

EXHIBIT 3

It might be claimed that the branding cost is not a difference in the "circumstances of sale" (to which the cited subsection pertains), but rather refers to differences in the merchandise which make the imported merchandise "similar" rather than "such" merchandise as that sold in the home market.

The same section of the Antidumping Act, as amended in 1958, which permits "due allowance" for differences in circumstances of sale *in the assessment of dumping duties* (after the findings of dumping and of injury have been made) found by the Secretary or his delegate to be wholly or partly the cause of the difference in price in home market versus export sales, also permits "due allowance" for the fact that the merchandise exported is "similar" rather than "such" merchandise as that sold in the home market *if* the Secretary or his delegate have *proof which establishes* to his satisfaction that the difference in price is wholly or partly due to the difference in the merchandise.

The Customs Regulations at Sec. 14.7(b)(3) are quite specific that in making "due allowance" for differences in the merchandise, the Secretary "will be guided primarily by the effect of such differences upon the market value of the merchandise but, when appropriate, he may also consider differences in cost of manufacture if it is established to his satisfaction that the amount of any price differential is wholly or partly due to such differences."