PROCEDURE UNDER UNITED STATES ANTI-DUMPING ACT

Proposed Changes

The following communication has been received from the United States delegation.

I am enclosing herewith a copy of the proposed amendments of United States customs regulations relating to procedures under the Anti-Dumping Act of 1921, as amended. These changes have been proposed in an effort to improve United States administrative procedures and to meet complaints registered by interested parties. They are based on an extensive review of United States anti-dumping procedures, which included public hearings during January of this year involving participation of exporters, importers, and domestic producers.

During the sixty days following publication of these proposed amendments in the Federal Register on 23 April, the views of those interested in the regulations may be brought to the attention of the United States Treasury. Following this sixty-day period, the Treasury will re-examine the proposed amendments in light of the views presented.

Foreign governments have been advised that during the sixty-day period mentioned above, they may make a formal submission of their views through the Department of State.

The proposed amendments are all subject to change and no fixed timetable has been established for their formal adoption. In conclusion, I should like to make clear that the action which the United States is taking as outlined above is not intended to delay or prejudice an international approach in GATT to broader problems in the field of anti-dumping policies and procedures.
ANNEX

DEPARTMENT OF THE TREASURY
BUREAU OF CUSTOMS

\[19\text{ CFR, Part 14}\]

Procedure Under Anti-Dumping Act, 1921, as Amended

Notice of Proposed Rule Making

There was published in the Federal Register of 24 December 1963 (28 F.R. 14245), a notice that the Treasury Department was reviewing its regulations relating to procedures under the Anti-Dumping Act, 1921 (19 CFR 14.6-14.13), and announcing that all interested parties would be afforded an opportunity to file written statements and be heard on 23 January 1964, with regard to these regulations.

After consideration of all the written submissions and oral statements it has been concluded that certain amendments of the regulations should be proposed. Accordingly, notice is hereby given pursuant to section 4 of the Administrative Procedure Act (5 U.S.C. 1003) that it is proposed to amend certain sections of Part 14 of the Customs Regulations (19 CFR Part 14) as indicated in tentative form below:

1. Section 14.6 presently provides that any person outside the Customs Service who has reason to believe or suspect that merchandise is being, or is likely to be, imported under circumstances which bring it within the purview of the Anti-Dumping Act may communicate such beliefs or suspicions to an appraiser of merchandise. It is proposed to amend this section to provide that (1) information furnished pursuant to this section should be based on belief and not merely grounded on suspicion, (2) communications setting forth such information should be addressed to the Commissioner of Customs, (3) certain additional information will be requested, (4) notice of the receipt of information pursuant to this section and other data relating thereto will be published in the Federal Register, and (5) the Commissioner's notice that there are reasonable grounds to believe or suspect sales at less than foreign market value (or constructed value) will specify whether the proper basis of comparison for fair value purposes is purchase price or exporter's sales price.

Accordingly, it is proposed to amend section 14.6 as follows:
Amend the first sentence of paragraph (b) to read 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 may communicate such information in writing to the Commissioner of Customs. * * *

Amend paragraph (b)(1) to read 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 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.

Amend paragraph (b)(2) to read as follows:

(2) Such detailed data as are 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.

Amend paragraph (b) by adding a subparagraph (4) to read 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.

Amend paragraph (c) to read 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.
Amend paragraph (d)(1) to read as follows:

(d)(1) Upon receipt pursuant to paragraph (a), (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 "Antidumping Proceeding Notice." The date of such receipt 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 U.S.C. 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.

Amend paragraph (e) to read 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 Appraisal Notice". If the belief or suspicion relates only to certain shippers, the notice shall also include the names of such shippers. The notice shall also specify whether the appropriate basis of comparison for fair value purposes is purchase price or exporter’s 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.

It is proposed to amend Part 14 to change the designation of footnote "14a" to footnote "14".

2. To make available to the fullest extent possible all information received in connexion with anti-dumping proceedings it is proposed to add a new section 14.6a reading 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 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 an officer or employee of the United States Government other than 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 be disregarded for the purpose of the anti-dumping proceeding, and no reliance shall be placed thereon in 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.

(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 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.

3. To provide more definitive standards for determining when and in what manner it is appropriate to make allowances for price differences based on differences in quantities of merchandise sold it is proposed to amend section 14.7(b)(1) to read 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 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 have 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.

4. It is proposed to amend section 14.7(b)(3) to provide that in making fair value comparisons between merchandise sold in the United States and similar merchandise sold in either the home market or third country markets differences in the merchandise will ordinarily be considered only to the extent that such differences affect market value. This will make section 14.7(b)(3) more closely parallel to section 14.7(b)(2). As amended, section 14.7(b)(3) would read 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 subdivisions (C), (D), (E), or (F) of section 212(3), Anti-Dumping Act, 1921, as amended (19 U.S.C. 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.

5. To define offering price to exclude non-bonafide offers, it is proposed to amend section 14.7(b)(4) to read 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.

6. To provide a simple procedure for terminating anti-dumping procedures when changed circumstances indicate that there is no likelihood of sales below fair value it is proposed to amend section 14.7(b) by adding a new sub-paragraph (9) to read as follows:

Section 14.7(b)(9) Likelihood of sales at less than fair value.

(i) Revision of prices. Whenever the Secretary of the Treasury is satisfied that an exporter, promptly after learning 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, 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.
(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 are 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, comment 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.

7. To provide for publication of notice of a tentative determination of whether merchandise is being or is likely to be sold at less than its fair value, and to provide for the receipt of oral views and argument thereon, it is proposed to amend section 14.8(a) to read as follows:

(a) Upon receipt from the Commissioner 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 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. Notice of the tentative determination, which may be referred to as "Notice of Tentative Determination", will be published in the Federal Register. 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 submitted. If any person believes that any information obtained by the Bureau of Customs in the course of an anti-dumping proceeding is inaccurate 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 the information, the accuracy of which is questioned. If the Secretary is satisfied that the circumstances so warrant an opportunity will be afforded by the Secretary or his delegate for both persons to appear, through their counsel or in person, accompanied by counsel if they so desire, to make known their respective points of view and to supply such further information 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. 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.

8. To avoid the retroactive application of dumping duties to merchandise imported by persons whose relationship to the exporter is not such as to justify the use of exporter's sales price as the basis for making the fair value comparison, it is proposed to amend section 14.9(a) to read 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.

9. To provide that certain warranties will not be regarded as affecting purchase price, it is proposed to amend section 14.9(f) to read 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 purchased, or agreed to be purchased, before publication of a "Withholding of Appraisement Notice" with respect to such merchandise will not be regarded as affecting purchase price or exporter's sales price.

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 U.S.C. 160(b) and 161(a)) before the date of the adoption of the amendments.

Prior to the final adoption of any amendments based on the foregoing, consideration will be given to any relevant data, views, or arguments pertaining thereto which are submitted in writing in duplicate to the Commissioner of Customs, Washington, DC 20226, within sixty days from the date of the publication of this notice in the Federal Register. The proposed amendments are to be issued under the authority of R.S. 161, as amended, 251, sec. 407, 42 Stat. 18; 5 U.S.C. 22, 19 U.S.C. 66, 173.

(Signed)
Commissioner of Customs

Approved: 15 April 1964

(Signed)

James A. Reed
Assistant Secretary of the Treasury