

EXHIBIT 3

There is still another aspect of the handling of this type of adjustment by Customs which seems contrary to the intention of Congress. We are informed that, after calculating an average cost per unit of the warranty in the home market, Customs automatically deducts that amount from the home market price for purposes of comparison with the export price. This is done under a claim of authority in the regulations to do so, where, under Sec. 14.7(b)(2), "warranties" are mentioned as an example of differences in circumstances of sale for which "such allowances" will be made in calculating the "fair value" of merchandise.

The "such" in "such allowances" refers, however, to the lead sentence of the subsection, which states that *"reasonable allowances will be made for bona fide differences in circumstances of sale 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."* (Emphasis added.)

The words in italics impose two requirements before an adjustment in price may be made: the adjustment must be *reasonable*, which certainly implies that an allowance is not *automatically* or *necessarily* to be made by the full arithmetical difference of the so-called warranty (the volume of returns in the home market on which the allowance was calculated might have been due to defective manufacturing procedures on certain lots which were not involved in the