

**UNITED STATES – ANTI-DUMPING MEASURES ON POLYETHYLENE
RETAIL CARRIER BAGS FROM THAILAND**

Agreement on Procedures between Thailand and the United States

The following communication, dated 7 January 2010, from the delegation of Thailand and the delegation of the United States to the Chairman of the Dispute Settlement Body, is circulated at the request of those delegations.

Thailand and the United States wish to inform the Dispute Settlement Body that we have reached an agreement on procedures in the dispute *United States – Anti-Dumping Measures on Polyethylene Retail Carrier Bags from Thailand* (DS383).

Please find attached the text of the agreement. We would ask you to circulate the agreement to the Dispute Settlement Body in the WT/DS383 document series.

Agreement on Procedures between Thailand and the United States

On 26 November 2008, the Government of the Kingdom of Thailand ("Thailand") requested consultations with the United States pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (the "DSU"), Article XXIII of the General Agreement on Tariffs and Trade 1994 (the "GATT 1994"), and Article 17 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the "Anti-Dumping Agreement"), with respect to anti-dumping measures on polyethylene retail carrier bags ("plastic carrier bags") from Thailand. Consultations were held by Thailand and the United States (the "parties") on 28 January 2009. These consultations have enabled the Parties to agree on the following procedures for purposes of this dispute:

1. Thailand will request the establishment of a panel in this dispute at the Dispute Settlement Body ("DSB") meeting scheduled for 20 March 2009. The United States will not oppose the establishment of the panel at that meeting. A copy of Thailand's request for the establishment of a panel is attached to this agreement. The parties agree to make every effort to ensure that they compose the panel without recourse to the Director General under Article 8.7 of the DSU.
2. The parties will cooperate to enable the panel to circulate its report as quickly as possible in light of the requirements of the DSU. To that end, the parties will work to reach agreement on working procedures that aim to expedite the panel proceedings. The parties will jointly ask the panel to adopt these procedures, which will enable it to complete its work within the six-month period envisaged in Article 12.8 of the DSU. The parties also agree to request the panel to ask that the parties file only one written submission each, and that the panel forego meetings with the parties, or, at the most, have only one such meeting. The parties also agree to share with each other drafts of their respective written submissions prior to submitting them to the panel and to take all reasonably available steps to accelerate the proceedings.
3. The United States will not contest Thailand's claim that the measures identified in the attached request for the establishment of a panel are inconsistent with the first sentence of Article 2.4.2 of the Anti-Dumping Agreement on the grounds stated in *United States – Final Dumping Determination on Softwood Lumber from Canada*, WT/DS264/AB/R (adopted 31 August 2004).
4. Thailand will not request that the panel suggest ways in which the United States could implement the panel's recommendations pursuant to the second sentence of Article 19.1 of the DSU.
5. Provided that the panel's finding is limited to a finding that the measures identified in the attached request for the establishment of a panel are inconsistent with the first sentence of Article 2.4.2 of the Anti-Dumping Agreement, the parties agree that, pursuant to Article 21.3(b) of the DSU, the reasonable period of time for bringing each such measure into conformity with the Anti-Dumping Agreement will be six months, beginning on the date on which the DSB adopts the report of the panel.
6. Subject to the consultation requirements of Section 129(b) of the Uruguay Round Agreements Act ("URAA"), 19 U.S.C. § 3538(b), the United States will use Section 129(b) to recalculate margins of dumping and to issue a new determination in order to render the anti-dumping measures on plastic carrier bags from Thailand consistent with the recommendations and rulings of the DSB. If any such recalculation that is performed under Section 129(b) results in a change in a cash deposit rate or revocation, in part or in whole, for the anti-dumping measures on plastic bags from Thailand, the new cash deposit rate or revocation will have prospective effect only, taking effect with respect to entries made no sooner than the date on which the United States Trade Representative directs the

United States Secretary of Commerce to implement its recalculation of the margins and new determination, as set forth in Section 129(c)(1) of the URAA, 19 U.S.C. §3538(c)(1).

7. The parties also mutually understand that the scope of Thailand's request for the establishment of a panel does not include any claim regarding margins of dumping determined solely on the basis of adverse facts available in the Final Determination as amended. The parties agree that they will inform the panel in their written submissions, whether made jointly or separately, that they are seeking findings consistent with this understanding. Accordingly, to the extent that the findings of the panel are consistent with the parties' understanding, implementation would not involve a recalculation of such margins of dumping.

For Thailand

(signed)
H.E. Mr Thawatchai Sophasienphonng
Ambassador
Geneva

For the United States

(signed)
Mr David P. Shark
Chargé d'affaires, a.i.
Geneva

WORLD TRADE ORGANIZATION

WT/DS383/2
10 March 2009

(09-1226)

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UNITED STATES – ANTI-DUMPING MEASURES ON POLYETHYLENE RETAIL CARRIER BAGS FROM THAILAND

Request for the Establishment of a Panel by Thailand

The following communication, dated 9 March 2009, from the delegation of Thailand to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

Upon instructions from my authorities, I wish to convey the request of the Government of the Kingdom of Thailand ("Thailand") to the Dispute Settlement Body (the "DSB") for the establishment of a panel pursuant to Article XXIII:1 of the *General Agreement on Tariffs and Trade 1994* (the "GATT 1994"), Articles 4 and 6 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (the "DSU"), and Article 17.4 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* (the "Anti-Dumping Agreement") with respect to certain anti-dumping measures imposed by the United States on imports of Polyethylene Retail Carrier Bags ("plastic carrier bags") from Thailand.

Prior Consultations

On 26 November 2008, Thailand requested consultations with the United States pursuant to Article 4 of the DSU, Article XXIII of the GATT 1994 and Article 17 of the Anti-Dumping Agreement.¹ These consultations were requested concerning anti-dumping measures imposed by the United States on imports of plastic carrier bags from Thailand. Consultations were held in Geneva on 28 January 2009. While these consultations assisted in clarifying the issues before the parties, they failed to resolve the dispute.

The Measure at Issue

The specific measure at issue is the anti-dumping order imposed by the United States on plastic carrier bags from Thailand and the final determination by the United States Department of Commerce ("USDOC"), as amended, leading to that order. The United States initiated its anti-dumping investigation of plastic carrier bags from Thailand on 1 April 2002. The investigation was conducted by the USDOC. The final determination in this investigation was published on

¹ See G/ADP/D76/1, G/L/873, WT/DS383/1.

18 June 2004² (the "Final Determination") and an amended final determination was published by the USDOC on 15 July 2004.³ Following a final determination of injury by the United States International Trade Commission, the United States issued an anti-dumping duty order on imports of Polyethylene Retail Carrier Bags from Thailand on 9 August 2004 (the "Order").⁴ The Final Determination, as amended, and the Order comprise the measure at issue in this dispute.

In the Final Determination, as amended, the USDOC used the "zeroing" methodology to determine the final dumping margins for certain Thai exporters subject to the order. Accordingly, for certain Thai exporters of plastic retail bags, the Final Determination, as amended, as well as the Order, reflected and included anti-dumping margins that were calculated on the basis of "zeroing". The use of the "zeroing" methodology is evident from the computer programs used to calculate the margins of dumping in the Final Determination, as amended, on which the anti-dumping duty order was based. More specifically, the methodology of "zeroing" negative anti-dumping margins in the above determination refers to the following:

- (a) different "models," i.e., types, of products are identified based on the most relevant product characteristics;
- (b) weighted average prices in the United States and weighted average normal values in the comparison market are calculated on a model-specific basis for the entire period of investigation;
- (c) the weighted average normal value of each model is compared to the weighted average United States price for that same model;
- (d) to calculate the dumping margin for an exporter, the amount of dumping for each model is summed and then divided by the aggregated United States price for all models;
- (e) before summing the total amount of dumping for all models, all negative margins on individual models are set to zero.

Through this method, the USDOC calculates margins of dumping and collects anti-dumping duties in amounts that exceed the actual extent of dumping, if any, by the investigated companies.

Thailand considers that this measure is inconsistent with the obligations of the United States under the provisions of the GATT 1994 and the Anti-Dumping Agreement described below.

The Legal Basis of the Complaint

Through the USDOC's methodology of "zeroing", the United States treats transactions with negative dumping margins as having margins equal to zero in determining weighted average anti-dumping margins in an anti-dumping investigation.

The use of "zeroing" led the United States to make a finding of dumping where none would have otherwise been made or to calculate inflated margins of dumping. Thailand considers that the

² See *Notice of Final Determination of Sales at Less Than Fair Value : Polyethylene Retail Carrier Bags from Thailand*, 69 Fed. Reg. 34122, 18 June 2004.

³ See *Notice of Amended Final Determination of Sales at Less Than Fair Value : Polyethylene Retail Carrier Bags from Thailand*, 69 Fed. Reg. 42419, 15 July 2004.

⁴ See *Antidumping Duty Order: Polyethylene Retail Carrier Bags from Thailand*, 69 Fed. Reg. 48204, 9 August 2004.

USDOC's use of its methodology of "zeroing" (in the Final Determination, as amended, which was a basis for the Order) is inconsistent with the obligations of the United States under the first sentence of Article 2.4.2 of the Anti-Dumping Agreement.

The "zeroing" methodology that the USDOC used in its anti-dumping investigation of plastic carrier bags from Thailand is identical to the methodology that was held to be inconsistent with the obligations of the United States under the Anti-Dumping Agreement in the following disputes: *United States – Final Dumping Determination on Softwood Lumber from Canada*⁵ and *United States – Anti-Dumping Measures on Shrimp from Ecuador*,⁶ and *United States – Measures Relating to Shrimp from Thailand*.⁷

Request for the Establishment of a Panel

Accordingly, Thailand requests that the DSB establish a panel pursuant to Article XXIII:1 of the GATT 1994, Articles 4 and 6 of the DSU, and Article 17.4 of the Anti-Dumping Agreement. Thailand requests that the establishment of a panel in this matter be placed on the agenda of the meeting of the DSB scheduled for 20 March 2009.

⁵ Panel Report, WT/DS264/R, and Appellate Body Report, WT/DS264/AB/R, adopted 31 August 2004.

⁶ Panel Report, WT/DS335/R, adopted 20 February 2007.

⁷ Panel Report, WT/DS343/R, and Appellate Body Report, WT/DS343/AB/R, adopted 1 August 2008.