

**1 ARTICLE 5 OF THE AGREEMENT ON IMPLEMENTATION OF ARTICLE VI OF THE
GENERAL AGREEMENT ON TARIFFS AND TRADE 1994 1**

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**1 ARTICLE 5 OF THE AGREEMENT ON IMPLEMENTATION OF ARTICLE VI OF THE GENERAL
AGREEMENT ON TARIFFS AND TRADE 1994**

1.1 Text of Article 5

Article 5

Initiation and Subsequent Investigation

5.1 Except as provided for in paragraph 6, an investigation to determine the existence, degree and effect of any alleged dumping shall be initiated upon a written application by or on behalf of the domestic industry.

5.2 An application under paragraph 1 shall include evidence of (a) dumping, (b) injury within the meaning of Article VI of GATT 1994 as interpreted by this Agreement and (c) a causal link between the dumped imports and the alleged injury. Simple assertion, unsubstantiated by relevant evidence, cannot be considered sufficient to meet the requirements of this paragraph. The application shall contain such information as is reasonably available to the applicant on the following:

- (i) the identity of the applicant and a description of the volume and value of the domestic production of the like product by the applicant. Where a written application is made on behalf of the domestic industry, the application shall identify the industry on behalf of which the application is made by a list of all known domestic producers of the like product (or associations of domestic producers of the like product) and, to the extent possible, a description of the volume and value of domestic production of the like product accounted for by such producers;
- (ii) a complete description of the allegedly dumped product, the names of the country or countries of origin or export in question, the identity of each known exporter or foreign producer and a list of known persons importing the product in question;
- (iii) information on prices at which the product in question is sold when destined for consumption in the domestic markets of the country or countries of origin or export (or, where appropriate, information on the prices at which the product is sold from the country or countries of origin or export to a third country or countries, or on the constructed value of the product) and information on export prices or, where appropriate, on the prices at which the product is first resold to an independent buyer in the territory of the importing Member;
- (iv) information on the evolution of the volume of the allegedly dumped imports, the effect of these imports on prices of the like product in the domestic market and the consequent impact of the imports on the domestic industry, as demonstrated by relevant factors and indices having a bearing on the state of the domestic industry, such as those listed in paragraphs 2 and 4 of Article 3.

5.3 The authorities shall 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.

5.4 An investigation shall not be initiated pursuant to paragraph 1 unless the authorities have determined, on the basis of an examination of the degree of support for, or opposition to, the application expressed¹³ by domestic producers of the like product, that the application has been made by or on behalf of the domestic industry.¹⁴ The application shall be considered to have been made "by or on behalf of the domestic industry" if it is supported by those domestic producers whose collective output constitutes more than 50% of the total production of the like product produced by that portion of the domestic industry expressing either support for or opposition to the application. However, no investigation shall be initiated when domestic producers expressly supporting the application account for less than 25% of total production of the like product produced by the domestic industry.

(footnote original) ¹³ In the case of fragmented industries involving an exceptionally large number of producers, authorities may determine support and opposition by using statistically valid sampling techniques.

(footnote original) ¹⁴ Members are aware that in the territory of certain Members employees of domestic producers of the like product or representatives of those employees may make or support an application for an investigation under paragraph 1.

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, after receipt of a properly documented application and before proceeding to initiate an investigation, the authorities shall notify the government of the exporting Member concerned.

5.6 If, in special circumstances, the authorities concerned decide to initiate an investigation without having received a written application by or on behalf of a domestic industry for the initiation of such investigation, they shall proceed only if they have sufficient evidence of dumping, injury and a causal link, as described in paragraph 2, to justify the initiation of an investigation.

5.7 The evidence of both dumping and injury shall be considered simultaneously (a) in the decision whether or not to initiate an investigation, and (b) thereafter, during the course of the investigation, starting on a date not later than the earliest date on which in accordance with the provisions of this Agreement provisional measures may be applied.

5.8 An application under paragraph 1 shall be rejected and an investigation shall be terminated promptly as soon as the authorities concerned are satisfied that there is not sufficient evidence of either dumping or of injury to justify proceeding with the case. There shall be immediate termination in cases where the authorities determine that the margin of dumping is *de minimis*, or that the volume of dumped imports, actual or potential, or the injury, is negligible. The margin of dumping shall be considered to be *de minimis* if this margin is less than 2%, expressed as a percentage of the export price. The volume of dumped imports shall normally be regarded as negligible if the volume of dumped imports from a particular country is found to account for less than 3% of imports of the like product in the importing Member, unless countries which individually account for less than 3% of the imports of the like product in the importing Member collectively account for more than 7% of imports of the like product in the importing Member.

5.9 An anti-dumping proceeding shall not hinder the procedures of customs clearance.

5.10 Investigations shall, except in special circumstances, be concluded within one year, and in no case more than 18 months, after their initiation.

1.2 General

1.2.1 Application for investigation within 365 days of a negative finding

1. Paragraph 7.1 of the Doha Ministerial Decision of 14 November 2001 on Implementation-Related Issues and Concerns provides that the Ministerial Conference:

"agrees that investigating authorities shall examine with special care any application for the initiation of an anti-dumping investigation where an investigation of the same product from the same Member resulted in a negative finding within the 365 days prior to the filing of the application and that, unless this pre-initiation examination indicates that circumstances have changed, the investigation shall not proceed."¹

1.3 Article 5.5: Notification to the government of the exporting Member concerned

2. At its meeting of 29 October 1998, the Committee on Anti-Dumping Practices adopted a recommendation on the timing of notifications required under Article 5.5 of the Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Anti-Dumping Agreement), providing as follows:

"the notification required by the second sentence of Article 5.5 should be made as soon as possible after the receipt by the investigating authorities of a properly documented application, and as early as possible before the decision is taken regarding initiation of an investigation on the basis of that properly documented application."²

1.4 Article 5.8: Negligible import volumes

3. On 27 November 2002, the Committee on Anti-Dumping Practices adopted a recommendation concerning the time-period to be considered in making a determination of negligible import volumes for purposes of Article 5.8 of the Anti-Dumping Agreement, as follows:

"The Committee notes that Article 5.8 of the Agreement on Implementation of Article VI of GATT 1994 provides that there shall be immediate termination in cases where the authorities determine that the volume of dumped imports, actual or potential, is negligible. Article 5.8 also defines the volume of dumped imports from a particular country that shall normally be regarded as negligible. However, it does not establish a period of time over which imports are to be counted in determining whether the volume of imports is negligible. The Committee considers that guidance regarding an appropriate time-period for that determination would be useful.

In light of the foregoing, the Committee recommends that, with respect to original investigations to determine the existence of dumping and consequent injury, whether the volume of dumped imports, actual or potential, from a particular country is regarded as negligible shall be determined with reference to the volume of dumped imports from that country during:

- (a) the period of data collection for the dumping investigation; or
- (b) the most recent 12 consecutive months prior to initiation for which data are available; or
- (c) the most recent 12 consecutive months prior to the date on which the application was filed, for which data are available, provided that the lapse of time between the filing of the application and the initiation of the investigation is no longer than 90 days.

Not later than 60 days after the approval of this recommendation Members shall notify to the Committee on Anti-Dumping Practices which of the time-periods set out above,

¹ [WT/MIN\(01\)/17](#), para. 7.1.

² [G/ADP/M/13](#), Section E (in particular, para. 44). The text of the recommendation can be found in [G/ADP/5](#).

they will use in all investigations thereafter. If in any investigation the chosen methodology is not utilized, one of the two other methodologies shall be adopted, and an explanation shall be made in the public notice or separate public report of that investigation. Members which adopt the time-period mentioned in item (c) above shall also notify which of the other two time-periods they shall use in any case in which the lapse of time between the filing of the application and the initiation of the investigation is longer than 90 days, unless a Member's domestic law prohibits such a lapse."³

4. Pursuant to this recommendation, 26 Members have notified the time-periods that they use for determining negligible import volumes.⁴

Current as of: June 2024

³ [G/ADP/M/23](#), paras. 7-9. The text of the recommendation can be found in [G/ADP/10](#).

⁴ See notifications issued in the [G/ADP/N/100/*](#) document series.