

GENERAL AGREEMENT ON
TARIFFS AND TRADE

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UNITED STATES ANTI-DUMPING REGULATIONS

Addendum

Final Rule Concerning Disclosure Conferences

The following communication, dated 10 April 1978, has been received from the Permanent Mission of the United States.

The Treasury Department published in the Federal Register of 23 March 1978, the enclosed notice of an amendment of the Customs regulations on anti-dumping. I am submitting this notice for circulation to the contracting parties as provided for in Article 15 of the Anti-Dumping Code.

RULES AND REGULATIONS

Title 19-Customs Duties

CHAPTER 1-UNITED STATES CUSTOMS SERVICE,
DEPARTMENT OF THE TREASURY

(T.D. 78-951)

PART 153-ANTI-DUMPING

Disclosure conferences

Agency: United States Customs Service, Department of the Treasury.

Action: Final rule.

Summary: This document amends the Customs Regulations to provide that a disclosure conference will be held by the Customs Service, at the request of any interested person, after the publication of a tentative determination in a proceeding under the Anti-Dumping Act, 1921, as amended. In the absence of a tentative determination, the conference will be held, at the request of any interested person, before the final determination is published. At the conference, interested persons may obtain disclosure of the bases for the tentative or final determination. These conferences are a means for providing information to interested persons concerning the bases for the Treasury Department's determinations.

Effective date: 24 April 1978.

For further information contact:

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Treasury Department,
1500 Pennsylvania Avenue NW.,
Washington, D.C. 20220,
202-566-2941.

SUPPLEMENTARY INFORMATION

Background

On 6 January 1978 notice was published in the Federal Register (43 FR 1099) of a proposal to amend part 153 of the Customs Regulations (19 CFR part 153) by adding a new Section 153.31(d) to set forth procedures to be followed by the Customs Service at informal disclosure conferences in advising interested persons of the bases for tentative, and in some cases final, determinations in anti-dumping proceedings. These conferences are a means for providing information to interested persons concerning the bases for the Treasury Department's determinations. In the case of a withholding of appraisement or other tentative determination, the disclosure conference will be held after the publication of the tentative determination. If no tentative determination is made, the disclosure conference will be held before publication of the final determination.

Written comments on the proposed amendment to be received on or before 6 February 1978 were invited from interested persons. As explained below, the comments have not resulted in any changes to the proposal.

DISCUSSION OF COMMENTS

All commenters supported the adoption of regulations specifically providing for informal disclosure conferences in anti-dumping proceedings. However, some commenters objected to the proposal that the disclosure conferences be held after publication in the Federal Register of a "Withholding of Appraisement Notice" or other notice of tentative disposition of an anti-dumping investigation. These commenters urged that holding the conference after the tentative determination would deny interested persons, particularly importers and foreign exporters and manufacturers, the opportunity, at an early stage in the proceedings, to provide additional information to present their views, and to minimize or eliminate dumping margins through price adjustments.

Under present procedures, after Customs has initially reviewed the available data for determining foreign market value or constructed value and purchase price or exporter's sales price as applicable, and has made any tentative adjustments considered appropriate, interested persons may request a disclosure conference to discuss the tentative calculations and adjustments. The calculations and adjustments discussed at the conference, however, are subject to further analysis and review within Customs, and all available information is subject to a complete analysis and review by the Treasury Department before a tentative or final determination is published in the proceeding.

Because of the complex issues of fact and law involved in anti-dumping proceedings, the Treasury Department has concluded that meaningful disclosure of the bases for a tentative determination is possible only after the analysis and review process is completed. Ample time is provided thereafter for the presentation of information and views. The regulations provide that interested persons may submit information and views at any time during the course of an anti-dumping proceeding (19 FR 153.31): Provided, that such submissions are received within the time-limits established. These provisions are in addition to the provisions for a hearing to be held after the publication of a notice of withholding of appraisement or other tentative determination (19 CFR 153.40). In addition, any price changes made by foreign manufacturers or exporters to minimize or eliminate dumping margins before the publication of the tentative determination must be regarded as speculative to the extent that the price changes are based on assumptions as to what the final calculations and adjustments will be.

For these reasons, and after consideration of all comments received and further review of this matter, it has been determined to adopt the amendment as proposed.

DRAFTING INFORMATION

The principal author of this document was Edward T. Rosse, Regulations and Legal Publications Division, United States Customs Service. However, other personnel in the Customs Service and the Treasury Department assisted in its development.

AMENDMENT TO THE REGULATIONS

Part 153 of the Customs Regulations (19 CFR part 153) is amended as set forth below.

R.E. Chasen,
Commissioner of Customs,
III Approved:
14 March 1978

Robert H. Mundheim,
General Counsel of the Treasury.

Section 153.31 is amended by adding a new paragraph (d) to read as follows:

Section 153.31 Full-scale investigation.

(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 Section 153.36 is required, and no request has been made for a withholding of appraisement under 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 Section 153.40. Confidential information will be treated consistently with the procedures set forth in Section 153.22. Nothing in this sub-section will affect access to information which is otherwise available pursuant to Section 153.21.

(Sections 201-212, 407, 42 Stat. 11 et seq., as amended, sec 5, 72 Stat. 585 secs. 406, 407, 42 Stat. 18 (5 U.S.C. 301, 19 U.S.C. 160-173).)

(FR Doc. 78-7648 Filed 3-22-78; 8.45 a.m.)

