

**THREAT OF MATERIAL INJURY**

Communication from Egypt

Revision

The following communication, dated 1 June 2006, is being circulated at the request of the Delegation of Egypt

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This proposal constitutes a further reflection of the proposal (TN/RL/GEN/121) concerning the concept of “*threat of material injury*”.

The discussions of the Negotiating Group on Rules, at its last meeting, confirmed Egypt in considering that Article 3.7 of the Anti-Dumping Agreement must be improved in order to provide investigating authorities and interested parties with additional guidance when assessing threat of material injury. The revisions/additions to the proposal submitted earlier, which are highlighted below, are intended to address the comments and concerns expressed by some Members:

- Egypt had proposed to insert a reference to the factors listed in Article 3.4 in a new subparagraph (v) to Article 3.7. Since the factors listed in Article 3.4, unlike those listed in Article 3.7, refer to the “*relevant factors and indices having a bearing on the state of the [domestic] industry*”, in order to distinguish the two types of factors that would have to be examined under Article 3.7, it is proposed to insert the reference to Article 3.4 factors under a sub-paragraph (a) and the existing Article 3.7 factors under a sub-paragraph (b);
- All the factors that are listed under Article 3.4 may not provide useful indications on the impact of dumped imports on the state of a domestic industry threatened to suffer from material injury. Consequently, only those economic factors and indices that are pertinent for threat of material injury determinations should be examined under Article 3.7. The insertion of a reference to the factors listed in 3.4 would not require a prospective analysis of these factors. Only those factors providing an indication of the current state of a domestic industry threatened by material injury should be examined;
- The determination “*of the availability of other markets to absorb any additional exports*” under the current sub-heading (ii) of Article 3.7 is often difficult to established for the domestic industry and for investigating authorities. Indeed, it is difficult to have access to the possible absorption capacity of other markets. In order to ensure that investigating authorities are not required to engage in a complex – when not impossible – fact-finding exercise, it is submitted that only the known availability of other markets to absorb any additional exports should be taken into consideration. Also, the absorbability of other export markets should only be considered when based on facts and not on mere allegations.

### Proposed Changes in Article 3.7

In view of the above, it is proposed to amend Article 3.7 of the Anti-Dumping Agreement as follows:

A determination of a threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances which would create a situation in which the dumping would cause injury must be clearly foreseen and imminent.<sup>10</sup> In making a determination regarding the existence of a threat of material injury, the authorities should consider, *inter alia*, such factors as:

- (a) any of the relevant factors listed in Article 3.4; and
- (b)
  - (i) a significant rate of increase of dumped imports into the domestic market indicating the likelihood of substantially increased importation;
  - (ii) sufficient freely disposable, or an imminent, substantial increase in, capacity of the exporter indicating the likelihood of substantially increased dumped exports to the importing Member's market, taking into account the known and established availability of other export markets to absorb any additional exports;
  - (iii) whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports; and
  - (iv) inventories of the product being investigated.

No one of these factors by itself can necessarily give decisive guidance but the totality of the factors considered must lead to the conclusion that further dumped exports are imminent and that, unless protective action is taken, material injury would occur.

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<sup>10</sup> One example, though not an exclusive one, is that there is convincing reason to believe that there will be, in the near future, substantially increased importation of the product at dumped prices.