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Committee on Anti-Dumping Practices
Committee on Subsidies and Countervailing Measures

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REPLIES TO QUESTIONS POSED BY AUSTRALIA¹,
CANADA², EUROPEAN COMMUNITIES³, HONG KONG⁴
INDIA⁵, JAPAN⁶, KOREA⁷, SINGAPORE⁸ AND THE UNITED STATES⁹
CONCERNING THE NOTIFICATION OF LAWS
AND REGULATIONS OF THAILAND¹⁰

The following communication, dated 20 February 1996, has been received from the Permanent Mission of Thailand.

General questions

(Korea - Q1, Hong Kong - Q1, EC -Q7, EC (Suppl.1) - Q1)

Answer

Concerning the current status of this Notification and future steps to replace this Notification, the Notification submitted by Thailand to the WTO has been published in the Royal Gazette on 8 October 1991 which is prior to the completion of the Uruguay Round negotiations on the A-D and SCM Agreements. This Notification is intended to be temporary with a view to providing general guidance to administrative authorities concerned on the criteria and procedures for the imposition of special duty on products imported at unfair prices or on subsidized imports.

After the conclusion of the Uruguay Round, the Thai Government ratified the WTO Agreement on 28 December 1994 which means that Thailand is, therefore, fully committed with the rights and obligations under the A-D and SCM Agreements. The Cabinet's decision on 9 November 1994 also instructed the administrative authorities concerned to take into account the obligations under the WTO Agreements. In the event that the provisions of the existing Notification are in contradiction to or do not conform with the WTO A-D and SCM Agreements, the administrative authorities shall do their utmost efforts to bring the existing Notification into conformity with their international commitments. The law in Thailand at present (the Export and Import Act B.E. 2522) is flexible enough to enable the administrative authorities to fulfil their international obligations.

¹G/ADP/W/216-G/SCM/W/226, ²G/ADP/W/212-G/SCM/W/222, ³G/ADP/W/159-G/SCM/W/166 + Suppl.1, ⁴G/ADP/W/185-G/SCM/W/192, ⁵G/ADP/W/239-G/SCM/W/249, ⁶G/ADP/W/162-G/SCM/W/169, ⁷G/ADP/W/173-G/SCM/W/180, ⁸G/ADP/W/236-G/SCM/W/246, ⁹G/ADP/W/214-G/SCM/W/224.

¹⁰G/ADP/N/1/THA/2-G/SCM/N/1/THA/2 + Corr.1.

At the same time, steps have been taken to replace the present Notification with a new legislation which will contain provisions in full conformity with the A-D and SCM Agreements. The Bill is now under the scrutiny of the Juridicial Council and will be forwarded to the Cabinet and the Parliament for their approval respectively. It is expected that the new legislation may be put into force by the end of 1996.

What is the legal status of the WTO A-D Agreement in Thailand? Does it have the force of law? If a provision of the domestic legislation is in conflict with the Agreement, which will take precedence?

Answer

The WTO A-D Agreement is the international commitment of Thailand which Thailand, as a state, must be responsible. However, the Agreement shall not have a force of law in Thailand, unless there is a domestic legislation implementing it. In case that the domestic legislation is in conflict with the Agreement, the domestic legislation shall prevail.

However, Thailand shall do its utmost efforts to comply with its international commitments, and shall try as much as possible to bring its own domestic legislation into conformity.

However, the mere fact that a provision of a domestic legislation is in conflict with the Agreement cannot in itself mean that a country violates its international commitment, as long as the country can fulfil its international obligations.

Are Thai A-D officials required, legally or otherwise, to abide by the A-D in the context of A-D proceedings, or to consult the A-D Agreement, for example on the interpretation of domestic legislation?

Answer

As the A-D Agreement is an international commitment of Thailand, the Thai A-D officials who are the instrumentality of the Executive Authorities of Thailand must naturally interpret relevant domestic legislations in such a way that they are not in conflict with Thailand's international commitments. The requirement stems from the officials' recognition of the responsibility of Thailand as a state.

Subsidies (Article 3.5)

Definition of Subsidies

(EC - Q1, Canada - Q4(a), 4(c), Australia - Q4)

Answer

The Notification does not contain the definition of subsidy, but Article 3.5 in the Notification is articulated that the meaning of subsidized imports, in broad terms, refers to goods which are imported into Thailand and which have been subsidized, whether directly or indirectly, by the producing country or the exporting country. The Investigating Committee interprets the term "subsidies" in the manner consistent with the SCM Agreement. For example, the Committee interprets the term to exclude programmes that are not countervailable. Where Article 3.5 of the Notification does not conform with

the interpretation of the SCM Agreement, the Committee shall interpret the term in conformity with the definition of subsidy in the SCM Agreement.

The new legislation will include definition of subsidies that conform to Article 1 of the SCM Agreement.

Amount of subsidies

(EC - Q2, Australia - Q4)

Answer

In calculating the amount of a subsidy, the Committee will follow Article 14 of the SCM Agreement. Therefore, the calculation will be made on the basis of "benefit to the recipient".

Specificity

(Canada - Q4(b), EC - Q3)

Answer

During the process of drafting the Notification in 1991, the Uruguay Round negotiations were then unable to reach their conclusion of the issue of "specificity", Article 3.5 of the Notification therefore does not explicitly include such requirement in the definition of subsidy. However, the Committee will include the specificity requirement in its investigation because of Thailand's commitment to the SCM Agreement.

Moreover, the new legislation will explicitly state that a subsidy must be "specific" to be subjected to countervailing duties and will define "specificity" in conformity with Article 2 of the SCM Agreement.

Consultation before investigation

(EC - Q4)

Answer

Although the Notification does not explicitly provide the possibilities of consultation before the opening of a CVD investigation, in practice the Committee always provides an interested Member an ample opportunity for consultation for the purpose of clarifying matters relevant to the investigation.

The new legislation will explicitly provide interested Members an opportunity for consultations before and during the investigation in conformity with Article 13 of the SCM Agreement. It will also permit Members whose products are the subject of the investigation to have access to non-confidential evidence.

Anti-dumping

Normal value (Article 3.2)

(Korea - Q2, Singapore - Q3)

Answer

No, Thailand does not intend to expand the use of the selling price of a like product in the domestic market of a third country or of a constructed price beyond the provisions allowed under the WTO Agreement.

The rationale behind this provision is that we cannot rule out the possibility of price being affected by monopolized production or government intervention. It is also interpreted in the manner consistent with Annex I, A-D Article VI, Paragraph 1, Note 2 of the GATT 1994.

The new Anti-Dumping and Countervailing legislation of Thailand will contain revised provisions for goods from a "non-market economy". A non-market economy will be drafted as a foreign country that the administering authorities has a complete and substantial monopoly of its trade and/or where domestic prices are fixed by the State.

(EC (Suppl.1) - Q2, Australia - Q1)

Answer

Article 3.2(3) of the Notification should be read "In the case where exporters in country of origin do not produce **and** sell like product in their domestic market, normal value shall be calculated as provided for in (2)".

Article 3.2(3) of the Notification therefore applies, for example, in cases where the exporter is a trading company in the country of origin. The trading company may have purchased the goods from the producer for export to Thailand. The trading company, however, does not produce the product in the country of origin. Article 3.2(3) makes clear that the Committee may nevertheless use the method noted in Article 3.2(2) as the basis for calculation of normal value.

(EC (Suppl.1) - Q3, Singapore - Q2)

Answer

In Article 3.2(4) of the WTO, the reason for the absence of the requirement that sales have been made below cost of production "within an extended period of time" is that the Thai Notification was announced prior to the conclusion of the Uruguay Round negotiations, we therefore had left "the extended period of time" open for administrative authorities to interpret it in compliance with the result of the Uruguay Round. In this regard, the Committee will normally interpret the phrase "extended period of time" to be one year but shall in no case be less than six months in order to conform with Article 2.2.1 footnote 4 of the A-D Agreement.

The new legislation will expressly include this standard.

(EC (Suppl.1) - Q4)

Answer

In practice, the Committee does not apply the last sentence of Article 3.2(5) of the Notification in constructing the normal value as we realize that it is beyond the coverage of WTO provisions which have been formulated after the Notification was published.

The new legislation will not include the last sentence noted in this question.

(EC (Suppl.1) - Q5, Australia - Q2)

Answer

The Committee will interpret the phrase "pass through" in Article 3.2(6) of the Notification to mean that the products in fact entered the commerce of an intermediate country and are then exported to Thailand and the phrase "merely in transit through" is interpreted to mean that the products merely pass through an intermediate country by any means of transport including transshipment. The Committee intends to interpret the provision in conformity with Article 2.5 of the A-D Agreement.

To answer the second question of Australia: yes, the phrase "imports pass through an intermediate country" refers to the "exporting country". The phrase "constructed from the selling price" is interpreted to mean that the calculation is to be based on the selling price of like product in the intermediate country.

(Singapore - Q1)

Answer

The Committee interprets the word "appropriate" to be consistent with the meaning of the word "representative" as used in Article 2.2 of the A-D Agreement. The new legislation will specifically use the term "representative".

Export price (Article 3.3)

(EC (Suppl.1) - Q6, Australia - Q3)

Answer

The Committee interprets the term "unreliable" consistent with its usage in Article 2.3 of the A-D Agreement. The phrase "not appropriate" is intended to cover circumstances where the Thai Government determines that the reported export price is for some other reason not appropriate for use in an anti-dumping calculation. This could include samples, second quality merchandise, etc.

Like product (Article 3.6)

(EC (Suppl.1) - Q7, Australia - Q5)

Answer

The rationale behind this provision was that we try to take into account the usage in addition to physical characteristic when considering whether products under consideration be considered a "like product".

The Committee will interpret Article 3.6 of the Notification in a manner consistent with Article 2.6 of the A-D Agreement. The new legislation specifically incorporates the WTO definition of "like product".

Procedures for anti-dumping and subsidies investigation

Definition of domestic industry (Article 3.7)

(Australia - Q6)

Answer

Yes, the Committee interprets the phrase "major market shares" to have the same meaning as "not to any substantial degree supplied by producers of the same product in question located elsewhere in Thailand". This interpretation is intended to be consistent with Article 4.1(ii)(b) of the A-D Agreement.

Yes, the phrase "shall be interpreted" means the provision is mandatory. In practice, the Committee will comply with Article 4.2 of the A-D Agreement and Article 16.3 of the SCM Agreement in imposing anti-dumping and countervailing measures.

Standing of domestic industry (Articles 5.1, 5.3, 6.1)

(EC - Q5, Korea - Q3, Canada - Q1)

Answer

Article 3.7 of the Notification defines "domestic industry" in conformity with Article 4.1 of the A-D Agreement and Articles 16.1 and 16.2 of the SCM Agreement. The Committee will take steps necessary to determine whether the "major proportion" standard is met. Specifically, the Committee intends to interpret "major proportion" in a manner consistent with the A-D and SCM Agreements.

The new legislation will contain provisions implementing the standing requirements of Article 5.4 of the A-D Agreement and Article 11.4 of the SCM Agreement. At present, the normal administrative procedures will be checked through the Board of Trade, the Board of Industry as mentioned in Article 5.1 of the Notification.

Submission and examination of complaint (Article 5.2)

(Australia - Q7, United States - Q1)

Answer

The Committee interprets Article 5.2 of the Notification in a manner consistent with Article 11.2 of the SCM Agreement and Article 5.2 of the A-D Agreement. Specifically, the Committee will only consider it "appropriate" to allow a complainant "to choose not to provide some of the information in (i) to (iv)" if the Committee concludes that, such as the case of own-market economy, information is not "reasonably available" to the complainant.

The new legislation will explicitly adopt the "reasonably available" standard.

Investigation (Article 6)

(EC (Suppl.1) - Q8)

Answer

Article 6.1(i) of the Notification refers to situations where the petitioner has not been able to provide all of the information required in Article 5.2 (because it was not "reasonably available") but the Committee believes that the information presented forms the basis for initiating an investigation.

Article 6.1(ii) relates to circumstances where information on all issues required in Article 5.2 of the Notification have been provided and that information is considered "sufficient evidence" to initiate the investigation.

In practice, the Committee will use "sufficient evidence" to initiate the investigation and fully conform with Article 5.3 of the A-D Agreement.

The new legislation will adopt a single "sufficient evidence reasonably available to the petitioner" standard.

(EC (Suppl.1) - Q9)

Answer

Article 6.2.2(4) of the Notification is interpreted in a manner consistent with the Thai Government's obligations under Article 12.2 of the A-D Agreement to provide public notice of a final determination. This provision does not limit the Committee's ability to provide the notice required under Article 6.9 of the A-D Agreement. Consequently, as a matter of practice, the Committee intends to provide the necessary notice required under Article 6.9.

(India - Q1)

Answer

The Committee interprets the term "relevant parties" to be consistent with Thailand's obligations under the SCM Agreement and the A-D Agreement. Consequently, the scope of the term as it is

interpreted in each section of the Notification depends on the notice obligations under the relevant Agreements.

(India - Q2)

Answer

The Committee interprets Article 6.2(2) in a manner consistent with its obligations as provided for in Annex II of the A-D Agreement and Annex VI of the SCM Agreement.

Opportunities to provide information during investigation (Article 6)

(Canada - Q7)

Answer

The Notification does not limit the ability of industrial users or consumer organizations to provide "relevant information". The ability of such groups to provide "relevant information" will be maintained in the new legislation.

De minimis/negligible (Articles 6.2.1(2) and 6.2.2(3))

(EC - Q6, Canada - Q2, Korea - Q4, Australia - Q8, India - Q3, Singapore - Q4)

Answer

Articles 6.2.1(2) and 6.2.2(3) of the Notification provide for termination of an investigation in manner that is interpreted consistent with the *de minimis* and negligibility provisions of Article 5.8 of the A-D Agreement and Articles 11.9 and 27.9 of the SCM Agreement. The new legislation will contain provisions explicitly implementing the *de minimis* and negligibility provisions of the A-D and SCM Agreements.

Investigation period (Article 6.6)

(Japan - Q1, EC (Suppl.1) - Q10, India - Q4, para. 1)

Answer

The Committee interprets Article 6.6 of the Notification in a manner consistent with Article 5.10 of the A-D Agreement and Article 11.1 of the SCM Agreement. Under Thai law, investigations will not be permitted to exceed eighteen months. The new legislation will conform explicitly to these provisions of the A-D and SCM Agreements. Specifically, Thai law will provide that an anti-dumping or countervailing duty investigation should normally be completed within one year of the initiation date, but that necessary extensions can be made to extend the investigation to no longer than eighteen months.

Determination of injury (Article 7)

(Canada - Q3, EC (Suppl.1) - Q11 and also Australia - Q9, United States - Q.5)

Answer

The Committee interprets Article 7 in a manner consistent with its WTO obligations.

The factors listed in Articles 7.1 and 7.2 of the Notification do not represent an exhaustive list. The Committee interprets Articles 7.1 and 7.2 as a list of factors that must be considered but that does not limit the ability of the Committee to consider "other relevant economic factors". These other factors include those specified in Article 3.4 of the A-D Agreement.

The new legislation will expressly include the factors listed in Article 3.4 of the A-D Agreement.

The Committee interprets Article 6.2.2(3) of the Thai Notification in a manner consistent with Article 3.5 of the A-D Agreement. This provision of the Notification specifically includes a "causation" requirement. The Committee uses the factors and considerations in Article 3.5 to define the "causation" standard. The new legislation will specifically incorporate the standards established in Article 3.5 of the A-D Agreement.

The Committee also interprets Article 6.2.2(3) of the Notification to require "material injury". Specifically, the third paragraph of that provision requires that the Committee consider when injury is "minimal". The Committee interprets this provision to mean that only if injury is "material" will special duties be imposed.

The new legislation will explicitly incorporate a "material injury" standard.

(United States - Q2, United States - Q7)

Answer

Q2. The Committee interprets Article 7.1(1) in a manner consistent with Article 3.2 of the A-D Agreement and Article 15.2 of the SCM Agreement. Article 7.1(1) only generally lists the type of factors to be considered in the injury analysis. The Article does not establish the threshold required for an affirmative injury determination. In this regard, the Notification does not limit the Committee's ability to require that the standards of the Agreements be met in order to make an affirmative determination.

Q7. The Committee interprets Article 7.2 consistent with the requirements of Article 3.7(i) of the A-D Agreement and Article 13.7(ii) of the SCM Agreement. In other words, the Notification only directs the Committee to consider the listed factors. However, in making a determination of threat of injury, the present Notification is silent as to the standard that must be met. In this regard, the Committee incorporates the standard in Article 3.7(i) of the A-D Agreement and Article 13.7(ii) of the SCM Agreement.

(United States - Q3, United States Q4)

Answer

Q3. The Committee interprets the phrase "other effects" in Article 7.1(2) to require an analysis of the economic factors and indices listed in Article 3.4 of the A-D Agreement and Article 15.4 of the SCM Agreement.

The new legislation will explicitly include the factors and indices noted in the Agreements.

Q4. The magnitude of the dumping margin is taken into consideration when determining the "other effects from imported products at unfair prices". (See Article 7.1(2) of the Notification.) As noted above, the Committee interprets Article 7.1(2) to include the factors listed in Article 3.4 of the A-D Agreement, including the provision related to the "magnitude of the margin of dumping".

(United States - Q6)

Answer

The Committee interprets Article 6.2.2(3) of the Notification in a manner consistent with Article 3.7 of the A-D Agreement and Article 15.7 of the SCM Agreement. Specifically, the Committee interprets the provision to require that such a determination be "based on facts and not merely on allegations, conjecture or remote possibility" and must be "clearly foreseen and imminent".

The new legislation expressly incorporates these standards.

(United States - Q8)

Answer

The factors listed in Article 7.2 of the Notification are not exhaustive. The specific factors listed must be considered but do not limit the ability of the Committee to consider "other relevant economic factors". The Committee considered the factors noted in Article 3.7(ii) of the A-D Agreement and Article 15.7(iii) of the SCM Agreement in making any determination regarding threat of injury.

The new legislation will expressly incorporate these considerations.

(United States - Q9)

Answer

Yes, the Committee interprets Article 7.2(4) in a manner consistent with Article 3.7(iv) of the A-D Agreement and Article 15.7(v) of the SCM Agreement.

(Singapore - Q5)

Answer

The Committee does not interpret the provision to permit the "cross cumulation" of the effects of dumped and subsidized imports.

The Committee interprets the phrase "other effects" in Article 7.1(2) to include an analysis of the economic factors and indices listed in Article 3.4 of the A-D Agreement and Article 15.4 of the SCM Agreement.

The new legislation will explicitly include the factors and indices noted in the Agreements.

Provisional measures (Article 8.1)

(Korea - Q5, Australia - Q10, India - Q4, para 2, Canada - Q5)

Answer

Article 8.1 of the Notification permits the imposition of provisional measures for "no more than six months, except if the Committee deems appropriate to extend the enforcement period". The Committee recognizes that this provision authorizes the imposition of provisional measures for a period longer than that permitted by Article 7.4 of the A-D Agreement or Article 17.4 of the SCM Agreement. Until the adoption of new legislation, however, the Government will undertake, through the use of administrative discretion, to ensure that Article 8.1 is interpreted consistent with the relevant provisions of the A-D and SCM Agreements. We note that provisional measures may be extended in cases involving countries that are not WTO Members.

The new legislation will adopt the time limits on provisional measures contained in the A-D and SCM Agreement provisions.

Determination of measures (Articles 8.2 and 8.3)

(Australia - Q11)

Answer

Article 8.3 is interpreted by the Committee to permit either the imposition of a special duty equal to the dumping margin or the net subsidy (but not both). Consequently, under this interpretation the obligation under Article VI:5 of GATT 1994 is fully implemented.

(India - Q5)

Answer

The lesser duty rule noted in the A-D and SCM Agreements does not appear to be mandatory. In both Agreements, the phrase "it is desirable" modifies the statement. Nevertheless, the draft Thai legislation and Notification implements the "lesser duty" rule.

Undertaking (Article 9)

(Australia - Q12)

Answer

Yes, Article 9.2 applies to undertaking by government as well. The investigating Committee will fully comply with Article 18.2 of the SCM Agreement.

Anti-circumvention (Article 12)

(Canada - Q6, Japan - Q2, Hong Kong - Q4, Korea - Q6, EC (Suppl.1) - Q12, Singapore - Q6)

Answer

With regard to Article 12 of the Notification on the anti-circumvention provision, the Notification was drafted prior to the conclusion to the Uruguay Round, during which negotiation on this particular article was carrying on. In any case, the Committee has never utilized Article 12 of the Notification.

Since Thailand had already ratified the WTO Agreements, Thailand is fully committed to its obligation in Article 18.1 of the Agreement not to take specific actions against dumping of exports from another Member except in accordance with the provisions of GATT 1994 as interpreted by this Agreement.

Others

Judicial review

(Hong Kong - Q2, EC (Suppl.1) - Q13)

Answer

In Thailand, it is possible to obtain a judicial review of decisions by the Committee or the Minister to impose special duties before the Civil Court under the provisions of the Civil Code.

The new legislation specifically incorporates Article 13 of the Anti-Dumping Agreement and Article 23 of the SCM Agreement of the judicial review.

DSB panel report

(Canada - Q8, Hong Kong - Q3)

Answer

The implementation of panel reports by Thailand will be in accordance with its rights and obligations under the WTO Agreements. If required, Thailand will implement panel reports by revising the existing laws and regulations or introducing a new law.