

# GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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Special Distribution

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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

Revision

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 authority of the importing country must make its determination of dumping based on the positive evidence] [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, [promptly] on the initiation of the investigation, the [form and content of] information required from any directly interested party and ensure that the party is aware that if this information 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. All verifiable information supplied [(with adequate non-confidential summaries)] in a timely fashion [and in the investigating authority's preferred format] should be taken into account when findings are made.
3. 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.]

[3a. In requiring questionnaire response formats such as computer compatible tapes, the investigating authorities should consider the interested party's reasonable ability to respond in preferred formats.]

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.

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 so 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 and thus relevant information is being withheld from the investigating authorities this situation [is likely to] [could] lead to a result which is less favourable to the party than if the party did co-operate.