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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)/103), also be circulated as a formal document.

The present proposal aims at establishing a common approach to the terms "*fluctuation*" and "*sustained movement*" within the meaning of Article 2.4.1 as well as fixing the maximum period within which exchange rate movements should be taken into consideration. The necessity for a clear circumscription of these concepts results from the fact that, although of primordial importance in most anti-dumping investigations, the provisions of Article 2.4.1 do not give any specific guidance of how to take into account exchange rate movements.[1] In fact, while it is generally agreed that currency fluctuations may affect the comparability of the export price and the normal value, there is no provision that specifies the above-mentioned terms.

Egypt understands that, on the one hand, investigating authorities should be granted flexibility in minimising the effects of exchange rate movements. On the other hand, it believes that Members should agree on certain basic principles in order to ensure the consistent implementation of Article 2.4.1.

Definition of the terms "*fluctuation*" and "*sustained movement*"

Since Article 2.4.1 contains a reference to a minimum 60-day period within which exporters should have adjusted their export prices to reflect sustained movements in exchange rates, Egypt proposes to use a 60-day period to define when fluctuations or sustained movements are occurring. While it remains open to discussing the appropriate reference period to assess exchange rates movements, Egypt is of the opinion that a 60-day period constitutes a proper basis to distinguish between short-term fluctuations and long-term trends.

It is therefore proposed to that fluctuations be defined as "*minor deviations from the moving average of the daily exchange rates for the prior 60 days*". Sustained movements could be found where "*the exchange rate significantly exceeds the moving average of the daily exchange rates for the prior 60 days*".

[1] See also the comments on Article 2.4.1 that were made in the documents TN/RL/W/130, TN/RL/W/47, TN/RL/GEN/5 and TN/RL/GEN/107.

These definitions of, on the one side, exchange rates' variations that do not have a significant impact the comparison between the normal value and the export price and, on the other side, movements that are the result of persistent changes and that may have a great impact on dumping determinations, would ensure that Members apply similar standards for their dumping determinations.

Definition of a specific time period for exchange rate movements

Article 2.4.1 stipulates that *"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"*. It provides a minimum time period but no maximum for exporters to adjust their export prices to reflect sustained movement. In order to ensure that investigating authorities are in a position to examine the export prices reflecting the sustained movements in exchange rate within a reasonable period of time, it is proposed to replace the minimum 60 day-period by a maximum 80-day period. Indeed, if the reference period of 60 days that is proposed by Egypt was to be accepted, it is submitted that 20 days should be sufficient for exporters to reflect sustained movements in exchange rates. The 80-day period within which export prices reflecting sustained movements in exchange rates would have to be provided should, however, not prevent exporters from replying to the anti-dumping questionnaire within the deadline set by the investigating authorities pursuant to Article 6.1.1. In order not to delay the investigating process, exporters that wish to submit revised export prices reflecting sustained movements in exchange rates may do so after the submission of their questionnaire response.

Proposed Changes in Article 2.4.1

In view of the foregoing, it is proposed to amend Article 2.4.1 of the Anti-Dumping Agreement as follows:

> 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[8], 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[9] shall be ignored and in an investigation the authorities shall allow exporters ~~at least 60 days~~ not more than 80 days from the date of sale[10] to have adjusted their export prices to reflect sustained movements[11] in exchange rates during the period of investigation.

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[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.

[9] "Fluctuations in exchange rates" shall mean minor deviations from the moving average of the daily exchange rates for the prior 60 days.

[10] Exporters shall nonetheless comply with the deadline set for the submission of their questionnaire responses.

[11] "Sustained movements" shall be found where exchange rate significantly exceeds the moving average of the daily exchange rates for the prior 60 days.