

**THAILAND – ANTI-DUMPING DUTIES ON ANGLES, SHAPES AND SECTIONS OF
IRON OR NON-ALLOY STEEL AND H-BEAMS FROM POLAND**

Notification of an Appeal by Thailand under
paragraph 4 of Article 16 of the Understanding on Rules
and Procedures Governing the Settlement of Disputes (DSU)

The following notification, dated 23 October 2000, sent by Thailand to the Dispute Settlement Body (DSB), is circulated to Members. This notification also constitutes the Notice of Appeal, filed on the same day with the Appellate Body, pursuant to the *Working Procedures for Appellate Review*.

Pursuant to Article 16 of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU") and Rule 20 of the Appellate Body's *Working Procedures for Appellate Review*, the Kingdom of Thailand hereby notifies its decision to appeal to the Appellate Body certain issues of law covered in the panel report on *Thailand – Anti-Dumping Duties on Angles, Shapes and Sections of Iron or Non-Alloy Steel and H-Beams from Poland* (WT/DS122/R) and certain legal interpretations developed by the Panel. Thailand seeks review of certain findings of the Panel and the Panel's failure to make certain findings, in violation of Thailand's fundamental due process rights, Articles 12.7 and 19.2 of the DSU, the standard of review under Article 17.6 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the "Anti-Dumping Agreement"), and/or other provisions of the Anti-Dumping Agreement and the DSU.

1. Thailand seeks review of the Panel's finding not to dismiss the Republic of Poland's "claims" of violation of Articles 2, 3, and 5 of the Anti-Dumping Agreement based on the insufficiency of Poland's request for establishment of a panel under Article 6.2 of the DSU. This finding is in error, and is based upon erroneous findings on issues of law and on related legal interpretations contained in paragraphs 7.11 to 7.47 of the Panel's Report, including, but not limited to:
 - (a) the Panel's finding that the sufficiency of a complaining Member's request for establishment of a panel is dependent on whether such Member's allegations were apparent from the time of its first written submission;
 - (b) the Panel's finding that the consideration of issues raised before the Thai investigating authorities in the course of the underlying anti-dumping investigation could constitute a justification, or the only justification, for finding that the request was sufficient under Article 6.2 of the DSU;
 - (c) the Panel's finding that the repetition of text from subparagraph 1 of Article 3 of the Anti-Dumping Agreement is sufficient to meet the minimum requirements of Article 6.2 of the DSU, because it relates to the text of Articles 3.1, 3.2, 3.4, and 3.5 of the Anti-Dumping Agreement;

- (d) the Panel's interpretation of the concept of "claim" and the scope of the matter subject to its terms of reference;
 - (e) the Panel's failure to determine whether Poland's request for establishment of a panel was sufficient to inform third parties of the legal basis of the complaint;
 - (f) the Panel's failure to establish the appropriate standard for determining how a defending party may demonstrate prejudice as a result of the complaining party's failure to comply with its obligations under Article 6.2 of the DSU;
 - (g) the Panel's failure to consider the evidence provided by Thailand (and referred to in Annex 2-6 of the Panel's report containing Thailand's responses to questions 2(b) and 7(b) from the Panel) regarding why Thailand's ability to defend itself had been prejudiced;
 - (h) the Panel's erroneous inference that Thailand's capable participation in certain parts of the Panel proceedings or up to a certain point in the proceedings is conclusive evidence that Thailand was not prejudiced during the course of the Panel's proceedings;
 - (i) the Panel's finding that Thailand was not permitted to contend that Poland violated Article 6.2 of the DSU with respect to certain "claims", if it did not do so in its First Written Submission or otherwise at the same time as it contended that Poland violated Article 6.2 of the DSU with respect to all other "claims"; and
 - (j) the Panel's conflicting findings that Thailand was obligated to participate in good faith in these proceedings under Article 3.10 of the DSU, including taking steps to identify claims against it before immediately asserting a procedural objection, but that Thailand must raise all procedural objections under Article 6.2 of the DSU in its First Written Submission.
2. Thailand seeks review of the Panel's findings in paragraphs 7.136 to 7.152 of its Report that Article 3.1 of the Anti-Dumping Agreement in conjunction with Article 17.6 of the Anti-Dumping Agreement require the Panel to consider only the facts, evidence, and reasoning that was disclosed to Polish firms (and/or their legal counsel) at the time of the final determination. The Panel's findings are in error, are applied in error, and are based on erroneous findings on issues of law and on related legal interpretations, including, but not limited to:
- (a) the Panel's failure to interpret Articles 3.1 and 17.6 of the Anti-Dumping Agreement in conjunction with Thailand's obligation under Article 6.5 of the Anti-Dumping Agreement to protect the confidential information submitted by the single domestic producer and the single foreign producer in this investigation;
 - (b) the Panel's findings that Article 17.6 (in conjunction with Article 17.5) of the Anti-Dumping Agreement either requires or permits a panel to disregard facts, evidence, and reasoning protected from disclosure as required under Article 6.5 of the Anti-Dumping Agreement; and

- (c) the Panel's review of the Thai authorities' establishment of the facts and evaluation under Article 17.6(i) of the Anti-Dumping Agreement based only on disclosed information, given that the Thai authorities' establishment of the facts and evaluation during the investigation was actually based on both the disclosed information and the information that Thailand was obligated to protect from disclosure under Article 6.5 of the Anti-Dumping Agreement.
3. Thailand seeks review of the standard of review and the burden of proof established and applied by the Panel. The standard of review and burden of proof established by the Panel are in error, are applied in error, and are based upon erroneous findings on issues of law and on related legal interpretations contained and/or applied in paragraphs 7.48 - 7.54, 7.136 - 7.152, 7.199 - 7.203, 7.207 - 7.214, 7.222 - 7.256, 7.260 - 7.266, 7.284, and 8.3 of the Panel's Report, including, but not limited to:
- (a) the Panel's findings and interpretations regarding the roles of the complaining Member, the defending Member, and the Panel regarding the burden of proof applicable to Poland's "claims";
 - (b) the Panel's findings and interpretations regarding its role pursuant to the applicable standard of review under Article 17.6 of the Anti-Dumping Agreement;
 - (c) the Panel's findings that it must examine for itself the facts of the matter by making its own determinations regarding the establishment of the facts and the evaluation thereof, rather than imposing the burden on Poland to present a *prima facie* case that the Thai authorities had failed to establish the facts properly and failed to evaluate the facts in an unbiased and objective manner;
 - (d) the Panel's findings that it must examine for itself whether Thailand's determination of injury was based on "positive evidence" and an "objective examination" of the disclosed factual basis of the determination, rather than impose the burden on Poland to present a *prima facie* case that the Thai authorities had failed to base their injury determination on an objective examination of both aspects under Article 3.1 of the Anti-Dumping Agreement;
 - (e) the Panel's failure under the applicable standard of review to determine whether Article 3.4 of the Anti-Dumping Agreement admits of more than one interpretation;
 - (f) the Panel's failure under the applicable standard of review to determine whether the only permissible interpretation of Article 3.4 of the Anti-Dumping Agreement is that the list of factors is mandatory;
 - (g) the Panel's failure under the applicable standard of review to determine whether the only permissible interpretation of Article 3.4 of the Anti-Dumping Agreement is that the list of factors is composed of fifteen factors; and
 - (h) the Panel's finding that it must examine whether and how the Thai investigating authorities evaluated all the relevant factors under Article 3.4 of the Anti-Dumping Agreement.
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