

## ANNEX C

### QUESTIONS AND ANSWERS

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## ANNEX C-1

### THAILAND'S RESPONSE TO THE PANEL'S QUESTION

1. Thailand hereby submits its response to the question provided by the Panel to Thailand on 10 November 2009.

#### Question to Thailand

At para. 10 of its written submission, Thailand asserts that the USDOC calculated the anti-dumping margins for the relevant Thai exporters using the following steps:

- (i) the USDOC identified different "models," *i.e.*, types, of products based on the most relevant product characteristics;
- (ii) the USDOC calculated weighted average prices in the United States and weighted average normal values in the comparison market on a model-specific basis, for the entire period of investigation;
- (iii) the USDOC compared the weighted average normal value of each model to the weighted average United States price for that same model;
- (iv) the USDOC calculated the dumping margin for an exporter by summing up the amount of dumping for each model and then dividing it by the aggregated United States price for all models; and
- (v) the USDOC set to zero all negative margins on individual models before summing the total amount of dumping for all models.

At para. 15 of its written submission, Thailand refers to specific lines of the computer programme used by the United States to calculate dumping margins in the Final Determination as evidence of "the use of 'zeroing' in the calculation of the dumping margins for the Thai exporters". The Panel understands that Thailand refers to this evidence exclusively in support of its assertion that the USDOC undertook step (v) above (*i.e.*, the USDOC "set to zero all negative margins on individual models before summing the total amount of dumping for all models"). Please explain what evidence Thailand relies on to support its assertion that the USDOC also undertook each of steps (i) through (iv) outlined above.

2. In this dispute, Thailand does not challenge the United States' use of steps (i)-(iv) described in paragraph 10 of Thailand's submission. Instead, Thailand challenges only the practice known as zeroing described in step (v) of that paragraph. By this step, the USDOC "did not permit the results of averaging groups for which the weighted-average export price or constructed export price exceeds the weighted-average normal value to offset the results of averaging groups for which the weighted-average export price or constructed export price is less than the weighted-average normal value".<sup>1</sup> In other words, the USDOC "zeroed" any intermediate model-by-model comparisons described in steps (i)-(iii) that had a negative result.

3. That said, the comparison methodology discussed in steps (i)-(iv) is described in the USDOC's notice of preliminary determination of sales at less than fair value in its investigation of imports of polyethylene retail carrier bags ("PRCBs"), in which the USDOC stated that:

To determine whether sales of PRCBs to the United States by Thai Plastic Bags and Universal in this investigation were made at less than fair value, we compare

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<sup>1</sup> See *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification*, 71 Fed. Reg. 77722 (27 December 2006), Exhibit THA-7.

EP [export price] or constructed export price (CEP) to normal value, as described in the 'US Price' and 'Normal Value' sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs and CEPs.

In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order of importance ...<sup>2</sup>

4. The USDOC further explained that:

We compared U.S. sales with sales of the foreign like product in the home market on the basis of the physical characteristics described under Fair Value Comparisons above. Wherever we were unable to match a U.S. model to identical merchandise sold in the home market, we selected the most similar model of subject merchandise in the home market as the foreign like product.<sup>3</sup>

5. Finally, the USDOC explained that the weighted-average dumping margin was "equal to the weighted-average amount by which the normal value exceeds the EP or CEP".<sup>4</sup>

6. Thus, the USDOC explained that it (i) identified different models based on physical characteristics; (ii) calculated weighted-average prices by model; and (iii) based its margin calculations on the weighted-average amount by which the normal value exceeded the export price in the intermediate comparisons.<sup>5</sup>

7. In addition, Thailand notes that the USDOC's notice of 27 December 2006, in which the USDOC provided notice of its intent to discontinue the use of zeroing with weighted-average to weighted-average comparisons in anti-dumping investigations, describes this methodology in some detail as well.<sup>6</sup> It is Thailand's understanding that it is not contested that the USDOC also used this methodology in the measures at issue in this dispute.

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<sup>2</sup> See *Notice of Preliminary Determination of Sales at Less than Fair Value and Postponement of Final Determination: Polyethylene Retail Carrier Bags from Thailand*, 69 Fed. Reg. 3552, 3554 (26 January 2004), Exhibit THA-9.

<sup>3</sup> *Ibid.*, at 3555.

<sup>4</sup> *Ibid.*, at 3557.

<sup>5</sup> These steps can also be seen in the computer programme used to determine the dumping margins provided by Thailand in Exhibit THA-4. For example, part 5 of the programme (lines 1976-2005) determines weighted-average US prices by model; part 8 of the programme (lines 985-1037) determines weighted-average normal values by model; part 6 of the programme (lines 2007-2179) matches home market and US sales by model; while part 9 of the programme (lines 2417-2555) shows the model-by-model calculations, including, in lines 2541-2543, the subtraction of US price from normal value. The USDOC also provided output showing summaries of and the highest 10 and lowest 5 margins by model ("CONNUMU" or "CONNUMH") for various types of comparisons (identical or similar models, normal value based on home market price or constructed value, same level of trade or not, etc.) in pages 32-44 of the output provided by the USDOC with the programme included in Exhibit THA-4.

<sup>6</sup> See *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification*, 71 Fed. Reg. 77722 (27 December 2006), Exhibit THA-7. ("When the Department applies the average-to-average methodology during an investigation, the Department usually divides the export transactions into groups by model and level of trade ('averaging groups') 19 CFR 351.414(d)(2). The Department then compares an average of the export prices or constructed export price of the transactions within one averaging group to the weighted-average of normal values of such sales. 19 CFR 351.414(d)(1). Prior to this modification, when aggregating the results of the averaging groups in order to determine the weighted-average dumping margin, the Department did not permit the results of averaging groups for which the weighted-average export price or constructed export price is less than the weighted-average normal value").

8. Thailand hopes that the above clarifies the Panel's understanding of the comparison methodology used by the USDOC in the measure at issue. Thailand remains available to provide any further information that the Panel may require to assist it in resolving this dispute.

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