

[Dumping Cessation in Regional Markets]

International Antidumping Code:

8 (e) When the industry has been interpreted as referring to the producers in a certain area, i.e., a market as defined in Article 4 (a) (ii), antidumping duties shall only be definitively collected on the products in question consigned for final consumption to that area, except in cases where the exporter shall, prior to the imposition of antidumping duties, be given an opportunity to cease dumping in the area concerned. In such cases, if an adequate assurance to this effect is promptly given, antidumping duties shall not be imposed, provided, however, that if the assurance is not given or is not fulfilled, the duties may be imposed without limitation to an area.

U.S. Treasury Regulations:

Section 14.7 (b) (9) merely allows the Secretary of Treasury to find no likelihood of sales at less than fair value if sales to the U.S. have terminated and will not be resumed.

Comment:

Giving the exporter an opportunity to cease dumping in the particular market area, and thereby absolving himself of antidumping duties on products consigned for consumption in that area, would seem to enable him to be home free on the dumping he has already done. This will encourage such area dumping, and exporters may dump into one different area after another with impunity.

It would not be possible to claim that Treasury regulations already cover this point since Section 14.7 (b) (9) only applies to a time period before a determination on the question of the likelihood of sales at less than fair value has been made, insofar as Treasury's authority under its regulations is only to make a finding of no likelihood of sales at less than fair value. Conformity with Article 8 (e) would enable dumper to absolve himself from dumping duties merely by terminating such sales at some time during the Tariff Commission's injury investigation, insofar as Article 8 (e) enables such termination any time "prior to the imposition of antidumping duties" which occurs after the Tariff Commission finds injury.

It is difficult to conceive of the Congress delegating authority of the Secretary of Treasury to set up without any prior Congressional approval such a system of duty avoidance when the market area concept is not even spelled out in the U.S. law.