

GENERAL AGREEMENT ON TARIFFS AND TRADE

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UNITED STATES ANTI-DUMPING REGULATIONS

The secretariat has received from the United States Mission the following text of the revised Anti-Dumping Regulations issued by the United States Treasury Department as a result of the adoption of the Anti-Dumping Code.

TITLE 19 - CUSTOMS DUTIES

Chapter I - Bureau of Customs

(T.D. 68-148)

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 Sections 53.15, 53.23, 53.26, 53.29, 53.30, 53.31, 53.33, 53.34, 53.35, 53.36, 53.38 (renumbered Section 53.37), 53.48, and 53.52.

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

PART 14 - APPRAISEMENT

Sections 14.6 - 14.13 (Deleted)

Part 14 is amended by deleting therefrom Sections 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

Sections 16.21 and 16.22 (Deleted)

Part 16 is amended by deleting therefrom Sections 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

Section 17.9 (Deleted)

Part 17 is amended by deleting therefrom Section 17.9 and footnote 10 thereto, and by amending the centre heading preceding Section 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:

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Subpart E - Antidumping Appeals and Protests

- 53.64 Antidumping appeals and protests procedure.

AUTHORITY: The provisions of this Part 53 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. 160-173. Other authorities are cited to text in parentheses.

Section 53.1 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 reappraisements, and protests relating to matters under the Antidumping Act, 1921, as amended.

Subpart A - Fair Value

Section 53.2 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 Sections 53.3 to 53.5.

Section 53.3 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.

Section 53.4 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.

Section 53.5 Fair value based on constructed value.

(a) General. If the information available is deemed by the Secretary insufficient or inadequate for a determination under Section 53.3 or Section 53.4, 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 Section 53.3 or Section 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.

Section 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 Sections 53.7 through 53.16 shall apply.

Section 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 reflecting 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.

Section 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.

Section 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 sub-division (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.

Section 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.

Section 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.

Section 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.

Section 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 Sections 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.

Section 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 or exporter's sales price, as the case may be, and the fair value, is more than insignificant.

Section 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.

Section 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 transshipped through the country of shipment.

Subpart B - Availability of Information

NOTE: For Bureau of Customs general provisions relating to availability of information see Part 20 of this chapter.

Section 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 Section 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

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

Section 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.

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

Communications to the Commissioner pursuant to Section 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.

Section 53.28 Adequacy of information.

If any information filed pursuant to Section 53.26 in the opinion of the Commissioner does not conform substantially with the requirements of Section 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.

Section 53.29 Initiation of antidumping proceeding; summary investigation.

Upon receipt of information pursuant to Section 53.25 or Section 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.

Section 53.30 Antidumping Proceeding Notice.

If the case has not been closed under Section 53.29, the Commissioner shall publish a notice in the FEDERAL REGISTER that information in an acceptable form has been received pursuant to Section 53.25 or Section 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 Section 53.23 requires that his name not be disclosed.

Section 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 Section 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 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.

Section 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 Section 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.

Section 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 appraisement 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 appraisement notice has been issued and thereafter he has afforded interested parties an opportunity to be heard pursuant to the provisions of Section 53.37. In lieu thereof a final negative determination will be published setting forth the statement of reasons.

Section 53.34 Withholding of appraisement.

(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 Appraisement Notice", indicating -

(1) That the belief or suspicion relates only to certain shippers or producers, if this is the case and that the investigations 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 Section 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 Section 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.

Section 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 Section 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.

Section 53.36 Affirmative determination; appraisement withheld pursuant to Section 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 Section 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 Section 53.35(a) through (f).

Section 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 Section 53.34(b), when it shall be held within 5 weeks of such publication. Reasonable notice of the meeting will be given.

Section 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.

Section 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.

Section 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.

Section 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 Section 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.

Section 53.42 Publication of determinations and findings.

Each determination made in accordance with Sections 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 Section 53.40, will be published in the FEDERAL REGISTER, together with a statement of the reasons therefor.

Section 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 portland cement	Sweden Belgium	55369 55428	
Portland grey cement Portland cement, other than white, nonstaining portland cement	Portugal Dominican Republic	55501 55883	
Chromic acid	Australia	56130	
Steel reinforcing bars	Canada	56150	
Carbon steel bars and structural shapes	Canada	56264	
Azobisformamide	Japan	56414	
Steel jacks	Canada	66-191	
Cast iron soil pipe.	Poland	67-252	

Subpart D - Action by District Director of Customs

Section 53.48 Action by the District Director of Customs.

(a) Appraisement withheld; notice to importer. Upon receipt of advice from the Commissioner of Customs pursuant to Section 53.34, the district director of customs 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", unless the Commissioner's Withholding of Appraisement 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 appraisement 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 Section 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 appraisement of such shipment.

(b) Request to proceed with appraisement. 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.

Section 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

NON-EXPORTER'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. 486, 46 Stat. 725, as amended; 19 U.S.C. 1436.)

Section 53.50 Appraisement 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.

Section 53.51 Appraisement 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, appraisement shall proceed upon the basis of the best information available.

Section 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 Withholding of Appraisement 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 appraisement 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.

Section 53.53 Release of merchandise; bond.

When the district director of customs in accordance with Section 53.34(c) has received a notice of withheld appraisement or when he has been advised of a finding provided for in Section 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 Section 53.54, or unless the merchandise covered by a specified entry will be appraised without regard to the Antidumping Act, 1921, as amended.

Section 53.54 Type of bond required.

(a) General. If the merchandise is of a class or kind covered by a notice of withheld appraisement provided for in Section 53.48(a) or by a finding provided for in Section 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) Incases 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 Section 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.

Section 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 Sections 53.2 through 53.5, 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 322, Tariff Act of 1930, as amended (31 U.S.C. 372) and Section 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.

Section 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.

Section 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 appraisement of the merchandise, as in the case of an advance in value. If the importer files an appeal for reappraisement, liquidation shall be suspended until the appeal for reappraisement is finally decided.

Section 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.

Section 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

Section 53.64 Antidumping appeals and protests procedure.

Appeals for reappraisalment, 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:
.....

Assistant Secretary

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

APPENDIX TO AMENDMENT OF ANTIDUMPING REGULATIONS

Parallel Reference Table

(This table shows the relation of sections in Part 53 to 19 CFR 14.6 - 14.13, 16.21, 16.22 and 17.9)

<u>Part 53 Sections</u>		<u>Part 14 Sections</u>
53.1	Scope	New
<u>Subpart A - Fair Value</u>		
53.2	Fair value; definition	14.7(a)
53.3	Fair value based on price in country of exportation; The usual test	14.7(a) (1)
	(a) General	
	(b) Restricted sales	Footnote 15 to Part 14, Example 1
53.4	Fair value based on sales for exportation to countries other than the United States	14.7(a) (2)
	(a) General	
	(b) Twenty-five percent rule	
	(c) Restricted sales	Footnote 15 to Part 14, Example 2
53.5	Fair value based on constructed value ..	14.7(a) (3)
	(a) General	14.7(a) (3)
	(b) Merchandise from controlled economy country	New
53.6	Calculation of fair value	14.7(b)
53.7	Fair value; differences in quantities .	14.7(b) (1)
	(a) General	
	(b) Criteria for allowances	
	(c) Price lists	Footnote 15 to Part 14, Example 4
53.8	Fair value; circumstances of sale	14.7(b) (2)
	(a) General	
	(b) Examples	
	(c) Relation to market value	
53.9	Fair value; similar merchandise	14.7(b) (3)
53.10	Fair value; offering price	14.7(b) (4)
53.11	Fair value; sales agency	14.7(b) (5)
53.12	Fair value; fictitious sales	14.7(b) (6)

APPENDIX TO AMENDMENT OF ANTIDUMPING REGULATIONS - Continued

Part 53 Sections

Part 14 Sections

Subpart A - Fair Value - Continued

53.13	Fair value; sales at varying prices ..	14.7(b) (7)
53.14	Fair value; quantities involved and differences in price	14.7(b) (8)
53.15	Fair value; revision of prices or other changed circumstances	14.7(b) (9)
	(a) Discontinuance of investigation	
	(b) Notice	
53.16	Fair value; shipments from intermediate country	New
53.17 - 53.22	Reserved	

Subpart B - Availability of Information

53.23	Availability of information in antidumping proceedings	14.6a
	(a) Information generally available	14.6a(a)
	(b) Requests for confidential treatment of information	14.6a(b)
	(c) Standards for determining whether information will be regarded as confidential	14.6a(c)
53.24	Reserved	

Subpart C - Procedure under Antidumping Act, 1921

53.25	Suspected dumping; information from customs officer	14.6(a)
52.26	Suspected dumping; information from persons outside Customs Service	14.6(b)
53.27	Suspected dumping; nature of information to be made available	14.6(b) and Paragraphs 2 and 3 Footnote 15 to Part 14
53.28	Adequacy of information	14.6(c)
53.29	Initiation of antidumping proceeding; summary investigation	14.6(d) (1) (i)
53.30	Antidumping proceeding notice	14.6(d) (1) (i)
53.31	Full scale investigation	14.6(d) (3) (i) and (ii)
	(a) Initiation of investigation..	
	(b) Termination of investigation	

APPENDIX TO AMENDMENT OF ANTIDUMPING REGULATIONS Continued

Part 53 Sections

Part 14 Sections

Subpart C - Procedure under Antidumping Act, 1921 - Continued

53.32	Determination as to fact or likelihood of sales at less than fair value	14.8(a)
	(a) Fair value determination	14.8(a)
	(b) Submission of views	14.8(a)
53.33	Negative determination	14.8(a)
	(a) Notice of tentative negative determination	14.8(a)
	(b) Opportunity to present views ...	14.8(a)
	(c) Final determination	14.8(a)
	(d) Negative determination after issuance of a withholding of appraisement notice	New
53.34	Withholding of appraisement	14.6(e)
	(a) Three-month period	New
	(b) Six-month period	New
	(c) Advice to District Directors of Customs	
	(d) Notice issued before July 1, 1968	New
53.35	Affirmative determination; general ...	New
53.36	Affirmative determination; appraisement withheld pursuant to Section 53.34(b)	New
53.37	Affirmative determination; opportunity to present views	14.8(a)
53.38	Referral to U.S. Tariff Commission ...	14.8(a)
53.39	Revocation of determination of sales at less than fair value; determination of sales at not less than fair value	New
53.40	Dumping finding	14.8(b)
53.41	Modification or revocation of finding	14.12
	(a) Application to modify or revoke	
	(b) Modification or revocation by Secretary	
	(c) Notice of modification or revocation of finding	
53.42	Publication of determinations and findings	14.13(a)
53.43	List of current findings	14.13(b)
53.44 - 53.47	Reserved	

APPENDIX TO AMENDMENT OF ANTIDUMPING REGULATIONS - Continued

Part 53 Sections

Part 14 Sections

Subpart D - Action by District Director of Customs

53.48	Action by the District Director of Customs	14.9(a)
	(a) Appraisement withheld; notice to importer	14.9(a)
	(b) Request to proceed with appraisement	14.9(b)
53.49	Certificate of importer	14.9(c)
53.50	Appraisement of merchandise covered by Form 4	14.9(d)
53.51	Appraisement when required certificate not filed	14.9(e)
53.52	Reimbursement of dumping duties	14.9(f)
	(a) General	14.9(f)
	(b) Statement concerning reimbursement	New
53.53	Release of merchandise; bond	14.10(a)
53.54	Type of bond required	
	(a) General	14.10(b)
	(b) Bond on customs Form 7591	14.10(c)
53.55	Conversion of currencies	14.11

Part 16 Sections

53.56	Dumping duty	
	(a) Rule for assessment	16.21(a) and Footnote 16 to Part 16
	(b) Entered value not controlling ..	Footnote 16
53.57	Notice to importer	16.21(b)
53.58	Dumping duty; samples.....	16.22
53.59	Method of computing dumping duty	16.22
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Subpart E - Antidumping Appeals and Protests

Part 17 Sections

53.64	Antidumping appeals and protests procedure	17.9
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