

MOST URGENT
No. 0309/ 948



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25 February B.E.2558 (2015)

Dear Senior Panel Member,

Subject: Anti-Dumping Review Panel: Review of Anti-dumping Notice on Power Transformers Exported from Indonesia, Taiwan, Thailand and Vietnam

The Department of Foreign Trade (the DFT) writes with regard to your review of the decision of your Parliamentary Secretary for Industry made on 8 December 2014 to impose anti-dumping measures on power transformers from the Kingdom of Thailand.

The DFT wishes to respectfully draw your attention to serious instances of non-compliance of the Parliamentary Secretary's decision with the *Agreement on Implementation of Article VI of the GATT 1994* ("the Anti-Dumping Agreement"). As a consequence of Australia's implementation of the Anti-Dumping Agreement, we perceive that the decision must similarly offend the parallel Australian laws.

ABB Ltd, a Thai exporter of power transformers to Australia was fully participative and fully cooperative with the investigation undertaken by your Anti-Dumping Commission. This company is an applicant in your current review. Our comments relate to matters that ABB Ltd Thailand has identified and raised directly with you in its application. Our comments in this letter may also apply to the treatment accorded to other Thai exporters, we would also ask that the benefit of your consideration also extend to them.

The Parliamentary Secretary's margin calculation decision in this case ignored instances in which ABB Ltd Thailand's exports of power transformers were not dumped during the period of investigation. This is an instance of the practice known as "zeroing".

Thailand has constantly asserted – in the World Trade Organisation's Dispute Settlement Body - that the practice called "zeroing" in anti-dumping margin calculation does not comply with the disciplines of Article VI:2 of the GATT 1994 or of the Anti-Dumping Agreement itself. For example, the Thai Government was the complainant in *United States - Measures Relating to Shrimp from Thailand* (DS343) and in *United States - Anti-Dumping Measures on Polyethylene Retail Carrier Bags from Thailand* (DS383). In both of these cases, the United States conceded that the practice of zeroing did not comply with the provision of the Anti-Dumping Agreement

pursuant to which the United States purported to adopt that practice in the impugned investigations.

The Appellate Body report in the latter case records the position of the United States on that issue as follows:

The United States acknowledges the accuracy of Thailand's description of the USDOC's use of "zeroing" in calculating the dumping margins for the individually investigated exporters whose margins of dumping were not based on total facts available. The United States recognizes that, in US - Softwood Lumber V, the Appellate Body found that the use of "zeroing" with respect to the average-to-average comparison methodology in investigations was inconsistent with Article 2.4.2, by interpreting the terms "margins of dumping" and "all comparable export transactions" as used in the first sentence of Article 2.4.2, in an integrated manner. [Footnotes omitted]

We are well aware that the United States' acknowledgement is worded in such a way so as to not amount to a concession that zeroing is not precluded in cases where a pattern of significantly different export prices among different purchasers is identified by an investigating authority (the second sentence of Article 2.4.2 refers).

In response to that, the DFT would like to firmly state its view that zeroing is not permitted under that sentence of the Anti-Dumping Agreement, nor under any other provision of the Anti-Dumping Agreement.

Moreover, we support the submissions made by ABB Ltd Thailand that, under the relevant Australian law, the "normal value" applied to its exports to Australia was not their normal value. As explained by ABB Ltd Thailand in its application, the normal value used by the Parliamentary Secretary in making his decision was the sum of all the export transactions plus the value of the dumping margin, where non-dumped exports were not taken into account in working out that dumping margin.

The DFT also would like to express its views on the following two other aspects of the Parliamentary Secretary's decision.

First, we note that the consideration that must be undertaken by an investigating authority under the second sentence of Article 2.4.2 before it adopts a "W-T" (weighted average to export transaction) margin calculation is whether there was "*a pattern of export prices which differ significantly among different purchasers, regions or time periods*". In ABB Ltd Thailand's case, the Anti-Dumping Commission's recommendation was based on a consideration of ABB Ltd Thailand's export prices but not of the different purchasers who paid those export prices. We are of the view that it cannot be permissible to interpret those words of Article 2.4.2 as if the export prices to one party that are there referred to were actually export prices to a third party.

Secondly, ABB Ltd Thailand has expressed a concern in its application about the method in which your Anti-Dumping Commission considered whether to terminate the investigation as it applied to exports from Thailand. Part of Article 5.8 of the Anti-Dumping Agreement states as follows:

There shall be immediate termination in cases where the authorities determine... that the volume of dumped imports, actual or potential, or the injury, is negligible... The volume of dumped imports shall normally be regarded as negligible if the volume of dumped imports from a particular country is found to account for less than 3 per cent of imports of the like product in the importing Member, unless countries which individually account for less than 3 per cent of the imports of the like product in the importing Member collectively account for more than 7 per cent of imports of the like product in the importing Member.

In the Report of its recommendations to the Parliamentary Secretary, the Anti-Dumping Commission states that “capacity (measured using the power rating) rather than number of units is the most appropriate measure of volume”. It also states that it “relied on value as the best available measure of volume and the size of the Australian market”.

In the DFT’s view, the volume of goods referred to in Article 5.8 is their quantity and not their value. The two terms – “volume” and “value” – are separate and distinct. Therefore, if it was the case that the number of power transformers exported from Thailand to Australia during the period of investigation having export prices lower than their normal values was less than 3% of the total import volume of power transformers exported from any country to Australia in that period, the investigation should have been terminated as against all exporters from Thailand.

The DFT will be most grateful for your kind and careful consideration of our views in this matter.

Yours sincerely,



(Miss. Banjongjitt Angsusingh)

Deputy Director-General

For Director-General

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