

GENERAL AGREEMENT ON TARIFFS AND TRADE

Committee on Anti-Dumping Practices

Ad-Hoc Group on the Implementation
of the Anti-Dumping Code

DRAFT RECOMMENDATION OF THE COMMITTEE CONCERNING
TRANSPARENCY OF ANTI-DUMPING PROCEEDINGS

Revision

I. Information about the complaint

1. The Committee recognizes that the right of parties to defend their interests during the course of an anti-dumping investigation can only be guaranteed if they also have the right to see all the information that is relevant to their case providing that it is not confidential.¹ As the importers and exporters involved can defend their interests only if they know the full extent of the allegations being made against them, it is essential that they have access to the complete text of the complaint and not a summary or expurgated version, due regard being paid to the requirement for the protection of confidential information.²

[1a. The Committee considers, that for the sake of transparency in anti-dumping proceedings, when a written communication is sent by the investigating authorities to private persons or firms within the territory of the exporting country, a copy shall be [provided] [made available] at the same time to the authorities of the exporting country.]

[¹Parties to the Anti-Dumping Code are aware that certain Parties may permit limited disclosure, pursuant to a narrowly drawn and restrictive protective order, of confidential information submitted by participants in an investigation. The Parties may disclose confidential information under such an order only to one or more professional representatives of the participants. The professional representative must submit a written request that identifies the confidential information requested, sets forth reasons for the request, and contains an agreement to abide by the terms of the protective order. The professional representative is subject to substantial disciplinary sanction for violating the protective order. Parties shall grant such requests only as necessary and appropriate, considering the need of the requester for access and the need of the submitter of the information for confidentiality.]

[²Release of confidential information under the terms and conditions described in footnote 1, above, is consistent with the requirements of the Anti-Dumping Code that confidential information be protected from unauthorized disclosure.]

*English only/Anglais seulement/Inglés solamente.

2. The Committee is aware of the fact that, at the initial stage, the complaint consists of unverified allegations which may turn out not to be true or may not contain sufficient evidence to justify an investigation; it is therefore not in the interest of the exporters that these should be made public before a decision whether to open an investigation has been made because this could lead to unnecessary disruption of trade. It could furthermore lead to a needless deterioration in the relations between the producers in the importing country and the exporters concerned as well as between the authorities of the importing and exporting country.

3. For these reasons the Committee recommends to the Parties:

- (a) to [provide] [to make available on request] the full text of the complaint to the exporters and importers involved as soon as a decision has been made to open an investigation, due regard being paid to the requirement for the protection of confidential information;
- (b) to provide [on request] the authorities of the exporting country with a copy of the complaint as soon as the decision has been made to open an investigation;
- (c) to require, in cases where confidential information is provided in the complaint, a non-confidential summary of such information in the non-confidential copy;
- (d) to confine to extremely exceptional cases the possibility of not providing a summary of confidential information and in such cases to fully explain the reasons therefor;
- (e) to avoid, unless a decision has been made to open an investigation, any publicizing of the complaint or its release.³

II. Publication and reasons for decisions taken under an anti-dumping investigation

4. The Committee recognizes that in order to ensure that anti-dumping investigations are conducted on a fair and equitable basis, and to enable parties to consider the possibility of legal recourse, it is essential that any decision taken by the investigating authority should be published together with the reasons which led to it. Publication shall be obligatory at the time of the initiation of an investigation, the application of provisional measures and the conclusion of the investigation (by the imposition of definitive duties, the acceptance of price undertakings or a negative finding).

³Parties to the Anti-Dumping Code are aware that for certain parties public information laws limit the ability of the government to deny specific requests from a member of the public for non-confidential information. These parties will not, however, encourage any such request.

5. Taking into account the relevant provisions of the Anti-Dumping Code the Committee recommends:

- (a) a notice initiating an anti-dumping investigation published in accordance with Article 6:6 shall contain adequate information on the following:
 - (i) the name of the exporting country and the product involved;
 - (ii) the date of initiation of investigation;
 - (iii) the basis on which dumping is alleged in the complaint;
 - (iv) a summary of the factors which have led to the allegation of injury;
 - (v) the address to which representations by interested parties should be directed;
 - (vi) the time-limits allowed to interested parties for making their views known.
- (b) a notice on the imposition of provisional measures published in accordance with Article 8:5 shall set forth adequate reasons for the preliminary findings on dumping and injury (insofar as there is no separate preliminary injury determination and a notice thereof) and shall refer to the matters of fact and law which have led to arguments being accepted or rejected, due regard being paid to the requirement for the protection of confidential information.
- (c) a notice of suspension or conclusion of investigation in the case of a positive determination involving the imposition of a definitive duty or a price undertaking shall contain all relevant information on the matters of fact and law and reasons which have led to the imposition of final measures or the acceptance of a price undertaking, due regard being paid to the requirement for the protection of confidential information, and in particular:
 - (i) the names of the suppliers or when this is impracticable, the supplying countries involved;
 - (ii) description of the product, which is sufficient for customs purposes;
 - (iii) the margins of dumping established and the basis on which the dumping calculations have been made;
 - (iv) factors which have led to the injury determination including information on factors other than dumping which have been taken into account when the injury determination is made insofar as there is no separate notice concerning such injury determination and including such information;
 - (v) main reasons leading to the determination;
 - (vi) reasons for the acceptance or rejection of arguments or claims made by the exporters and importers.

- (d) a notice of termination of an investigation in the case of a negative determination should be adequately detailed and decisions should set forth the factual basis for the determinations as well as the basis for the resolution of factual and legal issues raised during the investigation.