

ASSESSMENT OF STANDING

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)/102), also be circulated as a formal document.

This proposal is aimed at ensuring that domestic producers are in a position to effectively challenge the injurious effects of allegedly dumped imports and to clarify the methods that investigating authorities may use to ensure that domestic producers satisfy the requirements of Article 5.4 of the Anti-Dumping Agreement.

Fragmented and un-organised domestic industries

The domestic industries of developing countries are often characterized by their fragmentation and lack of organisational structures. Most of the domestic producers are very small in size, are very seldom represented in organisation and have limited opportunities to raise their concerns. Because of their size, the situation of these domestic producers is generally rapidly and particularly affected by dumped imports. It is thus important to ensure that they can effectively seek remedy against injurious dumping.

In the framework of these negotiations, some Members have proposed to tighten the current definitions of domestic industry and standing. These proposals are based on the reasoning that the current provisions are inequitable since they may enable domestic producers accounting for less than 50 percent of the total domestic production to lodge applications to initiate anti-dumping proceedings. Egypt considers that these proposals fail to take into account the reality of developing countries. Egypt is convinced that the adoption of an obligation to seek the express support of producers representing more than 50 per cent of total domestic industry would put an inequitable burden on the shoulders of domestic producers of fragmented and unstructured industries. For these industries, injurious dumping might have caused irreparable damages by the time a majority of producers has been identified and convinced to expressly support an application pursuant to Article 5.¹

In view of the foregoing, Egypt considers that, unless an application is opposed by a majority of domestic producers, applicants should be granted the possibility of requesting the initiation of an

¹ In many cases, it will not even be possible to identify the majority of an industry, for instance if there is a very large number of small, unincorporated entities run by individuals or families.

anti-dumping investigation as soon as an “*important, serious or significant*”² proportion of the domestic producers are represented by the applicants. Consequently, Egypt is of the opinion that the standing requirements, as set forth in Article 5.4 should remain unchanged.

Applications by associations of domestic producers

Article 5.2(i) provides that “*where a written application is made on behalf of a domestic industry, the application shall identify the industry on behalf of which the application is made by a list of all known domestic producers of the like product (or associations of domestic producers of the like product)*”. Where applications are lodged by or on behalf of associations of domestic producers, it is submitted that standing should be assessed by taking into account the production volume of all the members of these associations as a whole. Investigating authorities should not be required to examine whether or not each of the individual producers, which are members of these associations, actually support the initiation of an anti-dumping investigation.

Proposed Changes to Article 5.4

In view of the foregoing, it is proposed to amend Article 5.4 of the Anti-Dumping Agreement as follows:

An investigation shall not be initiated pursuant to paragraph 1 unless the authorities have determined, on the basis of an examination of the degree of support for, or opposition to, the application expressed¹³ by domestic producers of the like product (or associations of domestic producers of the like product), that the application has been made by or on behalf of the domestic industry.¹⁴ The application shall be considered to have been made “by or on behalf of the domestic industry” if it is supported by those domestic producers (or associations of domestic producers) whose collective output constitutes more than 50 per cent of the total production of the like product produced by that portion of the domestic industry expressing either support for or opposition to the application. However, no investigation shall be initiated when domestic producers (or associations of domestic producers) expressly supporting the application account for less than 25 per cent of total production of the like product produced by the domestic industry.

² This is the wording of the Panel in *Argentina – Definitive Anti-Dumping Duties on Poultry from Brazil* (WT/DS241/R), paras. 7.340 and 7.341.

¹³ In the case of fragmented industries involving an exceptionally large number of producers, authorities may determine support and opposition by using statistically valid sampling techniques.

¹⁴ Members are aware that in the territory of certain Members employees of domestic producers of the like product or representatives of those employees may make or support an application for an investigation under paragraph 1.