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L/4767

29 January 1979

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GENERAL AGREEMENT ON  
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Original: English

UNITED STATES ANTI-DUMPING REGULATIONS

Proposed Amendments

The following communication, dated 15 January 1979, has been received from the Permanent Mission of the United States.

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I am sending you a copy of proposed amendments to the customs regulations concerning deposit of estimated dumping duties for merchandise subject to a dumping finding and use of best information available.

DEPARTMENT OF THE TREASURY

CUSTOMS SERVICE

(19 CFR Part 153)

ANTI-DUMPING

Proposed Amendments to the Customs Regulations Concerning  
Deposit of Estimated Dumping Duties for Merchandise Subject  
to a Dumping Finding and Use of Best Information Available

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

ACTION: Proposed rule.

SUMMARY: This document advises the public that Customs proposes to amend its anti-dumping regulations to require the deposit of estimated dumping duties at the time of entry for merchandise subject to a finding of dumping. The manner in which this requirement would be implemented is addressed in the document. The proposed amendments also would provide for the submission of information in anti-dumping proceedings and specify when and how alternative "best" sources of information would be used if submissions are incomplete or untimely. The proposed amendments further provide that following the issuance of a finding, information necessary for the assessment of special dumping duties must be submitted promptly for entries subject to the finding.

DATES: Comments must be received on or before 12 February 1979.

ADDRESS: Written comments should be addressed to the Commissioner of Customs. Attention: Regulations and Legal Publications Division, Office of Regulations and Rulings, United States Customs Service, 1301 Constitution Avenue NW., Room 2335, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Legal Aspects: Theodore Hume (202-566-2806), Office of Chief Counsel; Operational Aspects: David L. Binder (202-566-5492), Duty Assessment Division, Office of Operations, United States Customs Service, 1301 Constitution Avenue NW., Washington D.C. 20229.

SUPPLEMENTARY INFORMATION:

Background: Importers of merchandise subject to a withholding of appraisal notice issued pursuant to Sub-Section 153.35. Customs Regulations (19 CFR 153.35), and thereafter a finding of dumping issued pursuant to Sub-Section 153.43 (19 CFR 153.43), are required at the time of entry of the

merchandise to post a bond in an amount deemed appropriate by the district director to cover potential dumping liability. However, after a dumping finding, if the importer is found to be related to the foreign producer within the meaning of Section 207, Anti-Dumping Act 1921, as amended (19 U.S.C. 166) ("the Act"), and the resale price of the merchandise in the United States is not known at the time of entry, importers are required by Sub-Section 153.51(b). Customs Regulations (19 CFR 153.31(b)), to post a bond "in an amount equal to the estimated value of the merchandise". The actual payment of dumping duties, however, occurs only after final ascertainment of all duties due.

It is proposed to amend Sub-Section 153.50. Customs Regulations (19 CFR 153.50), to require importers to deposit estimated dumping duties at the same time the deposit of estimated regular customs duties is required. The adoption of this procedure would provide substantial assurance that the actual amount of dumping duties assessed would be collected with minimal commitment of resources. This change also should provide a greater incentive for foreign manufacturers to adjust their prices to eliminate dumping margins because a failure to adjust prices would result in the importers having to deposit an additional amount, as well as incurring potential dumping duty liability. In addition, there should be greater incentive for those persons responsible for submitting the data upon which calculations of special dumping duties are based to make timely and complete submissions, because the amount of the deposits may be revised only when adequate data are provided timely.

The proposed amendments would apply to merchandise of a class or kind subject to a dumping finding and entered on or after the date the finding is published in the Federal Register. In the case of merchandise imported under the conditions described in Section 208 of the Act, estimated dumping duties would be required in addition to the bond. However, a deposit of estimated dumping duties would not be required for importations of merchandise subject to a withholding of appraisement notice and entered prior to a dumping finding. Such merchandise would continue to be subject to the bonding requirements of Sub-Section 153.51, Customs Regulations (19 CFR 153.51).

Under existing procedures, after the United States International Trade Commission ("the ITC") determines that sales at less than fair value cause or threaten injury to a domestic industry pursuant to Section 201(a) of the Act (19 U.S.C. 160(a)), it so advises the Secretary of the Treasury. The advice is forwarded to Customs for preparation of the formal finding of dumping. If the proposed procedures requiring the deposit of estimated dumping duties become effective, dumping findings would be processed directly in the Department, without referral to Customs. These findings generally would be published in the Federal Register no later than seven days after the affirmative injury determination is published in the Federal Register by the ITC.

Description of procedures

Generally, the amount of the required deposit would correspond to the weighted average margin based upon total sales for a manufacturer as calculated for purposes of the determination of sales at less than fair value pursuant to Sub-Sections 153.36 or 153.37, Customs Regulations (19 CFR 153.36, 153.37). In the case of a manufacturer not investigated during the fair value phase of the proceedings, the initial deposit required for that manufacturer's entries would be equal to a weighted average of the margins for all manufacturers investigated. If one or more manufacturers investigated were found to have no margins, then a zero margin, appropriately weighted, would be averaged into the deposit calculation for a non-investigated manufacturer.

The first adjustments to the amounts required to be deposited as estimated dumping duties ordinarily would occur in conjunction with the preparation of the first master lists. A master list is the form by which Customs Headquarters advises Customs field officers as to the manner in which the amount of dumping duties, if any, should be determined for a particular entry subject to a dumping finding. To expedite issuance, the first master list questionnaires would be sent to each known foreign manufacturer and related importer of merchandise subject to a finding no later than the time at which a finding is published in the Federal Register. The first master list request could cover all unappraised entries subject to the dumping finding. Manufacturers could, however, prepare their submissions in advance, because general questionnaires would be made available before a finding is published.

A period of thirty days to respond would be provided, with limited extensions in most cases not to exceed sixty days in total. As a general rule, a master list would be issued to Customs field officers no more than six months after complete responses were received and a verification, when appropriate, had been conducted.

If the response period does not correspond to a manufacturer's account accounting cycle, a prompt issuance of the first master list would be contingent on a waiver by the manufacturer of any claim for adjustments for factors not finally determined at the time of its response (e.g. year-end discounts). Absent a waiver, the estimated dumping duties resulting from margins determined at the conclusion of the fair value phase would be applied until complete responses are received and a master list is issued.

Subsequent master list questionnaires generally would be distributed on an annual basis, with appropriate revisions in the deposit amounts made in the same time frame. If this schedule does not conform to the manufacturer's accounting cycle, the period of the second, and any subsequent, master list request would be adjusted to correspond to such accounting cycle. In

situations where timely data is not supplied to permit updating of master lists, Customs would use the best information available in preparing new master lists and revising the deposit amounts.

While it would be the general intention to use the fair value results, Customs would consider expediting the first master list preparation and thereby the initial deposit amount in any case where the fair value margin was greater than 10 per cent. To implement this approach, foreign manufacturers potentially subject to a finding would have to submit master list information for the period up to the point of the determination of sales at less than fair value. Furthermore, this information must be received no later than thirty days after the determination of sales at less than fair value. Upon receipt, a master list analysis would be considered on an expedited basis to permit, in those instances, a revision of the fair value figures for purposes of the estimated deposits prior to the issuance of the finding. As revised, these figures would be used to determine the first deposit amounts.

This expedited master list procedure would not be considered for a manufacturer if its fair value phase margins were 10 per cent or less. In those situations where the fair value phase margins were 10 per cent or less, adjustments to the deposit amount would be considered only when the first master list is issued.

It is proposed that where master lists have been issued, the amount of the dumping duty deposit would be used initially upon the experience of the latest master list. If no master list has been issued, then the fair value phase margins would be used. The deposit requirement would apply to all merchandise subject to a finding of dumping as listed in Sub-Section 153.46, Customs Regulations (19 CFR 153.46), which is entered or withdrawn from warehouse for consumption on or after the effective date of these proposed amendments.

It is intended under the proposed amendments that Customs Headquarters personnel would calculate the appropriate amount of the estimated dumping duty required to be deposited. This amount would be determined on a percentage basis for the class or kind of merchandise subject to the finding, with possible different amounts for particular manufacturers. These percentage figures would be distributed to Customs field officers. The field officers, in reviewing the appropriate documents, would advise the importer of the amount required for the deposit to cover the estimated dumping duty, as well as regular Customs duties.

#### Use of best information available

It also is proposed to amend Sub-Sections 153.31(a) and 153.54, Customs Regulations (19 CFR 153.31(a), 153.54), insofar as they pertain to the use of "best information available". The proposed changes would

specifically emphasize that Customs intends to utilize the best information available whenever responses are either untimely or incomplete and thereby would delay either the fair value investigation or the assessment process.

Under the proposed procedures, Customs would indicate in its request for information the appropriate time within which submissions of data should be made. If submissions are not made within that time period and extensions have not been granted, Customs would proceed to use the best information available. For example, the use of the best information available may mean relying upon previously submitted data without allowances specified in Section 202 of the Act (19 U.S.C. 161). Similarly, in situations where some alternative method of calculating fair value or foreign market value is available, including cost figures or official reports of a company which can be used to derive appropriate prices or costs, that alternative method could be utilized.

#### Technical amendment

It is proposed to further amend Sub-Section 153.54 to provide that information necessary for the assessment of special dumping duties shall be submitted for all entries subject to the dumping finding instead of only for entries made from the date of publication of the Withholding of Appraisement Notice to the date of issuance of a finding. The purpose of this change is to clarify that unappraised entries made prior to the date of the publication of the Withholding of Appraisement Notice may be subject to special dumping duties.

#### Authority

The authority for the proposed amendments is R.S. 251, as amended (19 U.S.C. 66), Section 407, 42 Stat. 18 (19 U.S.C. 173), Sections 623, 624, 46 Stat. 759 (19 U.S.C. 1623, 1624), 77A Stat. 14, Tariff Schedules of the United States (19 U.S.C. 1202, General Headnote 11).

#### Comments

Customs invites written comments, preferably in triplicate, on the proposed amendments. Comments submitted will be available for public inspection in accordance with Sub-Section 103.8(b), Customs Regulations (19 CFR 103.8(b)), during regular business hours at the Regulations and Legal Publications Division, Office of Regulations and Rulings, Headquarters, United States Customs Service, 1301 Constitution Avenue NW., Room 2335, Washington, D.C. 20229.

Drafting information

The principal author of this document was John E. Elkins, Regulations and Legal Publications Division, Office of Regulations and Rulings, United States Customs Service. However, other personnel in the Customs Service and the Department of the Treasury assisted in its development.

Proposed amendments

1. It is proposed to revise paragraph (a) of Sub-Section 153.31, Customs Regulations (19 CFR 153.31), to read as follows:

Sub-Section 153.31 Full-scale investigation

(a) Initiation of investigation. Upon publication of an "Anti-Dumping Proceeding Notice", the Commissioner shall proceed by a full-scale investigation, or otherwise, to obtain such additional information, if any, as may be necessary to enable the Secretary to reach a determination as provided by Section 153.32. Customs will indicate in its request for information the appropriate time period within which the submissions of data must be made. If adequate submissions are not made within the specified time limits. Customs will proceed to use the best information available. To verify the information presented, or to obtain further details, investigations may be conducted by Customs representatives in foreign countries, unless the country concerned objects to the investigation. If an adequate investigation is not permitted, or if any information deemed necessary is withheld, the Secretary will reach a determination on the basis of the best information available.

In reaching a determination, the Secretary may utilize cost figures or official reports of a company or companies as necessary to determine appropriate costs or prices.

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2. It is proposed to revise Sub-Section 153.50, Customs Regulations (19 CFR 153.50), to read as follows:

Sub-Section 153.50 Release of merchandise; bond; deposit of estimated duties

When the district direct or, in accordance with Section 153.35(c), has received a notice of withheld appraisement or when he has been advised of a finding provided for in Section 153.43, and so long as such notice or finding is in effect, he shall withhold release of any merchandise of a class or kind covered by such notice or finding unless one of the following conditions is met:

(a) In the case of merchandise subject to a withholding of appraisement notice, the appropriate bond is filed or is on file, as specified in Sub-Section 153.51.

(b) In the case of merchandise subject to a finding, estimated dumping duties have been deposited in accordance with sub-part G of Part 141, Customs Regulations (19 CFR Part 141), and an appropriate bond which may be required by law or regulations is provided; or

(c) The merchandise covered by a specific entry will be appraised without regard to the Act.

3. It is proposed to revise Sub-Section 153.54, Customs Regulations (19 CFR 153.54), to read as follows:

Sub-Section 153.51 Timely submission of information for dumping appraisement purposes

Following the issuance of a finding of dumping, information necessary for the assessment of special dumping duties must be submitted as promptly as possible to the Commissioner, in such form as he may require, for entries subject to the finding. The necessary information shall be provided regularly on a periodic basis. Customs will indicate in its request for information the appropriate period for which data is being sought and the time within which the submissions should be made. If adequate submissions are not made within the specified time, Customs will use the best information available. In utilizing the best information available, information previously submitted by the same manufacturer may be used without the allowance of adjustments pursuant to Section 202 of the Act (19 U.S.C. 161). Also, where an alternative method of calculating the foreign market value (19 U.S.C. 164) or the constructed value (19 U.S.C. 165) is available, that alternative method may be utilized as the best information available where submissions otherwise are deemed inadequate.

R.E. Chasen,  
Commissioner of Customs

Approved: 8 December 1978.

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