Joint resolutions
2 may be introduced in either House of Con-
3 gress by any Member of such House.

4 (ii) APPLICATION OF SECTION 152 OF
5 THE TRADE ACT OF 1974.—Subject to the
6 provisions of this subsection, the provisions
7 of subsections (b), (d), (e), and (f) of sec-
8 tion 152 of the Trade Act of 1974 (19
9 U.S.C. 2192 (b), (d), (e), and (f)) apply to
10 joint resolutions to the same extent as
11 such provisions apply to resolutions under
12 such section.

13 (iii) DISCHARGE OF COMMITTEE.—If
14 a committee of either House to which a
15 joint resolution has been referred has not
16 reported it by the close of the 45th day
17 after its introduction, such committee shall
18 be automatically discharged from further
19 consideration of the joint resolution and it
20 shall be placed on the appropriate cal-
21 endar.

22 (iv) FLOOR CONSIDERATION.—It is
23 not in order for—

24 (I) the Senate to consider any
25 joint resolution unless it has been re-

1 reported by the Committee on Finance
2 or the committee has been discharged
3 under clause (iii);

4 (II) the House of Representatives
5 to consider any joint resolution unless
6 it has been reported by the Committee
7 on Ways and Means or the committee
8 has been discharged under clause (iii);
9 or

10 (III) either House to consider
11 any joint resolution or take any action
12 under paragraph (3)(A) (i) or (ii), if
13 the President has notified the appro-
14 priate committees that the decision to
15 apply responsive measures described
16 in paragraph (1) has been withdrawn
17 and the responsive measures have not
18 actually been applied.

19 (v) CONSIDERATION IN THE HOUSE.—

20 A motion in the House of Representatives
21 to proceed to the consideration of a joint
22 resolution may only be made on the second
23 legislative day after the calendar day on
24 which the Member making the motion an-
25 nounces his or her intention to do so.

1 (C) CONSIDERATION OF SECOND RESOLU-
2 TION NOT IN ORDER.—It shall not be in order
3 in either the House of Representatives or the
4 Senate to consider another joint resolution
5 under this subsection (other than a joint resolu-
6 tion received from the other House), if that
7 House has previously voted on a joint resolution
8 under this subsection with respect to the same
9 Presidential notification described in paragraph
10 (1).

11 (5) DEFINITION AND SPECIAL RULE.—

12 (A) APPLICABLE DATE.—For purposes of
13 this subsection, the term “applicable date”
14 means the date on which the responsive meas-
15 ures described in paragraph (1) are first sched-
16 uled to be applied by the Shipbuilding Agree-
17 ment Party.

18 (B) COMPUTATION OF TIME PERIODS.—
19 For purposes of paragraph (3)(A) (i) and (ii)
20 and paragraph (4)(B)(iii), the 90-day period,
21 the 15-day period, and the 45 days referred to
22 in such paragraphs shall be computed by ex-
23 cluding—

24 (i) the days on which either House is
25 not in session because of an adjournment

1 of more than 3 days to a day certain or an
 2 adjournment of the Congress sine die, and
 3 (ii) any Saturday and Sunday, not ex-
 4 cluded under clause (i), when either House
 5 is not in session.

6 (6) RULES OF HOUSE OF REPRESENTATIVES
 7 AND SENATE.—This subsection is enacted by Con-
 8 gress—

9 (A) as an exercise of the rulemaking power
 10 of the House of Representatives and the Sen-
 11 ate, respectively, and such procedures supersede
 12 other rules only to the extent that such proce-
 13 dures are inconsistent with such other rules;
 14 and

15 (B) with the full recognition of the con-
 16 stitutional right of either House to change the
 17 rules (so far as relating to the procedures of
 18 that House) at any time, in the same manner,
 19 and to the same extent as any other rule of that
 20 House.

21 **SEC. 119. EXPANDING MEMBERSHIP IN THE SHIPBUILDING**
 22 **AGREEMENT.**

23 (a) MONITORING.—The United States Trade Rep-
 24 resentative shall monitor the impact of the policies and
 25 practices pursued by countries that are not Shipbuilding

1 Agreement Parties, and shall seek the prompt accession
2 to the Shipbuilding Agreement of countries that have sig-
3 nificant commercial shipbuilding and repair industries, in-
4 cluding, but not limited to, Australia, Brazil, India, the
5 People's Republic of China, Poland, Romania, the Russian
6 Federation, Singapore, and Ukraine.

7 (b) REPORT.—The United States Trade Representa-
8 tive shall report to Congress annually on the results of
9 efforts to expand the membership of the Shipbuilding
10 Agreement. If it is determined that the continuing failure
11 of a country to adopt the disciplines of the Shipbuilding
12 Agreement is undermining the effectiveness of the Ship-
13 building Agreement and placing United States shipyards
14 at a competitive disadvantage, the United States Trade
15 Representative shall take vigorous action to redress the
16 situation by—

17 (1) using mechanisms available under United
18 States trade laws,

19 (2) seeking consultations with the country in-
20 volved, and

21 (3) initiating dispute settlement under applica-
22 ble international agreements.

23 The United States Trade Representative may also take ac-
24 tion with other Shipbuilding Agreement Parties.

1 **SEC. 120. PROTECTION OF UNITED STATES SECURITY IN-**
2 **TERESTS.**

3 Nothing in the Shipbuilding Agreement shall be con-
4 strued to prevent the United States from taking any ac-
5 tion which the United States considers necessary for the
6 protection of the essential security interests of the United
7 States as determined by the President, including invoking
8 its sovereign authority to exclude “military vessels” and
9 “military reserve vessels” from coverage under the Ship-
10 building Agreement and from any dispute or challenge
11 based on Annex I to the Shipbuilding Agreement. If the
12 United States takes action under the preceding sentence,
13 the Secretary of Defense shall designate the “military ves-
14 sels” and “military reserve vessels” to be excluded on a
15 case-by-case basis.

16 *Nothing in the Shipbuilding Agreement shall be con-*
17 *strued to prevent the United States from taking any action*
18 *which the United States considers necessary for the protec-*
19 *tion of the essential security interests of the United States,*
20 *including invoking its sovereign authority to define, for*
21 *purposes of exclusion from coverage under the Shipbuilding*
22 *Agreement and from any dispute or challenge based on*
23 *Annex I to the Shipbuilding Agreement, “military vessel”,*
24 *“military reserve vessel”, and “essential security interest”,*
25 *on a case-by-case basis, as determined by the Secretary of*
26 *Defense.*

1 **SEC. 121. DEFINITIONS.**

2 In this subtitle:

3 (1) *COMMITTEE OF EITHER HOUSE TO WHICH A*
 4 *JOINT RESOLUTION HAS BEEN REFERRED.*—*The term*
 5 *“a committee of either House to which a joint resolu-*
 6 *tion has been referred” means the Senate Committee*
 7 *on Commerce, Science, and Transportation, the Sen-*
 8 *ate Committee on Finance, the House Committee on*
 9 *National Security, or the House Committee on Ways*
 10 *and Means.*

11 ~~(1)~~ (2) *APPROPRIATE COMMITTEES.*—The term
 12 “appropriate committees” means the Committees on
 13 Finance and Commerce, Science, and Transpor-
 14 tation of the Senate, and the Committees on Ways
 15 and Means and National Security of the House of
 16 Representatives.

17 ~~(2)~~ (3) *SHIPBUILDING AGREEMENT, ETC.*—The
 18 terms “Shipbuilding Agreement”, “Shipbuilding
 19 Agreement Party”, “Shipbuilding Agreement ves-

20 sels”, and “Export Credit Understanding” have the
 21 meanings given those terms in subsections (h), (i),
 22 (j), and (k), respectively, of section 905 of the Mer-

23 chant Marine Act, 1936, as added by section ~~114(8)~~
 24 *114(7)* of this Act.

1 ~~(3)~~ (4) GATT 1994.—The term “GATT 1994”
2 has the meaning given that term in section 2 of the
3 Uruguay Round Agreements Act (19 U.S.C. 3501).

4 ~~(4)~~ (5) MILITARY VESSEL.—The term “military
5 vessel” means a vessel that, according to its basic
6 structural characteristics and ability, is intended to
7 be used exclusively for military purposes.

8 ~~(5)~~ (6) MILITARY RESERVE VESSEL.—The term
9 “military reserve vessel” means a vessel that has
10 been constructed with national defense features and
11 characteristics required by the Secretary of Defense
12 for the purpose of supporting the United States
13 Armed Forces in a contingency, if the vessel (with-
14 out regard to such features and characteristics) is
15 otherwise subject to the terms and conditions of the
16 Shipbuilding Agreement.

17 **SEC. 122. CAPITAL CONSTRUCTION FUND CONFORMING**
18 **AMENDMENT.**

19 Subsection (i) of section 7518 of the Internal Reve-
20 nue Code of 1986 is amended by inserting before the pe-
21 riod the following: “, except that in the case of the terms
22 ‘eligible vessel’ and ‘qualified vessel’, the amendments to
23 such section by the OECD Shipbuilding Trade Agreement
24 Act shall be taken into account”.

1 **Subtitle C—Effective Date**

2 **SEC. 131. EFFECTIVE DATE.**

3 (a) IN GENERAL.—Except as otherwise provided in
4 this title, this title and the amendments made by this title
5 take effect on the date that the Shipbuilding Agreement
6 enters into force with respect to the United States.

7 (b) TERMINATION OF TITLE AND AMENDMENTS.—
8 This title and the amendments made by this title shall
9 cease to be effective on the date the withdrawal of the
10 United States from the Shipbuilding Agreement becomes
11 effective.

12 **TITLE II—INTERNATIONAL**
13 **SHIPPING INCOME DISCLOSURE**

14 **SEC. 201. PENALTIES FOR FAILURE TO DISCLOSE POSITION**
15 **THAT CERTAIN INTERNATIONAL SHIPPING**
16 **INCOME IS NOT INCLUDIBLE IN GROSS IN-**
17 **COME.**

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

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

24 “(1) IN GENERAL.—A taxpayer who, with re-
25 spect to any tax imposed by this title, takes the posi-

1 tion that any of its gross income derived from the
2 international operation of a ship or ships is not in-
3 cludible in gross income by reason of subsection
4 (a)(1) or section 872(b)(1) (or by reason of any ap-
5 plicable treaty) shall be entitled to such treatment
6 only if such position is disclosed (in such manner as
7 the Secretary may prescribe) on the return of tax for
8 such tax (or any statement attached to such return).

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

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

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

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

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

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

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

5 (b) CONFORMING AMENDMENTS.—

6 (1) Paragraph (1) of section 872(b) of such
7 Code is amended by striking “Gross income” and in-
8 serting “Except as provided in section 883(d), gross
9 income”.

10 (2) Paragraph (1) of section 883(a) of such
11 Code is amended by striking “Gross income” and in-
12 serting “Except as provided in subsection (d), gross
13 income”.

14 (c) EFFECTIVE DATE.—

15 (1) IN GENERAL.—The amendments made by
16 this section shall apply to taxable years beginning
17 after December 31, 1997.

18 (2) COORDINATION WITH TREATIES.—The
19 amendments made by this section shall not apply in
20 any case where their application would be contrary
21 to any treaty obligation of the United States.

22 (d) INFORMATION TO BE PROVIDED BY CUSTOMS
23 SERVICE.—The United States Custom Service shall pro-
24 vide the Secretary of the Treasury or his delegate with
25 such information as may be specified by such Secretary

1 in order to enable such Secretary to determine whether
2 ships which are not registered in the United States are
3 engaged in transportation to or from the United States.