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

**DRAFT RECOMMENDATION CONCERNING
THE PERIOD OF DATA COLLECTION FOR A DUMPING INVESTIGATION**

Revision

The following sets forth (A) specific drafting suggestions concerning the text of the draft recommendation made by Members at the meeting of the Ad Hoc Group on Implementation in October 1999, indicating as well support expressed for those suggestions by other Members, and (B) comments made by Members at that meeting regarding the draft recommendation. Where no Member objected to drafting suggestions set forth in the previous revision, such suggestions have been incorporated into the draft text.

**(A) SPECIFIC DRAFTING SUGGESTIONS MADE BY MEMBERS AT THE MEETING
OF THE AD HOC GROUP ON IMPLEMENTATION IN APRIL 1999**

The Committee notes that although the Agreement on Implementation of Article VI of the GATT 1994 refers to the period of data collection for dumping investigations when it refers to the "period of investigation", it does not establish any specific period of investigation,¹ nor does it establish guidelines for determining an appropriate period of investigation, for the examination of either dumping or injury.

The Committee considers that guidelines for determining what period or periods of data collection may be appropriate for the examination of dumping and of injury would be useful. The Committee also recognizes, however, that it is important that national investigating authorities retain flexibility in order to be able to take account of the particular circumstances of a given investigation in setting the period of data collection for both dumping and injury, to ensure that it is appropriate in each case.

In light of the foregoing considerations, the Committee recommends that with respect to [original] (USA, Japan) investigations [conducted to determine the existence of dumping and consequent injury pursuant to Articles 2 and 3 of the Agreement] (Brazil, Hong Kong, China) -

1. As a general rule:

- (a) the period of data collection for dumping investigations [normally] (Brazil) should be twelve months, and in any case no less than six months;¹

¹ Footnote 4 of the Agreement does provide that, for purposes of determining whether sales below cost may be treated as not being in the ordinary course of trade, the "extended period of time" within which such sales are made "should normally be one year but shall in no case be less than six months".

- (b) the period for investigating sales below cost, and the period of data collection for dumping investigations, [~~normally~~] (**Brazil**) should be the same period in a particular investigation;
- (c) the period of data collection for [material] (**EC**) injury investigations [~~normally~~] (**Brazil**) should be at least three years;
- (d) the period of data collection for both dumping and injury investigations should include the most recent [reliable] (**USA**) data available before the initiation of the investigation; and
- [(e) Members should, if possible, consider the views of interested parties concerning the appropriate specific periods in a particular investigation.] (**Mexico**)
- [(e) Members should consider the views of interested parties concerning the appropriate specific periods in a particular investigation.] (**Japan, Cuba**)

2. In establishing the specific periods in a particular investigation, Members should consider the availability of data [including where relevant accounting data] (**USA**) in the records of the firms from which information will be sought, such firms' practices concerning financial reporting periods, the characteristics of the product in question, including seasonality and cyclicalities, and the existence of special order or customized sales.

43. In order to increase transparency of proceedings, investigating authorities should include in public notices or in the separate reports provided pursuant to Article 12 [of the Agreement] (**Mexico**), an explanation of the reason for the selection of a (**Cuba**) particular period for data collection if it differs from that provided for in this recommendation; from that provided for in national legislation, regulation, or established national guidelines; or from ~~that selected in other cases~~ the period most often selected in other recent similar cases. (**Brazil**)

(B) COMMENTS MADE BY MEMBERS AT THE MEETING OF THE AD HOC GROUP ON IMPLEMENTATION IN OCTOBER 1999 REGARDING THE THIRD REVISION OF THE DRAFT RECOMMENDATION.

1. The delegate of Brazil commented that the suggestion to delete the word "normally" from sections (a), (b), and (c) of the draft recommendation reflected the fact that the entirety of section 1 of the draft recommendation expressed a **general** rule, which made repeated reference to "normally" unnecessary and redundant.

2. The delegate of the European Community commented, as a matter of record with respect to section (c) of the draft recommendation, that it should be understood that whatever period of data collection is used, material injury is not required to be found for the entire period, but should at least be established towards the end of the period.

3. The delegate of the United States noted, with respect to section (d) of the draft recommendation, that the reference to "data available before the initiation of the investigation" did not preclude the collection of data from a period after the initiation of the investigation. The delegates of Mexico and Argentina expressed support for this view.

4. The delegate of Mexico reiterated the comment, made at the meeting of the Group in April 1999 with respect to section (c) of the draft recommendation, that Members should take into account the situation of newly established or created enterprises, where three years of data may not exist.

5. The delegate of Brazil expressed concern over the suggested inclusion of the word "reliable" in section (d) of the draft recommendation, observing that this section of the draft recommendation is focussed on the need to seek **recent** data in establishing the time-period for which data is collected. The reliability of the data is, of course, important, but cannot be determined in advance of its collection. The point of section (d) of the draft recommendation was to provide that as a general rule, the most recent data, including data for the period just prior to initiation, should be collected. Its reliability would then, of course, be assessed during the course of the investigation. The delegates of Canada, Hong Kong, China, and Mexico expressed support for the concern expressed by Brazil. The delegate of Hong Kong, China noted, in addition, that since the draft recommendation was proposing a general rule for the period of data collection, it was not necessary to include the concept of the reliability of the data in defining the time period for which data would be collected. The delegate of India noted that Article 5.3 of the Agreement required an examination of, *inter alia*, the accuracy of the evidence provided in the application. The delegate of the United States commented that the suggested inclusion of the word "reliable" was intended to reflect a concern that useable and complete data be collected.
