

**PROPOSAL ON ESTABLISHMENT OF RESPONDING
AND COMMENT PROCEDURE AFTER INITIATION**

Communication from China

The following communication, dated 30 June 2005, is being circulated at the request of the Delegation of China.

The submitting delegation has requested that this paper, which was submitted to the Rules Negotiating Group as an informal document (JOB(05)/138), also be circulated as a formal document.

Summary

1. Clarification and improvement of the procedures of anti-dumping and countervailing investigations are an important part of rules negotiations, which is helpful for effective protection of the substantive rights of the interested parties. China would suggest that the following provisions be added to the ADA and ASCM: a 20-day responding and comment period be established between initiation and issue of questionnaires, to allow the producers and/or exporters involved in the investigation to respond to the authorities and comment on the information given in the public notice of initiation. Such a procedure would help the respondents in making the necessary preparations for responding to the questionnaire to be released. Also, it would address the situation where the current Agreements provide no explicit right or procedure for the interested parties to comment on the initiation. Furthermore, it would help the authorities to acquire basic information from respondents as early as possible and thus mitigate the burden of investigation.

Description of the problem

2. As far as the respondents are concerned, the current practice requires that they must make the decision on whether to respond, decide on their defence strategy, set up a working team, hire lawyers, compiling past sales data, collect company information, respond to questionnaires, have the responses translated, bound and posted all within 30 days after receipt of the questionnaires. For firms with a large amount of exports and transactions, especially those small- and medium -sized firms from developing countries, they often choose not to respond for fears of not being able to complete the questionnaires within such a short period of time. Therefore, establishing a 20-day responding and comment period after initiation and before the release of questionnaires for companies to make decisions on whether to respond and to comment on the initiation would enable the respondents to concentrate on issues related to filling the questionnaires in the questionnaires phase, thus effectively reducing their burden of defence and, at the same time, providing the authorities with information in greater detail, adequacy and accuracy, increasing the likelihood of fair determinations.

3. A 20-day responding and comment period could also help to change the situation where the current Agreements have not explicitly provided the respondents with the right or procedure for

commenting on the public notice of initiation and to prevent them from being rushed into the phase of answering questionnaires and thus being handicapped at the very beginning of the investigation. Within the 20-day responding and comment period, respondents may comment on the information given in the public notice of initiation, including the representativeness of the applicant, scope of the product under consideration and evidence given for justifying the initiation of the investigation.

Representativeness of the applicant

4. The issue of representativeness of the applicant must be addressed by the authorities before the initiation of an investigation. This is dealt with in Article 5.4 of the ADA. But in practice, there may be proceedings initiated where the output of the applicant is not sufficient to represent the domestic industry. In such cases, the authorities should immediately terminate the proceeding upon confirmation. China believes that a 20-day responding and comment period established after initiation and before the release of questionnaires would allow respondents to make comments on the issue of standing and draw the attention of the authorities to this issue so that the latter may make clarifications to the extent possible and try to resolve the problem at the very outset.

Scope of product under consideration

5. Scope of product under consideration, which has a direct bearing on the fairness of the determinations, is of critical importance in both anti-dumping and countervailing investigations. In practice, application documents and public notice on initiation contain information on the scope of product under consideration as well as the corresponding HS Codes for reference. However, it occurs quite often that, due to ambiguity in product scope description and different HS code systems used by different Members, respondents would encounter difficulties in terms of identifying the exact scope of product under consideration and providing sufficient and accurate information to the authorities. In case of ambiguity in product scope description, respondents should have the right to express their concerns to and seek clarification from the authorities. If they suspect that their products are included in the scope of product under consideration by mistake, they shall have the right to defend their interest by submitting comments to the authorities along with a preliminary analysis of the issue, whereas the authorities may to the extent possible provide preliminary responses on the basis of information available, which would facilitate the resolution of the problems.

Evidence for justifying the initiation of an investigation

6. In the responding and comment period, based on the information and data available, respondents may make comments on the accuracy and adequacy of the evidence on which the initiation is based, challenge the evidence and provide a preliminary analysis thereof, so as to draw the authorities' attention to the relevant evidence at the very beginning of the proceeding and ensure that the grounds for initiation and subsequent investigation meet the requirements of the Agreement. If respondents should demonstrate that the authorities have no adequate evidence to justify the initiation, the authorities shall terminate the proceedings without delay, so as to avoid the waste of resources and save costs for interested parties.

7. As far as the investigating authorities are concerned, the current practice that allows no intervening period between initiation and the release of questionnaires means that the authorities would not be able to obtain information such as the intention of producers/exporters to respond, number of respondents, their import volume and existence of any objection to the initiation of investigation until after the close of the questionnaires period. In that case, the authorities would find it difficult to grasp the issues of contention at an early date or make an accurate assessment of the priorities and workload of the subsequent investigation, or, particularly in cases where sampling is required, proceed with the sampling smoothly if information pertaining to the respondents is not received in time. The institution of the 20-day post-initiation responding and comment period would

help resolve the above problems, reduce the workload for the authorities, improve their work efficiency while increasing the predictability of the proceedings and cutting the cost.

Proposal

8. The following paragraph shall be added in Article 5 of the ADA (initiation and subsequent investigation) and Article 11 of the ASCM (initiation and subsequent investigation):

The authorities shall in the public notice on the initiation of an investigation give the interested parties a period of 20 days after the date of initiation to notify the latter's intention to participate in the proceeding, provide the relevant information¹ and comment on the information contained in the notice of initiation, such as the representativeness of the applicant, the scope of the product under consideration and the evidence given to justify the initiation of the investigation. The authorities shall take due account of such comments. Questionnaires shall be sent to the interested parties within 10 days after the date of expiry of the above responding and comment period.

9. This paper does not purport to represent the People's Republic of China's final views on this matter and the People's Republic of China reserves the right to make further proposals.

¹ Information may include but not be limited to name, address, legal representative, contact details and contact person of the interested parties, total volume and value of the product under investigation exported to the investigating Member during the investigation period, and the official seal of the interested parties or signature of the legal representative.