

**SUBMISSION OF THE ARAB REPUBLIC OF EGYPT ON THE
CLARIFICATION OF CERTAIN PROVISIONS OF THE
ANTI-DUMPING AGREEMENT**

The following communication, dated 6 May 2003, has been received from the Permanent Mission of Egypt.

Egypt considers that certain provisions of the Anti-Dumping Agreement are unclear and thus difficult for investigating authorities to implement. Egypt believes that the clarification of these provisions falls within the scope of the mandate of the Negotiating Group.

This paper identifies some of the provisions of the Anti-Dumping Agreement, Egypt considers necessary to clarify in the context of the on-going negotiations. Egypt reserves its rights to identify additional areas for clarification in the future.

1. Article 2.4.1 - Currency conversion

Article 2.4.1 of the Anti-Dumping Agreement governs the conversion of the export price in cases where a comparison between the export price and the normal value requires such conversion. The general principle is that the conversion should be made using the rate of exchange on the date of sale. However, when sustained movements in exchange rates occurred during the period of investigation or when a sale of foreign currency on forward markets is directly linked to an export sale, investigating authorities are required to depart from the general principle in order not to affect the fair comparison of the export price and the normal value.

While it is generally agreed that currency fluctuations may affect the comparability of the export price and the normal value invoiced into different currencies, there is no general agreement on what constitutes "*sustained movements*" and how sustained exchange rates fluctuations should be taken into account in converting the export price.

In investigations where the export price was affected by sustained movements of the exchange rates, the Egyptian investigating authorities have used the average exchange rate prevailing during the 60-day period preceding the date of invoice in order to take into account the exchange rates fluctuations. Other investigating authorities use similar averaging methods but certainly prefer to use the exchange rate prevailing 60 days before the date of invoice to restrict the influence of the exchange rates fluctuations on the export price.

Although Egypt believes that investigating authorities should have a certain flexibility in minimising the effects of exchange rates fluctuations, it also considers that Members should agree on certain principles in order to ensure the consistent implementation of Article 2.4.1.

In addition, Egypt considers that it is necessary to clarify Article 2.4.1 since the 60-day grace period provided for therein may, in certain circumstances, be interpreted as allowing exporters and foreign producers to delay the submission of their questionnaire responses. Egypt is of the opinion that the purpose of Article 2.4.1 is not to grant exporters and foreign producers concerned an additional delay to reply to the questionnaires received, when they consider that the fluctuation of the exchange rates affects their export price.

In view of the foregoing, Egypt considers that it is necessary that Article 2.4.1 be clarified in the context of the current negotiations. Indeed, if Article 2.4.1 is left unchanged, it will not provide any helpful guidance to investigating authorities on how to take into account exchange rates fluctuations in the determination of the export price.

2. Footnote 9 – Material retardation

Footnote 9 of the Anti-Dumping Agreement provides that “*under this Agreement the term ‘injury’ shall, unless otherwise specified, be taken to mean material injury to a domestic industry, threat of material injury to a domestic industry or material retardation of the establishment of such an industry*”. While Egypt considers that both the term “*material injury*” and the term “*threat of material injury*” are sufficiently clear, it considers that the term “*material retardation*” needs to be clarified so as to enable investigating authorities to determine in which circumstances there is material retardation.

The definition of the term “*material retardation*” is intimately connected to the definition of the term “*new industry*” since material retardation only concerns incipient industries. Egypt considers that it is essential not to restrict the definition of the term “*new industry*” to industries which are being established from zero. As a developing country, Egypt is particularly concerned by the situation of embryonic, restructuring and recently privatised industries. All these types of industries, although different, have in common with new industries a limited level of development and/or a new organisation. Egypt considers that if these types of industries were not included in the definition of “*new industry*”, the concept of material retardation defined under footnote 9 would only apply to a very limited number of cases and would fail to sufficiently take into account the situation in developing and least developed countries.

In addition to defining the term material retardation, Members should identify tests similar to those set forth in Article 3 of the Anti-Dumping Agreement with respect to material injury and threat thereof in order to assist investigating authorities to determine in which circumstances material retardation occurs. Should material retardation remain an imprecise concept, there is a greater risk of misuse by investigating authorities.
