

**PROPOSAL ON PROCEDURE OF PROVIDING
NON-CONFIDENTIAL APPLICATION**

Communication from Japan

The following communication, dated 20 April 2006, is being circulated at the request of the Delegation of Japan.

The submitting delegation has requested that this paper, which was submitted to the Rules Negotiating Group as an informal document (JOB(06)/107), also be circulated as a formal document.

Explanation:

In current practice, some authorities do not provide a copy of the application for an anti-dumping investigation (ADA Article 5.1) until after the investigation is initiated.

However, the information contained in the application may be factually incorrect. ADA Article 5.3 requires authorities to “examine the accuracy and adequacy of the evidence provided in the application to determine whether there is sufficient evidence to justify the initiation of an investigation.” However, authorities may lack the sources of information needed to make a thorough examination on the accuracy/adequacy of the evidence in the application. Exporters in the subject country might be in a position to provide useful information to the authorities on key issues regarding the application. If exporters had the ability to provide authorities with accurate, substantiated information on these issues, this could help the authorities to examine the accuracy of the information in the application and thus to avoid the initiation of anti-dumping investigations on the basis of unfounded or erroneous applications.

On the other hand, this does not necessarily mean that the authorities have to accept and take into account the information that is provided by the exporters before the initiation. It would merely open a reasonable possibility to help the authorities with useful information.

Thus, we believe that this strikes an appropriate balance between the interests of the exporters and producers, and to take into account of the time limits and other constraints faced by authorities. This proposal would not impose any burden on the authorities. It would only require the authorities to provide the non-confidential version of the application to the government of the exporting Member. The government in turn may provide the application to the exporters and producers identified in the application, and to others who may be subject to the potential investigation.

We do not believe this procedure would have any “chilling” effect on trade, so long as the application is provided from the authorities only to the government of the exporting country and the exporters, and not publicized to the wider public. In any event, prevention of any such chilling effect and providing an adequate opportunity to defend against allegations of injurious dumping are both

protections intended for exporters and producers, and should be balanced with the interests of exporters and producers in mind.

Proposals:

Amend Articles 5.5 and 6.1.3 as follows:

5.5 The authorities shall avoid, unless a decision has been made to initiate an investigation, any publicizing of the application for the initiation of an investigation. However, within [7] days after receipt of a properly documented application ~~and before proceeding to initiate an investigation~~, the authorities shall notify and provide the full text of such application received under paragraph 1 to the government of the exporting Member concerned, which may make it available to the exporters and foreign producers and relevant trade associations known to the government of the exporting Member concerned.¹ Due regard shall be paid to the requirement for the protection of confidential information, as provided for in paragraph 5 of Article 6.

6.1.3 As soon as an investigation has been initiated, the authorities shall provide the full text of the written application received under paragraph 1 of Article 5 to the known exporters² ~~and to the authorities of the exporting Member~~ and shall make it available, upon request, to other interested parties involved. Due regard shall be paid to the requirement for the protection of confidential information, as provided for in paragraph 5.

¹ New footnote: This shall not preclude the authorities from providing the full text of such application directly to the known exporters and foreign producers and relevant trade associations, in addition to providing it to the government of the exporting Member.

² Existing footnote 16: It being understood that, where the number of exporters and foreign producers involved is particularly high, the full text of the written application ~~should~~ may instead be provided to ~~the authorities of the exporting Member or the relevant trade association or the authorities may notify to the government of the exporting Member that the full text of the written application cannot be provided to the exporters and foreign producers because of such high number.~~