

**PROPOSAL ON THE DISCLOSURE OF ESSENTIAL FACTS**

Communication by Turkey

The following communication, dated 15 September 2005, is being circulated at the request of the Delegation of Turkey.

The submitting delegation has requested that this paper, which was submitted to the Rules Negotiating Group as an informal document (JOB(05)/186), also be circulated as a formal document.

**1. Introduction**

Throughout the investigation, the interested parties should be informed via sufficiently detailed disclosure of findings, decisions and calculations to be able to defend their interests. Various Articles of the Anti-Dumping Agreement, in particular Article 6 and Article 12, describe the requirements to be fulfilled so as to provide full opportunity to the interested parties to defend their interests.

Among those Articles that call for transparency and due process, Article 6.9, in our view, is very critical in the sense that it requires disclosure of essential facts under consideration and that this be made in sufficient time. Therefore we opine that this Article merits a closer look by this Group.

Article 6.9 reads as follows:

“The authorities shall, before a final determination is made, inform all interested parties 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 Article’s clear intention is to provide the interested parties an opportunity to comment on the findings of the authority on dumping, injury and causation, correct clerical errors or misinterpretations of the facts, if any, and observe whether their arguments were taken into account, before the final determination is made, or in other words before it is too late.

However, despite this critical task, the provisions of this Article fall short off realizing this goal, since the Article does not explicitly announce certain key items such as the content of the notification and the time to be allowed to the interested parties to comment. Furthermore, the Article seems to require disclosure of only the essential facts and not the considerations and evaluation by the authority of those facts, which are as important as the facts themselves in order for the interested parties to defend their interests.

Consequent to such deficiencies in the Article, our experiences have proven that in some cases the reports provided do not allow for a reasonable understanding of facts and findings that establish the basis for the authorities' determinations and decisions. Such practice prevents the interested parties from having adequate knowledge of the facts and findings essential to the case. This, in turn, denies the interested parties the opportunity to present rebuttal arguments.

In this respect, this paper intends to promote a discussion on the disclosure of essential facts and considerations. However, while doing this, Turkey is aware that Members have differing anti-dumping systems. To the best of our knowledge, those Members, who have a bifurcated system with regard to dumping and injury determinations, disclose only facts regarding dumping findings.

However, Article 6.9 requires the disclosure of the essential facts under consideration, which form the basis for the decision whether to apply definitive measures. Thus, any disclosure under Article 6.9 should cover facts about dumping, injury and causal link, since findings on these items are the key to final decision. Yet, we are of the view that it is essential for the interested parties to be informed beforehand of the facts and also of the considerations, which form the basis for the final decision.

## **2. Proposal**

Turkey proposes to amend Article 6.9 as follows:

“The authorities shall, before a final determination is made, inform all interested parties of the essential facts and considerations which form the basis for the decision whether to apply definitive measures. Such disclosure shall, due regard being paid to the requirement for the protection of confidential information, contain in particular:

- (i) the names of the suppliers, or when this is impracticable, the supplying countries involved;
- (ii) a description of the product which is sufficient for customs purposes;
- (iii) the margins of dumping established and a full explanation of the reasons for the methodology used in the establishment and comparison of the export price and the normal value under Article 2;
- (iv) considerations relevant to injury and causation as set out in Article 3.

The parties shall be allowed 15 days to comment.

## **3. Explanation**

The proposal is intended to add more predictability to the current text of Article 6.9. In this respect, the content of the disclosure and a time limit to provide comments on the disclosure are introduced. In shaping this proposal, we have benefited from Article 12.2.1, which we believe contains sufficient guidance on what may be included in a disclosure. Moreover, we are of the view that some parallelism between final disclosure and public notices would be useful.

It is clear that, the essential facts in an anti-dumping investigation that will form the basis for the decision whether to apply definitive measures are the information on injury, dumping and the causal link between the two. Thus, any disclosure should basically include such facts and findings on these three items. To this end, Turkey proposes to improve Article 6.9 so as to lay down the content of final disclosure.

Our proposal also introduces a solid period for the interested parties to comment on the disclosure. Although our practice so far has proven that the 15-day period to comment is sufficient in most of the cases and an extension may be granted where necessary, we are still open to discuss this time period.

The paper does not purport to represent Turkey's final views on the matter and Turkey reserves the right to offer additional thoughts during the negotiation process.

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