

GENERAL AGREEMENT ON
TARIFFS AND TRADE

RESTRICTED

L/3537
9 June 1971

Limited Distribution

Original: English

REVIEW OF UNITED STATES ANTI-DUMPING REGULATIONS

Communication from the United States

The following communication, dated 27 May 1971, has been received from the Minister for Economic Affairs of the United States mission.

My authorities would appreciate your bringing to the attention of the contracting parties the following announcement relating to a review of United States antidumping regulations.

The United States Department of the Treasury has announced that it will conduct a broad review of the United States antidumping regulations. The review, the first of its kind in two years, stems from increasing interest in and recourse to procedures under the antidumping law. Treasury will welcome suggestions from interested parties through 11 June. After reviewing such submissions of views Treasury will publish changes it proposes to make, at which time further comments will be sought. Treasury also reserves the right to make proposals for specific changes before the review is completed.

A copy of the announcement of this broad review which appeared in the Federal Register on 13 April 1971 is enclosed.¹

Contracting parties may also be interested in the text of an announcement of a proposal to eliminate the "25 per cent rule" for fair value determination which was published in the Federal Register on 27 April 1971. A copy of this is also enclosed.²

The text of a United States Press Release concerning the proposed change in the 25 per cent rule for fair value determinations is also reproduced hereunder (Annex III).

¹Annex I

²Annex II

ANNEX I

Federal Register, Vol. 36, No. 71 - Tuesday, 13 April 1971

DEPARTMENT OF THE TREASURY

Bureau of Customs

(19 CFR Part 153)

Antidumping

Notice of Proposed Rule Making

Notice is hereby given that the Treasury Department intends to conduct a review of its Antidumping Regulations (19 CFR Part 153).

The most recent broad review of these Regulations took place more than two years ago, resulting in revisions which became effective as of 1 July 1968. Because of renewed interest in the Act since that time, another broad review of the Antidumping Regulations is now in order.

Interested persons are invited to submit suggestions for improving the Antidumping Regulations to the Commissioner of Customs, Washington, D.C. 20226, not later than 60 days after the date of publication of this notice in the Federal Register. Such suggestions should be accompanied with specific language designed to implement proposals that are submitted. All submissions will be given careful consideration. Thereafter the Treasury Department will publish a notice of proposed rule making in the Federal Register, which will set forth for comment specific revisions of the Antidumping Regulations that are contemplated.

Since this general review of the Antidumping Regulations is likely to require extensive study, extending over an appreciable period of time, the Treasury Department serves notice that it expressly reserves the right to proceed at any time during this period with specific changes in the regulations which it may deem appropriate and proper. In all cases where such changes encompass matters of substance, they will be made effective only after publishing in the Federal Register a notice of proposed rule making. Thus all affected persons will have a full opportunity to comment before such changes are put into effect.

(Seal)

Edwin F. Rains
Acting Commissioner of Customs

Approved: 1 April 1971

Eugene T. Rossides,
Assistant Secretary
of the Treasury.

ANNEX II

Federal Register, Vol. 36, No. 81 -- Tuesday, 27 April 1971

DEPARTMENT OF THE TREASURY

Bureau of Customs

(19 CFR Part 153)

Fair Value Determination in Antidumping Investigations

Notice of Proposed Rule Making

Section 205 of the Antidumping Act, 1921, as amended (19 USC 164), provides, inter alia, that 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 "in the principal markets of the country from which exported", hereinafter referred to as the "home market". Section 205 provides also that "... if the Secretary (of the Treasury) 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 foreign market value shall be the price at which such or similar merchandise is sold for exportation to countries other than the United States.

Section 153.4 of the Customs Regulations (19 CFR 153.4) states that merchandise sold for consumption in the home market will generally be considered to be an inadequate basis for comparison if it is less than 25 per cent of the quantity sold other than for exportation to the United States.

This 25 per cent rule was adopted by the Treasury Department for purposes of administrative convenience. The Department has now concluded that continued rigid adherence to the 25 per cent rule is inappropriate, for it is Treasury's experience that frequently the quantity of such or similar merchandise sold in the home market, although less than 25 per cent of the quantity sold other than for exportation to the United States is more than adequate for purposes of making fair value comparisons.

Accordingly, it is proposed to amend Section 153.4 of the Customs Regulations by deleting paragraph (b) and redesignating paragraph (c) as paragraph (b).

(Secs. 205, 407, 42 Stat. 13, as amended, 18; 19 USC 164, 173)

This amendment is proposed to be applied to all antidumping proceedings with respect to which neither a decision, final or tentative, nor a notice of withholding of appraisement has been published as of the date the amendment becomes effective.

L/3537

Page 4

Prior to the issuance of the proposed amendment, consideration will be given to any relevant data, views, or arguments which are submitted in writing to the Commissioner of Customs, 2100 K Street NW., Washington, DC 20226, and received not later than 30 days from the date of publication of this notice in the Federal Register. No hearing will be held.

(Seal)

Myles J. Ambrose
Commissioner of Customs

Approved: 23 April 1971

Eugene T. Rossides,
Assistant Secretary
of the Treasury.

ANNEX III

Antidumping

Treasury Proposes Change in 25 Per Cent Rule
for Fair Value Determinations

Assistant Secretary of the Treasury Eugene T. Rossides announced on 26 April 1971 a proposed rule making under which the Treasury may make fair value determinations on the basis of home market prices, even if the quantity of the merchandise sold for home consumption is less than 25 per cent of the total quantity sold other than for exportation to the United States.

In carrying out antidumping investigations, the Treasury Department normally compares for fair value purposes the difference between the home market price of the merchandise in the country of exportation with the price at which the merchandise is sold in the United States. Sales at less than fair value take place when the price in the United States is less than that in the home market.

The Antidumping Act provides that the price at which merchandise is sold by the manufacturer to third countries may be substituted for home market price when the quantity sold for home consumption is so small in relation to that sold for exportation to countries other than the United States "as to form an inadequate basis for comparison".

In declaring what constitutes an "inadequate basis for comparison" for fair value purposes, the Antidumping Regulations presently state that "generally" the quantity of merchandise sold for consumption in the home market will be considered inadequate if it is less than 25 per cent of the quantity sold other than for exportation to the United States.

This 25 per cent rule has been rigidly adhered to, notwithstanding the use of the word "generally". The Treasury Department has now tentatively concluded that continued rigid adherence to this 25 per cent rule is not only inappropriate but inconsistent with the intent of the Antidumping Act. Mr. Rossides noted that frequently the quantity of a particular article sold in the home market, although less than 25 per cent of the quantity sold other than for exportation to the United States, is nevertheless more than adequate for purposes of making fair value comparisons.

Accordingly, the Treasury Department is issuing a notice of proposed rule making which calls for elimination of the 25 per cent rule. The consequences of this will be to enable the Treasury to determine on a case-by-case basis when the quantity of sales in the home market is or is not adequate for purposes of fair value comparison.

Prior to the adoption of this proposed change, the Treasury Department will give consideration to all relevant views that are submitted in writing within 30 days from the date of publication of the notice of proposed rule making in the Federal Register. The notice is scheduled for publication in the Federal Register on Tuesday, 27 April 1971.