

ASSESSMENT OF DUMPING

Proposal from Egypt

The following communication, dated 4 October 2007, is being circulated at the request of the Delegation of Egypt.

The discussions that have previously taken place on this issue¹ within the Negotiating Group as well as the reasoning and findings set forth in reports of panels and of the Appellate Body have assisted Egypt in identifying some of the elements that require further clarification within the Anti-Dumping Agreement. As a relatively new user of the anti-dumping instrument, Egypt has not yet been confronted with some of the questions that may be arising when assessing the level of dumping in initial investigations and/or for anti-dumping duty collection purposes. However, it considers that, for the common benefit of interested parties and investigating authorities, these questions must be addressed and settled within these negotiations.

The present proposal aims at establishing clear rules in relation to the assessment of the level of dumping under some of the comparison methodologies provided for in Article 2.4.2, in refund proceedings or when determining the final liability for payment of anti-dumping duties under Article 9.3. Also, it is intended to confirm that exporting producers and investigating authorities can agree that the price of all export transactions made under price undertakings is to be made at or above an agreed undertaking price in line with Article 8.1.

Weighted average normal value to prices of individual export transactions comparisons - Targeted dumping

Pursuant to Article 2.4.2, a dumping margin may be determined by comparing a normal value established on a weighted average basis with prices of individual export transactions if a pattern of export prices is found to differ significantly among different purchasers, regions or time periods and an explanation is provided as to why these differences cannot be taken into account appropriately by the use of a weighted average-to-weighted average or transaction-to-transaction comparison.

Egypt proposes to refer to the weighted average normal value-to-transaction export prices comparison methodology in a new sub-paragraph 3 under Article 2.4, since it is an alternate to the weighted average-to-weighted average or transaction-to-transaction comparison methodologies set forth in Article 2.4.2. Also, it recommends that the circumstances in which investigating authorities can resort to this alternate methodology be clearly defined. In addition to the circumstances referred to in the current version of Article 2.4.2, Egypt considers that investigating authorities should have the possibility of using the weighted average normal value-to-transaction export prices comparison methodology, when it is established that only certain product types are dumped or are subject to more

¹ In particular with respect to TN/RL/GEN/8, TN/RL/GEN/126 and TN/RL/GEN/147.

severe dumping than other product types. In such circumstances, in order to address "targeted dumping", investigating authorities should have the right to limit their comparison to the export transactions found to be made at prices that are significantly different. Finally, in line with the current wording of Article 2.4.2, investigating authorities should be required to justify their use of the weighted average normal value-to-transaction export prices comparison methodology.

Transaction-to-transaction comparisons

The transaction-to-transaction comparison methodology has been used by some investigating authorities typically when confronted with a relatively small number of export transactions. In such cases, the comparison of export transactions was made only with some comparable normal value transactions. This comparison methodology can be particularly useful to investigating authorities of Members with small domestic markets.

Egypt proposes to insert a footnote x under Article 2.4.2 to clarify that, in a transaction-to-transaction comparison, investigating authorities are entitled to limit their analysis to a limited number of transactions. If investigating authorities were to be required to examine all export and normal value transactions, there would be no or very limited differences between the weighted average-to-weighted average and transaction-to-transaction methodologies. In line with the *chapeau* of Article 2.4, in order to ensure that the transaction-to-transaction methodology is not used to artificially inflate the level of dumping, investigating authorities must be required to select comparable transactions in a fair and objective manner.

When using the transaction-to-transaction methodology and limiting their comparison to a limited number of transactions, investigating authorities cannot assume that the transactions that were not considered are dumped for the purpose of the injury assessment under Article 3 or under Article 5.8. Also, if only some product types were considered for the establishment of the level of dumping, investigating authorities shall not have the right to impose an anti-dumping measure on all product types. As proposed in footnote xxx, the scope of the anti-dumping measure shall, in such a case, be limited to the product types that were considered for the establishment of the margin of dumping.

Refunds and retrospective assessment of anti-dumping duties

The Appellate Body recently found that investigating authorities are required to take into account all export sales made by the exporter or foreign producer with a view to calculating the "ceiling" for the total amount of anti-dumping duties that can be levied.² In particular, the Appellate Body noted that *"the concept of dumping relates to the pricing behaviour of exporters or foreign producers; it is the exporter, not the importer, that engages in practices that result in situations of dumping"*.

It is submitted that, if this approach was to be followed in the framework of refund proceedings in prospective duty-collection systems or for the determination of the final liability for payment of anti-dumping duties in retrospective duty-collection systems, it could be overly burdensome for investigating authorities and exporting producers and could lead to unfair results for the latter. For example, on the basis of the principle spelled out by the Appellate Body, investigating authorities would be required to take into account all export transactions and not only those concerning the importer who filed a request for refund. In practical terms, in order to make sure that the duty collected did not exceed the "ceiling" for the total amount of anti-dumping duties that can be levied, investigating authorities would be forced to initiate a partial interim review. Moreover, this

² *United States – Measures Relating to Zeroing and Sunset Reviews*, WT/DS322/AB/R, paragraphs 155 and 156.

approach could lead to unfair results, insofar as investigating authorities would be required to offset the dumping margins of the different importers when determining the amount of duty to be refunded to a given importer.

Thus, it seems appropriate to Egypt to amend Article 9.3, with a view to including a provision providing that, in the framework of importer-specific refunds, investigating authorities are allowed to calculate a margin of dumping on the basis of the export transactions relating to the specific importer.

Undertakings

Article 8.1 provides, in part, that "*Price increases under such undertakings shall not be higher than necessary to eliminate the margin of dumping*". For administration and monitoring purposes, exporting producers and investigating authorities often agree that the price of all export transactions be equal to or above the price at which the injurious effects of dumping was found to be eliminated during the most recent investigation. Egypt is of the opinion that the Anti-Dumping Agreement should stipulate, in a proposed footnote xx to Article 8.1, that such practice is consistent with this Article. This proposed amendment would not prevent exporting producers from which a price undertaking was accepted from requesting a review under Article 11.2 if they consider that the margin of dumping that was used as a basis for the determination of the agreed undertaking price has since varied.

Proposed Amendments to Articles 2, 8 and 9

In view of the foregoing, it is proposed to amend Articles 2.4.2, 2.4.3, 8.1, 9.1 and 9.3 of the Anti-Dumping Agreement as follows:

Articles 2.4.2 and 2.4.3

- 2.4.2 Subject to the provisions governing fair comparison in paragraph 4, the existence of margins of dumping during the investigation phase shall normally be established on the basis of a comparison of a weighted average normal value with a weighted average of prices of all comparable export transactions or by a comparison of normal value and export prices on a transaction-to-transaction basis^x. ~~*A normal value established on a weighted average basis may be compared to prices of individual export transactions if the authorities find a pattern of export prices which differ significantly among different purchasers, regions or time periods, and if an explanation is provided as to why such differences cannot be taken into account appropriately by the use of a weighted average to weighted average or transaction to transaction comparison.*~~

^x *The establishment of margins of dumping by a comparison of normal value and export prices on a transaction-to-transaction basis may imply the selection of a limited number of comparable transactions. In cases where the authorities resort to a selection of transactions, such selection shall be made in a fair and objective manner. Export transactions not considered for the establishment of the margin of dumping shall not be deemed to be dumped.*

- 2.4.3. If the authorities find a pattern of export prices, which differ significantly among different purchasers, regions, time periods or product types, the existence of margins of dumping may be established on the basis of a comparison of a normal value established on a weighted average basis with prices of individual export transactions. In such circumstances, the authorities may limit their comparison to individual export transactions made to purchasers, regions or time periods or of product types found to be significantly different. Authorities should provide an explanation as to why the*

methodologies provided for in paragraph 4.2 of Article 2 were not appropriate to address dumping practices found to be targeting certain purchasers, regions, time periods or product types.

Article 8.1

8.1 Proceedings may¹⁹ be suspended or terminated without the imposition of provisional measures or anti-dumping duties upon receipt of satisfactory voluntary undertakings from any exporter to revise its prices or to cease exports to the area in question at dumped prices so that the authorities are satisfied that the injurious effect of the dumping is eliminated. Price increases^{xx} under such undertakings shall not be higher than necessary to eliminate the margin of dumping. It is desirable that the price increases be less than the margin of dumping if such increases would be adequate to remove the injury to the domestic industry.

¹⁹ The word "may" shall not be interpreted to allow the simultaneous continuation of proceedings with the implementation of price undertakings except as provided in paragraph 4.

^{xx} Authorities may require that the price of each import transactions made pursuant to an undertaking be equal to or above the agreed undertaking price.

Articles 9.1 and 9.3.4

9.1 The decision whether or not to impose an anti-dumping duty in cases where all requirements for the imposition have been fulfilled, and the decision whether the amount of the anti-dumping duty to be imposed shall be the full margin of dumping or less, are decisions to be made by the authorities of the importing Member^{xxx}. It is desirable that the imposition be permissive in the territory of all Members, and that the duty be less than the margin if such lesser duty would be adequate to remove the injury to the domestic industry.

^{xxx} In cases where margins of dumping are established by comparing selected normal values and export prices on a transaction-to-transaction basis, the margins of dumping so obtained shall only be used to establish the anti-dumping duty applicable to those selected types of the product under consideration.

9.3.4 In determining the final liability for payment of anti-dumping duties or whether and to what extent a reimbursement should be made, the authorities may rely on the margin of dumping calculated on the basis of the export transactions relating to the importer concerned.