

**Committee on Anti-Dumping Practices  
Ad Hoc Group on Implementation**

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**PRACTICAL ISSUES AND EXPERIENCE WITH RESPECT TO  
QUESTIONNAIRES AND REQUESTS FOR INFORMATION  
UNDER ARTICLE 6.1 AND 6.1.1**

Paper from the European Communities

The following communication, dated 8 March 2001, has been received from the Permanent Delegation of the European Commission.

Under EC anti-dumping legislation, an investigation is always announced by a Notice of Initiation (NOI), published in the C series of the Official Journal of the European Communities. The NOI calls for all interested parties to make themselves known, to request questionnaires and hearings, and to submit information. It also indicates how to contact the Commission services, and clearly lays down all the time limits.

Questionnaires are sent to all interested parties listed in the complaint and which make themselves known within the applicable time limits. The questionnaires are specific to the type of party they are addressed to, as the different parties are concerned in different ways by the investigation.

Five main types of questionnaires are used, as follows:

- (a) Questionnaires to *producers/exporters* in the third country(ies) concerned are designed to collect the information necessary for the dumping determination and the injury analysis. They will, notably, include questions relating to:
  - Overall export sales to the Community (prices and quantities) over 3 to 5 years,
  - Transaction by transaction listings of domestic and export sales (for the Investigation Period (IP) only),
  - Costs of production and selling expenses, overall, by sector and by model (for IP only),
  - Operating statistics e.g. concerning production, capacity and profitability.
- (b) Questionnaires to *Community producers* must enable the Commission services to obtain all the information that can be obtained for the injury, causation, determination of injury threshold and Community interest analysis. Questions will relate to:
  - Transaction by transaction listings of sales in the Community (for IP only),

- Operating statistics over 3 to 5 years to cover all injury indicators listed in Article 3.3 of the Basic Regulation (sales, production, capacity, stocks, profitability, etc.),
  - Costs of production, both overall and by sector and model (usually for IP only),
  - Community interest considerations.
- (c) Questionnaires to ***related importers*** (annexed to questionnaires for exporters) are concerned with the information necessary for the determination of the CIF export price at Community frontier level, and establishment of the export price at an ex-factory level. They will therefore include questions relating to:
- Transaction by transaction listings of purchases (from the producers/exporters) (for IP only),
  - Transaction by transaction resale listings (of resales to independent parties in the Community) (for IP only),
  - Purchase costs and costs between importation and resale (for IP only).
- (d) Questionnaires to ***unrelated importers*** are used to assess prices to the first unrelated party in the Community and to double check the information provided by the producers/exporters. They will include questions on:
- Transaction by transaction listings of purchases and resales (for IP only),
  - Costs between importation and resale as well as importer's profit margin (for IP only),
  - Evolution of imports and resales over 3 to 5 years.
- (e) Questionnaires to ***users / consumers*** will only relate to the Community interest analysis. Obviously, these questionnaires mostly reflect obligations in the EC's own anti-dumping legislation rather than the WTO Anti-Dumping Agreement, as the legislation commits the EC to a compulsory public interest test. Questions will touch upon:
- Share of the costs of the product concerned and other main inputs in the overall costs of the downstream product produced by the user in question,
  - Detail of purchases made of the product concerned and other main inputs over 3 to 5 years,
  - Operating statistics (e.g. on profitability).

In order to implement the Community's approach to non-market economy countries, questionnaires similar to those mentioned under point a. above are sent to market economy, analogue countries.

All questionnaires will share common questions, for instance on the corporate structure of the company (to assess matters of relationships between interested parties), or on the product definition and perception (for the like product determination). All questionnaires also include a section to invite the respondent to add any additional comments or information they may have in relation to the investigation.

Finally, in order to help respondents, questionnaires include detailed instructions for completion and a glossary of terms. The names of the casehandlers in charge are also clearly indicated on the cover page, and the introduction encourages the respondent to contact them in case of questions and to find practical solutions to any difficulties. Together, these elements should enable a party to complete the reply without necessarily having to resort to help from a specialist adviser.

Completed questionnaires must always be returned by mail in paper form. This paper version is necessary for reasons of legal proof. However, the submission of an advance copy by e-mail or fax is increasingly accepted, provided it is followed by a paper version shortly afterwards. Certain data, for instance the transaction by transaction listings, are requested in electronic form, in a precise, given format. This is because the size of the information in question may be substantial and will have to be worked on further (e.g. for detailed calculations on dumping, undercutting and injury thresholds).

Questionnaires are based on standard templates, but they are always adapted to take account of particular aspects of the case. For example, additional questions may cover the following:

- specifications concerning the various types / models of the product concerned,
- questions related to the level of apparent consumption (for instance in cases of ex-CN codes where Eurostat statistics will not necessarily be reliable to provide an overview of imports in the Community),
- any captive use made of the product by the Community industry.

The questionnaire replies are the most important source of information for decision making. Therefore, questionnaires must ensure that all the required information is collected, including data which may at first sight appear to be redundant. Often, such data are often essential or may eventually prove to be so, whether to cross check the responses or to address all potential claims and questions.

Questionnaires must be completed in full. The replies will be treated confidentially, if the interested party submitting them so requests and justifies. The party in question will then have to submit two versions: a confidential and a non-confidential one. The non-confidential version will then be available for inspection by the other interested parties, on request. In addition, a specific clause in the EC's anti-dumping legislation obliges it to use confidential information so obtained solely for the purpose for which it was requested.

## **1. Time limits for the submission of information**

Article 6(2) of the EC's Basic Anti-Dumping Regulation governs the applicable time limits for questionnaire replies. These are at least 37 days for exporters and at least 30 days for all other parties, from the date of dispatch of the questionnaire by the Commission services. In practice, however, the Commission services give all parties a general deadline of 40 days from dispatch. Since questionnaires are sent within three days of the publication of the NOI, the 37-day requirement is always complied with. These deadlines apply to the filing of both the confidential and non-confidential versions of the replies.

Unjustified late replies are rejected. However, extensions may be granted, provided a written request is made, showing valid justification. Extension of deadlines may also be requested for certain parts of the questionnaires. In this case, casehandlers would agree with the respondent which parts of the questionnaire reply should be submitted within the original deadline and which ones could be submitted within the extended deadline.

The Commission Services will always try to accommodate requests for extensions, although they are under no obligation to accept them. Article 6.1.1 of the AD Agreement makes it clear that the investigating authority has discretion in granting an extension, and the EC shares the view outlined by the US in its paper G/ADP/AHG/W/98 that this discretion is warranted. In the EC's view, the suggestion that the Ad Hoc Group on Implementation should develop an indicative list of factors to take into account when deciding whether or not to grant an extension is a useful one. Prescriptive lists which commit Members to grant or refuse extensions depending on specific situations is neither helpful nor in the spirit of the existing rules.

In the EC's experience, practical examples of good reasons for granting an extension have included public holidays in the exporting country, strikes or accidents in the respondent's facilities and the amount and complexity of the data to be reported.

Another reason why discretion is important is because the time limits for the investigation are tight, especially if, as is the EC's practice, information is to be verified before the decision on any provisional measures. It will thus also be necessary to assess whether the granting of an extension will unduly delay the continuation of the investigation. Extensions of up to two weeks will usually not cause too many difficulties. In such cases, all parties requesting extensions are given the same extended deadline if these parties have requested them for comparable reasons, in order to avoid discrimination.

It is important to note however, that the particular circumstances of each case will differ. Hence, reasons for granting extensions in one case may not necessarily be valid to grant extensions in another one. What is important is that, in any given case, the various interested parties are treated fairly and without discrimination.

## **2. Deficiency letters**

Upon arrival, questionnaire replies are analysed in detail for completeness, consistency and plausibility. Figures are traced back, when possible, to copies of supporting documents provided by the respondent (e.g. the company's annual reports and accounts, management reports etc.).

Following this desk analysis, if the reply is by and large complete yet contains minor deficiencies, the respondent is also informed by a 'deficiency letter' in which it is requested to complete, correct or clarify its reply. Such letters are also sent out to receive additional feed-back and explanations about possible issues, in order for the casehandlers to understand them fully. The time limit normally given is 5 working days. Deficiency letters are sent by registered mail and/or fax.

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