

PROPOSAL ON STANDING OF THE APPLICATION

Communication from China¹

The following communication, dated 28 June 2007, is being circulated at the request of the Delegation of China.

Issues and Recommendations

From the point of view of China, the standing requirements on application as provided in Article 5.4 of the ADA should be clarified on the following aspects:

There exist certain ambiguities with regard to the requirements:

1. The time span of "the total production" and "collective output" is not clear. Should it be defined as a monthly/quarterly total production, or annual total production, or total production in previous 2-3 years (full statistical/financial) before the application is filed? In the opinion of China, the time span should be appropriately defined so as to avoid short-term effects that may distort the real situation or be abused for industry-specific interests.
2. The source statistics for "the total production" and "collective output" is not clear. Should these statistics provided by the domestic producers themselves be accepted as evidence of standing? In the opinion of China, the production/output statistics, if provided by domestic producers, should be certified by an independent accounting/auditing agency.
3. It is not clear whether total sales volume could be taken as a substitute for "total production" where it is difficult, but not impossible, to have an official data of the former.
4. How to define "domestic industry"? Can it be defined as a major proportion of the total domestic producers of those products as provided in Article 4.1 of the ADA?

China proposes to amend Article 5.4 as follows:

¹ This paper does not purport to represent China's final position on this matter and China reserves the right to make further proposals.

Proposed Text

Article 5.4: An investigation shall not be initiated pursuant to paragraph 1 unless the authorities have determined, on the basis of an examination of the degree of support for, or opposition to, the application expressed¹³ by domestic producers of the like product, that the application has been made by or on behalf of the domestic industry.¹⁴ The application shall be considered to have been made "by or on behalf of the domestic industry" if it is supported by those domestic producers whose collective output constitutes more than 50 per cent of the average total annual production in the last three years* of the like product produced by that portion of the domestic industry expressing either support for or opposition to the application. However, no investigation shall be initiated when domestic producers expressly supporting the application account for less than 25 per cent of total production of the like product produced by ~~the~~ all domestic ~~industry~~ producers. For the purpose of this paragraph, the collective output and total production of the like product shall be based on sum of individual amounts in the accounting and/or production records of the domestic producers of the like product and audited severally by certified auditors of the importing member.

¹³ In the case of fragmented industries involving an exceptionally large number of producers, authorities may determine support and opposition by using statistically valid sampling techniques.

¹⁴ Members are aware that in the territory of certain Members employees of domestic producers of the like product or representatives of those employees may make or support an application for an investigation under paragraph 1.

* Footnote added: for the purpose of paragraph 4, the output and/or production shall be those in the most recent 3 years/36 months before filing to the authority of the written application by the applicant, or the longest possible period when the output data are available. Total sales of the same period shall not be used as a substitute for the output and production.