

EXCHANGE RATES (ADA ARTICLE 2.4.1)

Paper from the United States

The following communication, dated 2 March 2006, is being circulated at the request of the Delegation of the United States

The submitting delegation has requested that this paper, which was submitted to the Rules Negotiation Group as an informal document (JOB(06)/47), also be circulated as a formal document.

The United States has previously observed that the exchange rate used under Article 2.4.1 of the ADA is extremely important because dumping comparisons almost always require converting the currency of the normal value sales into the currency of the sales of the product under consideration. However, Article 2.4.1 provides Members with very little guidance in this regard.¹ Other Members have made similar observations.²

The United States has also observed that there are numerous sources of recognized authority from which information about exchange rates may be gathered, and numerous reasonable ways to implement Article 2.4.1. While some Members have expressed an interest in harmonizing all practices in this regard, in our view, such an effort is unlikely to produce consensus. However, the goal of guarding against arbitrary application of Article 2.4.1 can be met equally well by requiring that Members make clear how they will implement that provision. With these considerations in mind, the United States proposes the following amendment.

Proposed Text:

2.4.1 When the comparison under paragraph 4 requires a conversion of currencies, such conversion should be made using the rate of exchange on the date of sale [FN 8] taken from a source of recognized authority [FN 8 bis], provided that when a sale of foreign currency on forward markets is directly linked to the export sale involved, the rate of exchange in the forward sale shall be used. Fluctuations in exchange rates shall be ignored and in an investigation the authorities shall allow exporters at least 60 days to have adjusted their export prices to reflect sustained movements in exchange rates during the period of investigation. The source of recognized authority normally used, and the specific method normally followed, by authorities in applying this paragraph shall be provided for in the national legislation or implementing regulations of the Member concerned, and their application to each particular case shall be transparent and adequately explained. If, in a particular case, a Member does

¹ See, *Further Issues Identified under the Anti-Dumping and Subsidies Agreements for Discussion by the Negotiating Group on Rules (Issue 2: "Exchange Rates")*, TN/RL/W/130 (20 June 2003).

² See Paper from Egypt, *Currency Conversions*, TN/RL/W/183 (1 July 2005).

not use the source of recognized authority or specific method provided for in its national legislation or implementing regulations, the Member shall provide in its relevant public notices and explanations of determinations under Article 12 a reasoned explanation for not using such source or method.

FN 8: Normally, the date of sale would be the date of contract, purchase order, order confirmation, or invoice, whichever establishes the material terms of sale.

FN 8 bis: Sources of recognized authority may include central banks, widely distributed financial journals, or other sources not created for the purpose of conducting antidumping proceedings.
