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OECD SHIPBUILDING AGREEMENT ACT

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Mr. ROTH, from the Committee on Finance, submitted the following

REPORT

[To accompany S. 1216]

[Including cost estimate of the Congressional Budget Office]

The Committee on Finance having considered legislation to approve and implement the Agreement Respecting Normal Competitive Conditions in the Commercial Shipbuilding and Repair Industry, resulting from negotiations conducted under the auspices of the Organization for Economic Cooperation and Development, reports favorably thereon and refers the bill to the full Senate with a recommendation that the bill do pass.

I. BACKGROUND

On June 8, 1989, the Shipbuilders Council of America (SCA), representing the U.S. shipbuilding industry, filed a petition under section 301 of the Trade Act of 1974, which alleged that foreign government subsidies to the shipbuilding industry constituted an unjustifiable, unreasonable, or discriminatory trade practice that burdens or restricts U.S. commerce. The SCA withdrew the petition on July 21, 1989, following a commitment by the U.S. Government to initiate negotiations on an agreement to discipline government support to the shipbuilding and repair industry within the framework of the Working Party on Shipbuilding of the Council of the Organization for Economic Cooperation and Development ("OECD"). These negotiations commenced on October 24, 1989, when the United States notified the Executive Committee of the OECD of its intention to negotiate such an agreement.

After more than five years of negotiation, the Agreement Respecting the Normal Competitive Conditions in the Commercial Shipbuilding and Repair Industry (the "Shipbuilding Agreement") was signed on December 21, 1994, by the Commission of the European Communities, and the Governments of Finland, Japan, the Republic of Korea, Norway, Sweden, and the United States. Together, the signatories account for approximately 80 percent of global shipbuilding capacity.

The Shipbuilding Agreement applies only to the construction and repair of self-propelled, seagoing commercial vessels of 100 gross tons and above (including certain specialized vessels) and tugs of 365 kilowatts or more. It does not cover the construction of naval vessels or the outfit and repair of vessels for military purposes.

The Shipbuilding Agreement has four general sections. First, with some limited exceptions, the Shipbuilding Agreement requires the elimination of virtually all subsidies to the shipbuilding industry granted either directly to shipbuilders or indirectly through ship operators or other entities. Second, to avoid trade-distorting financing programs, the Shipbuilding Agreement also establishes common rules to discipline government financing for export and domestic ship sales. Third, the Shipbuilding Agreement includes an "injurious-pricing code," modeled on the antidumping rules of the World Trade Organization (WTO), which would allow signatories to assess an offsetting injurious-pricing charge against foreign shipbuilders who sell ships at unfairly low (i.e., dumped) prices that injure domestic shipbuilders. The injurious-pricing code also permits signatories to impose specified countermeasures against a foreign shipbuilder that is subject to an affirmative injurious-pricing determination, if the shipbuilder does not pay the injurious-pricing charge. Finally, the Shipbuilding Agreement includes binding rules for dispute settlement in the OECD, which are patterned after the WTO's dispute-settlement regime.

The Shipbuilding Agreement is scheduled to enter into force 30 days after all signatories deposit instruments of ratification, acceptance, or approval with the OECD Secretariat. In order for the United States to complete its ratification, legislation must be enacted by Congress to bring U.S. law into compliance with the Shipbuilding Agreement.

The Shipbuilding Agreement had an initial target date for entry into force of January 1, 1996. At the meeting of the OECD Council Working Party on Shipbuilding on December 11, 1995, representatives of Korea, Norway, and the European Union (which now includes Finland and Sweden) deposited their respective instruments of ratification with the OECD Secretariat. At the same time, participants acknowledged that it would not be possible for either the United States or Japan to complete their ratification procedures in time to meet the original target effective date of January 1, 1996. Accordingly, representatives of the signatories agreed to extend the deadline and set a new target date of June 15, 1996, for depositing instruments of ratification, thereby permitting the Shipbuilding Agreement to enter into force by July 15, 1996.

On June 14, 1996, representatives of Japan deposited that country's instrument of ratification with the OECD Secretariat. Efforts in the 104th Congress to approve the implementing legislation that

would allow U.S. ratification of the Shipbuilding Agreement were unsuccessful. Nonetheless, a so-called "standstill" provision in the Shipbuilding Agreement (which prohibits the signatory countries from creating new or expanding existing shipbuilding subsidy programs) remains in force until the Shipbuilding Agreement comes into effect upon completion of its ratification by all signatory countries. The Committee is concerned that the future of the Shipbuilding Agreement is in jeopardy as the Council of the European Union is scheduled to consider a proposed package of shipyard subsidies in Spain, Germany, and Greece worth $2.1 billion by the end of September 1997.

II. SUMMARY OF THE BILL

The Shipbuilding Agreement establishes a mechanism for the determination of injurious pricing in the construction and sale of seagoing vessels, in a manner analogous to the provisions in the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("WTO Antidumping Agreement"). In addition, the Shipbuilding Agreement provides for the assessment of an injurious-pricing charge and countermeasures where appropriate—remedies that are different from the antidumping provisions under Title VII of the Tariff Act of 1930, as amended ("Title VII"), which implements the WTO Antidumping Agreement in U.S. law. Because ocean-going vessels engaged in international trade are technically not imported or entered for consumption in the United States, it is not possible to use the antidumping remedies of Title VII to cover the sale of vessels at less than fair value. Accordingly, separate statutory authority is required to implement the Shipbuilding Agreement.

1. Injurious Pricing and Countermeasures

Section 102 of the bill would establish a new Title VIII of the Tariff Act of 1930, as amended, in order to create an injurious-pricing mechanism applicable to shipbuilding. This mechanism would permit the collection of an injurious-pricing charge against ocean-going vessels sold to U.S. buyers at a price below normal value when that sale injures a U.S. shipbuilding industry. This mechanism also allows for the imposition of countermeasures against a shipyard that fails to pay the injurious-pricing charge.

The new Title VIII would be analogous to the current antidumping provisions of Title VII, which set forth procedures under U.S. law for assessment of antidumping duties. The specific injurious-pricing provisions differ from the antidumping provisions in Title VII only where necessary to take into account differences between the Shipbuilding Agreement and the WTO Antidumping Agreement due to the unique characteristics of the construction and sale of ocean-going vessels.

The new Title VIII would also provide for judicial review of injurious pricing and countermeasures determinations in the U.S. Court of International Trade, with subsequent appellate review in the U.S. Court of Appeals for the Federal Circuit.

2. Other Provisions

The bill also includes the following changes or additions to current law:

- Repairs made in a signatory to the Shipbuilding Agreement on U.S.-flagged vessels of a type covered by the Shipbuilding Agreement and on integrated tug-barges would be exempt from the 50 percent duty imposed under section 466 of the Tariff Act of 1930 on the cost of repairs made outside the United States on a U.S.-flagged vessel.
- The requirements of certain tax and subsidy programs available under the Merchant Marine Act, 1936 to vessels constructed in the United States, as well as government guarantees available under Title XI of the Merchant Marine Act for financing the construction, reconstruction or reconditioning of U.S. built vessels, are changed to conform to the requirements of the Shipbuilding Agreement and the related OECD Understanding on Export Credits for Ships. Changes to Title XI will not take effect until January 1, 2000.
- Private persons other than the U.S. Government are prohibited from asserting any cause of action or defense under the Shipbuilding Agreement in U.S. courts.
- The President would be required to commence U.S. withdrawal from the Shipbuilding Agreement when one or more Shipbuilding Agreement Parties, accounting for a specified tonnage of construction of vessels covered by the Shipbuilding Agreement, withdraws from the Agreement.
- Procedures for withdrawing Congressional approval of the Shipbuilding Agreement when a Shipbuilding Agreement Party undertakes responsive measures pursuant to a determination that the Jones Act[1] has significantly undermined the balance of rights and obligations under the Shipbuilding Agreement.

III. General Description

Short Title; Purposes; Table of Contents

(Section 1)

Section 1 provides that the title may be cited as the "OECD Shipbuilding Trade Agreement Act." Section 1 also lists three purposes of the Act:

- To enhance the competitiveness of U.S. shipbuilders which has been diminished as a result of foreign subsidies and predatory pricing practices.
- To ensure that U.S. ownership, manning, registry, and construction requirements for coastwise trade vessels, which have provided the Department of Defense with mariners and assets in times of national emergency, cannot be compromised by the Shipbuilding Agreement.
- To strengthen the U.S. shipbuilding industrial base to ensure that its full capabilities are available in time of national emergency.

[1] The Merchant Marine Act, 1920 (46 App. U.S.C. 861 et seq.), the Act of June 19, 1886 (46 App. U.S.C. 289), or any other provision of law set forth in Accompanying Note 2 to Annex II of the Shipbuilding Agreement.

1. TITLE I—APPROVAL AND IMPLEMENTATION OF OECD SHIPBUILDING AGREEMENT

A. SUBTITLE A—GENERAL PROVISIONS

Approval of the Shipbuilding Agreement

(Section 101)

Section 101 provides that the Congress approves the Shipbuilding Agreement, which resulted from negotiations conducted under the auspices of the OECD and which was entered into on December 21, 1994.

Injurious Pricing and Countermeasures Relating to Shipbuilding

(Section 102)

Section 102 adds a new Title VIII to the Tariff Act of 1930. Title VIII contains four subtitles, described section-by-section below. Because Title VIII is modeled on the antidumping statute in Title VII, this description outlines only the differences between the two titles.

SUBTITLE A—INJURIOUS PRICING CHARGE AND COUNTERMEASURES

Section 801: Injurious Pricing Charge

Section 801 would require the imposition of a one-time injurious-pricing charge against a foreign shipbuilder if the Department of Commerce (Commerce) determines that a vessel produced by that shipbuilder has been sold directly or indirectly to a U.S. buyer at less than its fair value and the International Trade Commission (ITC) determines that an industry in the United States is or has been materially injured or threatened with material injury, or the establishment of an industry in the United States is or has been materially retarded by reason of the sale of that vessel. The amount of the injurious-pricing charge would be the amount by which normal value exceeds the export price. The injurious-pricing charge would be assessed once for the sale in question. After the charge is paid, there would be no continuing liability on future sales or scrutiny of sales of other vessels produced by the foreign shipbuilder unless a separate investigation is conducted with respect to each of those sales.

Section 801 is modeled on and analogous to section 731 of Title VII. However, Title VIII contains several changes, which are required to take into account the unique characteristics of the shipbuilding industry and the requirements of the Shipbuilding Agreement. Specifically, because ocean-going vessels engaged in international trade are technically not imported or entered for consumption in the United States, the Shipbuilding Agreement and Title VIII would permit investigations to be commenced when a vessel is sold directly or indirectly to a U.S. buyer, regardless of whether the vessel is imported or entered for consumption in the United States.

Thus, the traditional antidumping mechanism of imposing an antidumping duty on future entries of imported merchandise would

not provide a domestic shipbuilding industry with effective relief. Accordingly, the Shipbuilding Agreement and Title VIII would establish a one-time charge to be assessed against the shipyard producing the injuriously-priced vessel.

Finally, the Shipbuilding Agreement provides that there must be a demonstration that there is or *has been* material injury by reason of the sale of the vessel or vessels in question. In contrast, the WTO Antidumping Agreement provides that there must be a demonstration that there *is* material injury by reason of imports. Accordingly, section 801 reflects the difference by requiring the ITC to determine whether there is or *has been* material injury by reason of the sale of the injuriously-priced vessel.

Accordingly, the Committee intends that the material injury standards of Title VII and Title VIII be interpreted differently consistent with the particular nature of the material-injury inquiry under the two titles.

Section 802: Procedures For Instituting An Injurious-Pricing Investigation

Section 802 sets forth the procedures for conducting an injurious-pricing investigation. Section 802(a) describes procedures for initiation by Commerce and provides that an investigation may be self-initiated only within six months after the time that Commerce first knew or should have known of the sale of the vessel. Section 802(b) describes the procedures for initiation by petition. These procedures require that a petition be filed within either six or nine months (depending upon the circumstances) from the time the petitioner knew or should have known of the sale of the vessel, but no later than six months after the delivery of the vessel. If these deadlines are not met, an investigation may not be commenced.

Section 802(b)(1)(B)(i) provides that if a petitioner is a producer, it must show that it had the capability to produce the subject vessel. In addition, if the sale of the subject vessel was made through a bidding process that was either a broad multiple bid or on which the producer was invited to bid, the petitioner must show that it made a timely effort to obtain the sale through a proposal that met bid specifications. If the sale was not made through a broad multiple bid and the petitioner was not invited to bid, but knew or should have known of the proposed purchase of the vessel in question, the petitioner must show it made timely efforts to conclude a sale consistent with the buyer's requirements.

In some instances, a petitioner may be capable of producing the vessel in question, but was not invited to participate in a bid because the buyer claims that it did not know that the petitioner was capable of producing a vessel to specification. In determining standing pursuant to section 802(b)(1)(B)(i)(I), the Committee does not intend that the Commerce Department narrowly construe the definition of "broad multiple bid" in section 861(31) to require that the buyer have actual knowledge of the petitioner's capability to produce the required vessel. Rather, the Commerce Department should examine whether the buyer extended invitations to at least all those producers that the buyer knew or reasonably should have known were capable of producing the required vessel. In considering this question, the Commerce Department should consult with

the Maritime Administration. The Commerce Department should also consider whether the petitioner may still have standing pursuant to section 802(b)(1)(B)(i)(III).

Section 802(d)(1) provides a 45-day deadline, with no extension, for initiating an investigation after the filing of a petition, assuming that the petition meets the requirements set forth. Among these requirements, section 802(d)(4) sets forth certain requirements for petitioners, including the requirement that a petitioner must file "on behalf of" a domestic industry. Under this requirement, there must be sufficient industry support for the petition. Support is deemed to be sufficient when the following criteria are met:

- domestic producers or workers who support the petition must account for at least 25 percent of the total capacity of domestic producers capable of producing the like vessel; and
- domestic producers or workers who support the petition must account for more than 50 percent of the total capacity to produce the like vessel of that portion of the industry expressing a view on the petition.

Section 802(d)(6) provides that Commerce may not initiate an injurious-pricing investigation if a third country that is a WTO member, but not a party to the Shipbuilding Agreement, has initiated an antidumping proceeding against the same vessel that has been pending for not more than a year, or that has been completed and resulted in the imposition of antidumping measures or a negative determination.

The procedures for initiating an injurious-pricing investigation under Title VIII differ in a number of respects from procedures for initiating an antidumping investigation under Title VII. Because most injurious-pricing investigations will involve only one ship, it was deemed appropriate to establish deadlines in the Shipbuilding Agreement for the filing of petitions and for self-initiation of an investigation with respect to that ship. Such deadlines are not needed in an antidumping investigation under Title VII, in which all entries of the subject imports during a specified period (generally 12 months for Commerce and 3 years for the ITC) are subject to investigation.

In addition, because vessels are generally unique and often made to individual specifications, a domestic producer may not have produced a vessel actually identical to the subject vessel. Nonetheless, the domestic producer could still be injured as a result of the sale because that producer was capable of producing the subject vessel. By contrast, Title VII investigations require that the petitioner, if a producer, actually produce or manufacture the like product (except in the context of a determination whether the establishment of a domestic industry is materially retarded by reason of dumped imports). Moreover, the petitioner under Title VII is not required to show that it made an effort to sell like merchandise to the purchaser.

Title VIII provides for a 45-day period for determining whether to initiate an injurious-pricing investigation, as opposed to 20 days with a possible extension to 40 days in an antidumping case under section 732(c)(1) of Title VII, because of the Administration's concern that the new representation requirements and deadlines for

filing petitions under Title VIII may create additional complexities requiring more time to determine the sufficiency of the petition.

Finally, Title VII does not provide for the delay or termination of an antidumping investigation if another WTO member undertakes antidumping or other measures against like merchandise from the subject country. Under Title VIII, however, a U.S. producer could seek to bring an injurious-pricing action against a vessel that is also subject to an antidumping action in a WTO member country that is not a party to the Shipbuilding Agreement. In this situation, the Shipbuilding Agreement and Title VIII would require that the injurious-pricing action not be initiated in certain circumstances.

Section 803: Preliminary Investigations

Section 803(a) would require the ITC to make its preliminary determination within 90 days after the filing of the injurious-pricing petition.

Section 803(b) states that Commerce is to make its preliminary determination within 160 days after initiating its investigation or 160 days after the date of delivery of the vessel in a cost or constructed-value investigation. An extension is permitted in extraordinarily complicated cases or for good cause until not later than 190 days after initiation or date of delivery, as the case may be.

These time periods for preliminary determinations in Title VIII cases are generally longer than in antidumping investigations under Title VII. This difference is related to the different nature of the investigations under the two titles. Due to the unique nature of the construction of vessels, a Title VIII cost investigation must be delayed until construction is completed to allow Commerce to obtain actual cost information. Tying Commerce's investigation to the date of the vessel's delivery may result in a delay of the investigation for several years due to the length of time necessary to construct a vessel.

Because the remedies established under Title VII and Title VIII are completely different, the effect of a preliminary affirmative Commerce determination would be different as well. Title VII provides for provisional relief in the form of the posting of a bond or cash deposit by the importer in the amount of the preliminary dumping margin and the collection of duties on entries of the subject merchandise after an affirmative preliminary determination has been rendered. Under Title VIII, however, no provisional relief after the preliminary investigation is necessary because the remedy consists entirely of a one-time charge, imposed on the shipbuilder after a final determination has been made.

Section 804: Termination or Suspension of Investigation

Section 804(d) provides for the suspension of an injurious-pricing investigation if a third country that is a WTO member, but not a party to the Shipbuilding Agreement, initiates an antidumping proceeding with respect to the same vessel. The investigation would be terminated if the third country proceeding results in the imposition of antidumping measures or a negative determination. If the third-country proceeding ends without the imposition of antidumping

measures or a negative determination, or if it is not concluded within one year (unless antidumping measures are subsequently imposed), the suspension would end and the Title VIII investigation would proceed.

This rule under 804(d) contrasts with Title VII, which does not allow for the suspension or termination of an investigation based on action by a third country. However, the Shipbuilding Agreement contemplates the situation where, for example, a U.S. producer seeks to bring a Title VIII action against a vessel that has been sold to a buyer in the United States and is also subject to an antidumping investigation by a WTO Member country that is not a party to the Shipbuilding Agreement. The rule in the Shipbuilding Agreement and Title VIII would require that the injurious-pricing investigation be terminated or suspended in such situations to avoid multiple investigations of the subject vessel.

Section 805: Final Determinations

Section 805(a) provides that Commerce would be required to make its final determination in an injurious-pricing investigation under Title VIII not later than 75 days after its preliminary determination. This period may be extended under certain circumstances to 290 days after initiation of the investigation in ordinary cases or after delivery of the vessel in cost or constructed-value investigations.

Section 805(b) provides that the ITC would be required to make its final determination before the later of the l20th day on which Commerce makes an affirmative preliminary determination or the 45th day after the day on which Commerce makes an affirmative final determination.

The extension for completion of Commerce's injurious-pricing investigation is longer under Title VIII than is provided for under section 735 of Title VII in an antidumping investigation. This difference between the two titles is related to the different nature of the investigations and the substantial delays that may be caused by use of actual cost data with respect to the construction of ships.

Section 806: Imposition And Collection Of Injurious Pricing Charge

In the event of final affirmative determinations by Commerce and the ITC under Title VIII, Commerce would be required to publish an order imposing a one-time injurious-pricing charge on the foreign shipbuilder in an amount equal to the injurious pricing margin for the vessel subject to investigation. The shipbuilder must pay the charge within 180 days. However, the payment period may be extended under extraordinary circumstances, subject to interest charges. Once the injurious-pricing charge is paid, the shipbuilder would not be subject to any continuing liability on the vessel in question or on future sales or scrutiny of sales of other vessels constructed by that shipbuilder unless a new investigation under Title VIII is conducted with respect to each of those future sales.

This injurious-pricing remedy under the Shipbuilding Agreement and Title VIII is different than the antidumping remedy under Title VII because of the differences between the sale of imported

merchandise and the nature of sales transactions involving ships. Because vessels engaged in international trade do not enter the United States for consumption, the traditional antidumping mechanism of imposing an antidumping duty on future entries would not provide the domestic industry with effective relief. Accordingly, the Shipbuilding Agreement and Title VIII would establish a one-time charge to be assessed against the shipyard producing the injuriously-priced vessel. Because the remedy would be a one-time charge, there is no need for an administrative or sunset review of the order as provided for under section 751 with respect to antidumping orders under Title VII.

Section 807: Imposition of Countermeasures

Section 807 provides that failure to pay the injurious-pricing charge imposed against a foreign shipbuilder subjects that shipbuilder to the imposition of countermeasures. The countermeasures would take the form of a temporary denial (for a period of up to four years after delivery of the vessel subject to countermeasures) of privileges to load or unload cargo or passengers in the United States to vessels contracted to be built by the offending shipbuilder within a period of up to four years after the effective date of the countermeasures.

Sections 807(b) and (c) set forth the procedures for establishing countermeasures. Specifically, section 807(b) would require Commerce to publish a notice of an intent to impose countermeasures not later than 30 days before the expiration of the time for payment of the injurious-pricing charge. Under section 807(c), Commerce would be required to issue a determination and order imposing countermeasures within 90 days after the notice of intent is published. In issuing this order, Commerce would be required to determine whether an interested party has demonstrated that the scope or duration of the countermeasures should be narrower or shorter than that set forth in the notice of intent.

Section 807(d) provides that if countermeasures are imposed, they may be reviewed annually as to scope and duration.

Section 807(e) provides that countermeasures may be extended in scope and duration beyond four years only if a panel established under the Shipbuilding Agreement agrees that such extension is appropriate.

Finally, section 807(f) would require Commerce to publish each year a list of all vessels subject to countermeasures and to provide notice of the imposition of countermeasures to certain interested parties.

The countermeasures procedure under Title VIII is essentially an enforcement mechanism. Neither Title VII nor the WTO Antidumping Agreement provide for the imposition of countermeasures. However, an injurious-pricing order under Title VIII would not apply to future vessels delivered by the shipyard in question. Therefore, the United States would have no recourse in enforcing the order if the shipyard refused to pay the injurious-pricing charge. Accordingly, it is necessary to establish a mechanism to ensure that a shipyard is unable to avoid the remedial effect of an order simply by not paying the injurious-pricing charge, and Title VIII and the Ship-

building Agreement establish the countermeasures procedure as the enforcement mechanism.

The Committee notes that under section 861(17)(G) of Title VIII, purchasers of vessels potentially subject to countermeasures have standing to participate fully in proceedings concerning the imposition of countermeasures. The Committee expects that the interests of such purchasers, as well as other interested parties (such as domestic producers, respondents, workers, and relevant trade or business associations) be taken into account in making countermeasure determinations.

The Committee also notes that the countermeasures would apply to vessels contracted to be built by the offending foreign producer after the date of the order imposing countermeasures. Specifically, a vessel would be covered if the material terms of sale for that vessel are established within a period of four consecutive years beginning 30 days after the notice of intent is published. The Committee expects that purchasers will be given ample notice as to vessels that may be potentially covered by the countermeasure order and wishes to avoid situations in which purchasers would not have sufficient notice that changes in contract terms could subject the vessel to countermeasures.

Accordingly, the Committee intends that only significant changes in the material terms of a legitimate contract entered into before the effective date of the countermeasures order should push the sale into the period covered by countermeasures if those changes were made after the order's effective date. Such significant changes amount to more than, for example, merely changing the delivery date because of construction delays, changing vessel specifications in a manner that does not affect the overall nature of the vessel subject to the contract, or other minor changes in price or terms. Of course, the Committee also intends that a vessel would be included in the countermeasure order if a sham contract were established covering the vessel before the effective countermeasure date simply to avoid imposition of countermeasures.

Section 808: Injurious Pricing Petitions By Third Countries

Section 808 provides that the government of a party to the Shipbuilding Agreement may file a petition with the U.S. Trade Representative (USTR) that requests an investigation to determine whether a vessel from another Shipbuilding Agreement Party has been sold directly or indirectly to one or more U.S. buyers at less than its normal value and that an industry in the petitioning country is materially injured by reason of the sale. After consulting with Commerce and the ITC, USTR would be required to determine whether to initiate an investigation. However, USTR would be able to proceed to initiate the investigation only after obtaining the approval of the Parties Group under the Shipbuilding Agreement.

The procedure in section 808 to allow third countries to file injurious-pricing petitions is in accordance with the requirements of the Shipbuilding Agreement and is intended to provide an opportunity to conduct an investigation to determine whether injury by reason of an injuriously-priced sale is experienced in another Shipbuilding Agreement Party. Section 808 is comparable to the proce-

dure under Title VII, section 783, which allows the government of a WTO party to file a petition with USTR requesting the initiation of an antidumping investigation to determine whether there is material injury to an industry in the petitioning country by reason of dumped imports entered for consumption in the United States.

Section 809: Third Country Injurious Pricing

Section 809 addresses concerns over the effects on the U.S. industry resulting from the injurious pricing of vessels sold to buyers in Shipbuilding Agreement parties other than the United States. The section establishes procedures analogous to section 1317 of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 1677k) regarding third-country dumping. These procedures permit the domestic industry to petition the U.S. Trade Representative if the industry has reason to believe that a vessel has been sold in another party to the Shipbuilding Agreement at less than fair value and such sale is injuring the U.S. domestic industry.

If USTR determines that there is a reasonable basis for the allegations in the petition, USTR shall submit an application to the appropriate authority of the Shipbuilding Agreement Party requesting that an injurious-pricing action be taken on behalf of the United States under the laws of that country with respect to the sale of the vessel in question. At the request of USTR, the appropriate officers of the Commerce Department and the ITC are to assist USTR in preparing any such application.

After submitting the application to the appropriate authorities of the Shipbuilding Agreement Party, USTR must seek consultations with such authorities regarding the requested action. The Committee understands that the Shipbuilding Agreement Party would be able to proceed to initiate an investigation requested by the United States only after obtaining the approval of the Parties Group under the Shipbuilding Agreement. If the government of the Shipbuilding Agreement Party refuses to take any injurious-pricing action, USTR must consult with the domestic industry regarding further action under any other U.S. law as appropriate.

SUBTITLE B—SPECIAL RULES

Section 821: Export Price

Section 821 sets forth the rules for determining the export price to be used in injurious-pricing investigations. "Export price" is defined as the price at which the subject vessel is first sold (or agreed to be sold) by or for the account of the foreign producer of the subject vessel to an unaffiliated U.S. buyer. Such a sale would include any transfer in ownership interest, including by lease or long-term bareboat charter, in conjunction with the original transfer from the producer, either directly or indirectly, to a U.S. buyer. Section 821(b) sets forth the adjustments to be made to export price.

The definition of export price under section 821 is similar to the definition in Title VII (section 772). However, Title VII also contains a definition of the concept "constructed export price." Because of the unique manner in which vessels are sold, there is no need

for a constructed export price concept in the context of an injurious-pricing determination under Title VIII.

Section 822: Normal Value

Section 822(a)(1) provides that the normal value of the subject vessel is the price of a like vessel in the home market, as adjusted, if sold at a time reasonably corresponding to the time of the sale under investigation. Section 822(a)(1)(D) defines such contemporaneous sales as being within three months before or after the sale of the subject vessel or, in the absence of such sales, such longer period as Commerce determines would be appropriate. If home-market sales are not available, Commerce would be required to determine normal value based on the price of a like vessel in third-country sales. Only if such sales are inappropriate could Commerce use constructed value to determine normal value.

Section 822(e) provides that in constructed-value situations, normal value would be derived on the basis of a statutory formula, which is the sum of the costs of production, plus the actual amount of profit and selling, administrative, and general expenses (where actual data are available). If constructed value is used, section 803(b)(1)(C) provides that the investigation may be delayed until the construction of the ship in question has been completed, even though the petition was filed at the time of contract.

Section 822(b) states that if Commerce determines that a home-market sale was made at less than the cost of production and was at a price that does not permit recovery of all costs within five years, that sale may be disregarded in determining normal value. If a sale is disregarded, normal value would be based on another sale of a foreign like vessel in the ordinary course of trade. If no such sale is available, then Commerce must use constructed value to determine the normal value of the subject vessel.

Section 822(f)(1)(C) provides for adjusting costs if they have been affected by startup operations. Section 822(f)(1)(D) would require that costs due to "extraordinary circumstances" such as labor disputes, fire, and natural disaster, be excluded.

The rules applicable to normal value in Title VIII are similar to those of Title VII (section 773), altered only where necessary to account for the lengthy periods required to construct ships and the fact that, due to the unique nature of the shipbuilding industry, there often are few, if any, vessels constructed by the foreign shipbuilder that may be used as an appropriate comparison. Title VII contains no special provision for adjusting costs due to "extraordinary circumstances" such as labor disputes, fire, or natural disaster.

The Committee understands that Commerce expects to use constructed value in most investigations because of lack of actual comparable sales. Nonetheless, the Committee expects that Commerce will make every effort to base normal value on home market or third-country sales when available within a reasonably coincident period.

Section 823: Currency Conversion

Under section 823(a), Commerce would be required to convert foreign currencies into U.S. dollars using the exchange rate in effect on the date of sale of the subject vessel, except that if it is established that a currency transaction on forward markets is directly linked to a sale under consideration, the rate specified in the forward-sale agreement shall be used.

Section 823(b) would define the date of sale as the date of the contract of sale. If the material terms of sale are significantly changed after that date, the date of sale would be the date of the change, and Commerce would be required to adjust for any unreasonable effect on the injurious-pricing margin due only to fluctuations in the exchange rate between the original and the new date of sale.

The provisions of section 823 are essentially the same as under Title VII, section 773A. Unlike the WTO Antidumping Agreement, however, the Shipbuilding Agreement does not require that, in converting currencies, fluctuations in exchange rates are to be ignored. This difference between the two agreements, which is reflected in Title VIII, accounts for differences in the respective investigations under the two titles, as well as the particular characteristics of the shipbuilding industry. In an antidumping investigation under Title VII, Commerce generally investigates multiple transactions during the 12 months prior to the filing of the petition. During that period of time, the exchange rate may fluctuate or change. Accordingly, under Title VII, Commerce is required to allow exporters time to adjust their export prices in response to sustained changes in the exchange rate. However, most Title VIII injurious-pricing investigations would involve only a single sales transaction.

Furthermore, two years or more may elapse between the time a ship contract is signed and ship construction is completed. Because of the long lead-time, during which numerous contract modifications may occur that could change the date of sale, there is much greater potential for movements in exchange rates to distort unreasonably the margin calculation for that sale. Therefore, section 823 requires adjustments to eliminate such distortions.

SUBTITLE C—PROCEDURES

Sections 841 Through 845: Procedures

Sections 841 through 845 set forth procedural requirements concerning the injurious-pricing mechanism. Specifically, section 841 provides that, upon request, Commerce and the ITC are each to hold hearings during their investigations.

Section 842 provides for determinations on the basis of the facts available. As in section 776 of Title VII, the option to use adverse inferences would be limited to those cases in which the agency finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Moreover, whenever the agency relies on secondary information rather than information obtained during the course of the investigation, the agency, to the extent practicable, would be required to

corroborate that information from independent sources that are reasonably at its disposal.

Section 843 sets forth the requirements for making information concerning the investigation available to the public, treating information as proprietary, disclosing proprietary information under protective order, serving submissions on other parties, handling violations of protective orders and sanctions, providing opportunity for comment by vessel buyers, and publishing determinations.

Section 844 sets forth procedures for conducting investigations, including certification of submissions, the manner for handling difficulties by the parties in meeting requirements of the investigation, treatment of deficient submissions, use of information submitted by the parties, non-acceptance of submissions, public comment on information, and verification of information submitted. The provision would require that the agencies not decline to consider information submitted by an interested party that is necessary to the determination but does not meet all of the requirements of the agency, if the information is submitted by the established deadline, it can be verified (where appropriate), it is not so incomplete that it cannot serve as a reliable basis for reaching a determination, the interested party has demonstrated that it has acted to the best of its ability to provide the information and meet the requirements, and that the information can be used without undue difficulty.

All of these procedural requirements under Title VIII are the same as the procedures set up under Title VII in sections 774, 776, 777, and 782 with respect to antidumping investigations. In addition, because the Shipbuilding Agreement provides that injurious-pricing determinations are subject to dispute resolution before the OECD, section 845 sets forth requirements for administrative action following OECD panel reports issued under the dispute-settlement rules of the Shipbuilding Agreement, which are virtually identical to the requirements in section 129 of the Uruguay Round Agreements Act with respect to administrative action following WTO dispute-settlement panel reports on antidumping and injury determinations.

The Committee intends that the procedural requirements of current law with respect to antidumping apply to shipbuilding investigations as well. Accordingly, antidumping procedural requirements under Title VII have been repeated in Title VIII, making only those changes necessitated by the differences between the WTO Antidumping Code and the Shipbuilding Agreement.

SUBTITLE D—DEFINITIONS

Section 861: Definitions

Industry; Producer: Section 861(4) defines "industry" as the producers as a whole of a domestic like vessel, or those producers whose collective capability to produce a domestic like vessel constitutes a major proportion of the total domestic capability to produce a like vessel. A "producer" is defined as including an entity that is producing the domestic like vessel and an entity with the capability to produce the domestic like vessel. "Capability to produce" is further defined as the capability of a producer to

produce a domestic like vessel with its present facilities or ability to adapt its facilities in a timely manner.

By contrast, under Title VII, section 771(4) defines "industry" as the producers as a whole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.

As discussed above with respect to section 802 of Title VIII, vessels are generally unique and made to individual specifications. Therefore, a domestic producer may not have produced a vessel like the subject vessel but could, nonetheless, still be injured by the sale because that producer was capable of producing such a vessel. Accordingly, the definition of "industry" and "producer" in Title VIII would not require that the party actually produce a like vessel in order to be considered a producer or part of the industry. This definition under Title VIII differs from Title VII, which requires that the petitioner, if a producer, actually produce or manufacture the like product (except in the context of a determination whether the establishment of a domestic industry is materially retarded by reason of subject imports).

Buyer; United States buyer: Section 801(a)(1) requires that a vessel be sold directly or indirectly to a U.S. buyer in order for an injurious-pricing investigation under Title VIII to be commenced. Section 861(5) defines a "buyer" as any person who acquires an ownership interest in a vessel, including by lease or long-term bareboat charter, in conjunction with the original transfer from the producer, either directly or indirectly.

Section 861(6) defines "United States buyer" as a buyer that is a U.S. citizen, a juridical entity organized under the laws of the United States (or a political subdivision thereof), or another juridical entity owned or controlled by such a juridical entity or U.S. citizen. The term "own" is defined as having more than a 50 percent interest. The term "control" is defined as the actual ability to have substantial influence on corporate behavior, which is presumed to exist where there is at least a 25 percent interest.

Title VII does not contain a definition of buyer or purchaser because Title VII does not require that a sale of the subject merchandise be made to a U.S. entity for an antidumping investigation to be commenced. Instead, Title VII requires that the subject merchandise enter the United States for consumption.

Because ocean-going vessels are technically not imported or entered for consumption in the United States, however, the Shipbuilding Agreement and Title VIII would permit investigations to be commenced only when a vessel is sold directly or indirectly to a U.S. buyer.

Ownership interest: With respect to the definition of a "buyer" in section 861(5), section 861(7) defines the term "ownership interest" as including any contractual or proprietary interest allowing the beneficiary to take advantage of the operation of a vessel in a manner substantially comparable to an owner. Section 861(5) automatically includes leases or bareboat charters as being ownership interests.

In an antidumping investigation under Title VII, Commerce may determine that a lease is equivalent to a sale under section 771(19)

after considering the terms of the lease, commercial practice within the industry, the circumstances of the transaction, whether the product subject to the lease is integrated into the operations of the lessee or importer, whether in practice there is a likelihood that the lease will be continued or renewed for a significant period of time, and other relevant factors, including whether the lease transaction would permit avoidance of antidumping or countervailing duties.

Vessel; Respondents subject to investigation: Section 861(8) defines "vessel" as a self-propelled seagoing vessel of 100 gross tons or more used for transportation of goods or persons or for performance of a specialized service (including icebreakers and dredgers) and a tug of 365 kilowatts or more, as long as it is produced in a Shipbuilding Agreement Party or in a country that is neither a Shipbuilding Agreement Party nor a member of the WTO. Accordingly, respondents in injurious-pricing investigations must be from countries that are parties to the Shipbuilding Agreement or from countries that are neither parties to the Shipbuilding Agreement nor members of the WTO. Thus, if a producer is from a country that is a member of the WTO but is not a party to the Shipbuilding Agreement, the Title VIII remedy may not be utilized.

By contrast, Title VII (section 771(16)) provides that a respondent may be from any country, even if it is not a member of the WTO, as long as the product is imported or sold for importation into the United States. This distinction between Title VII and Title VIII arises out of concern that an injurious-pricing action against a WTO member that agreed to be bound only by the rules of the WTO but not the provisions of the Shipbuilding Agreement may be subject to challenge as being inconsistent with U.S. obligations under the WTO.

Section 861(8) also excludes from the definition of "vessel" and, thereby from the application of the injurious-pricing provisions in the Shipbuilding Agreement, certain fishing vessels, military vessels, military reserve vessels, and certain other vessels sold before the entry into force of the Shipbuilding Agreement. For purposes of Title VIII, this section also defines the terms "self-propelled seagoing vessel," "military vessel," and "military reserve vessel."

Like vessel: Section 861(9) defines a "like vessel" as a vessel of the same type, purpose, and approximate size as the subject vessel and possessing characteristics closely resembling those of the subject vessel. This definition of "like vessel" in Title VIII is analogous to the definition of "like product" in Title VII.

Under Title VII, section 771(10) defines a "domestic like product" as a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to investigation.

The Committee recognizes that ocean-going vessels are frequently built to unique specifications. Accordingly, the Committee intends that, under the appropriate circumstances, there may be some minor variation in size and equipment between like vessels.

Material injury: Section 861(16) defines "material injury" as harm that is not inconsequential, immaterial, or unimportant. In making its determination whether an industry in the United States is or has been materially injured by reason of the sale of the subject vessel, section 861(16)(B) would require the ITC to consider the

sale of the subject vessel, the effect of the sale of the subject vessel on prices in the United States for a domestic like vessel, and the impact of the sale of the subject vessel on domestic producers of a domestic like vessel, but only in the context of production operations in the United States. In addition, the ITC may consider such other economic factors as are relevant to the material-injury determination.

In considering the sale of the subject vessel for purposes of determining material injury, section 861(16)(C)(i) would require the ITC to ascertain whether the sale, either in absolute terms or relative to production or demand in the United States, in terms of either volume or value, is or has been significant.

In evaluating the effect of the sale of the subject vessel on prices, section 861(16)(C)(ii) specifies that the ITC consider whether there has been significant underselling of the subject vessel as compared with the price of a domestic like vessel and whether the effect of the sale otherwise depresses or has depressed prices to a significant degree or prevents or has prevented price increases, which otherwise would have occurred, to a significant degree.

Finally, in evaluating the impact on the domestic industry, section 861(16)(C)(iii) requires evaluation of all relevant economic factors having a bearing on the state of the U.S. industry, including actual and potential decline in output, sales (or offers for sale), market share, profits, productivity, return on investments, and utilization of capacity; factors affecting domestic prices; actual and potential negative effects on cash flow, employment, wages, growth, ability to raise capital, and investment; actual and potential negative effects on the existing development and production efforts of the domestic industry; and the magnitude of the injurious-pricing margin. All factors are to be evaluated within the context of the business cycle and conditions of competition that are distinctive to the domestic industry.

Section 771(7)(B) of Title VII requires the ITC to consider the volume of subject imports in determining whether a domestic industry is materially injured by reason of such imports. The definitions of "material injury" and the requirements for determining material injury under Title VIII are analogous. Differences between the two titles are merely intended to account for the particular characteristics of the shipbuilding industry and the requirements of the Shipbuilding Agreement.

Nonetheless, with respect to the consideration of volume in determining material injury under Title VIII, the Committee recognizes that, unlike antidumping cases, injurious-pricing proceedings will normally involve the sale of only one vessel. Therefore, it is the Committee's view that, depending upon the circumstances of a particular investigation, the sale of one vessel at an injurious price may be sufficient to satisfy the volume criterion under Title VIII, whereas, it would be an unusual case in which a single sale would be considered a significant volume under Title VII. In addition, the Committee intends consideration of the "sale" under Title VIII to include the number of sales, tonnage, and value represented by that sale or sales, as appropriate.

Moreover, as discussed above concerning section 801, Title VIII provides that there must be a demonstration that there is or *has*

been material injury by reason of the sale of the vessel or vessels in question. Accordingly, the material-injury provision under Title VIII is drafted to permit consideration of whether the sale of the subject vessel *has caused* price depression or suppression.

Threat: Section 861(16)(E) specifies that in determining whether a U.S. industry is threatened with material injury by reason of the sale of the subject vessel, the ITC is to consider, among other relevant economic factors, any existing unused production capacity or imminent, substantial increase in production capacity in the exporting country indicating the likelihood of substantially increased sales of a foreign like vessel to U.S. buyers, taking into account the availability of other export markets to absorb any additional exports; whether the sale of a foreign like vessel or other factors indicate the likelihood of significant additional sales to U.S. buyers; whether the sale of the subject vessel or sale of a foreign like vessel by the foreign producer are at prices that are likely to have a significant depressing or suppressing effect on domestic prices, and are likely to increase demand for further sales; the potential for product shifting; the actual and potential negative effects on the existing development and production efforts of the domestic industry; and any other demonstrable adverse trends that indicate the probability that there is likely to be material injury by reason of the sale of the subject vessel.

These criteria under Title VIII for determining threat of material injury in an injurious-pricing investigation are analogous to the criteria under section 771(7)(F) in Title VII that the ITC is to consider in determining threat of material injury by reason of dumped imports. The only differences in the threat criteria between the two titles are intended to account for the particular characteristics of the shipbuilding industry and the requirements of the Shipbuilding Agreement. Therefore, except when necessary to account for these differences, the ITC should apply the threat criteria in Title VIII in the same manner as under Title VII.

The Committee notes, however, that although both Title VII and Title VIII make reference to "substantially increased sales" in the threat section, the increase in sales of a foreign like vessel or the increase in production capacity may, in appropriate circumstances, satisfy the Title VIII criterion even though such increase may not be sufficient in most cases in the context of a threat determination under Title VII. The ITC's consideration of "sale" in determining threat of material injury under Title VIII includes the number of sales, tonnage, and value represented by that sale or sales. Because there may be no more than one sale in most instances, the ITC need not focus on evidence of increased past sales in determining the likelihood of future sales.

Cumulation: Under section 861(16)(F), the ITC would be required, subject to certain exceptions, to assess cumulatively the effects of sales of foreign like vessels from all foreign producers. Section 861(16)(F) provides that the ITC must conduct a cumulative analysis with respect to petitions filed on the same day, investigations self-initiated on the same day, or petitions filed and investigations self-initiated on the same day, if the foreign producers of the subject vessels compete with each other and with producers of a domestic like vessel in the U.S. market.

These requirements regarding cumulative analysis by the ITC under Title VIII are analogous to the provisions in section 771(7)(G) of Title VII with respect to a cumulative assessment by the ITC of the volume and effects of imports of subject merchandise from all foreign countries. Therefore, the rules regarding the types of investigations that must be cumulated under Title VII and Title VIII are intended to be the same.

The only difference between the two titles in final determinations in which the ITC performs a cumulative analysis concerns the use of the record compiled in the first investigation in which the ITC makes a final determination. In antidumping cases under Title VII, the ITC is generally required to use such a record. However, in injurious-pricing investigations under Title VIII, the ITC may, but would not be required to use this record. The reason for the difference is that some Title VIII investigations may be delayed for long periods of time in order to obtain cost-of-production information, and use of the record in the first investigation may, therefore, not be appropriate for purposes of conducting a cumulative analysis.

Interested party: Section 861(17) defines "interested party" as the foreign producer, seller (other than the foreign producer), and the U.S. buyer of the subject vessel, or a trade or business association a majority of whose members are the foreign producer, seller, or U.S. buyer of the subject vessel; the government of the country in which the subject vessel is produced or manufactured; a producer that is a member of an industry; a certified union or recognized union or group of workers which is representative of an industry; a trade or business association a majority of whose members are producers in an industry; and an association a majority of whose members is composed of interested parties listed above.

Except to account for the particular characteristics of the shipbuilding industry, these definitions of "interested party" are analogous to the definitions of "interested party" under section 771(9) in Title VII. However, 861(17)(G) would also permit a purchaser to be an interested party in countermeasure proceedings if, after the effective date of an order imposing countermeasures under section 807, the purchaser entered into a contract of sale with the foreign producer that is subject to the order. Giving such parties interested party status would permit them to participate in proceedings before Commerce to determine the scope and duration of countermeasures.

Enforcement of Countermeasures

(Section 103)

Section 103 would amend Part II of Title IV of the Tariff Act of 1930 to provide the U.S. Customs Service with the authority to deny any request for a permit to lade or unlade passengers, merchandise, or baggage from or onto vessels listed by Commerce as being subject to countermeasures. Section 103(b) provides for certain limited exceptions to this rule.

Unlike the WTO Antidumping Agreement, the Shipbuilding Agreement, as reflected in section 103, specifically provides for the imposition of countermeasures if the foreign shipyard in question

does not pay the injurious-pricing charge assessed against it. Because the antidumping law permits the assessment of an antidumping duty on future entries of merchandise subject to an antidumping order, U.S. law does not permit the imposition of countermeasures in the dumping context.

Judicial Review in Injurious Pricing and Countermeasure Proceedings

(Section 104)

Section 104 amends the Tariff Act of 1930 to add section 516B, which provides that interested parties may challenge Commerce and ITC final determinations before the Court of International Trade, with subsequent appeal to the U.S. Court of Appeals for the Federal Circuit. In such cases, the applicable standard of review is whether the determination is "unsupported by substantial evidence on the record, or otherwise not in accordance with law." In addition, certain preliminary determinations and countermeasure determinations may be challenged. In these cases, the standard of review is whether the determination is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."

Section 516B is analogous to the judicial review procedures and standards of review provided for in section 516A of the Tariff Act of 1930 in antidumping and countervailing duty investigations under Title VII. Therefore, the Committee intends that section 516B provide essentially analogous opportunities for judicial review as under section 516A. The differences are intended to take into account the differences in the two types of investigations, especially the imposition of countermeasures and the absence of comparable administrative reviews and sunset reviews under Title VIII.

B. SUBTITLE B—OTHER PROVISIONS

Equipment and Repair of Vessels

(Section 111)

Section 111 amends section 466 of the Tariff Act of 1930, by adding a new subsection (i). The new subsection provides that the equipment supplied and repairs made in a signatory to the Shipbuilding Agreement on U.S.-flagged vessels of a type covered under the Shipbuilding Agreement, as well as U.S.-flagged, integrated tug-barges or tug-barge combinations, are not subject to the 50-percent *ad valorem* duty imposed under subsection 466(a) of the Tariff Act of 1930 on the cost of such equipment and repair made in a foreign country on a U.S.-flagged vessel.

Section 111 implements the provision in the Shipbuilding Agreement that prohibits the collection of duties on vessel repairs made in a signatory to the Shipbuilding Agreement. Accordingly, U.S. law must be changed to eliminate the duty if the repairs to a U.S.-flagged vessel are made in a Shipbuilding Agreement signatory. Although not specifically covered by the Shipbuilding Agreement, this section also applies to integrated tug-barges and tug-barge combinations (provided that the barge is of 100 gross tons or more and the tug is of 365 kilowatts or more) because they share many of

the same characteristics as vessels covered by the Shipbuilding Agreement. However, the duty would remain in place if the repairs are made in a country that is not a signatory to the Shipbuilding Agreement.

Effect of Agreement with Respect to Private Remedies

(Section 112)

Section 112 clarifies that no person other than the United States may assert any cause of action or defense under the Shipbuilding Agreement, or may challenge any action or inaction by the United States, the District of Columbia, any State, U.S. territory, or U.S. possession on the grounds that it is inconsistent with the Agreement. The implementing legislation of other trade agreements, such as section 102(c) of the Uruguay Round Agreements Act (Public Law 103–465) and section 102(c) of the North American Free Trade Agreement Implementation Act (Public Law 103–182), have essentially identical provisions to limit private remedies under those trade agreements. The Committee intends that section 112 provide the same limitations with respect to private remedies as in the Uruguay Round Agreements Act and the North American Free Trade Agreement Implementation Act.

Implementing Regulations

(Section 113)

Section 113 authorizes relevant agencies to issue regulations, as may be necessary to ensure that the amendments made by the OECD Shipbuilding Trade Agreement Act are appropriately implemented on the date that the Shipbuilding Agreement enters into force with respect to the United States.

The Committee intends that the relevant agencies take steps to ensure through regulation that the amendments made by the OECD Shipbuilding Trade Agreement Act are appropriately implemented upon entry into force. With respect to injurious pricing, the Committee expects that regulations would be modeled after regulations implementing Title VII of the Tariff Act of 1930 wherever possible, making only those changes necessitated by the differences between existing law and the amendments made by the OECD Shipbuilding Trade Agreement Act.

Amendments to the Merchant Marine Act, 1936

(Section 114)

Section 114 makes several changes to the Merchant Marine Act, 1936, which fall within the jurisdiction of the Senate Committee on Commerce, Science, and Transportation.

Applicability of Title XI Amendments

(Section 115)

Section 115 makes certain changes to Title XI of the Merchant Marine Act, 1936 which fall within the jurisdiction of the Senate Committee on Commerce, Science, and Transportation.

Monitoring and Enforcement

(Section 116)

Section 116 requires USTR to establish a program to monitor other Shipbuilding Agreement parties' compliance with the terms of the Shipbuilding Agreement, which should include the establishment of an inter-agency task force and consultations with U.S. embassies, industry, labor, and other interested parties. USTR is also required to submit an annual report to Congress on USTR's monitoring activities, the results of its consultations, and other parties' compliance with the Agreement. This section also provides that USTR should vigorously use the consultation procedures under the Shipbuilding Agreement if it receives information that a Shipbuilding Agreement Party is materially violating the Agreement in a manner that is detrimental to U.S. interests. If the matter is not otherwise resolved through consultation, USTR is directed to use the dispute-settlement procedures provided for under the Shipbuilding Agreement to redress the situation.

Jones Act and Related Laws Not Affected

(Section 117)

Section 117 clarifies the relationship between the requirements of the Shipbuilding Agreement and the Merchant Marine Act, 1920 (46 App. U.S.C. 861 et seq.), the Act of June 19, 1886 (46 App. U.S.C. 289), or any other provision of law set forth in Accompanying Note 2 to Annex II of the Shipbuilding Agreement (referred to collectively as the Jones Act). This provision falls within the jurisdiction of the Senate Committee on Commerce, Science, and Transportation.

Withdrawal from Shipbuilding Agreement

(Section 118)

Section 118(a) requires the President to give notice of withdrawal by the United States from the Shipbuilding Agreement (under Article 14 of that Agreement) as soon as practicable (normally within two to four weeks) after one or more Shipbuilding Agreement parties accounting for a specified tonnage of new Shipbuilding Agreement vessel construction (which does not include vessel repair) gives notice of intention to withdraw. This section also provides that the President may terminate the notice of withdrawal if one or more of the Shipbuilding Agreement parties terminates its (their) notice(s) of withdrawal and that any parties still intending to withdraw account for less than the specified tonnage of new Shipbuilding Agreement vessel construction.

Section 118(b) sets out procedures for withdrawal of Congressional approval of the Shipbuilding Agreement when a Shipbuilding Agreement Party undertakes responsive measures pursuant to a determination under the Shipbuilding Agreement that the Jones Act has significantly undermined the balance of rights and obligations under the Agreement. Under these procedures, section 118(b)(1) requires the President to notify the Senate Committees on Finance and Commerce, Science and Transportation, and the

House Committees on Ways and Means and National Security upon notice by a Shipbuilding Agreement Party of intention to apply such responsive measures under paragraph 2.e of Annex II B of the Shipbuilding Agreement and the applicable date of such measures. The President should provide this notice to the committees as soon as practicable, normally within two to four weeks of the notice by the Shipbuilding Agreement Party.

The term "applicable date" is defined in section 118(b)(5) as the date on which the responsive measures are first scheduled to be applied by the Shipbuilding Agreement Party. In some cases, the notification by the Shipbuilding Agreement Party of intention to apply responsive measures will not specify the date those measures may first be applied. In these instances, USTR should make every effort to determine the applicable date of the responsive measures from the Shipbuilding Agreement Party. Once that date is determined, the President is to issue as soon as practicable, a second notification to the Senate Committees on Finance and Commerce, Science, and Transportation, and the House Committees on Ways and Means and National Security, informing the committees of the applicable date. If USTR is unable to ascertain the applicable date, the President shall so inform the committees and the date of the President's first notification to the committees shall be deemed to be the applicable date of the responsive measures.

While the President should consult with the appropriate Congressional committees in the event that the OECD Parties Group authorizes one or more Shipbuilding Agreement parties to undertake responsive measures pursuant to paragraph 2.e of Annex II B, such authorization alone does not require formal notification mandated by section 118(b)(1). Rather, it is the intention of the Committee that the President issue the formal notification required by section 118(b)(1) only after the OECD Parties Group has authorized the undertaking of responsive measures *and* a government entity of one or more Shipbuilding Agreement parties has issued a notice of intention to apply such measures.

Section 118(b)(2) provides that, as of the applicable date of the responsive measures, Congress may consider and adopt a joint resolution providing for withdrawal of Congressional approval of the Shipbuilding Agreement. Under sections 118(b) (3) and (4) such a resolution may be introduced by any Member at any time on or after the applicable date. Congress then has 90 legislative days from the applicable date to transmit the resolution to the President; the Senate Committee on Finance and the House Committee on Ways and Means have up to 45 of those days to report the resolution or they are automatically discharged. If the President then vetoes the resolution, each House has 15 legislative days to vote to override the veto. Under subsection (b)(4)(B)(ii), the resolution would be subject to the "fast track" rules in section 152 of the 1974 Trade Act.

Section 118(b)(4)(B)(iv)(III) specifies that it would not be in order for Congress to consider a joint resolution or vote to override a Presidential veto of the joint resolution if the President notifies the appropriate Congressional committees that the decision to apply the relevant responsive measures has been withdrawn and the measures have not yet been applied. Furthermore, section

118(b)(4)(C) states that it would not be in order for either the House of Representatives or the Senate to consider another joint resolution (other than a joint resolution received from the other House), if that House has already voted on a joint resolution for withdrawal from the Shipbuilding Agreement with respect to the same Presidential notification regarding the implementation of responsive measures.

Expanding Membership in the Shipbuilding Agreement

(Section 119)

Section 119 requires USTR to monitor the policies and practices of countries that are not parties to the Shipbuilding Agreement and to seek the accession of countries that have significant commercial shipbuilding and repair industries, including Australia, Brazil, India, the People's Republic of China, Poland, Romania, Singapore, the Russian Federation, and Ukraine. USTR is also required to provide Congress with an annual report on its efforts to expand membership in the Shipbuilding Agreement.

Protection of United States Security Interests

(Section 120)

Section 120 clarifies the relationship between the requirements of the Shipbuilding Agreement and the protection of U.S. security interests. This provision is within the jurisdiction of the Senate Committee on Commerce, Science, and Transportation.

Definitions

(Section 121)

Section 121 defines various terms for purposes of subtitle B of the OECD Shipbuilding Trade Agreement Act. The term "appropriate committees" refers to the Senate Committees on Finance and Commerce, Science, and Transportation and the House Committees on Ways and Means and National Security.

The terms "Shipbuilding Agreement," "Shipbuilding Agreement Party," "Shipbuilding Agreement vessels," and "Export Credit Understanding" have the same meanings as in subsections (h), (i), (j), and (k) of section 905 of the Merchant Marine Act, 1936 (as added by section 114(8) of the OECD Shipbuilding Trade Agreement Act), respectively.

The term "GATT 1994" has the same meaning as in section 2 of the Uruguay Round Agreements Act (19 U.S.C. 3501).

This section also defines the terms "military vessel" and "military reserve vessel."

Capital Construction Fund Conforming Amendment

(Section 122)

Present Law

Under section 7518 of the Internal Revenue Code of 1986, in determining taxable income for regular tax purposes, a qualified taxpayer who owns or leases a qualified vessel (an "agreement vessel")

is allowed a deduction for certain amounts contributed to a fund established under section 607 of the Merchant Marine Act, 1936 (a "capital construction fund"). In addition, the investment earnings on amounts contributed to a capital construction fund are excluded from gross income for regular tax purposes.

If a withdrawal from a capital construction fund is used to acquire, construct, or reconstruct a qualified vessel, the amount withdrawn generally is not included in gross income and the basis of the qualified vessel generally is reduced by the amount withdrawn to the extent attributable to amounts previously deducted or excluded from income. In the case of any other withdrawal from a capital construction fund, the amount withdrawn generally is included in gross income to the extent attributable to amounts previously deducted or excluded from income and interest on the tax liability attributable to such inclusion generally must be paid from the date of the deduction or exclusion.

Any term (including the definition of "agreement vessel") provided in section 607(k) of the Merchant Marine Act, 1936, as in effect as of the date of enactment of the Tax Reform Act of 1986, applies for purposes of section 7518. Under section 607(k) of the Merchant Marine Act, 1936, as in effect as of the date of enactment of the Tax Reform Act of 1986, an agreement vessel generally is a vessel constructed or reconstructed in the United States (the "U.S.-build requirement") and documented under the laws of the United States (the "U.S.-flag requirement"). In addition, the person maintaining the capital construction fund must agree with the Secretary (of Commerce or Transportation) that the vessel will be operated in the United States foreign trade, Great Lakes trade, or noncontiguous domestic trade or in the fisheries of the United States.

Reasons for Change

Under present law, in order for a vessel to qualify for the tax benefits provided through capital construction funds, the vessel must meet certain requirements described in the Merchant Marine Act, 1936, as in effect as of the date of enactment of the Tax Reform Act of 1986. Among these requirements is that the vessel must have been constructed or reconstructed in the United States. This requirement conflicts with a goal of the OECD shipbuilding trade agreement, which seeks to minimize or eliminate shipbuilding subsidies among the signatory nations. Thus, the Committee amends the Internal Revenue Code of 1986 in order to conform to the definition of "agreement vessel" as provided by the OECD Shipbuilding Trade Agreement Act.

Explanation of Provision

For purposes of section 7518 of the Internal Revenue Code of 1986, the terms "eligible vessel" and "qualified vessel" shall have the same meaning as provided in section 607(k) of the Merchant Marine Act, 1936, as amended by the OECD Shipbuilding Trade Agreement Act. Thus, in general, for purposes of the tax benefits provided by capital construction funds, an agreement vessel will include any vessel constructed or reconstructed in any nation that is a signatory to the OECD shipbuilding agreement entered into on December 21, 1994.

C. SUBTITLE C—EFFECTIVE DATE

(Section 131)

Section 131(a) provides that the amendments made by the OECD Shipbuilding Trade Agreement Act take effect on the date that the Shipbuilding Agreement enters into force with respect to the United States. It is the expectation of the Committee that the Shipbuilding Agreement is unlikely to enter into force with respect to the United States before January 1, 2000, when the current terms of the Title XI program under the Merchant Marine Act, 1936, expire.

Section 131(b) also provides that if the United States withdraws from the Shipbuilding Agreement for any reason, the OECD Shipbuilding Agreement Act and all changes to U.S. law made by the Act would cease to have effect as of the date of the withdrawal.

2. TITLE II—INTERNATIONAL SHIPPING INCOME DISCLOSURE

Penalties for Failure to Disclose Position that Certain International Shipping Income is Not Includable in Gross Income

(Section 201)

Present Law

The United States generally imposes a 4-percent tax on the U.S.-source gross transportation income of foreign persons that is not effectively connected with the foreign person's conduct of a U.S. trade or business (sec. 887 of the Internal Revenue Code of 1986). Foreign persons generally are subject to U.S. tax at regular graduated rates on net income, including transportation income, that is effectively connected with a U.S. trade or business (secs. 871(b) and 882).

Transportation income is any income derived from, or in connection with, the use (or hiring or leasing for use) of a vessel or aircraft (or a container used in connection therewith) or the performance of services directly related to such use (sec. 863(c)(3)). Income attributable to transportation that begins and ends in the United States is treated as derived from sources in the United States (sec. 863(c)(1)). Transportation income attributable to transportation that either begins or ends in the United States is treated as derived 50 percent from U.S. sources and 50 percent from foreign sources (sec. 863(c)(2)). U.S.-source transportation income is treated as effectively connected with a foreign person's conduct of a U.S. trade or business only if the foreign person has a fixed place of business in the United States that is involved in the earning of such income and substantially all of such income of the foreign person is attributable to regularly scheduled transportation (sec. 887(b)(4)).

An exemption from U.S. tax is provided for income derived by a nonresident alien individual or foreign corporation from the international operation of a ship, provided that the foreign country in which such individual is resident or such corporation is organized grants an equivalent exemption to individual residents of the Unit-

ed States or corporations organized in the United States (secs. 872(b)(1) and 883(a)(1)).

Pursuant to guidance published by the Internal Revenue Service, a nonresident alien individual or foreign corporation that is entitled to an exemption from U.S. tax for its income from the international operation of ships must file a U.S. income tax return and must attach to such return a statement claiming the exemption (Rev. Proc. 91–12, 1991–1 C.B. 473). If the foreign person is claiming an exemption based on an applicable income tax treaty, the foreign person must disclose that fact as required by the Secretary of the Treasury (sec. 6114). The penalty for failure to make disclosure of a treaty-based position as required under section 6114 is $1,000 for an individual and $10,000 for a corporation (sec. 6712).

At the time the 4-percent tax on U.S.-source gross transportation income was enacted, concern was expressed about whether compliance with the tax, which is collected by means of the filing of a tax return, would be adequate. It was intended that the tax-writing committees of Congress and the Secretary of the Treasury would study the issue of compliance and that the Secretary would make recommendations if compliance did not prove adequate.[2]

Reasons for Change

The Committee understands that there is an extremely high level of noncompliance with the U.S. tax rules by foreign persons that have U.S.-source shipping income. The Committee believes that, in order to address these noncompliance problems, it is appropriate to impose significant penalties for a failure to satisfy the filing requirements for claiming the exemption from U.S. tax that is available to certain foreign persons with respect to income from the international operation of ships.

Explanation of Provision

Under the bill, a foreign person that claims exemption from U.S. tax for income from the international operation of ships, but does not satisfy the filing requirements for claiming such exemption, is subject to the penalty of the denial of such exemption and any deductions or credits otherwise allowable in determining the U.S. tax liability with respect to such income. If a foreign person that has a fixed placed of business in the United States fails to satisfy the filing requirements for claiming an exemption from U.S. tax for its income from the international operation of ships, such person is subject to the additional penalty that foreign source income from the international operation of ships would be treated as effectively connected with the conduct of a U.S. trade or business, but only to the extent that such income is attributable to such fixed place of business in the United States. Income so treated as effectively connected with a U.S. trade or business is subject to U.S. tax at graduated rates (and is subject to the disallowance of deductions and credits described above). These penalties are subject to a reasonable cause exception. The provision would not apply to the extent

[2] Joint Committee on Taxation, *General Explanation of the Tax Reform Act of 1986* (JCS–10–87), May 4, 1987, p. 930.

the application would be contrary to any treaty obligation of the United States.

The bill also provides for the provision of information by the U.S. Customs Service to the Secretary of the Treasury regarding foreign-flagged ships engaged in shipping to or from the United States.

Effective Date

The provision is effective for taxable years beginning after December 31, 1997.

IV. CONGRESSIONAL ACTION

On October 23, 1995, Senator Breaux introduced legislation (S. 1354) to implement the Shipbuilding Agreement. On December 11, 1995, similar legislation (H.R. 2754) was introduced in the House.

The Committee on Finance held a hearing on the Shipbuilding Agreement on December 5, 1995. During this hearing, the Committee heard testimony from the Administration in support of the Shipbuilding Agreement and other testimony from supporters and opponents of the Shipbuilding Agreement.

On May 8, 1996, the Committee on Finance reported H.R. 3074, which contained a number of trade items, including legislation to implement the Shipbuilding Agreement. Subsequently, on June 13, 1996, the House of Representative passed H.R. 2754, which, as amended, contained major substantive differences from the bill reported by the Committee on Finance. The Senate was unable to consider H.R. 2754 before the conclusion of the 104th Congress.

On April 22, 1997, Senator Breaux again introduced legislation (S. 629) to implement the Shipbuilding Agreement. This bill contained a number of modifications from the both H.R. 3074 as reported by the Finance Committee and H.R. 2754 as passed by the House.

V. VOTE OF THE COMMITTEE

In compliance with section 133 of the Legislative Reorganization Act of 1946, the Committee states that the legislation was ordered favorably reported unanimously by voice vote on September 11, 1997.

VI. BUDGETARY IMPACT

In compliance with sections 308 and 403 of the Congressional Budget Act of 1974, and paragraph 11(a) of Rule XXVI of the Standing Rules of the Senate, the following letter has been received from the Congressional Budget Office on the budgetary impact of the bill:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 19, 1997

Hon. WILLIAM V. ROTH, Jr.,
Chairman, Committee on Finance, U.S. Senate,
Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for the OECD Shipbuilding Trade Agreement, as ordered reported by the Senate Committee on Finance on September 11, 1997.

Sincerely,

JUNE E. O'NEILL, DIRECTOR.

SUMMARY

The Shipbuilding Trade Agreement would reduce the 50 percent ad valorem duty on the cost of equipment and non-emergency repairs obtained in foreign countries imposed upon U.S. flag vessels. The bill also expands the Capital Construction Fund, and increases penalties for failure to file a disclosure of exemption for income from certain international shipping. CBO and JCT estimate that this Agreement would increase governmental receipts by $3 million beginning in fiscal year 2000, and by $15 million over fiscal years 1997–2002.

The Shipbuilding Trade Agreement contains no new private-sector or intergovernmental mandates as defined in the Unfunded Mandates Reform Act of 1995 (UMRA), and would not impose any costs on state, local, or tribal governments.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of the Shipbuilding Trade Agreement is shown in the following table.

ESTIMATED BUDGETARY IMPACT OF FINANCE COMMITTEE BILL

[By fiscal year, in billions of dollars]

	1997	1998	1999	2000	2001	2002
REVENUES						
Proposed Changes to OECD Shipbuilding Trade Agreement	0	0	0	−7	−7	−7
Penalties for failure to file disclosure of exemption for income from international operation of ships or aircraft by foreign persons	0	0	0	12	15	15
Modify Capital Construction Fund	0	0	0	−2	−2	−2

The outlay effects of this legislation fall within budget function 800 (general government).

BASIS OF ESTIMATE

Revenues

The OECD Shipbuilding Trade Agreement was signed on December 21, 1994, by the following countries: The Commission of the European Communities including the United Kingdom, Germany, France, Italy, Spain, Ireland, the Netherlands, Belgium, Luxem-

bourg, Greece, Portugal, Denmark, Austria, Sweden and Finland; Japan; South Korea; Norway; and the United States. Under current law (19 U.S.C. 1466), U.S. flag vessels are subject to a 50 percent ad valorem duty on the cost of equipment and non-emergency repairs obtained in foreign countries. As mandated by the OECD agreement, section 111 of the proposed legislation would partially repeal the duty by exempting repairs to U.S. flag vessels done in OECD signatory countries.

CBO estimates that section 111 of the bill, pertaining to vessel repair duties, would decrease governmental receipts by $7 million beginning in fiscal year 2000 and by $21 million over the fiscal years 1997–2002, net of payroll and income tax offsets. The estimate of revenue loss is based on the historical collections. Over the past several years, collections have been between $15 million and $25 million annually. According to the U.S. Maritime Administration (MARAD), in December 1995 there were 141 vessels in the U.S. flag fleet. However, MARAD predicts a steady decline in the size of the U.S. fleet due to the impending expiration and expected termination of the operating-differential subsidy program, through which payments are made to U.S. vessels on specified trade routes. This estimate assumes that future collections of the vessel repair duty would decline as a result of this reduction in the size of the fleet.

Currently about half of all repairs on U.S. vessels in foreign ports are performed in OECD signatory countries. If section 111 of the bill is enacted, CBO assumes that additional U.S. vessel repairs would be diverted to ports in OECD countries to take advantage of the duty-free repair treatment. This estimate assumes that this provision will be effective on October 1, 1999.

Section 201 of the bill expands penalties for failure to satisfy the filing requirements for claiming the exemption from U.S. tax that is available to certain foreign persons with respect to income from international operation of ships. The Joint Committee on Taxation estimates that this provision would increase governmental receipts by $12 million in fiscal year 2000 and by $42 million over fiscal years 1997–2002. CBO concurs with this estimate.

Section 122 of the bill expands the eligibility requirement for the Capital Construction Fund by permitting repairs and construction to be undertaken overseas. JCT estimates that this provision will reduce governmental receipts by $2 million in fiscal year 2000, and by $6 million over fiscal years 1997–2002. CBO concurs with this estimate.

PAY-AS-YOU-GO CONSIDERATIONS

Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts through 1998. CBO estimates that the OECD Shipbuilding Trade Agreement would affect receipts. Therefore, pay-as-you-go procedures would apply to the bill. The pay-as-you-go impact is summarized below.

PAY-AS-YOU-GO CONSIDERATIONS

[By fiscal year, in millions of dollars]

	1997	1998
Changes in Outlays	Not Applicable	
Changes in Receipts	0	0

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

The bill contains no new private-sector or intergovernmental mandates as defined in UMRA, and would not impose any costs on state, tribal, or local governments.

ESTIMATED BUDGET EFFECTS OF THE ''OECD SHIPBUILDING TRADE AGREEMENT ACT'' AS PASSED BY THE SENATE FINANCE COMMITTEE ON SEPTEMBER 11, 1997; FISCAL YEARS 1998–2007

[In millions of dollars]

Provision	Effective	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	1998–02	1998–07
1. The Shipbuilding Trade Agreement [1]	1/1/00	.....	.....	−5	−7	−7	−7	−7	−7	−7	−7	−19	−54
2. Penalties for failure to file disclosure of exemption for income from international operation of ships by foreign persons	tyba 12/31/97	2	6	12	15	15	14	13	12	11	10	50	110
3. Modify Capital Construction Fund	1/1/00	.....	.....	−1	−2	−2	−3	−3	−3	−3	−3	−5	−20
Net total	.....	2	6	6	6	6	4	3	2	1	.....	26	36

Joint Committee on Taxation.

[1] Estimate provided by the Congressional Budget Office.

Note: Details may not add to totals due to rounding.

Legend for "Effective" column: tyba = taxable years beginning after

VII. REGULATORY IMPACT

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee states that the bill will not significantly regulate any individuals or businesses, will not impact on the personal privacy of individuals, and will result in no significant additional paperwork.

VIII. CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

INTERNAL REVENUE CODE OF 1986

* * * * * * *

Subchapter N—Tax Based on Income From Sources Within or Without the United States

* * * * * * *

PART II—NONRESIDENT ALIENS AND FOREIGN CORPORATION

Subpart A—Nonresident alien individuals

* * * * * * *

SEC. 872. GROSS INCOME.

(a) GENERAL RULE.—In the case of a nonresident alien individual, except where the context clearly indicates otherwise gross income includes only—

(1) gross income which is derived from sources within the United States and which is not effectively connected with the conduct of a trade or business within the United States, and

(2) gross income which is effectively connected with the conduct of a trade or business within the United States.

(b) EXCLUSIONS.—The following items shall not be included in gross income of a nonresident alien individual, and shall be exempt from taxation under this subtitle:

(1) Ships operated by certain nonresidents. [Gross income] *Except as provided in section 883(d), gross income* derived by an individual resident of a foreign country from the international operation of a ship or ships if such foreign country grants an equivalent exemption to individual residents of the United States.

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Subpart B—Foreign Corporations

* * * * * * *

SEC. 883. EXCLUSIONS FROM GROSS INCOME.

(a) INCOME OF FOREIGN CORPORATIONS FROM SHIPS AND AIRCRAFT.—The following items shall not be included in gross income of a foreign corporation, and shall be exempt from taxation under this subtitle:

(1) SHIPS OPERATED BY CERTAIN FOREIGN CORPORATIONS. [Gross income] *Except as provided in subsection (d), gross income* derived by a corporation organized in a foreign country from the international operation of a ship or ships if such foreign country grants an equivalent exemption to corporations organized in the United States.

* * * * * * *

(d) PENALTIES FOR FAILURE TO DISCLOSE POSITION THAT CERTAIN INTERNATIONAL SHIPPING INCOME IS NOT INCLUDABLE IN GROSS INCOME.—

(1) IN GENERAL.—A taxpayer who, with respect to any tax imposed by this title, takes the position that any of its gross income derived from the international operation of a ship or ships is not includable in gross income by reason of subsection (a)(1) or section 872(b)(1) (or by reason of any applicable treaty) shall be entitled to such treatment only if such position is disclosed (in such manner as the Secretary may prescribe) on the return of tax for such tax (or any statement attached to such return).

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

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

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

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

shall be treated for purposes of this title as effectively connected with the conduct of a trade or business within the United States, and

(B) no deductions or credits shall be allowed which are attributable to income from the international operation of a ship or ships.

(3) REASONABLE CAUSE EXCEPTION.—This subsection shall not apply to a failure to disclose a position if it is shown that such failure is due to reasonable cause and not due to willful neglect.

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SEC. 7518. TAX INCENTIVES RELATING TO MERCHANT MARINE CAPITAL CONSTRUCTION FUNDS.

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(i) DEFINITIONS.—For purposes of this section, any term defined in section 607(k) of the Merchant Marine Act, 1936 which is also used in this section (including the definition of "Secretary") shall have the meaning given such term by such section 607(k) as in effect on the date of the enactment of this section*, except that in the case of the terms "eligible vessel" and "qualified vessel", the amend-*

ments to such section by the OECD Shipbuilding Trade Agreement Act shall be taken into account.

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TARIFF ACT OF 1930

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TITLE IV—ADMINISTRATIVE PROVISIONS

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PART II—REPORT, ENTRY, AND UNLADING OF VESSELS AND VEHICLES

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SEC. 466. EQUIPMENT AND REPAIRS OF VESSELS.

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(i) EXCEPTION TO IMPOSITION OF DUTY.—

(1) IN GENERAL.—The duty imposed by subsection (a) shall not apply with respect to activities occurring in a Shipbuilding Agreement Party, as defined in section 861(22), with respect to—

(A) self-propelled seagoing vessels of 100 gross tons or more that are used for transportation of goods or persons or for performance of a specialized service (including, but not limited to, ice breakers and dredges);

(B) tugs of 365 kilowatts or more; and

(C) integrated tug-barges or tug-barge combinations.

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

(A) SELF-PROPELLED SEAGOING.—A vessel shall be considered "self-propelled seagoing" if its permanent propulsion and steering provide it all the characteristics of self-navigability in the high seas.

(B) INTEGATED TUG-BARGE.—An integrated tug-barge or tug-barge combination means a vessel that is designed to operate together in either the push mode or pull mode, if the barge is of 100 gross tons or more and the tug is of 365 kilowatts or more.

* * * * * * *

SEC. 468. SHIPBUILDING AGREEMENT COUNTERMEASURES.

(a) IN GENERAL.—Notwithstanding any other provision of law, upon receiving from the Secretary of Commerce a list of vessels subject to countermeasures under section 807, the Customs Service shall deny any request for a permit to lade or unlade passengers, merchandise, or baggage from or onto those vessels so listed.

(b) EXCEPTIONS.—Subsection (a) shall not be applied to deny a permit for the following:

(1) To unlade any United States citizen or permanent legal resident alien from a vessel included in the list described in subsection (a), or to unlade any refugee or any alien who would

otherwise be eligible to apply for asylum and withholding of deportation under the Immigration and Nationality Act.

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

(3) To lade or unlade coal and other fuel supplies (for the operation of the listed vessel), ships' stores, sea stores, and the legitimate equipment of such vessel.

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

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

(c) CORRECTION OF MINISTERIAL OR CLERICAL ERRORS.—

(1) PETITION FOR CORRECTION.—If the master of any vessel whose application for a permit to lade or unlade has been denied under this section believes that such denial resulted from a ministerial or clerical error, not amounting to a mistake of law, committed by any Customs officer, the master may petition the Customs Service for correction of such error, as provided by regulation.

(2) INAPPLICABILITY OF SECTIONS 514 AND 520.—Notwithstanding paragraph (1), imposition of countermeasures under this section shall not be deemed an exclusion or other protestable decision under section 514, and shall not be subject to correction under section 520.

(3) PETITIONS SEEKING ADMINISTRATIVE REVIEW.—Any petition seeking administrative review of any matter regarding the Secretary of Commerce's decision to list a vessel under section 807 must be brought under that section.

(d) PENALTIES.—In addition to any other provision of law, the Customs Service may impose a civil penalty of not to exceed $10,000 against the master of any vessel—

(1) who submits false information in requesting any permit to lade or unlade; or

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

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PART III—ASCERTAINMENT, COLLECTION, AND RECOVERY OF DUTIES

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SEC. 516A. JUDICIAL REVIEW IN COUNTERVAILING DUTY AND ANTIDUMPING DUTY PROCEEDINGS.

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SEC. 516B. JUDICIAL REVIEW IN INJURIOUS PRICING AND COUNTERMEASURE PROCEEDINGS.

(a) REVIEW OF DETERMINATION.—

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

(A)(i) a determination by the administering authority under section 802(c) not to initiate an investigation,

(ii) a negative determination by the Commission under section 803(a) as to whether there is or has been reasonable indication of material injury, threat of material injury, or material retardation,

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

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

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

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

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

(viii) a determination by the administering authority in a review under section 807(g),

(ix) a determination by the administering authority under section 807(i) to terminate proceedings, or to amend or revoke a countermeasure order,

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

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

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

(iii) notice of implementation of a determination described in subparagraph (C) of paragraph (2), or

(iv) notice of revocation of an injurious pricing order based on a determination described in subparagraph (D) of paragraph (2),

an interested party who is a party to the proceeding in connection with which the matter arises may commence an action in the United States Court of International Trade by filing concurrently a summons and complaint, each with the content and in the form, manner, and style prescribed by the rules of that court, contesting any factual findings or legal conclusions upon which the determination is based.

(2) REVIEWABLE DETERMINATIONS.—The determinations referred to in paragraph (1)(B) are—

(A) a final affirmative determination by the administering authority or by the Commission under section 805, including any negative part of such a determination (other than a part referred to in subparagraph (B)),

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

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

(D) a determination by the Commission under section 845(a) that results in the revocation of an injurious pricing order.

(3) EXCEPTION.—Notwithstanding the 30-day limitation imposed by paragraph (1) with regard to an order described in paragraph (1)(B)(i), a final affirmative determination by the administering authority under section 805 may be contested by commencing an action, in accordance with the provisions of paragraph (1), within 30 days after the date of publication in the Federal Register of a final negative determination by the Commission under section 805.

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

(b) STANDARDS OF REVIEW.—

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

(A) in an action brought under subparagraph (A) of subsection (a)(1), to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, or

(B) in an action brought under subparagraph (B) of subsection (a)(1), to be unsupported by substantial evidence on the record, or otherwise not in accordance with law.

(2) RECORD FOR REVIEW.—

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

(i) a copy of all information presented to or obtained by the administering authority or the Commission during the course of the administrative proceeding, including all governmental memoranda pertaining to the case and the record of ex parte meetings required to be kept by section 843(a)(2); and

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

(B) CONFIDENTIAL OR PRIVILEGED MATERIAL.—The confidential or privileged status accorded to any documents, comments, or information shall be preserved in any action under this section. Notwithstanding the preceding sentence, the court may examine, in camera, the confidential or privileged material, and may disclose such material under such terms and conditions as it may order.

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

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

(1) ADMINISTERING AUTHORITY.—The term "administering authority" has the meaning given that term in section 861(1).

(2) COMMISSION.—The term "Commission" means the United States International Trade Commission.

(3) INTERESTED PARTY.—The term "interested party" means any person described in section 861(17).

* * * * * * *

TITLE VIII—INJURIOUS PRICING AND COUNTERMEASURES RELATING TO SHIPBUILDING

Subtitle A—Imposition of Injurious Pricing Charge and Countermeasures

Subtitle B—Special Rules

Subtitle C—Procedures

Subtitle D—Definitions

Subtitle A—Imposition of Injurious Pricing Charge and Countermeasures

SEC. 801. INJURIOUS PRICING CHARGE.

(a) BASIS FOR CHARGE.—If—

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

(2) the Commission determines that—

(A) an industry in the United States—

(i) is or has been materially injured, or

(ii) is threatened with material injury, or

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

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

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

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

(a) INITIATION BY ADMINISTERING AUTHORITY.—

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

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

(b) INITIATION BY PETITION.—

(1) PETITION REQUIREMENTS.—

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

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

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

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

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

(III) except in a case in which the vessel was sold through a broad multiple bid, if there is no

invitation to tender a bid, the petition shall include information indicating that the petitioner was capable of building the vessel concerned and, if the petitioner knew or should have known of the proposed purchase, it made demonstrable efforts to conclude a sale with the United States buyer consistent with the delivery date and technical requirements of the buyer.

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

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

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

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

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

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

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

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

(3) DEADLINE FOR FILING PETITION.—

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

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

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

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

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

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

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

(c) ACTIONS BEFORE INITIATING INVESTIGATIONS.—

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

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

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

(d) PETITION DETERMINATION.—

(1) TIME FOR INITIAL DETERMINATION.—

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

(i) alleges the elements necessary for the imposition of an injurious pricing charge under section 801(a) and the elements required under subsection (b)(1)(B), (C), (D), or (E), and contains information reasonably available to the petitioner supporting the allegations; and

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

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

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

(3) NEGATIVE DETERMINATIONS.—If—

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

(B) paragraph (6)(B) applies,

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

(4) DETERMINATION OF INDUSTRY SUPPORT.—

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

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

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

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

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

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

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

(D) COMMENTS BY INTERESTED PARTIES.—Before the administering authority makes a determination with respect to initiating an investigation, any person who would qual-

ify as an interested party under section 861(17) if an investigation were initiated, may submit comments or information on the issue of industry support. After the administering authority makes a determination with respect to initiating an investigation, the determination regarding industry support shall not be reconsidered.

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

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

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

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

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

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

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

SEC. 803. PRELIMINARY DETERMINATIONS.

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

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

(A) an industry in the United States—

(i) is or has been materially injured, or

(ii) is threatened with material injury, or

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

by reason of the sale of the subject vessel. If the Commission makes a negative determination under this paragraph, the investigation shall be terminated.

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

90 days after the date on which the Commission receives notice from the administering authority that the investigation has been initiated under such section.

(b) PRELIMINARY DETERMINATION BY ADMINISTERING AUTHORITY.—

(1) PERIOD OF INJURIOUS PRICING INVESTIGATION.—

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

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

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

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

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

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

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

(1) IN GENERAL.—If—

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

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

(I) the novelty of the issues presented, or

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

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

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

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

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

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

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

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

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

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

(1) determine an estimated injurious pricing margin, and

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

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

SEC. 804. TERMINATION OR SUSPENSION OF INVESTIGATION.

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

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

(2) LIMITATION ON TERMINATION BY COMMISSION.—The Commission may not terminate an investigation under paragraph

(1) before a preliminary determination is made by the administering authority under section 803(b).

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

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

(d) PROCEEDINGS BY WTO MEMBERS.—

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

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

(A) the imposition of antidumping measures, or

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

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

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

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

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

then the administering authority and the Commission shall terminate the suspension and continue the investigation. The period in which the investigation was suspended shall not be included in calculating deadlines applicable with respect to the investigation.

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

SEC. 805. FINAL DETERMINATIONS.

(a) DETERMINATIONS BY ADMINISTERING AUTHORITY.—

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

(2) EXTENSION OF PERIOD FOR DETERMINATION.—

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

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

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

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

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

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

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

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

(b) FINAL DETERMINATION BY COMMISSION.—

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

(A) an industry in the United States—

(i) is or has been materially injured, or

(ii) is threatened with material injury, or

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

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

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

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

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

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

(c) EFFECT OF FINAL DETERMINATIONS.—

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

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

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

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

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

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

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

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

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

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

(3) informs the foreign producer that—

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

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

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

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

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

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

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

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

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

(2) shall revoke an injurious pricing order—

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

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

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

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

(e) ALTERNATIVE EQUIVALENT REMEDY.—

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

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

(B) is in the public interest,

(C) can be effectively monitored and enforced, and

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

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

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

SEC. 807. IMPOSITION OF COUNTERMEASURES.

(a) GENERAL RULE.—

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

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

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

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

(b) NOTICE OF INTENT TO IMPOSE COUNTERMEASURES.—

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

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

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

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

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

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

(c) DETERMINATION TO IMPOSE COUNTERMEASURES; ORDER.—

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

(2) TIME FOR DETERMINATION.—The determination shall be issued within 90 days after the date on which the notice of intent to impose countermeasures under subsection (b) is published in the Federal Register. The administering authority shall publish the determination, and the order described in paragraph (4), in the Federal Register within 7 days after issuing the final determination, and shall provide a copy of the determination and order to the Customs Service.

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

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

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

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

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

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

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

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

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

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

after the date on which the notice of initiation of the review is published.

(e) EXTENSION OF COUNTERMEASURES.—

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

(2) DEADLINE FOR REQUEST FOR EXTENSION.—

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

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

(3) DETERMINATION.—

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

(B) PROCEDURES.—

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

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

(4) CONSULTATION WITH TRADE REPRESENTATIVE.—If paragraph (3)(B)(i) applies, the administering authority shall consult with the Trade Representative concerning whether it would be appropriate to request establishment of a dispute settlement panel under the Shipbuilding Agreement for the purpose of

seeking authorization to extend the scope or duration of countermeasures for a period in excess of 4 years.

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

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

(f) LIST OF VESSELS SUBJECT TO COUNTERMEASURES.—

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

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

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

(B) The vessel identification number.

(C) The shipyard where the vessel was constructed.

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

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

(F) The delivery date of the vessel.

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

(H) Any other identifying information available.

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

(4) SERVICE OF LIST AND AMENDMENTS.—

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

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

(ii) the United States Customs Service,

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

(iv) the owners of vessels on the list,

(v) the shipyards on the list, and

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

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

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

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

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

(1) REQUEST FOR REVIEW.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) IF INJURIOUS PRICING ORDER REVOKED OR SUSPENDED.—If an injurious pricing order has been revoked or suspended under section 806 (d) or (e), the administering authority shall, as appropriate, suspend or terminate proceedings under this

section with respect to that order, or suspend or revoke a countermeasure order issued with respect to that injurious pricing order.

(2) IF PAYMENT DATE AMENDED.—

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

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

(C) REINSTITUTION OF PROCEEDINGS.—If—

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

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

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

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

(1) shall solicit comments from interested parties, and

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

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

SEC. 808. INJURIOUS PRICING PETITIONS BY THIRD COUNTRIES.

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

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

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

(b) INITIATION.—The Trade Representative, after consultation with the administering authority and the Commission and obtaining the approval of the Parties Group under the Shipbuilding

Agreement, shall determine whether to initiate an investigation described in subsection (a).

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 809. THIRD COUNTRY INJURIOUS PRICING.

(a) PETITION BY DOMESTIC INDUSTRY.—

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

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

(B) an industry in the United States is or has been materially injured, or is threatened with material injury by reason of the sale of the vessel, may submit a petition to the Trade Representative that alleges the elements referred to

in subparagraphs (A) and (B) and requests the Trade Representative to take action under subsection (b) of this section on behalf of the domestic industry.

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

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

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

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

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

(d) ACTION UPON REFUSAL OF SHIPBUILDING AGREEMENT PARTY TO ACT.—If the appropriate authority of the Shipbuilding Agreement Party refuses to undertake injurious pricing measures in response to a request made by the Trade Representative under subsection (b), the Trade Representative promptly shall consult with the domestic industry on whether action under any other law of the United States is appropriate.

Subtitle B—Special Rules

SEC. 821. EXPORT PRICE.

(a) EXPORT PRICE.—For purposes of this title, the term "export price" means the price at which the subject vessel is first sold (or agreed to be sold) by or for the account of the foreign producer of the subject vessel to an unaffiliated United States buyer. The term "sold (or agreed to be sold) by or for the account of the foreign producer" includes any transfer of an ownership interest, including by way of lease or long-term bareboat charter, in conjunction with the original transfer from the producer, either directly or indirectly, to a United States buyer.

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

(1) increased by the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject vessel, and

(2) reduced by—

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

(B) the amount, if included in such price, of any export tax, duty, or other charge imposed by the exporting country on the exportation of the subject vessel, and

(C) all other expenses incidental to placing the vessel in condition for delivery to the buyer.

SEC. 822. NORMAL VALUE.

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

(1) DETERMINATION OF NORMAL VALUE.—

(A) IN GENERAL.—The normal value of the subject vessel shall be the price described in subparagraph (B), at a time reasonably corresponding to the time of the sale used to determine the export price under section 821(a).

(B) PRICE.—The price referred to in subparagraph (A) is—

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

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

(I) such price is representative, and

(II) the administering authority does not determine that the particular market situation in such other country prevents a proper comparison with the export price.

(C) THIRD COUNTRY SALES.—This subparagraph applies when—

(i) a foreign like vessel is not sold in the exporting country as described in subparagraph (B)(i), or

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

(D) CONTEMPORANEOUS SALE.—For purposes of subparagraph (A), 'a time reasonably corresponding to the time of the sale' means within 3 months before or after the sale of the subject vessel or, in the absence of such sales, such longer period as the administering authority determines would be appropriate.

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

(3) USE OF CONSTRUCTED VALUE.—If the administering authority determines that the normal value of the subject vessel

cannot be determined under paragraph (1)(B) or (1)(C), then the normal value of the subject vessel shall be the constructed value of that vessel, as determined under subsection (e).

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

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

(A) reduced by—

(i) the amount, if any, included in the price described in paragraph (1)(B), attributable to any costs, charges, and expenses incident to bringing the foreign like vessel from the shipyard to the place of delivery to the purchaser,

(ii) the amount of any taxes imposed directly upon the foreign like vessel or components thereof which have been rebated, or which have not been collected, on the subject vessel, but only to the extent that such taxes are added to or included in the price of the foreign like vessel, and

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

(B) increased or decreased by the amount of any difference (or lack thereof) between the export price and the price described in paragraph (1)(B) (other than a difference for which allowance is otherwise provided under this section) that is established to the satisfaction of the administering authority to be wholly or partly due to—

(i) physical differences between the subject vessel and the vessel used in determining normal value, or

(ii) other differences in the circumstances of sale.

(6) ADJUSTMENTS FOR LEVEL OF TRADE.—The price described in paragraph (1)(B) shall also be increased or decreased to make due allowance for any difference (or lack thereof) between the export price and the price described in paragraph (1)(B) (other than a difference for which allowance is otherwise made under this section) that is shown to be wholly or partly due to a difference in level of trade between the export price and normal value, if the difference in level of trade—

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

(B) is demonstrated to affect price comparability, based on a pattern of consistent price differences between sales at different levels of trade in the country in which normal value is determined.

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

(7) ADJUSTMENTS TO CONSTRUCTED VALUE.—Constructed value as determined under subsection (e) may be adjusted, as appropriate, pursuant to this subsection.

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

(1) DETERMINATION; SALES DISREGARDED.—Whenever the administering authority has reasonable grounds to believe or suspect that the sale of the foreign like vessel under consideration for the determination of normal value has been made at a price which represents less than the cost of production of the foreign like vessel, the administering authority shall determine whether, in fact, such sale was made at less than the cost of production. If the administering authority determines that the sale was made at less than the cost of production and was not at a price which permits recovery of all costs within 5 years, such sale may be disregarded in the determination of normal value. Whenever such a sale is disregarded, normal value shall be based on another sale of a foreign like vessel in the ordinary course of trade. If no sales made in the ordinary course of trade remain, the normal value shall be based on the constructed value of the subject vessel.

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

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

(B) RECOVERY OF COSTS.—If the price is below the cost of production at the time of sale but is above the weighted average cost of production for the period of investigation, such price shall be considered to provide for recovery of costs within 5 years.

(3) CALCULATION OF COST OF PRODUCTION.—For purposes of this section, the cost of production shall be an amount equal to the sum of—

(A) the cost of materials and of fabrication or other processing of any kind employed in producing the foreign like vessel, during a period which would ordinarily permit the production of that vessel in the ordinary course of business, and

(B) an amount for selling, general, and administrative expenses based on actual data pertaining to the production and sale of the foreign like vessel by the producer in question.

For purposes of subparagraph (A), if the normal value is based on the price of the foreign like vessel sold in a country other than the exporting country, the cost of materials shall be determined without regard to any internal tax in the exporting country imposed on such materials or on their disposition which are remitted or refunded upon exportation.

(c) NONMARKET ECONOMY COUNTRIES.—

(1) IN GENERAL.—If—

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

(B) the administering authority finds that available information does not permit the normal value of the subject vessel to be determined under subsection (a),

the administering authority shall determine the normal value of the subject vessel on the basis of the value of the factors of production utilized in producing the vessel and to which shall be added an amount for general expenses and profit plus the cost of expenses incidental to placing the vessel in a condition for delivery to the buyer. Except as provided in paragraph (2), the valuation of the factors of production shall be based on the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate by the administering authority.

(2) EXCEPTION.—If the administering authority finds that the available information is inadequate for purposes of determining the normal value of the subject vessel under paragraph (1), the administering authority shall determine the normal value on the basis of the price at which a vessel that is—

(A) comparable to the subject vessel, and

(B) produced in one or more market economy countries that are at a level of economic development comparable to that of the nonmarket economy country,

is sold in other countries, including the United States.

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

(A) hours of labor required,

(B) quantities of raw materials employed,

(C) amounts of energy and other utilities consumed, and

(D) representative capital cost, including depreciation.

(4) VALUATION OF FACTORS OF PRODUCTION.—The administering authority, in valuing factors of production under paragraph (1), shall utilize, to the extent possible, the prices or costs of factors of production in one or more market economy countries that are—

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

(B) significant producers of comparable vessels.

(d) SPECIAL RULE FOR CERTAIN MULTINATIONAL CORPORATIONS.—Whenever, in the course of an investigation under this title, the administering authority determines that—

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

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

(3) the normal value of a foreign like vessel produced in one or more of the facilities outside the exporting country is higher than the normal value of the foreign like vessel produced in the facilities located in the exporting country,

the administering authority shall determine the normal value of the subject vessel by reference to the normal value at which a foreign like vessel is sold from one or more facilities outside the exporting country. The administering authority, in making any determination under this subsection, shall make adjustments for the difference between the costs of production (including taxes, labor, materials, and overhead) of the foreign like vessel produced in facilities outside the exporting country and costs of production of the foreign like vessel produced in facilities in the exporting country, if such differences are demonstrated to its satisfaction.

(e) CONSTRUCTED VALUE.—

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

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

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

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

(I) the actual amounts incurred and realized by the foreign producer of the subject vessel for selling, general, and administrative expenses, and for profits, in connection with the production and sale of the same general category of vessel in the domestic market of the country of origin of the subject vessel,

(II) the weighted average of the actual amounts incurred and realized by producers in the country of origin of the subject vessel (other than the producer of the subject vessel) for selling, general, and administrative expenses, and for profits, in connection with the production and sale of a foreign like vessel, in the ordinary course of trade, in the domestic market, or

(III) if data are not available under subclause (I) or (II), the amounts incurred and realized for selling, general, and administrative expenses, and for profits, based on any other reasonable method, except that the amount allowed for profit may not exceed the amount normally realized by foreign producers (other than the producer of the subject vessel) in connection with the sale of vessels in the same general category of vessel as the subject vessel in the domestic market of the country of origin of the subject vessel.

For purposes of this paragraph, the profit shall be based on the average profit realized over a reasonable period of time before and after the sale of the subject vessel and shall reflect a reasonable profit at the time of such sale. For purposes of the preceding sentence, a "reasonable period of time" shall not, except

where otherwise appropriate, exceed 6 months before, or 6 months after, the sale of the subject vessel. In calculating profit under this paragraph, any distortion which would result in other than a profit which is reasonable at the time of the sale shall be eliminated.

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

(3) COSTS OF MATERIALS.—For purposes of paragraph (1)(A), the cost of materials shall be determined without regard to any internal tax in the exporting country imposed on such materials or their disposition which are remitted or refunded upon exportation of the subject vessel produced from such materials.

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

(1) COSTS.—

(A) IN GENERAL.—Costs shall normally be calculated based on the records of the foreign producer of the subject vessel, if such records are kept in accordance with the generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sale of the vessel. The administering authority shall consider all available evidence on the proper allocation of costs, including that which is made available by the foreign producer on a timely basis, if such allocations have been historically used by the foreign producer, in particular for establishing appropriate amortization and depreciation periods, and allowances for capital expenditures and other development costs.

(B) NONRECURRING COSTS.—Costs shall be adjusted appropriately for those nonrecurring costs that benefit current or future production, or both.

(C) STARTUP COSTS.—

(i) IN GENERAL.—Costs shall be adjusted appropriately for circumstances in which costs incurred during the time period covered by the investigation are affected by startup operations.

(ii) STARTUP OPERATIONS.—Adjustments shall be made for startup operations only where—

(I) a producer is using new production facilities or producing a new type of vessel that requires substantial additional investment, and

(II) production levels are limited by technical factors associated with the initial phase of commercial production.

For purposes of subclause (II), the initial phase of commercial production ends at the end of the startup period. In determining whether commercial production

levels have been achieved, the administering authority shall consider factors unrelated to startup operations that might affect the volume of production processed, such as demand, seasonality, or business cycles.

(iii) ADJUSTMENT FOR STARTUP OPERATIONS.—The adjustment for startup operations shall be made by substituting the unit production costs incurred with respect to the vessel at the end of the startup period for the unit production costs incurred during the startup period. If the startup period extends beyond the period of the investigation under this title, the administering authority shall use the most recent cost of production data that it reasonably can obtain, analyze, and verify without delaying the timely completion of the investigation.

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

(D) COSTS DUE TO EXTRAORDINARY CIRCUMSTANCES NOT INCLUDED.—Costs shall not include actual costs which are due to extraordinary circumstances (including, but not limited to, labor disputes, fire, and natural disasters) and which are significantly over the cost increase which the shipbuilder could have reasonably anticipated and taken into account at the time of sale.

(2) TRANSACTIONS DISREGARDED.—A transaction directly or indirectly between affiliated persons may be disregarded if, in the case of any element of value required to be considered, the amount representing that element does not fairly reflect the amount usually reflected in sales of a like vessel in the market under consideration. If a transaction is disregarded under the preceding sentence and no other transactions are available for consideration, the determination of the amount shall be based on the information available as to what the amount would have been if the transaction had occurred between persons who are not affiliated.

(3) MAJOR INPUT RULE.—If, in the case of a transaction between affiliated persons involving the production by one of such persons of a major input to the subject vessel, the administering authority has reasonable grounds to believe or suspect that an amount represented as the value of such input is less than the cost of production of such input, then the administering authority may determine the value of the major input on the basis of the information available regarding such cost of production, if such cost is greater than the amount that would be determined for such input under paragraph (2).

SEC. 823. CURRENCY CONVERSION.

(a) IN GENERAL.—In an injurious pricing proceeding under this title, the administering authority shall convert foreign currencies into United States dollars using the exchange rate in effect on the date of sale of the subject vessel, except that if it is established that a currency transaction on forward markets is directly linked to a sale under consideration, the exchange rate specified with respect to

such foreign currency in the forward sale agreement shall be used to convert the foreign currency.

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

Subtitle C—Procedures

SEC. 841. HEARINGS.

(a) UPON REQUEST.—The administering authority and the Commission shall each hold a hearing in the course of an investigation under this title, upon the request of any party to the investigation, before making a final determination under section 805.

(b) PROCEDURES.—Any hearing required or permitted under this title shall be conducted after notice published in the Federal Register, and a transcript of the hearing shall be prepared and made available to the public. The hearing shall not be subject to the provisions of subchapter II of chapter 5 of title 5, United States Code, or to section 702 of such title.

SEC. 842. DETERMINATIONS ON THE BASIS OF THE FACTS AVAILABLE.

(a) IN GENERAL.—If—

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

(2) an interested party or any other person—

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

(B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (b)(1) and (d) of section 844,

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

(D) provides such information but the information cannot be verified as provided in section 844(g),

the administering authority and the Commission shall, subject to section 844(c), use the facts otherwise available in reaching the applicable determination under this title.

(b) ADVERSE INFERENCES.—If the administering authority or the Commission (as the case may be) finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority or the Commission, the administering authority or the Commission (as the case may be), in reaching the applicable determination under this title, may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available. Such adverse inference may include reliance on information derived from—

(1) the petition, or

(2) any other information placed on the record.

(c) CORROBORATION OF SECONDARY INFORMATION.—When the administering authority or the Commission relies on secondary information rather than on information obtained in the course of an investigation under this title, the administering authority and the Commission, as the case may be, shall, to the extent practicable, corroborate that information from independent sources that are reasonably at their disposal.

SEC. 843. ACCESS TO INFORMATION.

(a) INFORMATION GENERALLY MADE AVAILABLE.—

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

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

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

(B) the person charged with making the determination, or any person charged with making a final recommendation to that person, in connection with that proceeding,

if information relating to that proceeding was presented or discussed at such meeting. The record of such an ex parte meeting shall include the identity of the persons present at the meeting, the date, time, and place of the meeting, and a summary of the matters discussed or submitted. The record of the ex parte meeting shall be included in the record of the proceeding.

(3) SUMMARIES; NON-PROPRIETARY SUBMISSIONS.—The administering authority and the Commission shall disclose—

(A) any proprietary information received in the course of a proceeding under this title if it is disclosed in a form which cannot be associated with, or otherwise be used to identify, operations of a particular person, and

(B) any information submitted in connection with a proceeding which is not designated as proprietary by the person submitting it.

(4) MAINTENANCE OF PUBLIC RECORD.—The administering authority and the Commission shall maintain and make available for public inspection and copying a record of all information which is obtained by the administering authority or the Commission, as the case may be, in a proceeding under this title to the extent that public disclosure of the information is not prohibited under this chapter or exempt from disclosure under section 552 of title 5, United States Code.

(b) PROPRIETARY INFORMATION.—

(1) PROPRIETARY STATUS MAINTAINED.—

(A) IN GENERAL.—Except as provided in subsection (a)(4) and subsection (c), information submitted to the administering authority or the Commission which is designated as proprietary by the person submitting the information shall not be disclosed to any person without the consent of the person submitting the information, other than—

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

(ii) to an officer or employee of the United States Customs Service who is directly involved in conducting an investigation regarding fraud under this title.

(B) ADDITIONAL REQUIREMENTS.—The administering authority and the Commission shall require that information for which proprietary treatment is requested be accompanied by—

(i) either—

(I) a nonproprietary summary in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence, or

(II) a statement that the information is not susceptible to summary, accompanied by a statement of the reasons in support of the contention, and

(ii) either—

(I) a statement which permits the administering authority or the Commission to release under administrative protective order, in accordance with subsection (c), the information submitted in confidence, or

(II) a statement to the administering authority or the Commission that the business proprietary information is of a type that should not be released under administrative protective order.

(2) UNWARRANTED DESIGNATION.—If the administering authority or the Commission determines, on the basis of the nature and extent of the information or its availability from public sources, that designation of any information as proprietary is unwarranted, then it shall notify the person who submitted it and ask for an explanation of the reasons for the designation. Unless that person persuades the administering authority or the Commission that the designation is warranted, or withdraws the designation, the administering authority or the Commission, as the case may be, shall return it to the party submitting it. In a case in which the administering authority or the Commission returns the information to the person submitting it, the person may thereafter submit other material concerning the subject matter of the returned information if the submission is made within the time otherwise provided for submitting such material.

(c) LIMITED DISCLOSURE OF CERTAIN PROPRIETARY INFORMATION UNDER PROTECTIVE ORDER.—

(1) DISCLOSURE BY ADMINISTERING AUTHORITY OR COMMISSION.—

(A) IN GENERAL.—Upon receipt of an application (before or after receipt of the information requested) which describes in general terms the information requested and sets

forth the reasons for the request, the administering authority or the Commission shall make all business proprietary information presented to, or obtained by it, during a proceeding under this title (except privileged information, classified information, and specific information of a type for which there is a clear and compelling need to withhold from disclosure) available to all interested parties who are parties to the proceeding under a protective order described in subparagraph (B), regardless of when the information is submitted during the proceeding. Customer names (other than the name of the United States buyer of the subject vessel) obtained during any investigation which requires a determination under section 805(b) may not be disclosed by the administering authority under protective order until either an order is published under section 806(a) as a result of the investigation or the investigation is suspended or terminated. The Commission may delay disclosure of customer names (other than the name of the United States buyer of the subject vessel) under protective order during any such investigation until a reasonable time before any hearing provided under section 841 is held.

(B) PROTECTIVE ORDER.—The protective order under which information is made available shall contain such requirements as the administering authority or the Commission may determine by regulation to be appropriate. The administering authority and the Commission shall provide by regulation for such sanctions as the administering authority and the Commission determine to be appropriate, including disbarment from practice before the agency.

(C) TIME LIMITATIONS ON DETERMINATIONS.—The administering authority or the Commission, as the case may be, shall determine whether to make information available under this paragraph—

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

(ii) if—

(I) the person that submitted the information raises objection to its release, or

(II) the information is unusually voluminous or complex,

not later than 30 days (10 days if the submission pertains to a proceeding under section 803(a)) after the date on which the information is submitted.

(D) AVAILABILITY AFTER DETERMINATION.—If the determination under subparagraph (C) is affirmative, then—

(i) the business proprietary information submitted to the administering authority or the Commission on or before the date of the determination shall be made available, subject to the terms and conditions of the protective order, on such date, and

(ii) the business proprietary information submitted to the administering authority or the Commission after

the date of the determination shall be served as required by subsection (d).

(E) FAILURE TO DISCLOSE.—If a person submitting information to the administering authority refuses to disclose business proprietary information which the administering authority determines should be released under a protective order described in subparagraph (B), the administering authority shall return the information, and any nonconfidential summary thereof, to the person submitting the information and summary and shall not consider either.

(2) DISCLOSURE UNDER COURT ORDER.—If the administering authority or the Commission denies a request for information under paragraph (1), then application may be made to the United States Court of International Trade for an order directing the administering authority or the Commission, as the case may be, to make the information available. After notification of all parties to the investigation and after an opportunity for a hearing on the record, the court may issue an order, under such conditions as the court deems appropriate, which shall not have the effect of stopping or suspending the investigation, directing the administering authority or the Commission to make all or a portion of the requested information described in the preceding sentence available under a protective order and setting forth sanctions for violation of such order if the court finds that, under the standards applicable in proceedings of the court, such an order is warranted, and that—

(A) the administering authority or the Commission has denied access to the information under subsection (b)(1),

(B) the person on whose behalf the information is requested is an interested party who is a party to the investigation in connection with which the information was obtained or developed, and

(C) the party which submitted the information to which the request relates has been notified, in advance of the hearing, of the request made under this section and of its right to appear and be heard.

(d) SERVICE.—Any party submitting written information, including business proprietary information, to the administering authority or the Commission during a proceeding shall, at the same time, serve the information upon all interested parties who are parties to the proceeding, if the information is covered by a protective order. The administering authority or the Commission shall not accept any such information that is not accompanied by a certificate of service and a copy of the protective order version of the document containing the information. Business proprietary information shall only be served upon interested parties who are parties to the proceeding that are subject to protective order, except that a nonconfidential summary thereof shall be served upon all other interested parties who are parties to the proceeding.

(e) INFORMATION RELATING TO VIOLATIONS OF PROTECTIVE ORDERS AND SANCTIONS.—The administering authority and the Commission may withhold from disclosure any correspondence, private letters of reprimand, settlement agreements, and documents and files compiled in relation to investigations and actions involving a

violation or possible violation of a protective order issued under subsection (c), and such information shall be treated as information described in section 552(b)(3) of title 5, United States Code.

(f) OPPORTUNITY FOR COMMENT BY VESSEL BUYERS.—The administering authority and the Commission shall provide an opportunity for buyers of subject vessels to submit relevant information to the administering authority concerning a sale at less than fair value or countermeasures, and to the Commission concerning material injury by reason of the sale of a vessel at less than fair value.

(g) PUBLICATION OF DETERMINATIONS; REQUIREMENTS FOR FINAL DETERMINATIONS.—

(1) IN GENERAL.—Whenever the administering authority makes a determination under section 802 whether to initiate an investigation, or the administering authority or the Commission makes a preliminary determination under section 803, a final determination under section 805, a determination under subsection (b), (c), (d), (e)(3)(B)(ii), (g), or (i) of section 807, or a determination to suspend an investigation under this title, the administering authority or the Commission, as the case may be, shall publish the facts and conclusions supporting that determination, and shall publish notice of that determination in the Federal Register.

(2) CONTENTS OF NOTICE OR DETERMINATION.—The notice or determination published under paragraph (1) shall include, to the extent applicable—

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

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

(ii) a description sufficient to identify the subject vessel (including type, purpose, and size),

(iii) with respect to an injurious pricing charge, the injurious pricing margin established and a full explanation of the methodology used in establishing such margin,

(iv) with respect to countermeasures, the scope and duration of countermeasures and, if applicable, any changes thereto, and

(v) the primary reasons for the determination, and

(B) in the case of a determination of the Commission—

(i) considerations relevant to the determination of injury, and

(ii) the primary reasons for the determination.

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

(A) the administering authority shall include in a final determination under section 805 or 807(c) an explanation of the basis for its determination that addresses relevant arguments, made by interested parties who are parties to the investigation, concerning the establishment of the injurious pricing charge with respect to which the determination is made, and

(B) the Commission shall include in a final determination of injury an explanation of the basis for its determination that addresses relevant arguments that are made by interested parties who are parties to the investigation concerning the effects and impact on the industry of the sale of the subject vessel.

SEC. 844. CONDUCT OF INVESTIGATIONS.

(a) CERTIFICATION OF SUBMISSIONS.—Any person providing factual information to the administering authority or the Commission in connection with a proceeding under this title on behalf of the petitioner or any other interested party shall certify that such information is accurate and complete to the best of that person's knowledge.

(b) DIFFICULTIES IN MEETING REQUIREMENTS.—

(1) NOTIFICATION BY INTERESTED PARTY.—If an interested party, promptly after receiving a request from the administering authority or the Commission for information, notifies the administering authority or the Commission (as the case may be) that such party is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative forms in which such party is able to submit the information, the administering authority or the Commission (as the case may be) shall consider the ability of the interested party to submit the information in the requested form and manner and may modify such requirements to the extent necessary to avoid imposing an unreasonable burden on that party.

(2) ASSISTANCE TO INTERESTED PARTIES.—The administering authority and the Commission shall take into account any difficulties experienced by interested parties, particularly small companies, in supplying information requested by the administering authority or the Commission in connection with investigations under this title, and shall provide to such interested parties any assistance that is practicable in supplying such information.

(c) DEFICIENT SUBMISSIONS.—If the administering authority or the Commission determines that a response to a request for information under this title does not comply with the request, the administering authority or the Commission (as the case may be) shall promptly inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person with an opportunity to remedy or explain the deficiency in light of the time limits established for the completion of investigations or reviews under this title. If that person submits further information in response to such deficiency and either—

(1) the administering authority or the Commission (as the case may be) finds that such response is not satisfactory, or

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

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

(d) USE OF CERTAIN INFORMATION.—In reaching a determination under section 803, 805, or 807, the administering authority and the Commission shall not decline to consider information that is sub-

mitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority or the Commission if—

(1) the information is submitted by the deadline established for its submission,

(2) the information can be verified,

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

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

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

(e) NONACCEPTANCE OF SUBMISSIONS.—If the administering authority or the Commission declines to accept into the record any information submitted in an investigation under this title, it shall, to the extent practicable, provide to the person submitting the information a written explanation of the reasons for not accepting the information.

(f) PUBLIC COMMENT ON INFORMATION.—Information that is submitted on a timely basis to the administering authority or the Commission during the course of a proceeding under this title shall be subject to comment by other parties to the proceeding within such reasonable time as the administering authority or the Commission shall provide. The administering authority and the Commission, before making a final determination under section 805 or 807, shall cease collecting information and shall provide the parties with a final opportunity to comment on the information obtained by the administering authority or the Commission (as the case may be) upon which the parties have not previously had an opportunity to comment. Comments containing new factual information shall be disregarded.

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

SEC. 845. ADMINISTRATIVE ACTION FOLLOWING SHIPBUILDING AGREEMENT PANEL REPORTS.

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

(1) ADVISORY REPORT.—If a dispute settlement panel under the Shipbuilding Agreement finds in a report that an action by the Commission in connection with a particular proceeding under this title is not in conformity with the obligations of the United States under the Shipbuilding Agreement, the Trade Representative may request the Commission to issue an advisory report on whether this title permits the Commission to take steps in connection with the particular proceeding that would render its action not inconsistent with the findings of the panel concerning those obligations. The Trade Representative shall notify the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate of such request.

(2) TIME LIMITS FOR REPORT.—The Commission shall transmit its report under paragraph (1) to the Trade Representative

within 30 calendar days after the Trade Representative requests the report.

(3) CONSULTATIONS ON REQUEST FOR COMMISSION DETERMINATION.—If a majority of the Commissioners issues an affirmative report under paragraph (1), the Trade Representatives shall consult with the congressional committees listed in paragraph (1) concerning the matter.

(4) COMMISSION DETERMINATION.—Notwithstanding any other provision of this title, if a majority of the Commissioners issues an affirmative report under paragraph (1), the Commission, upon the written request of the Trade Representative, shall issue a determination in connection with the particular proceeding that would render the Commission's action described in paragraph (1) not inconsistent with the findings of the panel. The Commission shall issue its determination not later than 120 calendar days after the request from the Trade Representative is made.

(5) CONSULTATIONS ON IMPLEMENTATION OF COMMISSION DETERMINATION.—The Trade Representative shall consult with the congressional committees listed in paragraph (1) before the Commission's determination under paragraph (4) is implemented.

(6) REVOCATION OF ORDER.—If, by virtue of the Commission's determination under paragraph (4), an injurious pricing order is no longer supported by an affirmative Commission determination under this title, the Trade Representative may, after consulting with the congressional committees under paragraph (5), direct the administering authority to revoke the injurious pricing order.

(b) ACTION BY ADMINISTERING AUTHORITY.—

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

(A) an action by the administering authority in a proceeding under this title is not in conformity with the obligations of the United States under the Shipbuilding Agreement,

(B) the due date for payment of an injurious pricing charge contained in an order issued under section 806 should be amended,

(C) countermeasures provided for in an order issued under section 807 should be provisionally suspended or reduced pending the final decision of the panel, or

(D) the scope or duration of countermeasures imposed under section 807 should be narrowed or shortened,

the Trade Representative shall consult with the administering authority and the congressional committees listed in subsection (a)(1) on the matter.

(2) DETERMINATION BY ADMINISTERING AUTHORITY.—Notwithstanding any other provision of this title, the administering authority shall, in response to a written request from the Trade Representative, issue a determination, or an amendment to or suspension of an injurious pricing or countermeasure order, as

the case may be, in connection with the particular proceeding that would render the administering authority's action described in paragraph (1) not inconsistent with the findings of the panel.

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

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

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

(4) CONSULTATIONS BEFORE IMPLEMENTATION.—Before the administering authority implements any determination, amendment, or suspension under paragraph (2), the Trade Representative shall consult with the administering authority and the congressional committees listed in subsection (a)(1) with respect to such determination, amendment, or suspension.

(5) IMPLEMENTATION OF DETERMINATION.—The Trade Representative may, after consulting with the administering authority and the congressional committees under paragraph (4), direct the administering authority to implement, in whole or in part, the determination, amendment, or suspension made under paragraph (2). The administering authority shall publish notice of such implementation in the Federal Register.

(c) OPPORTUNITY FOR COMMENT BY INTERESTED PARTIES.—Before issuing a determination, amendment, or suspension, the administering authority, in a matter described in subsection (b)(1)(A), or the Commission, in a matter described in subsection (a)(1), as the case may be, shall provide interested parties with an opportunity to submit written comments and, in appropriate cases, may hold a hearing, with respect to the determination.

Subtitle D—Definitions

SEC. 861. DEFINITIONS.

In this title:

(1) ADMINISTERING AUTHORITY.—The term "administering authority" means the Secretary of Commerce, or any other officer of the United States to whom the responsibility for carrying out the duties of the administering authority under this title are transferred by law.

(2) COMMISSION.—The term "Commission" means the United States International Trade Commission.

(3) COUNTRY.—The term "country" means a foreign country, a political subdivision, dependent territory, or possession of a foreign country and, except as provided in paragraph (16)(E)(iii), may not include an association of 2 or more foreign countries, political subdivisions, dependent territories, or possessions of countries into a customs union outside the United States.

(4) INDUSTRY.—

(A) IN GENERAL.—Except as used in section 808, the term "industry" means the producers as a whole of a domestic like vessel, or those producers whose collective capability to produce a domestic like vessel constitutes a major proportion of the total domestic capability to produce a domestic like vessel.

(B) PRODUCER.—A "producer" of a domestic like vessel includes an entity that is producing the domestic like vessel and an entity with the capability to produce the domestic like vessel.

(C) CAPABILITY TO PRODUCE A DOMESTIC LIKE VESSEL.—A producer has the "capability to produce a domestic like vessel" if it is capable of producing a domestic like vessel with its present facilities or could adapt its facilities in a timely manner to produce a domestic like vessel.

(D) RELATED PARTIES.—(i) In an investigation under this title, if a producer of a domestic like vessel and the foreign producer, seller (other than the foreign producer), or United States buyer of the subject vessel are related parties, or if a producer of a domestic like vessel is also a United States buyer of the subject vessel, the domestic producer may, in appropriate circumstances, be excluded from the industry.

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

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

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

(III) a third party directly or indirectly controls the domestic producer and the foreign producer, seller, or United States buyer, or

(IV) the domestic producer and the foreign producer, seller, or United States buyer directly or indirectly control a third party and there is reason to believe that the relationship causes the domestic producer to act differently than a nonrelated producer.

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

(E) PRODUCT LINES.—In an investigation under this title, the effect of the sale of the subject vessel shall be assessed in relation to the United States production (or production capability) of a domestic like vessel if available data permit the separate identification of production (or production capability) in terms of such criteria as the production process or the producer's profits. If the domestic production (or production capability) of a domestic like vessel has no separate identity in terms of such criteria, then the effect of the sale of the subject vessel shall be assessed by the examination of the production (or production capability) of the narrow-

est group or range of vessels, which includes a domestic like vessel, for which the necessary information can be provided.

(5) BUYER.—The term "buyer" means any person who acquires an ownership interest in a vessel, including by way of lease or long-term bareboat charter, in conjunction with the original transfer from the producer, either directly or indirectly, including an individual or company which owns or controls a buyer. There may be more than one buyer of any one vessel.

(6) UNITED STATES BUYER.—The term "United States buyer" means a buyer that is any of the following:

(A) A United States citizen.

(B) A juridical entity, including any corporation, company, association, or other organization, that is legally constituted under the laws and regulations of the United States or a political subdivision thereof, regardless of whether the entity is organized for pecuniary gain, privately or government owned, or organized with limited or unlimited liability.

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

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

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

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

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

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

(B) commercial practice within the industry,

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

(D) whether in practice there is a likelihood that the beneficiary or beneficiaries of such interests will take advantage of and the risk for the operation of the vessel for a significant part of the life-time of the vessel.

(8) VESSEL.—

(A) IN GENERAL.—Except as otherwise specifically provided under international agreements, the term "vessel" means—

(i) a self-propelled seagoing vessel of 100 gross tons or more used for transportation of goods or persons or for performance of a specialized service (including, but not limited to, ice breakers and dredges), and

(ii) a tug of 365 kilowatts or more,

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

(B) EXCLUSIONS.—The term "vessel" does not include—

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

(ii) any military vessel or any military reserve vessel, and

(iii) any vessel sold before the date that the Shipbuilding Agreement enters into force with respect to the United States, except that any vessel sold after December 21, 1994, for delivery more than 5 years after the date of the contract of sale shall be a "vessel" for purposes of this title unless the shipbuilder demonstrates to the administering authority that the extended delivery date was for normal commercial reasons and not to avoid applicability of this title.

(C) SELF-PROPELLED SEAGOING VESSEL.—A vessel is "self-propelled seagoing" if its permanent propulsion and steering provide it all the characteristics of self-navigability in the high seas.

(D) MILITARY VESSEL.—A "military vessel" is a vessel that, according to its basic structural characteristics and ability, is intended to be used exclusively for military purposes.

(E) MILITARY RESERVE VESSEL.—A "military reserve vessel" is a vessel that has been constructed with national defense features and characteristics required by the Secretary of Defense for the purpose of supporting the United States Armed Forces in a contingency, if the vessel (without regard to such features and characteristics) is otherwise subject to the terms and conditions of the Shipbuilding Agreement.

(9) LIKE VESSEL.—The term "like vessel" means a vessel of the same type, same purpose, and approximate size as the subject vessel and possessing characteristics closely resembling those of the subject vessel.

(10) DOMESTIC LIKE VESSEL.—The term "domestic like vessel" means a like vessel produced in the United States.

(11) FOREIGN LIKE VESSEL.—Except as used in section 822(e)(1)(B)(ii)(II), the term "foreign like vessel" means a like vessel produced by the foreign producer of the subject vessel for sale in the producer's domestic market or in a third country.

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

(13) SUBJECT VESSEL.—The term "subject vessel" means a vessel subject to an investigation or an injurious pricing order under this title.

(14) FOREIGN PRODUCER.—The term "foreign producer" means the producer or producers of the subject vessel.

(15) EXPORTING COUNTRY.—The term "exporting country" means the country in which the subject vessel was built.

(16) MATERIAL INJURY.—

(A) IN GENERAL.—The term "material injury" means harm which is not inconsequential, immaterial, or unimportant.

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

(i) shall consider—

(I) the sale of the subject vessel,

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

(III) the impact of the sale of the subject vessel on domestic producers of a domestic like vessel, but only in the context of production operations within the United States, and

(ii) may consider such other economic factors as are relevant to the determination regarding whether there is or has been material injury by reason of the sale of the subject vessel.

In the notification required under section 805(d), the Commission shall explain its analysis of each factor considered under clause (i), and identify each factor considered under clause (ii) and explain in full its relevance to the determination.

(C) EVALUATION OF RELEVANT FACTORS.—For purposes of subparagraph (B)—

(i) SALE OF THE SUBJECT VESSEL.—In evaluating the sale of the subject vessel, the Commission shall consider whether the sale, either in absolute terms or relative to production or demand in the United States, in terms of either volume or value, is or has been significant.

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

(I) there has been significant price underselling of the subject vessel as compared with the price of a domestic like vessel, and

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

(iii) IMPACT ON AFFECTED DOMESTIC INDUSTRY.—In examining the impact required to be considered under subparagraph (B)(i)(III), the Commission shall evalu-

ate all relevant economic factors which have a bearing on the state of the industry in the United States, including, but not limited to—

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

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

(III) actual and potential negative effects on cash flow, employment, wages, growth, ability to raise capital, and investment,

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

(V) the magnitude of the injurious pricing margin.

The Commission shall evaluate all relevant economic factors described in this clause within the context of the business cycle and conditions of competition that are distinctive to the affected industry.

(D) STANDARD FOR DETERMINATION.—The presence or absence of any factor which the Commission is required to evaluate under subparagraph (C) shall not necessarily give decisive guidance with respect to the determination by the Commission of material injury.

(E) THREAT OF MATERIAL INJURY.—

(i) IN GENERAL.—In determining whether an industry in the United States is threatened with material injury by reason of the sale of the subject vessel, the Commission shall consider, among other relevant economic factors—

(I) any existing unused production capacity or imminent, substantial increase in production capacity in the exporting country indicating the likelihood of substantially increased sales of a foreign like vessel to United States buyers, taking into account the availability of other export markets to absorb any additional exports,

(II) whether the sale of a foreign like vessel or other factors indicate the likelihood of significant additional sales to United States buyers,

(III) whether sale of the subject vessel or sale of a foreign like vessel by the foreign producer are at prices that are likely to have a significant depressing or suppressing effect on domestic prices, and are likely to increase demand for further sales,

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

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

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

(ii) BASIS FOR DETERMINATION.—The Commission shall consider the factors set forth in clause (i) as a whole. The presence or absence of any factor which the Commission is required to consider under clause (i) shall not necessarily give decisive guidance with respect to the determination. Such a determination may not be made on the basis of mere conjecture or supposition.

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

(I) IN GENERAL.—The Commission shall consider whether injurious pricing in the markets of foreign countries (as evidenced by injurious pricing findings or injurious pricing remedies of other Shipbuilding Agreement Parties, or antidumping determinations of, or measures imposed by, other countries, against a like vessel produced by the producer under investigation) suggests a threat of material injury to the domestic industry. In the course of its investigation, the Commission shall request information from the foreign producer or United States buyer concerning this issue.

(II) EUROPEAN COMMUNITIES.—For purposes of this clause, the European Communities as a whole shall be treated as a single foreign country.

(F) CUMULATION FOR DETERMINING MATERIAL INJURY.—

(i) IN GENERAL.—For purposes of clauses (i) and (ii) of subparagraph (C), and subject to clause (ii) of this subparagraph, the Commission shall cumulatively assess the effects of sales of foreign like vessels from all foreign producers with respect to which—

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

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

(III) petitions were filed under section 802(b) and investigations were initiated under section 802(a) on the same day,

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

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

(I) with respect to which the administering authority has made a preliminary negative deter-

mination, unless the administering authority subsequently made a final affirmative determination with respect to those sales before the Commission's final determination is made, or

(II) from any producer with respect to which the investigation has been terminated.

(iii) RECORDS IN FINAL INVESTIGATIONS.—In each final determination in which it cumulatively assesses the effects of sales under clause (i), the Commission may make its determinations based on the record compiled in the first investigation in which it makes a final determination, except that when the administering authority issues its final determination in a subsequently completed investigation, the Commission shall permit the parties in the subsequent investigation to submit comments concerning the significance of the administering authority's final determination, and shall include such comments and the administering authority's final determination in the record for the subsequent investigation.

(G) CUMULATION FOR DETERMINING THREAT OF MATERIAL INJURY.—To the extent practicable and subject to subparagraph (F)(ii), for purposes of clause (i) (II) and (III) of subparagraph (E), the Commission may cumulatively assess the effects of sales of like vessels from all countries with respect to which—

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

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

(iii) petitions were filed under section 802(b) and investigations were initiated under section 802(a) on the same day,

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

(17) INTERESTED PARTY.—The term "interested party" means, in a proceeding under this title—

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

(ii) a trade or business association a majority of the members of which are the foreign producer, seller, or United States buyer of the subject vessel,

(B) the government of the country in which the subject vessel is produced or manufactured,

(C) a producer that is a member of an industry,

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

(E) a trade or business association a majority of whose members are producers in an industry,

(F) an association, a majority of whose members is composed of interested parties described in subparagraph (C), (D), or (E), and

(G) for purposes of section 807, a purchaser who, after the effective date of an order issued under that section, entered into a contract of sale with the foreign producer that is subject to the order.

(18) AFFIRMATIVE DETERMINATIONS BY DIVIDED COMMISSION.—If the Commissioners voting on a determination by the Commission are evenly divided as to whether the determination should be affirmative or negative, the Commission shall be deemed to have made an affirmative determination. For the purpose of applying this paragraph when the issue before the Commission is to determine whether there is or has been—

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

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

(C) material retardation of the establishment of an industry in the United States,

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

(19) ORDINARY COURSE OF TRADE.—The term 'ordinary course of trade' means the conditions and practices which, for a reasonable time before the sale of the subject vessel, have been normal in the shipbuilding industry with respect to a like vessel. The administering authority shall consider the following sales and transactions, among others, to be outside the ordinary course of trade:

(A) Sales disregarded under section 822(b)(1).

(B) Transactions disregarded under section 822(f)(2).

(20) NONMARKET ECONOMY COUNTRY.—

(A) IN GENERAL.—The term "nonmarket economy country" means any foreign country that the administering authority determines does not operate on market principles of cost or pricing structures, so that sales of vessels in such country do not reflect the fair value of the vessels.

(B) FACTORS TO BE CONSIDERED.—In making determinations under subparagraph (A) the administering authority shall take into account—

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

(ii) the extent to which wage rates in the foreign country are determined by free bargaining between labor and management,

(iii) the extent to which joint ventures or other investments by firms of other foreign countries are permitted in the foreign country,

(iv) the extent of government ownership or control of the means of production,

(v) the extent of government control over the allocation of resources and over the price and output decisions of enterprises, and

(vi) such other factors as the administering authority considers appropriate.

(C) DETERMINATION IN EFFECT.—

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

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

(D) DETERMINATIONS NOT IN ISSUE.—Notwithstanding any other provision of law, any determination made by the administering authority under subparagraph (A) shall not be subject to judicial review in any investigation conducted under subtitle A.

(21) SHIPBUILDING AGREEMENT.—The term "Shipbuilding Agreement" means The Agreement Respecting Normal Competitive Conditions in the Commercial Shipbuilding and Repair Industry, resulting from negotiations under the auspices of the Organization for Economic Cooperation and Development, and entered into on December 21, 1994.

(22) SHIPBUILDING AGREEMENT PARTY.—The term "Shipbuilding Agreement Party" means a state or separate customs territory that is a Party to the Shipbuilding Agreement, and with respect to which the United States applies the Shipbuilding Agreement.

(23) WTO AGREEMENT.—The term "WTO Agreement" means the Agreement defined in section 2(9) of the Uruguay Round Agreements Act.

(24) WTO MEMBER.—The term "WTO member" means a state, or separate customs territory (within the meaning of Article XII of the WTO Agreement), with respect to which the United States applies the WTO Agreement.

(25) TRADE REPRESENTATIVE.—The term 'Trade Representative' means the United States Trade Representative.

(26) AFFILIATED PERSONS.—The following persons shall be considered to be "affiliated" or "affiliated persons":

(A) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.

(B) Any officer or director of an organization and such organization.

(C) Partners.

(D) Employer and employee.

(E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization, and such organization.

(F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.

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

For purposes of this paragraph, a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person.

(27) INJURIOUS PRICING.—The term "injurious pricing" refers to the sale of a vessel at less than fair value.

(28) INJURIOUS PRICING MARGIN.—

(A) IN GENERAL.—The term "injurious pricing margin" means the amount by which the normal value exceeds the export price of the subject vessel.

(B) MAGNITUDE OF THE INJURIOUS PRICING MARGIN.—The magnitude of the injurious pricing margin used by the Commission shall be—

(i) in making a preliminary determination under section 803(a) in an investigation (including any investigation in which the Commission cumulatively assesses the effect of sales under paragraph (16)(F)(i)), the injurious pricing margin or margins published by the administering authority in its notice of initiation of the investigation; and

(ii) in making a final determination under section 805(b), the injurious pricing margin or margins most recently published by the administering authority before the closing of the Commission's administrative record.

(29) COMMERCIAL INTEREST REFERENCE RATE.—The term "Commercial Interest Reference Rate" or "CIRR" means an interest rate that the administering authority determines to be consistent with Annex III, and appendices and notes thereto, of the Understanding on Export Credits for Ships, resulting from negotiations under the auspices of the Organization for Economic Cooperation, and entered into on December 21, 1994.

(30) ANTIDUMPING.—

(A) WTO MEMBERS.—In the case of a WTO member, the term "antidumping" refers to action taken pursuant to the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994.

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

(31) BROAD MULTIPLE BID.—The term "broad multiple bid" means a bid in which the proposed buyer extends an invitation to bid to at least all the producers in the industry known by the buyer to be capable of building the subject vessel.

TITLE 28, UNITED STATES CODE

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PART IV—JUDICIARY AND JUDICIAL PROCEDURE

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CHAPTER 95—COURT OF INTERNATIONAL TRADE

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SEC. 1581. CIVIL ACTIONS AGAINST THE UNITED STATES AND AGENCIES AND OFFICERS THEREOF.

(a) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced to contest the denial of a protest, in whole or in part, under section 515 of the Tariff Act of 1930.

(b) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced under section 516 of the Tariff Act of 1930.

(c) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced under section 516A *or 516B* of the Tariff Act of 1930.

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PART VI—PARTICULAR PROCEEDINGS

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CHAPTER 169—COURT OF INTERNATIONAL TRADE PROCEDURE

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SEC. 2643. RELIEF.

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(c)(1) Except as provided in paragraphs (2), (3), (4), [and (5)] *(5), and (6)* of this subsection, the Court of International Trade may, in addition to the orders specified in subsections (1) and (b) of this section, order any other form of relief that is appropriate in a civil action, including, but not limited to, declaratory judgments, orders of remand, injunctions, and writs of mandamus and prohibition.

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(6) In any civil action under section 516B of the Tariff act of 1930, the Court of International Trade may not issue injunctions or any other form of equitable relief, except with regard to implementation of a countermeasure order under section 468 of that Act, upon a proper showing that such relief is warranted.

MERCHANT MARINE ACT, 1936

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TITLE V—CONSTRUCTION-DIFFERENTIAL SUBSIDY

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SEC. 511. RESERVE FUNDS FOR CONSTRUCTION OR ACQUISITION OF VESSELS; TAXATION (46 APP. U.S.C. 1161 (1994)).

(a) "NEW VESSEL" DEFINED.—When used in this section the term "new vessel" means any vessel (1) documented or agreed with the Secretary of Transportation to be documented under the laws of the United States; (2) construction in the United States after December 31, 1939 *or, if the vessel is a Shipbuilding Agreement vessel,*

constructed in a Shipbuilding Agreement Party, but only with regard to moneys deposited, on or after the date on which the OECD Shipbuilding Trade Agreement Act takes effect, into a construction reserve fund established under subsection (b), or the construction of which has been financed under Titles V or VII of this Act, as amended, or the construction of which has been aided by a mortgage insured under Title XI of this Act as amended; and (3) either (A) of such type, size, and speed as the Secretary of Transportation shall determine to be suitable for use on the high seas or Great Lakes in carrying out the purposes of this Act, but not of less than two thousand gross tons or of less speed than twelve knots, unless the Secretary of Transportation shall determine and certify in each case that a vessel of a specified lesser tonnage or speed is desirable for use by the United States in case of war or national emergency, or (B) constructed to replace a vessel or vessels requisitioned or purchased by the United States.

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TITLE VI—OPERATING-DIFFERENTIAL SUBSIDY

SEC. 601. SUBSIDY AUTHORIZED FOR OPERATION OF VESSELS IN FOREIGN TRADE OR IN OFF-SEASON CRUISES (46 APP. U.S.C. 1171 (1994)).

(a) APPLICATION FOR SUBSIDY; CONDITIONS PRECEDENT TO GRANTING.—The Secretary of Transportation is authorized and directed to consider the application of any citizen of the United States for financial aid in the operation of a vessel or vessels, which are to be used in an essential service in the foreign commerce of the United States or in such service and in cruises authorized under section 613 of this title. In this title VI the term "essential service" means the operation of a vessel on a service, route, or line described in section 211(a) or in bulk cargo carrying service described in section 211(b). No such application shall be approved by the Secretary of Transportation unless he determines that (1) the operation of such vessel or vessels in an essential service is required to meet foreign-flag competition and to promote the foreign commerce of the United States except to the extent such vessels are to be operated on cruises authorized under section 613 of this title**[**, 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 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;* (2) the applicant owns or leases, or can and will build or purchase or lease, a vessel or vessels of the size, type, speed, and number, and with the proper equipment required to enable him to operate in an essential service, in such manner as may be necessary to meet competitive conditions, and to promote foreign commerce; (3) the applicant possesses the ability, experience, financial resources, and other qualifications necessary to enable him to conduct the proposed operations of the

vessel or vessels as to meet competitive conditions and promote foreign commerce; (4) the granting of the aid applied for is necessary to place the proposed operations of the vessel or vessels on a parity with those of foreign competitors, and is reasonably calculated to carry out effectively the purposes and policy of this Act. To the extent the application covers cruises, as authorized under section 613 of this title, the Secretary of Transportation may make the portion of this last determination relating to parity on the basis that any foreign flag cruise from the United States competes with any American flag cruise from the United States.

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SEC. 606. READJUSTMENTS; CHANGE IN SERVICE; WITHDRAWAL FROM SERVICE; PAYMENT OF EXCESS PROFITS; WAGES, ETC.; AMERICAN MATERIALS (46 APP. U.S.C. 1176 (1994)).

Every contract for an operating-differential subsidy under this title shall provide (1) that the amount of the future payments to the contractor shall be subject to review and readjustment from time to time, but not more frequently than once a year, at the instance of the Secretary of Transportation or of the contractor. If any such readjustment cannot be reached by mutual agreement, the Secretary of Transportation, on his own motion or on the application of the contractor, shall, after a proper hearing, determine the facts and make such readjustment in the amount of such future payments as he may determine to be fair and reasonable and in the public interest. The testimony in every such proceeding shall be reduced to writing and filed in the office of the Secretary of Transportation. His decision shall be based upon and governed by the changes which may have occurred since the date of the said contract, with respect to the items theretofore considered and on which such contract was based, and other conditions affecting shipping, and shall be promulgated in a formal order, which shall be accompanied by a report in writing in which the Secretary of Transportation shall state his findings of fact; (2) that the compensation to be paid under it shall be reduced, under such terms and in such amounts as the Secretary of Transportation shall determine, for any periods in which the vessel or vessels are laid up; (3) that if the Secretary of Transportation shall determine that a change in an essential service, which is receiving an operating-differential subsidy under this title, is necessary in the accomplishment of the purposes of this Act, he may make such change upon such readjustment of payments to the contractor as shall be arrived at by the method prescribed in clause (1) of these conditions; (4) that if at any time the contractor receiving an operating-differential subsidy claims that he cannot maintain and operate his vessels in such an essential service, with a reasonable profit upon his investment, and applies to the Secretary of Transportation for a modification or rescission of his contract to maintain such essential service, and the Secretary of Transportation determines that such claim is proved, the Secretary of Transportation shall modify or rescind such contract and permit the contractor to withdraw such vessels from such essential service, upon a date fixed by the Secretary of Transportation, and upon the date of such withdrawal the further payment of the operating-differential subsidy shall cease and the contractor be discharged from any further obligation

under such contract; (5) that the contractor shall conduct his operations with respect to essential service, and any services authorized under section 613 of this title, covered by his contract in an economical and efficient manner; and (6) that whenever practicable, and operator who receives subsidy with respect to subsistence of officers and crews shall use as such subsistence items only articles, materials, and supplies of the growth, production, and manufacture of the United States, as defined in section 505 herein, except when it is necessary to purchase supplies outside the United States to enable such vessel to continue and complete here voyage, and an operator who receives subsidy with respect to repairs shall perform such repairs within any of the United States or the Commonwealth of Puerto Rico, *or, if the vessel is a Shipbuilding Agreement vessel, in a Shipbuilding Agreement Party or in the United States,* except in an emergency.

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SEC. 607.[7] CAPITAL CONSTRUCTION FUND (46 APP. U.S.C. 1177 (1994)).

(a) AGREEMENT RULES; PERSONS ELIGIBLE; REPLACEMENT, ADDITIONAL, OR RECONSTRUCTED VESSELS FOR PRESCRIBED TRADE AND FISHERY OPERATIONS; AMOUNT OF DEPOSITS, ANNUAL LIMITATION; CONDITIONS AND REQUIREMENTS FOR DEPOSITS AND WITHDRAWALS.—Any citizen of the United States owning or leasing one or more eligible vessels (as defined in subsection (k)(1)) may enter into an agreement with the Secretary under, and as provided in, this section to establish a capital construction fund (hereinafter in this section referred to as the "fund") with respect to any or all of such vessels. Any agreement entered into under this section shall be for the purpose of providing replacement vessels, additional vessels, or reconstructed vessels, built in the United States *or, if the vessel is a Shipbuilding Agreement vessel, in a Shipbuilding Agreement Party,* and documented under the laws of the United States for operation in the United States foreign, Great Lakes, or noncontiguous domestic trade or in the fisheries of the United States and shall provide for the deposit in the fund of the amounts agreed upon as necessary or appropriate to provide for qualified withdrawals under subsection (f). The deposits in the fund, and all withdrawals from the fund, whether qualified or nonqualified, shall be subject to such conditions and requirements as the Secretary may by regulations prescribe or are set forth in such agreement; except that the Secretary may not require any person to deposit in the fund for any taxable year more than 50 percent of that portion of such person's taxable income for such year (computed in the manner provided in subsection (b)(1)(A)) which is attributable to the operation of the agreement vessels.

* * * * * * *

(k) DEFINITIONS.—For the purposes of this section—

(1) The term "eligible vessel" means any vessel—

[(A) constructed in the United States and, if reconstructed, reconstructed in the United States,]

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

(ii) that is a Shipbuilding Agreement vessel and is constructed in a Shipbuilding Agreement Party and, if reconstructed, is reconstructed in a Shipbuilding Agreement Party or in the United States,

* * * * * * *

(2) The term "qualified vessel" means any vessel—

[(A) constructed in the United States and, if reconstructed, reconstructed in the United States,]

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

(ii) that is a Shipbuilding Agreement vessel and is constructed in a Shipbuilding Agreement Party and, if reconstructed, is reconstructed in a Shipbuilding Agreement Party or in the United States, but only with regard to moneys deposited into the fund on or after the date on which the OECD Shipbuilding Trade Agreement Act takes effect.

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SEC. 610. VESSELS ELIGIBLE TO SUBSIDY (46 APP. U.S.C. 1180 (1994)).

An operating-differential subsidy shall not be paid under authority of this title on account of the operation of any vessel which does not meet the following requirements: (1) The vessel shall be of steel or other acceptable metal, shall be propelled by steam or motor, shall be as nearly fireproof as practicable, [shall be built in a domestic yard or shall have been documented under the laws of the United States not later than February 1, 1928, or actually ordered and under construction for the account of citizens of the United States prior to such date,] *shall be built in the United States or, if the vessel is a Shipbuilding Agreement vessel, in a Shipbuilding Agreement Party,* and shall be documented under the laws of the United States, during the entire life of the subsidy contract; and (2) if the vessel shall be constructed after the passage of this act it shall be either a vessel constructed according to plans and specifications approved by the Secretary of Transportation and the Secretary of the Navy, with particular reference to economic conversion into an auxiliary naval vessel, or a vessel approved by the Secretary of Transportation and the Navy Department as otherwise useful to the United States in time of national emergency.

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TITLE IX—MISCELLANEOUS PROVISIONS

SEC. 901. TRANSPORTATION IN AMERICAN VESSELS OF GOVERNMENT PERSONNEL AND CERTAIN CARGOES (46 APP. U.S.C. 1241 (1994)).

* * * * * * *

(b) CARGOES PROCURED, FURNISHED OR FINANCED BY UNITED STATES; WAIVER IN EMERGENCIES; EXCEPTIONS; DEFINITION.—

(1) Whenever the United States shall procure, contract for, or otherwise obtain for its own account, or shall furnish to or for the account of any foreign nation without provision for reimbursement, any equipment, materials, or commodities, with-

in or without the United States, or shall advance funds or credits or guarantee the convertibility of foreign currencies in connection with the furnishing of such equipment, materials, or commodities, the appropriate agency or agencies shall take such steps as may be necessary and practicable to assure that at least 50 per centum of the gross tonnage of such equipment, materials, or commodities (computed separately for dry bulk carriers, dry cargo liners, and tankers), which may be transported on ocean vessels shall be transported on privately owned United States-flag commercial vessels, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels, in such manner as will insure a fair and reasonable participation of United States-flag commercial vessels in such cargoes by geographic areas: *Provided,* That the provisions of this subsection may be waived whenever the Congress by concurrent resolution or otherwise, or the President of the United States or the Secretary of Defense declares that an emergency exists justifying a temporary waiver of the provisions of section 901(b)(1) and so notifies the appropriate agency or agencies: *Provided further*, That the provisions of this subsection shall not apply to cargoes carried in the vessels of the Panama Canal Company. Nothing herein shall repeal or otherwise modify the provisions of Public Resolution Numbered 17, Seventy-third Congress (48 Stat. 500), as amended. [For purposes of this section, the term "privately owned United States-flag commercial vessels" shall not be deemed to include any vessel which, subsequent to the date of enactment of this amendment, shall have been either (a) built outside the United States, (b) rebuilt outside the United States, or (c) documented under any foreign registry, until such vessel shall have been documented under the laws of the United States for a period of three years: Provided, however, That the provisions of this amendment shall not apply where, (1) prior to the enactment of this amendment, the owner of a vessel, or contractor for the purchases of a vessel, originally constructed in the United States and rebuilt abroad or contracted to be rebuilt abroad, has notified the Maritime Administration in writing of its intent to document such vessel under United States registry, and such vessel is so documented on its first arrival at a United States port not later than one year subsequent to the date of the enactment of this amendment, or (2) where prior to the enactment of this amendment, the owner of a vessel under United States registry has made a contract for the rebuilding abroad of such vessel and has notified the Maritime Administration of such contract, and such rebuilding is completed and such vessel is thereafter documented under United States registry on its first arrival at a United States port not later than one year subsequent to the date of the enactment of this amendment.] *For purposes of this section, the term "privately owned United States-flag commercial vessels" shall be deemed to include—*

(A) any privately owned United States-flag commercial vessel constructed in the United States, and if rebuilt, rebuilt in the United States or in a Shipbuilding Agreement Party on or after

the date on which the OECD Shipbuilding Trade Agreement Act takes effect, and

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

The term "privately owned United States-flag commercial vessels" shall also be deemed to include any cargo vessel that so qualified pursuant to section 615 of this Act or this paragraph before the date on which the OECD Shipbuilding Trade Agreement Act takes effect. The term "privately owned United States-flag commercial vessels" shall not be deemed to include any liquid bulk cargo vessel that does not meet the requirements of section 3703a of title 46, United States Code.

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SEC. 905. DEFINITIONS (46 APP. U.S.C. 1244 (1994)).

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(h) The term "Shipbuilding Agreement" means the Agreement Respecting Normal Competitive Conditions in the Commercial Shipbuilding and Repair Industry, which resulted from negotiations under the auspices of the Organization for Economic Cooperation and Development, and was entered into on December 21, 1994.

(i) The term "Shipbuilding Agreement Party" means a state or separate customs territory that is a Party to the Shipbuilding Agreement, and with respect to which the United States applies the Shipbuilding Agreement.

(j) The term "Shipbuilding Agreement vessel" means a vessel to which the Secretary determines Article 2.1 of the Shipbuilding Agreement applies.

(k) The term "Export Credit Understanding" means the Understanding on Export Credits for Ships which resulted from negotiations under the auspices of the Organization for Economic Cooperation and Development and was entered into on December 21, 1994.

(l) The term "Export Credit Understanding vessel" means a vessel to which the Secretary determines the Export Credit Understanding applies.

(m) The term "integrated tug-barge" has the meaning given such term in section 466(i) of the Tariff Act of 1930 (19 U.S.C. 1466(i)).

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TITLE XI—FEDERAL SHIP MORTGAGE INSURANCE

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SEC. 1104A. ELIGIBILITY FOR GUARANTEE (46 APP. U.S.C. 1274 (1994)).

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(b) CONTENTS OF OBLIGATIONS.—Obligations guaranteed under this title—

* * * * * * *

[(5) shall bear interest (exclusive of charges for the guarantee and service charges, if any) at rates not to exceed such per centum per annum on the unpaid principal as the Secretary determines to be reasonable, taking into account the range of interest rates prevailing in the private market for similar loans and the risks assumed by the Secretary;]

(5) shall bear interest (exclusive of charges for the guarantee and service charges, if any) at rates not to exceed such percent per annum on the unpaid principal as the Secretary determines to be reasonable, taking into account the range of interest rates prevailing in the private market for similar loans and the risks assumed by the Secretary, except that, with respect to Export Credit Understanding vessels, and Shipbuilding Agreement vessels, the obligations shall bear interest at a rate the Secretary determines to be consistent with obligations of the United States under the Export Credit Understanding or the Shipbuilding Agreement, as the case may be;

* * * * * * *

[(i) LIMITATION ON ESTABLISHMENT OF PERCENTAGE.—The Secretary may not with respect to—

(1) the general 75 percent or less limitation in subsection (b)(2);

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

(3) the 80 percent or less limitation in the 3rd proviso to subsection (b)(2);

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

(i)(1) Except as provided in paragraph (2), the Secretary may not, with respect to—

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

(B) the 87½ percent or less limitation contained in the 1st, 2nd, 4th, or 5th proviso to subsection (b)(2) or in section 1121(b), or

(C) the 80 percent or less limitation in the 3rd proviso to subsection (b)(2),

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

(2) With respect to Export Credit Understanding vessels and Shipbuilding Agreement vessels, the Secretary may establish by rule, regulation, or procedure a uniform percentage that the Secretary determines to be consistent with obligations of the United States under

the Export Credit Understanding or the Shipbuilding Agreement, as the case may be.

* * * * * * *

(k) The Secretary shall establish by rule, regulation, or procedure a uniform percentage with respect to integrated tug-barges that the Secretary determines to be consistent with the percentages applied with respect to Export Credit Understanding vessels and Shipbuilding Agreement vessels under subsections (b)(5) and (i)(2).

SEC. 1104B. FINANCING CONTRACT FOR CONSTRUCTION OR RECONSTRUCTION OF COMMERCIAL VESSEL; VESSEL REPLACEMENT GUARANTEE FUND (46 APP. U.S.C. 1274a(b) (1994)).

* * * * * * *

(b) For the purposes of this section—

(1) the maximum term for obligations guaranteed under this program may not exceed 25 years;

(2) obligations guaranteed may not exceed 87½ percent of the actual cost or depreciated actual cost to the applicant for the construction or reconstruction of the vessel; and

(3) reconstruction cost obligations may not be guaranteed unless the vessel after reconstruction will have a useful life of at least 15 years[.], *except that, with respect to Export Credit Understanding vessels and Shipbuilding Agreement vessels, the Secretary may establish by rule, regulation, or procedure a uniform percentage that the Secretary determines to be consistent with obligations of the United States under the Export Credit Understanding or the Shipbuilding Agreement, as the case may be. With respect to integrated tug-barges, the Secretary shall establish by rule, regulation, or procedure a uniform percentage that the Secretary determines to be consistent with the percentages applied with respect to Export Credit Understanding vessels and Shipbuilding Agreement vessels pursuant to the preceding sentence.*

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