

**DISCLOSURE OF CALCULATIONS
IN PRELIMINARY AND FINAL DETERMINATIONS**

Communication from the United States

The following communication, dated 20 April 2006, 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(06)/116), also be circulated as a formal document.

The United States submits this paper to complement its previous paper on mandatory preliminary determinations.¹ In its previous paper, the United States highlighted the fact that transparency and full participation by parties are promoted by requiring the authority to inform parties, not only of the facts before the authority, but also of the authority's interpretation of those facts, and how both the facts and the interpretation of them relate to the pertinent principles of law to be applied. To further this goal, the US proposed that Members be required to issue preliminary determinations disclosing essential legal and factual considerations; Brazil made a similar proposal based on similar concerns.² Other Members have also noted the importance of disclosure to the interested parties of the authority's analysis of the facts before it.³

In this paper, we are proposing that all authorities be required to disclose certain types of information following preliminary and final determinations of the rates of dumping or countervailable subsidy and the level of duty to be applied. Regardless of the methodology or mechanism for determining the applied duty rate in an anti-dumping or countervailing duty proceeding, the authority must perform certain calculations using the information that has been provided or gathered during the course of the investigation. The United States believes that the authority should provide to each interested party for whom a level of duty has been determined the calculations that were used to determine the rate of dumping or countervailable subsidy and the level of duty to be applied to that interested party, accompanied by explanations sufficient to permit that party to reproduce those calculations. Such disclosure should be provided promptly, normally within one week of giving public notice of a determination, as required under Article 12.2 of the Anti-Dumping Agreement (ADA) and Article 22.3 of the Agreement on Subsidies and Countervailing Measures (ASCM).

¹ See, *Proposal on the Disclosure of Essential Preliminary Legal and Factual Considerations (Mandatory Preliminary Determinations)*, Paper from the United States, TN/RL/GEN/108 (6 March 2006).

² See, *Proposal on Preliminary Determinations*, Paper from Brazil, TN/RL/GEN/102 (3 March 2006).

³ *Proposal on the Disclosure of Essential Facts*, Communication by Turkey, TN/RL/GEN/63 (16 September 2005), and *Further Proposal on Issues Relating to Article 6.9 of the ADA*, Paper from Norway, TN/RL/GEN/87 (17 November 2005).

Subsequent to the issuance of a preliminary or final determination, a disclosure should include, at a minimum, the following:

1. the calculations used to determine the rate of dumping or countervailable subsidy and, if different, the calculations of the applied duty rate for collection or assessment purposes, whether in electronic format or hard copy (computer programs, spreadsheets, or any other medium demonstrating the calculations);
2. a detailed explanation of what information was used, and where the authority obtained the information;
3. a detailed explanation of any adjustments made to reported information when used in the calculations.

The goal of this disclosure should be to ensure that each firm has all of the information and explanation it needs to reproduce the calculation of the rate of dumping or countervailable subsidy, and any other rate of duty to be applied.

The United States recognizes that some of the information involved may be confidential, but believes that interested parties have a fundamental interest in knowing that any measures to be imposed are not the result of erroneous or arbitrary calculations. In light of the concern about confidentiality, the United States is not proposing that the calculations be disclosed to any party other than the party for whom the rate of dumping or subsidization and the level of duty have been calculated (normally the exporter).

Proposed Text

ADA Article 6.10*bis* [ASCM Article 12.8*bis*]

The authorities shall, normally within seven days after giving public notice of a preliminary or final determination under Article 12.2 [Article 22.3], disclose to each interested party for whom an individual rate of duty has been determined, the calculations used to determine the rate of dumping [countervailable subsidy] and, if different, the rate of duty to be applied to that interested party. The authorities shall provide to the interested party the calculations, whether in electronic format (such as a computer programme or spreadsheet) or in any other medium, a detailed explanation of the information used, the sources of that information and any adjustments made to the information when used in the calculations. The disclosure and explanation shall be in sufficient detail to permit the interested party to reproduce the calculations without undue difficulty.
