

WORLD TRADE ORGANIZATION

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

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TOPIC 6* - ARTICLE 6.2 "HEARINGS"
TOPIC 1* - ARTICLE 6.5 "TREATMENT OF CONFIDENTIAL INFORMATION"
TOPIC 7* - ARTICLE 6.9 "PROVISION OF ESSENTIAL FACTS"

Paper by Argentina

The following communication, dated 6 April 1998, has been received from the Permanent Mission of Argentina.

Comments by Argentina for the Ad Hoc Group on Implementation

INTRODUCTION

Argentine legislation provides for protection mechanisms against unfair trading practices in Law 24.425, which incorporates the Uruguay Round Agreements into domestic law, and Decree No. 2121/94.

In this connection, the Argentine Government has introduced a bifurcated system of investigation: through Decree 766/94 it created the National Commission for Foreign Trade (CNCE), which is responsible for examining and regulating matters connected with the determination of injury to domestic industry as a result of imports under conditions of unfair competition, while the Undersecretariat for Foreign Trade (SSCE) is responsible for the determination of dumping or subsidies.

Finally, the Department of Industry, Trade and Mining is the competent authority for initiating investigations and the Ministry of the Economy and Public Works and Services decides on the implementation of provisional or definitive measures and the termination of investigations.

A. Hearings

During the course of an investigation and prior to the final determination of injury by the Board of the CNCE, Decree 766/94 (Article 18), in conformity with Article 6.2 of the Agreement, provides opportunities for convening hearings with the participation of the interested parties. The procedure is regulated by Resolution CNCE/DR/002/96.

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

Prior to the holding of such hearings, the technical staff of the Commission organizes meetings with the interested parties in order to exchange views on the investigation, and provides synoptic tables of the main indicators to be discussed during the hearing.

The purpose of the hearings is to question the parties (domestic producers, importers and exporters) on issues that arise during the proceedings to enable the parties to question or rebut the information, data and evidence submitted with respect to the matter under investigation. The question of whether hearings are to be public or not is decided by the CNCE when it convenes them.

The decision by the CNCE to convene a hearing must include:

- (a) Identification of the investigation under way;
- (b) nature of the hearing;
- (c) purpose;
- (d) designation of authorities;
- (e) date, time and place;
- (f) prerequisites for attending and participating.

Accredited parties in the case must be notified at least 15 days in advance and informed that failure to appear will not adversely affect the defence of their interests.

The convocation is made at least 20 days in advance, and is published in the Official Journal in accordance with the above-mentioned content requirements.

Interested parties must communicate their intention to participate in the hearing at least four days in advance, and must establish legal personality (where appropriate). Two days prior to the hearing, the interested parties are informed of the time allotted for their statements.

The hearing is held in the presence of the Chairman of the CNCE and at least two members of the Board.

Upon conclusion of the hearing, the participants sign an official record containing:

- (a) A list of the parties (registered in advance and having established their identity and legal personality);
- (b) a record of each of the statements made;
- (c) the technical means employed for recording the official record, to be included as an annex to the official record in a sealed envelope after a copy thereof has been made;
- (d) the signature of the Chairman and of all those attending.

The above list is not exhaustive, and depends on the specific characteristics of each hearing.

It is important to point out that whatever the nature of the hearing (i.e. whether it is public or not), the provisions on confidential information included in the file must be strictly complied with.

The parties have a period of five working days following the conclusion of the hearing to provide, in writing, the information supplied orally during the hearing for such information to be taken into account in the final determination, and to present their final comments.

B. Confidential Information

During investigations of injury to domestic industry conducted before the CNCE in connection with applications for the introduction of anti-dumping and countervailing duties and safeguard measures, any party submitting information whose disclosure they consider could be harmful or could provide a competitor with a significant advantage may request confidential treatment.

B.1 Legal framework

The laws governing confidential treatment at the international and national levels are:

- Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994;
Articles 6.5, 6.5.1 and 6.5.2;
- Agreement on Subsidies and Countervailing Measures
Articles 12.4, 12.4.1 and 12.4.2;
- Agreement on Safeguards
Articles 3.2
- Decree 2121/94
Articles 45 and 46
- Decree 1059/96
Articles 3, 4, 5 and 6

B.2 Requirements

Under the provisions in force, the application for confidential treatment must include:

- (a) Clear identification of the information for which confidentiality is requested by indicating "CONFIDENTIAL" in the upper right-hand corner of each page;
- (b) justification of the need for such treatment;
- (c) non-confidential summary permitting a reasonable understanding of the content of the information supplied as confidential, for inclusion in the file.

If the information for which confidentiality has been requested cannot be summarized, the law requires that the applicant should so indicate, explaining the reasons why this cannot be done.

B.3 Procedure

The CNCE has five working days from the day following the receipt of the request for confidentiality to decide whether or not to grant such treatment, for which purpose it must determine whether the mentioned requirements have been met. Until confidential treatment has been granted, the information in question is removed from the file and kept in a sealed envelope to which only the technical personnel assigned to the investigation have access.

Should confidential treatment not be granted, the party that supplied the information may withdraw it at any time, in which case the said information cannot be taken into account in the investigation. If, on the other hand, the applicant withdraws the request, the information may be included in the file.

Requests for confidentiality are made upon submission of the information.

B.4 Confidential information in the technical reports and determinations of the CNCE

Argentine legislation does not provide for a system of access to confidential information for the legal counsel of the parties. Such information is available only to the party by which it was furnished and to the implementing authority.

This is why the non-confidential summaries must provide a sufficiently clear description of the documentation which is inaccessible for reasons of confidentiality.

These non-confidential summaries are included in the file. Thus, in files in which confidential information has been supplied and used, there are two versions of the technical report and of the official records containing the determinations: one that is confidential and is not included in the file, circulated only within the CNCE, and the other that is included in the public file, in which the confidential information is replaced by asterisks.

B.5 Confidential information and hearings

The CNCE is responsible, in accordance with all of the confidentiality provisions, for safeguarding confidential information during the hearings conducted under its auspices. Article 13 of Resolution 02/96 stipulates that: "The hearings, whatever their nature, shall be conducted in strict compliance with the rules concerning confidential information contained in the file of the investigation concerned. Thus, the CNCE may only consult summaries of the confidential information provided by the parties".

B.6 Information for which the CNCE generally grants confidential treatment if such treatment is requested by the parties

- Cost structure;
- list of customers;
- discounts and conditions of payment;
- determination of the price at the point of sale;
- stocks;

- monthly sales;
- production processes.

C. Article 6.9 "Provision of Essential Facts"

C.1 Introduction

Article 6.9 of the Anti-Dumping Agreement stipulates that "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 should take place in sufficient time for the parties to defend their interests."

C.2 National Commission for Foreign Trade (CNCE)

Throughout the injury investigation, the interested parties may follow the proceedings and make any comments with respect to the documentation pertaining to the case or furnish any evidence they consider appropriate.

Similarly, the technical staff may hold meetings with the parties in order to exchange views on the product, its characteristics, its applications, etc., the national and international markets and any other relevant matters.

During the final stage, before the Commission issues its conclusion with respect to injury to the domestic industry, a hearing is held.

Prior to the hearing, the technical staff of the Commission meets with the parties (producers, importers and others) and provides them with synoptic tables of the main economic indicators used to assess damage to the industry: production, sales, market share, installed capacity, stocks, employment, salaries, growth, investment, etc., so that they may examine the data, make such comments as they deem appropriate and present their counter-arguments as they consider necessary during the hearing. The presentation of this essential data in the synoptic table does not constitute an analysis of the merits of the case, nor does it anticipate the final conclusions of the Commission, since the conclusions may change in response to the submissions of the parties during the hearing or to additional data obtained by the implementing authority.

The parties are given a maximum of five working days following the conclusion of the hearing to provide a written version of their oral submissions made during the hearing and to make their final comments on the case.
