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UNITED STATES ANTI-DUMPING REGULATIONS

Proposed Amendments

The following communication has been received from the Permanent Mission of the United States.

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I am attaching for circulation to the contracting parties under Article 15 of the GATT Anti-Dumping Code the proposed amendments to customs regulations on anti-dumping pertaining to (a) merchandise from State-controlled economies, (b) requirements for anti-dumping petitions, and (c) disclosure conferences during full-scale investigations.

DEPARTMENT OF THE TREASURY

CUSTOMS SERVICE

(19 CFR Part 153)

ANTI-DUMPING

Proposed Amendments Pertaining to Merchandise  
from State-Controlled-Economy Countries

AGENCY: United States Customs Service, Treasury Department.

ACTION: Proposed rule-making.

SUMMARY: These proposed amendments would modify procedures as they relate to investigations under the Anti-Dumping Act, 1921, as amended, covering merchandise imported from State-controlled-economy countries. The amendments would provide that when merchandise from a State-controlled-economy country is being compared with the constructed value of merchandise in a non-State-controlled-economy country or countries, adjustments may be made to reflect differences in economic factors between the State-controlled-economy country and a non-State-controlled-economy country. Such a procedure would tend to recognize and preserve any relative efficiencies or natural advantages in the State-controlled-economy country. In addition, the requirements for a petition covering merchandise from a State-controlled-economy country to be in satisfactory form are proposed to be modified.

EFFECTIVE DATE: Comments must be received on or before 8 February 1978.

ADDRESS: Comments must be addressed to the Commissioner of Customs, Attention: Regulations and Legal Publications Division, United States Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Theodore Hume, Office of the General Counsel, United States Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, D.C., 20220, 202-566-2941.

SUPPLEMENTARY INFORMATION: The Trade Act of 1974 amended the Anti-Dumping Act, 1921, as amended (19 U.S.C. 160 et. seq.) (hereafter referred to as "the Act") by providing that where information indicates that:

"The economy of the country from which the merchandise is exported is State-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 foreign market value under Sub-Section (a), the Secretary shall determine the foreign market value of the merchandise on the basis of the normal costs, expenses, and profits as reflected by either:

"(1) The prices, determined in accordance with Sub-Section (a) and Section 202, at which such or similar merchandise of a non-State-controlled-economy country or countries is sold either (A) for consumption in the home market of that country or countries, or (B) to other countries, including the United States; or

"(2) the constructed value of such or similar merchandise in a non-State-controlled-economy country or countries as determined under Section 206." (19 U.S.C. 164(c)).

Section 153.7 of the Customs Regulations (19 CFR 153.7) reflects the statutory language in Section 205(c) (19 U.S.C. 164(c)).

Based upon experience since enactment of the Trade Act of 1974 and in an effort to make comparisons on more equivalent and realistic bases, consistent with the Act, it has been concluded that Sub-Section 153.7 of the Customs Regulations (19 CFR 153.7) should be amended. It is proposed that if such or similar merchandise is sold in a non-State-controlled-economy country or countries which is (are) concluded to be comparable in terms of economic development to the State-controlled-economy country under investigation, then for comparison purposes, prices will be used at which such or similar merchandise is sold either (1) for consumption in the home market of that country or countries, or (2) to other countries, including the United States. If such or similar merchandise is not sold in a non-State-controlled economy country having a level of economic development comparable to that in the State-controlled-economy country under investigation, then generally the constructed value of such or similar merchandise in a non-State-controlled-economy country or countries will be employed, with adjustments to that constructed value for differences in economic factors as reflected by the normal costs in a non-State-controlled-economy country or countries determined to be comparable in terms of economic development to the State-controlled-economy country under investigation.

Alternatively, in the situation where constructed value is being employed, adjustments may be made for difference in cost of production as reflected by the costs of specific factors of production in a non-State-controlled-economy country or countries determined to be comparable in economic development to the State-controlled-economy country under investigation. Such specific objective factors, as hours of labour required,

quantity of material employed, and amount of energy consumed, in the State-controlled-economy country would have to be verified to the satisfaction of the Secretary and then could be valued in the more comparable non-State-controlled-economy country or countries where production of such or similar merchandise is not actually occurring.

In the case of Sub-Section 153.27(a)(3)(ii) of the Customs Regulations (19 CFR 153.27(a)(3)(ii)), it is proposed that if the class or kind of merchandise in question is exported from a State-controlled-economy country, the information specified in the regulations should include not only the information presently set forth in Sub-Section 153.27(a)(3)(ii), but also constructed information of such or similar merchandise produced in a non-State-controlled-economy country, including the United States, if constructed information for such or similar merchandise in another non-State-controlled-economy country is not available. It is also proposed that Sub-Section 153.27(a)(3)(iii) (19 CFR Sub-Section 153.27(a)(3)(iii)) be amended to reflect the changes in Sub-Section 153.27(a)(3)(ii).

Accordingly, it is proposed that Section 153.7 and Sub-Section 153.27(a)(3)(ii), (iii) of the Customs Regulations (19 CFR 153.7, 153.27(a)(3)(ii), (iii)) be revised to read as follows:

Sub-Section 153.7 Merchandise from State-controlled-economy country

If the information available indicates to the Secretary that the economy of the country from which the merchandise is exported is State-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 Sub-Sections 153.2, 153.3, 153.4, the Secretary shall determine fair value in the basis of the normal costs, expenses, and profits as reflected by either:

(a) The prices, determined in accordance with Section 205(a) and Section 202 of the Act (19 U.S.C. 164(a), 161) at which such or similar merchandise of a non-State-controlled-economy country or countries, including the United States, is sold either (1) for consumption in the home market of that country or countries, or (2) to other countries, including the United States; or

(b) In cases where such or similar merchandise is not produced in a non-State-controlled-economy country or countries which is (are) concluded to be comparable in terms of economic development to the State-controlled-economy country from which the merchandise is exported, the constructed value of such or similar merchandise in a non-State-controlled-economy country or countries, including the United States, as determined under Section 206 of the Act (19 U.S.C. 165), will be used for comparison purposes.

(1) When constructed value is used, the constructed value of such or similar merchandise in a non-State-controlled-economy country may be adjusted for differences in economic factors between the non-State-controlled economy country or countries actually producing such or similar merchandise and a non-State-controlled-economy country or countries determined to be comparable in terms of economic development to the State-controlled-economy country under investigation. Such adjustments to the constructed value will be based upon differences in normal costs of producing the subject merchandise between the non-State-controlled-economy countries being compared.

(2) Alternatively, when constructed value is used, the constructed value of such or similar merchandise in a non-State-controlled economy country may be adjusted for differences in cost of production as reflected by differences in the costs of specific objective components or factors of production. Such specific components or factors of production, including but not limited to, hours of labour required, quantities of raw materials employed, and amount of energy consumed, will be obtained from the State-controlled-economy country under investigation. If verification of such figures in the State-controlled-economy country is concluded to the satisfaction of the Secretary, such components or factors may be valued in a non-State-controlled-economy country determined to be comparable in economic development to the State-controlled-economy country under investigation. In addition to the values thus obtained an amount for general expenses and profits, as required by Section 206(a)(2) of the Act (19 U.S.C. 165(a)(2)), will be made.

(c) The prices or the constructed value of the United States produced merchandise generally will be utilized where sales of such or similar merchandise in any other non-State-controlled-economy country are not available or do not provide an adequate basis for comparison.

Sub-Section 153.27 Suspected dumping; nature of information to be made available

(a) General \* \* \*

(3) Price information; fair value. \* \* \*

(ii) If the merchandise is being exported from a State-controlled-economy country,

(a) The price or prices at which such or similar merchandise of a non-State-controlled-economy country or countries is sold for consumption in the home market of that country or countries or to other countries (including the United States if such or similar merchandise is not sold or offered for sale in any other non-State-controlled-economy country), and

(b) The constructed value of such or similar merchandise in a non-State-controlled-economy country (including the United States if constructed value information from any other non-State-controlled-economy country is not available), such constructed value to be determined in accordance with Sub-Section 153.7(b).

(iii) If the information required under paragraph (a)(3)(i) is not available, the constructed value (as defined in Section 206 of the Act (19 U.S.C. 165)) of such merchandise in the country of exportation.

\* \* \* \* \*

The Customs Service invites comments from all interested persons on the proposed amendments to the Customs Regulations. Comments submitted will be available for public inspection in accordance with Sub-Section 103.8(b) of the Customs Regulations (19 CFR 103.8(b)) during regular business hours at the Regulations and Legal Publications Division Headquarters, United States Customs Service, 1301 Constitution Avenue NW., Washington D.C. 20229.

R.E. Chasen,  
Commissioner of Customs

Approved: 30 December 1977.

Henry C. Stockwell, Jr.,  
Acting General Counsel  
of the Treasury.

CUSTOMS SERVICE

(19 CFR Part 153)

ANTI-DUMPING PETITIONS

Proposed Amendments Pertaining to Requirements

AGENCY: United States Customs Service, Treasury Department.

ACTION: Proposed rule-making.

SUMMARY: This proposed amendment would modify the requirements for petitions being filed under the Anti-Dumping Act, 1921, as amended. For a petition to be considered to have been received in acceptable form, additional information should be included indicating a loss of sales, actual or anticipated, or price depression or suppression by reason of the alleged sales or offers for sale of less than fair value imports. The purpose of this proposed amendment is to allow the Department to consider adequately whether, and to what extent, a causal link exists between the alleged less than fair value imports and any resulting injury as specified in the Act.

EFFECTIVE DATE: Comments must be received on or before 8 February 1978.

ADDRESS: Comments must be addressed to the Commissioner of Customs, Attention: Regulations and Legal Publications Division, United States Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Theodore Hume, Office of the General Counsel, United States Treasury Department, 1500 Pennsylvania Avenue NW., Washington D.C. 20220, 202-566-2941.

SUPPLEMENTARY INFORMATION: The Anti-Dumping Act of 1921, as amended by the Trade Act of 1974, provides that if the Secretary, in making a determination as to whether to initiate an anti-dumping investigation concludes that:

"There is substantial doubt 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, he shall forward to the Commission the reasons for such substantial doubt (19 U.S.C. 160(d)(2))."

In order to assist the Treasury Department in concluding whether there is "substantial doubt", present regulations provide that certain injury information should be supplied for a communication (hereinafter referred to as a "petition"), to have been received in acceptable form and to make sufficient allegations to warrant a formal full-scale investigation (19 CFR 153.27(a)). Based upon experience since the Trade Act of 1974, it has been decided that it would further assist the Treasury Department in fulfilling its responsibilities under the law, to seek information which more specifically relates to the causal link, the "by reason of", between the alleged less than fair value imports and any injury being suffered by the United States industries concerned.

In order to allow the Department to consider adequately whether, and to what extent, such a causal link exists, it is proposed that Sub-Section 153.27(a)(4)(vi) of the Customs Regulations (19 CFR 153.27(a)(4)(vi)), be amended to indicate as information which should be included in a petition, information showing whether there have been, or are anticipated to be, either a loss of sales as a direct result of sales or offers for sale of the specific less than fair value imports alleged, or a depression or suppression of prices directly occasioned by sales or offers for sale of such imports.

Accordingly, it is proposed to revise Sub-Section 153.27(a)(4)(vi) of the Customs Regulations (19 CFR 153.27(a)(4)(vi)), to read as follows:

Sub-Section 153.27 Suspected dumping; nature of information to be made available

(a) \* \* \*

(4) \* \* \*

(vi) Information which indicates specifically either that sales have been, or are likely to be, lost as a direct result of the sales alleged to be at less than fair value, or that sales or offers for sale of such merchandise alleged to be sold at less than fair value have directly caused price depression or suppression. Additionally, information concerning any margin of underselling of the less than fair value imports, i.e., the extent to which the price discrimination permits the foreign exporter to undersell or offer to undersell the domestic merchandise. Such information, with details, should be supplied for the petitioner and for the industry.

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The Customs Service invites comments from all interested persons on the proposed amendments to the Customs Regulations. Comments submitted will be available for public inspection in accordance with Sub-Section 103.8(b)



of the Customs Regulations (19 CFR 103.8(b)), during regular business hours at the Regulations and Legal Publications Division, Headquarters, United States Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229.

R.E. Chasen,  
Commissioner of Customs

Approved: 30 December 1977

Henry Stockwell,  
Acting General Counsel  
of the Treasury.

DEPARTMENT OF THE TREASURY

CUSTOMS SERVICE

(19 CFR Part 153)

ANTI-DUMPING

Proposed Amendments to Customs Regulations Relating to  
Disclosure Conferences in Connexion with  
Full-Scale Anti-Dumping Investigations

AGENCY: United States Customs Service, Treasury Department.

ACTION: Proposed rule-making.

SUMMARY: This proposed amendment applies to an administrative procedure under the Anti-Dumping Act, 1921, as amended. During the course of an anti-dumping investigation, the Customs Service traditionally has followed a procedure whereby it will, if requested, provide interested persons with an informal oral disclosure of the bases for a tentative, and in some cases for a final, anti-dumping determination. Such disclosures are as detailed as possible, consistent with the need to protect confidential or other information, as authorized by law. It is now desired to reflect this procedure in regulations, as well as effect a change in the timing of such disclosure conferences.

EFFECTIVE DATE: Comments must be received on or before 6 February 1978.

ADDRESS: Comments must be addressed to the Commissioner of Customs, Attention: Regulations and Legal Publications Division, United States Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Theodore Hume, Office of the General Counsel, Treasury Department, 1500 Pennsylvania Avenue NW., Washington, D.C. 20220, 202-566-2941.

SUPPLEMENTARY INFORMATION: Under the Anti-Dumping Act of 1921, as amended, the Secretary of the Treasury is required to make a determination whether 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 (19 U.S.C. 160(a)). In order to inform interested persons of the bases for tentative findings

and conclusions, it has been found helpful, in addition to providing such statements in a notice of tentative determination published in the Federal Register, to disclose to such persons orally the bases for the tentative disposition of an anti-dumping investigation. In the past, on an informal basis, the Customs Service has disclosed the bases for calculations leading to tentative determinations prior to the publications of the tentative determination. It has now been decided that such disclosure should be reflected in regulations and should be continued, but at a time after publication of the tentative determination, not before; or before a final affirmative determination pursuant to Sub-Section 153.36 of the Customs Regulations (19 CFR 153.36). This disclosure is independent of the opportunity provided to present oral views before the Treasury Department, which interested persons may request in connexion with a tentative Treasury action, or as appropriate, prior to a final Treasury action where final action is taken pursuant to Sub-Section 153.36 of the Customs Regulations (19 CFR 153.36).

Accordingly, it is proposed that Sub-Section 153.31 of the Customs Regulations (19 CFR 153.31) be amended by inserting a new paragraph 153.31(d) to read as follows:

Sub-Section 153.31 Full-scale investigation

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(d) Disclosure conference. After the publication in the Federal Register of a "Withholding of Appraisement Notice", or any other notice of tentative disposition of an anti-dumping investigation, the Commissioner of Customs shall conduct, at the request of any interested person, a disclosure conference during which the Customs Service will disclose to such interested person the bases for the tentative disposition of an anti-dumping investigation. Where it appears to the Secretary that an affirmative determination pursuant to Sub-Section 153.36 is required, and no request has been made for a withholding of appraisement under Sub-Section 153.35(b), persons known to be interested in the proceeding will be so informed in sufficient time so they may request a disclosure prior to the hearing which may be requested pursuant to Sub-Section 153.40. Confidential information will be treated consistently with the procedures set forth in Sub-Section 153.22. Nothing in this Sub-Section will affect access to information which is otherwise available pursuant to Sub-Section 153.21.

The Customs Service invites comments from all interested persons on the proposed amendments to the Customs Regulations. Comments submitted will be available for public inspection in accordance with Sub-Section 103.8(b)

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of the Customs Regulations (19 CFR 103.8(b)) during regular business hours at the Regulations and Legal Publications Division, Headquarters, United States Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229.

R.E. Chasen,  
Commissioner of Customs

Approved: 30 December 1977.

Henry C. Stockwell, Jr.,  
Acting General Counsel  
of the Treasury.

