

**PROPOSAL ON AFFILIATED PARTIES**

Paper from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu

The following communication, dated 16 November 2005, is being circulated at the request of the Delegation of the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu.

The submitting delegation has requested that this paper, which was submitted to the Rules Negotiating Group as an informal document (JOB(05)/285), also be circulated as a formal document.

**I. SUMMARY OF THE PROPOSAL**

1. The issue of “affiliation” has been the subject of proposals by “Friends of Anti-Dumping Negotiations” (FANs)<sup>1</sup>, Brazil<sup>2</sup> and other Members. These proposals aim to establish guidance on the treatment of the transaction data between the affiliated parties by setting forth a clearer definition of “affiliated party” in the Anti-Dumping Agreement, and/or establishing an arm’s-length price test for the transactions between affiliated parties. This proposal does not address the issue of how to define “affiliated party”, though the proponents agree that a clearer set of definition is desirable.

2. What this proposal does is to focus on the arm’s-length price test. As a matter of principle, authorities should not presume that all price data between affiliated parties are unreliable. The transaction price, even between affiliated parties, should be accepted by the authorities unless it fails the arm’s-length price test. In this regard, the purpose of this proposal is similar to the purpose of the proposal submitted by FANs. This proposal allows greater flexibility for both the investigating authority and the responding party in carrying out the arm’s-length price test.

**II. PROPOSED TEXT**

Article 2 of the ADA should be amended by adding a new paragraph or annex to give guidance on the arm’s-length price test to the transactions between affiliated parties. The amended text shall be read as:

2.X "To determine whether the transaction between affiliated parties is acceptable for the purpose of this Article, the fact that the buyer and the seller are affiliated within the meaning of this Article shall not in itself be grounds for regarding the transaction price as unacceptable. If, in the light of information before the investigating authority, it appears to the authorities

<sup>1</sup> TN/RL/W/146 and TN/RL/GEN/19

<sup>2</sup> TN/RL/GEN/67

concerned that the price is not reliable because of the affiliation, it shall communicate its concerns to the exporter or producer involved and the exporter or producer shall be given a reasonable opportunity to respond."

In a sale between affiliated parties, the transaction price shall be accepted whenever the exporter or producer involved demonstrates, that such price closely approximates\* to one of the following during the period of investigation:

- (i) the transaction price in sales of identical or most similar products in commercially representative quantities to unaffiliated parties in the same country as the affiliated party;
- (ii) the price of identical or most similar products as determined on the basis of the price at which the goods are first resold in the greatest aggregate quantity to an independent buyer in the same country as the affiliated party, after making appropriate deductions for costs, duties and taxes incurred, or profits accrued, between sale to the affiliated party and resale to the first independent buyer;
- (iii) the price of identical or most similar products as determined on the basis of the cost of production in the country of origin plus a reasonable amount for administrative, selling and general costs and for profits realized on domestic sales, in case of domestic transactions, or realized on export sales in case of export transactions.

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*New footnote:* \* The investigating authority may determine on a case-by-case basis the appropriate percentage of variation that constitutes such close approximation in price. However, in no case shall the percentage be lower than [X] percent. The same percentage shall apply for variations both above and below the price being compared to in items (i), (ii) or (iii).

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