

THAILAND – H-BEAMS¹

(DS122)

PARTIES		AGREEMENTS	TIMELINE OF THE DISPUTE	
Complainant	<i>Poland</i>	<i>ADA Arts. 2, 3, 5 and 17.6</i>	Establishment of Panel	<i>19 November 1999</i>
			Circulation of Panel Report	<i>28 September 2000</i>
Respondent	<i>Thailand</i>		Circulation of AB Report	<i>12 March 2001</i>
			Adoption	<i>5 April 2001</i>

1. MEASURE AND PRODUCT AT ISSUE

- Measure at issue: Thailand's definitive anti-dumping determination.
- Product at issue: H-beams from Poland.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- ADA Art. 5 (initiation and notification): The Panel rejected Poland's claim that the Thai authorities' initiation of the investigation could not be justified due to the insufficiency of evidence originally contained in the application. The Panel considered that the application need not contain analysis, but only information. The Panel also rejected Poland's claim that Thailand violated Art. 5.5 by failing to provide a written notification of the filing of application for initiation of investigation. The Panel considered that a formal meeting could satisfy the requirement.
- ADA Art. 2.2 (constructed normal value): Having found that, (i) for the purpose of calculating a dumping margin under Art. 2.2, Thailand used the narrowest product category that included the like product; and (ii) that no separate reasonability test was required in choosing a profit figure for constructed normal value, the Panel concluded that Thailand had not violated Art. 2.2.
- ADA Art. 3.4 (injury factors): Having upheld the Panel's interpretation of Art. 3.4 that an investigating authority should consider *all* the injury factors listed in Art. 3.4, the Appellate Body upheld the Panel's finding that Thailand acted inconsistently with Art. 3.4.
- ADA, Arts. 3.1 and 17.6 (injury determination): (Thailand only appealed the Panel's legal interpretations of Arts. 3.1 and 17.6, and not the Panel's substantive findings of a violation of certain Art. 3 provisions.) The Appellate Body reversed the Panel's interpretations that Art. 3.1 requires an anti-dumping authority to base its determination only upon evidence that was disclosed to interested parties during the investigation. Similarly, it also reversed the Panel's interpretation that, under Art. 17.6, panels are required to examine only an investigating authority's injury analysis based on the documents shared with the interested parties. The Appellate Body found that the scope of the evidence that can be examined under Art. 3.1 depends on the "nature" of the evidence, not on whether the evidence is confidential or not. A panel should consider all facts, both confidential and non-confidential, in its assessment of the establishment and evaluation of the facts by investigating authorities under Art. 17.6.

3. OTHER ISSUES²

- DSU Art. 6.2 (panel request): The Appellate Body upheld the Panel's finding that Poland's panel request met the requirements of Art. 6.2. However, it rejected the Panel's rationale for finding Poland's mere listing of Art. 5 (without sub-provisions) in the panel request to be sufficient, i.e. the fact that several of the issues related to Art. 5 had already been raised by the exporters before the Thai authority. The Appellate Body rejected this reasoning because (i) there is not always continuity between claims raised in an investigation and those in WTO dispute settlement related to that investigation; and (ii) third parties to the dispute might not be on notice of the legal basis of the claims as they would not know specific issues raised in the underlying investigation. The Appellate Body considered that reference only to Art. 5 was sufficient in the present case because the sub-provisions of Art. 5 set out "closely related procedural steps".

¹ *Thailand – Anti-dumping Duties on Angles, Shapes and Sections of Iron or Non-Alloy Steel and H-Beams from Poland*

² Other issues addressed in this case: *amicus curiae* submission (breach of confidentiality, DSU Arts. 17.10 and 18.2); burden of proof and standard of review; confidential information (working procedures).