

ACCESS TO NON-CONFIDENTIAL INFORMATION

Paper from the United States

The following communication, dated 16 November 2005, is being circulated at the request of the Delegation of the United States.

The submitting delegation has requested that this paper, which was submitted to the Rules Negotiating Group as an informal document (JOB(05)/293), also be circulated as a formal document.

All Members of the WTO will benefit by ensuring that the public can access non-confidential information gathered by investigating authorities in antidumping and countervailing duty proceedings. Public access to information is essential to maximizing transparency, consistency and predictability in such proceedings. Therefore, Article 6 of the Anti-Dumping Agreement (ADA) and Article 12 of the Agreement on Subsidies and Countervailing Measures (ASCM) should be clarified and improved to guarantee the public access to that information.

There are many reasons members of the public have an interest in accessing the non-confidential information gathered in antidumping and countervailing duty investigations. Most importantly, exporters, producers and importers have a legitimate need to: (1) research how proceedings are conducted so that they can better prepare for proceedings in which they may be involved; (2) examine how similarly situated parties in other cases have been treated; and (3) generally, be able to defend fully their interests in the course of particular proceedings. However, exporters, producers and importers are not the only parties with a legitimate interest in accessing the non-confidential information. As already recognized by Article 6.12 of the ADA and Article 12.10 of the ASCM, industrial users and consumers have legitimate interests in trade remedy proceedings; their ability to participate under those provisions is severely curtailed if they do not have access to non-confidential information. Further, civil society, academics and other members of the public have important interests in being permitted to access non-confidential information in trade remedy proceedings to better understand the policies adopted by Member governments.

Creating a system of publicly accessible files is also in the interest of Members and their authorities. Providing access to the relevant documents increases public confidence in the functioning of the investigating authority, which strengthens the ability of the government to enforce its determinations. Further, making such information available to the public, which obviously includes administrators from other countries, allows other Members to benefit from the national experience of the investigating Member in addressing similar issues in their own cases. Moreover, maintenance of a well-organized non-confidential file also ensures the availability of a complete evidentiary record to support final determinations that may be reviewable in domestic judicial processes or other dispute settlement proceedings, and will reduce disagreements about what information was before the authorities in a particular proceeding.

In the view of the United States, the public can be given access to non-confidential documents in a manner which does not harm the integrity of the investigatory process, and does not impose unreasonable burdens on trade remedy authorities. First, the ADA and ASCM protect any information which is “by nature confidential,” or which is “provided on a confidential basis.”¹ Second, rules can be devised to ensure orderly access to the information, without unduly restricting such access. Third, rules can be devised to avoid imposing unnecessary costs on authorities for providing access.

The United States proposes amending Article 6 of the ADA and Article 12 of the ASCM by adding the following:

6.15 [12.13] Members shall maintain a facility, open for a specified, reasonable period during normal working hours, where any person can, without charge or appointment, review all non-confidential documents submitted to or obtained by the authority in an anti-dumping [countervailing duty] proceeding. Such documents shall be organized in a manner easily accessible to any person visiting such facility, and a complete index of documents in the possession of the authority shall be available to that person to facilitate the identification and location of particular documents in the file. It is desirable that such documents and indices also be available over the Internet. Members shall also make available in this facility a file of all public notices, in chronological order, issued pursuant to Article 12 [22], as well as copies of any documents submitted to the Committee on Anti-Dumping Practices pursuant to Article 16.4 [Committee on Subsidies and Countervailing Measures pursuant to Article 25.11] of this Agreement. Members shall permit any non-confidential document in the facility to be copied at the reasonable expense of the person accessing it.² Members shall notify the Committee on Anti-Dumping Practices [Committee on Subsidies and Countervailing Measures] of the location, opening hours, and the name and contact information of a person responsible for facilitating access to the facility.

¹ See Articles 6.5 of the ADA and 12.4 of the ASCM.

² The United States is open to discussing the definition of “reasonable expense,” but suggests that the expense to the person accessing and copying the document should be no greater than the cost incurred by the authority to provide the copy.