

# WORLD TRADE ORGANIZATION

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**Committee on Anti-Dumping Practices**

Original: English

**Committee on Subsidies and Countervailing Measures**

ORAL QUESTIONS POSED AT THE JOINT SPECIAL MEETING  
OF THE COMMITTEES CONCERNING THE NOTIFICATIONS  
PROVIDED BY THE GOVERNMENT OF AUSTRALIA OF LAWS AND  
REGULATIONS UNDER ARTICLES 18.5 AND 32.6 OF THE AGREEMENTS

The following communication, dated 19 July 1995, has been received from the Permanent Mission of Thailand.

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The Mission of Thailand would like to submit the written questions raised on 18-19 July 1995 in the review session of the anti-dumping and the countervailing measures law and regulations notified by Australia under Article 18.5 of the Anti-Dumping Agreement and Article 32.6 of the Subsidies and Countervailing Measures Agreement.

The Thai Mission would appreciate very much if these questions are forwarded to the appropriate delegates and also likes to reserve the right to receive the corresponding written replies, as well as the right to make follow-up enquiries during the next session of the meeting of the Committee to review the written questions and replies.

1. Excluded subsidies

The Subsidies Agreement specifically provides that the exemption of an exported product from duties or taxes borne by the like product when destined for domestic consumption, or the remission of such duties or taxes in amounts not in excess of those which have accrued, shall not be deemed to be a subsidy (see Article 1.1(a)(1)(ii)(Footnote 1) and Annexes I and II.

Australian law, however, does not appear to make any provision for the exclusion from actionable subsidies of such exemption or remission of duties and taxes. See Section 269TAAC (1)(b) and (6) of the Customs Act 1901.

**Question:** Please explain whether Australian law ensures that such exemption or remission of duties and taxes will not be treated as an actionable subsidy.

2. Opportunity of parties to submit relevant information

Article 6.1 of the Anti-Dumping Agreement provides that all interested parties in an anti-dumping investigation "shall be given notice of the information which the authority require and ample opportunity to present in writing all evidence which they consider relevant in respect of the investigation in question."

The Australian authority language which appears most applicable to this WTO requirement is Section 269TC(4)(e) of the Customs Act 1901. This section stipulates that after the Comptroller has decided to accept a dumping application, the Comptroller must invite the interested parties to lodge (within 40 days after the date of initiation of an investigation) "submission concerning the publication of the notice sought by the application".

Because the Australian statute does not mandate the use of questionnaires in anti-dumping investigations, and because interested parties are invited to submit evidence concerning the published notice, it is unclear whether a foreign exporter will know exactly what information the authority will require in making their anti-dumping determination. This lack of instruction may not meet the notice requirement of Article 6 of the A-D Agreement.

**Question:** Please reconcile the provision of the Australian law with the Anti-Dumping Agreement?

3. Disclosure of the basis decision

Article 6.9 of the Anti-Dumping Agreement specifies that "the authorities shall, before a final determination is made, inform all interested parties of the essential facts under consideration which form the basis for the decision whether to apply definitive measures", and that such disclosure should take place in sufficient time for the parties to defend their interest.

Under Section 269TG(3D) of the Customs Act 1901, the Minister has the authority before publishing a dumping duty notice to give notice to an exporter that it would be appropriate to undertake action so as to avoid causing or threatening material injury to an Australian industry producing like products. This provision, however, may fail to meet the Anti-Dumping Agreement requirement for the following reasons:

- (i) It is not mandatory, but merely permissive.
- (ii) It is not designed to inform "interested parties of the essential facts under consideration which form the basis for the decision".

- (iii) It does not provide a sufficient opportunity for the parties to defend their interest.

For example, one of the purposes of pre-determination disclosure is to ensure that ministerial errors do not lead to the miscalculation of dumping margins. If the interested parties are not provided with an opportunity to correct clerical errors, they might unnecessarily suffer significant commercial consequences.

**Question:** How does the Australian authority meet the disclosure requirement under Article 6.9 of the Anti-Dumping Agreement?