

# GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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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 TRANSPARENCY OF ANTI-DUMPING PROCEEDINGS

#### Revision

#### I. Information about the complaint

1. The Committee recognizes that the right of parties to defend their interests during the course of an anti-dumping investigation can only be guaranteed if they also have the right to see all the information that is relevant to their case providing that it is not confidential.<sup>1</sup> As the importers and exporters involved can defend their interests only if they know the full extent of the allegations being made against them, it is essential that they have access to the complete text of the complaint and not a summary or expurgated version, due regard being paid to the requirement for the protection of confidential information.<sup>2</sup>

[1a. The Committee considers, that for the sake of transparency in anti-dumping proceedings, when a written communication is sent by the investigating authorities to private persons or firms within the territory of the exporting country, a copy shall be [provided] [made available] at the same time to the authorities of the exporting country.]

2. The Committee is aware of the fact that, at the initial stage, the complaint consists of unverified allegations which may turn out not to be true; it is therefore not in the interest of the exporters that these should be made public. The Committee also considers that the release of the complaint before a decision whether to open an investigation has been made could lead to unnecessary disruption of trade if it were decided that the

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[<sup>1</sup>Parties to the Anti-Dumping Code are aware that in the territory of certain Parties disclosure of confidential information pursuant to a narrowly drawn protective order may be required.]

[<sup>2</sup>Interested parties are considered to have access to confidential information if it is made available to their legal representatives under protective order. It is further recognized that there may be certain types of information (e.g. customer names; documents obtained during on-the-spot investigations) disclosure of which may be denied even under protective order.]

evidence was not sufficient to justify an investigation. It could furthermore lead to a needless deterioration in the relations between the producers in the importing country and the exporters concerned as well as between the authorities of the importing and exporting country.

3. For these reasons the Committee recommends to the Parties:

- (a) to [make] [provide] the complaint [the full text of the complaint] available [on request] to the exporters and importers [concerned, involved] as soon as a decision has been made to open an investigation;
- (b) to provide [on request] the authorities of the exporting country with a copy of the complaint as soon as the decision has been made to open an investigation;
- [(c) to make available on request to the exporters and importers concerned the full text of the complaint;]
- (d) to require, in cases where confidential information is provided in the complaint, a non-confidential summary of such information in the non-confidential copy;
- (e) to confine to extremely exceptional cases the possibility of not providing a summary of confidential information and in such cases to fully explain the reasons therefor;
- (f) to avoid, before a decision has been made to open an investigation, any publicizing of the complaint or its release.<sup>3</sup>

## II. Publication and reasons for decisions taken under an anti-dumping investigation

4. The Committee recognizes that in order to ensure that anti-dumping investigations are conducted on a fair and equitable basis, and to enable parties to consider the possibility of legal recourse, it is essential that any decision taken by the investigating authority should be published together with the reasons which led to it. Publication should be considered as being obligatory at the time of the initiation of an investigation, the application of provisional measures or the conclusion of the investigation (by the imposition of definitive duties, the acceptance of price undertakings or a negative finding).

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<sup>3</sup> Parties to the Anti-Dumping Code are aware that for certain parties public information laws limit the ability of the government to deny specific requests from a member of the public for non-confidential information. These parties will not, however, encourage any such request.

5. Taking into account the relevant provisions of the Anti-Dumping Code the Committee recommends:

- (a) a notice initiating an anti-dumping investigation published in accordance with Article 6:6 shall contain adequate information on the following:
  - (i) the name of the exporting country and the product involved;
  - (ii) the date of initiation of investigation;
  - (iii) the basis on which dumping is alleged in the complaint;
  - (iv) a summary of the factors which have led to the allegation of injury;
  - (v) the address to which representations by interested parties should be directed;
  - (vi) [the] [any] time-limit [which may be] allowed to interested parties for making their views known.
- (b) a notice on the imposition of provisional measures published in accordance with Article 8:5 shall set forth adequate reasons for the preliminary findings on dumping and injury (insofar as there is no separate preliminary injury determination and a notice thereof) and shall refer to the matters of fact and law which have led to arguments being accepted or rejected, due regard being paid to the requirement for the protection of confidential information.
- (c) a notice of suspension or conclusion of investigation in the case of a positive determination involving the imposition of a definitive duty or a price undertaking shall contain as much information as possible on the matters of fact and law and reasons which have led to the imposition of final measures or the acceptance of a price undertaking, due regard being paid to the requirement for the protection of confidential information, and in particular:
  - (i) the names of the suppliers or supplying countries involved;
  - (ii) description of the product, which is sufficient for customs purposes;
  - (iii) the margins of dumping established and the basis on which the dumping calculations have been made;
  - (iv) factors which have led to the injury determination including information on factors other than dumping which have been taken into account when the injury determination is made insofar as there is no separate notice concerning such injury determination and including such information;
  - (v) main reasons leading to the determination;
  - (vi) reasons for the acceptance or rejection of arguments or claims made by the exporters and importers.

- (d) a notice of termination of an investigation in the case of a negative determination should be adequately detailed and decisions should set forth the factual basis for the determinations as well as the basis for the resolution of factual and legal issues raised during the investigation.