

WORLD TRADE ORGANIZATION

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

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TOPIC 7* - ARTICLE 6.9 "ESSENTIAL FACTS"

Paper by the United States

The following communication, dated 7 October 1997, has been received from the Permanent Mission of the United States.

Introduction

Article 6.9 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Anti-dumping Agreement) provides that, before a final determination is made, authorities shall inform all interested parties in an anti-dumping investigation 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."

The United States Department of Commerce (the Commerce Department or the Department) and the United States International Trade Commission (the Commission), in the interests of transparency, have long maintained procedures for disclosing to parties the facts underlying their anti-dumping determinations. The procedures address the disclosure of essential facts, procedures, and calculations leading to definitive measures in anti-dumping proceedings.

Information that is submitted on a timely basis to the Commerce Department or the Commission is subject to comment by other parties to the proceeding within such reasonable time as the Department or the Commission may provide. Both the Commerce Department and the Commission, before making a final determination, cease collecting information and provide the parties with opportunities to comment on information obtained.¹

Department of Commerce Procedures

The Commerce Department, which is charged with calculating the actual margin of dumping in an anti-dumping investigation, acquires most of its factual information in anti-dumping investigations from submissions made by interested parties during the course of the proceedings. Those interested parties are permitted to submit comments on facts provided to them by the Department or other parties in an anti-dumping investigation, up and until seven days prior to verification.² In this regard, parties

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

¹Section 782(g) of the Tariff Act of 1930 ("the Act").

²See 19 C.F.R. 351.301(b)(1).

may submit factual information to rebut, clarify or correct factual information submitted by any other interested party at any time prior to this deadline.³

Notwithstanding this deadline, the Department may request from any party the submission of additional factual information at any time during an anti-dumping proceeding⁴ and, pursuant to Section 782(g) of the Tariff Act of 1930, must provide the parties with the opportunity to comment on any information obtained by the Department upon which they have not previously had such an opportunity to comment.

During an investigation, parties may also comment on facts in the record by submitting written case and rebuttal briefs⁵ and participating in a public hearing.⁶ In its final determination, the Department must include an explanation of the basis for its determination that addresses relevant arguments made by all interested parties.⁷ Within five days of the announcement of its final determination, the Department must disclose to parties the details of its anti-dumping margin calculation. Parties may then submit comments on any errors or, within another five days, reply to comments submitted by others regarding any errors.⁸

An important feature of the way the Commerce Department system ensures that parties obtain all of the relevant case information in as timely a fashion as possible is that parties to the proceeding must serve their information on the other parties to the proceeding at the same time that they file it with the Department. This obviates the need for parties to have to go and inspect (and copy) information from the Department's file. Also, when submitting information to the Department, parties are required to submit the original and six copies of the proprietary version of the document, along with three copies of the public version. One of the public version copies is placed in the public case file, which is open for inspection by the public without appointment during normal hours of operation.

International Trade Commission Procedures

The Commission determines whether a United States industry has been materially injured by reason of dumped imports. Therefore, the Commission during the course of an anti-dumping investigation discloses all information obtained before the record is closed and provides parties with opportunities to comment on all information in its record. To illustrate, parties are provided at least seven opportunities to comment on facts provided to them in anti-dumping investigations before the Commission. These opportunities include: (1) a preliminary phase staff conference, (2) a postconference written brief, (3) written comments on draft questionnaires for the final phase of the investigation, (4) a written prehearing brief, (5) testimony delivered at hearings before the Commissioners and staff, (6) a written posthearing brief, and (7) final written comments on late-arriving information. Moreover, throughout anti-dumping investigations, parties are provided numerous and continuing opportunities

³See 19 CFR 351.301(c)(1) (note that if comments on facts provided are submitted less than 10 days before, on or after the deadline (normally only with the permission of the Department), rebuttal comments still may be submitted within ten days after the comments were served on other parties).

⁴See 19 C.F.R. 351.301(c)(2).

⁵See 19 C.F.R. 351.309(c)(1)(i) and 351.309(d).

⁶See 19 CFR 351.310.

⁷See Section 777(i)(3) of the Act.

⁸See 19 CFR 351.224(c).

to contact Commission investigative staff and provide additional data, comments or corrections on injury issues.

In particular, parties may testify at a staff conference provided for in the Commission's published notice of the institution of its preliminary phase investigation, and they may thereafter file written briefs in which they can comment on the testimony presented at the preliminary phase staff conference, challenge information presented by their opponents, or comment on information that has been released under the protection of an administrative protection order up to that point in the proceeding.⁹

Later, before questionnaires are issued by the Commission during the final phase of an investigation, parties are again provided an opportunity to comment in writing on the content of those questionnaires.¹⁰ Throughout the final phase of the investigation, interested parties to the investigation are served with submissions made by other parties, and business proprietary information received by the Commission is released to parties under an administrative protective order.

During the final phase of an investigation, Commission staff prepare a prehearing report, summarizing facts and information received by the Commission prior to holding a hearing and permitting the filing of prehearing briefs. That report is released to parties to the investigation, so their prehearing briefs can reflect the most current data practicable.¹¹ Each party may then file a prehearing brief, attend and present testimony at a hearing before the Commissioners and staff, and respond at the hearing or in a written posthearing brief to arguments of the parties and to questions of the Commission and staff.¹² A final report is then prepared by the staff summarizing information obtained. The final report is releasable to the parties along with any late-arriving information that had not previously been released to the parties. The report is normally released on or about day 265 of the anti-dumping investigation. Parties are provided with a final opportunity to comment on the information prior to the Commission's final vote on injury.¹³ After the vote, the Commission then releases to the parties its "final phase" determination and views of the Commission.

⁹See 19 C.F.R. 207.3 (requirement of parties to serve information submitted on other parties), 207.7(a)(1) (release of business proprietary information under APO), 207.12 (notice of preliminary phase of investigation published), and 207.15 (provision for written briefs and conference).

¹⁰See 19 C.F.R. 207.20(b).

¹¹See 19 C.F.R. 207.22.

¹²See 19 C.F.R. 207.23, 207.24, and 207.25.

¹³See 19 C.F.R. 207.30.