

**PROMPT ACCESS TO NON-CONFIDENTIAL INFORMATION  
(ARTICLES 6.4 AGREEMENT ON ANTI-DUMPING PRACTICES  
AND 12.3 AGREEMENT ON SUBSIDIES AND COUNTERVAILING MEASURES)<sup>1</sup>**

Communication from the United States

The following communication, dated 28 June 2004, is being circulated at the request of the Delegation of the United States.

The Members have agreed to take up the issue of clarifications and improvements to the Anti-Dumping Agreement (ADA) and Agreement on Subsidies and Countervailing Measures (ASCM). In this effort, the United States proposed that this Group examine clarifications designed to improve prompt access to non-confidential information.<sup>2</sup> While the Agreements recognize that confidential information may be protected from public disclosure, in many cases the United States has found that interested parties do not even have prompt access to supposedly "public" information.

Although Articles 6.4 ADA and 12.3 ASCM already address this issue<sup>3</sup>, their language could be misunderstood to shield authorities from their obligation to allow interested parties access to non-confidential information. There are at least five aspects of Articles 6.4 and 12.3 that could be misinterpreted to support an argument against permitting any access to non-confidential information. First, Articles 6.4 and 12.3 require access to information "whenever practicable". While the United States supports the view that authorities should not be required to do the impracticable, it should be made clear that the "practicability" standard is intended to allow authorities to establish orderly access, not to circumscribe access so that the purpose of Articles 6.4 and 12.3 is undermined.

Second, Articles 6.4 ADA and 12.3 ASCM require that access to non-confidential information be "timely". It should be clarified that access should be as prompt as possible after the authority comes into possession of non-confidential information concerning an investigation, taking due account of the need to maintain orderly access, and, in any event, in sufficient time to allow the interested party to defend its interests. While Articles 6.1.2 ADA and 12.1.2 ASCM require prompt

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<sup>1</sup> The delegation of the United States has requested that this paper, which was submitted to the Rules Negotiating Group as an informal document (JOB (04)/89), also be circulated as a formal document.

<sup>2</sup> TN/RL/W/35. The issue raised in this paper is limited to clarifying and improving timely access to non-confidential information submitted or gathered during the course of a proceeding. In a separate paper the United States may elaborate on its ideas with respect to confidential information under Articles 6.5 ADA and 12.4 ASCM, and public notice and explanation of determinations under Articles 12 ADA and 22 ASCM.

<sup>3</sup> ADA Article 6.4 states that "the authorities shall whenever practicable provide timely opportunities for all interested parties to see all information that is relevant to the presentation of their cases, that is not confidential as defined in paragraph 5, and that is used by the authorities in an anti-dumping investigation, and to prepare presentations on the basis of this information". ASCM Article 12.3 contains nearly identical language.

access to non-confidential information presented in writing by a party, they do not cover information gathered by the authority itself.

Third, Articles 6.4 ADA and 12.3 ASCM require that interested parties be permitted to "see" the non-confidential information. Given that the information is non-confidential, Members should clarify that parties may make photocopies of the information.

Fourth, interested parties are permitted to see the information "that is relevant to the presentation of their cases". Members should clarify that it is the interested party, not the authority, that may make the determination of relevance.

Fifth, Articles 6.4 ADA and 12.3 ASCM require access to non-confidential information that is "used" in an investigation. However, if authorities misread these provisions as permitting them to deny access to any information that they do not use, then interested parties may only have access to information that supports and does not detract from the authorities' conclusions.

With these concerns in mind, Articles 6.4 ADA and 12.3 ASCM could be clarified and improved as follows:

1. Require authorities to establish a central location with fixed daily opening hours where interested parties can, without prior appointment, review and make copies of all non-confidential information that has been submitted to or obtained by the authority for an investigation;
  2. Require authorities promptly to place copies of all non-confidential information relating to each investigation in this central location, whether that information is submitted by an interested party, or obtained by the authority in any other manner;
  3. Clarify that interested parties have access to all non-confidential information submitted to or obtained by an authority for an investigation, regardless of whether the authority considers a particular piece of information to be relevant to the presentation of their cases;
  4. Clarify that interested parties have access to all non-confidential information submitted to or obtained by an authority for an investigation, regardless of whether the authority uses or intends to use a particular piece of information;
  5. Clarify that the public should be given equivalent access to review and make copies of all non-confidential information relating to any antidumping or countervailing duty investigation.
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