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REPORT
No. 1619

ANTIDUMPING ACT, 1921

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Mr. BYRD, from the Committee on Finance, submitted the following

REPORT

[To accompany H. R. 6006]

The Committee on Finance, to whom was referred the bill (H. R. 6006) to amend certain provisions of the Antidumping Act, 1921, to provide for greater certainty, speed, and efficiency in the enforcement thereof, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

COMMITTEE AMENDMENTS

The Finance Committee added the following language after the second sentence of subsection (a):

For the purposes of this subsection, the said Commission shall be deemed to have made an affirmative determination if (A) the Commissioners of the said Commission voting are evenly divided as to whether its determination should be

in the affirmative or in the negative; or (B) the said Commission shall fail to make a determination within the said three months period.

This amendment would provide additional strength to the law. If the Tariff Commission, for some reason, should fail to act within the statutory time of three months, or if the voting by the Commissioners was evenly divided, a finding of injury would result and the Secretary of the Treasury would then carry out the provisions of the law and assess dumping duties.

PURPOSE

H. R. 6006 would amend the Antidumping Act so as to provide for greater certainty, speed, and efficiency in its enforcement. These improvements were suggested by the Treasury Department in accordance with the directive of Congress contained in section 5 of the Customs Simplification Act of 1956 (Public Law 927, 84th Cong.) which called for a review of the operation and effectiveness of the Antidumping Act by the Secretary of the Treasury. A report under this provision of the law was submitted on February 1, 1957.

The antidumping feature of our Tariff Act is of considerable importance in protecting domestic industries from inroads of foreign goods sold or offered for sale at less than fair value. Not only will the improvements made by this bill assist in speeding up the operating procedure, they will strengthen the deterrent effect of the law and in that respect help to prevent dumping.

The purpose of the amendment made by the Finance Committee is to provide that if the Tariff Commission fails to act within 3 months, or if there is an evenly divided vote within the Commission, then a finding of injury results.

GENERAL STATEMENT

A. PRINCIPAL FEATURES OF H. R. 6006

(1) Assessment of dumping duties

Assessment of dumping duties is provided for in the present law if there are (a) sales at less than fair value of imported merchandise and (b) injury to an industry in the United States resulting therefrom. Due to the wording of section 205 of the present law defining "foreign market value" and to Treasury rulings and court decisions construing this wording, it is possible for situations to arise where sales at less than fair value and injury are found, but where no duties can be

collected. The bill would revise this wording and is thus designed to put an end to this anomalous situation which can presently arise.

(2) *Definitions*

The new definitions of certain terms enacted in the Customs Simplification Act of 1956 (Public Law 927, 84th Cong.) would be incorporated into the Antidumping Act by the bill, with occasional modifications necessitated by the differences between the process of valuation for ordinary duties and the calculation of dumping duties. Customs officials would thereby be enabled in large measure to apply a similar set of definitions both in the calculation of ordinary duties and of dumping duties.

(3) *Public notice and reports*

Provision is made in the bill for mandatory public notice when there is reason to believe or suspect sales of imported merchandise at a dumping price, and mandatory public notice by the Treasury Department and the Tariff Commission of their decisions in dumping cases, whether affirmative or negative, with reasons therefor.

B. ANALYSIS

(1) *Assessment of dumping duties*

The Antidumping Act provides that when there has been a determination that imported merchandise of a certain class or kind has been or is being sold at less than fair value and that such sales are or are likely to be injurious to domestic industry, the dumping duties to be collected on particular shipments of such merchandise are to be equal to the amounts by which the prices paid for the goods by American purchasers are less than the foreign market values of the goods (or, in the absence of such value, than the cost of production).

Section 205 of the act provides that the foreign market value of imported merchandise is to be determined by reference to the price—

at which such or similar merchandise is sold or freely offered for sale to all purchasers in the principal markets of the country from which exported, in the usual wholesale quantities and in the ordinary course of trade for home consumption (or, if not sold or offered for sale for home consumption, then for exportation to countries other than the United States).

The phrase "sold or freely offered" has been construed by the courts to render prices in "restricted" sales ineligible for use in the determination of foreign market values. Examples of restricted sales are ones in which the buyers agree that the goods are not to be resold or used except as specified in the sales contracts. Such restrictions are fairly common in commercial practice.

The term "fair value" is not defined in the Antidumping Act but is defined in Treasury regulations. Formerly the Treasury construed the term as synonymous with foreign market value or (in cases where foreign market value as defined in the act is not determinable) with the cost of production of the goods. In 1955 the Treasury Department issued amended regulations regarding fair value to provide that the prices in "restricted" sales of such or similar goods in the home market of the exporter or in sales of such or similar goods for export to countries other than the United States could be used in

the determination of fair value. The Treasury Department explains that the prices of such or similar goods in restricted sales frequently provides a better and more easily ascertainable measure of fair value than can be arrived at if such restricted sales are excluded from consideration.

A principal change in the Antidumping Act of 1921 as amended which would be made by H. R. 6006 involves amendment of the definition of "foreign market value" in section 205 of the act so as to permit the use of prices in "restricted" sales in the determination of foreign market value. This amendment would bring the definition of "foreign market value" into conformity with the definition of "fair value" in the Treasury regulations. The amendment would be advantageous to the administration of the act because, with the disparity in the definitions of "foreign market value" and "fair value" that now exists, imported merchandise may be found to be sold below fair value to the injury of domestic industries but no antidumping duties may be chargeable. Such a situation can arise, for example, where the exclusion of a higher home market price as a basis for foreign market value requires reference to third country prices and where such prices are the same as or lower than the prices at which such or similar merchandise is sold to the United States.

Another amendment in the definitions relating to assessment of dumping duties is designed to make appropriate comparisons between the price at which imported merchandise is sold to American purchasers and the price at which such or similar merchandise is sold by the foreign producers or exporters elsewhere despite minor dissimilarities between the merchandise and the differences in the terms or circumstances of the sale.

2. Definitions

As a result of long study in the customs field, it was determined that certain definitions used in connection with value for assessment of ordinary duties should be brought up to date. This was accomplished in the Customs Simplification Act of 1956 (Public Law 927, 84th Cong.). These definitions are now, with occasional modifications necessitated by the differences between the process of valuation for ordinary duties and the calculation of dumping duties, incorporated into the bill. These new definitions cover the terms "sold or, in the absence of sales, offered for sale"; "constructed value"; "ordinary course of trade"; "such or similar merchandise"; "usual wholesale quantities".

3. Public notice and reports

Provision is made in the bill for public notice where the Secretary of the Treasury has reason to believe or suspect sales at less than foreign market value. In the past few years, it has generally been the practice to put out a press release in such cases. The bill will make publication mandatory.

Provision is also made for published notice of decisions, whether affirmative or negative, with reasons therefor. The Treasury Department will be required to publish such reports on its determinations with respect to sales at less than fair value and the Tariff Commission will be required to publish such reports on its determinations with respect to injury. In the past there has been no established practice on this point, except that United States Tariff Commission decisions

have been published, sometimes with, sometimes without reasons. Mandatory publication will enable all concerned to know what are the developments in connection with the Antidumping Act, and what types of cases are being found within or without the scope of its application.

SECTION-BY-SECTION EXPLANATION OF THE BILL

SECTION 1

Subsection (b) of section 201 of the Antidumping Act, 1921, in general requires the Secretary of the Treasury to forthwith authorize the withholding of appraisement reports as to imported merchandise of a class or kind as to which he has not made public a finding that it is being, or is likely to be, sold in the United States or elsewhere at less than its fair value whenever he has reason to believe or suspect that the purchase price is less than the foreign market value.

Paragraph (1) of the first section of the bill, as reported, amends section 201 (b) of the Antidumping Act to require the Secretary to publish notice in the Federal Register in addition to authorizing withholding of appraisement reports.

Paragraph (2) of the first section of the bill, as reported, adds a new subsection (c) to section 201 of the Antidumping Act. The new subsection requires the Secretary of the Treasury and the United States Tariff Commission to publish their decisions on dumping cases in the Federal Register, whether positive or negative, with reasons therefor.

SECTION 2

Section 202 of the Antidumping Act explains how the special dumping duty shall be calculated, once a finding has been published pursuant to section 201 (a) that foreign merchandise is sold at less than "fair value," with resultant injury to an industry in the United States. Subsection (a) of section 202 provides that the duty shall be measured by the difference between "foreign market value" and the price in the United States market. The price in the United States market may be either "purchase price" or "exporter's sales price." Subsection (b) (which deals with purchase price) and subsection (c) (which deals with exporter's sales price) provide for certain circumstances justifying adjustments in the figure to be calculated as foreign market value. Section 2 of the bill, as reported, relates to these subsections (b) and (c) of section 202 of the law. It substitutes the words "Secretary or his delegate" for "appraising officers." It uses different wording from that heretofore employed, for sales and offers for sale. It changes the provision regarding quantity discounts, and adds provisions regarding "other circumstances of sale" and "similar" articles of merchandise. These points may be more fully described as follows:

Substitution of the words "Secretary or his delegate" for "appraising officers"

In section 202 (b) and (c) the words "the Secretary or his delegate" are substituted for the words "appraising officers" to conform the wording of the law with the already existing legal status, as the result of 1950 Reorganization Plan No. 26, whereby all functions of all

offices of the Treasury Department, and all functions of all agencies and employees of the Department are placed in the Secretary with authority to delegate. Matters of detail such as here dealt with will be continued to be handled by the subordinates, by delegation.

Substitution of the words "sold or, in the absence of sales, offered for sale" for "sold or freely offered for sale to all purchasers"

Substitution in section 202 (b) and (c) of the words "sold or, in the absence of sales, offered for sale" for the words "sold or freely offered for sale to all purchasers" is one of several steps taken herein to bring this term into conformity with the provision of the Customs Regulations (19 C. F. R. 14.7) adopted April 8, 1955, defining the term "fair value." The substitution also conforms to wording in the Customs Simplification Act of 1956 with one difference made necessary because of the different purposes of the 1956 act and the Antidumping Act. This difference is the omission of the word "freely." The reason for the omission is explained in the second following paragraph.

As indicated above, findings under the Antidumping Act are based on sales at less than "fair value" with resultant injury, but special dumping duties are based on sales at less than "foreign market value." The purpose of conforming the definition of "foreign market value" to that of "fair value" is to put an end to the anomalous situation whereby a finding can be made under the act but no dumping duties can be collected despite continuance of sales at less than fair value.

In connection with the use of the words "sold or, in the absence of sales, offered for sale" the following explanation can be given. Your committee was advised by Treasury Department representatives that on occasion exporters are enabled to sell in the United States market at a lower price than they sold for home consumption without coming within the purview of the Antidumping Act because of inconsequential restrictions placed on their home consumption sales. Thus restricted they were no longer "freely" offered. The amended definition of "fair value" adopted in 1955 closed this gap so as to make possible findings under the act, but the present amendment to the law (which cannot be accomplished by regulation) is needed to make possible assessment of dumping duties in such cases. This applies where the home consumption price is higher than the price to the United States. The reverse situation, where a foreign cartel through its control of the market artificially lowers home consumption price to make possible an equally and unduly low price to the United States market can be handled with reference to the provision of the law and the regulations that no home consumption sale intended to establish a fictitious market shall be taken into account.

Differences due to quantity discounts

The amended provision in regard to quantity discounts is designed to make it clear that such discounts are a factor to be considered from the standpoint of a positive as well as a negative determination of sales at less than foreign market value. The present law provides that allowance may be made for quantity discounts if the quantities shipped to the United States are "greater" than the quantities sold for home consumption. Under the bill, as reported, it is provided that allowance shall be made if "any difference" between the prices being compared is due to the fact that the quantities in the sales to the United States market "are less or are greater than" the quantities sold for

home consumption (sec. 202 (b) (1) and (c) (1)). As presently worded, sales below foreign market value can be excused if the difference is due to quantity discounts, but sales at less than foreign market value cannot be determined if the price to the United States is not less than the home consumption price before allowance for the difference due to quantity discounts, although the price to the United States after allowance due to quantity discounts is in fact less than home consumption price because the quantities sold in the home market are greater than the quantities sold in the United States. The amendment would permit this provision to work both ways.

Differences due to "other circumstances of sale"

Under the bill as reported, provision is made (sec. 202 (b) (2) and (c) (2)) for consideration of "other differences in circumstances of sale" in addition to quantity differentials. This is designed to facilitate efficient and fair comparison between foreign market value and price to the United States market. Examples would be differences in terms of sale, credit terms, and advertising and selling costs.

Differences due to the fact that "similar" articles of merchandise are being compared

The essential element in a price determination under the Antidumping Act is typically a comparison between the price in the United States market, on the one hand, and the price of "such or similar" merchandise for home consumption in the exporting country, on the other hand. Section 202 (b) (3) and (c) (3), as added by the bill, is designed to facilitate equitable comparison and further to bring the definition of foreign market value into conformity with the definition of fair value. Section 5 of the bill, as reported, inserts a new section 212 in the law, entitled "Definitions." Section 212 (3) defines "such or similar merchandise." Subparagraphs (A) and (B) describe merchandise which is identical—i. e., "such" merchandise. Subparagraphs (C), (D), (E), and (F) describe merchandise which can be considered "similar." Section 202 (b) (3) and (c) (3) of the Antidumping Act, as added by section 2 of the bill, as reported, provide that where "similar" merchandise (i. e., merchandise described in sec. 212 (3) (C), (D), (E), or (F)) rather than "such" merchandise (i. e., merchandise described in sec. 212 (3) (A) or (B)) is being compared, allowance may be made for differences between the articles under consideration. If, for example, long-handled shovels are sold to the United States, and only short-handled (otherwise identical) shovels are sold for home consumption in the country of exportation, then it is possible to consider the two types of shovel "similar," and a price determination can be made by comparing the two similar shovels, making allowance for the fact that the long handles cost more than the short handles.

SECTION 3

Section 3 of the bill, as reported, deals with section 205 of the Antidumping Act, defining foreign market value. Changes relate to "sold or * * * offered for sale"; cases in which home consumption price is not an adequate standard for comparison; and sales through sales agencies.

*"Sold or * * * offered for sale"*

The words "sold or, in the absence of sales, offered for sale" are substituted for the words "sold or freely offered for sale to all purchasers" for the same reasons as those given in regard to the like amendment of subsections (b) and (c) of section 202, explained above.

Home consumption sales an inadequate basis for comparison

The provision authorizing the Secretary to base foreign market value on the price for exportation to countries other than the United States when home consumption sales are so small as to form an inadequate basis for comparison is another amendment derived from the Customs Regulations defining fair value (19 C. F. R. 14.7). While the usual standard for comparison with price to the United States market should be home consumption price, there may be instances in which the volume of home consumption sales do not form an adequate basis for comparison. If, for example, a foreign company sells only 1 percent of its product in the home country, 50 percent to third countries, and 49 percent to the United States, it is obvious that a fair comparison for the purpose of determining whether there has been dumping as to price can only be made by comparing the price to the United States with the third-country price. However, existing law ordinarily require the calculation of foreign market value to be made on the basis of the home consumption sales. Under the amendment made by section 3 of the bill, as reported, reference would instead be made to third-country price where this seems necessary for a fair comparison.

Sales through a sales agency

The provision relative to sales through a sales agency is designed to eliminate any possibility that transactions between related persons (as that term is defined in the law with reference to exporter's sales price) must be considered "sold" and used as the basis for foreign market value. This provision is derived from Customs Regulations (19 C. F. R. 14.7 (b) (3)), adopted April 8, 1955, defining fair value.

SECTION 4

Subsection (a) of section 4 of the bill, as reported, amends section 206 of the Antidumping Act to substitute the term "constructed value" for the term "cost of production." This definition of "constructed value" follows the definition of that term as added to the Tariff Act of 1930 by the Customs Simplification Act of 1956, with the following changes: (1) Instead of referring to merchandise "undergoing appraisement" the amendment refers to merchandise "under consideration"; (2) provision is made that the amount for general expenses shall be not less than 10 percent and the amount for profit not less than 8 percent. A comparative type showing the exact differences between the wording of the amendment and the wording in the Customs Simplification Act of 1956 is set forth in appendix A.

Under subsection (b) of section 4 of the bill, as reported, wherever the term "cost of production" appears in the Antidumping Act, the term "constructed value" is substituted.

SECTION 5

Section 5 of the bill, as reported, renumbers section 212 of the Antidumping Act as section 213, and inserts a new section 212 relating

to definitions. In addition to "constructed value," which is provided for in section 4 of the bill, as reported, the following definitions are incorporated in section 5 of the bill: "sold or, in the absence of sales, offered for sale"; "ordinary course of trade"; "such or similar merchandise"; and "usual wholesale quantities." These definitions are based on the Customs Simplification Act of 1956. Changes are made from the wording of the Customs Simplification Act of 1956 as necessary to show that the definitions here apply to values to be calculated under the Antidumping Act rather than to values calculated for purposes of ordinary duties; thus reference is made to merchandise "under consideration" instead of merchandise "undergoing appraisement." In addition two substantive changes are made.

The term "sold or, in the absence of sales, offered for sale" is used in place of the 1956 Customs Simplification Act's "freely sold or, in the absence of sales, offered for sale" in order that the definition shall be in conformity with the definition in the Customs Regulations regarding fair value (19 C. F. R. 14.7 (a) (1), (2)). (See also the discussion above relative to use of this term in the amendment sec. 202 (b) and (c) made by sec. 2 of the bill, as reported.) Because of the different purpose of the Antidumping Act, the amended definition applies to sales or offers irrespective of restrictions, in contrast to the 1956 Customs Simplification Act's definition which eliminates from consideration only certain types of restrictions. In analyzing sales under the Antidumping Act allowance may be made for differences due to restrictions, constituting circumstances of sale pursuant to the amendments to section 202, subsections (b) and (c).

The definition of "such or similar merchandise" is enlarged beyond the scope of the Customs Simplification Act of 1956, so as to be in conformity with the definition of fair value, in particular 19 Code of Federal Regulations 14.7 (4) (1) (circumstances of sale). This is designed to facilitate speedy and equitable comparison between merchandise sold to the United States and that sold elsewhere. (See also the discussion above relative to the use of this term in the amendment made by sec. 2 of the bill, as reported.)

A comparative type showing the exact differences between the wording of the definitions in the new section 212 and the wording in the Customs Simplification Act of 1956 is set forth in appendix B.

SECTION 6

Section 6 of the bill, as reported, provides that the amendments made by the bill are to apply with respect to all merchandise as to which no appraisement report has been made on or before the date of the enactment of the bill. The amendments are not to apply, however, with respect to any merchandise which—

- (1) Was exported from the country of exportation before the date of the enactment of the bill; and
- (2) Is subject to a finding under the Antidumping Act which (A) is outstanding on the date of the enactment of the bill, or (B) was revoked on or before the date of the enactment of the bill, but is still applicable to such merchandise.

CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

ANTIDUMPING ACT, 1921

(TITLE II, PUBLIC NO. 10—67TH CONGRESS)

DUMPING INVESTIGATION

SEC. 201. (a) Whenever the Secretary of the Treasury (hereinafter called the "Secretary") determines that 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, he shall so advise the United States Tariff Commission, and the said Commission shall determine within three months thereafter 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. The said Commission, after such investigation as it deems necessary, shall notify the Secretary of its determination, and, if that determination is in the affirmative, the Secretary shall make public a notice (hereinafter in this Act called a "finding") of his determination and the determination of the said Commission. *For the purposes of this subsection, the said Commission shall be deemed to have made an affirmative determination if (A) the Commissioners of the said Commission voting are evenly divided as to whether its determination should be in the affirmative or in the negative; or (B) the said Commission shall fail to make a determination within the said three months period.* The Secretary's finding shall include a description of the class or kind of merchandise to which it applies in such detail as he shall deem necessary for the guidance of customs officers.

(b) Whenever, in the case of any imported merchandise of a class or kind as to which the Secretary has not so made public a finding, the Secretary has reason to believe or suspect, from the invoice or other papers or from information presented to him or to any person to whom authority under this section has been delegated, that the purchase price is less, or that the exporter's sales price is less or likely to be less, than the foreign market value (or, in the absence of such value, than the [cost of production] *constructed value*), he shall forthwith *publish notice of that fact in the Federal Register and shall* authorize, under such regulations as he may prescribe, the withholding of appraisement reports as to such merchandise entered, or withdrawn from warehouse, for consumption, not more than one hundred and twenty days before the question of dumping has been raised by or presented to him or any person to whom authority under this section has been delegated, until the further order of the Secretary, or until the Secretary has made public a finding as provided for in subdivision (a) in regard to such merchandise.

(c) The Secretary, upon determining whether foreign merchandise is being, or is likely to be, sold in the United States at less than its fair value, and the United States Tariff Commission, upon making its determination under subsection (a) of this section, shall each publish such determination in the Federal Register, with a statement of the reasons therefor, whether such determination is in the affirmative or in the negative.

SPECIAL DUMPING DUTY

Sec. 202. (a) In the case of all imported merchandise, whether dutiable or free of duty, of a class or kind as to which the Secretary of the Treasury has made public a finding as provided for in section 201, entered, or withdrawn from warehouse, for consumption, not more than one hundred and twenty days before the question of dumping was raised by or presented to the Secretary or any person to whom

authority under section 201 has been delegated, and as to which no appraisement report has been made before such finding has been so made public, if the purchase price or the exporter's sales price is less than the foreign market value (or, in the absence of such value, than the **cost of production** *constructed value*) there shall be levied, collected, and paid, in addition to any other duties imposed thereon by law, a special dumping duty in an amount equal to such difference.

[(b) If it is established to the satisfaction of the appraising officers that the amount of such difference between the purchase price and the foreign market value is wholly or partly due to the fact that the wholesale quantities, in which such or similar merchandise is sold or freely offered for sale to all purchasers for exportation to the United States in the ordinary course of trade, are greater than the wholesale quantities in which such or similar merchandise is sold or freely offered for sale to all purchasers in the principal markets of the country of exportation in the ordinary course of trade for home consumption (or, if not so sold or offered for sale for home consumption, then for exportation to countries other than the United States), then due allowance shall be made therefor in determining the foreign market value for the purposes of this section.]

(b) In determining the foreign market value for the purposes of subsection (a), if it is established to the satisfaction of the Secretary or his delegate that the amount of any difference between the purchase price and the foreign market value (or that the fact that the purchase price is the same as the foreign market value) is wholly or partly due to—

(1) the fact that the wholesale quantities, in which such or similar merchandise is sold or, in the absence of sales, offered for sale for exportation to the United States in the ordinary course of trade, are less or are greater than the wholesale quantities in which such or similar merchandise is sold or, in the absence of sales, offered for sale in the principal markets of the country of exportation in the ordinary course of trade for home consumption (or, if not so sold or offered for sale for home consumption, then for exportation to countries other than the United States),

(2) other differences in circumstances of sale, or

(3) the fact that merchandise described in subdivision (C), (D), (E), or (F) of section 212 (3) is used in determining foreign market value,

then due allowance shall be made therefor.

[(c) If it is established to the satisfaction of the appraising officers that the amount of such difference between the exporter's sales price and the foreign market value is wholly or partly due to the fact that the wholesale quantities, in which such or similar merchandise is sold or freely offered for sale to all purchasers in the principal markets of the United States in the ordinary course of trade, are greater than the wholesale quantities in which such or similar merchandise is sold or freely offered for sale to all purchasers in the principal markets of the country of exportation in the ordinary course of trade for home consumption (or, if not so sold or offered for sale for home consumption, then for exportation to countries other than the United States), then due allowance shall be made therefor in determining the foreign market value for the purposes of this section.]

(c) In determining the foreign market value for the purposes of subsection (a), if it is established to the satisfaction of the Secretary or his

delegate that the amount of any difference between the exporter's sales price and the foreign market value (or that the fact that the exporter's sales price is the same as the foreign market value) is wholly or partly due to—

(1) the fact that the wholesale quantities in which such or similar merchandise is sold or, in the absence of sales, offered for sale in the principal markets of the United States in the ordinary course of trade, are less or are greater than the wholesale quantities in which such or similar merchandise is sold or, in the absence of sales, offered for sale in the principal markets of the country of exportation in the ordinary course of trade for home consumption (or, if not so sold or offered for sale for home consumption, then for exportation to countries other than the United States),

(2) other differences in circumstances of sale, or

(3) the fact that merchandise described in subdivision (C), (D), (E), or (F) of section 212 (3) is used in determining foreign market value,

then due allowance shall be made therefor.

PURCHASE PRICE

SEC. 203. That for the purposes of this title, the purchase price of imported merchandise shall be the price at which such merchandise has been purchased or agreed to be purchased, prior to the time of exportation, by the person by whom or for whose account the merchandise is imported, plus, when not included in such price, the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the merchandise in condition, packed ready for shipment to the United States, less the amount, if any, included in such price, attributable to any additional costs, charges, and expenses, and United States import duties, incident to bringing the merchandise from the place of shipment in the country of exportation to the place of delivery in the United States; and plus the amount, if not included in such price, of any export tax imposed by the country of exportation on the exportation of the merchandise to the United States; and plus the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the merchandise to the United States; and plus the amount of any taxes imposed in the country of exportation upon the manufacturer, producer, or seller, in respect to the manufacture, production or sale of the merchandise, which have been rebated, or which have not been collected, by reason of the exportation of the merchandise to the United States.

EXPORTER'S SALES PRICE.

SEC. 204. That for the purpose of this title the exporter's sales price of imported merchandise shall be the price at which such merchandise is sold or agreed to be sold in the United States, before or after the time of importation, by or for the account of the exporter, plus, when not included in such price, the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the merchandise in condition, packed ready for shipment to the United States, less (1) the amount, if any, included in such price, attributable to any additional costs, charges, and expenses, and

United States import duties, incident to bringing the merchandise from the place of shipment in the country of exportation to the place of delivery in the United States, (2) the amount of the commissions, if any, for selling in the United States the particular merchandise under consideration, (3) an amount equal to the expenses, if any generally incurred by or for the account of the exporter in the United States in selling identical or substantially identical merchandise, and (4) the amount of any export tax imposed by the country of exportation on the exportation of the merchandise to the United States; and plus the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the merchandise to the United States; and plus the amount of any taxes imposed in the country of exportation upon the manufacturer, producer, or seller in respect to the manufacture, production, or sale of the merchandise, which have been rebated, or which have not been collected, by reason of the exportation of the merchandise to the United States.

FOREIGN MARKET VALUE

SEC. 205. [That for] *For the purposes of this [title the] title, 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 [or freely offered for sale to all purchasers] or, in the absence of sales, offered for sale in the principal markets of the country from which exported, in the usual wholesale quantities and in the ordinary course of trade for home consumption (or, if not so sold or offered for sale for home consumption, or if the Secretary 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 price at which so sold or offered for sale for exportation to countries other than the United States), plus, when not included in such price, the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the merchandise in condition packed ready for shipment to the United States, except that in the case of merchandise purchased or agreed to be purchased by the person by whom or for whose account the merchandise is imported, prior to the time of exportation, the foreign market value shall be ascertained as of the date of such purchase or agreement to purchase. In the ascertainment of foreign market value for the purposes of this title no pretended sale or offer for sale, and no sale or offer for sale intended to establish a fictitious market, shall be taken into account. If such or similar merchandise is sold or, in the absence of sales, offered for sale through a sales agency or other organization related to the seller in any of the respects described in section 207, the prices at which such or similar merchandise is sold or, in the absence of sales, offered for sale by such sales agency or other organization may be used in determining the foreign market value.*

[COST OF PRODUCTION

[SEC. 206. That for the purposes of this title the cost of production of imported merchandise shall be the sum of—

[(1) The cost of materials of, and of fabrication, manipulation, or other process employed in manufacturing or producing, identical or substantially identical merchandise, at a time preceding the date of shipment of the particular merchandise under consideration which would ordinarily permit the manufacture or production of the particular merchandise under consideration in the usual course of business;

[(2) The usual general expenses (not less than 10 per centum of such cost) in the case of identical or substantially identical merchandise;

[(3) The cost of all containers and coverings, and all other costs, charges, and expenses incident to placing the particular merchandise under consideration in condition, packed ready for shipment to the United States; and

[(4) An addition for profit (not less than 8 per centum of the sum of the amounts found under paragraphs (1) and (2)) equal to the profit which is ordinarily added, in the case of merchandise of the same general character as the particular merchandise under consideration, by manufacturers or producers in the country of manufacture or production who are engaged in the same general trade as the manufacturer or producer of the particular merchandise under consideration.]

CONSTRUCTED VALUE

SEC. 206. (a) For the purposes of this title, the constructed value of imported merchandise shall be the sum of—

(1) the cost of materials (exclusive of any internal tax applicable in the country of exportation directly to such materials or their disposition, but remitted or refunded upon the exportation of the article in the production of which such materials are used) and of fabrication or other processing of any kind employed in producing such or similar merchandise, at a time preceding the date of exportation of the merchandise under consideration which would ordinarily permit the production of that particular merchandise in the ordinary course of business;

(2) an amount for general expenses and profit equal to that usually reflected in sales of merchandise of the same general class or kind as the merchandise under consideration which are made by producers in the country of exportation, in the usual wholesale quantities and in the ordinary course of trade, except that (A) the amount for general expenses shall not be less than 10 per centum of the cost as defined in paragraph (1), and (B) the amount for profit shall not be less than 8 per centum of the sum of such general expenses and cost; and

(3) the cost of all containers and coverings of whatever nature, and all other expenses incidental to placing the merchandise under consideration in condition, packed ready for shipment to the United States.

(b) For the purposes of this section, a transaction directly or indirectly between persons specified in any one of the paragraphs in subsection (c) of this section may be disregarded if, in the case of any element of value required to be considered, the amount representing that element does not fairly reflect the amount usually reflected in sales in the market under consideration of merchandise of the same general class or kind as the merchandise under consideration. If a transaction is disregarded under

the preceding sentence and there are no other transactions available for consideration, then the determination of the amount required to be considered shall be based on the best evidence available as to what the amount would have been if the transaction had occurred between persons not specified in any one of the paragraphs in subsection (c).

(c) *The persons referred to in subsection (b) are:*

(1) *Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants;*

(2) *Any officer or director of an organization and such organization;*

(3) *Partners;*

(4) *Employer and employee;*

(5) *Any person directly or indirectly owning, controlling, or holding with power to vote, 5 per centum or more of the outstanding voting stock or shares of any organization and such organization; and*

(6) *Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.*

EXPORTER

SEC. 207. That for the purposes of this title the exporter of imported merchandise shall be the person by whom or for whose account the merchandise is imported into the United States:

(1) If such person is the agent or principal of the exporter, manufacturer, or producer; or

(2) If such person owns or controls, directly or indirectly, through stock ownership or control or otherwise, any interest in the business of the exporter, manufacturer, or producer; or

(3) If the exporter, manufacturer, or producer owns or controls, directly or indirectly, through stock ownership or control or otherwise, any interest in any business conducted by such person; or

(4) If any person or persons, jointly or severally, directly or indirectly, through stock ownership or control or otherwise, own or control in the aggregate 20 per centum or more of the voting power or control in the business carried on by the person by whom or for whose account the merchandise is imported into the United States, and also 20 per centum or more of such power or control in the business of the exporter, manufacturer, or producer.

OATHS AND BONDS ON ENTRY

SEC. 203. That in the case of all imported merchandise, whether dutiable or free of duty, of a class or kind as to which the Secretary has made public a finding as provided in section 201, and delivery of which has not been made by the collector before such finding has been so made public, unless the person by whom or for whose account such merchandise is imported makes oath before the collector, under regulations prescribed by the Secretary, that he is not an exporter, or unless such person declares under oath at the time of entry, under regulations prescribed by the Secretary, the exporter's sales price of such merchandise, it shall be unlawful for the collector to deliver the merchandise until such person has made oath before the collector, under regulations prescribed by the Secretary, that the merchandise has not been sold or agreed to be sold by such person, and has given

bond to the collector, under regulations prescribed by the Secretary, with sureties approved by the collector, in an amount equal to the estimated value of the merchandise, conditioned: (1) that he will report to the collector the exporter's sales price of the merchandise within 30 days after such merchandise has been sold or agreed to be sold in the United States, (2) that he will pay on demand from the collector the amount of special dumping duty, if any, imposed by this title upon such merchandise, and (3) that he will furnish to the collector such information as may be in his possession and as may be necessary for the ascertainment of such duty, and will keep such records as to the sale of such merchandise as the Secretary may by regulation prescribe.

DUTIES OF APPRAISERS

SEC. 209. That in the case of all imported merchandise, whether dutiable or free of duty, of a class or kind as to which the Secretary has made public a finding as provided in section 201, and as to which the appraiser or person acting as appraiser has made no appraisement report to the collector before such finding has been so made public, it shall be the duty of each appraiser or person acting as appraiser, by all reasonable ways and means to ascertain, estimate, and appraise (any invoice or affidavit thereto or statement of [cost of production] *constructed value* to the contrary notwithstanding) and report to the collector the foreign market value or the [cost of production] *constructed value*, as the case may be, the purchase price, and the exporter's sales price, and any other facts which the Secretary may deem necessary for the purposes of this title.

APPEALS AND PROTESTS

SEC. 210. That for the purposes of this title the determination of the appraiser or person acting as appraiser as to the foreign market value or the [cost of production] *constructed value*, as the case may be, the purchase price, and the exporter's sales price, and the action of the collector in assessing special dumping duty, shall have the same force and effect and be subject to the same right of appeal and protest, under the same conditions and subject to the same limitations; and the general appraisers, the Board of General Appraisers, and the Court of Customs Appeals shall have the same jurisdiction, powers, and duties in connection with such appeals and protests as in the case of appeals and protests relating to customs duties under existing law.

DRAWBACKS

SEC. 211. That the special dumping duty imposed by this title shall be treated in all respects as regular customs duties within the meaning of all laws relating to the drawback of customs duties.

Definitions

SEC. 212. For the purposes of this title—

(1) The term "sold or, in the absence of sales, offered for sale" means sold or, in the absence of sales, offered—

(A) to all purchasers at wholesale, or

(B) *in the ordinary course of trade to one or more selected purchasers at wholesale at a price which fairly reflects the market value of the merchandise, without regard to restrictions as to the disposition or use of the merchandise by the purchaser except that, where such restrictions are found to affect the market value of the merchandise, adjustment shall be made therefor in calculating the price at which the merchandise is sold or offered for sale.*

(2) *The term "ordinary course of trade" means the conditions and practices which, for a reasonable time prior to the exportation of the merchandise under consideration, have been normal in the trade under consideration with respect to merchandise of the same class or kind as the merchandise under consideration.*

(3) *The term "such or similar merchandise" means merchandise in the first of the following categories in respect of which a determination for the purposes of this title can be satisfactorily made:*

(A) *The merchandise under consideration and other merchandise which is identical in physical characteristics with, and was produced in the same country by the same person as, the merchandise under consideration.*

(B) *Merchandise which is identical in physical characteristics with, and was produced by another person in the same country as, the merchandise under consideration.*

(C) *Merchandise (i) produced in the same country and by the same person as the merchandise under consideration, (ii) like the merchandise under consideration in component material or materials and in the purposes for which used, and (iii) approximately equal in commercial value to the merchandise under consideration.*

(D) *Merchandise which satisfies all the requirements of subdivision (C) except that it was produced by another person.*

(E) *Merchandise (i) produced in the same country and by the same person and of the same class or kind as the merchandise under consideration, (ii) like the merchandise under consideration in the purposes for which used, and (iii) which the Secretary or his delegate determines may reasonably be compared for the purposes of this title with the merchandise under consideration.*

(F) *Merchandise which satisfies all the requirements of subdivision (E) except that it was produced by another person.*

(4) *The term "usual wholesale quantities", in any case in which the merchandise in respect of which value is being determined is sold in the market under consideration at different prices for different quantities, means the quantities in which such merchandise is there sold at the price or prices for one quantity in an aggregate volume which is greater than the aggregate volume sold at the price or prices for any other quantity.*

SHORT TITLE

SEC. [212] 213. That this title may be cited as the "Antidumping Act, 1921."

