

# GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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Committee on Anti-Dumping Practices

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## ADVANCE NOTICE OF PROPOSED RULEMAKING

### United States

At the meeting of the Anti-Dumping Committee on 4-6 October 1976 the representative of the United States invited the countries signatories to the Anti-Dumping Code to submit comments by 14 November 1976 on a notice published in the United States Federal Register requesting the submission of possible revisions to Section 153.10 of the United States Anti-Dumping Regulations relating to the adjustment for circumstances of sales. The notice is reproduced hereunder.

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(19 CFR Part 153)

### ANTI-DUMPING

#### Advance Notice of Proposed Rulemaking

The United States Customs Service is considering amending Section 153.10 of the Customs Regulations (19 CFR 153.10). That provision relates to making adjustments for differences in circumstances of sales when comparing the purchase price or exporter's sales price with the sales, or other criteria applicable, upon which a determination of fair value is based under Section 201(a) of the Anti-Dumping Act of 1921, as amended (19 U.S.C. 160(a)).

In the preamble to the notice of proposed rulemaking published in the Federal Register of 23 July 1975 (40 FR 30825), relating to a proposed revision of Parts 153 and 175 of the Customs Regulations, it was noted that no amendments were being proposed at that time with respect to the provisions set forth in Section 153.10 of the proposal (those provisions being contained in Section 153.8 of the regulations then in effect), but that those provisions were under study. Subsequently, in T.D. 76-176, which was published in the Federal Register of 25 June 1976 (41 FR 26203), and set

forth the revised Part 153, several amendments to Section 153.10 were included. These changes, however, were intended to reflect long-existing Department of the Treasury practice.

The present notice is being issued to solicit the views of the interested public as to whether current practices, as set forth in revised Section 153.10, should be continued or further revised in any way.

Section 153.10 presently provides as follows:

Section 153.10 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 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 also will 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 direct relationship to the sales which are under consideration, allowances generally will not be made for differences in 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. In making comparisons using exporter's sales price, reasonable allowance will be made for actual selling expenses incurred in the home market up to the amount of the selling expenses incurred in the United States market.

(c) Determination of allowances: In determining the amount of the reasonable allowances for any differences in circumstances of sale, the Secretary will be guided primarily by the cost of such differences to the seller but, where

appropriate, may also consider the effect of such differences upon the market value of the merchandise.

Interested persons are invited to participate in the formulation of the practices to be followed under Section 153.10 of the Customs Regulations by submitting such written data, views, or arguments as they may desire. Each suggested amendment should be accompanied by specific language for its implementation. Such views should be addressed to the Commissioner of Customs, Attention: Regulations Division, Washington, D.C. 20229. To ensure consideration of such communications, they should be received not later 14 October 1976.

Written material or suggestions submitted will be available for public inspection in accordance with Section 103.8(b) of the Customs Regulations (19 CFR 103.8(b)), at the Regulations Division, Headquarters, United States Customs Service, Washington, D.C., during regular business hours.

After consideration of the data and comments received in response to this notice, and if it is decided to amend Section 153.10 of the Customs Regulations, a notice of proposed rulemaking will be issued.