

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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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

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, all reasonable steps should be taken by the authorities of the importing countries to avoid the use of information from unreliable sources.

II

For these reasons the Committee recommends that:

1. As soon as possible after the initiation of the investigation, the investigating authorities should specify in detail the information required from any directly interested party, and the way in which that information should be structured by the interested party in its response. The investigating authorities should also ensure that the party is aware that if information is not supplied within a reasonable time span, the investigating 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 investigating authorities may also request that an interested party provide its response in a particular medium (e.g. computer tape) or computer language. Where such a request is made, the investigating authorities should consider the reasonable ability of the interested party to respond in the preferred medium or computer language, and should not request the company to use for its response a computer system other than that used by the firm. The investigating authority should not maintain a request for response in a particular medium or computer language, and the response need not be given in that particular medium or computer language, if the interested party does not maintain computerized accounts or if presenting the response in a particular medium or computer language would result in an unreasonable extra burden on the interested party, e.g. it would entail unreasonable additional cost and trouble.

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3. All information which is verifiable, which is appropriately submitted so that it can be used in the investigation without undue difficulties and which is supplied in a timely fashion, and, where applicable, supplied in a medium or computer language requested by the investigating authorities, should be taken into account when findings are made. If a party does not respond in the preferred medium or computer language because of the circumstances set out in paragraph 2, this should not be considered to significantly impede the investigation.

4. Where the investigating authorities do not have the ability to process information if provided in a particular medium (e.g. computer tape) the information should be supplied in the form of written material or any other form acceptable to the investigating authorities.

5. 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.

6. If evidence or information is not accepted, the supplying party should be informed forthwith of the reasons thereof and have an opportunity to provide further explanations within a reasonable period, due account being taken of the time-limits of the investigation. If the explanations are considered by the investigating authorities as not being satisfactory, the reasons for rejection of such evidence or information should be given in any published findings.

7. If the investigating authorities have to base their findings, including those with respect to normal value, 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 should check the reasonableness of the information from other independent sources at their disposal, 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 could lead to a result which is less favourable to the party than if the party did co-operate.