

# GENERAL AGREEMENT ON TARIFFS AND TRADE

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## AMENDMENTS TO THE UNITED STATES ANTI-DUMPING REGULATIONS

### Communication from the United States Delegation

The secretariat has received from the United States delegation the following background memorandum on the Revised Anti-Dumping Regulations, which have recently been adopted. Attached to the memorandum is a comparative print showing changes between the amendments finally adopted and those published as proposals earlier this year (cf. document L/2222).

## AMENDMENTS TO THE ANTI-DUMPING REGULATIONS

### Background Memorandum

On 23 April 1964, the Treasury Department published in the Federal Register proposed amendments to the anti-dumping regulations and invited comment of the public thereon. A background memorandum issued at the time made the following observations:

"The changes in the anti-dumping regulations which are presently proposed are based in large part on the comments received both orally and in writing in connexion with the hearing which was held on 23 January 1964. In addition, the proposed amendments reflect the views of the experts brought in by the Treasury Department as consultants with regard to this matter. Finally, they are based in part on suggestions emanating from within the Department.

"To some extent, the interests of those concerned with domestic production and those concerned with imports are necessarily inconsistent, and it is impossible to satisfy one without dissatisfying the other. Analysis of the basic problems, however, has disclosed a surprisingly large area in which there is room for improvement which it is believed would be welcomed by domestic producers, importers and exporters alike.

"This is the area to which the major part of the proposed revisions is directed. Their adoption would, it is believed, contribute significantly to sound administration of Treasury's anti-dumping procedures. The proposed amendments are not designed to make the administration of the Anti-Dumping Act either more or less restrictive."

As a result of the notice of 23 April, the Treasury Department received approximately sixty statements of views from domestic producers, importers, exporters, foreign governments and various associations either directly or through their legal counsel. Many of these contained lengthy, carefully thought-out, helpful comments. To the extent that the Treasury has believed that these comments exposed deficiencies in the proposed amendments or suggested improvements, they have been used as the basis for further changes. It should be noted, however, that the comments and views received have not resulted in radical changes in the regulations which were proposed in April. The changes to which they have led will improve the amendments and not affect their character as a set of rules the purpose of which is to increase efficiency and fairness but leave unchanged the balance as between domestic producers on the one hand and exporters on the other.

The following comments relate to a number of the more important matters dealt with by the amended regulations:

Making information available

The present amendment departs from the heretofore prevailing rule that virtually all information in an anti-dumping proceeding shall be treated as confidential. Under the new regulations, all information entered in connexion with an anti-dumping proceeding will be made available for inspection or copying by any interested person except that the Treasury, on the request of the person who submitted the information, may conclude on the basis of standards set forth in the regulations that the information shall be treated as confidential. In any case in which information is submitted with the request that it be treated as confidential and the Treasury Department denies the request, the person submitting the information will have his choice of having the information disregarded or of acquiescing in its being treated as non-confidential. Provision is also made for deletion of identifying details the inclusion of which would be harmful to the person submitting the information. The amendment also provides that certain information may be disclosed by the Treasury in generalized or summarized fashion rather than in detail when this course is deemed appropriate in the interests of maximum disclosure coupled with protection of confidentiality. The standards which will guide the Treasury in determining which classes of information should or should not be regarded as confidential are spelled out in considerable detail in new section 14.6a(c).

It is believed that the net effect of this proposal will be to open up a large body of information to interested persons without detriment to the persons who supply information. The amendment which has been adopted is essentially the same as that proposed last April but its drafting has been improved. One drafting change is designed to make it entirely clear to foreign producers that under no circumstances will information which was submitted as confidential be disclosed without the consent of the person who supplied it, regardless of whether the Treasury believes that the claim to confidential treatment is justified. This had been intended by the language originally proposed but some comments indicated that additional assurance was necessary. The amendment also makes it clear that whenever the Treasury rejects a claim that information is entitled to confidential treatment, the information will not be given weight as supporting the submitter's position until the submitter agrees to an appropriate disclosure of the information.

#### Confrontation and argument

The new amendments provide that the Treasury, at the request of any interested person, will be prepared to hear the arguments of either side in the presence of the other. As pointed out last April, the Treasury has rejected as impractical and undesirable the suggestion of some members of the public that anti-dumping procedures be determined on the basis of public hearings of a quasi-judicial type. Further consideration of this matter has strengthened the Treasury's view that public hearings of this type would not be suitable in anti-dumping proceedings and would impose a costly and unjustified burden upon exportations to the United States.

Members of the public, in commenting upon the provisions for confrontation, pointed out that this amendment as originally proposed appeared to be limited to situations in which the accuracy of information was in dispute. They pointed out that there should be an opportunity to argue with regard to other matters as well, e.g., questions of law. The merit of this position has been recognized in the amendment which now also makes it clear that there can be more than two interested parties present at a confrontation.

An important change in this amendment is that it now specifically provides that the Treasury Department may delay sending cases to the Tariff Commission in order that the Treasury aspect of related cases may be consolidated. The April notice did not deal with this matter but the Treasury believes that this provision is nonetheless appropriate. It reflects an administrative practice which has been followed by the Department and does not establish any change of actual practice.

Quantity discounts

The amendments have established a clear standard for determining when and how allowances should be made with respect to sales in different quantities. They specify that an allowance will ordinarily be made for a quantity discount only if it is actually enjoyed with respect to 20 per cent of the merchandise sold in the home market or in third country markets where applicable or, in the alternative, unless it is cost-justified. The amendment will provide that ordinarily a six-months' history of quantity discounts will be deemed to be a satisfactory basis for a quantity allowance. The April proposals had required a year's history in this respect.

Complaints

The provisions announced last April of the proposed regulations with respect to the filing of complaints have been adopted substantially as they were proposed. They have been changed, however, to provide that there shall be publication of an anti-dumping proceeding notice only after a summary investigation has determined that the complaint is not patently without foundation. Further, the new amendment provides that both anti-dumping proceeding notices and withholding orders will be directed only at the foreign firms whose shipments are actually involved. Of course, if in any case all of the exporters from and producers in a particular country were believed to be dumping, the anti-dumping proceeding notice and withholding order would be directed to all shipments from that country.

Retroactivity

The amended regulations will eliminate retroactive application of dumping duties by eliminating withholding of appraisement of goods imported before the date of a withholding order in all cases except those in which the importer is defined as having a relationship with the exporter under section 207 of the Anti-Dumping Act. (The class of cases in which retroactivity would still obtain are those where, for example, the exporter and importer are principal and agent or where there is mutuality of ownership or control between exporter and importer.) This amendment has been adopted in the same form in which it was proposed last April.

Reimbursement of dumping duties by exporter

Under the amended regulations it has been made feasible for an exporter to warrant freedom from dumping duties with respect to merchandise purchased prior to an order withholding appraisement and to compensate the importer for a breach of this warranty. Unlike the proposals announced in April, however, the amendment now being issued restricts such warranties to shipments of merchandise made before a finding that sales have been made below fair value.

#### Termination of proceedings

The new regulations contain a provision which will allow the termination of anti-dumping proceedings in some, but not all, instances in which it is clear that prices have been revised to eliminate any dumping margin, that sales to the United States have been terminated, or that the complaining person has concluded that no further purpose would be served by the continuation of the anti-dumping proceedings.

Under this amendment, safeguards will be provided by requiring publication of a Federal Register notice of the impending action with an opportunity to interested parties to present their views. It is believed that this procedure will allow some cases to be terminated quickly.

The amendment as originally proposed has been further amended so as to make it clear that cases will be closed out only when it is demonstrated to the Secretary's satisfaction that this action is appropriate. The Secretary, in reaching his determination, will consider such matters as the degree of assurance which he has that the objectionable practices have been terminated, whether the case involves deliberate sporadic dumping, or other unusual circumstances which would make it inappropriate to close the case, and whether any objections to closing it are groundless or frivolous.

#### Offers of sales

An amendment adopted in the form in which it was proposed last April specifically authorizes the Treasury to disregard offers of sales whenever it is clear from the circumstances that acceptance of the offer could not reasonably be expected. For example, an offer of sale of heavy winter overcoats for local consumption by a manufacturer in a tropical country would not be regarded as an offer to which any weight should be given.

#### Adjustment for differences in cost of production

One of the amendments establishes a realistic standard for determining what weight should be placed on differences in cost of production in making determinations of the value of merchandise when the merchandise being compared is not identical. This amendment, which is unchanged from the form in which it was proposed last April, provides, in general, that differences in cost of production will be taken into account only to the extent that they affect the market value of the merchandise concerned.

#### Effective date

The amendments will be published within a few days in the Federal Register and will go into effect thirty days after their publication. No amendment will be given retroactive effect and the provisions relating to confidentiality of information, quantity discounts and similar merchandise will not apply to then pending cases.

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Attached hereto is a comparative print showing the amendments in the form in which they are being issued and indicating the extent to which the proposed amendments published in the Federal Register on 23 April 1964 have been changed.

COMPARATIVE PRINT SHOWING CHANGES BETWEEN THE  
AMENDMENTS ADOPTED AND THOSE PUBLISHED AS PROPOSALS IN  
THE FEDERAL REGISTER OF 23 APRIL 1964

(Material deleted from April proposals is indicated by cancelling lines; material added is indicated by underlining)

(1) The proposed amendment of the first sentence of paragraph 14.6(b) is being adopted without change, as follows:

(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 Anti-Dumping Act, 1921, as amended,<sup>14</sup> may communicate such information in writing to the Commissioner of Customs. \*\*\*

(2) The proposed amendment of paragraph 14.6(b)(1) is being adopted with a change, as follows:

(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.

(3) The proposed amendment of paragraph 14.6(b)(2) is being adopted with a change, as follows:

(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 Anti-Dumping 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.

(4) The proposed new sub-paragraph 4 of Section 14.6(b) is being adopted without change, as follows:

(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.

(5) The proposed amendment of paragraph 14.6(c) is being adopted without change, as follows:

(c) If any information filed pursuant to paragraph (b) 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.

(6) The proposed amendment of paragraph 14.6(d)(1) is being adopted with changes, as follows:

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

(i) ~~the Commissioner shall publish notice of that fact in the Federal Register, which notice may be referred to as the "Anti-Dumping Proceeding Notice".~~ The date of such receipt 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 "Anti-Dumping 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 Anti-Dumping Act, 1921, as amended (19 USC 160(b) and 161(a)) and that date shall be included in the notice. 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 section 14.6a of these regulations requires that his name not be disclosed.

(ii) the Commissioner shall thereupon proceed promptly to decide whether or not reasonable grounds 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). To assist him in making such 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.

(7) The proposed amendment of paragraph 14.6(e) is being adopted with changes, as follows:

(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)(i) 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 Anti-Dumping 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 Appraisement Notice". If the belief or suspicion relates only to certain shippers or producers, the notice shall ~~also include the names of such shippers~~ specify that this 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 exporters' 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 appraisement in accordance with the pertinent provisions of section 14.9.

(8) As proposed, footnote "14a" in paragraph 14.6(b) is being redesignated "footnote 14". The former footnote 14 in paragraph 14.6(a) is being eliminated.

(9) The proposed new section 14.6a is being adopted with changes, as follows:



Section 14.6a Disclosure of information in anti-dumping 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 connexion with any anti-dumping proceeding will be available for inspection or copying by any interested person, including 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 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 relating to fees charged for providing copies of documents.

(b) Requests for confidential treatment of information. Any person who submits information in connexion with an anti-dumping 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 ~~not other~~ than an officer or employee of the United States Government ~~other than~~ 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 ~~anti-dumping-proceeding~~, and no reliance shall be placed thereon in this connexion ~~with the proceeding~~.

(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 ~~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 have a significantly adverse effect upon the person supplying the information or upon any person from whom he acquired the information,~~ the information will ordinarily be considered appropriate for disclosure in generalized, summary or approximated form, without identifying details, ~~if it is determined that this course can be followed without its having the significantly adverse effect which direct disclosure of the information would entail,~~ 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 (b), 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 relied on to justify accepted as justifying allowances for quantity or differences of circumstances of sale;

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

~~(v) disclose information which would be of significant competitive advantage to a competitor; or~~

~~(vi) affect in a significantly adverse way any person who supplied information, including any informer, or any person from whom the supplier of the information acquired it.~~

(10) The proposed amendment of section 14.7(b)(1) is being adopted with a change as follows:

Section 14.7(b)(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 (i) the exporter during the year 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 per cent 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 (ii) the exporter can demonstrate that the discounts are warranted on the basis of savings specifically attributable to the quantities involved.

(11) The proposed amendment of section 14.7(b)(3) is being adopted without change, as follows:

- (3) 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-divisions (C), (D), (E), or (F) of section 212(3), Anti-Dumping Act, 1921, as amended (19 USC 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.

(12) The proposed amendment of section 14.7(b)(4) is being adopted without change, as follows:

Section 14.7(b)(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.

(13) The proposed new paragraph (9) of section 14.7(b) is being adopted with changes, as follows:

Section 14.7(b)(9) Likelihood-of-sales-at-less-than-fair-value.  
Revision of prices or other changed circumstances.

(1) --Revision-of-prices. Whenever the Secretary of the Treasury is satisfied that an exporter, promptly after learning the commencement of an anti-dumping investigation with respect to his shipments, has revised his prices so as to eliminate the likelihood of his sales in the United States being at prices below his comparable sales in the home market (or in third country markets, when sales to third countries are the basis for comparison) or has, without intention to resume them, terminated his sales to the United States, either (1) 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 revisions, 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 anti-dumping investigation, the Secretary shall publish a notice to this effect in the Federal Register. The notice shall also state that the exporter's action is considered to be evidence that he is not selling and is not likely to sell below fair value and that the Secretary will so determine unless evidence or argument to the contrary is presented within thirty days. 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 thirty days the Secretary will determine that there are not and are not likely to be sales below fair value.

~~(ii) - Other changed circumstances. - Whenever a person who has filed information pursuant to section 14.6(b), prior to the determination referred to in section 14.8(a), advises the Secretary of the Treasury that he no longer believes it is appropriate to determine that there are, or that there likely to be, sales below fair value with respect to the merchandise to which his information related, the Secretary may publish a notice of this fact in the Federal Register together with an invitation to all interested parties to express their views thereon. - If within thirty days after the publication of such notice comments shall be received indicating that any segment of an industry interested in the anti-dumping proceeding believes that it is desirable that the determination provided for in section 14.8(a) be made, the Commissioner of Customs and the Secretary of the Treasury shall proceed in accordance with the provisions of that section. - Otherwise the anti-dumping proceeding may be closed with a determination that this action has been taken pursuant to the procedures herein described.~~

(14) The proposed amendment of section 14.8(a) is being adopted with changes, as follows:

(a) Upon receipt from the Commission of Customs of the information referred to in section 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 the tentative determination, which may be referred to as "Notice of Tentative Determination," will be published in the Federal Register 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 such 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 anti-dumping 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 as 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, ~~request that information or argument be supplied orally to him by any such person or persons as he in his discretion may deem to be appropriate~~ 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: ~~--If the determination is affirmative, the Secretary will advise the United States Tariff Commission accordingly,~~ except that the Secretary may defer making an affirmative determination of sales below fair value during the pendency of any other anti-dumping 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 anti-dumping 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.

(15) The proposed amendment of section 14.9(a) is being adopted without change, as follows:

Section 14.9 Action by the appraiser.

(a) Upon receipt of advice from the Commissioner of Customs pursuant to section 14.6(e), if the Commissioner's "Withholding of Appraisement 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 section 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.

(16) The proposed amendment of section 14.9(f) is being adopted with changes, as follows:

Section 14.9(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 non-applicability 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 Appraisement 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.

(17) The proposed effective date provisions are substantially unchanged except for a thirty-day delay provision to allow the public to become acquainted with them. As proposed, they had read as follows:

"It is contemplated that if the proposed amendments are adopted they will become effective, but not retroactively, on the date of their adoption. Section 14.6a and the amendments of sections 14.7(b)(1), 14.7(b)(3), and 14.9(a) will not be effective with respect to anti-dumping proceedings in connexion with which the question of dumping was raised or presented for the purposes of section 201(b) and 202(a) of the Anti-Dumping Act, 1921, as amended (19 USC 160(b) and 161(a)) before the date of the adoption of the amendments."

As issued, the effective date provisions read as follows:

"The amendments shall become effective, but not retroactively, thirty days after the date of their publication in the Federal Register. However, section 14.6a and the amendments to sections 14.7(b)(1), 14.7(b)(3), and 14.9(a) shall not be effective with respect to anti-dumping proceedings in connexion with which the question of dumping was raised or presented for the purpose of sections 201(b) and 202(a) of the Anti-Dumping Act, 1921, as amended (19 USC 160(b) and 161(a)), before the thirtieth day following the date of publication of the amendments in the Federal Register."

(18) Examples 4 and 5, set forth in footnote 15 appended to section 14.7(a) are being revised to reflect changes brought about by the new amendments. No change in the Examples was stated as being contemplated in the Federal Register Notice of 23 April because it was deemed unnecessary to give notice in this regard. The Examples do not themselves constitute changes in the regulations. They merely illustrate certain effects of the regulations, and require change as the regulations change. Examples 4 and 5, as they will be revised, will read as follows:

Example 4

A foreign producer makes all of his sales, other than those to the United States, for consumption in the country of exportation. The majority of the merchandise thus sold by him is sold in 50 ton lots at list prices, net. However, a discount of 5 per cent is granted on sales of more than 500 tons, and is freely available to those who purchase in the ordinary course of trade. During the six months preceding the date when the question of dumping was raised, the producer made sales of more than 500 tons each with respect to 15 per cent of such or similar merchandise which he sold in the home market. Sales for exportation to the United States are at list prices less 5 per cent and have been in quantities of over 500 tons. The 5 per cent will not be allowed as a quantity discount because less than 20 per cent of such or similar merchandise was sold in the home market in



quantities to which such discount was applicable, unless the 5 per cent can be justified by cost savings. Cost savings can also be used to justify a quantity discount where there were no sales in the home market in quantities sufficient to warrant the granting of the 5 per cent discount, and no offers because there is no potential market for such quantities.

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.

The following Example also relates to quantity allowances.

Example 5

A foreign producer has the following record of sales at or about the date of sale or exportation to the United States.

<u>Price per lb.</u> <u>for Sales in</u> <u>Units of 100 lbs.</u> <u>and 1,000 lbs.</u>	<u>Sales for</u> <u>Consumption</u> <u>in Country of</u> <u>Exportation</u>	<u>Sales</u> <u>to the</u> <u>United States</u>
\$ .85 ( 100 lbs.)	200,000 lbs.	-
\$ .80 (1,000 lbs.)	20,000 lbs.	100,000 lbs.

Although the lower price in the home market appears to obtain for quantities the same as those sold for exportation to the United States at the same price, the quantity sold for home consumption at the lower price is less than 20 per cent of the quantity sold in the home market. Accordingly, the price for exportation to the United States is not justified unless cost savings can be shown to justify the lower price. If 44,000 pounds had been sold in the home market at the \$.80 price, the lower price would have been justified for comparison with the price for exportation to the United States.