

EXCHANGE RATES (ANTI-DUMPING AGREEMENT ARTICLE 2.4.1)

Communication from the United States

The following communication, dated 8 April 2004, is being circulated at the request of the Delegation of the United States.¹

The United States has suggested that Members discuss problems associated with Article 2.4.1 of the Anti-Dumping Agreement, which addresses the manner in which exchange rates are to be applied in anti-dumping investigations.² Specifically, the United States pointed out that the substantive requirements of that Article are vague, and that it contains no procedural transparency requirements. Without prejudice to proposals the United States may make on the former, in the view of the United States, setting forth clear rules which require Members to state the procedures they will follow will go a long way towards clarifying and improving this provision. The United States recognizes that there may be several reasonable ways to implement Article 2.4.1. For example, there are numerous sources of recognized authority from which information about exchange rates may be gathered. It is important, however, that Members make clear how they will implement Article 2.4.1 as a guard against arbitrary application. With these thoughts in mind, the United States believes that the following steps would greatly clarify and improve Article 2.4.1:

1. Article 2.4.1 should **require that Members use exchange rates from sources of recognized authority**, and should require Members to notify the Committee on Anti-Dumping Practices of the source they intend normally to use;
2. Article 2.4.1 should require Members to notify the Committee on Anti-Dumping Practices of the specific methodology they will normally follow to implement Article 2.4.1; among the issues to be addressed by this notice should be: (1) how the Member defines a "fluctuation" in exchange rates for purposes of Article 2.4.1., (2) what steps it will take if it identifies such a fluctuation; (3) how the Member defines a "sustained movement" for purposes of Article 2.4.1., and (4) what steps it will take when it identifies such a movement;
3. Article 2.4.1 should specify that Members are obligated to use a notified source and follow a notified methodology, unless the Member has provided, in its relevant public notices and explanations of determinations under Article 12, a reasonable explanation of the facts and logic which lead it to conclude that the normal source or methodology was not appropriate;

¹ The Delegation of the United States has requested that this paper, which was submitted to the Rules Negotiating Group as an informal document (JOB(04)/46), also be circulated as a formal document.

² See, TN/RL/W/130.

4. If a Member changes its practice with respect to a source or methodology which has been notified under paragraph 1 and 2, Article 2.4.1 should require that Member to notify the Committee of its new practice; and

5. Article 2.4.1 should specify the period during which such notifications should be made, as well as the consequences for failure to meet the obligation.

In the view of the United States, there are areas covered by the Anti-Dumping Agreement where specific rules are needed. In most areas, however, there are several reasonable procedures which may be followed. The danger in such areas is less that the approach taken in a particular case may be unreasonable, but that a Member may arbitrarily shift among reasonable methods from case to case. The approach proposed above for Article 2.4.1 may serve as a useful model for dealing with such issues.
