

WORLD TRADE ORGANIZATION

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

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TOPIC 7* - ARTICLE 6.9 "ESSENTIAL FACTS" AND
TOPIC 8* - ARTICLE 12.2 "PUBLIC NOTICE"

Paper by Brazil

The following communication, dated 9 September 1997, has been received from the Permanent Mission of Brazil.

Topic 7 - Provision of essential facts under consideration

In accordance with Article 6.9 of the Anti-Dumping Agreement "the authorities shall, before a final determination is made, inform all interested parties of the essential facts under consideration which form the basis for the decision whether to apply definitive measures. Such disclosure shall take place with sufficient time for the parties to defend their interests".

Brazil's compliance with this provision is made through the convocation of a final hearing where the essential facts under consideration are provided in written form (this report is annexed to the investigative process). Interested parties have the opportunity to present comments orally and to submit, within 15 days, their views in written form. Information received after the conclusion of this final comment period, which marks the end of the investigation *per se*, is not taken into consideration for purposes of the final determination.

The report of the essential facts under consideration contains the following: a summary of the investigation procedure; a description of the product under investigation and of the like product; a definition of the domestic industry; the degree of representation of the applicant and the degree of support for the application; the elements of dumping (normal value, export price, methodology to calculate dumping margins); data related to the imports that are the object of dumping; the prices and the evolution of the participation of dumped imports in apparent consumption; the data relative to the domestic industry (production, sales, market share, installed capacity, profit margins, employment, productivity, stocks, exports, economic and financial analysis, among others, and information relative to other factors); the views and allegations of interested parties.

The objective of presenting the essential facts under consideration to the interested parties is to provide transparency to the investigation and to allow parties to comment on the above-mentioned facts, to offer clarifications on specific points, to provide other points of view to the investigative authorities and to comment and, eventually, suggest corrections on calculation and methodology.

*See document G/ADP/W/401 for descriptions of the numbered topics.

The presentation of the essential facts under consideration by the investigative authorities shall not involve an analysis of merit or advance what will be the final determination since this has still not been reached and the comments of the parties may influence final results.

Questions for discussion

If the objective of the final disclosure is to give an opportunity to the interested parties to comment on the analysis of the information they have received, having knowledge of the data and the presentations that have been actually taken into consideration by the investigative authorities, the following questions seem to need to be discussed:

- What are the procedures to be adopted in the cases in which, in this stage of the investigation, new information are received that alter the essential facts that have been presented?
- If the new information that affect the database presented in the final disclosure, which would be used in the final determination, are aggregated to the process after that stage of the investigation that would call for the need to proceed to a new disclosure. In this case, this procedure would be interpreted in light of Article 6.14 or would Article 5.10 apply?
- How should authorities proceed if the new information is presented in this phase of the investigation in cases in which the investigation's deadlines have been extended and the present phase is an extension?
- Would the questions raised above suggest that the Anti-Dumping Agreement presupposes that after the final disclosure the investigative authorities may not accept new information, it being considered that all interested parties have been given ample opportunity to present their defences and access the non-confidential information which constitute the investigative process?

Topic 8 - Public notice

I. Legal background

The public notice provided for in Article 12.2 of the Agreement refers to “any preliminary or final determination, whether affirmative or negative, of any decision to accept an undertaking (...), of the termination of such an undertaking, and of the termination of a definitive anti-dumping duty”. It must include “in sufficient detail the findings and conclusions reached on all issues of fact and law” and the motives which led to the imposition of the measures, with due account being taken for the right to confidentiality for the information that has been provided. The public notice provided for in Article 12.2.1 and 12.2.2 must contain the reasons for accepting or rejecting arguments or allegations of the interested parties as well as the basis for any decision taken under Article 6.10.2.

II. Public notice of a final determination

The public notice related to the determination and decisions referred to in Article 12.2 must contain, at least, the following information. The other information referred to in Article 12, if not contained in the public notice, must be included in the complete report, which shall be promptly placed at the disposal of the interested parties.

- (a) Background to the process: information related to the main stages of the investigation, such as the submission of the application, initiation of the investigation, notifications, preliminary determination, final hearing, etc.
- (b) The product under investigation: product description, tariff classification, import tariff in force during the period under investigation for purposes of injury analysis and definition of like product.
- (c) The domestic industry: definition of the domestic industry and its participation in the domestic production.
- (d) Dumping: methodology adopted for the determination of the normal value, of the export price and of the margin of dumping.
- (e) Injury: the evolution of imports under dumped prices and the evolution of these prices, “an evaluation of all the relevant economic factors that are pertinent to the domestic industry, including actual or potential decline in sales, profits, output, market share, productivity, return on investments, or utilization of capacity; factors affecting domestic prices; the magnitude of the margin of dumping; actual or potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments (Article 3.4)”.
- (f) Causality: analysis of a causal relationship between imports at dumped prices and injury to the domestic industry, taking into account the examination of other known factors, in particular those described in the last part of Article 3.5, other than imports at dumped prices, which may be causing injury to the domestic industry in the same occasion.
- (g) Conclusion and calculation of the measure: conclusion in relation to the determination that was reached and explanation of how the measure that was applied was calculated.