

**UNITED STATES – MEASURES RELATING TO SHRIMP FROM THAILAND
WT/DS343**

**Comments of the United States on Certain Additional Factual Information Submitted by
Thailand in Connection with Its Oral Statement During the Second Panel Meeting**

1. In accordance with the Panel’s instructions during the Second Substantive Meeting with the Parties, the United States is providing the following comments on certain additional factual information submitted by Thailand on July 27, 2007, in connection with its oral statement.

Exhibit THA-21

2. While Thailand cites to the U.S. antidumping statute and a portion of a sample U.S. Department of Commerce (“USDOC”) questionnaire to support its claim that expenses paid in connection with bonds are “normally reported as indirect selling expenses incurred in the United States,”¹ nothing in the statute or sample questionnaire supports the proposition that the United States treats costs associated with the enhanced bond directive or other bonds as indirect selling expenses, or requires exporters or producers to report these costs as indirect selling expenses. Thailand’s suggestion that under U.S. law “the export price shall be reduced by the amount of ‘any additional costs, charges, or expenses, and United States import duties’ incurred with respect to the U.S. sale,” is based on an incorrect and incomplete reference to 19 U.S.C. 1677a(c)(2)(A).² That provision addresses “costs, charges, or expenses, and United States import duties” which are “incident to bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery in the United States.”³ Thus, with respect to expenses, this provision relates to transportation expenses, not selling expenses. Expenses associated with the bonds required pursuant to the additional bond directive are not considered transportation expenses.

3. With respect to selling expenses, 19 U.S.C. 1677a(d)(1) provides for adjustments for certain selling expenses – *i.e.*, those expenses incurred by the seller on behalf of the purchaser in *selling* the subject merchandise in the United States. Such expenses include administrative salaries, salesmen’s salaries, and selling commissions. Expenses associated with the bonds required pursuant to the additional bond directive are not considered expenses incurred in “selling” subject merchandise in the United States. Consistent with the USDOC’s interpretation of the statute, the field in the USDOC questionnaire dealing with indirect selling expenses instructs companies to “Describe the sales and administrative overhead expenses (*e.g.*, office rent, salesmen’s salaries) incurred in the United States.” The questionnaire does not identify bond costs as such expenses, and, to the extent that any respondent reports bond costs as part of

¹ *Second Oral Statement of Thailand*, July 24, 2007, para. 26 (“Thailand Second Oral Statement”).

² Thailand Second Oral Statement, para. 26 (emphasis in original).

³ 19 U.S.C. 1677a(c)(2)(A) (Exh. THA-21).

its indirect selling expenses, such reporting would be in error and deducting them would not accord with USDOC's interpretation of the statute.

Exhibit THA-22

4. Thailand refers to a portion of the U.S. Statement of Administrative Action (“SAA”) to assert that “U.S. law interprets the reference to the ‘margin of dumping’ in the *chapeau* to Article 9.3 of the Anti-Dumping Agreement to include the margin determined in the investigation and treats the limitation in the *chapeau* as applying to the cash deposits of estimated anti-dumping duties collected at the time of entry.” The portion of the SAA being cited refers to the “dumping margin”, but nowhere suggests that the dumping margin to be collected is the margin determined in the investigation.⁴ Thailand does not explain how it concludes from the statement in the SAA that the margin of dumping referenced is the margin of dumping determined in the investigation, nor how the portion of the SAA being cited, which likewise makes no reference to cash deposits, “treats the limitation in the *chapeau* as applying to the cash deposits of estimated anti-dumping duties collected at the time of entry.”⁵ The SAA simply recites the rules contained in Article 9 of the Antidumping Agreement for assessing and collecting duties once an order is imposed.

5. More fundamentally, as the United States has explained in its submissions, the ordinary meaning of the text of the Antidumping Agreement does not support Thailand's argument. A cash deposit or bond is not a duty, but rather is a form of security. The term “dumping margin” as used in Article 9.3 refers to the dumping margin based on transactions examined in the assessment review, not the dumping margin calculated in the investigation (based on an entirely different set of transactions). Thailand's argument simply does not accord with the text, and is not supported by previous panel and Appellate Body reports interpreting Article 9.⁶

Exhibit THA-23

6. Thailand claims that a statement by the United States in its submission in *Turkey – Rice* supports the conclusion that mere “burdensomeness” constitutes a “restriction” within the

⁴ Message from the President of the United States Transmitting the Uruguay Round Agreements, Texts of Agreements Implementing Bill, Statement of Administrative Action and Required Supporting Documents, 103d Congress, 2d Session, House Doc. 103-316, Vol. 1 (1994), pp. 814-5 (Exh. THA-22).

⁵ Thailand Second Oral Statement, para. 51.

⁶ See *Second Written Submission of the United States*, June 29, 2007, paras. 13-21 (“U.S. Second Written Submission”); *Second Oral Statement of the United States*, July 24, 2007, paras. 8-11.

meaning of Article XI:1.⁷ However, the United States in that dispute did not assert, as Thailand appears to claim here, that any measure that creates some additional “burdens” on importers breaches Article XI. Unlike the bond measure at issue here, as the United States explained in its submissions in *Turkey – Rice*, the domestic purchase requirement means that, under Turkey’s TRQ regime, “importation ... cannot be realized unless an importer purchases large quantities of domestic rice and presents proof of such purchases” and the regulations have at times “rendered importers completely unable to ship.”⁸ By contrast, under the additional bond directive, importation can occur without providing increased bond amounts, and the import data indicate that the bond has not interfered with importers’ ability to ship – indeed, imports of shrimp from Thailand have increased since the bond requirement was imposed.⁹ In this regard, as the United States has argued in its submissions, the additional bond directive is more akin to the bond requirement that was found in *Dominican Republic – Cigarettes* not to breach GATT Article XI. Like that measure, the Panel should find that the additional bond directive is not inconsistent with the requirements of Article XI.¹⁰

⁷ Thailand Second Oral Statement, para. 79, n.93.

⁸ U.S. First Written Submission, *Turkey – Measures Affecting the Importation of Rice* (WT/DS334), 20 September 2006, para. 104 (Exh. THA-23).

⁹ U.S. Second Written Submission, para. 36; Exh. US-11.

¹⁰ *E.g.*, U.S. Second Written Submission, para. 36