

**RESPONSES BY THE UNITED STATES TO QUESTIONS FROM
AUSTRALIA ON INVESTIGATORY PROCEDURES UNDER
THE ANTI-DUMPING AND SUBSIDIES AGREEMENTS**

Submission by the United States

The following communication, dated 17 March 2003, has been received from the Permanent Mission of the United States.

The United States appreciates Australia's interest in the issues raised in our submission on investigatory procedures under the Anti-Dumping and Subsidies Agreements (TN/RL/W/35). The United States provides the following responses to certain questions posed by Australia in document TN/RL/W/43.

Under ADA Article 6.4/SCM Article 12.3, the United States notes that there is no definition of what is "timely" in regard to these opportunities to interested parties. What is the United States' view of the implication or relevance of "whenever practicable" regarding "timely opportunities" under ADA Article 6.4/SCM Article 12.3?

The United States recognizes that the concept of "practicability" under ADA Article 6.4/SCM Article 12.3 is an important one, particularly for small administering authorities, in order to allow them to provide orderly access to the information. However, the Agreements are clear that non-confidential information is to be released. This need for "practicability" and flexibility must not unreasonably restrict timely access to the information which is necessary in order for a party to have a full opportunity for the defense of its interests. In decisions on the practicability of providing access to the information, authorities should recognize the vital importance of "timely opportunities" for access to the information. Article 6.4 should be clarified on this point.

What does the United States consider is the scope of "all information that is relevant to the presentation of their cases, that is not confidential as defined in paragraph 5, and that is used by the authorities in an anti-dumping investigation" under ADA Article 6.4? Would non-confidential information that is made available, for example, extend to the information that investigating authorities consider in the determination of injury?

Members should consider ways in which interested parties could be granted access to all non-confidential information regardless of whether the national authorities ultimately rely upon the information for purposes of their determination. This should include all non-confidential information and written argument presented to or obtained by the authorities during the course of a proceeding which relates to that proceeding, whether in connection with the determination of dumping or of material injury. Of particular importance, the administering authority should not decide what is relevant to the presentation of the interested parties' cases, or otherwise necessary for a full defence of

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their interests. By granting interested parties access to all non-confidential information, the authority ensures that each party will be able to obtain all information that the party believes is relevant.

The United States notes that ADA Article 12.2.1(iii) "provides that the public notice should contain, inter alia, an explanation of the reasons for the methodology used to determine the dumping margin; however, it does not require an explanation of the methodology itself." Given that ADA 12.2.1 provides that "sufficiently detailed explanations for the preliminary determinations of dumping and injury" shall be set forth, does the United States consider that "considerations relevant to the injury determination" in ADA Article 12.2.1(iv) should include disclosure or explanation of the calculation methodology for the determination of injury? What factors should be disclosed?

ADA Article 12.2.1(iv) states that, in preliminary determinations of injury, authorities should provide "considerations relevant to the injury determination as set out in Article 3." Consequently, the obligation to provide an explanation under Article 12.2.1(iv) relates to the requirements specified in Article 3. The United States is unaware of any requirement under Article 3 for authorities to use a "calculation methodology" to determine whether there is injury, and Australia does not identify or propose any such requirement. Accordingly, there appears to be no basis for an obligation to make such disclosure or explanation under Article 12.2.1(iv).

In the second paragraph of this section, the United States notes that "pre-verification advice is not required under the Agreements". Could the United States explain what it means by "pre-verification"? How does the United States relate this to ADA Annex I and the provision within ADA Article 6.7/SCM Article 12.6 that verification investigations may be carried out by authorities "provided they obtain the agreement of the firms concerned and notify the representatives of the government of the Member in question"?

In the view of the United States, pre-verification preparation is an important step in ensuring a smooth and successful verification of the accuracy of submitted information to the benefit of the firms concerned as well as the authorities. "Pre-verification" advice simply refers to advice or guidance given by the authorities to the parties prior to verification that would help explain the process and general nature of the information that is to be verified. This could assist in planning to ensure that the necessary information and personnel are on hand during the verification. Beyond the authorities merely obtaining the agreement of the firms concerned, this Group should consider whether providing pre-verification advice or guidance should also be a requirement.
