

**PROPOSAL ON ISSUES RELATING TO EVIDENCE, PUBLIC NOTICE
AND EXPLANATION OF THE DETERMINATIONS UNDER
ARTICLES 6 AND 12 OF THE ADA**

Communication from Norway

Addendum

The following communication, dated 13 October 2005, is being circulated at the request of the Delegation of Norway.

The submitting delegation has requested that this paper, which was submitted to the Rules Negotiating Group as an informal document (JOB(05)/132/Add.1), also be circulated as a formal document.

**FURTHER PROPOSAL ON ISSUES RELATING TO
ARTICLE 6 OF THE ADA**

1. Introduction

Members have had a preliminary discussion on the major aspects of the due process and transparency paper submitted by Norway in TN/RL/GEN/49 during the Rules-session of September 2005. The discussion revealed a broad interest amongst Members on this key issue and valuable input was given on how to carry the discussion forward.

At this juncture Norway would like to provide an update on some of the elements discussed and on the background of proposals for changes reflected in Annex of TN/RL/GEN/49. For the sake of expediency we have concentrated on the elements of the proposals relating to Article 6 of the ADA. We have considered various input from Members and thus amended the legal text relating to certain, but not all parts of Article 6. We expect that the various inputs from Members reflected in this revised text will facilitate an agreement on issues related to the due process and transparency. Norway welcomes additional comments on these and other transparency and due process-related issues in the course of the negotiations.

This document presents a number of specific proposals for clarification and improvement. It does not represent final positions.

ANNEX

Summary of proposed changes to current text of ADA

(For ease of reference we reproduce below the current text of the relevant Articles of the AD Agreement, with the proposed changes included. Additions are underlined, while deletions are presented with ~~strikethroughs~~.)

Article 6 - Evidence

6.1 Authorities shall actively and in an objective and unbiased manner seek the evidence necessary for the investigation. All interested parties in an anti-dumping investigation shall be given notice¹ of the information which the authorities require and ample opportunity to present in writing all evidence which ~~they~~ the interested parties consider relevant in respect of the investigation in question.²

6.1.1 Exporters or foreign producers receiving questionnaires used in an anti-dumping investigation shall be given at least ~~30~~ 45 days for reply.³ Due consideration should be given to any request for an extension of the ~~30~~ 45-day period and, upon cause shown, such an extension should be granted whenever practicable.⁴

6.1.4 Where information submitted must be translated, authorities shall accept unofficial translations, and shall not require certification by official translators.⁵

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6.4 The authorities shall ~~whenever practicable~~ provide ~~timely~~ prompt opportunities for all interested parties to see all information that is ~~relevant to the presentations of their cases, that is not~~ confidential as defined in paragraph 5, and that is ~~used by~~ before the authorities in an anti-dumping investigation, regardless of whether the authorities use or intend to use a particular piece of information, and to prepare presentations on the basis of this information. Authorities shall make available to all interested parties on request an updated list of all documents contained in the file of an anti-dumping investigation, including a list of all documents withheld because of confidentiality. The list shall be updated throughout the investigation. Authorities shall maintain a location where

¹ New footnote to be inserted: Authorities shall make best efforts to identify the exporters and/or producers concerned, including through, inter alia, checking customs declarations, through requests to industry associations in the exporting Member, through industry publications in the exporting Member and any other means reasonably available to them.

² Editorial note: Any possible conflict of the new footnote above with Article 5.5 will be solved through the proposals in FANs paper.....related to the initiation of investigations.

³ Existing footnote no. 15: As a general rule, the time-limit for exporters shall be counted from the date of receipt of the questionnaire, which for this purpose shall be deemed to have been received one week from the date on which it was sent to the respondent or transmitted to the appropriate diplomatic representative of the exporting Member or, in the case of a separate customs territory Member of the WTO, an official representative of the exporting territory.

⁴ Editorial note: Instead of extending the time limit, we are willing to discuss possibilities to enhance the extension clause. Special treatment of SMEs and language problems in responding to questionnaires are of particular importance. In this respect, reference is also made to G/ADP/7.

⁵ Editorial note: We raise the question whether the issues of language and the review of documents are more appropriately dealt with in ANNEX II, which then would be, and probably already is procedures relating to the whole of Article 6 and not solely paragraph 8 of Article 6.

information will be placed promptly after its receipt or creation, and where free access shall be given to all interested parties to review or copy the information.⁶

6.5.1. The authorities shall require interested parties providing confidential information to furnish ~~non-confidential summaries thereof.~~ a public version of the document containing the confidential information. The public version of the document shall be identical to the version containing the confidential information except that the confidential information shall be redacted and replaced by a non-confidential summary. Upon cause shown, where that is not possible, a non-confidential summary may replace the confidential document. These summaries shall be ~~in~~ sufficiently detailed to permit a reasonable understanding of the substance of the information submitted in confidence. In exceptional circumstances, ~~such~~ parties may indicate that such information is not susceptible to summary. In such exceptional circumstances, a statement of the reasons why summarization is not possible must be provided to all interested parties.

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6.6 ~~[Except in circumstances provided for in paragraph 8, t,]~~⁷ The authorities shall during the course of an investigation satisfy themselves as to the accuracy of the information ~~supplied by interested parties~~ upon which their findings are based. Within a reasonable period after receipt of responses to the questionnaires, the authorities shall set out in writing any requests for clarifications or additional requirements for information from the interested party concerned. If evidence or information is not accepted, the supplying party shall be informed promptly of the reasons therefore, and shall have the opportunity to provide further evidence or information or explanations within a reasonable period.

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6.13 The authorities shall take due account of any difficulties experienced by interested parties, in particular [small companies] [SMEs]⁸, in supplying information requested, and shall provide any assistance practicable. In particular the authorities shall respond in a timely manner to requests for clarifications of the questionnaire, including on the information needed.

⁶ Editorial note: We raise the question whether the issues of language and the review of documents are more appropriately dealt with in ANNEX II, which then would be, and probably already is procedures relating to the whole of Article 6 and not solely paragraph 8 of Article 6.

⁷ Editorial note: In FANs proposal TN/RL/GEN/64 on Facts Available, Article 6.8 is changed. Thus the first sentence in Article 6.6 may be deleted.

⁸ Editorial note: SMEs appears to be a term commonly used by Members, and may be a better alternative to the term "small companies". See also footnote 4.