

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

ADP/W/59
31 May 1983

Special Distribution

Committee on Anti-Dumping Practices

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

DRAFT RECOMMENDATION OF THE COMMITTEE CONCERNING
BEST INFORMATION AVAILABLE IN TERMS OF ARTICLE 6:8

I

The authorities of the importing country have a right and an obligation to make decisions on the basis of the best information available during the investigation from whatever source, even where evidence has been supplied by the interested party. The Anti-Dumping Code recognizes the right of the importing country to base findings on the facts available when any interested party refuses access to or does not provide the necessary information within a reasonable period, or significantly impedes the investigation (Article 6:8). However, as the main burden of proof rests with the authorities of the importing country, all reasonable steps should be taken by them to avoid the use of information from unreliable sources.

II

For these reasons the Committee recommends that:

1. The investigating authorities should specify in detail, at the outset of the investigation, the information required from any directly interested party and ensure that the party is aware that if it is not supplied within a reasonable time span, the authorities will be free to make decisions on the basis of the facts available, including those contained in the complaint by the domestic industry.
2. The interested party should be free to supply the information in the manner which does not impose unnecessary burden on it and no information shall be disregarded merely because it is not provided in a preferred format, e.g. on computer compatible tapes.
3. All information supplied in a timely fashion and verifiable should be taken into account when findings are made.
4. Even though the information provided may not be ideal in all respects this factor, in itself, should not justify the investigating authorities from disregarding it since the interested party may have acted to the best of its ability.

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5. If evidence or information is not accepted, the supplying party should be informed of the reasons thereof and have an opportunity to provide further explanations. If the explanations are not satisfactory, the reasons for rejection of such evidence or information should be given in any published findings

6. If the investigating authorities have to base their findings on information from a secondary source, including the information supplied in the complaint, they should do it with special circumspection. In such cases the authorities may wish to check the reasonableness of the information from other independent sources, such as published price lists, official import statistics and customs returns, and from the information obtained from other interested parties during the investigation. It is clear, however, that if an interested party does not co-operate, this situation is likely to lead to a result which is less favourable to the party than if the party did co-operate.