

GENERAL AGREEMENT ON  
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GROUP OF EXPERTS  
ON ANTI-DUMPING AND COUNTERVAILING DUTIES

United States Anti-Dumping Act

To facilitate the work of the Group of Experts on anti-dumping and countervailing duties, the United States Anti-dumping Act of 1921, as amended by Public Law 85-630, effective from 14 August 1958, is herewith reproduced. This text replaces that of the United States Anti-Dumping Act set out on page 130 of GATT publication "Anti-Dumping and Countervailing Duties" of July 1958.

ANTI-DUMPING ACT, 1921, AS AMENDED  
(19 U.S.C. 160 et seq.)

(August 14, 1958)

DUMPING INVESTIGATION

SEC. 201. (a) Whenever the Secretary of the Treasury (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 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.

SPECIAL DUMPING DUTY

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 -

- (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 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 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.

#### PURCHASE PRICE

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

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 merchandise 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 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.

#### CONSTRUCTED VALUE

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.

## EXPORTER

SEC. 207. That for the purposes of this title the exporter 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 or control or otherwise, any interest in any business conducted by such persons; 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

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 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 prices 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 said 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

SEC. 209. 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 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 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.

#### APPEALS AND PROTESTS

SEC. 210. That for the purposes of this title the determination of the appraiser 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 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 United States Customs Court, and the Court of Customs and Patent Appeals 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.

#### DRAWBACKS

SEC. 211. That the special dumping duty imposed by 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.

#### DEFINITIONS

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.

#### SHORT TITLE

SEC. 213. That this title may be cited as the "Antidumping Act, 1921."

