

104TH CONGRESS
1ST SESSION

S. 1354

To improve and implement the OECD Shipbuilding Trade Agreement.

IN THE SENATE OF THE UNITED STATES

OCTOBER 23, 1995

Mr. BREAUX introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To improve 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Shipbuilding Trade
5 Agreement Act”.

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

7 The Congress approves the Agreement Respecting
8 Normal Competitive Conditions in the Commercial Ship-
9 building and Repair Industry (hereinafter in this Act re-
10 ferred to as the “Shipbuilding Agreement”), and the relat-
11 ed Understanding on Export Credits for Ships, which col-

1 lectively are a reciprocal trade agreement resulting from
 2 negotiations under the auspices of the Organization for
 3 Economic Cooperation and Development, entered into on
 4 December 21, 1994.

5 **SEC. 3. EFFECTIVE DATE.**

6 This Act takes effect on the date that the Shipbuild-
 7 ing Agreement enters into force with respect to the United
 8 States.

9 **TITLE I—INJURIOUS PRICING**
 10 **AND COUNTERMEASURES**

11 **SEC. 101. INJURIOUS PRICING AND COUNTERMEASURES**

12 **PROCEEDINGS.**

13 The Tariff Act of 1930, as amended, is further
 14 amended by the addition of the following title and sections:

15 **“TITLE VIII—INJURIOUS PRIC-**
 16 **ING AND COUNTERMEASURES**

17 **“SEC. 831. INJURIOUS PRICING CHARGE.**

18 “(a) If—

19 “(1) the administering authority determines
 20 that a foreign vessel, as defined in section 871(8),
 21 has been sold directly or indirectly to one or more
 22 United States buyers at less than its fair value, and

23 “(2) the Commission determines that—

24 “(A) an industry, in the United States—

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

2 or

3 “(ii) is threatened with material in-

4 jury, or

5 “(B) the establishment of an industry in

6 the United States is or has been materially re-

7 tarded,

8 by reason of the sale of such vessel,

9 then there shall be imposed upon the foreign producer of
10 the subject vessel an injurious pricing charge, in an
11 amount equal to the amount by which the normal value
12 exceeds the export price for the vessel. For purposes of
13 this subsection and section 835(b)(1), a reference to the
14 sale of a foreign vessel includes the creation or transfer
15 of an ownership interest, as defined in section 871(7), in
16 the vessel, except for an ownership interest created or ac-
17 quired solely for the purpose of providing security for a
18 normal commercial loan.

19 “For the purpose of title VIII, the term ‘sale’ also
20 includes contracts for the reconstruction of a vessel by a
21 foreign producer for the United States owner of the vessel.
22 References in title VIII to producing or building of a vessel
23 shall also encompass the reconstruction of an existing ves-
24 sel.

1 “(b) No foreign vessel, as defined in section 871(8),
2 may be considered to be, or to be part of, a class or kind
3 of merchandise for purposes of subtitle B of title VII of
4 this Act.

5 **“SEC. 832. 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 paragraph (c)(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 duty under section
15 831 exist, and whether a domestic producer, as de-
16 fined in section 871(17)(C), would meet the criteria
17 of paragraph (b)(1)(A) for a petitioner.

18 “(2) TIME FOR INITIATION BY ADMINISTERING
19 AUTHORITY.—An investigation may only be initiated
20 under paragraph (1) within six months after the
21 time the administering authority knew or should
22 have known of the sale of the vessel. Any period in
23 which paragraph (c)(6)(A) applies shall not count
24 for purposes of the six-month period.

25 “(b) INITIATION BY PETITION.—

1 “(1) PETITION REQUIREMENTS.—Except in a
2 case in which paragraph (c)(6) applies, an injurious
3 pricing proceeding shall be initiated whenever an in-
4 terested party, as defined in subparagraph (C), (D),
5 (E) or (F) of section 871(17), files a petition with
6 the administering authority, on behalf of an indus-
7 try, which alleges the elements necessary for the im-
8 position of an injurious pricing charge under section
9 831 and the elements required under subparagraph
10 (A), (B) or (C) of this section, and which is accom-
11 panied by information reasonably available to the pe-
12 titioner supporting those allegations and identifying
13 the transaction concerned.

14 “(A) If the petitioner is a domestic pro-
15 ducer, as described in section 871(17)(C),
16 and—

17 “(i) if the vessel was sold through a
18 broad multiple bid, the petition shall in-
19 clude information that the petitioner was
20 invited to tender a bid on the contract at
21 issue, petitioner actually did so, and the
22 bid of the petitioner substantially met bid
23 specifications (i.e., delivery date and tech-
24 nical requirements), or

1 “(ii) if the vessel was sold through
2 any bidding process other than a broad
3 multiple bid and the petitioner was invited
4 to tender a bid on the contract at issue,
5 the petition shall include information that
6 petitioner actually did so and the bid of
7 the petitioner substantially met bid speci-
8 fications, or

9 “(iii) except in case in which the ves-
10 sel was sold through a broad multiple bid,
11 if there is no invitation to tender a bid, the
12 petition shall include information that the
13 petitioner was capable of building the ves-
14 sel concerned and, if the petitioner knew or
15 should have know of the proposed pur-
16 chase, it made demonstrable efforts to con-
17 clude a sale with the United States buyer
18 consistent with the bid specifications in
19 question.

20 “(B) If the petitioner is an interested
21 party, described in section 871(17)(D), the peti-
22 tion shall include information that members of
23 the union or group of workers are employed by
24 a domestic producer that meets the require-
25 ments of subparagraph (A) of this section.

1 “(C) If the petitioner is an interested party
2 described in section 871(17)(E), the petition
3 shall include information that a member of the
4 association is a domestic producer that meets
5 the requirements of subparagraph (A) of this
6 section.

7 “(D) If the petitioner is an interested
8 party described in section 871(17)(F), the peti-
9 tion shall include information that a member of
10 the association meets the requirements of sub-
11 subparagraph (B) or (C) of this section.

12 The petition may be amended at such time, and
13 upon such conditions, as the administering authority
14 and the Commission may permit.

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

19 “(3) DEADLINE FOR FILING PETITION.—

20 “(A) (i) A petitioner to which paragraph
21 (b)(1)(A)(i) or (ii) of this section applies must
22 file the petition no later than the earlier of six
23 months after the time that the petitioner knew
24 or should have known of the sale of the vessel

1 and six months after delivery of the subject ves-
2 sel.

3 “(ii) A petitioner to which paragraph
4 (b)(1)(A)(iii) of this section applies must—

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

10 “(II) must submit to the administer-
11 ing authority a notice of intent to file a pe-
12 tition no later than six months after the
13 time that petitioner knew or should have
14 known of the sale (unless the petition itself
15 is filed within the six-month period).

16 “(B) For the purposes of paragraph
17 (b)(3), if the existence of the sale, together with
18 general information concerning the vessel, is
19 published in the international trade press, there
20 is a rebuttable presumption that the petitioner
21 knew or should have known of the sale of the
22 vessel from the date of that publication.

23 “(4) ACTION WITH RESPECT TO PETITIONS.—

24 “(A) NOTIFICATION OF GOVERNMENTS.—

25 Prior to initiating an investigation under either

1 paragraph (a) or (b) of this section, the admin-
2 istering authority shall notify the government of
3 the exporting country named in the petition. In
4 the case of initiation under paragraph (b) of
5 this section, such notification shall include a
6 public version of the petition.

7 “(B) ACCEPTANCE OF COMMUNICA-
8 TIONS.—The administering authority shall not
9 accept any unsolicited oral or written commu-
10 nication from any person other than an inter-
11 ested party described in section 871(17) (C),
12 (D), (E) or (F) before the administering au-
13 thority makes its decision whether to initiate an
14 investigation, except for inquiries regarding the
15 status of the administering authority’s consider-
16 ation of the petition or a request for consulta-
17 tion by the government of the exporting coun-
18 try.

19 “(C) NONDISCLOSURE OF CERTAIN INFOR-
20 MATION.—The administering authority and the
21 Commission shall not disclose information with
22 regard to any draft petition submitted for re-
23 view and comment before it is filed under para-
24 graph (1).

25 “(c) PETITION DETERMINATION.—

1 “(1) TIME FOR INITIAL DETERMINATION.—

2 “(A) Within 45 days after the date on
3 which a petition is filed under subsection (b),
4 the administering authority shall, after examin-
5 ing, on the basis of sources readily available to
6 the administering authority, the accuracy and
7 adequacy of the evidence provided in the peti-
8 tion, determine whether the petition—

9 “(i) alleges the elements necessary for
10 the imposition of an injurious pricing
11 charge under section 831 and the elements
12 required under paragraph (b)(1) (A), (B),
13 (C) or (D), and contains information rea-
14 sonably available to the petitioner support-
15 ing the allegations, and

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

18 “(B) Any period in which paragraph
19 (6)(A) applies shall not be counted for purposes
20 of the deadline in paragraph (1)(A).

21 “(2) AFFIRMATIVE DETERMINATIONS.—If the
22 determinations under clauses (i) and (ii) of para-
23 graph (1)(A) are affirmative, the administering au-
24 thority shall initiate an investigation to determine

1 whether the vessel was sold at less than fair value,
2 unless paragraph (6) (A) or (B) applies.

3 “(3) NEGATIVE DETERMINATIONS.—If—

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

6 “(ii) paragraph (6)(B) applies,

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

11 “(4) DETERMINATION OF INDUSTRY SUP-
12 PORT.—

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

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

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

1 portion of the domestic industry expressing
2 support for or opposition to the petition.

3 “(B) CERTAIN POSITIONS DIS-
4 REGARDED.—In determining industry support
5 under subparagraph (A), the administering au-
6 thority shall disregard the position of domestic
7 producers who oppose the petition, if such pro-
8 ducers are related to the foreign producer or
9 United States buyer, or the domestic producer
10 is itself the United States buyer, unless such
11 domestic producers demonstrate that their in-
12 terests as domestic producers would be ad-
13 versely affected by the imposition of an injuri-
14 ous pricing charge.

15 “(C) POLLING THE INDUSTRY.—If the pe-
16 tition does not establish support of domestic
17 producers or workers accounting for more than
18 50 percent of the total capacity to produce the
19 like vessel, the administering authority shall—

20 “(i) poll the industry or rely on other
21 information in order to determine if there
22 is support for the petition as required by
23 subparagraph (A), or

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

1 authority may determine industry support
2 for the petition by using any statistically
3 valid sampling method to poll the industry.

4 “(D) COMMENTS BY INTERESTED PAR-
5 TIES.—Before the administering authority
6 makes a determination with respect to initiating
7 an investigation, any person, who would qualify
8 as an interested party under section 871(17) if
9 an investigation were initiated, may submit
10 comments or information on the issue of indus-
11 try support. After the administering authority
12 makes a determination with respect to initiating
13 an investigation, the determination regarding
14 industry support shall not be reconsidered.

15 “(5) DEFINITION OF DOMESTIC PRODUCERS OR
16 WORKERS.—For purposes of this subsection, the
17 term ‘domestic producers or workers’ means inter-
18 ested parties as defined in section 871(17) (C), (D),
19 (E), or (F).

20 “(6) PROCEEDINGS BY WTO MEMBERS.—The
21 administering authority shall not initiate an inves-
22 tigation under this section if, with respect to the ves-
23 sel sale at issue in the petition, an antidumping pro-
24 ceeding conducted by the authorities of a WTO

1 member who is not a Shipbuilding Agreement
2 Party—

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

5 “(B) has been completed and resulted in
6 issuance of an antidumping order, imposition of
7 antidumping duties, or a negative determination
8 with respect to whether the sale was at less
9 than fair value or with respect to injury.

10 “(d) NOTIFICATION TO COMMISSION OF DETERMINA-
11 TION.—The administering authority shall—

12 “(1) notify the Commission immediately of any
13 determination it makes under subsection (a) or (c),
14 and

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

1 **“SEC. 833. PRELIMINARY DETERMINATIONS.**

2 “(a) DETERMINATION BY COMMISSION OF REASON-
3 ABLE INDICATION OF INJURY.—

4 “(1) GENERAL RULE.—Except in the case of a
5 petition dismissed by the administering authority
6 under section 832(c)(3), the Commission, within the
7 time specified in paragraph (2), shall determine,
8 based on the information available to it at the time
9 of the determination, whether there is a reasonable
10 indication that—

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

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

13 or

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

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

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

23 “(2) TIME FOR COMMISSION DETERMINA-
24 TION.—The Commission shall make the determina-
25 tion described in paragraph (1) within 90 days after
26 the date on which the petition is filed.

1 “(b) PRELIMINARY DETERMINATION BY ADMIN-
2 ISTERING AUTHORITY.—

3 “(1) PERIOD OF INJURIOUS PRICING INVES-
4 TIGATION.—The administering authority shall make
5 a determination, based upon the information avail-
6 able to it at the time of the determination, of wheth-
7 er there is a reasonable basis to believe or suspect
8 that the vessel was sold at less than fair value. Such
9 determination shall be made—

10 “(A) within 140 days after the completion
11 of construction of—

12 “(i) the foreign like vessel, if cost data
13 is required to determine normal value on
14 the basis of a sale of a foreign like vessel
15 that has not been delivered on or before
16 the date on which the administering au-
17 thority initiates the investigation, or

18 “(ii) the subject vessel, if normal
19 value is to be determined on the basis of
20 constructed value, or

21 “(B) within 140 days after the date on
22 which the administering authority initiates the
23 investigation under section 832, in cases in
24 which paragraph (A) does not apply, and

1 in no event before an affirmative determination by
2 the Commission under subsection (a) of this section.

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

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

13 “(1) IN GENERAL.—

14 “(A) If the administering authority con-
15 cludes that the parties concerned are cooperat-
16 ing and determines that—

17 “(i) the case if extraordinarily com-
18 plicated by reason of—

19 “(I) the novelty of the issues pre-
20 sented, or

21 “(II) the nature and extent of
22 the information required, and

23 “(ii) additional time is necessary to
24 make the preliminary determination, or

1 “(iii) a party to the investigation re-
2 quests an extension and demonstrates good
3 cause for the extension,
4 then the administering authority may postpone
5 the time for making the preliminary determina-
6 tion.

7 “(B) The preliminary determination may
8 be postponed under paragraph (1) (A) or (B)
9 until not later than the 170th day after—

10 “(i) under (b)(1)(A), the date of the
11 completion of construction of the foreign
12 like vessel or the subject vessel, as appro-
13 priate, or

14 “(ii) under (b)(1)(B), the date on
15 which the administering authority initiates
16 an investigation under section 832.

17 “(2) NOTICE OF POSTPONEMENT.—The admin-
18 istering party shall notify the parties to the inves-
19 tigation, not later than 20 days before the date on
20 which the preliminary determination would otherwise
21 be required under subsection (b)(1), if it intends to
22 postpone making the preliminary determination
23 under paragraph (1). The notification shall include
24 an explanation of the reasons for the postponement,

1 and notice of the postponement shall be published
2 in the Federal Register.

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

7 “(1) determine an estimated injurious pricing
8 margin, and

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

18 “(e) NOTICE OF DETERMINATION.—Whenever the
19 Commission or the administering authority makes a deter-
20 mination under this section, the Commission or the admin-
21 istering authority, as the case may be, shall notify the pe-
22 titioner, and other parties to the investigation, and the
23 Commission or the administering authority (whichever is
24 appropriate) of its determination. The administering au-
25 thority shall include with such notification the facts and

1 conclusions on which its determination is based. Not later
2 than 5 days after the date on which the determination is
3 required to be made under subsection (a)(2), the Commis-
4 sion shall transmit to the administering authority the facts
5 and conclusions on which its determination is based.

6 **“SEC. 834. TERMINATION OR SUSPENSION OF INVESTIGA-**
7 **TION.**

8 “(a) TERMINATION OF INVESTIGATION UPON WITH-
9 DRAWAL OF PETITION.—

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

16 “(2) LIMITATION ON TERMINATION BY COMMIS-
17 SION.—The Commission may not terminate an in-
18 vestigation under paragraph (1) before a preliminary
19 determination is made by the administering author-
20 ity under section 833(b).

21 “(b) TERMINATION OF INVESTIGATIONS INITIATED
22 BY ADMINISTERING AUTHORITY.—The administering au-
23 thority may terminate any investigation initiated by the
24 administering authority under section 832(a) after provid-

1 ing notice of such termination to all parties to the inves-
2 tigation.

3 “(c) The criteria of paragraphs (A) through (D) of
4 section 837(e)(1) shall apply to any agreement that forms
5 the basis for termination of an investigation under para-
6 graph (a) or (b).

7 “(d) PROCEEDINGS BY WTO MEMBERS.—

8 “(1) The administering authority and the Com-
9 mission shall suspend an investigation under this
10 section if the authorities of a WTO member that is
11 not a Shipbuilding Agreement Party initiate a bona
12 fide antidumping proceeding with respect to the sale
13 of the subject vessel.

14 “(2) If such a proceeding is concluded by—

15 “(A) issuance of an antidumping order,

16 “(B) imposition of antidumping duties, or

17 “(C) a negative determination with respect

18 to whether the sale is at less than fair value or

19 with respect to injury,

20 the administering authority and the Commission

21 shall terminate the investigation under this section.

22 “(3)(A) if such a proceeding—

23 “(i) is concluded by a result described in

24 paragraph (2) (A) or (B) and dumping duties

25 are assessed at less than an amount equal to

1 the amount by which the normal value exceeds
2 the export price for the subject vessel,

3 “(ii) is concluded by a result other than a
4 result described in paragraph (2) (A), (B), or
5 (C), or

6 “(iii) is not concluded within one year from
7 initiation of the proceeding,

8 then the administering authority and the Commis-
9 sion shall terminate the suspension and continue the
10 investigation. The period in which the investigation
11 was suspended shall not count for purposes of cal-
12 culating applicable deadlines for the proceeding.

13 “(B) Notwithstanding paragraph (A)(ii), if the
14 proceeding is concluded by a result described in
15 paragraph (2) (A) or (B), the administering author-
16 ity and the Commission shall terminate the inves-
17 tigation under this section.

18 **“SEC. 835. FINAL DETERMINATIONS.**

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

21 “(1) IN GENERAL.—Within 75 days after the
22 date of its preliminary determination under section
23 833(b), the administering authority shall make a
24 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.—If the preliminary determination was not ex-
5 tended under section 833(c), the administering au-
6 thority may postpone making the final determination
7 under paragraph (1) until not later than the 130th
8 day after the date of its preliminary determination
9 under section 833(b), if a request in writing for such
10 postponement is made by—

11 “(A) the producer of the subject vessel, in
12 a proceeding in which the preliminary deter-
13 mination by the administering authority under
14 section 833(b) was affirmative, or

15 “(B) the petitioner, in a proceeding in
16 which the preliminary determination by the ad-
17 ministering authority under section 833(b) was
18 negative.

19 “(3) DE MINIMIS INJURIOUS PRICING MAR-
20 GIN.—In making a determination under this sub-
21 section, the administering authority shall disregard
22 any injurious pricing margin that is de minimis as
23 defined in section 833(b)(3).

24 “(b) FINAL DETERMINATION BY COMMISSION.—

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

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

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

5 or

6 “(ii) is threatened with material in-
7 jury, or

8 “(B) the establishment of an industry in
9 the United States is or has been materially re-
10 tarded,

11 by reason of the sale of the vessel with respect to
12 which the administering authority has made an af-
13 firmative determination under subsection (a)(1) of
14 this section.

15 “(2) PERIOD FOR INJURY DETERMINATION
16 FOLLOWING AFFIRMATIVE PRELIMINARY DETER-
17 MINATION BY ADMINISTERING AUTHORITY.—If the
18 preliminary determination by the administering au-
19 thority under section 833(b) is affirmative, then the
20 Commission shall make the determination required
21 by paragraph (1) before the later of—

22 “(A) the 120th day after the day on which
23 the administering authority makes its affirma-
24 tive preliminary determination under section
25 833(b), or

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

4 “(3) PERIOD FOR INJURY DETERMINATION
5 FOLLOWING NEGATIVE PRELIMINARY DETERMINA-
6 TION BY ADMINISTERING AUTHORITY.—If the pre-
7 liminary determination by the administering author-
8 ity under section 833(b) is negative, and its final de-
9 termination under subsection (a) is affirmative, then
10 the final determination by the Commission under
11 this subsection shall be made within 75 days after
12 the date of that affirmative final determination.

13 “(c) EFFECT OF FINAL DETERMINATIONS.—

14 “(1) EFFECT OF AFFIRMATIVE DETERMINATION
15 BY THE ADMINISTERING AUTHORITY.—If the deter-
16 mination of the administering authority under sub-
17 section (a) is affirmative, then the administering au-
18 thority shall—

19 “(A) make available to the Commission all
20 information upon which such determination was
21 based and which the Commission considers rel-
22 evant to its determination, under such proce-
23 dures as the administering authority and the
24 Commission may establish to prevent disclosure,
25 other than with the consent of the party provid-

1 ing it or under protective order, of any informa-
2 tion to which confidential treatment has been
3 given by the administering authority; and

4 “(B) calculate an injurious pricing charge
5 in an amount equal to the amount by which the
6 normal value exceeds the export price of the
7 vessel.

8 “(2) ISSUANCE OF ORDER; EFFECT OF NEGA-
9 TIVE DETERMINATION.—If the determinations of the
10 administering authority and the Commission under
11 subsections (a)(1) and (b)(1) are affirmative, then
12 the administering authority shall issue an injurious
13 pricing order under section 836. If either of such de-
14 terminations is negative, the investigation shall be
15 terminated upon the publication of notice of that
16 negative determination.

17 “(d) PUBLICATION OF NOTICE OF DETERMINA-
18 TIONS.—Whenever the administering authority or the
19 Commission makes a determination under this section, it
20 shall notify the petitioner, other parties to the investiga-
21 tion, and the other agency of its determination and of the
22 facts and conclusions of law upon which the determination
23 is based, and it shall publish notice of its determination
24 in the Federal Register.

1 the normal value exceeds the export price for the
2 vessel;

3 “(2) includes the identity and location of the
4 producer and a description of the vessel sold at less
5 than fair value, in such detail as the administering
6 authority deems necessary; and

7 “(3) informs the producer that—

8 “(A) failure to pay the injurious pricing
9 charge in a timely fashion may result in the im-
10 position of countermeasures with respect to that
11 producer under section 837,

12 “(B) payment made after the deadline in
13 paragraph (1) shall be subject to interest
14 charges at the United States dollar Commercial
15 Interest Reference Rate (CIRR), and

16 “(C) the producer may request an exten-
17 sion of the due date for payment, as described
18 in subsection (b).

19 “(b) EXTENSION OF DUE DATE FOR PAYMENT IN
20 EXTRAORDINARY CIRCUMSTANCES.—

21 “(1) Upon request, the administering authority
22 may amend the order to set a due date for payment
23 or payments later than the date that is 180 days
24 from the date of publication of the order, if it deter-
25 mines that full payment in 180 days would render

1 the producer insolvent or would be incompatible with
2 a judicially supervised reorganization. Payments
3 made on an extended schedule shall be subject to in-
4 terest charges at the United States dollar CIRR.

5 “(2) If a request is granted under paragraph
6 (1), payments made after the date that is 180 days
7 from the publication of the order shall be subject to
8 interest charges.

9 “(c) The administering authority shall deliver a copy
10 of the order requesting payment to the producer of the
11 subject vessel and to an appropriate representative of the
12 government of the exporting country.

13 “(d) The administering authority—

14 “(1) may revoke an injurious pricing order if
15 the administering authority determines that produc-
16 ers accounting for substantially all of the production
17 of the like product have expressed a lack of interest
18 in the order; and

19 “(2) shall revoke an injurious pricing order if—

20 “(i) the sale of the subject vessel that was
21 the subject of the injurious pricing determina-
22 tion is voided,

23 “(ii) the charge is paid in full, including
24 any interest accrued for late payment,

1 “(iii) upon full implementation of an alter-
2 native equivalent remedy described in (e), or

3 “(iv) with respect to the vessel sale that
4 was at issue in the investigation that resulted
5 in the injurious pricing order, an antidumping
6 proceeding conducted by the authorities of a
7 WTO member who is not a Shipbuilding Agree-
8 ment Party has been completed and resulted in
9 issuance of an antidumping order or imposition
10 of antidumping duties.

11 “(e) ALTERNATIVE EQUIVALENT REMEDY.—

12 “(1) The administering authority may suspend
13 an injurious pricing order if the authority enters
14 into an agreement with the producer on an alter-
15 native equivalent remedy, that the administering au-
16 thority determines—

17 “(A) is at least as effective a remedy as
18 the injurious pricing charge;

19 “(B) is in the public interest;

20 “(C) can be effectively monitored and en-
21 forced; and

22 “(D) is otherwise consistent with the do-
23 mestic law and international obligations of the
24 United States.

1 “(2) Prior to entering into an agreement under
2 paragraph (1), the administering authority shall con-
3 sult with the domestic industry, provide for submis-
4 sion of comments by interested parties, and obtain
5 the approval of the petitioners for such agreement.

6 “(3) If the injurious pricing order has been sus-
7 pended under paragraph (1), and the administering
8 authority determines that the producer has materi-
9 ally violated the terms of agreement, the administer-
10 ing authority shall terminate the suspension.

11 **“SEC. 837. IMPOSITION OF COUNTERMEASURES.**

12 “(a) GENERAL RULE.—

13 “(1) Unless an injurious pricing order is re-
14 voked or suspended under section 836 (d) or (e), the
15 administering authority shall issue an order impos-
16 ing countermeasures.

17 “(2) The countermeasure order shall—

18 “(A) state that, as provided in section 468
19 of this Act, a permit to lade or unlade pas-
20 sengers or merchandise may not be issued with
21 respect to vessels contracted to be built by the
22 foreign producer of the vessel with respect to
23 which an injurious pricing order was issued
24 under section 836, and

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

4 “(b) PRELIMINARY DETERMINATION TO IMPOSE
5 COUNTERMEASURES.—

6 “(1) GENERAL RULE.—The administering au-
7 thority shall issue a preliminary determination to
8 impose countermeasures within 7 days after the ex-
9 piration of the time for payment specified in the
10 order, and shall publish that determination in the
11 Federal Register within 7 days after issuance.

12 “(2) ELEMENTS OF THE PRELIMINARY DETER-
13 MINATION.—The preliminary determination shall
14 contain at least the following elements:

15 “(A) SCOPE.—A permit to lade or unlade
16 passengers or merchandise may not be issued
17 with respect to any vessel, built by the foreign
18 producer, for which the material terms of sale
19 are established (normally the date of contract)
20 within a period of four consecutive years begin-
21 ning on the effective date in paragraph (C).

22 “(B) DURATION.—For each vessel within
23 the scope described in paragraph (A), a permit
24 to lade or unlade passengers or merchandise

1 may not be issued for a period of four years
2 after delivery of the vessel.

3 “(C) EFFECTIVE DATE.—The effective
4 date of a preliminary determination shall be 30
5 days after publication of such determination in
6 the Federal Register.

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

9 “(1) GENERAL RULE.—The administering au-
10 thority shall, within the time specified in paragraph
11 (2) of this subsection, issue a final determination
12 and order imposing countermeasures.

13 “(2) TIME FOR FINAL DETERMINATION.—The
14 final determination shall be issued within 90 days
15 after the date on which the preliminary determina-
16 tion to impose countermeasures under subsection (b)
17 is published in the Federal Register. The administer-
18 ing authority shall publish the final determination,
19 and the order described in paragraph (4), in the
20 Federal Register within 7 days, and shall provide a
21 copy of the determination and order to the Customs
22 Service.

23 “(3) CONTENT OF THE FINAL DETERMINA-
24 TION.—In the final determination imposing counter-
25 measures the administering authority shall deter-

1 mine whether, in light of all of the circumstances,
2 and interested party has demonstrated that the
3 scope or duration of the countermeasures should be
4 narrowed or shortened.

5 “(4) ORDER.—At the same time it issues its
6 final determination, the administering authority
7 shall issue an order imposing countermeasures, con-
8 sistent with its final determination.

9 “(d) ADMINISTRATIVE REVIEW OF FINAL DETER-
10 MINATION TO IMPOSE COUNTERMEASURES.—

11 “(1) REQUEST FOR REVIEW.—Annually, in the
12 anniversary month of the issuance of the order im-
13 posing countermeasures under this title, the admin-
14 istering authority shall publish in the Federal Reg-
15 ister a notice providing that interested parties may
16 request—

17 “(A) a review of the scope or duration of
18 countermeasures, and

19 “(B) a hearing in connection with such a
20 review.

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

24 “(A) publish notice of initiation of a review
25 in the Federal Register not later than 15 days

1 following the anniversary month of the issuance
2 of the order imposing countermeasures, and

3 “(B) shall review and determine whether
4 the requesting party has demonstrated that the
5 scope or duration of the countermeasures is ex-
6 cessive in light of all of the circumstances.

7 “(3) TIME FOR REVIEW.—The administering
8 authority shall make its determination under para-
9 graph (2)(B) within 90 days after the date of which
10 the notice of initiation of such review is published.
11 If the determination under paragraph (2)(B) is af-
12 firmative, the administering authority shall amend
13 the order accordingly. The administering authority
14 shall promptly publish the determination and any
15 amendment to the order in the Federal Register,
16 and shall provide a copy of any amended order to
17 the Customs Service. In extraordinary cir-
18 cumstances, the administering authority may extend
19 the time for its determination under paragraph
20 (2)(B) to not later than 150 days after the date on
21 which the notice of initiation of such review is pub-
22 lished.

23 “(e) EXTENSION OF COUNTERMEASURES.—

24 “(1) REQUEST FOR EXTENSION.—Within the
25 time described in paragraph (2), an interested party

1 may file with the administering authority a request
2 that the scope or duration of countermeasures be ex-
3 tended.

4 “(2) DEADLINE FOR REQUEST FOR EXTEN-
5 SION.—

6 “(A) If the request seeks an extension that
7 would cause the scope or duration of counter-
8 measures to exceed four years, including any
9 prior extensions, a request for extension under
10 paragraph (1) shall be filed not earlier than the
11 date that is 15 months, and not later than the
12 date that is 12 months, before the date that
13 marks the end of the period that defines the
14 vessels that fall within the scope of the order.

15 “(B) If the request seeks an extension
16 under paragraph (1) other than one described
17 in paragraph (A), a request shall be filed not
18 earlier than the date that is 6 months, and not
19 later than a date that is 3 months, before the
20 date that marks the end of the period that de-
21 fines the vessels that fall within the scope of the
22 order.

23 “(3) DETERMINATION.—If a proper request has
24 been received under paragraph (1), the administer-
25 ing authority shall—

1 “(A) publish notice of initiation of an ex-
2 tension proceeding in the Federal Register not
3 later than 15 days following the applicable
4 deadline in paragraph (2) for requesting the ex-
5 tension.

6 “(B) (i) if paragraph (2)(A) applies to the
7 request, consult with the Trade Representative,
8 as described in paragraph (4), or

9 “(ii) if paragraph (2)(B) applies to the re-
10 quest, determine, within 90 days from the date
11 on which the notice of initiation of the proceed-
12 ing was published, whether the requesting party
13 has demonstrated that the scope or duration of
14 the countermeasures is inadequate in light of all
15 of the circumstances. If the administering au-
16 thority determines that an extension is war-
17 ranted, it shall amend the countermeasure
18 order accordingly. The administering authority
19 shall promptly publish the determination and
20 any amendment to the order in the Federal
21 Register, and shall provide a copy of any
22 amended order to the Customs Service.

23 “(4) CONSULTATION WITH TRADE REPRESENT-
24 ATIVE.—If paragraph (3)(B)(i) applies, the admin-
25 istering authority shall consult with the Trade Rep-

1 representative concerning whether it would be appro-
2 priate to request establishment of a dispute settle-
3 ment panel under the Shipbuilding Agreement for
4 the purpose of seeking authorization to extend the
5 scope or duration of countermeasures for a period in
6 excess of four years.

7 “(5) DECISION NOT TO REQUEST PANEL.—If,
8 based on consultations under paragraph (4), the
9 Trade Representative decides not to request estab-
10 lishment of a panel, the Trade Representative will
11 inform the party requesting the extension of the
12 countermeasures of the reasons for its decision in
13 writing. The decision will not be judicially
14 reviewable.

15 “(6) PANEL PROCEEDINGS.—If, based on con-
16 sultations under paragraph (4), the Trade Rep-
17 resentative requests the establishment of a panel
18 under the Shipbuilding Agreement, and the panel
19 authorizes an extension of the period of counter-
20 measures, the administering authority shall promptly
21 amend the countermeasure order in accordance with
22 the panel’s authorization. The administering author-
23 ity shall publish notice of the amendment in the
24 Federal Register.

1 “(f) LIST OF VESSELS SUBJECT TO COUNTER-
2 MEASURES.—

3 “(1) GENERAL RULE.—At least once during
4 each 12-month period beginning on the anniversary
5 date of a final determination to impose counter-
6 measures under this section, the administering au-
7 thority shall publish in the Federal Register a list of
8 all delivered vessels subject to countermeasures.

9 “(2) CONTENT OF LIST.—The list under para-
10 graph (1) shall include the following information for
11 each vessel, to the extent the information is avail-
12 able—

13 “(A) name and general description of ves-
14 sel;

15 “(B) vessel identification number;

16 “(C) shipyard where vessel was con-
17 structed;

18 “(D) last-known registry of vessel;

19 “(E) last-known owner of vessel, and ad-
20 dress of owner;

21 “(F) delivery date of vessel;

22 “(G) remaining duration of counter-
23 measures on vessel; and

24 “(H) any other identifying information
25 available.

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

6 “(4) SERVICE OF LIST AND AMENDMENTS.—
7 (A) The administering authority shall serve a copy
8 of the list described in paragraph (1) on—

9 “(i) the petitioner,

10 “(ii) the United States Customs Service,

11 “(iii) the OECD Secretariat,

12 “(iv) owners of listed vessels,

13 “(v) shipyards listed, and

14 “(vi) the government of the country in
15 which a listed shipyard is located.

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

19 “(i) the parties listed in paragraphs (A)
20 (i), (ii), and (iii), and

21 “(ii) if the amendment affects their inter-
22 ests, the parties listed in paragraphs (A) (iv),
23 (v), and (vi).

24 “(g) ADMINISTRATIVE REVIEW OF LIST OF VESSELS
25 SUBJECT TO COUNTERMEASURES.—

1 “(1) REQUEST FOR REVIEW.—(A) An inter-
2 ested party may request in writing a review of the
3 list described in paragraph (g)(1), including any
4 amendments thereto, to determine whether—

5 “(i) a vessel included in the list does not
6 fall within the scope of the countermeasure
7 order and should be deleted; or

8 “(ii) a vessel not included in the list falls
9 within the scope of the countermeasure order
10 and should be added.

11 “(B) Any request seeking a determination de-
12 scribed in paragraph (1)(A)(i) shall be made within
13 90 days from publication of the list in which the ves-
14 sel at issue first appears.

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

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

20 “(i) not later than 15 days after re-
21 ceipt of the request or,

22 “(ii) if the request seeks a determina-
23 tion described in paragraph (1)(A)(i), not
24 later than 15 days after the deadline in
25 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 the determination and any amend-
16 ment to the list in the Federal Register.

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 an injurious pricing order has been sus-
25 pended or revoked under section 836 (d) or (e), the

1 administering authority shall, as appropriate, sus-
2 pend or terminate proceedings under this section, or
3 suspend or revoke a countermeasure order.

4 “(2)(A) If the payment date under an injurious
5 pricing order has been amended under section 884,
6 the administering authority shall, as appropriate,
7 suspend proceedings or modify deadlines under this
8 section, or suspend or amend a countermeasure
9 order.

10 “(B) In taking action under paragraph (A), the
11 administering authority shall ensure that counter-
12 measures are not applied prior to the date that is 30
13 days after publication in the Federal Register of the
14 amended payment date.

15 “(C) If—

16 “(i) a final countermeasure order has been
17 issued pursuant to subsection (c) prior to an
18 amendment under section 884 to the payment
19 date of an injurious pricing order, and

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

1 the administering authority may reinstitute proceed-
2 ings under subsection (c) for purposes of issuing a
3 new final determination under that subsection.

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

7 “(1) shall solicit comments from interested par-
8 ties; and

9 “(2)(A) in a proceeding under subsection (c) or
10 (d), upon request of an interested party, shall hold
11 a hearing in accordance with section 874(b) in con-
12 nection with that proceeding, or

13 “(B) in a proceeding under subsection (e) or
14 (g), upon request of an interested party, may hold
15 a hearing in accordance with section 874(b) in con-
16 nection with that proceeding.

17 **“SEC. 871. DEFINITIONS; SPECIAL RULES.**

18 “For purposes of this title:

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

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

4 “(3) COUNTRY.—The term ‘country’ means a
5 foreign country, a political subdivision, dependent
6 territory, or possession of a foreign country and, ex-
7 cept as provided in section 871(16)(E)(iii), may not
8 include an association of two or more foreign coun-
9 tries, political subdivisions, dependent territories, or
10 possessions of countries into a customs union out-
11 side the United States.

12 “(4) INDUSTRY.—

13 “(A) IN GENERAL.—The term ‘industry’
14 means the producers as a whole of a domestic
15 like vessel, or those producers whose collective
16 capability to produce a domestic like vessel con-
17 stitutes a major proportion of the total domes-
18 tic capability to produce a domestic like vessel.

19 “(B) PRODUCER.—A ‘producer’ of a like
20 vessel includes entities that are producing a do-
21 mestic like vessel and those with capability to
22 produce a domestic like vessel.

23 “(C) CAPABILITY TO PRODUCE A LIKE
24 VESSEL.—A producer has ‘capability to produce
25 a like vessel’ if it is capable of producing a do-

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

4 “(D) RELATED PARTIES.—

5 “(i) If a producer of a domestic like
6 vessel and the foreign producer, seller
7 (other than the foreign producer) or
8 United States buyer of the subject vessel
9 are related parties, or if a producer of a
10 domestic like vessel is also a United States
11 buyer of the subject vessel, the domestic
12 producer may, in appropriate cir-
13 cumstances, be excluded from the industry.

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

18 “(I) the domestic producer di-
19 rectly or indirectly controls the foreign
20 producer, seller or United States
21 buyer,

22 “(II) the foreign producer, seller
23 or United States buyer directly or in-
24 directly controls the domestic pro-
25 ducer,

1 “(III) a third party directly or
2 indirectly controls the domestic pro-
3 ducer and the foreign producer, seller
4 or United States buyer, or

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

12 For purposes of this subparagraph, a party
13 shall be considered to directly or indirectly
14 control another party if the party is legally
15 or operationally in a position to exercise
16 restraint or direction over the other party.

17 “(E) PRODUCT LINES.—The effect of the
18 sale of the subject vessel shall be assessed in re-
19 lation to the United State production (or pro-
20 duction capability) of the domestic like vessel if
21 available data permit the separate identification
22 of production (or production capability) in
23 terms of such criteria as the production process
24 or the producer’s profits. If the domestic pro-
25 duction (or production capability) of the domes-

1 tic like vessel has not separate identity in terms
2 of such criteria, then the effect of the same
3 shall be assessed by the examination of the pro-
4 duction (or production capability) of the nar-
5 rowest group or range of vessels, which includes
6 a domestic like vessel, for which the necessary
7 information can be provided.

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

18 “(6) UNITED STATES BUYER.—The term
19 ‘United States buyer’ means a buyer that is—

20 “(A) a United States citizen, or

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

1 the entity is organized for pecuniary gain, pri-
2 vate or government owned, or organized with
3 limited or unlimited liability, or

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

8 “(i) the term ‘own’ means having
9 more than a fifty percent interest; and

10 “(ii) the term ‘control’ means the ac-
11 tual ability to have substantial influence on
12 corporate behavior. Control is presumed to
13 exist where there is a twenty-five percent
14 interest. If ownership of a company is es-
15 tablished, other control is presumed not to
16 exist unless it is established otherwise.

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

1 “(A) the terms and circumstances of the
2 transaction;

3 “(B) commercial practice;

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

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

12 “(8) VESSEL.—

13 “(A) IN GENERAL.—The term ‘vessel’
14 means

15 “(i) a self-propelled seagoing vessel of
16 100 gross tons or more used for transpor-
17 tation of goods or persons or for perform-
18 ance of a specialized service (such as ice
19 breakers and dredgers), and

20 “(ii) tugs of 365 kw and over.

21 “(B) the term ‘vessel’ does not include—

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

25 “(ii) military vessels; and

1 “(iii) vessels sold prior to the date
2 that the Shipbuilding Agreement enters
3 into force for the United States, except
4 that vessels sold after December 21, 1994,
5 for delivery more than 5 years after the
6 date of contract are included unless the
7 shipbuilder demonstrates to the admin-
8 istering authority that the extended deliv-
9 ery date was for normal commercial rea-
10 sons and not to avoid applicability of the
11 injurious pricing law.

12 “(C) A vessel is ‘self-propelled seagoing’ if
13 its permanent propulsion and steering provide it
14 all the characteristics of self-navigability in the
15 high seas.

16 “(D) A ‘military vessel’ is a vessel which,
17 according to its basic structural characteristics
18 and ability, is intended to be used exclusively
19 for military purposes.

20 “(E) The term ‘vessel’ may mean more
21 than one vessel in appropriate circumstances.

22 “(9) LIKE VESSEL.—The term ‘like vessel’
23 means a vessel of the same type, purpose and ap-
24 proximate size as the subject vessel and possessing
25 characteristics closely resembling those of the sub-

1 ject vessel. There may be small differences in size
2 and equipment between like vessels.

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

6 “(11) FOREIGN LIKE VESSEL.—The term ‘for-
7 eign like vessel’ means a like vessel produced by the
8 producer of the subject vessel for sale in the produc-
9 er’s domestic market or in a third country.

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

14 “(13) SUBJECT VESSEL.—The term ‘subject
15 vessel’ means a vessel subject to investigation pursu-
16 ant to section 831.

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

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

23 “(16) MATERIAL INJURY.—

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

4 “(B) SALE AND CONSEQUENT IMPACT.—In
5 making determinations under sections 833(a)
6 and 835(b), the Commission in each case—

7 “(i) shall consider—

8 “(I) the effect of the sale of the
9 subject vessel on prices in the United
10 States for domestic like vessels, and

11 “(II) the impact of the sale of
12 such vessel on domestic producers of
13 domestic like vessels, but only in the
14 context of production operations with-
15 in the United States; and

16 “(ii) may consider such other eco-
17 nomic factors as are relevant to the deter-
18 mination regarding whether there is or has
19 been material injury by reason of the sale
20 of the subject vessel.

21 In the notification required under section
22 835(d), the Commission shall explain its analy-
23 sis of each factor considered under clause (i),
24 and identify each factor considered under clause

1 (ii) and explain in full its relevance to the deter-
2 mination.

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

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

8 “(I) there has been significant
9 price underselling of the subject vessel
10 as compared with the price of domes-
11 tic like vessels, and

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

18 “(ii) IMPACT ON AFFECTED DOMESTIC
19 INDUSTRY.—In examining the impact re-
20 quired to be considered under subpara-
21 graph (b)(i)(II) the Commission shall
22 evaluate all relevant economic factors
23 which have a bearing on the state of the
24 industry in the United States, including,
25 but not limited to—

1 “(I) actual and potential decline
2 in output, sales, offers for sale, mar-
3 ket share, profits, productivity, return
4 on investments, and utilization of ca-
5 pacity,

6 “(II) factors affecting domestic
7 prices, including with regard to sales
8 or offers for 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 the domestic like vessel,
19 and

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

22 The Commission shall evaluate all relevant
23 economic factors described in this clause
24 within the context of the business cycle

1 and conditions of competition that are dis-
2 tinctive to the affected industry.

3 “(D) STANDARD FOR DETERMINATION.—

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

9 “(E) THREAT OF MATERIAL INJURY.—

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

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

1 “(II) whether the sale of the for-
2 eign like vessel or other factors indi-
3 cate the likelihood of significant addi-
4 tional sales to United States buyers,

5 “(III) whether sale of the subject
6 vessel or sales of the foreign like ves-
7 sel by the foreign producer are at
8 prices that are likely to have a signifi-
9 cant depressing or suppressing effect
10 on domestic prices, and are likely to
11 increase demand for further sales,

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

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

1 version of the domestic like vessel,
2 and

3 “(VI) any other demonstrable ad-
4 verse trends that indicate the prob-
5 ability that there is likely to be mate-
6 rial injury by reason of the sale of the
7 subject vessel.

8 “(ii) BASIS FOR DETERMINATION.—

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

18 “(iii) EFFECT ON INJURIOUS PRICING

19 IN THIRD-COUNTRY MARKETS.—

20 “(I) IN GENERAL.—The Commis-

21 sion shall consider whether injurious
22 pricing in the markets of foreign
23 countries (as evidenced by injurious
24 pricing findings or injurious pricing
25 remedies in other Shipbuilding Agree-

1 ment Party markets, or antidumping
2 findings or remedies in other coun-
3 tries, against like vessels produced by
4 the producer under investigation) sug-
5 gests a threat of material injury to
6 the domestic industry. In the course
7 of its investigation, the Commission
8 shall request information from the
9 foreign producer or United States
10 buyer concerning this issue.

11 “(II) EUROPEAN COMMU-
12 NITIES.—For purposes of this clause,
13 the European communities as a whole
14 shall be treated as a single foreign
15 country.

16 “(F) CUMULATION FOR DETERMINING MA-
17 TERIAL INJURY.—

18 “(i) IN GENERAL.—For purposes of
19 clause (i) of subparagraph (C), and subject
20 to clause (ii), the Commission shall cumu-
21 latively assess the effects of sales of for-
22 eign like vessels subject to investigation
23 from all foreign producers if, with respect
24 to such vessels, the foreign producers com-
25 pete with each other and with producers of

1 domestic like vessels in the United States
2 market.

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

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

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

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

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

10 “(G) CUMULATION FOR DETERMINING
11 THREAT OF MATERIAL INJURY.—To the extent
12 practicable and subject to subparagraph (F)(ii),
13 for purposes of clause (i)(II) and (III) of sub-
14 paragraph (E), the Commission may cumula-
15 tively assess the effects of sales of like vessels
16 subject to investigation from all countries if,
17 with respect to such vessels, the foreign produc-
18 ers compete with each other and with producers
19 of domestic like vessels in the United States
20 market.

21 “(17) INTERESTED PARTY.—The term ‘inter-
22 ested party’ means—

23 “(A) the foreign producer, seller (other
24 than the foreign producer) and the United
25 States buyer of the subject vessel, or a trade or

1 business association, a majority of the members
2 of which are the foreign producer, seller or
3 United States buyer;

4 “(B) the government of the country in
5 which the subject vessel is produced or manu-
6 factured;

7 “(C) a producer that is a member of an in-
8 dustry defined in paragraph (4) of this section;

9 “(D) a certified union or recognized union
10 or group of workers which is representative of
11 an industry defined in paragraph (4) of this
12 section;

13 “(E) a trade or business association, a ma-
14 jority of whose members are producers in an in-
15 dustry described in paragraph (4) of this sec-
16 tion;

17 “(F) an association, a majority of whose
18 members is composed of interested parties de-
19 scribed in subparagraph (C), (D), or (E); and

20 “(G) for purposes of section 837, a pur-
21 chaser who, after the effective date of an order
22 issued under that section, entered into a con-
23 tract of sale with the foreign producer of the
24 subject vessel.

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

10 “(A) material injury to an industry in the
11 United States,

12 “(B) threat of material injury to such an
13 industry, or

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

16 by reason of sale of the subject vessel, an affirmative
17 vote on any of the issues shall be treated as a vote
18 that the determination should be affirmative.

19 “(19) ORDINARY COURSE OF TRADE.—The
20 term ‘ordinary course of trade’ means the conditions
21 and practices which, for a reasonably time prior to
22 the sale of the subject vessel, have been normal in
23 the shipbuilding industry with respect to like vessels.
24 The administering authority shall consider the fol-

1 lowing sales and transactions, among others, to be
2 outside the ordinary course of trade—

3 “(A) sales disregarded under section
4 873(b)(1); or

5 “(B) sales disregarded under section
6 873(f)(2).

7 “(20) SHIPBUILDING AGREEMENT.—The term
8 ‘Shipbuilding Agreement’ means the OECD Agree-
9 ment Respecting Normal Competitive Conditions in
10 the Commercial Shipbuilding and Repair Industry.

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

17 “(22) WTO AGREEMENT.—The term ‘WTO
18 Agreement’ means the Agreement defined in section
19 2(9) of the Uruguay Round Agreements Act.

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

1 “(24) TRADE REPRESENTATIVE.—The term
2 ‘Trade Representative’ means the United States
3 Trade Representative.

4 “(25) AFFILIATED PERSONS.—The following
5 persons shall be considered to be ‘affiliated’ or ‘af-
6 filiated persons’:

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

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

13 “(C) Partners.

14 “(D) Employer and employee.

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

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

23 “(G) Any person who controls any other
24 person and such other person.

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

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

8 “(27) INJURIOUS PRICING MARGIN.—

9 “(A) The term ‘injuriously pricing margin’
10 means the amount by which the normal value
11 exceeds the export price of the subject vessel.

12 “(B) Magnitude of the injuriously pricing
13 margin. The magnitude of the injuriously pricing
14 margin used by the Commission shall be—

15 “(i) in making a preliminary deter-
16 mination under section 833(a) in an inves-
17 tigation (including any investigation in
18 which the Commission cumulatively as-
19 sesses the effect of sales under paragraph
20 (16)(F)(i)), the injuriously pricing margin or
21 margins published by the administering
22 authority in its notice of initiation of the
23 investigation; and

24 “(ii) in making a final determination
25 under section 835(b), the injuriously pricing

1 margin or margins most recently published
2 by the administering authority prior to the
3 closing of the Commission's administrative
4 record.

5 “(28) COMMERCIAL INTEREST REFERENCE
6 RATE.—The term ‘Commercial Interest Reference
7 Rate’ or ‘CIRR’ means an interest rate the admin-
8 istering authority determines to be consistent with
9 Annex III, and appendices and notes thereto, of the
10 Understanding on Export Credits for Ships (OECD
11 document C/WP6(94)6), and any amendments
12 thereto.

13 “(29) NONMARKET ECONOMY COUNTRY.—

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

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

1 “(i) the extent to which the currency
2 of the foreign country is convertible into
3 the currency of other countries,

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

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

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

14 “(v) the extent of government control
15 over the allocation of resources and over
16 the price and output decisions of enter-
17 prises, and

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

20 “(C) DETERMINATION IN EFFECT.—

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

1 “(ii) The administering authority may
2 make a determination under subparagraph
3 (A) with respect to any foreign country at
4 any time.

5 “(D) DETERMINATION NOT IN ISSUE.—
6 Notwithstanding any other provision of law, any
7 determination made by the administering au-
8 thority under subparagraph (A) shall not be
9 subject to judicial review in any investigation
10 conducted under title VIII.

11 “(E) COLLECTION OF INFORMATION.—
12 Upon request by the administering authority,
13 the Commissioner of Customs shall provide the
14 administering authority a copy of all public and
15 proprietary information submitted to, or ob-
16 tained by, the Commissioner of Customs that
17 the administering authority considers relevant
18 to proceedings involving vessels produced in
19 nonmarket economy countries. The administer-
20 ing authority shall protect proprietary informa-
21 tion obtained under this section from public dis-
22 closure in accordance with section 877.

23 “(30) The term ‘reconstruction’ shall include,
24 but shall not be limited to, a substantial alteration

1 or rebuilding of the hull or principal structural com-
2 ponent.

3 **“SEC. 872. EXPORT PRICE.**

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

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

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

24 “(2) reduced by—

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

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

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

13 **“SEC. 873. NORMAL VALUE.**

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

20 “(1) DETERMINATION OF NORMAL VALUE.—

21 “(A) IN GENERAL.—The normal value of
22 the subject vessel shall be the price described in
23 subparagraph (B), at a time reasonably cor-
24 responding to the time of the sale used to deter-
25 mine the export price under section 872(a).

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

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

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

13 “(I) such price is representative,
14 and

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

20 “(C) THIRD COUNTRY SALES.—This sub-
21 paragraph applies when—

22 “(i) a foreign like vessel is not sold in
23 the exporting country as described in sub-
24 paragraph (B)(i), or

1 “(ii) the particular market situation
2 in the exporting country does not permit a
3 proper comparison with the export price.

4 “(D) CONTEMPORANEOUS SALE.—For the
5 purpose of subparagraph (A), ‘a time reason-
6 ably corresponding to the time of the sale’ nor-
7 mally means within 3 months prior to or after
8 the sale of the subject vessel.

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

13 “(3) USE OF CONSTRUCTED VALUE.—If the ad-
14 ministering authority determines that the normal
15 value of the subject vessel cannot be determined
16 under paragraph (1)(B) or (1)(C), then the normal
17 value of the subject vessel will be the constructed
18 value of that vessel, as determined under subsection
19 (e).

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

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

1 “(A) reduced by—

2 “(i) the amount, if any, included in
3 the price described in paragraph (1)(B),
4 attributable to any costs, charges, and ex-
5 penses incident to bringing the foreign like
6 vessel from the shipyard to the place of de-
7 livery to the purchaser,

8 “(ii) the amount of any taxes imposed
9 directly upon the foreign like vessel or
10 components thereof which have been re-
11 bated, or which have not been collected, on
12 the subject vessel, but only to the extent
13 that such taxes are added to or included in
14 the price of the foreign like vessel, and

15 “(iii) the amount of all other expenses
16 incidental to placing the foreign like vessel
17 in condition for delivery to the buyer, and

18 “(B) increased or decreased by the amount
19 of any difference (or lack thereof) between the
20 export price and the price described in para-
21 graph (1)(B) (other than a difference for which
22 allowance is otherwise provided under this sec-
23 tion) that is established to the satisfaction of
24 the administering authority to be wholly or
25 partly due to—

1 “(i) physical differences between the
2 subject vessel and the vessel used in deter-
3 mining normal value, or

4 “(ii) other differences in the cir-
5 cumstances of sale.

6 “(6) ADDITIONAL ADJUSTMENTS.—

7 “(A) LEVEL OF TRADE.—The price de-
8 scribed in paragraph (1)(B) shall also be in-
9 creased or decreased to make due allowance for
10 any difference (or lack thereof) between the ex-
11 port price and the price described in paragraph
12 (1)(B) (other than a difference for which allow-
13 ance is otherwise made under this section) that
14 is shown to be wholly or partly due to a dif-
15 ference in level of trade between the export
16 price and normal value, if the difference in level
17 of trade—

18 “(i) involves the performance of dif-
19 ferent selling activities; and

20 “(ii) is demonstrated to affect price
21 comparability, based on a pattern of con-
22 sistent price differences between sales at
23 different levels of trade in the country in
24 which normal value is determined.

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

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

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

11 “(1) DETERMINATION; SALES DISREGARDED.—

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

1 other sale of a foreign like vessel in the ordinary
2 course of trade. If no sales made in the ordinary
3 course of trade remain, the normal value shall be
4 based on the constructed value of the subject vessel.

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

7 “(A) REASONABLE GROUNDS TO BELIEVE
8 OR SUSPECT.—There are reasonable grounds to
9 believe or suspect that sale of a foreign like ves-
10 sel was made at a price that is less than the
11 cost of production of the vessel, if an interested
12 party described in subparagraph (C), (D), (E),
13 or (F) of section 871(17) provides information,
14 based upon observed prices or constructed
15 prices or costs, that the sale of the foreign like
16 vessel under consideration for the determination
17 of normal value has been made at a price which
18 represents less than the cost of production of
19 the vessel.

20 “(B) RECOVERY OF COSTS.—If prices
21 which are below the cost of production at the
22 time of sale are above the weighted average per
23 unit cost of production for the period of inves-
24 tigation, such prices shall be considered to pro-

1 vide for recovery of costs within a reasonable
2 period of time.

3 “(3) CALCULATION OF COST OF PRODUC-
4 TION.—For purposes of this subtitle, 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 production and sale of the foreign
15 like vessel by the producer in question; and

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),

7 the administering authority shall determine the nor-
8 mal value of the subject vessel on the basis of the
9 value of the factors of production utilized in produc-
10 ing the vessel and to which shall be added an
11 amount for general expenses and profit plus the cost
12 of any other expenses incidental to placing the vessel
13 in condition for delivery to buyer. Except as pro-
14 vided in paragraph (2), the valuation of the factors
15 of production shall be based on the best available in-
16 formation regarding the values of such factors in a
17 market economy country or countries considered to
18 be appropriate by the administering authority.

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

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

1 “(B) produced in one or more market
2 economy countries that are at a level of eco-
3 nomic development comparable to that of the
4 nonmarket economy country,
5 is sold in other countries, including the United
6 States.

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

10 “(A) hours of labor required,

11 “(B) quantities of raw materials employed,

12 “(C) amounts of energy and other utilities
13 consumed, and

14 “(D) representative capital cost, including
15 depreciation.

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

22 “(A) at a level of economic development
23 comparable to that of the nonmarket economy
24 country, and

1 “(B) significant producers of comparable
2 vessels.

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

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

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

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

19 it shall determine the normal value of the subject vessel
20 by reference to the normal value at which a foreign like
21 vessel is sold from one or more facilities outside the ex-
22 porting country. The administering authority, in making
23 any determination under this paragraph, shall make ad-
24 justments for the difference between the costs of produc-
25 tion (including taxes, labor, materials, and overhead) of

1 the foreign like vessel produced in facilities outside the ex-
2 porting country and costs of production of the foreign like
3 vessel produced in facilities in the exporting country, if
4 such differences are demonstrated to its satisfaction.

5 “(e) CONSTRUCTED VALUE.—For purposes of this
6 title, the constructed value of the subject vessel shall be
7 an amount equal to the sum of—

8 “(1) the cost of materials and fabrication or
9 other processing of any kind employed in producing
10 the subject vessel, during a period which would ordi-
11 narily permit the production of the vessel in the or-
12 dinary course of business;

13 “(2)(A) the actual amounts incurred and real-
14 ized by the foreign producer of the subject vessel for
15 selling, general, and administrative expenses, and for
16 profits, in connection with the production and sale
17 of the foreign like vessel, in the ordinary course of
18 trade, in the domestic market of the country of ori-
19 gin of the subject vessel, or

20 “(B) if actual data are not available with re-
21 spect to the amounts described in subparagraph (A),
22 then—

23 “(i) the actual amounts incurred and real-
24 ized by the foreign producer of the subject ves-
25 sel for selling, general, and administrative ex-

1 penses, and for profits, in connection with the
2 production and sale of the same general cat-
3 egory of vessel in the domestic market of the
4 country of origin of the subject vessel,

5 “(ii) the weighted average of the actual
6 amounts incurred and realized by producers in
7 the country of origin of the subject vessel (other
8 than the producer of the subject vessel) for sell-
9 ing, general, and administrative expenses, and
10 for profits, in connection with the production
11 and sale of foreign like vessels, in the ordinary
12 course of trade, in the domestic market, or

13 “(iii) if data is not available under sub-
14 paragraph (i) or (ii), the amounts incurred and
15 realized for selling, general, and administrative
16 expenses, and for profits, based on any other
17 reasonable method, except that the amount al-
18 lowed for profit may not exceed the amount
19 normally realized by foreign producers (other
20 than the producer of the subject vessel) in con-
21 nection with the sale of vessels in the same gen-
22 eral category in the domestic market of the
23 country of origin of the subject vessel, and

24 “(iv) the profit shall, in all cases, be based
25 on the average profit realized over a reasonable

1 period of time prior to and after the sale of the
2 subject vessel and shall reflect a reasonable
3 profit at the time of such sale. For the purpose
4 of this subparagraph, a 'reasonable period of
5 time' normally will not exceed six months prior
6 to and after the sales of the subject vessel.

7 “(C) when costs and profit are determined
8 under paragraph (B)(iii), such determination
9 shall normally be based on appropriate export
10 sales by the producer of the subject vessel or,
11 absent such sales, to export sales by other pro-
12 ducers of the like vessel or the same general
13 category of vessel in the country of origin of the
14 subject vessel.

15 For purposes of paragraph (1), the cost of materials shall
16 be determined without regard to any internal tax in the
17 exporting country imposed on such materials or their dis-
18 position which are remitted or refunded upon exportation
19 of the subject vessel produced from such materials.

20 “(f) SPECIAL RULES FOR CALCULATION OF COST OF
21 PRODUCTION AND FOR CALCULATION OF CONSTRUCTED
22 VALUE.—For purposes of subsections (b) and (e)—

23 “(1) COSTS.—

24 “(A) IN GENERAL.—Costs shall normally
25 be calculated based on the records of the for-

1 eign producer of the vessel, if such records are
2 kept in accordance with the generally accepted
3 accounting principles of the exporting country
4 and reasonably reflect the costs associated with
5 the production and sale of the vessel. The ad-
6 ministering authority shall consider all available
7 evidence on proper allocation of costs, including
8 that which is made available by the foreign pro-
9 ducer on a timely basis, if such allocations have
10 been historically used by the foreign producer,
11 in particular for establishing appropriate amor-
12 tization and depreciation periods, and allow-
13 ances for capital expenditures and other devel-
14 opment costs.

15 “(B) NONRECURRING COSTS.—Costs shall
16 be adjusted appropriately for those non-
17 recurring costs that benefit current or future
18 production, or both.

19 “(C) STARTUP COSTS.—

20 “(i) IN GENERAL.—Costs shall be ad-
21 justed appropriately for circumstances in
22 which costs incurred during the time pe-
23 riod covered by the investigation are af-
24 fected by startup operations.

1 “(ii) STARTUP OPERATIONS.—Adjust-
2 ments shall be made for startup operations
3 only where—

4 “(I) a producer is using new pro-
5 duction facilities or producing a new
6 type of vessel that requires substantial
7 additional investment, and

8 “(II) production levels are limited
9 by technical factors associated with
10 the initial phase of commercial pro-
11 duction.

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

21 “(iii) ADJUSTMENT FOR STARTUP OP-
22 ERATIONS.—The adjustment for startup
23 operations shall be made by substituting
24 the unit production costs incurred with re-
25 spect to the vessel at the end of the start-

1 up period for the unit production costs in-
2 curred during the startup period. If the
3 startup period extends beyond the period
4 of the investigation under this title, the ad-
5 ministering authority shall use the most
6 recent cost of production data that it rea-
7 sonably can obtain, analyze, and verify
8 without delaying the timely completion of
9 the investigation or review. For purposes
10 of this subparagraph, the startup period
11 ends at the point at which the level of com-
12 mercial production that is characteristic of
13 the vessel, the producer, or the industry is
14 achieved.

15 “(D) Costs shall not include actual costs
16 which are due to extraordinary circumstances
17 (including, but not limited to, labor disputes,
18 fire, natural disaster) and which are signifi-
19 cantly over the cost increase which the ship-
20 builder could have reasonably anticipated and
21 taken into account at the time of sale.

22 “(2) TRANSACTIONS DISREGARDED.—A trans-
23 action directly or indirectly between affiliated per-
24 sons may be disregarded if, in the case of any ele-
25 ment of value required to be considered, the amount

1 representing that element does not fairly reflect the
2 amount usually reflected in sales of the vessel under
3 consideration in the market under consideration. If
4 a transaction is disregarded under the preceding
5 sentence and no other transactions are available for
6 consideration, the determination of the amount shall
7 be based on the information available as to what the
8 amount would have been if the transaction had oc-
9 curred between persons who are not affiliated.

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

22 **“SEC. 873A. CURRENCY CONVERSION.**

23 “(a) IN GENERAL.—In an injurious pricing proceed-
24 ing under this title, the administering authority shall con-
25 vert foreign currencies into United States dollars using the

1 exchange rate in effect on the date of sale of the subject
2 vessel, except that if it is established that a currency
3 transaction on forward markets is directly linked to a sale
4 under consideration, exchange rate specified with respect
5 to such foreign currency in the forward sale agreement
6 shall be used to convert the foreign currency.

7 “(b) DATE OF SALE.—For purposes of this section,
8 ‘date of sale’ means the date on which the material terms
9 of sale are established. That date is normally the date of
10 contract. If, however, the material terms of sale are sig-
11 nificantly changed, the date of sale is the date of such
12 change. In the case of such a change in the date of sale,
13 the administering authority shall make appropriate ad-
14 justments to take into account any unreasonable effect on
15 the injurious pricing margin solely due to fluctuation in
16 the exchange rate between the original date of sale and
17 the new date of sale.

18 **“SEC. 874. HEARINGS.**

19 “(a) The administering authority and the Commis-
20 sion shall each hold a hearing in the course of an inves-
21 tigation upon the request of any party to the investigation
22 before making a final determination under section 835.

23 “(b) PROCEDURES.—Any hearing required or per-
24 mitted under this title shall be conducted after notice pub-
25 lished in the Federal Register, and a transcript of the

1 hearing shall be prepared and made available to the public.
2 The hearing shall not be subject to the provisions of sub-
3 chapter II of chapter 5 of title 5, United States Code, or
4 to section 702 of such title.

5 **“SEC. 876. DETERMINATIONS ON THE BASIS OF THE FACTS**
6 **AVAILABLE.**

7 “(a) IN GENERAL.—If—

8 “(1) necessary information is not available on
9 the record, or

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

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

14 “(B) fails to provide such information by
15 the deadlines for the submission of the informa-
16 tion or in the form and manner requested sub-
17 ject to subsections (b)(1) and (d) of section
18 882,

19 “(C) significantly impedes a proceeding
20 under this title, or

21 “(D) provides such information but the in-
22 formation cannot be verified as provided in sec-
23 tion 882(g),

1 the administering authority and the Commission shall,
2 subject to section 882(c), use the facts otherwise available
3 in reaching the applicable determination under this title.

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

15 “(1) the petition, or

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

18 “(c) CORROBORATION OF SECONDARY INFORMA-
19 TION.—When the administering authority or the Commis-
20 sion relies on secondary information rather than on infor-
21 mation obtained in the course of an investigation or re-
22 view, the administering authority and the Commission, as
23 the case may be, shall, to the extent practicable, corrobo-
24 rate that information from independent sources that are
25 reasonably at their disposal.

1 **“SEC. 877. ACCESS TO INFORMATION.**

2 “(a) INFORMATION GENERALLY MADE AVAIL-
3 ABLE.—

4 “(1) PROGRESS OF INVESTIGATION REPORTS.—
5 The administering authority and the Commission
6 shall, from time to time upon request, inform the
7 parties to an investigation of the progress of that in-
8 vestigation.

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

12 “(A) interested parties or other persons
13 providing factual information in connection with
14 a proceeding, and

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

19 if information relating to that proceeding was pre-
20 sented or discussed at such meeting. The record of
21 such an ex parte meeting shall include the identity
22 of the persons present at the meeting, the date,
23 time, and place of the meeting, and a summary of
24 the matters discussed or submitted. The record of
25 the ex parte meeting shall be included in the record
26 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 if it is disclosed
6 in a form which cannot be associated with, or
7 otherwise be used to identify, operations of a
8 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)(A) and subsection (c), infor-

1 mation submitted to the administering author-
2 ity or the Commission which is designated as
3 proprietary by the person submitting the infor-
4 mation shall not be disclosed to any person
5 without the consent of the person submitting
6 the information, 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 mad 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 (except
3 privileged information, classified information,
4 and specific information of a type for which
5 there is a clear and compelling need to withhold
6 from disclosure) available to all interested par-
7 ties who are parties to the proceeding under a
8 protective order described in subparagraph (B),
9 regardless of when the information is submitted
10 during a proceeding. Customer names (other
11 than the name of the United States buyer of
12 the subject vessel) obtained during any inves-
13 tigation which requires a determination under
14 section 835(b) may not be disclosed by the ad-
15 ministering authority under protective order
16 until either an order is published under section
17 836(a) as a result of the investigation or the in-
18 vestigation is suspended or terminated. The
19 Commission may delay disclosure of customer
20 names (other than the name of the United
21 States buyer of the subject vessel) under protec-
22 tive order during any such investigation until a
23 reasonable time prior to any hearing provided
24 under section 874.

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 833(a)) after the date on
19 which the information is submitted, or

20 “(ii) if—

21 “(I) the person submitting the
22 information raises objection to its re-
23 lease, or

24 “(II) the information is unusu-
25 ally voluminous or complex,

1 not later than 30 days (10 days if the sub-
2 mission pertains to a proceeding under sec-
3 tion 833(a)) after the date on which the
4 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; however, 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) of this section, and such information shall
12 be treated as information described in section 552(b)(3)
13 of title 5.

14 “(f) OPPORTUNITY FOR COMMENT BY VESSEL OPER-
15 ATORS.—The administering authority and the Commission
16 shall provide an opportunity for operators of subject ves-
17 sels to submit relevant information to the administering
18 authority concerning a sale at less than fair value or coun-
19 termeasures, and to the Commission concerning material
20 injury by reason of sale of a vessel at less than fair value.

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

23 “(1) IN GENERAL.—Whenever the administer-
24 ing authority makes a determination under section
25 832 whether to initiate an investigation, or the ad-

1 administering authority or the Commission makes a
2 preliminary determination under section 833, a final
3 determination under section 835, a determination
4 under paragraph (b), (c), (d), (e)(3)(B)(ii), (g), or
5 (i) of section 837, or a determination to suspend an
6 investigation under this title, the administering au-
7 thority or the Commission, as the case may be, shall
8 publish the facts and conclusions supporting that de-
9 termination, and shall publish notice of that deter-
10 termination in the Federal Register.

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

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

17 “(i) the names of the foreign producer
18 and the country of origin of the subject
19 vessel,

20 “(ii) a description sufficient to iden-
21 tify the subject vessel,

22 “(iii) with respect to an injurious pric-
23 ing charge, the injurious pricing margin
24 established and a full explanation of the

1 methodology used in establishing such
2 margin, and

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

7 “(v) the primary reasons for the de-
8 termination.

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

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

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

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

18 “(A) the administering authority shall in-
19 clude in a final determination under section 835
20 or 837(c) an explanation of the basis for its de-
21 termination that addresses relevant arguments,
22 made by interested parties who are parties to
23 the investigation concerning the establishment
24 of the injurious pricing charge with respect to
25 which the determination is made; and

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

8 **“SEC. 882. CONDUCT OF INVESTIGATIONS.**

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

16 “(b) DIFFICULTIES IN MEETING REQUIREMENTS.—

17 “(1) NOTIFICATION BY INTERESTED PARTY.—

18 If an interested party, promptly after receiving a re-
19 quest from the administering authority or the Com-
20 mission for information, notifies the administering
21 authority or the Commission (as the case may be)
22 that such party is unable to submit the information
23 requested in the requested form and manner, to-
24 gether with a full explanation and suggested alter-
25 native forms in which such party is able to submit

1 the information, the administering authority or the
2 Commission (as the case may be) shall consider the
3 ability of the interested party to submit the informa-
4 tion in the requested form and manner and may
5 modify such requirements to the extent necessary to
6 avoid imposing an unreasonable burden on that
7 party.

8 “(2) ASSISTANCE TO INTERESTED PARTIES.—
9 The administering authority and the Commission
10 shall take into account any difficulties experienced
11 by interested parties, particularly small companies,
12 in supplying information requested by the admin-
13 istering authority or the Commission in connection
14 with investigations and reviews under this title, and
15 shall provide to such interested parties any assist-
16 ance that is practicable in supplying such informa-
17 tion.

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

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

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

8 “(2) such response is not submitted within the
9 applicable time limits,

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

13 “(d) USE OF CERTAIN INFORMATION.—In reaching
14 a determination under section 833, 835, or 837 the ad-
15 ministering authority and the Commission shall not de-
16 cline to consider information that is submitted by an inter-
17 ested party and is necessary to the determination but does
18 not meet all the applicable requirements established by the
19 administering authority or the Commission if—

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

22 “(2) the information can be verified,

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

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

6 “(5) the information can be used without undue
7 difficulties.

8 “(e) NONACCEPTANCE OF SUBMISSIONS.—If the ad-
9 ministering authority or the Commission declines to accept
10 into the record any information submitted in an investiga-
11 tion or review under this title, it shall, to the extent prac-
12 ticable, provide to the person submitting the information
13 a written explanation of the reasons for not accepting the
14 information.

15 “(f) PUBLIC COMMENT ON INFORMATION.—Informa-
16 tion, that is submitted on a timely basis to the administer-
17 ing authority or the Commission during the course of a
18 proceeding under this title shall be subject to comment
19 by other parties within such reasonable time as the admin-
20 istering authority or the Commission shall provide. The
21 administering authority and the Commission, before mak-
22 ing a final determination under sections 835 and 837,
23 shall cease collecting information and shall provide the
24 parties with a final opportunity to comment on the infor-
25 mation obtained by the administering authority or the

1 Commission (as the case may be) upon which the parties
2 have not previously had an opportunity to comment. Com-
3 ments containing new factual information shall be dis-
4 regarded.

5 “(g) VERIFICATION.—The administering authority
6 shall verify all information relied upon in making a final
7 determination under section 835.

8 **“SEC. 883. INJURIOUS PRICING PETITIONS BY THIRD COUN-**
9 **TRIES.**

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

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

17 “(2) an industry in the petitioning country is
18 materially injured by reason of such sale.

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

1 “(c) DETERMINATIONS.—Upon initiation of an inves-
2 tigation, the Trade Representative shall request the follow-
3 ing determinations be made according to substantive and
4 procedural requirements specified by the Trade Represent-
5 ative, notwithstanding any other provisions of this title:

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

9 “(2) The Commission shall determine whether
10 an industry in the petitioning country is materially
11 injured by reason of the sale of the subject vessel in
12 the United 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 determination required by subsection (b), and

17 “(2) by the administering authority and the
18 Commission, in making the determination 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 836, and

3 “(2) make such determinations and take such
4 other actions as are required by sections 836 and
5 837, as if affirmative determinations had been made
6 under section 835 (a) and (b).

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

10 “(1) the final determinations of the administer-
11 ing authority and the Commission under subsection
12 (c) shall be treated as final determinations made
13 under section 835, and

14 “(2) determinations of the administering au-
15 thority under paragraph (e)(2) shall be treated as
16 determinations made under section 836 or 837, as
17 the case may be.

18 “(g) **ACCESS TO INFORMATION.**—Section 877 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. 884. ADMINISTRATIVE ACTION FOLLOWING SHIP-
23 BUILDING AGREEMENT PANEL REPORTS.**

24 “(a) **ACTION BY UNITED STATES INTERNATIONAL
25 TRADE COMMISSION.**—

1 “(1) CONSULTATIONS WITH CONGRESSIONAL
2 COMMITTEES.—Promptly after a report by a dispute
3 settlement panel is issued that contains findings that
4 an action by the Commission in a proceeding under
5 title VIII of this Act is not in conformity with the
6 obligations of the United States under the Ship-
7 building Agreement, the Trade Representative shall
8 consult with the Committee on Ways and Means of
9 the House of Representatives and the Committee on
10 Finance of the Senate on the matter.

11 “(2) REQUEST FOR REPORTS.—In the case of a
12 report described in paragraph (1), the Trade Rep-
13 resentative may request the Commission to—

14 “(A) issue an advisory report on whether
15 title VIII of this Act permits the Commission to
16 take steps in connection with the particular pro-
17 ceeding that would render its action not incon-
18 sistent with the findings of the panel concerning
19 those obligations; and

20 “(B) if a majority of the Commissioners is-
21 sues an affirmative report under subparagraph
22 (A), issue a determination in connection with
23 the particular proceeding that would render the
24 Commission’s action described in paragraph (1)
25 not inconsistent with the findings of the panel.

1 The Trade Representative shall notify the congress-
2 sional committees listed in paragraph (1) of such a
3 request.

4 “(3) TIME LIMITS FOR REPORT.—The Commis-
5 sion shall transmit to the Trade Representative—

6 “(A) its report under subparagraph (A) of
7 paragraph (1) within 60 calendar days after the
8 request from the Trade Representative is made,
9 and

10 “(B) its determination under subparagraph
11 (B) of paragraph (1) within 120 calendar days
12 after the request from the Trade Representative
13 is made, but only if a majority of the Commis-
14 sioners issues an affirmative report under sub-
15 paragraph (A) of paragraph (1).

16 “(4) REVOCATION OF ORDER.—If, by virtue of
17 the Commission’s determination under subparagraph
18 (B) of paragraph (1), an injurious pricing order is
19 no longer supported by an affirmative Commission
20 determination under title VIII of this Act, the ad-
21 ministering authority shall revoke the injurious pric-
22 ing order and shall publish notice of the revocation
23 in the Federal Register.

24 “(b) ACTION BY ADMINISTERING AUTHORITY.—

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

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

11 “(B) the due date for payment of an inju-
12 rious pricing charge contained in an order is-
13 sued pursuant to section 836 of this Act should
14 be amended,

15 “(C) countermeasures provided for in an
16 order issued pursuant to section 837 should be
17 provisionally suspended or reduced pending the
18 final decision of the panel, or

19 “(D) the scope or duration of counter-
20 measures imposed pursuant to section 837 of
21 this Act should be narrowed or shortened,

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

1 “(2) DETERMINATION BY ADMINISTERING AU-
2 THORITY.—Notwithstanding any provision of this
3 Act, the administering authority shall, in response to
4 a written request from the Trade Representative,
5 issue a determination, or an amendment to or sus-
6 pension of an injurious pricing or countermeasure
7 order, as the case may be, in connection with the
8 particular proceeding that would render the admin-
9 istering authority’s action described in paragraph
10 (1) not inconsistent with the findings of the panel.

11 “(3) TIME LIMITS FOR DETERMINATIONS.—The
12 administering authority shall issue its determina-
13 tion—

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

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

22 “(4) IMPLEMENTATION OF DETERMINATION;
23 NOTICE OF IMPLEMENTATION.—The administering
24 authority shall implement the determination under
25 paragraph (2)—

1 “(A) with respect to a matter described in
2 subparagraph (A) of paragraph (1), only if the
3 injurious pricing margin in the determination
4 under paragraph (2) differs from the injurious
5 pricing margin in the determination reviewed by
6 the panel, and

7 “(B) with respect to a matter described in
8 subparagraph (B), (C), or (D) of paragraph
9 (1), upon issuance of the determination under
10 paragraph (2).

11 The administering authority shall publish notice of
12 implementation in the Federal Register.

13 “(c) OPPORTUNITY FOR COMMENT BY INTERESTED
14 PARTIES.—Prior to issuing a determination, the admin-
15 istering authority, in a matter described in paragraph
16 (b)(1)(A), or the Commission, in a matter described in
17 paragraph (a)(1), as the case may be, shall provide inter-
18 ested parties with an opportunity to submit written com-
19 ments and, in appropriate cases, may hold a hearing, with
20 respect to the determination.”

21 **SEC. 102. ENFORCEMENT OF COUNTERMEASURES.**

22 Subtitle III, part II, of the Tariff Act of 1930, as
23 amended, is further amended by the addition of the follow-
24 ing:

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 837 of this Act, the Customs Service shall deny
7 any request for a permit to lade or unlade passengers,
8 merchandise or baggage from or onto those vessels so list-
9 ed.

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

12 “(1) To unlade any United States citizen or
13 permanent legal resident alien from such vessel; or
14 to unlade any refugee or any alien who would other-
15 wise be eligible to apply for asylum and withholding
16 of deportation under the Immigration and Natu-
17 ralization Act.

18 “(2) To lade or unlade any crewmember(s) of
19 the listed vessel.

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

24 “(4) To lade or unlade supplies for the use or
25 sale on a listed vessel.

1 “(5) To lade or unlade such other merchandise,
2 baggage or passenger(s) as the Customs Service
3 shall determine necessary to protect the immediate
4 health, safety, or welfare of a human being.

5 “(c) CORRECTION OF MINISTERIAL OR CLERICAL
6 ERRORS.—

7 “(1) If the master of any vessel whose applica-
8 tion for a permit to lade or unlade has been denied
9 pursuant to this section believes that such denial re-
10 sulted from a ministerial or clerical error, not
11 amounting to a mistake of law, committed by any
12 Customs officer, the master may petition the Cus-
13 toms Service for correction of such error, as pro-
14 vided by regulation.

15 “(2) Notwithstanding paragraph (1), imposition
16 of countermeasures under this section shall not be
17 deemed an exclusion or other protestable decision
18 under section 514 of this Act, nor shall be subject
19 to correction under section 520 of this Act.

20 “(3) Any petition seeking administrative review
21 of any matter regarding the Secretary of Com-
22 merce’s decision to list a vessel under section 837 of
23 this Act must be brought pursuant to that section.

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

1 penalty not to exceed \$10,000 against the master of any
2 vessel—

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 pur-
7 suant to this section.”

8 **SEC. 103. JUDICIAL REVIEW IN INJURIOUS PRICING AND**
9 **COUNTERMEASURE PROCEEDINGS.**

10 (a) Subtitle III, part III, of the Tariff Act of 1930,
11 as amended, is further amended by the addition of the
12 following:

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

15 “(a) REVIEW OF DETERMINATION.—

16 “(1) Within 30 days after the date of publica-
17 tion in the Federal Register of—

18 “(A)(i) a determination by the administer-
19 ing authority, under section 832(c) of this Act,
20 not to initiate an investigation,

21 “(ii) a negative determination by the Com-
22 mission, under section 833(a) of this Act, as to
23 whether there is or has been reasonable indica-
24 tion of material injury, threat of material in-
25 jury, or material retardation,

1 “(iii) a determination by the administering
2 authority to suspend or revoke an injurious
3 pricing order under section 836 (d) or (e),

4 “(iv) a determination by the administering
5 authority under section 837(c) of this Act,

6 “(v) a determination by the administering
7 authority in a review under section 837(d) of
8 this Act,

9 “(vi) a determination by the administering
10 authority concerning whether to extend the
11 scope or duration of a countermeasure order
12 under section 837(e)(3)(B)(ii) of this Act,

13 “(vii) a determination by the administering
14 authority to amend a countermeasure order
15 under section 837(e)(6) of this Act,

16 “(viii) a determination by the administer-
17 ing authority in a review under section 837(g)
18 of this Act,

19 “(ix) a determination by the administering
20 authority under section 837(i) of this Act to
21 terminate proceedings, or to amend or revoke a
22 countermeasure order,

23 “(x) a determination by the administering
24 authority under section 884(b) of this Act, with

1 respect to a matter described in paragraph
2 (1)(D) of that section, or

3 “(B)(i) an injurious pricing order based on
4 a determination described in clause (i) of para-
5 graph (C),

6 “(ii) notice of a determination described in
7 clause (ii) of paragraph (C),

8 “(iii) notice of implementation of a deter-
9 mination described in clause (iii) of paragraph
10 (C), or

11 “(iv) notice of revocation of an injurious
12 pricing order based on a determination de-
13 scribed in clause (iv) of paragraph (C),

14 an interested party who is a party to the proceeding
15 in connection with which the matter arises may com-
16 mence an action in the United States Court of Inter-
17 national Trade by filing concurrently a summons
18 and complaint, each with the content and in the
19 form, manner, and style prescribed by the rules of
20 that court, contesting any factual findings or legal
21 conclusions upon which the determination is based.

22 “(C) REVIEWABLE DETERMINATIONS.—
23 The determinations which may be contested
24 under subparagraph (B) are as follows:

1 “(i) final affirmative determinations
2 by the administering authority and by the
3 Commission under section 835 of this Act,
4 including any negative part of such a de-
5 termination (other than a part referred to
6 in clause (ii)),

7 “(ii) a final negative determination by
8 the administering authority or the Com-
9 mission under section 835 of this Act,

10 “(iii) a determination by the admin-
11 istering authority under section 884(b) of
12 this Act, with respect to a matter described
13 in paragraph (1)(A) of that section, or

14 “(iv) a determination by the Commis-
15 sion under section 884(a) of this Act that
16 results in the revocation of an injurious
17 pricing order.

18 “(2) EXCEPTION.—Notwithstanding the limita-
19 tion imposed by paragraph (1)(B)(i) of this sub-
20 section, a final affirmative determination by the ad-
21 ministering authority under section 835 of this Act
22 may be contested by commencing an action, in ac-
23 cordance with the provisions of paragraph (1), with-
24 in thirty days after the date of publication in the

1 Federal Register of a final negative determination by
2 the Commission under section 835 of this Act.

3 “(3) PROCEDURES AND FEES.—The procedures
4 and fees set forth in chapter 169 of title 28 apply
5 to an action under this section.

6 “(b) STANDARDS OF REVIEW.—

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

9 “(A) in an action brought under paragraph
10 (A) of subsection (a)(1) of this section, to be
11 arbitrary, capricious, an abuse of discretion, or
12 otherwise not in accordance with law, or

13 “(B) in an action brought under paragraph
14 (B) of subsection (a)(1) of this section, to be
15 unsupported by substantial evidence on the
16 record, or otherwise not in accordance with law.

17 “(2) RECORD FOR REVIEW.—

18 “(A) IN GENERAL.—For the purposes of
19 this subsection, the record, unless otherwise
20 stipulated by the parties, shall consist of—

21 “(i) a copy of all information pre-
22 sented to or obtained by the administering
23 authority or the Commission during the
24 course of the administrative proceeding, in-
25 cluding all governmental memoranda per-

1 taining to the case and the record of ex
2 parte meetings required to be kept by sec-
3 tion 877(a)(2) of this title; and

4 “(ii) a copy of the determination, all
5 transcripts or records of conferences or
6 hearings, and all notices published in the
7 Federal Register.

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

17 “(c) STANDING.—Any interested party who was a
18 party to the proceeding under title VIII of this Act shall
19 have the right to appear and be heard as a party in inter-
20 est before the United States Court of International Trade.
21 The party filing the action shall notify all such interested
22 parties of the filing of an action under this section, in the
23 form, manner, and within the time prescribed by rules of
24 the court.

25 “(d) DEFINITIONS.—

1 “(1) ADMINISTERING AUTHORITY.—The term
2 ‘administering authority’ means the administering
3 authority described in section 871(1) of this Act.

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

7 “(3) INTERESTED PARTY.—The term ‘inter-
8 ested party’ means any person described in section
9 871(17) of this Act.”

10 (b) Paragraph (c) of section 1581 of title 28 is
11 amended by adding “or 516B” after “section 516A”.

12 (c) Section 2643 of title 28 is amended as follows:

13 (1) Amend paragraph (c)(1) by deleting “Ex-
14 cept as provided in paragraphs (2), (3), (4), and
15 (5)”, and adding in lieu thereof “Except as provided
16 in paragraphs (2), (3), (4), (5), and (6)”.

17 (2) Amend paragraph (c) by adding at the end
18 the following new paragraph:

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

TITLE II—OTHER PROVISIONS**SEC. 201. AMENDMENTS TO THE MERCHANT MARINE
ACT, 1936.**

The Merchant Marine Act, 1936, as amended, as hereby further amended as follows:

(a) Section 511(a)(2) (46 App. U.S.C. 1161(a)(2)) is amended by inserting “or, if the vessel is a Shipbuilding Agreement vessel, constructed in a Shipbuilding Agreement Party, but only with regard to monies deposited into the fund on or after the date this Act takes effect”, following “constructed in the United States”.

(b) Section 601(a) (46 App. U.S.C. 1171(a)) is amended by deleting “, and that such vessel or vessels were built in the United States, or have been documented under the laws of the United States not later than February 1, 1928, or actually ordered and under construction for the account of citizens of the United States prior to such date,” and inserting in lieu thereof “and that such vessel or vessels were built in the United States, or, if the vessel or vessels are Shipbuilding Agreement vessels, in a Shipbuilding Agreement Party”.

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

1 building Agreement vessel, in a Shipbuilding Agree-
2 ment Party,” prior to “except in an emergency.”.

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

5 (1) Subsection (a) is amended by inserting
6 “or, if the vessel is a Shipbuilding Agreement
7 vessel, in a Shipbuilding Agreement Party,” fol-
8 lowing “built in the United States”.

9 (2) Subsection (k) is amended as follows:

10 (A) Subparagraph (1)(A) is deleted,
11 and the following inserted in lieu thereof:

12 “(A)(i) constructed in the United States
13 and, if reconstructed, reconstructed in the
14 United States, or

15 “(ii) that is a Shipbuilding Agreement ves-
16 sel and is constructed in a Shipbuilding Agree-
17 ment Party and, if reconstructed, reconstructed
18 in a Shipbuilding Agreement Party.”

19 (B) Subparagraph (2)(A) is amended
20 to read as follows:

21 “(A)(i) constructed in the United States
22 and, if reconstructed, reconstructed in the
23 United States, or

24 “(ii) that is a Shipbuilding Agreement ves-
25 sel and is constructed in a Shipbuilding Agree-

1 ment Party and, if reconstructed, reconstructed
2 in a Shipbuilding Agreement Party, but only
3 with regard to moneys deposited into the fund
4 on or after the date this Act takes effect.”

5 (e) Section 610 (46 App. U.S.C. 1180) is amended
6 by deleting “shall be built in a domestic yard or shall have
7 been documented under the laws of the United States not
8 later than February 1, 1928, or actually ordered and
9 under construction for the account of citizens of the
10 United States prior to such date,” and inserting in lieu
11 thereof “shall be built in the United States or, if the vessel
12 is a Shipbuilding Agreement vessel, in a Shipbuilding
13 Agreement Party,”.

14 (f) Section 901(b)(1) (46 App. U.S.C. 1241(b)(1)) is
15 amended by deleting the third sentence and inserting in
16 lieu thereof the following: “For purposes of this section,
17 the term ‘privately owned United States-flag commercial
18 vessels’ shall be deemed to include—

19 “(1) and privately owned United States-flag
20 commercial vessel constructed in the United States,

21 “(2) any privately owned liner vessel con-
22 structed in a Shipbuilding Agreement Party, and if
23 reconstructed, reconstructed in a Shipbuilding
24 Agreement Party, that is documented pursuant to
25 chapter 121 of title 46, United States Code and is

1 less than five years of age on the date of such docu-
2 mentation, and

3 “(3) any privately owned bulk cargo vessel con-
4 structed or delivered by a shipyard located in a
5 Shipbuilding Agreement Party after January 1,
6 1993. The term ‘privately owned United States-flag
7 commercial vessels’ shall also be deemed to include
8 any liner or bulk cargo vessel that so qualified pur-
9 suant to section 615 of title VI or section 901(b)(1)
10 of title IX of this Act, prior to entry into force of
11 the Shipbuilding Agreement with respect to the
12 United States. The term ‘privately owned United
13 States-flag commercial vessels’ shall not be deemed
14 to include any liquid bulk cargo vessel that does not
15 meet the requirements of section 3703a of title 46,
16 United States Code.”

17 (g) Section 905 (46 App. U.S.C. 1244) is amended
18 by adding a new subsection (h) as follows:

19 “(h)(1) The term ‘Shipbuilding Agreement’ means
20 the Agreement Respecting Normal Competitive Conditions
21 in the Commercial Shipbuilding and Repair Industry and
22 the related Understanding on Export Credits for Ships,
23 resulting from negotiations under the auspices of the Or-
24 ganization for Economic Cooperation and Development,
25 entered into on December 21, 1994.

1 “(2) The term, ‘Shipbuilding Agreement Party’
2 means a state or separate customs territory that is a Party
3 to the Shipbuilding Agreement, and with respect to which
4 the United States applies the Shipbuilding Agreement.

5 “(3) The term, ‘Shipbuilding Agreement vessel’
6 means a vessel that the Secretary determines to be within
7 the scope of Article 2.1 of the Shipbuilding Agreement.

8 “(4) The term, ‘Export Credit Understanding’ means
9 the Understanding on Export Credits for Ships (OECD
10 document C/WP6(94)6), including any amendments there-
11 to.

12 “(5) The term, ‘Export Credit Understanding vessel’
13 means a vessel that the Secretary determines to be within
14 the scope of the Export Credit Understanding.”

15 (h) Section 1104A (46 App. U.S.C. 1274) is amended
16 as follows:

17 (1) Paragraph (b)(5) is amended to read as fol-
18 lows:

19 “(5) shall bear interest (exclusive of charges for
20 the guarantee and service charges, if any) at rates
21 not to exceed such per centum per annum of the un-
22 paid principal as the Secretary determines to be rea-
23 sonable, taking into account the range of interest
24 rates prevailing in the private market for similar
25 loans and the risks assumed by the Secretary: *Pro-*

1 *vided, however,* That, so long as the Export Credit
2 Understanding remains in force with respect to the
3 United States, with respect to Export Credit Under-
4 standing vessels the obligations shall bear interest at
5 a rate the Secretary determines to be consistent with
6 the Export Credit Understanding.”

7 (2) Subsection (i) is amended to read as fol-
8 lows:

9 “(i) LIMITATION ON ESTABLISHMENT OF PERCENT-
10 AGE.—(1) Except as provided in paragraph (2), the Sec-
11 retary may not, with respect to—

12 “(A) the general 75 percent or less limitation in
13 subsection (b)(2);

14 “(B) the 87½ percent or less limitation in the
15 1st, 2nd, 4th, or 5th proviso to subsection (b)(2) or
16 section 1112(b); or

17 “(C) the 80 percent or less limitation in the 3rd
18 proviso to such subsection;

19 establish by rule, regulation, or procedure any percentage
20 within any such limitation that is, or is intended to be,
21 applied uniformly to all guarantees or commitments to
22 guarantee made under this section that are subject to the
23 limitation.

24 “(2) With respect to Export Credit Understanding
25 vessels, the Secretary may establish by rule, regulation,

1 or procedure a uniform percentage that the Secretary de-
2 termines to be consistent with the Export Credit Under-
3 standing, provided, however, the Export Credit Under-
4 standing remains in force with respect to the United
5 States.”

6 (i) Section 1104B(b) (46 App. U.S.C. 1274a(b)) is
7 amended by deleting the period at the end and adding the
8 following: “, but, with respect to Export Credit Under-
9 standing vessels, the Secretary may establish by rule, reg-
10 ulation, or procedure a uniform percentage that the Sec-
11 retary determines to be consistent with the Export Credit
12 Understanding, *Provided, however,* That the Export Credit
13 Understanding remains in force with respect to the United
14 States.”

15 **SEC. 203. EQUIPMENT AND REPAIR OF VESSELS.**

16 Section 466 of the Tariff Act of 1930 (19 U.S.C.
17 1466), is amended by the addition of a new subsection
18 (i) as follows:

19 “(i) The duty imposed by subparagraph (a) of this
20 section shall not apply with respect to activities occurring
21 in a Shipbuilding Agreement Party, as defined in section
22 1244 of the appendix to Title 46, with respect to (a) self-
23 propelled seagoing vessels of 100 gross tons and above and
24 used for transportation of goods or persons or for per-
25 formance of a specialized service (including but not limited

1 to ice breakers and dredges) and (b) tugs of 365 kw and
2 over. A vessel shall be considered ‘self-propelled seagoing’
3 if its permanent propulsion and steering provide it all the
4 characteristics of self-navigability in the high seas.’”

5 **SEC. 204. EFFECT OF AGREEMENT WITH RESPECT TO PRI-**
6 **VATE REMEDIES.**

7 No person other than the United States—

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

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

17 **SEC. 205. IMPLEMENTING REGULATIONS.**

18 After the date of the enactment of this Act, respon-
19 sible officers of the United States Government may issue
20 such regulations as may be necessary to ensure that this
21 Act is appropriately implemented on the date the Ship-
22 building Agreement enters into force with respect to the
23 United States.

1 **SEC. 206. MONITORING COMPLIANCE WITH THE SHIP-**
2 **BUILDING AGREEMENT.**

3 (a) Title III of the Trade Act of 1979, as amended,
4 is further amended by the addition of the following:

5 **“SEC. 311. MONITORING COMPLIANCE WITH THE SHIP-**
6 **BUILDING AGREEMENT.**

7 “(a) MONITORING.—The Trade Representative, in
8 consultation with the Secretary, shall monitor the compli-
9 ance of each Shipbuilding Agreement Party with the Ship-
10 building Agreement.

11 “(b) PRELIMINARY DETERMINATIONS OF NON-
12 COMPLIANCE.—

13 “(1) ANNIVERSARY DATE.—

14 “(A) On each anniversary of the date of
15 the enactment of this Act, the Trade Represent-
16 ative shall make a preliminary determination,
17 on the basis of the monitoring under subsection
18 (a), as to whether any Shipbuilding Agreement
19 Party is in noncompliance with the Shipbuilding
20 Agreement.

21 “(B) The Trade Representative shall, with-
22 in 7 days after the anniversary date, publish in
23 the Federal Register a notice setting forth—

24 “(i) each preliminary determination
25 made under this subsection, together with
26 a statement of the basis therefor, and a re-

1 quest for public comments thereon within
2 30 days of the date of the Federal Register
3 notice; and

4 “(ii) the results of the monitoring
5 under subsection (a).

6 “(2) RECEIPT OF INFORMATION.—

7 “(A) The Trade Representative shall also
8 make a preliminary determination as to whether
9 a Shipbuilding Agreement Party is in non-
10 compliance with the Shipbuilding Agreement
11 within 30 days after the receipt of information
12 alleging that there are reasonable grounds to
13 suspect such noncompliance.

14 “(B) The Trade Representative shall, with-
15 in 7 days after the determination under sub-
16 paragraph (A), publish in the Federal Register
17 a notice setting forth each preliminary deter-
18 mination made under this subsection, together
19 with a statement of the basis therefor, and a re-
20 quest for public comments thereon within 30
21 days of the date of the Federal Register notice.

22 “(c) FINAL DETERMINATIONS OF NONCOMPLI-
23 ANCE.—Within 60 days after the date of publication of
24 a Federal Register notice under subsection (b), the Trade
25 Representative shall publish a notice in Federal Register

1 setting forth a final determination, together with a state-
 2 ment of the basis therefor, as to whether a Shipbuilding
 3 Agreement Party is in noncompliance with the Shipbuild-
 4 ing Agreement.

5 “(d) ACTION BY THE TRADE REPRESENTATIVE RE-
 6 GARDING NONCOMPLIANCE.—Within 15 days of the date
 7 of publication of a Federal Register notice under section
 8 (c) in which a Shipbuilding Agreement Party has been de-
 9 termined to be in noncompliance with the Shipbuilding
 10 Agreement, the Trade Representative shall—

11 “(1) notify the Shipbuilding Agreement Party;

12 and

13 “(2) either—

14 “(A) invoke the dispute settlement proce-
 15 dures of the Shipbuilding Agreement, or

16 “(B) take any other appropriate action.”

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