

DURATION OF REVIEW INVESTIGATIONS

Communication from Egypt

The following communication, dated 20 April 2006, is being circulated at the request of the Delegation of Egypt.

The submitting delegation has requested that this paper, which was submitted to the Rules Negotiating Group as an informal document (JOB(06)/101), also be circulated as a formal document.

The present proposal serves to clarify Egypt's position with regard to the various submissions that have been made by Members on the duration of reviews conducted under Articles 9 and 11.

As a first observation, Egypt would like to reiterate its concerns with regard to the proposals of some Members to provide for the automatic expiry of anti-dumping measures on a given date and a mandatory "grace period" after the expiry of measures.¹ Egypt is similarly concerned about the proposed introduction of a list of specific requirements that investigating authorities would have to assess in the course of a sunset review and the suggested prohibition of *ex officio* sunset reviews.² Although Egypt understands that anti-dumping measures should normally be allowed to lapse at the end of a five-year period unless a sunset review investigation has been initiated and that sunset reviews should be carried out so as to allow all interested parties to demonstrate whether or not the expiry of the measures in force would be likely to lead to continuation or recurrence of dumping and injury, it considers that, where warranted, Members should be allowed to extend these measures. Domestic industries, in particular in developing country Members, are generally not in a position to withstand the injurious effects of dumped imports after the expiry of anti-dumping measures.

Strict time limit for review investigations

In the past, interim and sunset review investigations carried out pursuant to Articles 11.2 and 11.3 respectively, have, in an important number of cases, taken far longer than 12 months although, pursuant to Article 11.4, these should be "*carried out expeditiously and shall normally be concluded within 12 months of the date of initiation of the review*". The same is true for new-comer reviews that should normally be "*carried out on an accelerated basis, compared to normal duty assessment and review proceedings*". Egypt considers that review investigations are generally less complex than initial investigations and may therefore be concluded within a shorter period of time.

¹ See, in particular, document TN/RL/W/204.

² See, in particular, document TN/RL/GEN/61.

Egypt is of the opinion that the introduction of specific time-limits for review investigations would increase the efficiency and predictability of the review mechanisms³. Based on its experience and the practice of other Members, Egypt proposes mandatory time limits of 12 months for interim and expiry review investigations and of 9 months for new-comer review investigations. Even though Egypt is open to discussing the appropriate time limits within which review investigations should be completed, it considers that those it is proposing to introduce would maintain the balance between the rights and interests of interested parties and investigating authorities.

Possibility to amend anti-dumping duties within the scope of sunset reviews

It is generally considered that there are only two possible outcomes to a sunset review: the expiry of the measures in force or their expiry. This implies that if investigating authorities conclude, within the scope of a sunset review, that the anti-dumping measures in place could be significantly decreased - or should alternatively be increased – in order to remove the injurious effects of dumping, they will most likely recommend that the anti-dumping duties in force at the same level. Egypt considers that Members should be explicitly granted the right to *amend* anti-dumping duties further to sunset reviews, where warranted.

It may be argued that Article 11.1, which states that “*an anti-dumping duty shall remain in force only as long as and to the extent necessary to counteract dumping which is causing injury*” enables Members to amend the level of existing measures further to an expiry review or that interim review investigations may be conducted together with expiry review where it is claimed that the level of the existing measures is to be amended. Nonetheless, since it considers that the current version of the Anti-Dumping Agreement could be clarified with respect to this matter, Egypt proposes to amend Article 11.3 in order to explicitly allow for the amendment of anti-dumping measures further to sunset review investigations.

Proposed amendments to Articles 9.5, 11.3 and 11.4

In view of the foregoing, it is proposed to amend Articles 9.5, 11.3 and 11.4 of the Anti-Dumping Agreement be amended as follows:

- Article 9.5

If a product is subject to anti-dumping duties in an importing Member, the authorities shall promptly carry out a review for the purpose of determining individual margins of dumping for any exporters or producers in the exporting country in question who have not exported the product to the importing Member during the period of investigation, provided that these exporters or producers can show that they are not related to any of the exporters or producers in the exporting country who are subject to the anti-dumping duties on the product. Such a review shall be initiated and carried out on an accelerated basis, compared to normal duty assessment and review proceedings in the importing Member and shall in no case exceed 9 months. No anti-dumping duties shall be levied on imports from such exporters or producers while the review is being carried out. The authorities may, however, withhold appraisal and/or request guarantees to ensure that, should such a review result in a determination of dumping in respect of such producers or exporters, anti-dumping duties can be levied retroactively to the date of the initiation of the review.

³ The imposition of shorter time limits for review investigations was also suggested in documents TN/RL/W/10 and TN/RL/W/138.

- Article 11.3

Notwithstanding the provisions of paragraphs 1 and 2, any definitive anti-dumping duty shall be terminated on a date not later than five years from its imposition (or from the date of the most recent review under paragraph 2 if that review has covered both dumping and injury, or under this paragraph), unless the authorities determine, in a review initiated before that date on their own initiative or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period of time prior to that date, that the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury.²² The duty may remain in force pending the outcome of such a review and may be amended thereafter, due account being taken of the provisions of paragraph 1."

- Article 11.4

The provisions of Article 6 regarding evidence and procedure shall apply to any review carried out under this Article. Any such review shall be carried out expeditiously and shall ~~normally~~ be concluded within 12 months of the date of initiation of the review.

²² When the amount of the anti-dumping duty is assessed on a retrospective basis, a finding in the most recent assessment proceeding under subparagraph 3.1 of Article 9 that no duty is to be levied shall not by itself require the authorities to terminate the definitive duty.