

TEXT OF ANTIDUMPING ACT, 1921
INTERNATIONAL ANTIDUMPING CODE
AND RELATED MATERIALS

COMMITTEE ON FINANCE
UNITED STATES SENATE
RUSSELL B. LONG, *Chairman*

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DUMPING INVESTIGATION

SEC. 201. (a) Whenever the Secretary of the Treasury 19 U.S.C. 160
(hereinafter called the "Secretary") determines that a class or kind of foreign merchandise is being, or is likely to be, sold in the United States or elsewhere at less than its fair value, he shall so advise the United States Tariff Commission, and the said Commission shall determine within three months thereafter whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States. The said Commission, after such investigation as it deems necessary, shall notify the Secretary of its determination, and, if that determination is in the affirmative, the Secretary shall make public a notice (hereinafter in this Act called a "finding") of his determination and the determination of the said Commission. For the purposes of this subsection, the said Commission shall be deemed to have made an affirmative determination if the Commissioners of the said Commission voting are evenly divided as to whether its determination should be in the affirmative or in the negative. The Secretary's finding shall include a description of the class or kind of merchandise to which it applies in such detail as he shall deem necessary for the guidance of customs officers.

(b) Whenever, in the case of any imported merchandise of a class or kind as to which the Secretary has not so made public a finding, the Secretary has reason to believe or suspect, from the invoice or other papers or from information presented to him or to any person to whom authority under this section has been delegated, that the purchase price is less, or that the exporter's sales price is less or likely to be less, than the foreign market value (or, in the absence of such value, than the constructed value), he shall forthwith publish notice of that fact in

¹ [See page 13 for footnote.]

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the Federal Register and shall authorize, under such regulations as he may prescribe, the withholding of appraisement reports as to such merchandise entered, or withdrawn from warehouse, for consumption, not more than one hundred and twenty days before the question of dumping has been raised by or presented to him or any person to whom authority under this section has been delegated, until the further order of the Secretary, or until the Secretary has made public a finding as provided for in subdivision (a) in regard to such merchandise.

(c) The Secretary, upon determining whether foreign merchandise is being, or is likely to be, sold in the United States at less than its fair value, and the United States Tariff Commission, upon making its determination under subsection (a) of this section, shall each publish such determination in the Federal Register, with a statement of the reasons therefor, whether such determination is in the affirmative or in the negative. (As amended by § 301, Act of Sept. 1, 1954 (68 Stat. 1138), and §§ 1, 4(b), Act of Aug. 14, 1958 (72 Stat. 583, 585).)

SPECIAL DUMPING DUTY

19 U.S.C. 161

SEC. 202. (a) In the case of all imported merchandise, whether dutiable or free of duty, of a class or kind as to which the Secretary of the Treasury has made public a finding as provided for in section 201, entered, or withdrawn from warehouse, for consumption, not more than one hundred and twenty days before the question of dumping was raised by or presented to the Secretary or any person to whom authority under section 201 has been delegated, and as to which no appraisement report has been made before such finding has been so made public, if the purchase price or the exporter's sales price is less than the foreign market value (or, in the absence of such value, than the constructed value) there shall be levied, collected, and paid, in addition to any other duties imposed thereon by law, a special dumping duty in an amount equal to such difference.

(b) In determining the foreign market value for the purposes of subsection (a), if it is established to the satisfaction of the Secretary or his delegate that the amount of any difference between the purchase price and the foreign market value (or that the fact that the purchase price is the same as the foreign market value) is wholly or partly due to—

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(1) the fact that the wholesale quantities, in which such or similar merchandise is sold or, in the absence of sales, offered for sale for exportation to the United States in the ordinary course of trade, are less or are greater than the wholesale quantities in which such or similar merchandise is sold or, in the absence of sales, offered for sale in the principal markets of the country of exportation in the ordinary course of trade for home consumption (or, if not so sold or offered for sale for home consumption, then for exportation to countries other than the United States),

(2) other differences in circumstances of sale, or

(3) the fact that merchandise described in subdivision (C), (D), (E), or (F) of section 212 (3) is used in determining foreign market value,

then due allowance shall be made therefor.

(c) In determining the foreign market value for the purpose of subsection (a), if it is established to the satisfaction of the Secretary or his delegate that the amount of any difference between the exporter's sales price and the foreign market value (or that the fact that the exporter's sales price is the same as the foreign market value) is wholly or partly due to—

(1) the fact that the wholesale quantities in which such or similar merchandise is sold or, in the absence of sales, offered for sale in the principal markets of the United States in the ordinary course of trade, are less or are greater than the wholesale quantities in which such or similar merchandise is sold or, in the absence of sales, offered for sale in the principal markets of the country of exportation in the ordinary course of trade for home consumption (or, if not so sold or offered for sale for home consumption, then for exportation to countries other than the United States),

(2) other differences in circumstances of sale, or

(3) the fact that merchandise described in subdivision (C), (D), (E), or (F) of section 212(3) is used in determining foreign market value,

then due allowance shall be made therefor. (As amended by § 302, Act of Sept. 1, 1954 (68 Stat. 1139), and §§ 2, 4(b), Act of Aug. 14, 1958 (72 Stat. 583, 585).)

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PURCHASE PRICE

19 U.S.C. 162 **SEC. 203.** That for the purposes of this title, the purchase price of imported merchandise shall be the price at which such merchandise has been purchased or agreed to be purchased, prior to the time of exportation, by the person by whom or for whose account the merchandise is imported, plus, when not included in such price, the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the merchandise in condition, packed ready for shipment to the United States, less the amount, if any, included in such price, attributable to any additional costs, charges, and expenses, and United States import duties, incident to bringing the merchandise from the place of shipment in the country of exportation to the place of delivery in the United States; and plus the amount, if not included in such price, of any export tax imposed by the country of exportation on the exportation of the merchandise to the United States; and plus 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 merchandise to the United States; and plus the amount of any taxes imposed in the country of exportation upon the manufacturer, producer, or seller, in respect to the manufacture, production or sale of the merchandise, which have been rebated, or which have not been collected, by reason of the exportation of the merchandise to the United States.

EXPORTER'S SALES PRICE

19 U.S.C. 163 **SEC. 204.** That for the purpose of this title the exporter's sales price of imported merchandise shall be the price at which such merchandise is sold or agreed to be sold in the United States, before or after the time of importation, by or for the account of the exporter, plus, when not included in such price, the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the merchandise in condition, packed ready for shipment to the United States, less (1) the amount, if any, included in such price, attributable to any additional costs, charges, and expenses, and United States import duties, incident to bringing the mer-

chandise from the place of shipment in the country of exportation to the place of delivery in the United States, (2) the amount of the commissions, if any, for selling in the United States the particular merchandise under consideration, (3) an amount equal to the expenses, if any, generally incurred by or for the account of the exporter in the United States in selling identical or substantially identical merchandise, and (4) the amount of any export tax imposed by the country of exportation on the exportation of the merchandise to the United States; and plus 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 merchandise to the United States; and plus the amount of any taxes imposed in the country of exportation upon the manufacturer, producer, or seller in respect to the manufacture, production, or sale of the merchandise, which have been rebated, or which have not been collected, by reason of the exportation of the merchandise to the United States.

FOREIGN MARKET VALUE

SEC. 205. For the purposes of this title, the foreign market value of imported merchandise shall be the price, at the time of exportation of such merchandise to the United States, at which such or similar merchandise is sold or, in the absence of sales, offered for sale in the principal markets of the country from which exported, in the usual wholesale quantities and in the ordinary course of trade for home consumption (or, if not so sold or offered for sale for home consumption, or if the Secretary determines that the quantity sold for home consumption is so small in relation to the quantity sold for exportation to countries other than the United States as to form an inadequate basis for comparison, then the price at which so sold or offered for sale for exportation to countries other than the United States), plus, when not included in such price, the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the merchandise in condition packed ready for shipment to the United States, except that in the case of merchandise purchased or agreed to be purchased by the person by whom or for whose account the merchandise is imported, prior to the time of exportation, the foreign market value shall be ascertained as of

19 U.S.C. 164

the date of such purchase or agreement to purchase. In the ascertainment of foreign market value for the purposes of this title no pretended sale or offer for sale, and no sale or offer for sale intended to establish a fictitious market, shall be taken into account. If such or similar merchandise is sold or, in the absence of sales, offered for sale through a sales agency or other organization related to the seller in any of the respects described in section 207, the prices at which such or similar merchandise is sold or, in the absence of sales, offered for sale by such sales agency or other organization may be used in determining the foreign market value. (As amended by § 3, Act of Aug. 14, 1958 (72 Stat. 584).)

CONSTRUCTED VALUE

19 U.S.C. 165 **SEC. 206.** (a) For the purposes of this title, the constructed value of imported merchandise shall be the sum of—

(1) the cost of materials (exclusive of any internal tax applicable in the country of exportation directly to such materials or their disposition, but remitted or refunded upon the exportation of the article in the production of which such materials are used) and of fabrication or other processing of any kind employed in producing such or similar merchandise, at a time preceding the date of exportation of the merchandise under consideration which would ordinarily permit the production of that particular merchandise in the ordinary course of business;

(2) an amount for general expenses and profit equal to that usually reflected in sales of merchandise of the same general class or kind as the merchandise under consideration which are made by producers in the country of exportation, in the usual wholesale quantities and in the ordinary course of trade, except that (A) the amount for general expenses shall not be less than 10 per centum of the cost as defined in paragraph (1), and (B) the amount for profit shall not be less than 8 per centum of the sum of such general expenses and cost; and

(3) the cost of all containers and coverings of whatever nature, and all other expenses incidental to placing the merchandise under consideration in condition, packed ready for shipment to the United States.

(b) For the purposes of this section, a transaction directly or indirectly between persons specified in any one of the paragraphs in subsection (c) of this section 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 in the market under consideration of merchandise of the same general class or kind as the merchandise under consideration. If a transaction is disregarded under the preceding sentence and there are no other transactions available for consideration, then the determination of the amount required to be considered shall be based on the best evidence available as to what the amount would have been if the transaction had occurred between persons not specified in any one of the paragraphs in subsection (c).

(c) The persons referred to in subsection (b) are:

(1) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants;

(2) Any officer or director of an organization and such organization;

(3) Partners;

(4) Employer and employee;

(5) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 per centum or more of the outstanding voting stock or shares of any organization and such organization; and

(6) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person. (As amended by § 4(a), Act of Aug. 14, 1958 (72 Stat. 584).)

EXPORTER

SEC. 207. That for the purposes of this title the ex- 19 U.S.C. 166
porter of imported merchandise shall be the person by whom or for whose account the merchandise is imported into the United States:

(1) If such person is the agent or principal of the exporter, manufacturer, or producer; or

(2) If such person owns or controls, directly or indirectly, through stock ownership or control or otherwise, any interest in the business of the exporter, manufacturer, or producer; or

(3) If the exporter, manufacturer, or producer owns or controls, directly or indirectly, through stock ownership

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or control or otherwise, any interest in any business conducted by such person; or

(4) If any person or persons, jointly or severally, directly or indirectly, through stock ownership or control or otherwise, own or control in the aggregate 20 per centum or more of the voting power or control in the business carried on by the person by whom or for whose account the merchandise is imported into the United States, and also 20 per centum or more of such power or control in the business of the exporter, manufacturer, or producer.

OATHS AND BONDS ON ENTRY

19 U.S.C. 167

SEC. 208. That in the case of all imported merchandise, whether dutiable or free of duty, of a class or kind as to which the Secretary has made public a finding as provided in section 201, and delivery of which has not been made by the collector ² before such finding has been so made public, unless the person by whom or for whose account such merchandise is imported makes oath before the collector, under regulations prescribed by the Secretary, that he is not an exporter, or unless such person declares under oath at the time of entry, under regulations prescribed by the Secretary, the exporter's sales price of such merchandise, it shall be unlawful for the collector to deliver the merchandise until such person has made oath before the collector, under regulations prescribed by the Secretary, that the merchandise has not been sold or agreed to be sold by such person, and has given bond to the collector, under regulations prescribed by the Secretary, with sureties approved by the collector, in an amount equal to the estimated value of the merchandise, conditioned: (1) that he will report to the collector the exporter's sales price of the merchandise within 30 days after such merchandise has been sold or agreed to be sold in the United States, (2) that he will pay on demand from the collector the amount of special dumping duty, if any, imposed by this title upon such merchandise, and (3) that he will furnish to the collector such information as may be in his possession and as may be necessary for the ascertainment of such duty, and will keep such records as to the sale of such merchandise as the Secretary may by regulation prescribe.

DUTIES OF APPRAISERS ²

SEC. 209. That in the case of all imported merchandise, **19 U.S.C. 168** whether dutiable or free of duty, of a class or kind as to which the Secretary has made public a finding as provided in section 201, and as to which the appraiser or person acting as appraiser has made no appraisement report to the collector before such finding has been so made public, it shall be the duty of each appraiser or person acting as appraiser, by all reasonable ways and means to ascertain, estimate, and appraise (any invoice or affidavit thereto or statement of constructed value to the contrary notwithstanding) and report to the collector ² the foreign market value or the constructed value, as the case may be, the purchase price, and the exporter's sales price, and any other facts which the Secretary may deem necessary for the purposes of this title. (As amended by § 4(b), Act of Aug. 14, 1958 (72 Stat. 585).)

APPEALS AND PROTESTS

SEC. 210. That for the purposes of this title the **19 U.S.C. 169** determination of the appraiser ² or person acting as appraiser as to the foreign market value or the constructed value, as the case may be, the purchase price, and the exporter's sales price, and the action of the collector ² in assessing special dumping duty, shall have the same force and effect and be subject to the same right of appeal and protest, under the same conditions and subject to the same limitations; and the general appraisers, the Board of General Appraisers,³ and the Court of Customs Appeals⁴ shall have the same jurisdiction, powers, and duties in connection with such appeals and protests as in the case of appeals and protests relating to customs duties under existing law. (As amended by § 4(b), Act of Aug. 14, 1958 (72 Stat. 585).)

DRAWBACKS

SEC. 211. That the special dumping duty imposed by **19 U.S.C. 170** this title shall be treated in all respects as regular customs duties within the meaning of all laws relating to the drawback of customs duties.

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DEFINITIONS

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19 U.S.C. 170a

SEC. 212. For the purposes of this title—

(1) The term "sold or, in the absence of sales, offered for sale" means sold or, in the absence of sales, offered—

(A) to all purchasers at wholesale, or

(B) in the ordinary course of trade to one or more selected purchasers at wholesale at a price which fairly reflects the market value of the merchandise,

without regard to restrictions as to the disposition or use of the merchandise by the purchaser except that, where such restrictions are found to affect the market value of the merchandise, adjustment shall be made therefor in calculating the price at which the merchandise is sold or offered for sale.

(2) The term "ordinary course of trade" means the conditions and practices which, for a reasonable time prior to the exportation of the merchandise under consideration, have been normal in the trade under consideration with respect to merchandise of the same class or kind as the merchandise under consideration.

(3) The term "such or similar merchandise" means merchandise in the first of the following categories in respect of which a determination for the purposes of this title can be satisfactorily made:

(A) The merchandise under consideration and other merchandise which is identical in physical characteristics with, and was produced in the same country by the same person as, the merchandise under consideration.

(B) Merchandise which is identical in physical characteristics with, and was produced by another person in the same country as, the merchandise under consideration.

(C) Merchandise (i) produced in the same country and by the same person as the merchandise under consideration, (ii) like the merchandise under consideration in component material or materials and in the purposes for which used, and (iii) approximately equal in commercial value to the merchandise under consideration.

(D) Merchandise which satisfies all the requirements of subdivision (C) except that it was produced by another person.

(E) Merchandise (i) produced in the same country and by the same person and of the same general class or kind as the merchandise under consideration, (ii) like the merchandise under consideration in the purposes for which used, and (iii) which the Secretary or his delegate determines may reasonably be compared for the purposes of this title with the merchandise under consideration.

(F) Merchandise which satisfies all the requirements of subdivision (E) except that it was produced by another person.

(4) The term "usual wholesale quantities", in any case in which the merchandise in respect of which value is being determined is sold in the market under consideration at different prices for different quantities, means the quantities in which such merchandise is there sold at the price or prices for one quantity in an aggregate volume which is greater than the aggregate volume sold at the price or prices for any other quantity. (Added by § 5, Act of Aug. 14, 1958 (72 Stat. 585).)

SHORT TITLE

SEC. 213. That this title may be cited as the "Anti- 19 U.S.C. 171
dumping Act, 1921." (Renumbered by § 5, Act of
Aug. 14, 1958 (72 Stat. 585).)

DEFINITIONS⁵

SEC. 406. That when used in Title II or Title III or 19 U.S.C. 172
in this title—

The term "person" includes individuals, partnerships, corporations, and associations; and

The term "United States" includes all Territories and possessions subject to the jurisdiction of the United States, except the Philippine Islands,⁶ the Virgin Islands, the islands of Guam and Tutuila, and the Canal Zone.

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RULES AND REGULATIONS

19 U.S.C. 173 SEC. 407. That the Secretary shall make rules and regulations necessary for the enforcement of this Act.

¹ Title II of the Act of May 27, 1921 (42 Stat. 9, 11-15, Public Law 10—67th Congress, H.R. 2435, H. Rep. 1, S. Rep. 16), as amended—

(A) by title III of the Customs Simplification Act of 1954 (68 Stat. 1136, 1138-39, Public Law 768—83d Congress, H.R. 10009, H. Rep. 2453, S. Rep. 2326), and

(B) by the Act of August 14, 1958 (72 Stat. 583, Public Law 85-630, H.R. 6006, H. Rep. 1261, S. Rep. 1619, Conf. Rep. 2352).

² Since the functions of the offices of collector of customs and appraiser of merchandise were transferred to the Secretary of the Treasury under Reorganization Plan No. 26 of 1950 (15 Fed. Reg. 4935), each reference in the Act to the collector or the appraiser should be a reference to the Secretary.

³ The name of the Board of General Appraisers was changed to the United States Customs Court by the first section of the Act of May 28, 1926 (44 Stat. 669).

⁴ The name of the Court of Customs Appeals was changed to the Court of Customs and Patent Appeals by the first section of the Act of March 2, 1929 (45 Stat. 1475).

⁵ Although the provisions of the Antidumping Act, 1921, are contained in title II of the Act of May 27, 1921, sections 406 and 407 of title IV of that Act are applicable to the Antidumping Act, 1921.

⁶ The independence of the Philippine Islands was recognized by the United States after the date of the enactment of the Act of May 27, 1921, thus the reference to the Philippine Islands in the definition of the term "United States" should be omitted.

NEW DUMPING REGULATIONS OF THE TREASURY DEPARTMENT

TITLE 19—CODE OF FEDERAL REGULATIONS

Title 19—CUSTOMS DUTIES

Chapter I—Bureau of Customs [T.D. 65-148]

ANTIDUMPING REGULATIONS

Notice of a proposal to amend the Customs Regulations providing procedures under the Antidumping Act, 1921, was published in the FEDERAL REGISTER for October 28, 1967 (32 F.R. 14955). Interested persons were given an opportunity to submit relevant data, views, or arguments in writing regarding the proposed amendments.

Due consideration has been given to all comments, views, and other data received. In response to those comments or for editorial purposes, changes have been made in §§ 53.15, 53.23, 53.26, 53.29, 53.30, 53.31, 53.33, 53.34, 53.35, 53.36, 53.38 (renumbered § 53.37), 53.48, and 53.52.

Accordingly, the Customs Regulations are amended, to add a new Part 53, Antidumping, and to delete §§ 14.6 through 14.13, 16.21, 16.22, and 17.9 of the regulations as follows:

PART 14—APPRAISEMENT

§§ 14.6-14.13 [Deleted]

Part 14 is amended by deleting therefrom §§ 14.6 through 14.13, entitled "Procedure under Antidumping Act" and footnotes 14 and 15 thereto.

(Sec. 407, 42 Stat. 18; 5 U.S.C. 301, 19 U.S.C. 173)

PART 16—LIQUIDATION OF DUTIES

§§ 16.21 and 16.22 [Deleted]

Part 16 is amended by deleting therefrom §§ 16.21 and 16.22 and footnote 16.

(Sec. 407, 42 Stat. 18; 5 U.S.C. 301, 19 U.S.C. 173)

PART 17—PROTESTS AND REAPPRAISEMENTS

§ 17.9 [Deleted]

Part 17 is amended by deleting therefrom § 17.9 and footnote 10 thereto, and by amending the center heading preceding § 17.9 to read: "American Producers' Appeals and Protests."

(Sec. 407, 42 Stat. 18; 5 U.S.C. 301, 19 U.S.C. 173)

PART 53—ANTIDUMPING

A new Part 53, entitled "Antidumping," is added to read as follows:

Sec.
53.1 Scope.

Sec.	Subpart A—Fair Value
53.2	Fair value; definition.
53.3	Fair value based on price in country of exportation; the usual test.
53.4	Fair value based on sales for exportation to countries other than the United States.
53.5	Fair value based on constructed value.
53.6	Calculation of fair value.
53.7	Fair value; differences in quantities.
53.8	Fair value; circumstances of sale.
53.9	Fair value; similar merchandise.
53.10	Fair value; offering price.
53.11	Fair value; sales agency.
53.12	Fair value; fictitious sales.
53.13	Fair value; sales at varying prices.
53.14	Fair value; quantities involved and differences in price.
53.15	Fair value; revision of prices or other changed circumstances.
53.16	Fair value; shipments from intermediate country.

Subpart B—Availability of Information

53.23	Availability of information in antidumping proceedings.
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Subpart C—Procedure Under Antidumping Act, 1921

53.25	Suspected dumping; information from customs officer.
53.26	Suspected dumping; information from persons outside Customs Service.
53.27	Suspected dumping; nature of information to be made available.
53.28	Adequacy of information.
53.29	Initiation of antidumping proceeding; summary investigation.
53.30	Antidumping Proceeding Notice.
53.31	Full scale investigation.
53.32	Determination as to fact or likelihood of sales at less than fair value.
53.33	Negative determination.
53.34	Withholding of appraisal.
53.35	Affirmative determination; general.
53.36	Affirmative determination; Appraisal withheld pursuant to § 53.34 (b).
53.37	Affirmative determination—Opportunity to present views.
53.38	Referral to U.S. Tariff Commission.
53.39	Revocation of determination of sales at less than fair value; determination of sales at not less than fair value.
53.40	Dumping finding.
53.41	Modification or revocation of finding.
53.42	Publication of determinations and findings.
53.43	List of current findings.

Subpart D—Action by District Director of Customs

53.46	Action by the District Director of Customs.
53.49	Certificate of importer.
53.50	Appraisal of merchandise covered by Form 4.
53.51	Appraisal when required certificate not filed.

- 59.52 Reimbursement of dumping duties.
- 59.53 Release of merchandise; bond.
- 59.54 Type of bond required.
- 59.55 Conversion of currencies.
- 59.56 Dumping duty.
- 59.57 Notice to importer.
- 59.58 Dumping duty; Samples.
- 59.59 Method of computing dumping duty.

Subpart E—Antidumping Appeals and Protests
 59.64 Antidumping appeals and protests procedure.

Authority: The provisions of this Part 59 issued under secs. 201-212, 407, 42 Stat. 11 et seq., as amended, sec. 5, 72 Stat. 585, secs. 406, 407, 42 Stat. 18; 5 U.S.C. 301, 19 U.S.C. 160-178. Other authorities are cited to text in parentheses.

§ 59.1 Scope.

This part sets forth procedures and rules applicable to proceedings under the Antidumping Act, 1921, as amended, the assessment of the special dumping duty, appeals for reappraisal, applications for review of reappraisals, and protests relating to matters under the Antidumping Act, 1921, as amended.

Subpart A—Fair Value

§ 59.2 Fair value; definition.

For the purposes of section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)), the fair value of the imported merchandise shall be determined in accordance with §§ 59.3 to 59.5.

§ 59.3 Fair value based on price in country of exportation; the usual test.

(a) *General.* Merchandise imported into the United States will ordinarily be considered to have been sold, or to be likely to be sold, at less than fair value if the purchase price or exporter's sales price (as defined in sections 203 and 204, respectively, of the Antidumping Act, 1921, as amended (19 U.S.C. 162, 163)), as the case may be, is, or is likely to be, less than the price (as defined in section 205, after adjustment as provided for in section 202 of the Antidumping Act, 1921, as amended (19 U.S.C. 164, 161)), at which such or similar merchandise (as defined in section 212(3) of the Antidumping Act, 1921, as amended (19 U.S.C. 170a(3))) is sold for consumption in the country of exportation on or about the date of purchase or agreement to purchase of the merchandise imported into the United States if purchase price applies, or on or about the date of exportation thereof if exporter's sales price applies.

(b) *Restricted sales.* When home market sales form the appropriate basis of comparison, they will be used for this purpose whether or not they are restricted. If there should be restrictions which affect the value of the merchandise, appropriate adjustment of the home market price will be made.

§ 59.4 Fair value based on sales for exportation to countries other than the United States.

(a) *General.* If it is demonstrated that during a representative period the quantity of such or similar merchandise sold for consumption in the country of exportation is so small, in relation to the quantity sold for exportation to countries other than the United States, as to be an inadequate basis for comparison, then merchandise imported into the United States will ordinarily be deemed to have been sold, or to be likely to be sold, at less than fair value if the purchase price or the exporter's sales price (as defined in sections 203 and 204, respectively, of the Antidumping Act, 1921, as amended (19 U.S.C. 162, 163)), as the case may be, is, or is likely to be, less than the price (as defined in section 205, after adjustment as provided for in section 202 of the Antidumping Act, 1921, as amended (19 U.S.C. 164, 161)), at which such or similar merchandise (as defined in section 212(3) of the Antidumping Act, 1921, as amended (19 U.S.C. 170a(3))) is sold for exportation to countries other than the United States on or about the date of purchase or of agreement to purchase the merchandise imported into the United States if purchase price applies, or on or about the date of exportation thereof if exporter's sales price applies.

(b) *Twenty-five percent rule.* Generally, the quantity of such or similar merchandise sold for consumption in the country of exportation will be considered to be an inadequate basis for comparison if it is less than 25 percent of the quantity sold other than for exportation to the United States.

(c) *Restricted sales.* When third country sales form the appropriate basis of comparison, they will be used for this purpose whether or not they are restricted. If there should be restrictions which affect the value of the merchandise, appropriate adjustment of the third country price will be made.

§ 59.5 Fair value based on constructed value.

(a) *General.* If the information available is deemed by the Secretary insufficient or inadequate for a determination under § 59.3 or § 59.4, he will determine fair value on the basis of the constructed value as defined in section 206 of the Antidumping Act, 1921, as amended (19 U.S.C. 165).

(b) *Merchandise from controlled economy country.* Ordinarily, if the information available indicates that the economy of the country from which the merchandise is exported is controlled to an extent that sales or offers of sales of such or similar merchandise in that

country or to countries other than the United States do not permit a determination of fair value under § 53.3 or § 53.4, the Secretary will determine fair value on the basis of the constructed value of the merchandise determined on the normal costs, expenses, and profits as reflected by the prices at which such or similar merchandise is sold by a non-state-controlled-economy country either (1) for consumption in its own market; or (2) to other countries, including the United States.

§ 53.6 Calculation of fair value.

In calculating fair value under section 201(a), Antidumping Act, 1921, as amended (19 U.S.C. 160(a)), the criteria in §§ 53.7 through 53.16 shall apply.

§ 53.7 Fair value; differences in quantities.

(a) *General.* In comparing the purchase price or exporter's sales price, as the case may be, with such applicable criteria as sales or offers, on which a determination of fair value is to be based, reasonable allowances will be made for differences in quantities if it is established to the satisfaction of the Secretary that the amount of any price differential is wholly or partly due to such differences. In determining the question of allowances for differences in quantity, consideration will be given, among other things, to the practice of the industry in the country of exportation with respect to affording in the home market (or third country markets, where sales to third countries are the basis for comparison) discounts for quantity sales which are freely available to those who purchase in the ordinary course of trade.

(b) *Criteria for allowances.* Allowances for price discounts based on sales in large quantities ordinarily will not be made unless:

(1) *Six-month rule.* The exporter during the 6 months prior to the date when the question of dumping was raised or presented (or during such other period as investigation shows is more representative) had been granting quantity discounts of at least the same magnitude with respect to 20 percent or more of such or similar merchandise which he sold in the home market (or in third country markets when sales to third countries are the basis for comparison) and that such discounts had been freely available to all purchasers; or

(2) *Cost justification.* The exporter can demonstrate that the discounts are warranted on the basis of savings specifically attributable to the quantities involved.

(c) *Price lists.* In determining whether a discount has been given, the presence or absence of a published price list re-

flecting such a discount is not controlling. In certain lines of trade, price lists are not commonly published and in others although commonly published they are not commonly adhered to.

§ 53.8 Fair value; circumstances of sale.

(a) *General.* In comparing the purchase price or exporter's sales price, as the case may be, with the sales, or other criteria applicable, on which a determination of fair value is to be based, reasonable allowances will be made for bona fide differences in circumstances of sale if it is established to the satisfaction of the Secretary that the amount of any price differential is wholly or partly due to such differences. Differences in circumstances of sale for which such allowances will be made are limited, in general, to those circumstances which bear a reasonably direct relationship to the sales which are under consideration.

(b) *Examples.* Examples of differences in circumstances of sale for which reasonable allowances generally will be made are those involving differences in credit terms, guarantees, warranties, technical assistance, servicing, and assumption by a seller of a purchaser's advertising or other selling costs. Reasonable allowances will also generally be made for differences in commissions. Except in those instances where it is clearly established that the differences in circumstances of sale bear a reasonably direct relationship to the sales which are under consideration, allowances generally will not be made for differences in research and development costs, production costs, and advertising and other selling costs of a seller unless such costs are attributable to a later sale of merchandise by a purchaser: *Provided*, That reasonable allowances for selling expenses generally will be made in cases where a reasonable allowance is made for commissions in one of the markets under consideration and no commission is paid in the other market under consideration, the amount of such allowance being limited to the actual selling expense incurred in the one market or the total amount of the commission allowed in such other market, whichever is less.

(c) *Relation to market value.* In determining the amount of the reasonable allowances for any differences in circumstances of sale, the Secretary will be guided primarily by the effect of such differences upon the market value of the merchandise but, where appropriate, may also consider the cost of such differences to the seller, as contributing to an estimate of market value.

§ 53.9 Fair value; similar merchandise.

In comparing the purchase price or

exporter's sales price, as the case may be, with the selling price in the home market, or for exportation to countries other than the United States, in the case of similar merchandise described in subdivisions (C), (D), (E), or (F) of section 212(3), Antidumping Act, 1921, as amended (19 U.S.C. 170a(3)), due allowance shall be made for differences in the merchandise. In this regard the Secretary will be guided primarily by the effect of such differences upon the market value of the merchandise but, when appropriate, he may also consider differences in cost of manufacture if it is established to his satisfaction that the amount of any price differential is wholly or partly due to such differences.

§ 53.10 Fair value; offering price.

In the determination of fair value, offers will be considered in the absence of sales, but an offer made in circumstances in which acceptance is not reasonably to be expected will not be deemed to be an offer.

§ 53.11 Fair value; sales agency.

If such or similar merchandise is sold or, in the absence of sales, offered for sale through a sales agency or other organization related to the seller in any of the respects described in section 207 of the Antidumping Act, 1921 (19 U.S.C. 166), the price at which such or similar merchandise is sold or, in the absence of sales, offered for sale by such sales agency or other organization may be used in the determination of fair value.

§ 53.12 Fair value; fictitious sales.

In the determination of fair value, no pretended sale or offer for sale, and no sale or offer for sale intended to establish a fictitious market, shall be taken into account.

§ 53.13 Fair value; sales at varying prices.

Where the prices in the sales which are being examined for a determination of fair value vary (after allowances provided for in §§ 53.7, 53.8, and 53.9), determination of fair value will take into account the prices of a preponderance of the merchandise thus sold or weighted averages of the prices of the merchandise thus sold. Unless there is a clear preponderance of merchandise sold at the same price, weighted averages of the prices of the merchandise sold normally will be used.

§ 53.14 Fair value; quantities involved and differences in price.

Merchandise will not be deemed to have been sold at less than fair value unless the quantity involved in the sale or sales to the United States, or the difference between the purchase price of exporter's sales price, as the case may be,

and the fair value, is more than insignificant.

§ 53.15 Fair value; revision of prices or other changed circumstances.

(a) *Discontinuance of investigation.* Whenever the Secretary of the Treasury is satisfied during the course of an antidumping investigation that either

(1) Price revisions have been made which eliminate the likelihood of sales at less than fair value and that there is no likelihood of resumption of the prices which prevailed before such revision; or

(2) Sales to the United States of the merchandise have terminated and will not be resumed;

or whenever the Secretary concludes that there are other changed circumstances on the basis of which it may no longer be appropriate to continue an antidumping investigation, the Secretary may publish a notice to this effect in the FEDERAL REGISTER.

(b) *Notice.* The notice shall state the facts relied on by the Secretary in publishing the notice and that those facts are considered to be evidence that there are not and are not likely to be sales at less than fair value. The notice shall also state that unless persuasive evidence or argument to the contrary is presented within 30 days the Secretary will determine that there are not and are not likely to be sales at less than fair value. The acceptance of assurances to revise prices or the termination of sales at less than fair value will not prevent the Secretary from making a determination of sales at less than fair value in any case where he considers such action appropriate or if the exporters have requested such action.

§ 53.16 Fair value; shipments from intermediate country.

If the merchandise is not imported directly from the country of origin, but is shipped to the United States from another country, the price at which such or similar merchandise is sold in the country of origin will be used in the determination of fair value if the merchandise was merely transhipped through the country of shipment.

Subpart B—Availability of Information

NOTE: For Bureau of Customs general provisions relating to availability of information see Part 26 of this chapter.

§ 53.23 Availability of information in antidumping proceedings.

(a) *Information generally available.* In general, all information but not necessarily all documents, obtained by the Treasury Department including the Bureau of Customs, in connection with any antidumping proceeding will be available

for inspection or copying by any person. With respect to documents prepared by an officer or employee of the United States, factual material, as distinguished from recommendations and evaluations, contained in any such document will be made available by summary or otherwise on the same basis as information contained in other documents. Attention is directed to § 24.12 of this chapter relating to fees charged for providing copies of documents.

(b) *Requests for confidential treatment of information.* Any person who submits information in connection with an antidumping proceeding may request that such information, or any specified part thereof, be held confidential. Information covered by such a request shall be set forth on separate pages from other information; and all such pages shall be clearly marked "Confidential Treatment Requested." The Commissioner of Customs or the Secretary of the Treasury or the delegate of either will determine, pursuant to paragraph (c) of this section, whether such information, or any part thereof, shall be treated as confidential. If it is so determined, the information covered by the determination will not be made available for inspection or copying by any person other than an officer or employee of the U.S. Government or a person who has been specifically authorized to receive it by the person requesting confidential treatment. If it is determined that information submitted with such a request, or any part thereof, should not be treated as confidential, or that summarized or approximated presentations thereof should be made available for disclosure, the person who has requested confidential treatment thereof shall be promptly so advised and, unless he thereafter agrees that the information, or any specified part or summary or approximated presentations thereof, may be disclosed to all interested parties, the information will not be made available for disclosure, but to the extent that it is self-serving it will be disregarded for the purpose of the determination as to sales at less than fair value and no reliance shall be placed thereon in this connection, unless it can be demonstrated from other sources that the information is correct.

(c) *Standards for determining whether information will be regarded as confidential*—(1) *General.* Information will ordinarily be considered to be confidential only if its disclosure would be of significant competitive advantage to a competitor or would have a significantly adverse effect upon a person supplying the information or upon a person from whom he acquired the information. Further, if disclosure of information in specific terms or with identifying details

would be inappropriate under this standard, the information will ordinarily be considered appropriate for disclosure in generalized, summary or approximated form, without identifying details, unless the Commissioner of Customs or the Secretary of the Treasury or the delegate of either determines that even in such generalized, summary or approximated form, such disclosure would still be of significant competitive advantage to a competitor or would still have a significantly adverse effect upon a person supplying the information or upon a person from whom he acquired the information. As indicated in paragraph (b) of this section, however, the decision that information is not entitled to protection from disclosure in its original or in another form will not lead to its disclosure unless the person supplying it consents to such disclosure.

(2) *Information ordinarily regarded as appropriate for disclosure.* Information will ordinarily be regarded as appropriate for disclosure if it

- (i) Relates to price information;
- (ii) Relates to claimed freely available price allowances for quantity purchases; or
- (iii) Relates to claimed differences in circumstances of sale.

(3) *Information ordinarily regarded as confidential.* Information will ordinarily be regarded as confidential if its disclosure would

- (i) Disclose business or trade secrets;
- (ii) Disclose production costs;
- (iii) Disclose distribution costs, except to the extent that such costs are accepted as justifying allowances for quantity or differences in circumstances of sale;
- (iv) Disclose the names of particular customers or the price or prices at which particular sales were made.

(5 U.S.C. 552)

Subpart C—Procedure Under Antidumping Act, 1921

§ 53.25 Suspected dumping; information from customs officer:

If any district director of customs has knowledge of any grounds for a reason to believe or suspect that any merchandise is being, or is likely to be, imported into the United States at a purchase price or exporter's sales price less than the foreign market value (or, in the absence of such value, than the constructed value), as contemplated by section 201(b) Antidumping Act, 1921, as amended (19 U.S.C. 160(b)), or at less than its "fair value" as that term is defined in § 53.2, he shall communicate his belief or suspicion promptly to the Commissioner of Customs. Every such communication shall contain or be accompanied by a statement of substan-

tially the same information as is required in § 53.27, if the district director has such information or if it is readily available to him.

§ 53.26 Suspected dumping; information from persons outside Customs Service.

Any person outside the Customs Service who has information that merchandise is being, or is likely to be, imported into the United States under such circumstances as to bring it within the purview of the Antidumping Act, 1921, as amended, may, on behalf of an industry in the United States, communicate such information in writing to the Commissioner of Customs.

§ 53.27 Suspected dumping; nature of information to be made available.

Communications to the Commissioner pursuant to § 53.26, regarding suspected dumping should, to the extent feasible, contain or be accompanied by the following:

(a) A detailed description or sample of the merchandise; if no sample is furnished, the Bureau of Customs may call upon the person who furnished the information to furnish samples of the imported and competitive domestic articles, or either;

(b) The name of the country from which it is being, or is likely to be, imported;

(c) The name of the exporter or exporters and producer or producers, if known;

(d) The ports or probable ports of importation into the United States;

(e) Information indicating that an industry in the United States is being injured, or is likely to be injured, or prevented from being established;

(f) Such detailed data as are available with respect to values and prices indicating that such merchandise is being, or is likely to be, sold in the United States at less than its fair value, within the meaning of the Antidumping Act, 1921, as amended, including information as to any differences between the foreign market value or constructed value and the purchase price or exporter's sales price which may be accounted for by any difference in taxes, discounts, incidental costs such as those for packing or freight, or other items.

(g) Such material as is available indicating the market price for similar merchandise in the country of exportation and in any third countries in which merchandise of the producer complained of is known to be sold.

(h) Such information as is available as to sales made for consumption in the country of exportation or for exportation otherwise than to the United States over a significant period of time prior to

the date upon which the information is furnished.

(i) Such suggestions as the person furnishing the information may have as to specific avenues of investigation to be pursued or questions to be asked in seeking pertinent information.

§ 53.28 Adequacy of information.

If any information filed pursuant to § 53.26 in the opinion of the Commissioner does not conform substantially with the requirements of § 53.27, the Commissioner shall return the communication to the person who submitted it with detailed written advice as to the respects in which it does not conform.

§ 53.29 Initiation of antidumping proceeding; summary investigation.

Upon receipt of information pursuant to § 53.25 or § 53.26 in a form acceptable to the Commissioner, the Commissioner shall conduct a summary investigation. If he determines that the information is patently in error, or that merchandise of the class or kind is not being and is not likely to be imported in more than insignificant quantities, or for other reasons determines that further investigation is not warranted, he shall so advise the person who submitted the information and the case shall be closed.

§ 53.30 Antidumping Proceeding Notice.

If the case has not been closed under § 53.29, the Commissioner shall publish a notice in the FEDERAL REGISTER that information in an acceptable form has been received pursuant to § 53.25 or § 53.26. This notice, which may be referred to as the "Antidumping Proceeding Notice," will specify—

(a) Whether the information relates to all shipments of the merchandise in question from an exporting country, or only to shipments by certain persons or firms; in the latter case, the names of such persons and firms will be specified.

(b) The date on which information in an acceptable form was received and that date shall be the date on which the question of dumping was raised or presented for purposes of sections 201(b) and 202(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(b) and 161(a)).

(c) The fact that there is some evidence on record concerning injury to or likelihood of injury to or prevention of establishment of an industry in the United States.

(d) A summary of the information received. If a person outside the Customs Service raised or presented the question of dumping, his name shall be included in the notice unless a determination under § 53.28 requires that his name not be disclosed.

§ 53.31 Full-scale investigation.

(a) *Initiation of investigation.* Upon publication of an Antidumping Proceeding Notice the Commissioner shall proceed, by a full-scale investigation, or otherwise, to obtain such additional information, if any, as may be necessary to enable the Secretary to reach a determination as provided by § 53.32. In order to verify the information presented, or to obtain further details, investigations will, where appropriate, be conducted by Customs Representatives in foreign countries, unless the country concerned objects to the investigation. If an adequate investigation is not permitted, or if any necessary information is withheld, the Secretary will reach a determination on the basis of such facts as are available to him.

(b) *Termination of investigation.* If at any time during an investigation the Commissioner determines that further investigation is not warranted by the facts of the case, he may recommend to the Secretary that the case be closed by a determination of no sales at less than fair value.

§ 53.32 Determination as to fact or likelihood of sales at less than fair value.

(a) *Fair value determination.* Upon receipt from the Commissioner of Customs of the information referred to in § 53.31, the Secretary of the Treasury will proceed as promptly as possible to determine whether or not the merchandise in question is in fact being, or is likely to be, sold in the United States or elsewhere at less than its fair value.

(b) *Submission of views.* During the course of an antidumping proceeding interested persons may make such written submissions as they desire. Appropriate consideration will be given to any new or additional information submitted. The Secretary or his delegate also may at any time invite any person or persons to supply him orally with information or argument.

§ 53.33 Negative determination.

(a) *Notice of Tentative Negative Determination.* If it appears to the Secretary that on the basis of information before him a determination of sales at not less than fair value may be required, he will publish in the *FEDERAL REGISTER* a "Notice of Tentative Negative Determination," which will include a statement of the reasons upon which the tentative determination is based.

(b) *Opportunity to present views—*(1) *Written.* Interested persons may make such written submissions as they desire, within a period which will be specified in the notice, with respect to the contemplated action. Appropriate consideration will be given to any new or

additional information or argument submitted.

(2) *Oral.* If any person believes that any information obtained by the Bureau of Customs in the course of the antidumping proceeding is inaccurate or that for any other reason the tentative determination is in error, he may request in writing that the Secretary of the Treasury afford him an opportunity to present his views in this regard. Upon receipt of such a request, the Secretary will notify the person who supplied any information, the accuracy of which is questioned and such other person or persons, if any, as he in his discretion may deem to be appropriate. If the Secretary is satisfied that the circumstances so warrant, an opportunity will be afforded by the Secretary or his delegate for all such persons to appear, through their counsel or in person, accompanied by counsel if they so desire, to make known their respective points of view and to supply such further information or argument as may be of assistance in leading to a conclusion as to the accuracy of the information in question. The Secretary or his delegate may at any time invite any person or persons to supply him orally with information or argument.

(c) *Final determination.* As soon as possible thereafter, the Secretary will make a final determination and publish his determination in the *FEDERAL REGISTER*.

(d) *Negative determination after issuance of a withholding of appraisalment notice.* The procedure specified in paragraphs (a), (b), and (c) of this section will not apply if the decision to issue a negative determination is made by the Secretary after a withholding of appraisalment notice has been issued and thereafter he has afforded interested parties an opportunity to be heard pursuant to the provisions of § 53.37. In lieu thereof a final negative determination will be published setting forth the statement of reasons.

§ 53.34 Withholding of appraisalment.

(a) *Three-month period.* If the Commissioner determines during the course of his investigations that there are reasonable grounds to believe or suspect that any merchandise is being, or is likely to be, sold at less than its foreign market value (or, in the absence of such value, then its constructed value) under the Antidumping Act; and if there is evidence on record concerning injury or likelihood of injury to or prevention of establishment of an industry of the United States, he shall publish notice of these facts in the *FEDERAL REGISTER* in a "Withholding of Appraisalment Notice," indicating—

(1) That the belief or suspicion re-

lates only to certain shippers or producers, if this is the case and that the investigation is limited to the transactions of such shippers or producers;

(2) The expiration date of the notice (which shall be no more than 3 months from the date of publication of the notice in the FEDERAL REGISTER, unless a longer period of withholding of appraisement has been requested by the importer and the exporter pursuant to paragraph (b) and has been approved by the Commissioner).

This withholding of appraisement notice will be issued concurrently with the Secretary's determination pursuant to § 53.35, unless appraisement is being withheld pursuant to paragraph (b) of this section.

(b) *Six-month period.* At any time prior to the issuance of the withholding of appraisement notice referred to in paragraph (a) of this section, importers and exporters concerned may request that the period of withholding of appraisement extend for a period longer than 3 months, but in no case longer than 6 months. Upon the receipt of such a request from importers and exporters concerned the Commissioner will decide whether appraisement should be withheld for a period longer than 3 months. If the Commissioner decides that a period of withholding of appraisement longer than 3 months is justified, he will publish a withholding of appraisement notice upon the same basis and containing information of the same type as is required by paragraph (a) of this section, except that the expiration date of the notice may be 6 months from the date of publication of the notice in the FEDERAL REGISTER.

(c) *Advice to District Directors of Customs.* The Commissioner shall advise all district directors of customs of his action. Upon receipt of such advice the district director of customs shall proceed to withhold appraisement in accordance with the pertinent provisions of § 53.48.

(d) *Notice issued before July 1, 1968.* The time limitations of this section do not apply to withholding of appraisement notices issued before July 1, 1968.

§ 53.35 Affirmative determination; general.

If it appears to the Secretary on the basis of the information before him that a determination of sales at less than fair value is required, unless the withholding of appraisement notice was issued pursuant to § 53.34(b), he will publish in the FEDERAL REGISTER his Determination of Sales at Less Than Fair Value. This determination will include

(a) An adequate description of the merchandise;

(b) The name of each country of exportation;

(c) The name of the supplier or suppliers, if practicable;

(d) The date of the receipt of the information in an acceptable form;

(e) Whether the appropriate basis of comparison is purchase price or exporter's sales price; and

(f) A statement of reasons upon which the determination is based.

§ 53.36 Affirmative determination; appraisement withheld pursuant to § 53.34(b).

If it appears to the Secretary on the basis of the information before him that a determination of sales at less than fair value is required, and if a withholding of appraisement notice has been issued pursuant to § 53.34(b), he will publish in the FEDERAL REGISTER his Determination of Sales at Less Than Fair Value within 3 months from the date of publication of such withholding of appraisement notice. This determination will contain information of the same type as required in § 53.35 (a) through (f).

§ 53.37 Affirmative determination—opportunity to present views.

As soon as possible after the publication of the withholding of appraisement notice if any person believes that for any reason the withholding action is in error, he may request that the Secretary of the Treasury afford him an opportunity to present his views in this regard. Upon receipt of such a request the Secretary will notify each person who supplied any information, relied upon in connection with the withholding action, and such other person or persons, if any, as he may deem to be appropriate. If the Secretary is satisfied that the circumstances so warrant, an opportunity will be afforded by the Secretary or his delegate for all interested persons to appear, through their counsel or in person, accompanied by counsel if they so desire, to make known their respective points of view and to supply such further information or argument as may be of assistance in a consideration of the matter. Unless for unusual reasons it is clearly impracticable, such meeting will be held within three weeks of the date of the publication of the notice of withholding, unless such notice was issued pursuant to § 53.34(b), when it shall be held within 5 weeks of such publication. Reasonable notice of the meeting will be given.

§ 53.38 Referral to U.S. Tariff Commission.

Whenever the Secretary makes a determination of sales at less than fair value he shall so advise the U.S. Tariff Commission.

§ 53.39 Revocation of determination of sales at less than fair value; determination of sales at not less than fair value.

If the Secretary is persuaded from information submitted or arguments received that his determination of sales at less than fair value was in error, and if the Tariff Commission has not yet issued a determination relating to injury, he will publish a notice of "Revocation of Determination of Sales at Less Than Fair Value; Determination of Sales at Not Less Than Fair Value," or, if appropriate, a notice of "Modification of Determination of Sales at Less Than Fair Value," which notice will state the reasons upon which it was based. He shall notify the Tariff Commission of his action.

§ 53.40 Dumping finding.

If the Tariff Commission determines that there is, or is likely to be, the injury contemplated by the statute, the Secretary of the Treasury will make the finding contemplated by section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)), with respect to the involved merchandise.

§ 53.41 Modification or revocation of finding.

(a) *Application to modify or revoke.* An application for the modification or revocation of any finding made as provided for in § 53.40 may be submitted in writing to the Commissioner of Customs, together with detailed information concerning any change in circumstances or practice which has obtained for a substantial period of time, or other reasons, which the applicant believes will establish that the basis for the finding no longer exists with respect to all or any part of the merchandise covered thereby.

(b) *Modification or revocation by Secretary.* The Secretary of the Treasury may on his own initiative modify or revoke a finding of dumping.

(c) *Notice of modification or revocation of finding.* Notice of intent to modify or revoke a finding will be published by the Secretary in the FEDERAL REGISTER. Comments from interested parties will be given consideration if they are received within the period of time stated in the notice.

§ 53.42 Publication of determinations and findings.

Each determination made in accordance with §§ 53.33, 53.34, 53.35, and 53.36, whether such determination is in the affirmative or in the negative, and each finding made in accordance with § 53.40, will be published in the FEDERAL REGISTER, together with a statement of the reasons therefor.

§ 53.43 List of current findings.

The following findings of dumping are currently in effect:

FINDINGS OF DUMPING			
Merchandise	Country	T.D.	Modified by
Portland cement, other than white, nonstaining	Sweden.....	55309	
portland cement.	Belgium....	55428	
Portland gray cement....	Portugal....	55501	
Portland cement, other than white, nonstaining portland cement.	Dominican Republic.	55683	
Chromic acid.....	Australia....	56130	
Steel reinforcing bars.....	Canada.....	56150	
Carbon steel bars and structural shapes.	Canada.....	56264	
Azobisformamide.....	Japan.....	56414	
Steel jacks.....	Canada.....	65-191	
Cast iron soil pipe.....	Poland.....	67-223	

Subpart D—Action by District Director of Customs

§ 53.43 Action by the District Director of Customs.

(a) *Appraisalment withheld; notice to importer.* Upon receipt of advice from the Commissioner of Customs pursuant to § 53.34, the district director of customs shall withhold appraisalment as to such merchandise entered, or withdrawn from warehouse, for consumption, after the date of publication of the "Withholding of Appraisalment Notice," unless the Commissioner's Withholding of Appraisalment Notice specifies a different effective date. Each district director of customs shall notify the importer, consignee, or agent immediately of each lot of merchandise with respect to which appraisalment is so withheld. Such notice shall indicate (1) the rate of duty of the merchandise under the applicable item of the Tariff Schedules of the United States if known, and (2) the estimated margin of the special dumping duty that could be assessed. Upon advice of a finding made in accordance with § 53.40, the district director of customs shall give immediate notice thereof to the importer when any shipment subject thereto is imported after the date of the finding and information is not on hand for completion of appraisalment of such shipment.

(b) *Request to proceed with appraisalment.* If, before a finding of dumping has been made, or before a case has been closed without a finding of dumping, the district director of customs is satisfied by information furnished by the importer or otherwise that the purchase price or exporter's sales price, in respect of any shipment, is not less than foreign market value (or, in the absence of such value, than the constructed value), he shall so advise the Commissioner and request authorization to proceed with his

appraisement, of that shipment in the usual manner.

§ 53.49 Certificate of importer.

If a finding of dumping has been made, the district director of customs shall require the importer or his agent to file a certificate of the importer on the appropriate one of the following forms. A separate certificate shall be required for each shipment.

FORM 1
NONEXPORTER'S CERTIFICATE, ANTIDUMPING ACT, 1921

Port of
Date, 19...

Re: Entry No., dated, 19...
Import carrier:
Arrived, 19...

I certify that I am not the exporter as defined in section 207, Antidumping Act, 1921, of the merchandise covered by the aforesaid entry. I further certify that the merchandise was purchased for importation by on, 19..., and that the purchase price is
(Signed)

FORM 2
EXPORTER'S CERTIFICATE WHEN SALES PRICE IS KNOWN, ANTIDUMPING ACT, 1921

Port of
Date, 19...

Re: Entry No., dated, 19...
Import carrier:
Arrived, 19...

I certify that I am the exporter as defined in section 207, Antidumping Act, 1921, of the merchandise covered by the aforesaid entry; that the merchandise is sold or agreed to be sold at the price stated in the attached statement; and that, if any of such merchandise is actually sold at any price different from the price stated therefor in the attached statement, I will immediately notify the district director of customs of all the circumstances.

The merchandise was acquired by me in the following manner:

and has been sold or agreed to be sold to at
(name and address) (price)
(Signed)

FORM 3
EXPORTER'S CERTIFICATE WHEN SALES PRICE IS NOT KNOWN ANTIDUMPING ACT, 1921

Port of
Date, 19...

Re: Entry No., dated, 19...
Import carrier:
Arrived, 19...

I certify that I am the exporter as defined in section 207, Antidumping Act, 1921, of the merchandise covered by the aforesaid entry, and that I have no knowledge as to any price at which such merchandise will be sold in the United States. I hereby agree that I will keep a record of the sales and will furnish

the district director of customs within 30 days after the sale of any of such merchandise a statement of each selling price. I further agree that, if any of the merchandise has not been sold before the expiration of 6 months from the date of entry, I will so report to the district director of customs upon such expiration date.

The merchandise was acquired by me in the following manner:

(Signed)

FORM 4
EXPORTER'S CERTIFICATE WHEN MERCHANDISE IS NOT, AND WILL NOT BE, SOLD ANTIDUMPING ACT, 1921

Port of
Date, 19...

Re: Entry No., dated, 19...
Import carrier:
Arrived, 19...

I certify that I am the exporter as defined in section 207, Antidumping Act, 1921, of the merchandise covered by the aforesaid entry, and that such merchandise has not been, and will not be, sold in the United States for the following reason:

(Signed)

(Sec. 496, 46 Stat. 725, as amended; 19 U.S.C. 1486)

§ 53.50 Appraisalment of merchandise covered by Form 4.

If an unqualified certificate on Form 4 is filed and the district director of customs is satisfied that no evidence can be obtained to contradict it, the shipment will be appraised without regard to the Antidumping Act.

§ 53.51 Appraisalment when required certificate not filed.

If the importer fails to file an appropriate certificate within 30 days following notification by the district director of customs that a certificate is required under section 53.49, appraisalment shall proceed upon the basis of the best information available.

§ 53.52 Reimbursement of dumping duties.

(a) General. In calculating purchase price or exporter's sales price as the case may be, there shall be deducted the amount of any special dumping duties which are, or will be paid by the manufacturer, producer, seller, or exporter, or which are, or will be, refunded to the importer by the manufacturer, producer, seller, or exporter, either directly or indirectly, but a warranty of nonapplicability of dumping duties entered into before the initiation of the investigation, will not be regarded as affecting purchase price or exporter's sales price if it was granted to an importer with respect to merchandise which was:

(1) Purchased, or agreed to be purchased, before publication of a Withhold-

ing of Appraisal Notice with respect to such merchandise; and

(2) Exported before a determination of sales at less than fair value is made.

(b) *Statement concerning reimbursement.* Before proceeding with appraisal of any merchandise with respect to which dumping duties are found to be due the district director of customs shall require the importer to file a written statement in the following form:

I hereby certify that I (have) (have not) entered into any agreement or understanding for the payment or for the refunding to me, by the manufacturer, producer, seller, or exporter of all or any part of the special dumping duties assessed upon the following importations of (commodity) from (country): (List entry numbers) which have been purchased on or after (date of publication of withholding in Federal Register or purchased before (same date) but exported on or after (date of determination of sales at less than fair value)).

A certificate will be required for all merchandise that is unappraised on the date that the finding of dumping is issued. Thereafter, a separate certificate will be required for each additional shipment.

§ 53.53 Release of merchandise; bond.

When the district director of customs in accordance with § 53.34(c) has received a notice of withheld appraisal or when he has been advised of a finding provided for in § 53.40, and so long as such notice or finding is in effect, he shall withhold release of any merchandise of a class or kind covered by such notice or finding which is then in his custody or is thereafter imported, unless an appropriate bond is filed or is on file, as specified hereafter in § 53.54, or unless the merchandise covered by a specified entry will be appraised without regard to the Antidumping Act, 1921, as amended.

§ 53.54 Type of bond required.

(a) *General.* If the merchandise is of a class or kind covered by a notice of withheld appraisal provided for in § 53.48(a) or by a finding provided for in § 53.40, a single consumption entry bond covering the shipment, in addition to any other required bond, shall be furnished by the person making the entry or withdrawal, unless—

(1) A bond is required under paragraph (b) of this section; or

(2) In cases in which there is no such requirement the district director of customs is satisfied that the bond under which the entry was filed is sufficient. The face amount of any additional bond required under this paragraph shall be sufficient to assure payment of any special duty that may accrue by reason of the Antidumping Act, but in no case shall be for less than \$100.

(b) *Bond on customs Form 7591.* If the merchandise is of a class or kind covered by a finding provided for in § 53.40 and the importer or his agent has filed a certificate on Form 3 (section 53.49), the bond required by section 208 of the Antidumping Act, 1921 (19 U.S.C. 167), shall be on customs Form 7591. In such case, a separate bond shall be required for each entry or withdrawal, and such bond shall be in addition to any other bond required by law or regulation. The record of sales required under the conditions of the bond of customs Form 7591 shall identify the entry covering the merchandise and show the name and address of each purchaser, each selling price, and the date of each sale. The face amount of such bond shall be equal to the estimated value of the merchandise covered by the finding.

§ 53.55 Conversion of currencies.

In determining the existence and amount of any difference between the purchase price or exporter's sales price and the foreign market value (or, in the absence of such value, the constructed value) for the purposes of §§ 53.2 through 53.6, or of section 201(b) or 202(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(b), 161(a)), any necessary conversion of a foreign currency into its equivalent in U.S. currency shall be made in accordance with the provisions of section 522, Tariff Act of 1930, as amended (31 U.S.C. 372) and § 16.4 of this chapter, (a) as of the date of purchase or agreement to purchase, if the purchase price is an element of the comparison, or (b) as of the date of exportation, if the exporter's sales price is an element of the comparison.

§ 53.56 Dumping duty.

(a) *Rule for assessment.* Special dumping duty shall be assessed on all importations of merchandise, whether dutiable or free, as to which the Secretary of the Treasury has made public a finding of dumping, entered or withdrawn from warehouse, for consumption, not more than 120 days before the question of dumping was raised by or presented to the Secretary or his delegate, provided the particular importation has not been appraised prior to the publication of such finding, and the district director of customs has determined that the purchase price or exporter's sales price is less than the foreign market value or constructed value, as the case may be.

(b) *Entered value not controlling.* The fact that the importer has added on entry the difference between the purchase price or the exporter's sales price and the foreign market value or constructed value and the district director of customs has approved the resulting

entered value shall not prevent the assessment of the special dumping duty.

§ 53.57 Notice to importer.

Before dumping duty is assessed, the district director of customs shall notify the importer, his consignee, or agent of the appraisal of the merchandise, as in the case of an advance in value. If the importer files an appeal for reappraisal, liquidation shall be suspended until the appeal for reappraisal is finally decided.

§ 53.58 Dumping duty; samples.

If the necessary conditions are present, the special dumping duty shall be assessed on samples imported for the purpose of taking orders and making sales in this country.

§ 53.59 Method of computing dumping duty.

If it appears that the merchandise has been purchased by a person not the exporter within the meaning of section 207, Antidumping Act, 1921 (19 U.S.C. 166), the special dumping duty shall equal the difference between the purchase price and the foreign market value on the date of purchase, or, if there is no foreign market value, between the purchase price and the constructed value, any foreign currency involved being converted into U.S. money as of the date of purchase or agreement to purchase. If it appears that the merchandise is

imported by a person who is the exporter within the meaning of such section 207, the special dumping duty shall equal the difference between the exporter's sales price and the foreign market value on the date of exportation, or, if there is no foreign market value, between the exporter's sales price and the constructed value, any foreign currency involved being converted into U.S. money as of the date of exportation.

Subpart E—Antidumping Appeals and Protests

§ 53.64 Antidumping appeals and protests procedure.

Appeals for reappraisal, applications for reviews of reappraisements, and protests relating to the Antidumping Act, 1921, as amended, shall be made in the same manner as appeals, applications for review, and protests relating to ordinary customs duties.

These amendments shall become effective on July 1, 1968.

LESTER D. JOHNSON,
Commissioner of Customs.

Approved: May 29, 1968

JOSEPH M. BOWMAN
Assistant Secretary.

For ready comparison the following parallel reference table shows where former §§ 14.6-14.13, 16.21, 16.22, and 17.9 appear in Part 53.

APPENDIX TO AMENDMENT OF ANTIDUMPING REGULATIONS

PARALLEL REFERENCE TABLE

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53.3 Fair value based on price in country of exportation; The usual test.	14.7(a) (1).
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[F.R. Doc. 68-6596; Filed, May 31, 1968; 11:48 a.m.]

PRESENT DUMPING REGULATIONS OF TREASURY DEPARTMENT

TITLE 19—CODE OF FEDERAL REGULATIONS

PROCEDURE UNDER ANTIDUMPING ACT

§ 14.6 Suspected dumping.

(a) If any appraiser or other principal customs officer has knowledge of any grounds for a reason to believe or suspect that any merchandise is being, or is likely to be, imported into the United States at a purchase price or exporter's sales price less than the foreign market value (or, in the absence of such value, than the constructed value), as contemplated by section 201(b). Antidumping Act, 1921, as amended (19 U.S.C. 160(b)), or at less than its "fair value" as that term is defined in § 14.7, he shall communicate his belief or suspicion promptly to the Commissioner of Customs. Every such communication shall contain or be accompanied by a statement of substantially the same information as required in paragraph (b) of this section, if in the possession of the appraiser or other officer or readily available to him.

(b) Any person outside the Customs Service who has information that merchandise is being, or is likely to be, imported into the United States under such circumstances as to bring it within the purview of the Antidumping Act, 1921, as amended, may communicate such information in writing to the Commissioner of Customs. Every such communication shall contain or be accompanied by the following:

(1) A detailed description or sample of the merchandise; the name of the country from which it is being, or is likely to be, imported; the name of the exporter or exporters and producer or producers, if known; and the ports or probable ports of importation into the United States. If no sample is furnished, the Bureau of Customs may call upon the person who furnished the information to furnish samples of the imported and competitive domestic articles, or either.

(2) Such detailed data as are reasonably available with respect to values and prices indicating that such merchandise is being, or is likely to be, sold in the United States at less than its fair value, within the meaning of the Antidumping Act, 1921, as amended, including information as to any differences between the foreign market value or constructed value and the purchase price or exporter's sales price which may be accounted for by any difference in taxes, discounts, incidental costs such as those for packing or freight, or other items.

(3) Such information as is reasonably available to the person furnishing the information as to the total value and volume of domestic production of the merchandise in question.

(4) Such suggestions as the person furnishing the information may have as to specific avenues of investigation to be pursued or questions to be asked in seeking pertinent information.

(c) If any information filed pursuant to paragraph (b) of this section does not conform with the requirements of that paragraph, the Commissioner shall return the communication to the person who submitted it with detailed written advice as to the respects in which it does not conform.

(d) (1) Upon receipt pursuant to paragraph (a) or (b) of this section of information in proper form:

(1) The Commissioner shall conduct a summary investigation. If he determines that the information is patently in error or that the merchandise is not being and is not likely to be imported in more than insignificant quantities he shall so advise the person who submitted the information and the case shall be closed. Otherwise, the Commissioner shall publish a notice in the Federal Register that information in proper form has been received pursuant to paragraph (a) or (b) of this section. This notice, which may be referred to as the "Antidumping Proceeding Notice," will specify whether the information relates to all shipments of the merchandise in question from an exporting country, or only to shipments

by certain persons or firms; in the latter case, only the names of such persons and firms will be specified. The notice shall also specify the date on which information in proper form was received and that date shall be the date on which the question of dumping was raised or presented for purposes of sections 201(b) and 202(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(b) and 161(a)). The notice shall also contain a summary of the information received. If a person outside the Customs Service raised or presented the question of dumping, his name shall be included in the notice unless a determination under § 14.6a of the regulations of this part requires that his name not be disclosed.

(i) The Commissioner shall thereupon proceed promptly to decide whether or not reasonable grounds exist to believe or suspect that the merchandise is being, or likely to be, sold at less than its foreign market value (or, in the absence of such value, than its constructed value). To assist him in making this decision the Commissioner, in his discretion, may conduct a brief preliminary investigation into such matters, in addition to the invoice or other papers or information presented to him, as he may deem necessary.

(2) If the Commissioner decides, after such preliminary investigation, if any, that reasonable grounds do exist to believe or suspect that the merchandise is being, or is likely to be, sold at less than its foreign market value (or, in the absence of such value, than its constructed value) he will thereafter proceed, by a full-scale investigation, or otherwise, to obtain such additional information, if any, as may be necessary to enable the Secretary to reach a determination as provided by § 14.8(a).

(3) If the Commissioner decides, after such preliminary investigation, if any, that reasonable grounds do not exist to believe or suspect that the merchandise is being, or is likely to be, sold at less than its foreign market value (or, in the absence of such value, than its constructed value), he will thereafter

(i) Proceed, by a full-scale investigation, or otherwise to obtain such additional information, if any, as may be necessary to enable the Secretary to reach a determination as provided by § 14.8(a), or

(ii) Recommend to the Secretary that a full-scale investigation is not warranted by the facts of the case and that the case be closed by a finding of no sales at less than fair value.

(e) If the Commissioner determines pursuant to paragraph (d) (1) (ii) of this section, or in the course of an investigation under paragraph (d) (3) (1) of this section, that there are reasonable grounds to believe or suspect that any merchandise is being, or is likely to be, sold at less than its foreign market value (or, in the absence of such value, than its constructed value) under the Antidumping Act, he shall publish notice of that fact in the FEDERAL REGISTER, furnishing an adequate description of the merchandise, the name of each country of exportation, and the date of the receipt of the information in proper form, and shall advise all appraisers of his action. This notice may be referred to as the "Withholding of Appraisal Notice." If the belief or suspicion relates only to certain shippers or producers, the notice shall specify that that is the case and that the investigation is limited to the transactions of such shippers or producers. The notice shall also specify whether the appropriate basis of comparison for fair value purposes is purchase price or exporter's sales price if sufficient information is available to so state; otherwise a supplementary notice will be published in the FEDERAL REGISTER as soon as possible which will specify which of such prices is the appropriate basis of comparison for fair value purposes. Upon receipt of such advice, the appraisers shall proceed to withhold appraisal in accordance with the pertinent provisions of § 14.9.

(Secs. 201, 407, 42 Stat. 11, as amended, 18; 19 U.S.C. 160, 173) [28 F.R. 14728, Dec. 31, 1963, as amended by T.D. 56815, 29 F.R. 16320, Dec. 5, 1964]

§ 14.6a Disclosure of information in antidumping proceedings.

(a) *Information generally available.* In general, all information, but not necessarily all documents, obtained by the Treasury Department, including the Bureau of Customs, in connection with any antidumping proceeding will be available for inspection or copying by any interested person, such as the producer of the merchandise, any importer, exporter, or domestic producer of merchandise similar to that which is the subject of the proceeding. With respect to documents prepared by an officer or employee of the United States, factual material, as distinguished from recommendations and evaluations, contained in any such docu-

ment will be made available by summary or otherwise on the same basis as information contained in other documents. Attention is directed to § 24.12 of this chapter relating to fees charged for providing copies of documents.

(b) *Requests for confidential treatment of information.* Any person who submits information in connection with an antidumping proceeding may request that such information, or any specified part thereof, be held confidential. Information covered by such a request shall be set forth on separate pages from other information; and all such pages shall be clearly marked "Confidential Treatment Requested." The Commissioner of Customs or the Secretary of the Treasury or the delegate of either will determine, pursuant to paragraph (c) of this section, whether such information, or any part thereof, shall be treated as confidential. If it is so determined, the information covered by the determination will not be made available for inspection or copying by any person other than an officer or employee of the United States Government or a person who has been specifically authorized to receive it by the person requesting confidential treatment. If it is determined that information submitted with such a request, or any part thereof, should not be treated as confidential, or that summarized or approximated presentations thereof should be made available for disclosure, the person who has requested confidential treatment thereof shall be promptly so advised and, unless he thereafter agrees that the information, or any specified part or summary or approximated presentations thereof, may be disclosed to all interested parties, the information will not be made available for disclosure, but to the extent that it is self-serving it will be disregarded for the purpose of the determination as to sales below fair value and no reliance shall be placed thereon in this connection.

(c) *Standards for determining whether information will be regarded as confidential.* (1) Information will ordinarily be considered to be confidential only if its disclosure would be of significant competitive advantage to a competitor or would have a significantly adverse effect upon a person supplying the information or upon a person from whom he acquired the information. Further, if disclosure of information in specific terms or with identifying details would be inappropriate under this standard, the information will ordinarily be considered appropriate for disclosure in generalized, summary or approximated form, without identifying details, unless the Commissioner of Customs or the Secretary of the Treasury or the delegate of either determines that even in such generalized, summary or approximated form, such disclosure would still be of significant competitive advantage to a competitor or would still have a significantly adverse effect upon a person supplying the information or upon a person from whom he acquired the information. As indicated in paragraph (b) of this section, however, the decision that information is not entitled to protection from disclosure in its original or in another form will not lead to its disclosure unless the person supplying it consents to such disclosure.

(2) Information will ordinarily be regarded as appropriate for disclosure if it

(i) Relates to price information;

(ii) Relates to claimed freely available price allowances for quantity purchases; or

(iii) Relates to claimed differences in circumstances of sale.

(3) Information will ordinarily be regarded as confidential if its disclosure would

(i) Disclose business or trade secrets;

(ii) Disclose production costs;

(iii) Disclose distribution costs, except to the extent that such costs are accepted as justifying allowances for quantity or differences in circumstances of sale;

(iv) Disclose the names of particular customers or the price or prices at which particular sales were made.

(Sec. 407, 42 Stat. 18; 19 U.S.C. 173) [T.D. 56315, 29 F.R. 16821, Dec. 5, 1964]

§ 14.7 Fair value.

(a) *Definition.* For the purposes of section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)), the fair value of imported merchandise shall be determined as follows:

(1) *Fair value based on price in country of exportation—the usual test.* Merchandise imported into the United States will ordinarily be considered to have been sold, or to be likely to be sold, at less than fair value if the purchase price or

exporter's sales price (as defined in sections 203 and 204, respectively, of the Antidumping Act, 1921, as amended (19 U.S.C. 162, 163)), as the case may be, is, or is likely to be, less than the price (as defined in section 205, after adjustment as provided for in section 202 of the Antidumping Act, 1921, as amended (19 U.S.C. 164, 161)), at which such or similar merchandise (as defined in section 212(3) of the Antidumping Act, 1921, as amended (19 U.S.C. 170a(3))) is sold for consumption in the country of exportation on or about the date of purchase or agreement to purchase, of the merchandise imported into the United States if purchase price applies, or on or about the date of exportation thereof if exporter's sales price applies.

(2) *Fair value based on sales for exportation to countries other than the United States.* If, however, it is demonstrated that during a representative period the quantity of such or similar merchandise sold for consumption in the country of exportation is so small, in relation to the quantity sold for exportation to countries other than the United States, as to be an inadequate basis for comparison, then merchandise imported into the United States will ordinarily be deemed to have been sold, and to be likely to be sold, at less than fair value if the purchase price or the exporter's sales price (as defined in sections 203 and 204, respectively, of the Antidumping Act, 1921, as amended (19 U.S.C. 162, 163)), as the case may be, is, or is likely to be, less than the price (as defined in section 205, after adjustment as provided for in section 202 of the Antidumping Act, 1921, as amended (19 U.S.C. 164, 161)), at which such or similar merchandise (as defined in section 212(3) of the Antidumping Act, 1921, as amended (19 U.S.C. 170a(3))) is sold for exportation to countries other than the United States on or about the date of purchase or agreement to purchase of the merchandise imported into the United States if purchase price applies, or on or about the date of exportation thereof if exporter's sales price applies.

(3) *Fair value based on constructed value.* If the information available is deemed by the Secretary insufficient or inadequate for a determination under subparagraph (1) or (2) of this paragraph, he will determine fair value on the basis of the constructed value as defined in section 206 of the Antidumping Act, 1921, as amended (19 U.S.C. 165).

(b) *Calculation of fair value.* In calculating fair value under section 201(a), Antidumping Act, 1921, as amended (19 U.S.C. 160(a)), the following criteria shall be applicable:

(1) *Quantities.* In comparing the purchase price or exporter's sales price, as the case may be, with such applicable criteria as sales or offers, on which a determination of fair value is to be based, reasonable allowances will be made for differences in quantities if it is established to the satisfaction of the Secretary that the amount of any price differential is wholly or partly due to such differences. In determining the question of allowances for differences in quantity, consideration will be given, among other things, to the practice of the industry in the country of exportation with respect to affording in the home market (or third country markets, where sales to third countries are the basis for comparison) discounts for quantity sales which are freely available to those who purchase in the ordinary course of trade. Allowances for price discounts based on sales in large quantities ordinarily will not be made unless (1) the exporter during the six months prior to the date when the question of dumping was raised or presented had been granting quantity discounts of at least the same magnitude with respect to 20 percent or more of such or similar merchandise which he sold in the home market (or in third country markets when sales to third countries are the basis for comparison) and that such discounts had been freely available to all purchasers, or (2) the exporter can demonstrate that the discounts are warranted on the basis of savings specifically attributable to the quantities involved.

(2) *Circumstances of sale.* (1) In comparing the purchase price or exporter's sales price, as the case may be, with the sales, or other criteria applicable, on which a determination of fair value is to be based, reasonable allowances will be made for bona fide differences in circumstances of sale if it is established to the satisfaction of the Secretary that the amount of any price differential is wholly or partly due to such differences.

(2) Differences in circumstances of sale for which such allowances will be made are limited, in general, to those circumstances which bear a reasonably direct relationship to the sales which are under consideration. Examples of differences in circumstances of sale for which reasonable allowances generally will be made are those involving differences in credit terms, guarantees, warranties, technical assistance, servicing, and assumption by a seller of a pur-

chaser's advertising or other selling costs. Reasonable allowances will also generally be made for differences in commissions. Except in those instances where it is clearly established that the differences in circumstances of sale bear a reasonably direct relationship to the sales which are under consideration, allowances generally will not be made for differences in research and development costs, production costs, and advertising and other selling costs of a seller unless such costs are attributable to a later sale of merchandise by a purchaser; provided that reasonable allowances for selling expenses generally will be made in cases where a reasonable allowance is made for commissions in one of the markets under consideration and no commission is paid in the other market under consideration, the amount of such allowance being limited to the actual selling expense incurred in the one market or the total amount of the commission allowed in such other market, whichever is less.

(iii) In determining the amount of the reasonable allowances for any differences in circumstances of sale, the Secretary will be guided primarily by the effect of such differences upon the market value of the merchandise but, where appropriate, may also consider the cost of such differences to the seller, as contributing to an estimate of market value.

(8) *Similar merchandise.* In comparing the purchase price or exporter's sales price as the case may be, with the selling price in the home market, or for exportation to countries other than the United States, in the case of similar merchandise described in subdivisions (C), (D), (E), or (F) of section 212(3), Antidumping Act, 1921, as amended (19 U.S.C. 170a(3)), due allowance shall be made for differences in the merchandise. In this regard the Secretary will be guided primarily by the effect of such differences upon the market value of the merchandise but, when appropriate, he may also consider differences in cost of manufacture if it is established to his satisfaction that the amount of any price differential is wholly or partly due to such differences.

(4) *Offering price.* In the determination of fair value, offers will be considered in the absence of sales, but an offer made in circumstances in which acceptance is not reasonably to be expected will not be deemed to be an offer.

(5) *Sales agency.* If such or similar merchandise is sold or, in the absence of sales, offered for sale through a sales agency or other organization related to the seller in any of the respects described in section 207 of the Antidumping Act, 1921, as amended (19 U.S.C. 166), the price at which such or similar merchandise is sold or, in the absence of sales, offered for sale by such sales agency or other organization may be used in the determination of fair value.

(6) *Fictitious sales.* In the determination of fair value, no pretended sale or offer for sale, and no sale or offer for sale intended to establish a fictitious market, shall be taken into account.

(7) *Sales at varying prices.* Where the prices in the sales which are being examined for a determination of fair value vary (after allowances provided for in subparagraphs (1), (2), and (8) of this paragraph), determination of fair value will take into account the prices of a preponderance of the merchandise thus sold or weighted averages of the prices of the merchandise thus sold.

(8) *Quantities involved and differences in price.* Merchandise will not be deemed to have been sold at less than fair value unless the quantity involved in the sale or sales to the United States, or the difference between the purchase price or exporter's sales price, as the case may be, and the fair value, is more than insignificant.

(9) *Revision of prices or other changed circumstances.* Whenever the Secretary of the Treasury is satisfied that promptly after the commencement of an antidumping investigation either (i) price revisions have been made which eliminate the likelihood of sales below fair value and that there is no likelihood of resumption of the prices which prevailed before such revision, or (ii) sales to the United States of the merchandise have terminated and will not be resumed; or whenever the Secretary concludes that there are other changed circumstances on the basis of which it may no longer be appropriate to continue an antidumping investigation, the Secretary shall publish a notice to this effect in the FEDERAL REGISTER. The notice shall state the facts relied on by the Secretary in publishing the notice and that those facts are considered to be evidence that there are not and are not likely to be sales below fair value. The notice shall also state that unless persuasive evidence or argument to the contrary is presented within 30 days the Secretary will determine that there are not and are not likely to be sales below fair value.

(Sec. 407, 42 Stat. 18; 19 U.S.C. 178) [28 F.R. 14728, Dec. 31, 1963, as amended by T.D. 56815, 29 F.R. 16321, Dec. 5, 1964]

§ 14.8 Determination of fact or likelihood of sales at less than fair value; determination of injury; finding of dumping.

(a) Upon receipt from the Commissioner of Customs of the information referred to in § 14.6(d), the Secretary of the Treasury will proceed as promptly as possible to determine tentatively whether or not the merchandise in question is in fact being, or is likely to be, sold in the United States or elsewhere at less than its fair value. As soon as possible the Secretary will publish in the FEDERAL REGISTER a "Notice of Tentative Determination," which will include a statement of the reasons on which the tentative determination is based. Interested persons will be given an opportunity to make such written submissions as they desire, within a period which will be specified in the notice, with respect to the contemplated action. Appropriate consideration will be given to any new or additional information or argument submitted. If any person believes that any information obtained by the Bureau of Customs in the course of an antidumping proceeding is inaccurate or that for any other reason the tentative determination is in error, he may request in writing that the Secretary of the Treasury afford him an opportunity to present his views in this regard. Upon receipt of such a request the Secretary will notify the person who supplied any information, the accuracy of which is questioned and such other person or persons, if any, as he in his discretion may deem to be appropriate. If the Secretary is satisfied that the circumstances so warrant, an opportunity will be afforded by the Secretary or his delegate for all such persons to appear, through their counsel or in person, accompanied by counsel if they so desire, to make known their respective points of view and to supply such further information or argument as may be of assistance in leading to a conclusion as to the accuracy of the information in question. The Secretary or his delegate may at any time, upon appropriate notice, invite any such person or persons as he in his discretion may deem to be appropriate to supply him orally with information or argument. As soon as possible thereafter, the Secretary will make a final determination, except that the Secretary may defer making an affirmative determination of sales below fair value during the pendency of any other antidumping proceeding which relates to the same class or kind of merchandise imported from another foreign country. The Secretary will defer making an affirmative determination only if he is satisfied that deferral is appropriate under all of the circumstances. Circumstances which the Secretary will take into consideration will include the dates on which information relating to the various antidumping proceedings came to his attention, the volume of sales involved in each proceeding, elements of hardship, if any, and probable extent of delay which deferral would entail. No determination that sales are not below fair value will be deferred because of this provision. Whenever the Secretary makes a determination of sales at less than fair value he will so advise the United States Tariff Commission.

(b) If the Tariff Commission determines that there is, or is likely to be, the injury contemplated by the statute, the Secretary of the Treasury will make the finding contemplated by section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)), with respect to the involved merchandise.

(Secs. 201, 407, 42 Stat. 11, as amended, 18; 19 U.S.C. 160, 173) [28 F.R. 14728, Dec. 31, 1963, as amended by T.D. 56315, 29 F.R. 16327, Dec. 5, 1964]

§ 14.9 Action by the appraiser.

(a) Upon receipt of advice from the Commissioner of Customs pursuant to § 14.6(e), if the Commissioner's "Withholding of Appraisal Notice" shall specify that the proper basis of comparison for fair value purposes is exporter's sales price or if that notice does not specify the appropriate basis of comparison

for fair value purposes, each appraiser shall withhold appraisement as to such merchandise entered, or withdrawn from warehouse, for consumption, on any date after the 120th day before the question of dumping was raised by or presented to the Secretary of the Treasury or his delegate. If the Commissioner's "Withholding of Appraisement Notice," including any supplementary notice, shall specify that the proper basis of comparison for fair value purposes is purchase price, the appraiser shall withhold appraisement as to such merchandise entered, or withdrawn from warehouse, for consumption, after the date of publication of the "Withholding of Appraisement Notice." Each appraiser shall notify the collector and importer immediately of each lot of merchandise with respect to which appraisement is so withheld. Upon advice of a finding made in accordance with § 14.8(b), the appraiser shall give immediate notice thereof to the collector and the importer when any shipment subject thereto is imported after the date of the finding and information is not on hand for completion of appraisement of such shipment. Customs Form 6459 shall be used to notify the collector and importer whenever appraisement is withheld under this paragraph.

(b) If, before a finding of dumping has been made, or before a case has been closed without a finding of dumping, the appraiser is satisfied by information furnished by the importer or otherwise that the purchase price or exporter's sales price, in respect of any shipment, is not less than foreign market value (or, in the absence of such value, than the constructed value), he shall so advise the Commissioner and request authorization to proceed with his appraisement of that shipment in the usual manner.

(c) If a finding of dumping has been made, the appraiser shall require the importer or his agent to file a certificate of the importer on the appropriate one of the following forms. A separate certificate shall be required for each shipment.

Form 1.

NONEXPORTER'S CERTIFICATE

ANTIDUMPING ACT, 1921

Port of -----
Date -----, 19--

Re: Entry No. -----, dated -----, 19--
Import carrier: ----- Arrived -----, 19--

I certify that I am not the exporter as defined in section 207, Antidumping Act, 1921, of the merchandise covered by the aforesaid entry. I further certify that the merchandise was purchased for importation by ----- on -----, 19--, and that the purchase price is -----

(Signed) -----

Form 2.

EXPORTER'S CERTIFICATE WHEN SALES PRICE IS KNOWN

ANTIDUMPING ACT, 1921

Port of -----
Date -----, 19--

Re: Entry No. -----, dated -----, 19--
Import carrier: ----- Arrived -----, 19--

I certify that I am the exporter as defined in section 207, Antidumping Act, 1921, of the merchandise covered by the aforesaid entry; that the merchandise is sold or agreed to be sold at the price stated in the attached statement; and that, if any of such merchandise is actually sold at any price different from the price stated therefor in the attached statement, I will immediately notify the appraiser of all the circumstances.

The merchandise was acquired by me in the following manner :

and has been sold or agreed to be sold to

(Name and address)

at -----

(price)

(Signed) -----

Form 3

EXPORTER'S CERTIFICATE WHEN SALES PRICE IS NOT KNOWN

ANTIDUMPING ACT, 1921

Port of -----

Date -----, 19__

Re: Entry No. -----, dated -----, 19__

Import carrier: ----- Arrived -----, 19__

I certify that I am the exporter as defined in section 207, Antidumping Act, 1921, of the merchandise covered by the aforesaid entry, and that I have no knowledge as to any price at which such merchandise will be sold in the United States. I hereby agree that I will keep a record of the sales and will furnish the appraiser within 30 days after the sale of any such merchandise a statement of each selling price. I further agree that, if any of the merchandise has not been sold before the expiration of 6 months from the date of entry, I will so report to the appraiser upon such expiration date.

The merchandise was acquired by me in the following manner :

(Signed) -----

Form 4

EXPORTER'S CERTIFICATE WHEN MERCHANDISE IS NOT, AND WILL NOT BE SOLD

ANTIDUMPING ACT, 1921

Port of -----

Date -----, 19__

Re: Entry No. -----, dated -----, 19__

Import carrier: ----- Arrived -----, 19__

I certify that I am the exporter as defined in section 207, Antidumping Act, 1921, of the merchandise covered by the aforesaid entry, and that such merchandise has not been, and will not be, sold in the United States for the following reason :

(Signed) -----

(d) If an unqualified certificate on Form 4 is filed and the appraiser is satisfied that no evidence can be obtained to contradict it, he shall notify the collector promptly that the shipment will be appraised without regard to the Antidumping Act and proceed to appraise the merchandise in the usual manner.

(e) If the importer fails to file an appropriate certificate within 30 days following notification by the appraiser that a certificate is required under paragraph (c) of this section, the appraiser shall proceed upon the basis of the best information available.

(f) In calculating purchase price or exporter's sales price, as the case may be, there shall be deducted the amount of any special dumping duties which are, or will be, paid by the manufacturer, producer, seller, or exporter, or which are, or will be, refunded to the importer by the manufacturer, producer, seller, or exporter, either directly or indirectly, but a warranty of nonapplicability of dumping duties granted to an importer with respect to merchandise which is (1) purchased, or agreed to be purchased, before publication of a "Withholding of Appraisal Notice" with respect to such merchandise and (2) exported before a determination of sales below fair value is made, will not be regarded as affecting purchase price or exporter's sales price.

(Secs. 201, 202, 203, 204, 208, 407, 42 Stat. 11, as amended, 12, 13, 14, 18; sec. 486, 46 Stat. 725, as amended; 19 U.S.C. 160, 161, 162, 163, 167, 173, 1486) [28 F.R. 14728, Dec. 31, 1963, as amended by T.D. 56615, 29 F.R. 16322, Dec. 5, 1964]

§ 14.10 Release of merchandise; bond.

(a) When the collector has received a notice of withheld appraisement provided for in § 14.9(a), or when he has been advised of a finding provided for in § 14.8(b), and so long as such notice or finding is in effect, he shall withhold release of any merchandise of a class or kind covered by such notice or finding which is then in his custody or is thereafter imported, unless an appropriate bond is filed or is on file, as specified hereafter in this section, or unless he is advised by the appraiser that the merchandise covered by a specified entry will be appraised without regard to the Antidumping Act.

(b) If the merchandise is of a class or kind covered by a notice of withheld appraisement provided for in § 14.9(a) or by a finding provided for in § 14.8(b), a single consumption entry bond covering the shipment, in addition to any other required bond, shall be furnished by the person making the entry or withdrawal, unless

(1) A bond is required under paragraph (c) of this section, or

(2) In cases in which there is no such requirement the collector is satisfied that the bond under which the entry was filed is sufficient. The penalty of any additional bond required under this paragraph shall be in such amount as will assure payment of any special duty that may accrue by reason of the Antidumping Act, but in no case less than \$100.

(c) If the merchandise is of a class or kind covered by a finding provided for in § 14.8(b) and the importer or his agent has filed a certificate on Form 8 (§ 14.9(c)), the bond required by section 208 of the Antidumping Act, 1921, as amended (19 U.S.C. 167), shall be on customs Form 7591. In such case, a separate bond shall be required for each entry or withdrawal, and such bond shall be in addition to any other bond required by law or regulation. The record of sales required under the conditions of the bond on customs Form 7591 shall identify the entry covering the merchandise and show the name and address of each purchaser, each selling price, and the date of each sale. The penalty of such bond shall be in an amount equal to the estimated value of the merchandise covered by the finding.

(Secs. 208, 407, 42 Stat. 14, 18; 19 U.S.C. 167, 173)

§ 14.11 Conversion of currencies.

In determining the existence and amount of any difference between the purchase price or exporter's sales price and the foreign market value (or, in the absence of such value, the constructed value) for the purposes of § 14.7, or of 201(b) or 202(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(b), 161(a)), any necessary conversion of a foreign currency into its equivalent in United States currency shall be made in accordance with the provisions of section 522, Tariff Act of 1930, as amended (31 U.S.C. 372) and § 16.4 of this chapter, (a) as of the date of purchase or agreement to purchase, if the purchase price is an element of the comparison, or (b) as of the date of exportation, if the exporter's sales price is an element of the comparison.

(Secs. 201, 202, 407, 42 Stat. 11, as amended, 18; 19 U.S.C. 160, 161, 173)

§ 14.12 Modification or revocation of finding.

An application for the modification or revocation of any finding made as provided for in § 14.8(b) will receive due consideration if submitted in writing to the Commissioner of Customs together with detailed information concerning any change in circumstances or practice which has obtained for a substantial period of time, or other reasons, which the applicant believes will establish that the basis for the finding no longer exists with respect to all or any part of the merchandise covered thereby. Notice of intent to modify or revoke a finding will be published by the Secretary in the FEDERAL REGISTER. Comments received from interested parties within 30 days following date of publication will be given consideration.

(Secs. 201, 407, 42 Stat. 11, as amended, 18; 19 U.S.C. 160, 173)

§ 14.13 Publication of findings.

(a) Each determination made in accordance with § 14.8(a), whether such determination is in the affirmative or in the negative, and each finding made in accordance with § 14.8(b), will be published in the FEDERAL REGISTER, together

with a statement of the reasons therefor. Findings made in accordance with § 14.8(b) will be published also in a weekly issue of the Treasury Decisions.

(b) The following findings of dumping are currently in effect:

Merchandise	Country	T.D.	Modified by
Portland cement, other than white nonstaining portland cement.....	Sweden.....	55369	
	Belgium.....	55428	
Portland gray cement.....	Portugal.....	55501	
Portland cement, other than white, nonstaining portland cement.....	Dominican Republic.....	55883	
Chromic acid.....	Australia.....	56130	
Steel reinforcing bars.....	Canada.....	56150	
Carbon steel bars and structural shapes.....	do.....	56284	
Azobisformamide.....	Japan.....	56414	
Steel jacks.....	Canada.....	66-191	
Cast iron soil pipe.....	Poland.....	67-252	

§ 16.21 Dumping duty; notice to importer.

(a) Special dumping duty shall be assessed on all importations of merchandise, whether dutiable or free, as to which the Secretary of the Treasury has made public a finding of dumping, entered or withdrawn from warehouse, for consumption, not more than 120 days before the question of dumping was raised by or presented to the Secretary or his delegate, provided the particular importation has not been appraised prior to the publication of such finding, and the appraiser reports that the purchase price or exporter's sales price is less than the foreign market value or constructed value, as the case may be.

(b) Before dumping duty is assessed the collector shall notify the importer of the appraiser's report, as in the case of an advance in value. If the importer files an appeal for reappraisal, liquidation shall be suspended until the appeal for reappraisal is finally decided.

(c) If the necessary conditions are present, special dumping duty shall be assessed on samples imported for the purpose of taking orders and making sales in this country.

(Secs. 202, 209, 407, 42 Stat. 11, as amended, 15, 18; 19 U.S.C. 161, 168, 178)

§ 16.22 Method of computing dumping duty.

If it appears that the merchandise has been purchased by a person not the exporter within the meaning of section 207, Antidumping Act, 1921, as amended (19 U.S.C. 166), the special dumping duty shall equal the difference between the purchase price and the foreign market value on the date of purchase, or, if there is no foreign market value, between the purchase price and the constructed value, any foreign currency involved being converted into United States money as of the date of purchase or agreement to purchase. If it appears that the merchandise is imported by a person who is the exporter within the meaning of such section 207, the special dumping duty shall equal the difference between the exporter's sales price and the foreign market value on the date of exportation, or, if there is no foreign market value, between the exporter's sales price and the constructed value, any foreign currency involved being converted into United States money as of the date of exportation.

(Secs. 202, 207, 42 Stat. 11, as amended, 14, as amended; 19 U.S.C. 161, 166)

ANTIDUMPING PROTESTS AND APPEALS; AMERICAN PRODUCERS' APPEALS AND PROTESTS

§ 17.9 Antidumping; protests and appeals; procedure.

(a) Appeals for reappraisal, applications for reviews of reappraisements, and protests relating to the Antidumping Act, 1921, shall be made in the same manner as appeals, applications for review, and protests relating to ordinary customs duties.

(b) Notice of appraiser's reports which require the assessment of dumping duties shall be sent by the collector to the importer, consignee, or agent.

(Sec. 210, 42 Stat. 15, as amended; 19 U.S.C. 169)

DUMPING REGULATIONS OF TARIFF COMMISSION

TITLE 19—CODE OF FEDERAL REGULATIONS

PART 208—INVESTIGATIONS OF DUMPING INJURY TO DOMESTIC INDUSTRY

Sec.	
208.1	Applicability of part.
208.2	Purpose of investigation.
208.3	Institution of investigation.
208.4	Public hearings.
208.5	Written statements.
208.6	Notification of Commission's determination.

AUTHORITY: The provisions of this Part 208 issued under sec. 335, 72 Stat. 680; 19 U.S.C. 1335.

SOURCE: The provisions of this Part 208 appear at 27 F.R. 12126, Dec. 7, 1962, unless otherwise noted.

§ 208.1 Applicability of part.

This Part 208 applies specifically to investigations for the purposes of section 201(a) of the Antidumping Act. For other applicable rules see Part 201 of this chapter.

§ 208.2 Purpose of investigation.

The purpose of an investigation by the Commission under section 201(a) of the Antidumping Act is to determine whether an industry in the United States is being, or is likely to be, injured, or is prevented from being established, by reason of the importation into the United States of a class or kind of foreign merchandise which the Secretary of the Treasury has determined is being, or is likely to be, sold in the United States or elsewhere at less than its fair value.

§ 208.3 Institution of investigation.

After the receipt of advice from the Secretary of the Treasury that he has determined that a class or kind of foreign merchandise is being, or is likely to be, sold in the United States or elsewhere at less than its fair value, the Commission will institute an investigation for the purposes indicated in § 208.2.

§ 208.4 Public hearings.

If, in the judgment of the Commission, there is good and sufficient reason therefor, the Commission, in the course of its investigation, will hold a public hearing and afford interested parties opportunity to appear and be heard at such hearing. If no notice of public hearing issues concurrently with a notice of investigation, any interested party who believes that a public hearing should be held may, within fifteen days after the date of publication in the **FEDERAL REGISTER** of the notice of investigation, submit a request in writing to the Secretary of the Commission that a public hearing be held, stating the reasons for such request.

§ 208.5 Written statements.

At any time after a notice of investigation under § 208.3 is published in the **FEDERAL REGISTER**, any interested party may submit to the Commission a written statement of information pertinent to the subject matter of such investigation. If a public hearing is held in the investigation such statement may be presented in lieu of appearance at such hearing. Statements shall conform with the requirements for documents set forth in § 201.8 of this chapter.

§ 208.6 Notification of Commission's determination.

On or before the expiration of three months after the date of the receipt by the Commission of the advice from the Secretary of the Treasury referred to in § 208.3 the Commission will notify the Secretary of the Treasury of its determination. A summary of the Commission's determination, together with a statement of reasons therefor, will be published in the **FEDERAL REGISTER**.

INTERNATIONAL ANTIDUMPING CODE

AGREEMENT ON IMPLEMENTATION OF ARTICLE VI OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE

The parties to this Agreement,

Considering that Ministers on 21 May 1963 agreed that a significant liberalization of world trade was desirable and that the comprehensive trade negotiations, the 1964 Trade Negotiations, should deal not only with tariffs but also with non-tariff barriers;

Recognizing that anti-dumping practices should not constitute an unjustifiable impediment to international trade and that anti-dumping duties may be applied against dumping only if such dumping causes or threatens material injury to an established industry or materially retards the establishment of an industry;

Considering that it is desirable to provide for equitable and open procedures as the basis for a full examination of dumping cases; and

Desiring to interpret the provisions of Article VI of the General Agreement and to elaborate rules for their application in order to provide greater uniformity and certainty in their implementation;

Heraby agree as follows:

PART I - ANTI-DUMPING CODE

Article 1

The imposition of an anti-dumping duty is a measure to be taken only under the circumstances provided for in Article VI of the General Agreement. The following provisions govern the application of this Article, in so far as action is taken under anti-dumping legislation or regulations.

A. DETERMINATION OF DUMPING

Article 2

(a) For the purpose of this Code a product is to be considered as being dumped, i.e. introduced into the commerce of another country at less than its normal value, if the export price of the product exported from one country to another is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country.

(b) Throughout this Code the term "like product" ("produit similaire") shall be interpreted to mean a product which is identical, i.e. alike in all respects to the product under consideration, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration.

(c) In the case where products are not imported directly from the country of origin but are exported to the country of importation from an intermediate country, the price at which the products are sold from the country of export to the country of importation shall normally be compared with the comparable price in the country of export. However, comparison may be made with the price in the country of origin, if, for example, the products are merely trans-shipped through the country of export, or such products are not produced in the country of export, or there is no comparable price for them in the country of export.

(d) When there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting country or when, because of the particular market situation, such sales do not permit a proper comparison, the margin of dumping shall be determined by comparison with a comparable price of the like product when exported to any third country which may be the highest such export price but should be a representative price, or with the cost of production in the country of origin plus a reasonable amount for administrative, selling and any other costs and for profits. As a general rule, the addition for profit shall not exceed the profit normally realized on sales of products of the same general category in the domestic market of the country of origin.

(e) In cases where there is no export price or where it appears to the authorities¹ concerned that the export price is unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed on the basis of the price at which the imported products are first resold to an independent buyer, or if the products are not resold to an independent buyer, or not resold in the condition as imported, on such reasonable basis as the authorities may determine.

(f) In order to effect a fair comparison between the export price and the domestic price in the exporting country (or the country of origin) or, if applicable, the price established pursuant to the provisions of Article VI:1(b) of the General Agreement, the two prices shall be compared at the same level of trade, normally at the ex factory level, and in respect of sales made at as nearly as possible the same time. Due allowance shall be made in each case, on its merits, for the differences in conditions and terms of sale, for the differences in taxation, and for the other differences affecting price comparability. In the cases referred to in Article 2(e) allowance for costs, including duties and taxes, incurred between importation and resale, and for profits accruing, should also be made.

(g) This Article is without prejudice to the second Supplementary Provision to paragraph 1 of Article VI in Annex I of the General Agreement.

¹When in this Code the term "authorities" is used, it shall be interpreted as meaning authorities at an appropriate, senior level.

B. DETERMINATION OF MATERIAL INJURY, THREAT OF MATERIAL INJURY AND MATERIAL RETARDATION

Article 3

Determination of Injury¹

(a) A determination of injury shall be made only when the authorities concerned are satisfied that the dumped imports are demonstrably the principal cause of material injury or of threat of material injury to a domestic industry or the principal cause of material retardation of the establishment of such an industry. In reaching their decision the authorities shall weigh, on one hand, the effect of the dumping and, on the other hand, all other factors taken together which may be adversely affecting the industry. The determination shall in all cases be based on positive findings and not on mere allegations or hypothetical possibilities. In the case of retarding the establishment of a new industry in the country of importation, convincing evidence of the forthcoming establishment of an industry must be shown, for example that the plans for a new industry have reached a fairly advanced stage, a factory is being constructed or machinery has been ordered.

(b) The valuation of injury - that is the evaluation of the effects of the dumped imports on the industry in question - shall be based on examination of all factors having a bearing on the state of the industry in question, such as: development and prospects with regard to turnover, market share, profits, prices (including the extent to which the delivered, duty-paid price is lower or higher than the comparable price for the like product prevailing in the course of normal commercial transactions in the importing country), export performance, employment, volume of dumped and other imports, utilization of capacity of domestic industry, and productivity; and restrictive trade practices. No one or several of these factors can necessarily give decisive guidance.

(c) In order to establish whether dumped imports have caused injury, all other factors which, individually or in combination, may be adversely affecting the industry shall be examined, for example: the volume and prices of undumped imports of the product in question, competition between the domestic producers themselves, contraction in demand due to substitution of other products or to changes in consumer tastes.

¹When in this Code the term "injury" is used, it shall, unless otherwise specified, be interpreted as covering cause of material injury to a domestic industry, threat of material injury to a domestic industry or material retardation of the establishment of such an industry.

(d) The effect of the dumped imports shall be assessed in relation to the domestic production of the like product when available data permit the separate identification of production in terms of such criteria as: the production process, the producers' realizations, profits. When the domestic production of the like product has no separate identity in these terms the effect of the dumped imports shall be assessed by the examination of the production of the narrowest group or range of products, which includes the like product, for which the necessary information can be provided.

(e) A determination of threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances which would create a situation in which the dumping would cause material injury must be clearly foreseen and imminent.¹

(f) With respect to cases where material injury is threatened by dumped imports, the application of anti-dumping measures shall be studied and decided with special care.

Article 4

Definition of Industry

(a) In determining injury the term "domestic industry" shall be interpreted as referring to the domestic producers as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products except that

- (i) when producers are importers of the allegedly dumped product the industry may be interpreted as referring to the rest of the producers;
- (ii) in exceptional circumstances a country may, for the production in question, be divided into two or more competitive markets and the producers within each market regarded as a separate industry, if, because of transport costs, all the producers within such a market sell all or almost all of their production of the product in question in that market, and none, or almost none, of the product in question produced elsewhere in the country is sold in that market or if there exist special regional marketing conditions (for example, traditional patterns of distribution or consumer tastes) which result in an equal degree of isolation of the producers in such a market

¹One example, though not an exclusive one, is that there is convincing reason to believe that there will be, in the immediate future, substantially increased importations of the product at dumped prices.

from the rest of the industry, provided, however, that injury may be found in such circumstances only if there is injury to all or almost all of the total production of the product in the market as defined.

(b) Where two or more countries have reached such a level of integration that they have the characteristics of a single, unified market, the industry in the entire area of integration shall be taken to be the industry referred to in Article 4(a).

(c) The provisions of Article 3(d) shall be applicable to this Article.

C. INVESTIGATION AND ADMINISTRATION PROCEDURES

Article 5

Initiation and Subsequent Investigation

(a) Investigations shall normally be initiated upon a request on behalf of the industry¹ affected, supported by evidence both of dumping and of injury resulting therefrom for this industry. If in special circumstances the authorities concerned decide to initiate an investigation without having received such a request, they shall proceed only if they have evidence both on dumping and on injury resulting therefrom.

(b) Upon initiation of an investigation and thereafter, the evidence of both dumping and injury should be considered simultaneously. In any event the evidence of both dumping and injury shall be considered simultaneously in the decision whether or not to initiate an investigation, and thereafter, during the course of the investigation, starting on a date not later than the earliest date on which provisional measures may be applied, except in the cases provided for in Article 10(d) in which the authorities accept the request of the exporter and the importer.

(c) An application shall be rejected and an investigation shall be terminated promptly as soon as the authorities concerned are satisfied that there is not sufficient evidence of either dumping or of injury to justify proceeding with the case. There should be immediate termination in cases where the margin of dumping or the volume of dumped imports, actual or potential, or the injury is negligible.

(d) An anti-dumping proceeding shall not hinder the procedures of customs clearance.

¹As defined in Article 4.

Article 6

Evidence

(a) The foreign suppliers and all other interested parties shall be given ample opportunity to present in writing all evidence that they consider useful in respect to the anti-dumping investigation in question. They shall also have the right, on justification, to present evidence orally.

(b) The authorities concerned shall provide opportunities for the complainant and the importers and exporters known to be concerned and the governments of the exporting countries; to see all information that is relevant to the presentation of their cases, that is not confidential as defined in paragraph (c) below, and that is used by the authorities in an anti-dumping investigation, and to prepare presentations on the basis of this information.

(c) All information which is by nature confidential (for example, because its disclosure would be of significant competitive advantage to a competitor or because its disclosure would have a significantly adverse effect upon a person supplying the information or upon a person from whom he acquired the information) or which is provided on a confidential basis by parties to an anti-dumping investigation shall be treated as strictly confidential by the authorities concerned who shall not reveal it, without specific permission of the party submitting such information.

(d) However, if the authorities concerned find that a request for confidentiality is not warranted and if the supplier is either unwilling to make the information public or to authorize its disclosure in generalised or summary form, the authorities would be free to disregard such information unless it can be demonstrated to their satisfaction from appropriate sources that the information is correct.

(e) In order to verify information provided or to obtain further details the authorities may carry out investigations in other countries as required, provided they obtain the agreement of the firms concerned and provided they notify the representatives of the government of the country in question and unless the latter object to the investigation.

(f) Once the competent authorities are satisfied that there is sufficient evidence to justify initiating an anti-dumping investigation pursuant to Article 5 representatives of the exporting country and the exporters and importers known to be concerned shall be notified and a public notice may be published.

(g) Throughout the anti-dumping investigation all parties shall have a full opportunity for the defence of their interests. To this end, the authorities concerned shall, on request, provide opportunities for all directly interested parties to meet those parties with adverse interests, so

that opposing views may be presented and rebuttal arguments offered. Provision of such opportunities must take account of the need to preserve confidentiality and of the convenience to the parties. There shall be no obligation on any party to attend a meeting and failure to do so shall not be prejudicial to that party's case.

(h) The authorities concerned shall notify representatives of the exporting country and the directly interested parties of their decisions regarding imposition or non-imposition of anti-dumping duties, indicating the reasons for such decisions and the criteria applied, and shall, unless there are special reasons against doing so, make public the decisions.

(i) The provisions of this Article shall not preclude the authorities from reaching preliminary determinations, affirmative or negative, or from applying provisional measures expeditiously. In cases in which any interested party withholds the necessary information, a final finding, affirmative or negative, may be made on the basis of the facts available.

Article 7

Price Undertakings

(a) Anti-dumping proceedings may be terminated without imposition of anti-dumping duties or provisional measures upon receipt of a voluntary undertaking by the exporters to revise their prices so that the margin of dumping is eliminated or to cease to export to the area in question at dumped prices if the authorities concerned consider this practicable, e.g. if the number of exporters or potential exporters of the product in question is not too great and/or if the trading practices are suitable.

(b) If the exporters concerned undertake during the examination of a case, to revise prices or to cease to export the product in question, and the authorities concerned accept the undertaking, the investigation of injury shall nevertheless be completed if the exporters so desire or the authorities concerned so decide. If a determination of no injury is made, the undertaking given by the exporters shall automatically lapse unless the exporters state that it shall not lapse. The fact that exporters do not offer to give such undertakings during the period of investigation, or do not accept an invitation made by the investigating authorities to do so, shall in no way be prejudicial to the consideration of the case. However, the authorities are of course free to determine that a threat of injury is more likely to be realized if the dumped imports continue.

D. ANTI-DUMPING DUTIES AND PROVISIONAL MEASURES

Article 8

Imposition and Collection of Anti-Dumping Duties

(a) The decision whether or not to impose an anti-dumping duty in cases where all requirements for the imposition have been fulfilled and the decision whether the amount of the anti-dumping duty to be imposed shall be the full margin of dumping or less, are decisions to be made by the authorities of the importing country or customs territory. It is desirable that the imposition be permissive in all countries or customs territories parties to this Agreement, and that the duty be less than the margin, if such lesser duty would be adequate to remove the injury to the domestic industry.

(b) When an anti-dumping duty is imposed in respect of any product, such anti-dumping duty shall be levied, in the appropriate amounts in each case, on a non-discriminatory basis on imports of such product from all sources found to be dumped and causing injury. The authorities shall name the supplier or suppliers of the product concerned. If, however, several suppliers from the same country are involved, and it is impracticable to name all these suppliers, the authorities may name the supplying country concerned. If several suppliers from more than one country are involved, the authorities may name either all the suppliers involved, or, if this is impracticable, all the supplying countries involved.

(c) The amount of the anti-dumping duty must not exceed the margin of dumping as established under Article 2. Therefore, if subsequent to the application of the anti-dumping duty it is found that the duty so collected exceeds the actual dumping margin, the amount in excess of the margin shall be reimbursed as quickly as possible.

(d) Within a basic price system the following rules shall apply provided that their application is consistent with the other provisions of this Code:

If several suppliers from one or more countries are involved, anti-dumping duties may be imposed on imports of the product in question found to have been dumped and to be causing injury from the country or countries concerned, the duty being equivalent to the amount by which the export price is less than the basic price established for this purpose, not exceeding the lowest normal price in the supplying country or countries where normal conditions of competition are prevailing. It is understood that for products which are sold below this already established basic price a new anti-dumping investigation shall be carried out in each particular case, when so demanded by the interested parties and the demand is supported by relevant evidence. In cases where no dumping is found, anti-dumping duties collected shall be reimbursed as quickly as possible. Furthermore, if it can be found that the duty so collected exceeds the actual dumping margin, the amount in excess of the margin shall be reimbursed as quickly as possible.

(e) When the industry has been interpreted as referring to the producers in a certain area, i.e. a market as defined in Article 4(a)(ii), anti-dumping duties shall only be definitively collected on the products in question consigned for final consumption to that area, except in cases where the exporter shall, prior to the imposition of anti-dumping duties, be given an opportunity to cease dumping in the area concerned. In such cases, if an adequate assurance to this effect is promptly given, anti-dumping duties shall not be imposed, provided, however, that if the assurance is not given or is not fulfilled, the duties may be imposed without limitation to an area.

Article 9

Duration of Anti-Dumping Duties

(a) An anti-dumping duty shall remain in force only as long as it is necessary in order to counteract dumping which is causing injury.

(b) The authorities concerned shall review the need for the continued imposition of the duty, where warranted, on their own initiative or if interested suppliers or importers of the product so request and submit information substantiating the need for review.

Article 10

Provisional Measures

(a) Provisional measures may be taken only when a preliminary decision has been taken that there is dumping and when there is sufficient evidence of injury.

(b) Provisional measures may take the form of a provisional duty or, preferably, a security - by deposit or bond - equal to the amount of the anti-dumping duty provisionally estimated, being not greater than the provisionally estimated margin of dumping. Withholding of appraisement is an appropriate provisional measure provided that the normal duty and the estimated amount of the anti-dumping duty be indicated and as long as the withholding of appraisement is subject to the same conditions as other provisional measures.

(c) The authorities concerned shall inform representatives of the exporting country and the directly interested parties of their decisions regarding imposition of provisional measures indicating the reasons for such decisions and the criteria applied, and shall, unless there are special reasons against doing so, make public such decisions.

(d) The imposition of provisional measures shall be limited to as short a period as possible. More specifically, provisional measures shall not be imposed for a period longer than three months or, on decision of the authorities concerned upon request by the exporter and the importer, six months.

(e) The relevant provisions of Article 8 shall be followed in the application of provisional measures.

Article 11

Retroactivity

Anti-dumping duties and provisional measures shall only be applied to products which enter for consumption after the time when the decision taken under Articles 8(a) and 10(a), respectively, enters into force, except that in cases:

(i) Where a determination of material injury (but not of a threat of material injury, or of a material retardation of the establishment of an industry) is made or where the provisional measures consist of provisional duties and the dumped imports carried out during the period of their application would, in the absence of these provisional measures, have caused material injury, anti-dumping duties may be levied retroactively for the period for which provisional measures, if any, have been applied.

If the anti-dumping duty fixed in the final decision is higher than the provisionally paid duty, the difference shall not be collected. If the duty fixed in the final decision is lower than the provisionally paid duty or the amount estimated for the purpose of the security, the difference shall be reimbursed or the duty recalculated, as the case may be.

(ii) Where appraisement is suspended for the product in question for reasons which arose before the initiation of the dumping case and which are unrelated to the question of dumping, retroactive assessment of anti-dumping duties may extend back to a period not more than 120 days before the submission of the complaint.

(iii) Where for the dumped product in question the authorities determine

- (a) either that there is a history of dumping which caused material injury or that the importer was, or should have been, aware that the exporter practices dumping and that such dumping would cause material injury, and
- (b) that the material injury is caused by sporadic dumping (massive dumped imports of a product in a relatively short period) to such an extent that, in order to preclude it recurring, it appears necessary to assess an anti-dumping duty retroactively on those imports.

the duty may be assessed on products which were entered for consumption not more than 90 days prior to the date of application of provisional measures.

E. ANTI-DUMPING ACTION ON BEHALF OF A THIRD COUNTRY**Article 12**

(a) An application for anti-dumping action on behalf of a third country shall be made by the authorities of the third country requesting action.

(b) Such an application shall be supported by price information to show that the imports are being dumped and by detailed information to show that the alleged dumping is causing injury to the domestic industry concerned in the third country. The government of the third country shall afford all assistance to the authorities of the importing country to obtain any further information which the latter may require.

(c) The authorities of the importing country in considering such an application shall consider the effects of the alleged dumping on the industry concerned as a whole in the third country; that is to say the injury shall not be assessed in relation only to the effect of the alleged dumping on the industry's exports to the importing country or even on the industry's total exports.

(d) The decision whether or not to proceed with a case shall rest with the importing country. If the importing country decides that it is prepared to take action, the initiation of the approach to the CONTRACTING PARTIES seeking their approval for such action shall rest with the importing country.

PART II - FINAL PROVISIONS**Article 13**

This Agreement shall be open for acceptance, by signature or otherwise, by contracting parties to the General Agreement and by the European Economic Community. The Agreement shall enter into force on 1 July 1968 for each party which has accepted it by that date. For each party accepting the Agreement after that date, it shall enter into force upon acceptance.

Article 14

Each party to this Agreement shall take all necessary steps, of a general or particular character, to ensure, not later than the date of the entry into force of the Agreement for it, the conformity of its laws, regulations and administrative procedures with the provisions of the Anti-Dumping Code.

Article 15

Each party to this Agreement shall inform the CONTRACTING PARTIES to the General Agreement of any changes in its anti-dumping laws and regulations and in the administration of such laws and regulations.

Article 16

Each party to this Agreement shall report to the CONTRACTING PARTIES annually on the administration of its anti-dumping laws and regulations, giving summaries of the cases in which anti-dumping duties have been assessed definitively.

Article 17

The parties to this Agreement shall request the CONTRACTING PARTIES to establish a Committee on Anti-Dumping Practices composed of representatives of the parties to this Agreement. The Committee shall normally meet once each year for the purpose of affording parties to this Agreement the opportunity of consulting on matters relating to the administration of anti-dumping systems in any participating country or customs territory as it might affect the operation of the Anti-Dumping Code or the furtherance of its objectives. Such consultations shall be without prejudice to Articles XIII and XXIII of the General Agreement.

This Agreement shall be deposited with the Director-General to the CONTRACTING PARTIES who shall promptly furnish a certified copy thereof and a notification of each acceptance thereof to each contracting party to the General Agreement and to the European Economic Community.

This Agreement shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

DONE at Geneva this thirtieth day of June, one thousand nine hundred and sixty-seven, in a single copy, in the English and French languages, both texts being authentic.

ARTICLE VI OF GENERAL AGREEMENT ON TARIFFS AND TRADE

ANTI-DUMPING AND COUNTERVAILING DUTIES

1. The contracting parties recognize that dumping, by which products of one country are introduced into the commerce of another country at less than the normal value of the products, is to be condemned if it causes or threatens material injury to an established industry in the territory of a contracting party or materially retards the establishment of a domestic industry. For the purposes of this Article, a product is to be considered as being introduced into the commerce of an importing country at less than its normal value, if the price of the product exported from one country to another

(a) is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country, or,

(b) in the absence of such domestic price, is less than either
(i) the highest comparable price for the like product for export to any third country in the ordinary course of trade, or
(ii) the cost of production of the product in the country of origin plus a reasonable addition for selling cost and profit.

Due allowance shall be made in each case for differences in conditions and terms of sale, for differences in taxation, and for other differences affecting price comparability.

2. In order to offset or prevent dumping, a contracting party may levy on any dumped product an anti-dumping duty not greater in amount than the margin of dumping in respect of such product. For the purposes of this Article, the margin of dumping is the price difference determined in accordance with the provisions of paragraph 1.

3. No countervailing duty shall be levied on any product of the territory of any contracting party imported into the territory of another contracting party in excess of an amount equal to the estimated bounty or subsidy determined to have been granted, directly or indirectly, on the manufacture, production or export of such product in the country of origin or exportation, including any special subsidy to the transportation of a particular product. The term "countervailing duty" shall be understood to mean a special duty levied for the purpose of offsetting any bounty or subsidy bestowed, directly or indirectly, upon the manufacture, production or export of any merchandise.

4. No product of the territory of any contracting party imported into the territory of any other contracting party shall be subject to anti-dumping or countervailing duty by reason of the exemption of such product from duties or taxes borne by the like product when destined for consumption in the country of origin or exportation, or by reason of the refund of such duties or taxes.

5. No product of the territory of any contracting party imported into the territory of any other contracting party shall be subject to both anti-dumping and countervailing duties to compensate for the same situation of dumping or export subsidization.

6. (a) No contracting party shall levy any anti-dumping or countervailing duty on the importation of any product of the territory of another contracting party unless it determines that the effect of the dumping or subsidization, as the case may be, is such as to cause or threaten material injury to an established domestic industry, or is such as to retard materially the establishment of a domestic industry.

(b) The CONTRACTING PARTIES may waive the requirement of sub-paragraph (a) of this paragraph so as to permit a contracting party to levy an anti-dumping or countervailing duty on the importation of any product for the purpose of offsetting dumping or subsidization which causes or threatens material injury to an industry in the territory of another contracting party exporting the product concerned to the territory of the importing contracting party. The CONTRACTING PARTIES shall waive the requirements of sub-paragraph (a) of this paragraph, so as to permit the levying of a countervailing duty, in cases in which they find that a subsidy is causing or threatening material injury to an industry in the territory of another contracting party exporting the product concerned to the territory of the importing contracting party.

(c) In exceptional circumstances, however, where delay might cause damage which would be difficult to repair, a contracting party may levy a countervailing duty for the purpose referred to in sub-paragraph (b) of this paragraph without the prior approval of the CONTRACTING PARTIES; *Provided* that such action shall be reported immediately to the CONTRACTING PARTIES and that the countervailing duty shall be withdrawn promptly if the CONTRACTING PARTIES disapprove.

7. A system for the stabilization of the domestic price or of the return to domestic producers of a primary commodity, independently of the movements of export prices, which results at times in the sale of the commodity for export at a price lower than the comparable price charged for the like commodity to buyers in the domestic market, shall be presumed not to result in material injury within the meaning of paragraph 6 if it is determined by consultation among the contracting parties substantially interested in the commodity concerned that:

(a) the system has also resulted in the sale of the commodity for export at a price higher than the comparable price charged for the like commodity to buyers in the domestic market, and

(b) the system is so operated, either because of the effective regulation of production, or otherwise, as not to stimulate exports unduly or otherwise seriously prejudice the interests of other contracting parties.

* * * * *

AD ARTICLE VI

Paragraph 1

1. Hidden dumping by associated houses (that is, the sale by an importer at a price below that corresponding to the price invoiced by an exporter with whom the importer is associated, and also below the price in the exporting country) constitutes a form of price dumping with respect to which the margin of dumping may be calculated on the basis of the price at which the goods are resold by the importer.

2. It is recognized that, in the case of imports from a country which has a complete or substantially complete monopoly of its trade and where all domestic prices are fixed by the State, special difficulties may exist in determining price comparability for the purposes of paragraph 1, and in such cases importing contracting parties may find it necessary to take into account the possibility that a strict comparison with domestic prices in such a country may not always be appropriate.

Paragraphs 2 and 3

Note 1.—As in many other cases in customs administration, a contracting party may require reasonable security (bond or cash deposit) for the payment of anti-dumping or countervailing duty pending final determination of the facts in any case of suspected dumping or subsidization.

Note 2.—Multiple currency practices can in certain circumstances constitute a subsidy to exports which may be met by countervailing duties under paragraph 3 or can constitute a form of dumping by means of a partial depreciation of a country's currency which may be met by action under paragraph 2. By "multiple currency practices" is meant practices by governments or sanctioned by governments.

Paragraph 6(b)

Waivers under the provisions of this sub-paragraph shall be granted only on application by the contracting party proposing to levy an anti-dumping or countervailing duty, as the case may be.



June 19, 1968

EXECUTIVE BRANCH

ANALYSIS OF INTERNATIONAL ANTIDUMPING CODE
IN RELATION TO ANTIDUMPING ACT, 1921

SUMMARY

There follows an analysis of the International Antidumping Code, signed in Geneva on June 30, 1967, as part of the Kennedy Round, in relation to the Antidumping Act, 1921, and regulations thereunder. It has been prepared by the General Counsel of the Office of the Special Representative for Trade Negotiations in collaboration with legal counsel of the Departments of the Treasury and State.

This analysis demonstrates the consistency between the International Antidumping Code and the Antidumping Act, 1921, by relating each provision of the Code to relevant provisions of the Act and regulations and administrative practice thereunder. In particular, it cites pertinent sections of the new dumping regulations issued by the Department of the Treasury effective July 1, 1968.

Throughout the analysis the following terms are used: "the Act" (Antidumping Act, 1921), "the Code" (International Antidumping Code), "dumping" (sales at less than fair value), and "authorities" (officers of the Department of the Treasury or United States Tariff Commission, depending upon the context), and "old regulations" and "new regulations" (of the Department of the Treasury). In addition, it is to be noted that "anti-dumping duties" and "dumping duties" are used synonymously, the former being the term in the Code and the latter in the Act.

The provisions of the Antidumping Act, 1921, are codified in 19 U.S.C. 160 - 171. The new dumping regulations of the Department of the Treasury are set out in 33 F.R. 8244 - 8251 (1968), and its old dumping regulations are codified in 19 CFR 14.6 - 14.13, 16.21, 16.22, and 17.9. The dumping regulations of the United States Tariff Commission are codified in 19 CFR Part 208. The text of the International Antidumping Code was attached as Appendix A to the notice of proposed rule making concerning the new dumping regulations of the Department of the Treasury (32 F.R. 14962 - 14964 (1967)).

ANALYSIS OF INTERNATIONAL ANTIDUMPING CODE
IN RELATION TO ANTIDUMPING ACT, 1921

PART I - ANTIDUMPING CODE

Article 1.

Article 1 states that the imposition of a dumping duty is a measure to be taken only under the circumstances provided for in Article VI of the General Agreement on Tariffs and Trade (GATT). Article VI establishes basic conditions to be satisfied before dumping duties may be imposed. In addition, Article 1 provides that the subsequent provisions of the Code govern the application of Article VI, insofar as action is taken under antidumping legislation or regulations. Article 1 therefore serves to introduce the provisions of the Code and to make clear their relationship to Article VI.

A. DETERMINATION OF DUMPING

Article 2.

Paragraph (a) defines a "dumped" product as one introduced into the commerce of another country at less than its "normal value". A product is to be considered as being "dumped" if its export price (equivalent to "purchase price" under section 203 of the Act (19 U.S.C. 162)) is less than the comparable

price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country.

There is no substantive difference between the Code in this respect and the provisions relating to sales at less than fair value as defined in Treasury's regulations (see section 14.7 of the old regulations and sections 53.2-53.16 of the new regulations).

Paragraph (b) defines "like product" as one which is alike in all respects to the product under consideration, or in the absence of such an identical product, another product which has characteristics closely resembling those of the product under consideration. There is no material difference between this provision and the definition of "such or similar merchandise" in section 212(3) of the Act (19 U.S.C. 170a(3)).

Paragraph (c) covers the case where products are not imported directly from the country of origin but rather from an intermediate country -- which becomes the country of export. In such a case, the export price (that is, the price at which the products are sold from the intermediate country to the country of importation) "shall normally be compared" with the comparable price in such intermediate country. However, in

such a case the export price may nevertheless be compared with the price in the country of origin if there is, in effect, no basis for using a comparable price in the intermediate country. This provision is in keeping with standard Customs practice (see section 14.3(d) of the old regulations and section 53.16 of the new regulations).

Paragraph (d) provides that when there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting country or when, because of the particular market situation, such sales do not permit a proper comparison, the export price shall be compared with a comparable price of the like product when exported to any third country. Such price may be the highest such export price but should be a representative price. This conforms to the parenthetical "third-country price" provision in section 205 of the Act (19 U.S.C. 164).

Alternatively, paragraph (d) provides that the export price shall be compared with the cost of production in the country of origin plus a reasonable amount for administrative, selling and any other costs and for profits. The addition for profit "as a general rule" shall not exceed the profit

normally realized on sales of products of the same general category in the country of origin. This provision restates the "constructed value" provision in section 206 of the Act (19 U.S.C. 165). That provision, however, specifies that the addition for profit must be at least 8%. Since ordinarily profit margins exceed 8%, the phrase "as a general rule" preserves the consistency between the Code and the Act in those relatively rare instances when the 8% adjustment must be made despite a lower profit margin for the general class of merchandise concerned.

Paragraph (e) deals with cases where there is no export price or where it appears to the authorities that the export price is unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party. In such cases, the export price may be "constructed" on the basis of the price at which the imported products are first resold to an independent buyer, or if the products are not resold to an independent buyer, or not resold in the condition as imported, on such reasonable basis as the authorities may determine. There is no inconsistency between this provision and sections 204 and 207 of the Act (19 U.S.C. 163 and 166) which deal with this situation.

Paragraph (f) relates to the adjustments to be made in order to effect a fair comparison between the export price (or constructed export price under paragraph (e)) and the home market price (or the price in the intermediate country of export under paragraph (c), the price of export to a third country under paragraph (d), or the constructed value under paragraph (d)). It provides that the two prices shall be compared at the same level of trade, "normally" at the ex factory level. Under the Act the practice is to make the price comparison at the same level of trade, and in virtually every case this is the ex factory level. Paragraph (f) further provides that the price comparison shall relate to sales made at as nearly as possible the same time. This conforms to the Act.

In addition, paragraph (f) provides that due allowance shall be made in each case, on its merits, for the differences in conditions and terms of sale, for the differences in taxation, and for the other differences affecting price comparability. This provision is consistent with the Act. Finally, paragraph (f) provides that in the cases involving constructed export price under paragraph (e) allowance for costs, including duties and taxes, incurred between importation and resale, and for profits accruing, should also be made. Since this is a hortatory provision, it creates no inconsistency with the Act.

Paragraph (g) provides that where state trading countries are concerned Article 2 does not prejudice the Second Supplementary Provision to paragraph 1 of Article VI which is set out in Annex I to the GATT. This Second Supplementary Provision provides that in the case of imports from a state trading country special difficulties may exist in determining price comparability and that in such cases it may be found necessary to take into account the possibility that a strict comparison with domestic prices in such a country may not always be appropriate. Consistent with this provision, the "fair value" of imports from state trading countries is ordinarily determined under the "constructed value" provision in section 206 of the Act (19 U.S.C. 165). Section 53.5(b) of the new regulations is declaratory of Treasury's present practice under that section.

**B. DETERMINATION OF MATERIAL INJURY,
THREAT OF MATERIAL INJURY AND MATERIAL RETARDATION**

Article 3. Determination of Injury.

Paragraph (a) provides that a determination of injury shall be made only when the authorities concerned are satisfied that the dumped imports are "demonstrably the principal cause of material injury or of threat of material injury to a domestic

industry or the principal cause of material retardation of the establishment of such an industry".

Section 201(a) of the Act provides that the Tariff Commission shall determine "whether an industry in the United States is being or is likely to be injured, or prevented from being established, by reason of the importation of such merchandise into the United States" (19 U.S.C. 160(a)).

The concept of "the principal cause" is consistent with the Act and present practice. The Tariff Commission has always considered the causal relationship between dumped imports and injury in terms of something real and substantial. In published decisions, Commissioners have indicated that terms such as "primarily" are a proper characterization under the Act of the degree of causality required to establish injury. The term "the principal cause" is susceptible of such interpretation and, indeed, does not require that dumped imports be that cause which is greater than all other causes combined of material injury. It therefore allows injury determinations consistent with the requirements of the Act.

The term "injury" as used in the Act has consistently been interpreted by the Tariff Commission to mean "material injury". This has been true since the Commission was given

the function of making injury determinations in 1954. Moreover, during consideration of the Customs Simplification Act of 1954, the Ways and Means Committee was explicitly informed by the General Counsel of the Tariff Commission that the notion of "material injury" had been applied in antidumping cases and would continue to be applied. (Hearings on H.R. 9476 Before the Committee on Ways and Means, 83rd Cong., 2d Sess., 37-38 (1954)).

The Code speaks in terms of "material retardation of the establishment of such an industry" and the Act reads "is prevented from being established". The notion of "material retardation" is a reasonable interpretation of the idea of prevention and would permit injury to be found even though it is not shown that dumped imports absolutely prevent the establishment of an industry.

Paragraph (a) also provides that, in reaching their decision, the authorities shall weigh, on one hand, the effect of the dumping, and, on the other hand, all other factors taken together which may be adversely affecting the industry. The determination shall in all cases be based on positive findings and not on mere allegations or hypothetical possibilities. In the case of retarding the establishment of a

new industry in the country of importation, convincing evidence of the forthcoming establishment of an industry must be shown, for example that the plans for a new industry have reached a fairly advanced stage, a factory is being constructed, or machinery has been ordered. These requirements supplement but do not change the first and basic sentence of paragraph (a) and constitute reasonable standards for the application of that sentence.

Paragraph (b) provides that the valuation of injury -- that is the evaluation of the effects of the dumped imports on the industry in question -- shall be based on examination of all factors having a bearing on the state of the industry in question. It then lists, by way of example, a number of such factors, and concludes that no one or several of these factors can necessarily give decisive guidance. This paragraph highlights what is implicit in the Act and what would be inherent in any consideration of the question of injury.

Paragraph (c) provides that in order to establish whether dumped imports have caused injury, all other factors which, individually or in combination, may be adversely affecting the industry shall be examined and then gives several examples

of such factors. This provision is a logical elaboration of the concept of the principal cause, which necessarily requires comparison with other identifiable causes.

Paragraph (d) provides that the effect of the dumped imports shall be assessed in relation to the domestic production of the like product when available data permit the separate identification of production. This provision isolates, insofar as data permit, that sector of domestic production which is most likely to be affected by the dumped imports. The paragraph recognizes, however, that this is not always possible and therefore provides, as an alternative, that the effect of the dumped imports shall be assessed by the examination of the production of the narrowest group or range of products which includes the like product, for which the necessary information can be provided. In either case, the paragraph identifies as specifically as possible those productive facilities most vulnerable to dumped imports and is thereby consistent with the Act.

Paragraphs (e) and (f) concern the manner in which cases involving a threat of material injury are to be considered. Paragraph (e) provides that a determination of threat of

material injury shall be based on facts and not merely on allegation, conjecture, or remote possibility. The change in circumstances which would create a situation in which the dumping would cause material injury must be clearly foreseen and imminent. These requirements are consistent with the practice of the Tariff Commission. Paragraph (f) provides that with respect to cases where material injury is threatened by dumped imports, the application of antidumping measures shall be studied and decided with special care. This paragraph is designed to prevent the promiscuous use of the notion of "threat".

Article 4. Definition of Industry.

Paragraph (a) lays down the basic rule that in determining injury the term "domestic industry" shall be interpreted as referring either to the domestic producers as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products.

Each of these two alternative definitions of industry relates to the domestic producers of the like products. This is an appropriate refinement of the concept of "an industry" in the Act, since an imported product usually has its greatest

competitive impact on the like domestic product. Moreover, as defined in section 2(d) of the Code, a like product need not be only the identical product. It may be another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration. The latter definition allows scope for considering the domestic producers which are affected by dumped imports but which do not produce the identical domestic product.

For purposes of defining an industry, the two alternative definitions in paragraph (a) deal not only with the requisite characteristics of the domestic product but with the required number of domestic producers.

The first of the two alternative definitions of industry speaks in terms of all the domestic producers and is consistent with a strict reading of the term "an industry" in the Act. The second definition recognizes that such an all-inclusive test may not always be appropriate. It therefore defines industry in terms of those producers who account for a major proportion of total domestic production of the product. This alternative is consistent with the Act. It will permit determinations of injury where geographic segmentation is not proper

and where the domestic industry as a whole is materially injured by dumped imports but certain producers in that industry are not.

Paragraph (a) provides two exceptions to the general definitions of industry. These two exceptions are not mandatory but simply permit two kinds of segmentation in defining an industry. Insofar as the Act does not envisage segmentation, either on its face or in legislative history, these two exceptions may be set aside. However, insofar as segmentation may be considered appropriate under the Act, the two types permitted by paragraph (a) are likewise appropriate.

Subparagraph (a)(i) provides that when producers are importers of the allegedly dumped product the industry may be interpreted as referring to the rest of the producers. This is designed to permit those producers in the industry which are not importers of the product to be considered the industry for purposes of an injury investigation.

Subparagraph (a)(ii) lays down two alternative exceptions -- in terms of geographic segmentation -- to the general definitions of industry. The fact that either of these exceptions is available only "in exceptional circumstances" is consistent with the infrequent use of geographic segmentation

in the past. The first type of geographic segmentation involves segmentation due to transport costs. The second type involves segmentation based upon "special regional marketing conditions". In either case, injury may be found only if there is injury to all or almost all of the total production of the product in the market as defined. Such a condition is a reasonable one to maintain the integrity of the concept of injury.

Paragraph (b) provides that where two or more countries have reached such a level of integration that they have the characteristics of a single unified market, the industry in the entire area of integration shall be taken to be the industry referred to in paragraph (a). This provision applies to customs unions such as the European Communities and is not relevant to the United States.

Paragraph (c) provides that the provisions of Article 3(d) shall be applicable to Article 4. As noted above, Article 3(d) identifies, insofar as data permit, those productive facilities most vulnerable to dumped imports for purposes of determining injury. The effect of paragraph (c) is to provide that the same concept shall be used for purposes of determining the domestic producers of the like product under paragraph (a) of Article 4.

C. INVESTIGATION AND ADMINISTRATION PROCEDURES

Article 5. Initiation and Subsequent Investigation.

Paragraph (a) provides that investigations "shall normally" be initiated upon a request on behalf of the industry affected, supported by evidence both of dumping and of injury. However, an investigation may be initiated by the authorities concerned, provided they have evidence both on dumping and injury.

The requirement in paragraph (a) that investigations shall normally be initiated upon the request of an industry is consistent with past experience under the Act. The great majority of antidumping investigations has been started because of complaints by domestic industries. Only a relatively small number has been initiated by the Government.

Under the present regulations implementing the Act, evidence bearing on the question of injury is required, if it is reasonably available to the complainant. See section 14.6(b)(3) of the old regulations, requiring information as to the total value and volume of domestic production of the merchandise in question. The purpose of this provision is to ensure that an expensive and time-consuming investigation will not be initiated where there is no possibility of injury or

where the complaint is frivolous. This is consistent with the rule of statutory construction that a law will not be interpreted to require the performance of a futile act. With that rule in mind, section 53.27(e) of the new regulations provides that a complaint be accompanied by:

"Information indicating that an industry of the United States is being injured, or is likely to be injured, or prevented from being established."

The Treasury Department will not, however, undertake to evaluate information bearing on injury. Under the Act this is a function of the Tariff Commission.

Paragraph (b) first provides that, upon initiation of an investigation and thereafter, the evidence of both price discrimination and injury "should be considered simultaneously". This hortatory provision does not legally obligate the United States to take any action.

Paragraph (b) also provides that, in any event, the evidence of both price discrimination and injury shall be considered simultaneously in the decision whether or not to initiate an investigation. This requirement will be satisfied by an examination of the complaint to see if evidence of injury is submitted as required by the new regulations.

Finally, paragraph (b) provides that the evidence of both price discrimination and injury shall be considered simultaneously thereafter, during the course of the investigation, starting on a date not later than the earliest date on which provisional measures may be applied, except in the cases provided for in Article 10(d) in which the authorities accept the request of the exporter and the importer.

The procedure in keeping with this provision is set forth in section 53.34(a)(2) of the new regulations. This section provides that the Secretary of the Treasury's affirmative determination that there are, or are likely to be, sales in the United States of the merchandise in question at less than fair value, will be issued concurrently with the order to withhold appraisement. This, in effect, will accelerate the procedure currently employed, whereby after withholding of appraisement, a "tentative" determination of sales at less than fair value is issued, which is in turn followed by a final determination. Under the new procedure, no affirmative "tentative" determinations of sales at less than fair value would be issued. It should be noted that the "tentative" determination procedure followed under the current regulations would be retained where negative determinations are indicated. This is set out in section 53.33 of the new regulations.

In practice, therefore, by a final determination of sales at less than fair value under section 201(a) of the Act (19 U.S.C. 160(a)) the case would be forwarded to the Tariff Commission for consideration on the question of injury at the time the provisional measure -- withholding of appraisement -- is taken under section 201(b) of the Act. Under the Act, the Tariff Commission has three months to make its decision. Should new facts or other circumstances come to the attention of the Treasury Department, the original determination of sales, or likelihood of sales, at less than fair value would be revoked, if warranted. Such a revocation, prior to the time when the Tariff Commission has reached its determination on the question of injury, would effectively close the case. There has, in fact, been one revocation of a final determination of sales at less than fair value based on a re-evaluation of pertinent information (Finished Tubeless Tire Valves from West Germany, 32 F.R. 14780 (1967)).

The proposed procedure conforms to the requirement in the Code for simultaneous consideration of the questions of price discrimination and injury once "provisional measures" are applied. As to its consistency with the Act, it is clear that the

withholding of appraisement would still occur when the Secretary of the Treasury had reason to believe or suspect that there are, or are likely to be, sales below fair value. The elimination of the "tentative" determination stage, insofar as affirmative determinations are concerned, poses no problem under the Act, since this procedure was established simply as an administrative device in 1965. Because evidence of likelihood of sales below fair value is sufficient to justify an affirmative determination by the Secretary of the Treasury under the Act, even though the existence of sales below fair value may not have been established at the time of withholding or appraisement, the accelerated procedure can be implemented consistent with the requirements of the Act.

The exception in paragraph (b) relates to the second sentence of Article 10(d) of the Code. This sentence provides that appraisement shall not be withheld for a period longer than three months, or, when the exporter and the importer so request and the authorities accept, for a period longer than six months. Under the new regulations, the withholding of appraisement and the issuance of the Treasury Department's affirmative determination of sales at less than fair value would not be simultaneous in such six-month cases. Instead,

the affirmative determination would be made three months after appraisement had been withheld. See sections 53.34, 53.35, and 53.36 of the new regulations.

Paragraph (c) provides that an application shall be rejected and an investigation shall be terminated promptly as soon as the authorities are satisfied that there is not sufficient evidence of either price discrimination or injury to justify proceeding with the case. This paragraph also provides in a hortatory manner that cases should be closed where the margin of dumping or the volume of dumped imports, actual or potential, or the injury is negligible. Both provisions are in keeping with present practice under the Act. See sections 14.6(d)(1)(i) and 14.7(b)(9) of the old regulations and sections 53.15 and 53.28 of the new regulations.

Paragraph (d) provides that an antidumping proceeding shall not hinder the procedures of customs clearance. Since antidumping proceedings are not so used under the Act, this provision is consistent with the Act and its administration.

Article 6. Evidence

Paragraph (a) provides that all interested parties shall be given ample opportunity to present evidence in writing or,

on justification, orally. This provision is consistent with present practice under the Act. See section 14.8 of the old regulations and section 53.32(b) of the new regulations.

Paragraph (b) provides that the complainant, the importers and exporters known to be concerned, and the governments of the exporting countries shall be provided opportunities to see all information that is relevant, non-confidential, and being used by the authorities, and to prepare presentations on the basis of such information. This provision restates current practice under the Act. See section 14.6a of the old regulations and subpart B of the new regulations.

Paragraph (c) provides that all information which is by nature confidential or which is provided on a confidential basis by parties to an investigation shall be treated as strictly confidential by authorities and they shall not reveal it without specific permission of the party submitting the information. The present practice under the Act is the same. See section 14.6a(b) of the old regulations and section 53.23(b) of the new regulations.

Paragraph (d) provides that, if the authorities find that a request for confidentiality is not warranted and if the supplier is either unwilling to make the information public or

to authorize its disclosure in generalized or summary form, the authorities would be free to disregard such information unless it can be demonstrated to their satisfaction from appropriate sources that the information is correct. This is a permissive and not mandatory provision. Under present practice, such information would be disregarded if self-serving. See section 14.6a(b) of the old regulations. The substance of paragraph (d) is now reflected in section 53.23(b) of the new regulations. It is reasonable and consistent with the Act to take into account information which is demonstrably correct.

Paragraph (e) provides that, in order to verify information obtained or to obtain further details, the authorities may carry out investigations in other countries as required. However, they must obtain the agreement of the firms concerned and they must notify the representatives of the government of the country in question and receive no objection to the investigation. Paragraph (e) is a permissive provision. It is implicit in section 14.6(d)(3)(i) of the old regulations and is consistent with present practice. It is now reflected in section 53.31(a) of the new regulations.

Paragraph (f) provides that once the authorities are satisfied that there is sufficient evidence to justify initiating

an investigation; representatives of the exporting country and the exporters and importers known to be concerned shall be notified. In addition, a public notice may be published. Both the mandatory and permissive parts of paragraph (f) are consistent with present practice. See section 14.6(d)(1)(i) of the old regulations, relating to public notice, and section 53.30 of the new regulations.

Paragraph (g) provides that throughout the investigation all parties shall have a full opportunity for the defense of their interests. On request, all directly interested parties shall be provided opportunities to meet those parties with adverse interests, so that opposing views may be presented and rebuttal arguments offered, taking into account the need to preserve confidentiality and the convenience of the parties. There shall be no obligation on any party to attend a meeting and failure to do so shall not be prejudicial to that party's case. These procedures are in keeping with present practice. See section 14.8(a) of the old regulations and sections 53.33 (a)(2) and 53.37 of the new regulations.

Paragraph (h) provides that the authorities shall notify representatives of the exporting country and the directly

interested parties of their decisions regarding the imposition or non-imposition of antidumping duties, indicating the reasons for such decisions and the criteria applied. In addition, the authorities shall, unless there are special reasons against doing so, make public the decisions. These provisions accord with present practice. Section 201(c) of the Act (19 U.S.C. 160(c)), requires publication of findings of injurious dumping. With respect to notification of interested parties, see section 14.13(a) of the old regulations and section 53.42 of the new regulations.

Paragraph (i) provides that the provisions of Article 6 shall not preclude the authorities from reaching preliminary determinations, affirmative or negative, or from applying provisional measures expeditiously. This provision permits preliminary determinations, such as "tentative" determinations, which under the new regulations would be made in cases where negative determinations on the question of price discrimination were indicated. See section 53.33(a) of the new regulations. Paragraph (i) also provides that, in cases where any interested party withholds the necessary information, a final finding, affirmative or negative may be made on the basis of the facts available. This is a permissive provision, which is now reflected in section 53.31(a) of the new regulations.

Article 7. Price Undertakings.

Paragraph (a) provides that antidumping proceedings may be terminated without imposition of antidumping duties or provisional measures upon receipt of a voluntary undertaking by the exporters to revise their prices so that the margin of dumping is eliminated or to cease to export to the area in question at dumped prices. This provision is permissive and is consistent with present practice, under which assurances to cease exporting to the United States at dumped prices may be accepted. See section 14.7(b)(9) of the old regulations and section 53.15 of the new regulations.

Paragraph (b) provides that, if the exporters make, and the authorities accept, such an undertaking, the investigation of injury shall nevertheless be completed if the exporters so desire or the authorities so decide. The purpose of this provision is to allow the foreign producer who is convinced that his exports, though sold at a dumping price, do not injure, to have a chance to get a decision to this effect, thus allowing him to resume sales at such a price with at least some indication that this can be done without subjecting him to dumping duties. Paragraph (b) is consistent with present practice and is now reflected in section 53.15(b) of the new regulations.

Paragraph (b) also provides that, if a determination of no injury is made, the undertaking given by the exporters shall automatically lapse unless the exporters state that it shall not lapse. Under present practice, only those undertakings are accepted which are unqualified and which continue without regard to the disposition of the case.

Finally, paragraph (b) provides that the fact that exporters do not offer to give such undertakings, or do not accept an invitation made by the authorities to do so, shall in no way be prejudicial to the consideration of the case. Paragraph (b) adds, however, that the authorities are free to determine that a threat of injury is more likely to be realized if the dumped imports continue. These two provisions simply state what would be reasonable under such circumstances and are consistent with present practice under the Act.

D. ANTIDUMPING DUTIES AND PROVISIONAL MEASURES

Article 8. Imposition and Collection of Anti-Dumping Duties.

Paragraph (a) provides that the decision whether or not to impose an antidumping duty and whether the amount of the antidumping duty shall be the full margin of dumping or less, are decisions to be made by the authorities. This clearly

permits the United States to impose dumping duties equal to the full dumping margin, as required by section 202 of the Act (19 U.S.C. 161).

Paragraph (a) also states that "it is desirable" that the imposition be permissive and that the duty be less than the margin, if such lesser duty should be adequate to remove injury. This is a hortatory provision which does not impose an obligation upon the United States and therefore creates no inconsistency with the Act.

Paragraph (b) provides that, when an antidumping duty is imposed in respect of any product, such duty shall be levied on a non-discriminatory basis on imports of such product from all sources found to be dumped and causing injury. This is consistent with section 202 of the Act (19 U.S.C. 161), which requires dumping duties to be imposed only in the amount of the dumping margin and is therefore necessarily non-discriminatory.

Paragraph (b) also provides that the authorities shall name the supplier or suppliers of the product concerned, subject to two exceptions. First, if several suppliers from the same country are involved and it is impracticable to name all these suppliers, the authorities may name the supplying country concerned. Second, if several suppliers from more than one

country are involved, the authorities may name either all the suppliers involved or, if this is impractical, all the supplying countries involved. Present practice under the Act conforms to the general rule, as qualified by the two exceptions, and is now reflected in section 53.35(c) of the new regulations.

Paragraph (c) provides that the amount of the antidumping duty must not exceed the margin of dumping. This is consistent with section 202 of the Act (19 U.S.C. 161), which does not authorize any excessive duties. Paragraph (c) also provides that, if subsequent to the application of the antidumping duty it is found that the duty so collected exceeds the actual dumping margin, the amount in excess of the margin shall be reimbursed as quickly as possible. This cannot normally occur under the Act, since full opportunity is given under customs law for the determination of the correct amount of the dumping duty prior to its collection.

Paragraph (d) concerns a country which uses a "basic price system" for purposes of antidumping proceedings. The paragraph is inapplicable to the United States, since the Act does not provide for such a system.

Paragraph (e) provides, as a general rule, that when the industry has been interpreted as referring to the producers in

a certain area -- that is, in a case of geographic segmentation -- antidumping duties shall only be definitively collected on the products in question which are consigned for final consumption to that area. This requirement cannot be satisfied under the Act. Moreover, it would raise problems under the sixth clause of section 9 of article I of the Constitution.

Accordingly, paragraph (e) provides that, in lieu of satisfying the general rule and prior to the imposition of antidumping duties, the exporter shall be given an opportunity to cease dumping in the area concerned. If the exporter promptly gives adequate assurance to this effect, antidumping duties shall not be imposed. In a case of geographic segmentation, non-imposition of dumping duties could be justified under the Act only if the exporter's assurance were made very promptly and it were clearly adequate to remove any possibility of future dumping on his part. If the assurance does not meet these necessarily demanding conditions or, if it does so, but is then not fulfilled, the antidumping duties may be imposed without limitation to an area. This procedure is consistent with the Act since a sufficiently firm assurance to cease dumping would satisfy the basic purpose of the Act.

Article 9. Duration of Anti-Dumping Duties.

Paragraph (a) provides that an antidumping duty shall remain in force only as long as it is necessary in order to counteract dumping which is causing injury. This is consistent with the Act, which is directed exclusively to dumping which causes injury.

Paragraph (b) provides that the authorities shall review the need for the continued imposition of the duty, where warranted, on their own initiative or if interested suppliers or importers of the product so request and submit information substantiating the need for review. Review upon request is provided for in section 14.12 of the old regulations and section 53.41(a) of the new regulations. Review upon the initiative of the authorities reflects present practice and is provided for in section 53.41(b) of the new regulations.

Article 10. Provisional Measures.

Paragraph (a) provides that provisional measures may be taken only when a preliminary decision has been taken that there is dumping and when there is sufficient evidence of injury. The first condition is a requirement of section 201(b) of the Act (19 U.S.C. 160(b)). As previously mentioned in the

discussion of Article 5, the second condition will be satisfied if the complaint includes evidence of injury as required by section 53.27(e) of the new regulations.

Paragraph (b) provides that provisional measures may take the form of a provisional duty or security. Since such provisional measures are not permitted under the Act, this provision is inapplicable to U.S. practice.

Paragraph (b) also provides that withholding of appraisement is an appropriate provisional measure provided that the normal duty and the estimated amount of the antidumping duty be indicated and as long as the withholding of appraisement is subject to the same conditions as other provisional measures. Under the new procedures, the district director of customs will notify the importer of the normal duty and the estimated amount of the dumping duty. See section 53.48(a) of the new regulations.

Paragraph (c) provides that the authorities shall inform representatives of the exporting country and the directly interested parties of their decisions regarding imposition of provisional measures, indicating the reasons for such decisions and the criteria applied, and shall, unless there are special reasons against doing so, make public such decisions.

Under the new procedures, representatives of the exporting country and the directly interested parties will be informed by letter of the withholding of appraisement, together with the reasons for such decision and the criteria applied. In addition, the reasons and criteria will be set out in the public notices at the time the notice of withholding of appraisement is published.

Paragraph (d) provides in a hortatory manner that the imposition of provisional measures shall be limited to as short a period as possible. More specifically, paragraph (d) provides that provisional measures shall not be imposed for a period longer than three months or, on decision of the authorities concerned upon request by the exporter and the importer, six months. This provision is discussed previously in the commentary on Article 5(b).

Paragraph (e) provides that the relevant provisions of Article 8 shall be followed in the application of provisional measures. Article 8 relates to the imposition and collection of dumping duties. Accordingly, paragraph (e) refers to types of provisional measures other than withholding of appraisement and is therefore inapplicable to U.S. practice.

Article 11. Retroactivity.

This article establishes the general rule that antidumping duties and provisional measures shall only be applied to products which enter for consumption after the time when the decision to impose such duties or to take such measures enters into force. The prospective application of withholding of appraisement is permitted by section 201(b) of the Act (19 U.S.C. 160(b)). In turn, section 202(a) of the Act (U.S.C. 161(a)) requires dumping duties to be assessed only on entries which are unappraised. In most cases, under present practice, appraisement is withheld only with respect to prospective entries and therefore dumping duties are imposed only on prospective entries. This will continue to be true under the new procedures.

Article 11 also contains three exceptions to the general rule, which are set out in clauses (i), (ii), and (iii), respectively.

Clause (i) provides, insofar as it is applicable to U.S. practice, that where a determination of injury (but not threat of injury) is made, antidumping duties may be levied retroactively for the period for which provisional measures, if any, have been applied. Such retroactivity is permitted by section 202(a) of that Act.

Clause (ii) provides that where appraisement is suspended for the product in question for reasons which arose before the initiation of the dumping case and which are unrelated to the question of dumping, retroactive assessment of antidumping duties may extend back to a period not more than 120 days before the submission of the complaint. Effect may be given to this provision under section 202(a) of the Act, which permits dumping duties to be assessed on all unappraised entries of products entered not more than 120 days before the date of the complaint.

Clause (iii) covers the case where for the dumped product in question the authorities determine two things. First, there is a history of dumping which caused material injury or the importer was, or should have been, aware that the exporter practices dumping and that such dumping would cause injury. Second, the injury is caused by sporadic dumping (massive dumped imports of a product in a relatively short period of time) to such an extent that, in order to preclude it recurring, it appears necessary to assess a dumping duty retroactively on those imports. In this case, the duty may be assessed on products which were entered for consumption not more than 90 days prior to the date of application of provisional measures.

Section 201(b) of the Act permits the withholding of appraisal with respect to products entered for consumption not more than 90 days prior to the date of the notice of withholding. Accordingly, in such a case, section 202(a) of the Act would provide for the imposition of antidumping duties on products entered within such period.

E. ANTIDUMPING ACTION ON BEHALF OF A THIRD COUNTRY

Article 12.

This Article deals with the case where country A is dumping goods in country B and is thereby causing injury not to an industry in country B but to an industry in country C which exports to country B. In such a case, country C may apply to country B to impose dumping duties against country A. However, country B cannot impose antidumping duties in such a case without the approval of the GATT CONTRACTING PARTIES.

Paragraphs (a) and (c) of this article provide that the United States -- if it is in the position of country C -- may try to persuade country B to take action. Whether or not country B decides to invoke its antidumping law would, of course, have nothing to do with the Act. At the same time, paragraph (d) provides that if the United States is country B,

the decision whether or not to proceed with a case rests with the United States. This permits the United States to reject an application from country C, on the ground that section 201(a) of the Act deals only with injury to an industry in the United States.

PART II - FINAL PROVISIONS

This part contains Articles 13 through 17, which relate to procedural matters concerning the signature, entry into force, and operation of the Code. It therefore does not bear on U.S. practice under the Act.



TARIFF COMMISSION REPORT ON S. CON. RES. 38

The Tariff Commission report on S. Con. Res. 38, dealing with the International Antidumping Code, was sent to the Committee on Finance on March 8, 1968. The Committee published the Tariff Commission Report on March 13, 1968, which is available as a Committee Print. Because of the length of this report, it is not being reproduced as part of this document.

However, by a 3-2 determination (Commissioners Sutton, Clubb, and Culliton) the Tariff Commission reported to the Committee that there were numerous instances where the International Antidumping Code appeared inconsistent and in conflict with the U.S. Antidumping Act of 1921 and certain other U.S. statutes.

Among the areas of apparent conflict found by these three Commissioners were: the criteria for determining injury; the definition of industry; and certain of the procedures and determinations of the Treasury and the Tariff Commission in investigating and processing a dumping case.

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