

CHAPTER 4
THAILAND'S APPLICATION OF ANTIDUMPING PROCEDURES

This chapter analyzes Thailand's application of antidumping procedures. First, the history of Thailand Antidumping Law will be discussed. Later, the antidumping investigation which consist of determination of dumping and determination of injury will be analyzed.

From the past, many countries such as the European Union, the United States and New Zealand conducted a number of antidumping investigations against imports from Thailand (Table 4.1).

Table 4.1
Antidumping Cases Filed Against Thailand by Country

Country	Effective or Investigating	Terminated	Total
United States	6	2	8
European Union	10	1	11
Australia	3	2	5
New Zealand	5	2	7
Malaysia	2	-	2
Canada	2	-	2
Others	5	5	10
Total	33	12	45

Source : Department of External Trade, Ministry of Commerce

Table 4.2
Current Antidumping Cases Filed against Exports from Thailand by Country

Country	Products	Antidumping Duty	Country	Products	Antidumping Duty
United States	Furfuryl Alcohol	7.82		Footwear	n.a.
	Canned Pineapple Fruit	12.85-27.85		Fax Machines	10.41-22.60
	Butt-Weld Pipe Fittings	0-50.84		Disposable Lighters	5.80-51.90
	Malleable Cast Iron Pipe Fitting	1.7	India	Polyesters	9.37 rupee/kg.
	Carbon Steel Pipe	14.2-46.5		Purified Terephataic Acid	8.61
Australia	Circular Welded Carbon Steel Pi	14.2-46.5	Philippines	Mats	n.a.
	Stained Glass	n.a.		Self Adhesive Leaves Photo Albu	55.5
	Polyvinyl Chloride	n.a.		Pipe-fittings	14.20-46.50
	Refrigerators	n.a.	South Africa	Glass	0.76
Brazil	Bicycle Tire Inner Tubes	37.59-58.49	New Zealand	White Sugar	60 US\$/Ton
	Bicycles	13.00-39.20		Gypsum Boards	15.69 cent/Square Meter
European Union	Pipe Fittings	58.9		Men Footwear	17
	Color Televisions	3.00-29.80		Sweetened Condensed Milk	n.a.
	Microwaves	14.10-27.30		Plastic Board	n.a.
	Cotton Thread	6.70-20.20	Malaysia	Mats	58.00-114.00
	Crafts	2.70-8.40		Corrugating Medium Paper	0-16.00
	Plastic Bags	13.80-83.40			

Source: Department of Foreign Trade, Ministry of Commerce.

The European Union conducted antidumping investigations into imports such as color television, footwear, bicycles and disposable lighters. The United States conducted antidumping investigations into imports of Thai products such as canned pineapple, bearings, and furfuryl alcohol (Table 4.2).

As a number of countries resorting to Antidumping Law is increased, Thailand began to take an offensive role by preparing to launch an Antidumping Law since 1991. The first Thai law concerned with antidumping determination was enacted under the Ministry of Commerce Notification on Principle and Procedure to Collect Surcharge on Unfairly Priced Imports and Subsidized Imports, 1991. During the five years existence of the 1991 MOC Notification, there was only one final antidumping investigation. Hydrogen peroxide from India was filed in 1994 with final determination of 30 per cent of surcharge rate.

As a result of the Uruguay Round of the GATT, WTO members including Thailand have either enacted new national antidumping and countervailing duty laws or amended the existing laws. Hence, 1991 MOC Notification was replaced by the 1996 Ministry of Commerce Notification on Collection of Surcharge in response to Dumped and Subsidized Imported Products, 1996 (B.E. 2539) (hereinafter 1996 MOC Notification). The motivation of the 1996 MOC Notification primarily develops from an increase in antidumping cases filed against the exports from Thailand and hence Thai government aimed to take an offensive role against unfair imports from other countries. In general, The 1996 MOC Notification is analogous to the EU and U.S. Antidumping Law.¹ Currently, there are four final antidumping investigations (Table 4.3).

¹ Kenneth J. Pierce, Matthew R. Nicely and Lyle B. Vander Schaaf, "Thailand's Application of Post-Uruguay Round Antidumping Procedures," *Dullapaha* 2(April-June 1997) : 95.

Table 4.3
Final Antidumping Investigations in 1994 –1998

Product	Surcharge (%)	Country
Hydrogen Peroxide	30	India
H-Section Steel	27.78	Poland
Hot-Rolled Sheet	25.45-33.24	Russia
Hot-Rolled Sheet	45.56	Ukraine

Source: Department of Foreign Trade, Ministry of Commerce

Under the 1996 MOC Notification, The Department of Foreign Trade (hereinafter DFT) conducts the dumping investigation. The Department of Internal Trade conducts the injury investigation. An ultimate responsibility for the determination of dumping and injury determination falls to the Committee on Dumping and Subsidy (hereinafter Committee). The Committee consists of the Minister of Commerce as a chairman, representatives from the Ministry of Finance, Ministry of Industry, the Ministry of Foreign Affairs, the Director-General of the Department of Internal Trade, the Director-General of the Department of Foreign Trade, the Director-General of the Department of Business Economics and six expert members appointed by the cabinet. However, Thailand has not yet established an independent authority which is responsible for the review of administration and determination of dumping.²

To be consistent with WTO agreement, the 1996 MOC Notification prescribes dumping as sale less than normal value of the like product.³ The Committee task is to

² Ibid., p. 104.

³ 1996 MOC Notification, Article 6.1.

determine whether the imported product is being sold at the price less than normal value and causes material injury to the domestic industry.

4.1 Determination of Export Price

The export price is based on price actually paid or payable.⁴ However, when it appears that the export price is unreliable, it may be constructed by adjusting all costs and expenses.⁵ Nevertheless, the 1996 MOC Notification broadly designates the determination of export price. For example, it does not provide many details about the method of calculating the constructed export price. Therefore, the method of calculating the constructed export price is not clearly stated in details and hence depends on case by case basis.

4.2 Determination of Normal Value

Normal value is based on the prices paid or payable for the like product in the ordinary course of trade by independent customers in the exporting country.⁶

When there are no sales of the like product in the exporting country⁷, either the export price to the appropriate third country or the cost of production plus a reasonable amount of administrative, selling and general costs and profits may be used. Moreover, the 1996 MOC Notification adopted practices of treating sales below cost of production within extended period of time as not being in the ordinary cost of trade and therefore not relevant to calculation of normal values.

⁴ Ibid.

⁵ 1996 MOC Notification, Article 6.2.

⁶ 1996 MOC Notification, Article 6.3.

⁷ Ibid.

For the non-market economy, normal value shall be determined by comparing with information in a comparable market economy of the third country or wherever on any reasonable basis, including the price of the like product sold in Thailand.⁸ Similarly, the determination of normal value is simply given. The 1996 MOC Notification only broadly defines concept in calculating normal value. Any specification of the determination of normal value cannot be observed in the 1996 MOC Notification.

In most cases, the export price and normal value are simply constructed on the basis of (a) best information available or facts available because interested party does not cooperate with the investigation or (b) surrogate information because the exporters' home markets were non market economy countries.

4.3 Price Comparison and Adjustments

In calculating normal value and the export price, sales are compared at the same level of trade with adjustment made for differences that directly affect price comparability. Much information was acquired from the exporters under investigation. However, if information cannot be accessible or is not available, the Committee may determine an investigation based on Best Information Available (BIA.)⁹

In accordance with the WTO requirements, the Committee compares normal value and the export prices on weighted average to weighted average basis or on transaction to transaction basis. However, The 1996 MOC Notification is less specific about which type of direct and indirect expense adjustments will be made. This lack of

⁸ 1996 MOC Notification, Article 6.4.

⁹ 1996 MOC Notification, Article 9.2.

specifics may result in a biased final outcome. For example, in the hot-rolled steel sheet cases¹⁰, only inland freight, commissions, and brokerage and handling expenses were incorporated into the calculation of the export prices. Other typical selling expenses were not included.

4.4 Determination of Injury

Thailand's injury provisions are similar to EU and the U.S. provisions. The 1996 MOC Notification designates that requirements for the determination of material injury must be based on positive evidence by examining of (a) the volume of the dumped imports and the effect of the dumped imports on prices in the domestic market for the like products, and (b) the impact of these imports on the domestic industry.¹¹

According to WTO, the Committee is required to consider whether there has been a significance increase either in absolute terms or relative to production or in consumption and whether there has been a significant price undercutting which depresses prices to a significant degree or prevents price increase. However, the 1996 MOC Notification does not specify the word "significance" in the provisions.¹² This may be considered as the lack of consistency with GATT Antidumping Code 1994.

Thai provisions concerning threat of material injury are similar to EU injury provisions in certain aspects. Regarding the determination of threat of material injury, EU and Thai injury provisions require 1) any significant rate of increase in dumped imports; 2) sufficiently freely disposable capacity of the exporter; 3) whether imports are entering at prices that would depress or prevent price increases at a significant degree; and 4)

¹⁰ Department of Foreign Trade Notification Regarding Preliminary Dumping Determination on Hot-Rolled Steel Sheet in Coils Originating In or Exported From The Russian Federation and the Ukraine (No.1) 1997.

¹¹ 1996 MOC Notification, Article 7.2.

¹² 1996 MOC Notification, Article 7.

inventories of the product being investigated.¹³ Meanwhile, the U.S. injury provisions add to these considerations 1) the potential for product shifting in the foreign country; 2) actual and potential negative effects of existing development and production efforts such as developments for derivative versions of the product; and 3) demonstrable adverse effects that indicate that dumped imports probably cause material injury.

Thai antidumping law is also similar to EU Antidumping Law in terms of collection of duty at less than dumping margin or lesser duty. Such lesser duty would be allowed to impose antidumping duties less than to dumping margin to remove the injury¹⁴. Thai law also contains the injury margin provisions in Article 14.2 of the 1996 MOC Notification. The 1996 MOC Notification does not state any specific techniques to lower antidumping duties below calculated dumping margin.¹⁵ However, in practices, it appears that the Committee has never calculated the injury margin.

The collection of antidumping duties less than dumping margin was found in its preliminary determinations on hot-rolled steel sheet from Russia and the Ukraine. Since there would be the impact of antidumping duties on domestic downstream industries, the Committee decided to impose only half of the duty.

In practice, the Committee injury determinations was criticized for the lack of justified explanations, and it makes its injury finding at the risk of challenging the WTO obligations.¹⁶ In addition, the causation requirement is not explicitly interpreted. It seems that the causation is presumed as long as there are some increases in import volume and

¹³ 1996 MOC Notification, Article 7.4 (1)-(4).

¹⁴ 1996 MOC Notification, Article 14.1.

¹⁵ Kenneth J. Pierce, Matthew R. Nicely and Lyle B. Vander Schaaf, op.cit, footnote 1, p.100-101.

¹⁶ There is no discussion of whether and why the volume and price undercutting were significant in the *H-beam* case. Also, It was not stated as significant increase in the level of Russian imports but rather as merely observed in the *hot-rolled steel sheet* case. See Department of Foreign Trade Notification Regarding Preliminary Dumping Determination on Hot-Rolled Steel Sheet in Coils Originating In or Exported From The Russian Federation and the Ukraine (No.1) 1997 and Department of Foreign Trade Notification Regarding the Final Dumping Determination on Angles, Shapes and Sections of Iron or Non-Alloy Steel: H-beams Originating In or Exported from Poland 1997.

price underselling which is being criticized as such simplistic injury analysis.¹⁷ For example, in the hot-rolled steel sheet preliminary injury determination, there was no significant increase in the level of Russian imports and underselling was not stated as significant but rather as merely observable.

In conclusion, the implementation of the MOC Notification against unfair imports signifies an important move in the development of unfair trade laws. The antidumping law will help Thailand regulate unfair trade practices. However, as stated earlier, there are several concerns over the application of the law since the MOC Notification gives only basic rules for antidumping investigation. Such simplistic analysis may be troublesome. Therefore, the next step of the development of Thai Antidumping law is to ensure the fairness of antidumping investigation which has to be in conformity with WTO requirements.

¹⁷ Kenneth J. Pierce, Matthew R. Nicely and Lyle B. Vander Schaaf, *op.cit.*, footnote 1.