

(As delivered)

**IN THE WORLD TRADE ORGANISATION
Before the Appellate Body**

(DS397 / AB-2011-2)

**European Communities – Definitive Anti-Dumping
Measures on Certain Iron and Steel Fasteners from China**

Oral Statement

by

Norway as a Third Participant

Hearing of the Appellate Body

Geneva

4-6 May 2011

Mr Chairman, Members of the Division,

1. Norway welcomes the opportunity to make a brief statement as a Third Participant before the Appellate Body in this appeal. Norway did not make a written submission to the Appellate Body, and will therefore briefly set out its views on one particular legal issue in this oral statement. The issue relates to the interpretation of Article 6.5 of the *Anti-Dumping Agreement*, and the treatment of the identity of complainants and supporters of a complaint.
2. Article 6.5 provides that information which is by nature confidential, or which is provided on a confidential basis by parties to an anti-dumping investigation, shall, upon good cause shown, be treated as such by the authorities.
3. In the present case, the question is whether the names of complainants and supporters of a complaint shall be treated as confidential under Article 6.5, where the complainants and supporters of the complaint do not want their names disclosed in order to avoid potential retaliation by customers who also buy products directly from the country subject to the investigation.
4. Let me first underline that Norway is of the view that the names of complainants and supporters of a complaint can never fall into the category of information which is “by nature confidential”, because the exercise of due process rights set out in the *Anti-Dumping Agreement* is dependent on the provision of such information. For the same reason, Norway believes that the confidential treatment of this type of information cannot be justified under the criterion of “good cause”.
5. In paragraph 7.451 of the Panel report, the Panel expresses that “what constitutes “good cause” will depend on the nature of the information at issue for which confidential treatment is sought”. Norway agrees with this. In our opinion, the nature of the information at issue in this dispute is such that potential commercial retaliation cannot constitute “good cause” for confidential treatment.
6. The context of Article 6.5 illustrates the importance of transparency when it comes to the names of complainants and supporters of a complaint. Article 5.2 of the *Anti-Dumping Agreement* sets out the requirements of the application to initiate an anti-

dumping investigation. Amongst others, the application “shall contain such information as is reasonably available to the applicant” on “the identity of the applicant”, where the application is made by the domestic industry. Where the application is made on behalf of the industry, “the application shall identify the industry” by “a list of all known domestic producers of the like product (or associations of domestic producers of the like product)”. Furthermore, according to Article 6.1.3 of the *Anti-Dumping Agreement*, the investigating authorities shall provide the “full text of the written application”, which thus includes the identity of the domestic industry, to “the known exporters and to the authorities of the exporting Member” as soon as an investigation has been initiated.

7. These provisions ensure that affected parties have access to the information needed to assess the standing of the domestic industry, a central element of every anti-dumping investigation. The investigation can have serious effects on the position of many parties, including through the imposition of anti-dumping duties. It is thus of great importance that the investigation follows certain rules in terms of procedural justice and fairness, and guarantees certain rights of defence for the Member(s) in question. In Norway’s view, refusing to disclose the identity of the complainants and the domestic producers supporting the complaint would be contrary to the important requirement of due process, including as set out in Article 6.2 of the *Anti-Dumping Agreement*. The right of defence would be rather hollow, without the possibility for affected or interested parties to verify the standing of the domestic industry.
8. In light of the important function of the names of complainants and supporters of the complaint with regard to due process rights and the defence of these rights, Norway believes that “good cause” cannot be established for the confidential treatment of the names of complainants and supporters of the complaint where these do not want their names disclosed to avoid potential retaliation by customers.

Thank you.
