

PROPOSAL ON AFFILIATED PARTIES

Paper from Brazil

The following communication, dated 10 October 2005, is being circulated at the request of the Delegation of Brazil.

The submitting delegation has requested that this paper, which was submitted to the Rules Negotiating Group as an informal document (JOB(05)/228), also be circulated as a formal document.

I. DESCRIPTION OF THE PROBLEM

1. In previous submissions to the NGR¹, the “Friends of Anti-Dumping Negotiations” (FANs) raised the issue of “affiliation” for the purposes of the calculation of normal value and the use of constructed export price (CEP) under Articles 2.2 and 2.3 of the Antidumping Agreement (ADA).
2. The discussion during the Negotiating Group’s meeting in March and September 2004 showed no disagreement regarding the desirability of a clarification of the concept of “affiliated parties” for the purposes of the determination of dumping margins. The proposed definition is based upon the International Accounting Standard 24 (IAS 24 – reformatted 1994) as regards control and IAS 28 (revised 2000) as relates to significant influence.
3. We believe that clarifying the concept would gather more transparency and security to antidumping procedures by improving the calculation of both normal value and export price.

II. ELEMENTS OF SOLUTION

4. Amend Article 2 to make it clear that for the purposes of that Article:

“An affiliated party shall be any party which is considered to, directly or indirectly, have significant influence or be significantly influenced by another party, or which is under the common significant influence of a third party. For the purposes of this definition, significant influence is:

- (i) the power to govern the financial and operating policies of an enterprise by having:
 - (a) more than one half of the voting power of an enterprise;
 - (b) power over more than one half of the voting rights by virtue of an agreement with other investors;

¹ TN/RL/W/146 and TN/RL/GEN/19

- (c) such power under a statute or an agreement;
 - (d) power to appoint or remove the majority of the members of the board of directors or equivalent governing body;
 - (e) power to cast the majority of votes as meetings of the board of directors or equivalent governing body; or
- (ii) the power granted through share ownership, statute or agreement to a person or enterprise to participate in the financial and operating policy decisions of the another enterprise by having:
- (a) representation on the board of directors of such other enterprise;
 - (b) common directors and/or officers with such other enterprise;
 - (c) a contractual relationship (or any other binding obligation) enabling such person or enterprise to unilaterally impose pricing conditions on such other enterprise and resulting on an economic, financial and technological dependence of such other enterprise from such person or enterprise.”
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