

EXHIBIT 3

The courts had held that prices on transactions which restricted the use or territory in which the merchandise could be resold, or resale of the merchandise, were not "freely offered to all purchasers" and, hence, could not be used as a basis for home market value determination. Further, a price that was available to some purchasers, but not to all purchasers (as, e.g., a price restricted to manufacturers who used the merchandise in their manufacturing operations but who did not resell it), was not "freely offered to all purchasers."

Under the Antidumping Act, if freely offered home market prices were not available, freely offered prices in sales to third country purchasers were required to be used. These might have been lower than the restricted home market sales. Foreign producers could thus immunize their home market prices from use for dumping comparisons, and set their third market prices at the same level as sales to the United States.

Congress had dealt with a similar problem in regard to "foreign value" for customs purposes in the Customs Simplification Act of 1956. It eliminated the use of "foreign value" as the primary customs valuation base for all articles except those named on the Final List (articles where the Secretary of the Treasury found that change of the value rules would have the effect of reducing duties by 5% or more). It also defined the phrase "freely sold or, in the absence