

A. Determination of Dumping

Article 2

[Fair Value v. Normal Value]

International Antidumping Code:

2 (a) For the purpose of this Code a product is to be considered as being dumped, i.e., introduced into the commerce of another country at less than its normal value, if the export price of the product exported from one country to another is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country.

Article VI, GATT:

I. "The contracting parties recognize that dumping, by which products of one country are introduced into the commerce of another country at less than the normal value of the products."

Antidumping Act, 1921, As Amended:

Antidumping Act, 1921, does not specifically define dumping, but rather is directed only at sales at "less than fair value," which is undefined. Thus, Treasury is left free to define dumping in its regulations as it sees fit.

U.S. Treasury Regulations:

At present fair value, as defined in paragraph 14.7 of the Treasury Regulations (19CFR 14.7), may be found if purchase price or exporter's sales price (as defined in sections 203 and 204, respectively of the Antidumping Act, 1921, as amended) is not, or is not likely to be, less than the foreign market value (as defined in section 205) or constructed value (as defined in section 206) after adjustments as provided for in section 202 at which such or similar merchandise (as defined in section 212 (3)) is sold for consumption in the country of exportation.

Footnote 15 of the Treasury Regulations makes it clear that the definition of fair value "does not in any way modify or affect definitions of foreign market value or constructed value, or their application as a basis for determining whether or not to withhold appraisement under section 201 or impose the duty under section 202."

S. 1726 (90th Congress):

The term "at less than fair value" would be defined in the statute so as to preclude Treasury from changing its regulations or the interpretation of its regulations. Therefore, the bill provides for a comparison of provisions already defined in the present Act--purchase price or exporter's sales price and foreign market value or constructed value. Section: 1 [201(f)(1)].

Comment:

Raises question of whether U.S. "fair value" is equivalent to Code's "normal value." If U.S. Treasury regulations have to be changed to read "normal value" then U.S. law would also have to be changed to read "normal value" since Treasury Regulations are intended to reflect the U.S. Antidumping Law.