

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

**SUMMARY REPORT OF THE MEETING OF THE
AD HOC GROUP ON IMPLEMENTATION
OF THE COMMITTEE ON ANTI-DUMPING PRACTICES
26-27 OCTOBER 1998**

Note by the Secretariat

1. The Ad Hoc Group on Implementation ("the Group") held its fourth substantive discussions concerning the topics referred to it by the Committee on Anti-Dumping Practices ("the Committee").¹ The proposed agenda for the meeting, which had been circulated in document WTO/AIR/946, dated 16 October 1998, was adopted.
2. The Chairman (Mr. José Antonio S. Buencamino, Philippines) observed that, while he was pleased at the number of Members who submitted papers on the various topics before the Group, he was very concerned that so many papers were submitted well past the deadline established and announced at the Group's meeting in April 1998. He observed that the late submission of documents was simply unacceptable in the context of a Group discussing specific technical issues. Members, and especially their capital-based experts, could not be expected to prepare adequately for the Group's discussions without the necessary documentation, in their preferred working language, in advance of the meeting. He strongly urged Members to respect the deadlines for submission of papers for the Group in the future, and suggested that Members might consider beginning the preparation of submissions for the next meeting as soon as possible, while the matters discussed at the current meeting were still fresh in their minds.
3. Turning to the agenda for this meeting, the Chairman noted that a number of papers had been submitted for the meeting, addressing all ten of the topics referred to the Group, and in addition, there were draft recommendations to consider on three matters. Regarding the draft recommendations, he reminded Members that, if the Group came to a consensus on a recommendation, that recommendation would be sent forward to the Committee for its consideration. Given that the membership of the Committee and the membership of the Group are coextensive, and all Members will have had an opportunity to consider the draft recommendations, and discuss them in the Group, there should be little need for discussion at the Committee before deciding whether to adopt a recommendation of the Group as a Committee Decision on an agreed understanding regarding a particular implementation issue. Therefore, he proposed to put any recommendations agreed upon in the Group before the Committee at its meeting later in the week, and would propose that a decision be made at that meeting. He observed that it was important to keep in mind that neither the Group nor the Committee can modify the legal obligations set forth in the Agreement as such. However, it was hoped that Members could come to some agreement about practices in the conduct of anti-dumping investigations that Members believe are consistent with the Agreement's requirements.

¹ The list of topics referred to the Ad Hoc Group was circulated to Members in document G/ADP/W/401.

4. The Chairman reminded the Group that the discussions would follow the order in which papers were received, as set forth in the agenda. Members who had submitted papers on a topic would be asked to briefly present their views, and the floor would then be opened for general discussion.

5. The first topic on the agenda was topic number 9, contents of preliminary determinations. The Chairman reminded Members that the Group had not reached this topic at its meeting in April 1998, and therefore had agreed that it would be the first topic on the agenda at this meeting. Members noted that, based on the papers submitted, it appeared that there were common points among Members' practice with respect to the contents of preliminary determinations. One Member raised substantive questions concerning the standards applied in making preliminary determinations, including whether measures were "necessary" to prevent injury, whether measures could be imposed before there was proof of dumping, and whether the use of the future tense in the threat of injury provision weakened the injury standard. Members expressed differing views on the latter point, with a number of Members pointing out that that provisional measures could only be applied if the investigating authorities find that there is threat of injury. One Member observed that in its view, the topic under discussion was not the standard applied by investigating authorities, but rather the contents of the preliminary determination, and the subsequent discussion turned to that issue.

6. In this regard, there were two principal issues – what information was actually reproduced in the notice of preliminary determination, and what information was otherwise available – for instance, whether computer programs used in calculating dumping margins were made available. One Member noted that the contents of the notice might not be the same for preliminary determinations of injury and dumping. Another Member noted that the substance of the preliminary determination had to be seen in context of the public notice. This Member pointed out that a principal interest was in ensuring that rigorous standards were applied. In this regard, this Member expressed a desire to have Members reach a consensus on a comprehensive list of the contents of the published notice. Some Members expressed the view that nothing beyond what was set forth in Article 12 was necessary, although of course Members could provide more information. Noting that the analysis of dumping could take different forms, both qualitative and quantitative, one Member observed that what was important was not the form of the analysis, but the ability of exporters to replicate the analysis in order to be able to understand the calculation of the dumping margin. In this regard, another Member observed that the preliminary investigation, which might be completed within 60 days, might not be that full, but that Members nonetheless had to have a reasonable determination. Another Member observed that the preliminary determination required consideration of more information than was considered in deciding to initiate, but less than the final determination. Information had to be available to Members to allow a dialog before the final determination.

7. The Group decided to request the Secretariat to prepare a draft recommendation on matters to be included in preliminary affirmative determination, without prejudice to the relationship between this topic and topic 8 on the contents of public notices.

8. The discussion then turned to topic 1, treatment of confidential information. It was noted that Members' practice seemed to fall into one of two broad categories of system – either parties' representatives were allowed access to almost everything before the investigating authorities, or the investigating authorities required non-confidential summaries of confidential information which were provided or made available to interested parties. The key to the latter system was that such summaries must be sufficient to allow parties to reasonably understand the facts. In this latter regard, it was noted that some Members allowed deletion of confidential information with resulting blanks in submissions. It was questioned at what point did the authorities decide that a non-confidential summary was needed in order for comprehension by the parties. Another Member observed that, in its practice, information submitted fell into two categories – it was either accessible to the parties, or

was for the exclusive use of the investigating authorities, such as confidential government information, internal notes of the investigating authority, communications with other Ministries.

9. The Group decided to ask the Secretariat to prepare a note distilling the substance of the papers submitted by Members and the discussions in the Group, and if possible formulating specific questions to assist Members in focussing further discussions.

10. The Group next considered the revised draft recommendation (G/ADP/AHG/W/22/rev.1) prepared by the Secretariat in light of the discussions at previous meetings concerning topic 2, the period of data collection. While there was broad agreement with the intent of the draft recommendation, Members raised numerous specific points with respect to the actual text of the revised draft recommendation, emphasizing the necessity to allow investigating authorities sufficient flexibility.

11. The Group agreed to ask the Secretariat to prepare a bracketed version of the draft so that Members may consider the various proposals made at the meeting before reverting to this matter.²

12. The Group turned to topic 3, Article 6.10 sampling method. Members described their individual practice concerning selection of a sample, and when sampling was used. Questions were raised with respect to the last sentence of Article 6.10, concerning the use of voluntary responses. In this regard, one Member noted the need to have some limits on investigating authorities' obligation to use voluntary responses, in light of time limitations on investigations. Other Members noted the overall emphasis in the Agreement on individual margins, and the limitation on sampling in the last sentence of Article 6.10. Several Members asked about practice in a case where answers were not received from those initially sampled. One Members commented that discussions with industry associations were useful in establishing a representative sample.

13. The Group did not reach any conclusions on this topic, and agreed to revert to it at a later date.

14. The Group next considered the draft recommendation (G/ADP/AHG/W/48) prepared by the Secretariat in light of the discussions at previous meetings concerning topic 4, Article 5.6. A number of Members noted that they had no substantive disagreement with the text of the draft recommendation, but questioned whether it served a practical purpose in the context of the administration of anti-dumping investigations. Several specific suggestions were made with respect to the text of the draft recommendation. One Member recalled that, at the outset, the discussions on this topic had focussed on preparing a negative list of circumstances that did not constitute "special circumstances" within the meaning of Article 5.6. However, several Members observed that in light of the lack of practical experience with self-initiation, they questioned whether they could reach agreement on such a list without foreclosing possible future actions. Several Members commented that the decision to self-initiate an anti-dumping investigation should always be explained by the investigating authorities. One Member commented that political pressure should not be behind a decision to self-initiate, and explanation of the special circumstances would aid transparency.

15. The Group did not reach a consensus on the draft recommendation, and agreed to revert to it, if Members so wished, at a later date.

16. The Group next turned to consideration of the draft recommendation prepared by the Secretariat under topic 5, regarding the timing of the notification to the exporting Member required under Article 5.5. Several Members made specific suggestions regarding the text of the draft

² Subsequently circulated as document G/ADP/AHG/W/22/Rev.2, dated

recommendation, and the Secretariat prepared a revised version of the text to reflect the various options discussed. After further consideration of the revised version, the Group adopted a draft recommendation on the timing of the notification to the exporting Members required under Article 5.5, which the Chairman would place before the Committee at its meeting later in the week.³

17. The Group next turned to discussion of the contents of the notification required under Article 5.5. Among the items Members described as relevant, and/or included in such notifications in their own practice, were:

- a description of the goods, the name of the domestic producer(s), and tariff number under which the goods were imported
- a summary of the evidence in the application
- identification of the exporters and countries of export
- a reminder concerning the first sentence of article 5.5, which provides that the authorities shall avoid, unless a decision has been made to initiate an investigation, any publicizing of the application
- the date of receipt of the application
- the name of the applicant
- the name and address of the investigating authority

18. Some Members commented that they did not include any specific information regarding the exporters involved in their notifications under Article 5.5, as they viewed this as potentially allowing for "publicizing" of an application contrary to the first sentence of Article 5.5. One Member noted its view that the contents of this notification should allow the exporting Member to begin basic preparations in the event of an investigation. Several Members commented that, in general, notifications were provided to the diplomatic representative of the exporting Members located in the importing Member, or in some cases if there was no diplomatic representation in the importing Member, it might be sent to the Ministry of Commerce in the exporting Member. In this regard, some Members commented that it might be useful to have an indication of acceptable contact point in the exporting Members. It was recalled that the Group had requested Members to submit contact points for the receipt of notifications under Article 5.5.

19. The Group agreed to ask the Secretariat to compile and circulate an indicative list setting out the contact points identified by Members for the Article 5.5 notification. Members who had not already done so were requested to submit the relevant information to the Secretariat as soon as possible.

20. The Group next turned to topic 6, Article 6.2 hearings. The Chairman recalled that the Secretariat had circulated a compilation of information submitted by Members concerning their hearing practices (G/ADP/AHG/W/51). Members described some elements of their hearing practice, and noted that the compilation was useful. One Member commented that "public interest" hearings, if held, should be considered in this regard, and wondered whether other Members had separate hearings on this aspect. In particular, interest was expressed in whether hearings were recorded or transcribed,

³ The Committee on Anti-Dumping Practices adopted the recommendation concerning the timing of the notification under Article 5.5 on 29 November 1998, which was subsequently circulated in document G/ADP/5, dated

and whether such recordings or transcriptions were available to participants in the investigation, and Members were asked to describe their practice in this regard. Several Members commented that minutes of hearings were reported in the technical summaries or reports of investigations, and in addition hearings were generally transcribed or fully recorded, including in some instances video recordings.

21. The Group decided to ask the Secretariat to include the reference to "public interest" hearings held by one Member in an addendum to the compilation of information.⁴ The Group did not reach any conclusions regarding this topic, and agreed to revert to it at a later date.

22. The Group then turned to discussion of topic 7, provision of essential facts. Several Members expressed approval of the list of essential facts that had been circulated by the Secretariat (G/ADP/AHG/W/50). Members commented that the essential facts must include at a minimum the major elements of an anti-dumping investigation, that is, dumping, injury, and the causal relationship. Members recognized that investigating authorities needed flexibility to decide in particular cases what information should be disclosed, but it was observed that the list circulated by the Secretariat could serve as an indicative list on which that decision might be based. It was noted that, since this disclosure was made before the final decision was taken, disclosure must be as neutral as possible, to avoid appearing to prejudge the outcome. One Member expressed concern that there seemed to be confusion between the essential facts to be disclosed under Article 6.9 and the facts and explanations required in public notices or reports under Article 12. In this regard, this Member noted that its system provided for continuous access to all facts in the investigation, and enquired how other Members enabled parties to learn facts in a complete and timely fashion. Moreover, this Member was concerned that the list circulated by the Secretariat suggested an obligation to disclose reasoning or evaluation, and the Member could not agree that this was required under Article 6.9, which referred to disclosure of facts. In addition, the list appeared to include matters which were not necessarily required to be considered by investigating authorities under the Agreement, which suggested again an obligation to disclose reasoning or analysis, rather than simply facts. Another Member suggested that the publication of the provisional determination under Article 12 could serve as the disclosure of essential facts under Article 6.9. Thus, the disclosure could be broader than simply facts but could include evaluation of those facts. In response to questions, the Chairman clarified that the items on the list did not reflect any evaluation as to whether the items listed were essential facts. The list simply compiled those facts Members had identified as essential, and certainly their inclusion on the list did not imply approval. Members also raised questions concerning the mechanics of the disclosure – given the importance of disclosure of essential facts to parties, it would be useful to know how Members carried out this task.

23. The Group decided to request the Secretariat to circulate a compilation of information submitted by Members concerning how disclosure of essential facts is carried out in their respective national practices. Members who had not already done so were requested to submit the relevant information to the Secretariat as soon as possible.

24. The Group then turned to discussion of topic 8, public notices. Several Members explained their processes for issuance of public notices, and in some cases described the contents of such notices. A number of Members noted that their domestic investigating authorities, in addition to publication in official documents, made public notices available on internet web-sites, which also included other information concerning domestic procedures and investigations in some cases. A question was raised concerning how Members included information on dumping and injury in their notices of initiation. One Member noted that there is a difference between information contained in public notices and information made available to parties to an investigation. Public notices might

⁴ Subsequently circulated as G/ADP/AHG/W/51/Add.1 (DATE).

contain summaries of information which is provided or made available more fully to parties in the form of records or reports of investigating authorities.

25. The Group decided to ask the Secretariat to circulate the internet addresses of decision-making and/or investigating authorities provided by Members. These would be included in the list identifying Members' competent authorities, notified to the Committee pursuant to Article 16.5 of the Agreement, which appears in document G/ADP/N/14 and addenda. Members who had not already done so were requested to submit the relevant information to the Secretariat as soon as possible. In addition, the Group decided to ask the Secretariat to explore and report back to Members concerning the proposal to include links to Members' web-sites on the WTO web-site.

26. The Group next turned to discussion of topic 10, duty assessments. Several Members described their procedures, which ranged from specific procedures applicable only with respect to anti-dumping duties, to the application of more general procedures used in the context of tax refunds. One Member noted its continuing interest in exactly how Members determined, assessed, and collected anti-dumping duties. In this regard, it was suggested that Members might review the information previously submitted to formulate specific questions intended to elicit useful information on this issue. In addition, Members who had not yet done so might submit information describing their domestic procedures in this regard.

27. The Group did not reach any conclusions on this topic, and agreed to revert to it at a later date.

28. The Group agreed that its next meeting would be scheduled in conjunction with the April regular meeting of the Committee, on Monday and Tuesday, 26-27 April 1999.

29. The Group agreed that papers and other submissions for the Group's next meeting should be transmitted to the Secretariat no later than 15 March 1999.
