

## Anti-Dumping and Countervailing Act, B.E. 2542 (1999)

Translation

Whereas it is expedient to enact an anti-dumping and countervailing legislation;

Certain statutes within which pertain to the limitation on freedom of business undertaking and career, for which Section 29, together with Section 50 of the Constitution of the Kingdom of Thailand authorizes its enforcement by the power of law.

### Section 1

This Act is called "Anti-Dumping and Countervailing Act, B.E. 2542 (1999)".

### Section 2

This Act is to be in force commencing on the ninetieth day after its publication in the Royal Gazette.

### Section 3

The Anti-Dumping Act, B.E. 2507 (1964) is hereby nullified.

### Section 4

In this Act:

"Injury" means injury pursuant to Section III;

"Domestic industry" means a domestic industry pursuant to Section IV;

"Subject merchandise" means a product which is alleged of being dumped or subsidized;

"Like product" means a product which is identical, i.e. alike in all respects to the subject merchandise, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the subject merchandise;

"Level of trade" means a series of stages for a merchandise to reach the consumer;

"Dumping margin" means the margin by which the export price is lower than the normal value;

"Interested party" means:

- (1) a foreign producer, exporter or the importer of the subject merchandise, or a trade or business association a majority of the members of which are producers, exporters, or importers of such product;
- (2) the government of a country from which the subject merchandise is exported to Thailand;
- (3) a producer of the like product in Thailand or a trade or business association the majority of the members of which are producers of the like product in Thailand;
- (4) any other entity designated by the Minister of Commerce to be an interested party.

"Duties" means preliminary duties, anti-dumping or countervailing duties as the case may be;

"Committee" means the Committee on Dumping and Subsidies.

### Section 5

The Minister of Finance shall be responsible in accordance to this Act exclusively with issues pertaining to the Customs Department; and is thus authorized to issue ministerial regulations as prescribed under Section 11 to maintain compliance with this Act.

The Minister of Commerce shall take actions in accordance with this Act and is herewith authorized to issue ministerial regulations and notifications to maintain compliance with this Act.

Ministerial regulations and notifications are in effect from the date of publication in the Royal Gazette.

### **Section 6**

The Minister of Commerce is herewith authorized to issue ministerial regulations specifying methodologies, and procedures concerning the determinations of dumping, subsidies, injuries, anti-dumping measures, countervailing measures, reviews, including any measure relating to this Act in so far as such measure is not an obstacle to, or counteract the provisions of this Act.

Where appropriate, the ministerial regulations as provided in paragraph one can be issued, in specific instances, in the form of Ministry of Commerce Notification.

## **SECTION I GENERAL PROVISIONS**

### **Section 7**

A determination to impose any anti-dumping or countervailing measure shall include the consideration on the interests of the domestic industry, consumer, and public interests.

### **Section 8**

For the purpose of enforcing this Act, when the Committee deems appropriate, it may in writing direct the Customs Department to register any import or export, to collect information pertaining to any import or export. In such instances, the Customs Department is authorized to secure from any importer or exporter information as requested by the Committee. Where appropriate, Customs legislations shall apply mutatis mutandis.

### **Section 9**

The petitioner, importers, or foreign exporters may request a disclosure of information used in the determination of preliminary measure, duty assessments and reviews in the manner prescribed in Ministry of Commerce regulations.

The request as described in paragraph one shall be submitted no later than one month from the date of the decision to impose a measure, whether preliminary or final.

### **Section 10**

Pertaining to petitions for anti-dumping investigations, countervailing investigations, undertakings, reviews, including other information requests, the Ministry of Commerce is authorized to issue notifications prescribing fees or expenses in the amount commensurable to such tasks.

### **Section 11**

The refund of duties or prepaid duty guarantee as prescribed in this Act shall be in accordance with ministerial regulations.

## **SECTION II DUMPING**

### **Section 12**

Any act of dumping which causes injuries as prescribed in Section III to the domestic industry as prescribed in Section IV is unlawful and retaliatory measures are hereby permitted.

### **Section 13**

An act of dumping, in the present Act, is the introduction of merchandise into the commerce of Thailand at an export price below its normal value.

### **Section 14**

An export price is the price actually paid or payable for the product exported from the exporting country into Thailand.

In cases where there is no export price or where it appears that the export price is unreliable because of an association or a compensatory arrangement between the parties involved, the export price may be constructed on the basis of the price at which the subject merchandise is first resold to an independent buyer, or if the merchandise are not resold to an independent buyer, or are not resold in the condition in which they were imported, on any suitable basis.

In cases such as those described in paragraph two, the calculation to establish an export price shall include adjustments for all costs including duties and taxes incurred, and for profits accruing, between importation and resale.

### **Section 15**

Normal value is based on the prices paid or payable, in the ordinary course of trade, by independent customers in the exporting country. It is derived from the sale of merchandise in a sufficient quantity of no less than five (5) percent of the export of the subject merchandise from the exporting country into Thailand. However, a lower volume of sales may be used where it can be demonstrated that domestic sales at such volume are the price in the country of export.

In cases where the price as established in paragraph one cannot be found, or such prices are unreliable because of an association or a compensatory arrangement between the parties involved or because of the particular market situation in the exporting country renders it impossible to obtain a proper comparison, the normal value shall be determined from the following prices:

- (1) the export price of the like product, in the normal course of trade, from the exporting country to an appropriate third country, if it can be demonstrated that such price is indicative of the price in the country of export; or,
- (2) the price constructed from the cost of production in the country of origin plus a reasonable amount for selling, general and administrative costs and for profits.

In cases where the price as described in paragraph one or paragraph two (1) is lower than the cost of production, plus selling, general, administrative and other costs; having investigated such sales within an extended period of time in substantial quantities; and having found that they occurred at prices which do not provide for the recovery of all costs within a reasonable period of time; it shall thus be determined that such sales are not in the normal course of trade and cannot be used for the purpose of establishing the normal value, except when that price found is above the weighted average per unit costs for the period of investigation.

### **Section 16**

In cases of imports from non-market economy countries, the determination of normal value as prescribed in Section 15 shall be made on the basis of the price in a market economy third country, or where such is not possible, on any other reasonable basis, including the prices in Thailand as appropriate.

### **Section 17**

In cases where merchandise is imported into Thailand from an intermediate country, the price information of that exporting country shall be used as a basis in establishing the normal value as prescribed in Section 15. However, comparisons may be made with the price in the country of origin if the merchandise are merely transshipped through the country of export; or such merchandise are not produced in the country of export; or there is no comparable price for them in the country of export.

## **Section 18**

A fair comparison shall be made between the export price and the normal value. It shall be made at the same level of trade and as nearly as possible at the same time. Due allowance shall be made for various differences which affect price comparability.

As established in paragraph one, the methodology for establishing a dumping margin shall be as follows, except in cases where there is sufficient cause to utilize other methodologies:

- (1) comparison of a weighted average normal value with a weighted average prices of all comparable export transactions;
- (2) comparison of normal value and export prices on a transaction-by-transaction basis;
- (3) if it is found that there is a pattern of export prices which differ significantly among different purchases, regions, or time periods, a normal value established on a weighted average basis may be compared to prices of individual export transactions.

The determination of the dumping margin may be done through sampling in accordance to the methodology as prescribed by the Ministry of Commerce.

## **SECTION III INJURY**

### **Section 19**

Unless otherwise specified, under this Act, the term "injury" shall be taken to mean:

- (1) material injury to a domestic industry,
- (2) threat of material injury to a domestic industry; or,
- (3) material retardation of the establishment of a domestic industry.

### **Section 20**

The determination that there is material injury to a domestic industry as prescribed in Section 19 (1) shall be based on positive evidence and shall involve an objective examination of both

- (1) the volume of the dumped imports and the effects of the dumped imports on prices in the domestic market for like products; and,
- (2) the consequent impact of these imports on domestic producers of like products.

Where imports of a product from more than one country are simultaneously subject to anti-dumping investigations, if it is found that the margin of dumping established in relation to the imports from each country is more than de minimis as defined in Section 28, and cumulative assessment of injury as defined in Section 19 (1), the effects of such imports may be cumulatively assessed when it is appropriate in light of the conditions of competition between the imported products and the like domestic product.

### **Section 21**

In the determination of injury as prescribed in Section 19 (1), the demonstration of a causal relationship between the dumped imports and the injury to the domestic industry shall be based on an examination of all relevant evidence. Any known factor other than the dumped imports which at the same time are injuring the domestic industry, and the injuries caused by those factors must not be attributed to the dumped imports. Factors which may be relevant in this respect include, inter alia, the volume and prices of imports not sold at dump prices, contraction in demand or changes in the pattern of consumption, trade-restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry.

## **Section 22**

A determination of threat of material injury to a domestic industry referred to in Section 19 (2) shall be based on facts and not merely on allegation, conjecture, or remote possibility. The change in circumstances which would create a situation where the dumping would cause injury must be clearly foreseen and imminent or indicate the imminent likelihood of further dumped imports and that, unless protective action is taken, material injury will occur. In making a determination regarding the existence of a threat of material injury, consideration should be given to factors such as:

- (1) a significant rate of increase of dumped imports into the domestic market of Thailand indicating the likelihood of substantially increased importation;
- (2) sufficient freely disposable capacity of the exporter or an imminent and substantial increase in such capacity indicating the likelihood of substantially increased dumped imports into Thailand, due account being taken of the availability of other export markets to absorb any additional exports;
- (3) whether imports are entering at prices that would, to a significant degree, depress prices or prevent price increases which would have otherwise occurred, and would probably increase demand for further imports; and,
- (4) inventories of the subject merchandise.

## **Section 23**

In order to determine whether material retardation to an establishment and development of a domestic industry under Section 19 (3) exists, factors which may lead to a material retardation including the possible viability and time period required for the establishment and establishment of such a domestic industry shall be present.

## **SECTION IV DOMESTIC INDUSTRY**

## **Section 24**

For the purpose of this Act, the term "domestic industry" refers to the domestic producers as a whole of the like products whose collective output of the products constitutes a major proportion of the total domestic production of the product, except:

- (1) when producers are related to the exporters or importers or are themselves importers of the allegedly dumped product, such producers may be considered as not being a part of the domestic industry;
- (2) if the territory of Thailand is, for the production in question, divided into more than one competitive markets, the producers of the like products within each market may be regarded as a separate domestic industry if the producers of like products within such market sell all or almost all of their production of the product in question in that market, and the demand in that market is not to any substantial degree satisfied by producers of like products located elsewhere in Thailand.

For the purpose of paragraph one (1) above, producers shall be deemed to be related to importers or exporters of subject merchandise if one of them controls the other, or both of them are directly or indirectly control a third person, provided that there are grounds for believing or suspecting that the effect of the relationship is such as to cause the producers concerned to behave differently from non-related producers. In such cases, one shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter.

For the purpose of paragraph one (2) injury may be found to exist in that particular market even where major proportion of the total domestic industry is not injured. In such circumstances, anti-dumping duty shall be levied only on the subject merchandise

consigned for consumption in that market. When it is not practicable to levy anti-dumping duty on such a basis or the exporters fail to submit appropriate undertaking proposal as prescribed in Section 44, anti-dumping duty may be levied on all the subject merchandise imported into Thailand.

## **SECTION V DUMPING DETERMINATION**

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### **Part I General Provision**

#### **Section 25**

The methodology for determining dumping not being articulated in this Section shall be in accordance with ministerial regulations.

#### **Section 26**

Any information which is by nature confidential or which is provided on a confidential basis shall be accorded confidentiality.

Such information shall not be disclosed without specific permission of the party submitting it. Interested parties providing confidential information shall be required to furnish non-confidential summaries thereof. If the supplier of the information is either unwilling to make the information public or to consent to the disclosure of such information within the established time limits, such information may be disregarded.

#### **Section 27**

In cases where any interested party refuses access to, or otherwise does not provide necessary information within an established time period or significantly impedes the investigation, the determination may be based on facts available or leading to a result which is less favorable to that party.

#### **Section 28**

There shall be an immediate termination in cases where it is determined that the margin of dumping is de minimis, or that the volume of dumped imports is negligible, as prescribed in a ministerial regulation.

#### **Section 29**

During the course of an investigation, the Department of Foreign Trade or the Committee, as the case may be, may initiate verification on claims or evidence submitted.

Such verifications may be conducted at any time during the course of an investigation and may be thus conducted in Thailand, the exporting country or other countries involved.

#### **Section 30**

The Department of Foreign Trade shall, before a final determination is made by the Committee, inform all interested parties of the essential facts under consideration which form the basis for the determination. Such disclosure should take place in sufficient time for the parties to defend their interests.

#### **Section 31**

After the publication of the notice of initiation as prescribed in Section 39, if there are reasonable grounds to believe that eventually the final anti-dumping duty may be collected retroactively prior to the date of application of provisional measures, the Committee may assign the Customs Department to impose a duty on the subject merchandise imported during such period. In this regard, the Customs Department is authorized to request the collateral in the amount designated by the Committee.

## **Part II**

### **Initiation of Investigation**

#### **Section 32**

An anti-dumping investigation is initiated when there is a petition made by the Department of Foreign Trade, or a legal person, or a group of legal persons in accordance with Section 33.

#### **Section 33**

A legal person or a group of legal persons may submit a petition to initiate an investigation on behalf of the domestic industry to the Committee via the Department of Foreign Trade.

The petition as prescribed in paragraph one must be supported by those domestic producers whose collective output constitutes more than fifty (50) per cent of the total production of the like product produced by that portion of the domestic industry expressing either support for or opposition to the application. However, no investigation shall be initiated when domestic producers expressly supporting the application account for less than twenty-five (25) per cent of the total production of the like product produced by the domestic industry.

The submission of petition shall be in accordance with Ministry of Commerce notifications.

#### **Section 34**

If the petition as prescribed in Section 33 is incomplete or incorrect, the Department of Foreign Trade shall thus notify the petitioner to complete or correct the petition within a specified time limit.

When a petition is complete and correct, the Department of Foreign Trade shall forward the petition to the Committee for consideration.

#### **Section 35**

When the Committee had received the petition as specified in Section 32, the Department of Foreign Trade shall notify the government of the exporting countries of the receipt of such petition.

#### **Section 36**

The petitioner may withdraw its petition. Nevertheless, should this be done after the initiation as prescribed in Section 39, the Committee may continue or terminate the case as it sees fit.

#### **Section 37**

When the Committee determines that there is sufficient evidence of dumping, injury and causal link, the Department of Foreign Trade shall commence its investigation without delay.

When the Committee determines that there is no sufficient evidence of dumping, injury and causal link, the Department of Foreign Trade shall inform the petitioner thus without delay.

#### **Section 38**

When a government of a third country lodges a complaint that there is dumping from an exporting country into Thailand, causing injury to the domestic industry concerned in that third country; and after the Committee determines that an anti-dumping proceeding be initiated, the Department of Foreign Trade shall proceed as directed by the Committee in accordance to this Section mutatis mutandis after receiving an approval from the World Trade Organization (Council for Trade in Goods).

When the Department of Foreign Trade deems appropriate; or when a domestic industry lodges a petition that there is dumping from an exporting country into an importing country, causing injury to a Thai domestic industry; and that the Department of Foreign Trade determines that the complaint is warranted, it shall lodge such a complaint to the importing country to initiate an anti-dumping proceeding.

The methodology and guideline for the implementation of paragraph one and paragraph two shall be in accordance with ministerial regulations.

### **Part III**

#### **Dumping and Injury Investigations**

##### **Section 39**

In the process of an anti-dumping proceeding, the Department of Foreign Trade shall investigate both the dumping and injury. The initiation of an investigation shall be published in the Royal Gazette and in the local newspaper in Thai and English as appropriate.

An initiation notice shall include the following information:

- (1) complete description of the subject merchandise;
- (2) exporting countries and interested countries involved;
- (3) summary of factual evidence;
- (4) requests for factual details or evidence and fees involved;
- (5) time-limits allowed for interested parties to present their facts and views in writing;
- (6) time-limits allowed for interested parties to make known their intention to present oral arguments pertaining to the determination of dumping and resulting injury.

The Department of Foreign Trade shall inform in writing the petitioners, exporters, importers or representatives thereof known to it of the initiation of the proceeding.

##### **Section 40**

Upon completion of the dumping and injury investigations, the Department of Foreign Trade shall prepare a report of its findings and submit it to the Committee for deliberation.

### **Part IV**

#### **Provisional Measures**

##### **Section 41**

If the Committee makes an affirmative preliminary determination of dumping and consequent injury and further determines that provisional measures being necessary to prevent injury to the domestic industry, it may impose provisional measures by applying provisional duty or requiring a bond for the purpose of levying that provisional duty.

The provisional duty imposed under paragraph one shall be no greater than the preliminarily determined margin of dumping.

In cases where a provisional duty is levied, customs and customs tariff legislation are to be enforced in the collection of that provisional duty as though it were import duty by law. Such collected provisional duty or bonds shall be held in compliance with Sections 51,52 until there is no longer a cause to do so.

## **Section 42**

Provisional measures shall be applied no sooner than sixty (60) days from the date of publication of the notice of initiation of the investigation.

The application of provisional measures shall be limited only to the period necessary and shall be in compliance with the following:

- (1) under normal circumstances, the application of provisional measures may not exceed four (4) months;
- (2) upon request by exporters representing a significant percentage of the trade involved, the Committee may extend the application period beyond four (4) months but not exceeding six (6) months;
- (3) if, during the course of an investigation, the issue of whether a duty lower than the margin of dumping would be sufficient to remove injury is examined, the Committee may extend the period referred to in (1) above beyond four (4) months but not exceeding six (6) months and the period referred in (2) may be extended beyond six (6) months but not exceeding nine (9) months, respectively.

## **Part V Undertakings**

### **Section 43**

An anti-dumping proceeding may be suspended with respect to any exporter without the imposition of provisional measures or the levying of a final anti-dumping duty when there is an undertaking between that exporter and the Department of Foreign Trade with respect to price revisions or cessation of that export at dumped prices.

The Department of Foreign Trade may enter into an undertaking only if it is satisfied that, by entering into such an undertaking, the injurious effect of the dumping will be terminated. However, price increases under such undertakings shall not be higher than necessary to eliminate the dumping margin.

To become effective, an undertaking must be approved by the Committee.

### **Section 44**

An undertaking may be accepted only after the Committee has made a preliminary determination.

An undertaking may be proposed by exporters or put forward by the Department of Foreign Trade.

The Department of Foreign Trade may reject undertakings offered by exporters for any reasons including reason of general policy. In such a case, the Department of Foreign Trade, where practicable, shall provide to the exporters the reasons which have led it to regard such an acceptance of an undertaking as inappropriate.

### **Section 45**

The fact that a foreign exporter does not offer an undertaking, or does not accept a proposal of the Department of Foreign Trade to enter into an undertaking, shall in no way prejudice the consideration of the case.

### **Section 46**

The foreign exporters who have entered into an undertaking with the Department of Foreign Trade shall provide information within the time period specified by the Department and shall permit the verification of such information by the Department. In cases where there is a violation of an undertaking, provisional measures may be applied on facts available basis and the anti-dumping investigation previously suspended may be continued.

## **Section 47**

Upon acceptance of an undertaking, the anti-dumping proceeding may nevertheless be completed by the Committee if the exporters so desire by indicating their intention in the undertaking; or if undertakings are accepted in respect to some but not all the exporters involved; or if such undertakings are subsequently violated; or if the Committee so decides due to other considerations.

Pursuant to the provisions in the preceding paragraph, upon the completion of the final determination if:

- (1) a negative final determination is made, the undertaking shall automatically lapse, except in cases where such a determination is due in large part to an undertaking. In such cases, the Committee may require that an undertaking be maintained for a reasonable period;
- (2) an affirmative final determination with respect to dumping and subsequent injury are made, the undertaking shall continue;
- (3) an affirmative final determination is made with respect to dumping and subsequent injury is made in case of a violation of an undertaking, the Committee may levy definitive anti dumping duty retroactively on products entered for consumption not more than ninety (90) days before the application of a provisional measure, except that any such retroactive assessment shall not apply to imports entered before the violation of the undertaking.

## **Section 48**

The provisions of Section VIII shall apply, *mutatis mutandis* to undertakings accepted.

# **SECTION VI ANTI-DUMPING DUTY**

## **Section 49**

When an affirmative final anti-dumping determination is made by the Committee, the amount of anti-dumping duty to be imposed shall be that which would be adequate to remove the injury and shall in no case exceed the dumping margin.

Anti-dumping duty shall be collected in the appropriate amount in each case on a non-discriminatory basis from each exporter found to be dumping, except as to imports from those exporters for which undertakings under the terms of Part V, Section V are applicable.

In cases where the final anti-dumping duty is levied, customs and customs tariff legislations are to be enforced in the collection of such duty as though it were import duty by law. Such duty levied shall be held in compliance with Section 59 until there is no longer a cause to do so.

## **Section 50**

When a sampling method is used to determine the dumping margin in accordance with Section 18, paragraph three, any anti-dumping duty shall be assigned for those selected importers. For those not selected for sampling, their anti-dumping rates shall not exceed the weighted average dumping margin found. However, if any party subject to such duties is able to provide complete information relevant to his case within the time period specified by the Committee, an appropriate rate shall be determined individually for that party.

Exceptions shall be made in cases where the number of individual parties is so large that examination would be unduly burdensome and prevents the timely completion of the investigation pursuant to Section 54, the duty at an amount not exceeding their weighted average may be levied.

### **Section 51**

Where a final determination of injury as described in Section 19 (1), or Section 19 (2) is made, where the effect of the dumped imports would, in the absence of the provisional measures, have led to a determination of injury referred to in Section 19 (1), the Committee may levy anti-dumping duty retroactively for the period in which provisional measures have been applied in accordance with Ministry of Commerce notifications.

If the final anti-dumping duty levied pursuant to the provisions of the preceding paragraph is higher than the provisional duty applied, the difference shall not be collected. If the final anti-dumping duty is lower than the provisional duty applied, the difference shall be reimbursed.

### **Section 52**

Where a determination of injury referred to in Section 19 (2) or Section 19 (3) is made, the Committee may impose anti-dumping duty only from the date of the determination of injury under Section 19 (2) or 19 (3), as the case may be, and any provisional duty imposed shall be reimbursed in an expeditious manner.

Where the Committee has determined that there is no dumping or injury in its final determination, the provisional duty or bond collected shall be reimbursed in an expeditious manner.

### **Section 53**

In cases where a measure under Section 31 is taken, the Committee may impose anti-dumping duty retroactively for a period of no more than ninety (90) days prior to the date of imposition of provisional measures if:

- (1) there is a history of dumping of such subject merchandise which caused injury; or that the importers were, or should have been, aware that such exporters were dumping and that such dumping would cause injury; and
- (2) the injury is caused by massive imports of a subject merchandise in a relatively short term which, in light of timing and the volume of the dumped imports and other circumstances, is likely to seriously undermine the remedial effect of the final anti-dumping duty without the use of anti-dumping duty prior to the date when the preliminary measure is in place.

Prior to the imposition of anti-dumping duty as prescribed in paragraph one, the importers concerned must be given an opportunity to comment.

## **SECTION VII**

### **STATUTORY TIME-LIMIT OF INVESTIGATIONS**

### **Section 54**

Investigations shall, except in special circumstances, be concluded within one (1) year and in no case more than eighteen (18) months, after their initiations.

## **SECTION VIII**

### **DURATION AND REVIEWS**

### **Section 55**

An anti-dumping duty under Section VI shall remain in effect only as long as and to the extent necessary to counteract dumping which is causing injury.

## **Section 56**

The need for continued imposition of the duty may be reviewed by the Committee on its own initiative or at the request of an interested party, provided that such an interested party submits positive information substantiating the need for such a review.

The review above shall be conducted expeditiously and shall be concluded within one year from the date of initiation of the review.

The anti-dumping duty remains in effect pending the outcome of the review.

## **Section 57**

An anti-dumping duty shall be terminated on a date no later than five years from its imposition or from the date of the most recent review if that review has covered both dumping and injury, unless the Committee determines, on its own initiative or upon a request made by or on behalf of the domestic industry within a reasonable period of time prior to the date that the expiry of the duty would be likely to lead to continuation or recurrence of dumping.

## **Section 58**

Exporters or producers outside of Thailand who have not exported the product to Thailand during the period of investigation may request a review for the purpose of determining their individual dumping margins, provided that these exporters or producers can demonstrate that they are not related to any of the exporters or producers outside Thailand who are subject to the anti-dumping duty. In this regard, paragraph two of Section 24 shall apply *mutatis mutandis*, to this Section.

No anti-dumping duty may be levied on imports from such exporters or producers while the review is being carried out. However, if such a review results in a determination of dumping or the Committee determines that exporters or producers requesting a review are related to any of the exporters or producers outside Thailand who are subject to the anti-dumping duty on the product, the Committee may levy anti-dumping duty retroactively to the date of the initiation of the review and Section 31 shall apply *mutatis mutandis*.

## **Section 59**

An importer may request reimbursement of duty collected where it can be demonstrated that the dumping margin has been eliminated, or reduced to a level which is below the level of duty in effect.

A request for review under the proceeding paragraph may be submitted to the Committee within six (6) months from the date of payment of that duty.

## **Section 60**

The provisions in Part I, Part II, Part III of Section V and Section VI are to be in effect for reviews and refunds, *mutatis mutandis*, as prescribed in this Section.

## **SECTION IX JUDICIAL REVIEWS**

## **Section 61**

Those wishing to appeal a final determination made by the Committee in accordance with Section 49 or review determination in accordance with Sections 56, 57, 58, and 59 may file their appeal to the Court of Intellectual Property and International Trade within thirty (30) days from the date of the final determination.

The appeal process as indicated in paragraph one shall not be a cause for mitigation of the levying or refund of duty in this Act, except where the Court of Intellectual Property and International Trade otherwise directs.

## **SECTION X SUBSIDIES**

### **Section 62**

In this Section:

"Government" shall include any public body;

"Certain Enterprise" means an enterprise or industry or a group of enterprises or a group of industries

### **Section 63**

In this Act, a subsidy is deemed to exist where the government of the country of origin or exporting country is engaged in the following activities and a benefit is thereby conferred:

- (1) granting of a financial contribution including:
  - (a) any activity which will eventually result in a transfer of funds or liability being reduced or terminated;
  - (b) foregoing or non-collection of government revenue that is otherwise due;
  - (c) governmental purchase or provision of goods or services other than general infrastructure; or,
  - (d) making of payments to a funding mechanism, or the acts of entrusting or directing on a private body to carry out one or more of the types of functions illustrated in (a), (b), or (c) above.
- (2) giving any form of income or price support, whether direct or indirect, in order to increase an export or reduce an import of any product.

The exemption of an export from customs surcharge 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 financial contribution referred to in paragraph one of this Section.

### **Section 64**

The following types of subsidies are deemed to be specific:

- (1) a subsidy to which access is limited to certain enterprises, whether in law or in fact;

A subsidy for which eligibility is based on an objective criterion or upon conditions which are neutral, do not favor certain enterprises over others, and which are economic in nature and horizontal in application shall not be deemed to be specific.

To determine whether there is subsidy to certain enterprises, factors other than those mentioned in the second paragraph shall also be considered. Such factors shall include: (a) the receipt or use of a subsidy program by certain enterprises more than others; and, (b) the manner in which discretion has been exercised by the granting authority in the decision to grant a subsidy. Account shall be taken of the extent of diversification of economic activities, as well as of the length of time during which the subsidy program has been in operation.

- (2) a subsidy which is limited to certain enterprises located within a designated geographical region. However, the setting or change of generally applicable tax rates shall not be deemed to be a specific subsidy for the purposes of this Section.

Any determination of specificity under the provision of paragraph one of this Section shall be substantiated on the basis of positive evidence.

## **Section 65**

The following subsidies, with respect to specificity as prescribed in Section 64, are countervailing:

- (1) a subsidy contingent, in law or in fact, upon export performance in the manner prescribed in ministerial regulations;
- (2) a subsidy contingent upon the use of domestic over imported products;
- (3) a subsidy that causes adverse effects to the national interest, including,
  - (a) injury as prescribed in Section III to the domestic industry as prescribed in Section IV;
  - (b) nullification or impairment of benefits accruing directly or indirectly to Thailand, in particular the benefits of concessions bound under the WTO Agreement;
  - (c) serious prejudice to the interests of Thailand as prescribed in ministerial regulations.

## **Section 66**

A countervailing duty shall not apply to the subsidies, the details of which shall be prescribed in Ministry of Commerce notifications, for which benefit is provided through programs that grant:

- (1) assistance for research activities;
- (2) assistance to disadvantaged regions; or,
- (3) assistance to promote adoption of existing facilities to new environmental requirements imposed by laws or regulations.

## **Section 67**

In cases where there is subsidy as prescribed in Section 65,

- (1) Department of Foreign Trade shall request consultation with the country granting or maintaining a subsidy in accordance with the methodology and procedure as set forth by the World Trade Organization. Agreement on Subsidies and Countervailing Measures and the Committee shall provide remedy as appropriate;
- (2) Committee shall determine a countervailing duty applicable.

In cases where actions are taken both with respect to (1) and (2) simultaneously and it is found in the final determination that both countervailing measures can be used, the Committee shall apply only one (1) of the available countervailing measures.

## **Section 68**

A countervailing duty shall be calculated in terms of the benefit conferred to the recipient who is found to exist during the investigation period for subsidization and shall be determined per unit of the subsidized product of each recipient.

If the recipient must pay any fees or expenses to the granting authority in order to obtain the subsidy, such recipient may request deduction of those fees or expenses. The recipient bears the burden of proof of such fees or expenses.

The amount of countervailing duty to be imposed shall be that which would be adequate to remove the injury and in no case may exceed the amount of subsidy received.

## **Section 69**

With regard to the calculation of benefits to the recipient, the following rules shall apply:

- (1) Government provision of equity capital shall not be considered as conferring a benefit, unless the investment decision can be regarded as inconsistent with the usual investment practice of private investors in the country of origin or export;

- (2) A loan by a government shall not be considered as conferring a benefit, unless there is a difference between the amount that the firm receiving the loan pays on the government loan and the amount that the firm would pay of a comparable commercial loan which the firm could actually obtain on the market. In this case, the benefit conferred shall be the difference between the two amounts;
- (3) A loan guarantee by a government shall not be considered as conferring a benefit, unless there is a difference between the amount that the firm receiving the guarantee pays on a loan guaranteed by the government and the amount that the firm would otherwise pay for a comparable commercial loan absent the government guarantee. In this case, the provision in (2) above shall apply, *mutatis mutandis*, to the calculation of benefit received;
- (4) The provision of goods or services or purchases of goods by a government shall not be considered as conferring a benefit unless the provision is made for less than adequate remuneration. The adequacy of remuneration shall be determined in relation to prevailing market conditions for the product or service in question in the country of provision or purchase.

The calculation of the benefit to the recipient shall be in conformity with the rules and procedures set forth in ministerial regulations. Such regulations may specify that further notifications by the Ministry of Commerce be issued for this purpose.

#### **Section 70**

In making a countervailing duty determination, the provisions in Sections II, III, IV, V, VI, VII, VIII, and IX shall apply *mutatis mutandis*, except in the following cases:

- (1) the provision of Section 42 (2) and (3) shall not apply to the imposition of provisional measures;
- (2) undertakings between exporters and the Department of Foreign Trade shall not be accepted unless the consent of the exporting country's Government has been obtained.

#### **Section 71**

After a petition from a representative of a domestic industry is accepted or upon the proposal of a countervailing duty proceeding by the Department of Foreign Trade is made, the country the product of which may be subjected to such a proceeding shall be notified and given an opportunity for consultations with the Committee with the aim of terminating the countervailing duty proceeding or entering into an undertaking.

Throughout the period of the proceeding, a consultation may be conducted and the Committee shall provide opportunity to consult as appropriate. However, these provisions regarding consultations are not intended to prevent the authorities concerned from continuing with the countervailing duty proceeding in question.

The Committee shall permit the country the product of which is subject to a countervailing duty proceeding access to non-confidential evidence.

### **SECTION XI THE COMMITTEE**

#### **Section 72**

There shall be a committee entitled "The Committee on Dumping and Subsidy". The Committee is composed of the Minister of Commerce who serves as Chairman, Permanent Secretary of the Ministry of Commerce, Permanent Secretary of the Finance Ministry, Permanent Secretary of the Ministry of Foreign Affairs, Permanent Secretary of the Ministry of Agriculture and Cooperatives, Permanent Secretary of the Ministry of Industry, General Secretary of the Board of Investment, Director-General of the Department of Foreign Trade, Director-General of the Department of Internal Trade, Director-General of the

Department of Business Economics, an appointee from the Office of the Consumer Protection Board and six (6) expert members to be appointed by the Cabinet.

The Director-General of the Department of Foreign Trade shall serve as secretary and shall appoint an officer of the Department of Foreign Trade to serve as assistant secretary to the Committee.

The individuals to be appointed as expert members of the Committee under the provision of paragraph one shall be experts in the fields of international trade, economics, accounting, law, agriculture and industry; one expert per each field.

### **Section 73**

The Committee shall have the following authorities and duties:

- (1) to perform their duties involving anti-dumping and countervailing measures under this Act;
- (2) to approve or reject undertakings;
- (3) to serve as advisors with regard to the formulation of ministerial regulations and notifications to maintain compliance to this Act;
- (4) to perform other functions as prescribed by the Act or assigned by the Cabinet.

### **Section 74**

Each expert member of the Committee shall have a term of office of four (4) years. At the end of the first two-year period, one-half of the expert members of the Committee shall retire by way of lot-drawing. The retirement of such expert members by way of drawing is to be considered a retirement by rotation.

### **Section 75**

In addition to retirement by rotation, the expert members of the Committee shall automatically retire upon the following:

- (1) death;
- (2) resignation;
- (3) request by the Cabinet to resign due to inappropriate behavior, dishonesty or inefficiency on part of the expert member;
- (4) adjudication by final court decision of imprisonment except in cases where such adjudication results from offences involving negligence or petty crimes;
- (5) incompetence or semi-incompetence;
- (6) bankruptcy.

### **Section 76**

Where an expert member of the Committee retires prior to the end of his term, a new member shall be appointed in an expeditious manner. If the remainder of the term for which a new expert member would be appointed is less than ninety (90) days, it is possible not to appoint any one to fill that post.

The term of office of a newly appointed expert member referred to in the preceding paragraph shall be the remaining term of the retiring expert member.

### **Section 77**

A meeting of the Committee shall be valid only when no less than half of the Committee members are present. If the Chairman is not present at a meeting or is unable to perform the assigned functions, the Deputy Chairman shall act in his stead. If neither the Chairman nor the Deputy Chairman is present at a meeting or able to perform his assigned duties, the members in attendance shall elect an acting Chairman among themselves.

A decision of the Committee shall be made by a majority vote of all the members present at each meeting. Each member has one (1) vote. In the event of a tie, the Chairman shall cast the final, decisive vote.

Dissenting views together with reasons thereof which are offered during any meeting shall be recorded in the minutes of the meeting. Any member of the Committee may request the incorporation of his dissenting view into the determination.

### **Section 78**

For the purpose of performing its duties and functions, the Committee may appoint a sub-committee for any specific duty.

## **SECTION XII TEMPORARY PROVISION**

### **Section 79**

All the anti-dumping and countervailing proceedings in place prior to the date of the legal enforcement of this Act shall continue their course of proceeding as prescribed in the Notification of the Ministry of Commerce on the Imposition of Anti-dumping and Countervailing Duties, B.E. 2539 and the Export and Import of Goods Act, B.E. 2522 until their completions.

Countersigned by  
Mr. Chuan Leekpai  
Prime Minister

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