

**THE PROBLEMS US DUMPING AND SUBSIDY REGULATIONS  
POSE FOR THAILAND: EVIDENCE FROM THE STEEL AND  
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Benjamas Chinapandhu

John M. Rothgeb Jr.

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**BENJAMAS CHINAPANDHU**

FACULTY OF POLITICAL SCIENCE

RAMKAMHAENG UNIVERSITY

BANGKOK, THAILAND

**JOHN M. ROTHGEB, JR.**

DEPARTMENT OF POLITICAL SCIENCE

MIAMI UNIVERSITY

OXFORD, OHIO USA

### **ABSTRACT**

This research examines the problems unfair trade laws create for the developing and newly industrialized countries of Asia by investigating the difficulties US antidumping (AD) and countervailing duty (CVD) regulations create for Thailand. AD regulations restrict imports sold at abnormally low prices. CVD laws eliminate the advantages conferred when governments give exporters subsidies. American AD and CVD laws are a potent means for protecting US producers because Congress has extended their reach and because they can be employed by American corporations to harass foreign competitors. Interviews with Thai government officials and representatives from the steel and pineapple industries indicate that these American laws pose many problems for Thai exporters. Among these problems are the complexity of US regulations, the cost of hiring US attorneys to respond to American investigations, the limited time allowed for responding to requests for information, the business lost when contracts are canceled because a Thai firm faces an AD or CVD investigation, and the excessive reliance of the Thais on US attorneys for training.

## I. INTRODUCTION

In recent decades, an important international trend has involved the continuing negotiations under the auspices of the General Agreement on Tariffs and Trade (GATT) and the World Trade Organization (WTO) that have lowered tariffs and expanded markets the world over.<sup>1</sup> This increasingly open international trading arena has allowed many developing and newly industrialized countries in Asia to employ a strategy that relies on exports as a means for promoting economic growth and development. As a result, several Asian countries have experienced rapid increases in their standards of living and in the size and sophistication of their manufacturing sectors.

While an exporting-for-growth strategy has had economic benefits for some developing countries, it has created political problems in many of the advanced societies that receive those exports because it means more competition for local producers. These local producers in turn often pressure their governments for protection. Even though GATT and WTO agreements now restrict many forms of protection employed in the past, governments are still able to shield domestic producers from foreign competition by using unfair trade procedures that have been only modestly affected by international negotiations. Unfair trade involves an attempt by a “producer or its government . . . to manipulate normal market mechanisms to its advantage and to the detriment” of foreign competitors (Rothgeb, 2001, p. 95). International norms treat dumping and subsidies as prime examples of unfair trade.<sup>2</sup> Dumping refers to selling goods in export markets at abnormally low prices. Subsidies are payments governments make to domestic producers that enable those producers to export more easily.

Since the WTO and governments worldwide regard dumping and subsidies as unfair trade, national laws to protect local producers from these practices have survived the trade liberalization of the post-World War II period (Goldstein, 1986, pp. 186–87; Jackson, 1997, pp. 177–78). Indeed, in many cases national unfair trade laws have been extended to cover an expanding assortment of behaviors and have become so complex that one trade analyst has labeled them the “preferred protectionist devices” for those seeking to limit imports (Srinivasan, 1999, p. 1062).

An examination of the use of unfair trade laws reveals how often they restrict the exports of developing and newly industrialized states in Asia. According to the WTO, between 2000 and 2005 there were a total of 1614 dumping investigations worldwide, 53 percent of which were aimed at Asian exports. The picture is similar for anti-dumping (AD) duty penalties, for 52 percent of the 1113 measures were placed on Asian exports. The anti-subsidy investigations and duties (known as countervailing duties, or CVDs) follow the same pattern, for 55 percent of the 83 investigations and 59 percent of the 65 penalties worldwide were against Asian products.<sup>3</sup>

Data for the United States and the European Union, the world’s largest export markets, follow the same pattern. In the United States, between 2000 and 2005, 41 percent of the 283 AD and CVD investigations and 44 percent of the 332 AD and CVD duties were placed on Asian goods. The figures for the European Union are even higher, for 61 percent of the 150 AD and CVD investigations and 62 percent of the 126 duty orders were levied against imports from Asia. When considering these figures, it is important to note that Asian countries accounted for an average of 19.6 percent of the world’s exports between 2000 and 2005. In the United States, during the years 2000–2005, 26 percent of imports were from Asia, and in the European Union during the same time period 29 percent of imports came from Asia.<sup>4</sup>

While unfair trade rules worldwide and in the United States and the European Union may not be specifically designed to target Asian exports, the above data indicate that their application disproportionately affects goods from Asian societies. Given the degree to which the AD and CVD investigations and duties around the world focus on Asian exports and considering the emphasis many analysts place on the exporting-for-growth strategy, research regarding how this affects Asian governments and producers is in order. In particular, interviews with government officials and private industry representatives might prove useful for determining exactly how much damage unfair trade laws

do to Asian trade. Interestingly, while such interview-based research could be illuminating, to date the scholarly work on unfair trade regulations has centered primarily on assessing WTO unfair trade negotiations, on the logical implications for developing societies of WTO agreements, and on examining aggregate trade flow data.<sup>5</sup>

This research has two purposes. The first is to conduct a case study to identify some of the problems government officials and industry representatives from an Asian country confront due to the anti-dumping and anti-subsidy rules found in their largest export market. The second is to offer policy recommendations to help alleviate those problems. The developing country examined is Thailand. Thailand's largest export market is the United States. Thailand was selected because it is among the developing world's most active traders, its government and industry have experience with anti-dumping and anti-subsidy investigations, and it has both a well-organized government trade bureaucracy and established industry groups that handle trade issues. Furthermore, WTO data regarding the developing countries that have faced the most AD and CVD investigations and have had the most duties imposed reveal that Thailand ranks among the top ten in each area.<sup>6</sup> One might therefore conclude that the Thai government and Thai businesses have substantial experience with unfair trade and that if Thailand faces problems due to AD and CVD actions, then the same difficulties probably plague other Asian societies. Hence, investigating the Thai case should provide valuable clues as to how Asian countries in general are affected by unfair trade regulations.<sup>7</sup>

The following pages contain three sections. The first provides an overview of the evolution of American AD and CVD laws to illustrate their complexity. The second summarizes results from interviews of Thai government officials and industry representatives. Finally, the implications of this analysis are considered.

## **II. AMERICAN ANTIDUMPING AND COUNTERVAILING DUTY LAWS**

### **A. The Origins of American Regulations**

United States unfair trade legislation originated a century ago when attempts were made to prevent foreigners from manipulating markets to the detriment of American businesses (Rothgeb, 2001, p. 95). At the time, dumping was seen as selling foreign goods in the United States at abnormally low prices that could not be matched by American producers. As Congress saw it, such behavior was predatory because it might bankrupt American firms. Another Congressional concern related to the payments, or subsidies, foreign governments sometimes gave to exporters that allowed foreign corporations to sell goods at prices American companies could not match. Once again, the possible result for American firms was bankruptcy.<sup>8</sup>

To counter these practices, Congress passed the first US anti-subsidy law in 1890 to offset the payments some European countries granted to sugar exporters (Viner, 1966, pp. 168–69). This law was extended to cover other subsidized goods in 1894, 1897, 1909, and 1913 as Congress sought to revise American anti-subsidy laws to protect US companies from what it viewed as unfair trade. By 1913, American CVD regulations were widely regarded as the most stringent in the world, for they required the imposition of duties to offset a variety of foreign payments and tax rebates. In 1922 and 1930 Congress passed additional legislation that increased the scope of American CVD regulations by expanding the definition of a subsidy to include payments by provincial and local governments (Viner, 1966, pp. 173–74; Bryan, 1980, p. 251).

The first American anti-dumping legislation in 1894 was designed to prevent foreign monopolies from restraining US domestic commerce (Viner 1966, pp. 240–41; Congressional Budget Office (CBO), 1994, pp. 19–20). In 1916, the Anti-Dumping Act introduced criminal penalties for predatory pricing, which was defined as selling foreign goods in the US at prices below those charged in the exporting country (Finger, 1993, p. 19; CBO, 1994, p. 20; Lash, 1998, p. 25). Another method for dealing with dumping was contained in the Anti-Dumping Act of 1921. This legislation, which has served as the foundation for the way the United States has handled dumping ever since, used anti-dumping duties to eliminate the

pricing advantages created by dumping (CBO, 1994, p. 21; Mastel, 1998, p. 19; Eckes, 1999, p. 67). In addition, a new procedure was set up to measure dumping. Normally, a dumping investigation compared the selling price in the United States with the price charged in the exporting country, referred to as the home country. A lower American price was defined as dumping. The new method permitted the Treasury Department to estimate a cost of production if data for home country sales were not available, thereby making it easier for an American complainant to obtain a favorable ruling.<sup>9</sup>

### **B. More Recent AD Legislation**

As mentioned above, the trade agreements negotiated since World War II have lowered American tariffs, and many companies have looked to AD and CVD regulations for protection. In response, Congress began toughening US regulations in 1954 when it set strict time limits for AD investigations. In 1958, Congress again acted by requiring that tie votes in AD investigations be recorded in favor of American complainants and that the price comparisons in AD cases need not be based on identical goods. In addition, the 1958 law allowed the Treasury Department to measure dumping by comparing the US price with sales in third country markets when home country sales were negligible. If prices in the United States were lower than in third markets, dumping would be presumed. The 1954 move favored American complainants by ensuring quick responses when dumping was alleged, while the other changes made it easier to reach positive findings in AD cases (Bryan, 1980, pp. 8–9; Mastel, 1998, p. 12).<sup>10</sup>

In 1974 and 1979 even more protection was given to American producers when Congress altered AD procedures in four ways. The first two came in the Trade Act of 1974. One set strict time limits for foreign firms when they filled out the complex questionnaires associated with AD investigations. Another redefined dumping as any sales at a price below the cost of production, even if there was no difference in price between the United States and foreign markets (CBO, 1994, pp. 25–26; Nivola, 1993, pp. 92–93). The other two changes were in the Trade Agreements Act of 1979. This law moved the authority for conducting AD investigations from the Treasury Department to the Commerce Department, which Congress saw as more sympathetic to requests for protection. In addition, the Commerce Department was authorized to use the “best information available” (BIA) to calculate AD price comparisons (Nivola, 1993, pp. 94–95; CBO, 1994, pp. 27–28; House of Representatives (HOR), 2001, p. 91; U.S. Congress (Congress), 1979, pp. 1, 4).

The net result of the 1974 and 1979 changes was increased pressure on foreign firms. For one thing, these companies were compelled to move quickly when completing AD questionnaires. For another, the failure to provide data in a timely fashion could result in the use of BIA, which almost always worked to the disadvantage of foreigners because the data used on occasion comes from the American firm filing the complaint. Naturally, data coming from an American company usually cast an unfavorable light on foreign pricing practices.

It should be noted that the Trade Agreements Act of 1979 included one provision that worked to the advantage of foreigners for it henceforth required an injury test before AD duties could be imposed. That is, AD investigations now involved a three step process. The first step required any party that felt it was a victim of dumping to file a complaint with the Commerce Department requesting an investigation. The second step focused on a price comparison to determine if dumping existed, and the third step called for the US International Trade Commission to evaluate whether the dumping was adversely affecting, or injuring, American producers. If dumping existed and an injury was found, then AD duties would be imposed. Otherwise, the case would be dismissed. This change brought American law into conformity with new rules created during the Tokyo Round of GATT negotiations (CBO, 1994, pp. 24, 26, 27; HOR, 2001, pp. 90–91).

Additional changes to American AD rules came in the Trade and Tariff Act of 1984 and the Omnibus Trade and Competitiveness Act of 1988. The most important change in 1984 involved “cumulation.” Under the new cumulation rule, the injury part of an AD investigation now examined all dumped imports of a particular good. Previously, decisions were made on a case-by-case basis, and dumping by small

foreign firms often was not seen as injuring American producers (Nivola, 1993, p. 105; Lande & VanGrasstek, 1986, pp. 121–122; Congress, 1984, p. 10). This change made it far easier to obtain the positive injury finding required before AD duties could be imposed.

The major changes in 1988 pertained to “circumvention” and dumping in third countries. The circumvention rule attempted to restrict a foreign producer’s ability to side-step American AD laws by assembling goods in another country and then exporting to the United States (Nivola, 1993, p. 105; HOR, 2001, pp. 102–103; Congress, 1988, pp. 5–6). The third country dumping rule was meant to combat dumping in markets where US companies engaged in export activity. Such third country dumping was viewed by Congress as robbing American producers of foreign sales.<sup>11</sup>

### **C. The Uruguay Round Agreements Act**

While the revisions to US AD rules described above tended to increase protection for US producers, the changes in the Uruguay Round Agreements Act (URAA) of 1994 limited that protection. These alterations responded to the bargains struck during the Uruguay Round of GATT negotiations. Three modifications to US law deserve special mention. The first pertained to the minimum price difference (technically known as the “de minimis” margin) in an AD investigation that would result in the imposition of duties. The URAA set this price difference at 2 percent. Henceforth, dumping was defined as a US selling price that was more than 2 percent lower than the comparison price used in an AD investigation. Prior to the URAA, the US had employed a 0.5 percent de minimis. Thus, this change reduced the likelihood that AD investigations would favor American complainants (WTO, 1994a, p. 152; ITA, 1994a, pp. 28, 37, 77; ITA, 1994b, p. 22).<sup>12</sup>

A second change related to cumulation. The new URAA rule specified that cumulation would not be applied if the imports from a country accounted for less than 3 percent of the total imports of a particular good. An exception to this rule could be made if the total imports from all countries meeting the 3 percent rule collectively accounted for 7 percent or more of the imports of the good (WTO, 1994a, p. 152; ITA, 1994a, p. 28; ITA, 1994b, p. 76).

The last major change in the URAA had to do with “sunset reviews.” Such reviews determine whether dumping would continue or resume if AD duties are terminated. The URAA required sunset reviews within five years of the initial imposition of AD duties. Previously, there were no provisions for specifying when AD duties would be lifted once they were in place (Rothgeb & Chinapandhu, 2007, p. 30).

### **D. Recent Anti-Subsidy Legislation**

Post-World War II alterations in American CVD regulations have paralleled those for AD rules. Seven major changes have expanded the reach of CVD investigations and led to greater protection for US producers. The first two modifications were included in the Trade Act of 1974 where strict time limits were set for conducting US CVD investigations and American firms were given the right to appeal unfavorable CVD decisions (Bryan, 1980, p. 252; Congress, 1978, pp. 2374–75). Both rules favored American corporations at the expense of foreign competitors.

Two more revisions are found in the Trade Agreements Act of 1979, where the authority for conducting CVD investigations was transferred from the Treasury Department to the Commerce Department, and the use of best information available (BIA) was permitted when US investigators were unable to acquire the appropriate data (Nivola, 1993, pp. 94–95; HOR, 2001, p. 85; Congress, 1979, pp. 152–153). As mentioned above, the Commerce Department was regarded as more likely to favor American producers, and BIA was designed to ensure that US investigations would not be thwarted by foreign attempts to withhold information.

The Trade and Tariff Act of 1984 also introduced two changes to US CVD rules. One applied cumulation rules to CVD investigations. Henceforth, as was the case for AD cases, the injury test in CVD cases would be based on the effects of all subsidized imports of a good (Congress, 1984, p. 3033). The second



revision expanded the definition of subsidies to include “upstream” subsidies. Upstream subsidies are defined as payments from a government or customs union that gives merchandise subject to a CVD a competitive advantage by lowering the cost of inputs used to produce the good (Congress, 1984, p. 3035). These changes increased the reach of American CVD rules by expanding the definition of unacceptable government assistance.

Finally, the Omnibus Trade and Competitiveness Act of 1988 introduced the concept of a “domestic” subsidy into US trade law. Previously, subsidies were regarded as government payments that allowed foreign producers to expand their exports. The 1988 law altered this definition to include any benefit a foreign government provided to its producers that reduced the cost of production, even if obtaining the benefit did not depend on export performance (Congress, 1988, p. 1184; Horlick & Oliver, 1989, pp. 7, 9). An example would be the reduced utility rates governments often charge industrial users. Once again, this change extended the scope of US regulations.

Recent changes in American anti-subsidy rules have not always resulted in a tougher stance toward imports, however, for, as was the case with AD regulations, the outcomes of GATT and WTO negotiations have introduced modifications favoring foreigners. One such change came in 1979 when the Trade Agreements Act required the same injury test in CVD cases as it did for AD investigations. As a result, CVD cases now followed the same three step procedure described above for AD investigations.

Other alterations benefitting foreigners were included in the Uruguay Round Agreements Act of 1994 that incorporated the WTO Subsidies Agreement into American trade law. This law added the WTO “traffic light” approach to American CVD procedures, afforded special treatment to imports from developing countries, and required the same type of sunset reviews for CVD duties as it did for AD levies (see above). The special rules for developing countries focused on setting higher cumulation and de minimis standards, thereby making it more difficult for American investigators to conclude that developing country subsidies merited US anti-subsidy duties. The traffic light feature was designed to differentiate between categories of subsidies, ranging from “red” light subsidies that were forbidden at all times to “green” light subsidies that were to be treated as nonactionable. In essence, the WTO meant for this approach to ease some of the frictions surrounding government subsidies by trying to make it clear what subsidies were unacceptable at all times and which subsidies were permissible. An example of a red light subsidy is one that is contingent on the export of a good, while an illustration of a green light subsidy is one that is meant to promote employment in a depressed region within a country (WTO, 1994b, pp. 231, 262; ITA, 1994b, pp. 49, 63; HOR, 2001, pp. 86, 106).<sup>13</sup>

### **E. The Byrd Amendment**

A final US law pertaining to dumping and subsidies is the Continued Dumping and Subsidies Offset Act of 2000, also known as the Byrd Amendment (named for the Democratic Senator from West Virginia). This legislation allowed the proceeds from AD and CVD cases to be distributed among the American producers affected by foreign dumping and/or subsidies. Prior to this law, the revenue from AD and CVD penalties was paid to the US Treasury. This law gave US companies additional incentives to file unfair trade cases since they could be a source of both revenue and protection. Shortly after its passage, several WTO members asked a WTO panel to consider whether this law violated WTO rules. The panel ruled against the US, and the law was allowed to expire in October 2007 (HOR, 2001, p. 104; *New York Times*, 2002, p. C2; *Wall Street Journal*, 2002, p. A2; *Wall Street Journal*, 2003, p. A8).

## **III. SUMMARY**

In the years since they were first created, American AD and CVD regulations have become increasingly complex instruments for protecting American firms from an expanding set of foreign pricing practices and forms of governmental assistance. Both types of rules have continually enlarged the definitions of dumping and/or subsidies, set severe time limits for investigations, confronted foreigners with complex requests for information that must be provided within a short time period, threatened the use of best

information available when foreigners do not provide data quickly enough, based injury determinations on the cumulated value of imports, and set such low de minimis levels that findings favoring American complainants were relatively easy to obtain. In addition, American AD investigating authorities were encouraged by law to monitor foreign sales and production in third markets to guard against circumvention and dumping in other countries, while CVD rules stretched the definition of foreign subsidies to include upstream and domestic activities. While GATT and WTO negotiations and panel rulings have reined in some of the more extreme regulations, as they now stand American laws present foreigners wishing to export to the United States with some daunting challenges.

In the following pages, the types of problems that these American rules have created for Thai businesses and governmental officials are explored.

### **A. Interview Results**

The analysis of the problems American AD and CVD regulations pose for Thailand is based on interviews conducted with Thai government officials and with representatives of the Thai steel and canned pineapple industries. The steel industry was selected for three reasons: (1) worldwide it is targeted for more dumping and subsidy complaints than any other industry, (2) it is one of Thailand's largest exporting industries, and (3) it has had extensive experience with US AD and CVD complaints. In fact, Thai steel exporters have been the target of more US dumping and subsidy complaints and penalties than all other Thai exporters combined. The pineapple industry has faced far fewer AD and CVD cases and can help evaluate how the frequency of complaints affects perceptions.<sup>14</sup>

The government officials interviewed came from the Bureau of Trade Interests and Remedies (BTIR), the Bureau of Multilateral Trade Negotiations (BMTN), and the Office of the Board of Investment (BOI). The BTIR and the BMTN are the key agencies within the Thai Ministry of Commerce that handle AD and CVD issues, while the BOI aids Thai corporations that face foreign CVD investigations.<sup>15</sup>

From the private sector, interviews were conducted with representatives of the Federation of Thai Industries (FTI), the Thai Iron and Steel Industry Club (TISIC), the Thai Food Processors' Association (TFPA), the Thai Pineapple Packers Group (TPPG), and the Joint WTO Committee (JWTO). The FTI is an umbrella organization that includes TISIC and TFPA as members. The TPPG forms one of the divisions within the TFPA. Each of these organizations assists Thai corporations facing foreign AD and CVD actions. The Joint WTO Committee includes as members the Board of Trade of Thailand, the FTI, and the Thai Bankers' Association. In the area of ADs and CVDs, the JWTO is one of the primary vehicles for informing the Thai government of the problems foreign AD and CVD complaints pose for Thai firms.<sup>16</sup>

To assess the types of problems US AD and CVD regulations create for Thailand, the respondents from the government and the private sector were asked to discuss issues relating to four areas: (1) their knowledge of US rules, (2) the procedures associated with US investigations, (3) the burdens US AD and CVD investigations create for Thailand, and (4) whether Thai actors seek settlements to terminate or suspend US investigations. The interviews focused on the respondents' experiences in the period since the WTO Antidumping Agreement and the Subsidies and Countervailing Measures Agreement went into effect in 1995. The questions are in Appendix 1.

The interviews took place in June and July of 2000 at the appropriate office in Bangkok. Follow up interviews were held between May and June of 2005 to determine if there were any changes in respondent perceptions and whether any problems found were temporary or more permanent. The interviews were conducted in Thai, the native language for one of the authors.

From the outset, it should be noted that some respondents hesitated to answer questions, arguing that trade is one of the most important of Thailand's national interests. To overcome this problem, all interviewees were guaranteed anonymity and were allowed to answer only those questions they felt comfortable with.<sup>17</sup>



## **B. Knowledge Issues**

This group of questions examined whether the Thai government and Thai corporations employ enough specialists who understand US and WTO AD and CVD rules and where those specialists are educated. Among government officials, only those from the BTIR answered these questions. From the private sector, only the representative from TISIC responded to all questions, while the interviewees from TFPA, FTI, and JWTO addressed selected questions.

Beginning with the government, the BTIR respondents said that their agency does not have the expertise needed to deal with US and WTO AD and CVD cases and that the government and private companies rely heavily on the advice they receive from the American attorneys they hire to handle their cases. As far as education is concerned, the BTIR officials indicated that training is difficult to obtain in Thailand and that the Thai government depends on US trade lawyers to educate government personnel regarding US AD and CVD regulations.

Among industry respondents, the TISIC representative agreed with the comments from the BTIR, stating that Thai firms do not employ enough specialists who understand US and WTO AD and CVD regulations and that most Thai steel companies rely on US attorneys to educate their employees. The respondents from the FTI and the JWTO agreed with these views. The TISIC respondent also noted that the US International Trade Commission (ITC) and the WTO often hold training seminars in Bangkok for corporate leaders.

Interestingly, the representatives from the pineapple industry had a different view, indicating that information about US and WTO AD and CVD rules was not important and could be obtained from trade lawyers if it was needed. This difference of opinion between the pineapple and steel interviewees might be traced to the difference noted above regarding their experience with AD and CVD cases. While 9 AD and 8 CVD cases have been filed in the United States against the steel industry over the years, only one AD case has been filed against pineapples (ITC, 2005; ITA, 2000). In addition, the TPPG interviewee stated in 2005 that while US attorneys usually did a good job safeguarding Thai interests, on at least one occasion it was necessary to terminate relations with a firm for improperly handling a case, indicating that the dependence on US lawyers can have negative effects.

## **C. Procedural Issues**

The procedural questions sought to determine how well respondents understood the methods used in US AD and CVD investigations and whether they considered those procedures appropriate. Those responding to this part of the survey included the BTIR officials and the representatives from TISIC, TFPA, and TPPG.

The BTIR respondents said that an important issue regarding US AD and CVD investigations involves Thai confidentiality laws, noting that American investigators frequently request information from the Thai government even when Thai laws make it illegal to make disclosures. The TISIC and TFPA interviewees described another problem, arguing that the questions included in US AD surveys often were meant to uncover Thai business secrets.

Another controversial procedural issue mentioned by the TISIC and TFPA representatives concerned the brief amounts of time the United States allows for filling out the lengthy AD investigation questionnaires. The TPPG respondent maintained these time limits put small Thai companies, corporations unfamiliar with US AD procedures, and firms with foreign partners at a disadvantage because these businesses usually needed more time to respond. In addition, all of the interviewees from the government and from private industry expressed the opinion that it was inappropriate for US investigators to use the best information available when Thai respondents in an AD case were unable to provide adequate answers. Smaller firms were seen as especially disadvantaged due to a lack of awareness as to when BIA is used. Indeed, the interviewees uniformly agreed that US AD and CVD questionnaires are so complex that it is nearly impossible to provide the information requested in a timely manner. In the 2005 interviews, the BTIR officials stated that meeting US timetables has necessitated retaining attorneys in Washington to

warn of imminent investigations, a practice the Thais found expensive. Hence, there was a general consensus that US procedures are designed to work to the disadvantage of foreigners and constitute a form of harassment.

#### **D. Burden Issues**

These questions examined the costs Thai companies incur due to US AD and CVD investigations. Beginning with the nature of the costs, the BTIR, BMTN, TISIC, and TFPA interviewees all stated that the primary burdens were the immense time required for handling US investigations, the large number of personnel needed to deal with the cases, and the expense associated with hiring US attorneys to represent Thai interests. BTIR officials estimated the average initial cost of an attorney for CVD cases at \$150,000, while private industry respondents said that lawyers for AD cases cost \$250,000 on average. The TISIC and TFPA representatives noted that these attorney fees often exceeded what smaller Thai companies could pay and that these firms sometimes did not contest cases.

Another burden was lost business. All respondents, both government and private, claimed that AD and CVD investigations led to lost sales. The BTIR interviewees stated that smaller Thai companies often lose sales in the United States because they abandon the American market if they receive adverse AD rulings. The TISIC and TFPA representatives agreed and added that American importers frequently terminate their contracts with Thai firms that are undergoing US AD and /or CVD investigations. As a result, the private industry respondents argued that the burdens associated with US AD and CVD cases are immense.

#### **E. Settlement Issues**

This part of the survey sought to determine if Thai companies were willing to limit their exports to the US in exchange for the termination of their AD and CVD cases and whether Thai firms felt that American companies use AD and CVD investigations to harass their Thai competitors. Regarding the termination of investigations, officials from the BTIR and BOI stated that in CVD cases the government hesitated to negotiate for the suspension or termination of US investigations due to the fear that any deals made might be less favorable for Thai firms than an adverse US finding. The BOI respondents added that Thai law made it difficult for the government to reach suspension deals on subsidies because it states that only recipient companies can request that subsidies be ended. Industry representatives from TISIC and TFPA voiced similar concerns about suspension agreements.

As for harassment, the TISIC and TFPA representatives strongly agreed with the contention that US corporations use AD and CVD cases as a way to make life difficult for their Thai competitors. The TFPA respondent was particularly vehement about this point, noting that the complexities associated with US AD and CVD regulations often interact with the uncertainties in international agricultural markets to make it difficult for Thai firms to price their products. Proper pricing was described as a key to AD allegations, but was portrayed as difficult for it required careful monitoring of American and world markets, which was depicted as very costly. Additionally, all respondents noted that such features of US laws as the Byrd Amendment (now expired), relatively low de minimis levels, cumulation, and the possible use of BIA served as incentives for American producers to file unfair trade cases to torment the Thais. Beyond this, it was noted that the tendency American importers had for canceling contracts when a Thai firm faced an unfair trade investigation also served to encourage US companies to file cases. Hence, the Thai respondents clearly felt that US AD and CVD rules are unfair and are used by US firms to bedevil foreigners.

### **IV. CONCLUSIONS**

As was illustrated in the preceding discussion, American AD and CVD regulations have become increasingly protective of American businesses in recent years. This protection takes at least two forms. The first is the expanded reach of American rules that promotes outcomes in AD and CVD cases that favor American complainants. The second pertains to the greater complexity built into US regulations, for this complexity often renders American rules and procedures so arcane that foreigners wishing to export

to the US market find it extremely difficult to avoid violating some part of the US laws that regulate foreign dumping and subsidies.

The results from this study show just how troublesome American AD and CVD rules are for Thailand. At the most basic level, Thai government and corporate respondents felt there are inadequate numbers of Thai specialists with the expertise to navigate American unfair trade laws. In the area of education, there was a widespread feeling that it is difficult to obtain the appropriate training in Thailand, which in turn leads to an excessive reliance on American attorneys for advice and training. Thus, in an area that the Thais assert is a key national interest (that is, using exports to promote economic development), one finds a high degree of Thai vulnerability.

Another elemental problem relating to US AD and CVD regulations has to do with the expenses incurred by firms facing US investigations. These expenses take at least three forms: (1) the cost of hiring American attorneys, (2) the time and personnel that must be allocated to responding to unfair trade cases, and (3) the business lost by Thai companies that are under the cloud of investigation. These costs directly reduce the ability of Thai firms to operate in the United States and indirectly do harm by raising the overhead for Thai firms, which means higher prices that make Thai products less attractive in export markets.

A final problem associated with US AD and CVD cases pertains to the complexity of US procedures and the tendency of US firms to employ AD and CVD complaints to harass foreigners. With regard to procedures, the Thai interviewees uniformly complained that the time limits in US investigations and the excessive ambiguity and demands for information found in US questionnaires make it almost impossible for Thai respondents to satisfy American authorities. Moreover, the Thais displayed a considerable suspicion that US investigators employ unfair trade cases to undermine Thai competitive advantages. The Thais also saw the use of the best information available as tilting the outcome of investigations against Thailand and believed that this investigatory practice simply encouraged US firms to file cases.

In light of these findings, it is important to make two recommendations for Thai governmental and educational officials to consider. The first is to encourage educators to set up courses of study to train the trade specialists needed by the government and private corporations. One of Thailand's most pronounced deficiencies is the dearth of such specialists. This has resulted in a dependence on foreign educational efforts that should be reversed.

A second recommendation is that the Thai government use WTO negotiations to try to revise international rules regarding dumping and subsidies. The current analysis points to two areas where change might benefit Thailand. The first would limit the circumstances under which the best information available could be used during unfair trade investigations. The second would provide more time for respondents to fill out the questionnaires and provide data in AD and CVD cases. Greater restraints on the use of BIA and longer amounts of time for providing information would not only help Thai respondents get a better hearing in the United States, but it would also discourage American producers from using AD and CVD complaints to harass foreigners. Another form of assistance the WTO could provide to all developing countries would be to maintain a system rating the attorneys that handle unfair trade cases. Given the extreme reliance developing countries have on foreign lawyers, such a system could prove valuable.

To conclude, the results herein suggest the need for additional research to determine if the problems Thailand confronts due to US AD and CVD rules also affect other developing countries. Further research might also inquire into whether the unfair trade regulations found in other advanced areas, such as the EU, have similar effects.

## APPENDIX 1

### QUESTIONS FOR THE THAI AD AND CVD SURVEY

#### I. Knowledge Questions

##### A. Knowledge of United States Law

1. Does the Thai government feel that it has a sufficient staff of trained specialists who understand American AD and CVD laws?
2. Is the Thai government forced to rely on experts it hires in the United States to handle its AD and CVD cases?
3. Does the Thai government feel comfortable in relying so heavily on American legal experts to assist it with AD and CVD cases?
4. Does the Thai government feel that it should place a high priority on training Thai scholars and professionals so that it would have a group of Thais with expertise in American trade policy?
5. Do Thai corporations have staffs of trained specialists who understand United States AD and CVD laws?
6. Do Thai corporations place a priority on hiring specialists who understand United States AD and CVD laws?
7. Does the United States government provide any assistance to the Thai government or to Thai corporations to help them understand United States AD and CVD laws?
8. Does the WTO provide any assistance in understanding United States AD and CVD laws?

##### B. Knowledge of WTO Rules

1. Does the Thai government feel that it has a sufficient staff of trained experts who understand WTO AD and CVD rules?
2. If not, then who does the Thai government rely on for assistance with its WTO AD and CVD cases?
3. Does the Thai government feel comfortable relying on this source for assistance?
4. Does the Thai government feel that it should place a priority on training Thai scholars and professionals so they could handle Thai AD and CVD cases before the WTO?
5. Do Thai corporations have sufficient staffs of trained experts to help them understand WTOAD and CVD rules?
6. If not, then who do Thai corporations rely on for assistance with their WTO AD and CVD cases?
7. Do Thai corporations feel comfortable relying on this source for assistance?
8. Do Thai corporations feel that they should place a priority on training their employees to understand WTO AD and CVD rules?
9. Do the Thais feel the WTO provides sufficient assistance to help countries understand WTOAD and CVD rules?
10. Do the Thais cooperate with other countries to gain assistance in understanding WTO AD and CVD rules? If so, which countries?

#### II. Procedural Questions

1. Do the Thais feel comfortable with United States AD and CVD procedures?
2. Does the United States give adequate prior public notice of AD investigations as required under Article 12 of the WTO Antidumping Agreement?
3. Do the Thais feel they are given an adequate opportunity for input when the United States conducts AD and CVD investigations?
4. Do United States authorities provide adequate explanations for procedures and details of the cases brought against Thai producers so that the Thais feel they understand the case against them and what is expected of them during the investigation?

5. How well do the Thais understand the time deadlines associated with American AD and CVD cases?
6. Do the Thais understand that the best information available (BIA) will be used if proper information is not provided during an investigation?
7. Do the Thais realize that BIA can be obtained from United States complainants during an investigation?
8. Do the Thais understand the procedures the United States uses during on-the-spot investigations in Thailand? Do the Thais feel that these procedures affect Thai interests negatively?
9. Do the Thais feel that United States procedures are sufficiently transparent so that all parties to AD and CVD cases understand what is going on?
10. How do the Thais feel about the United States law passed in 2000 (the Byrd Amendment) that diverts AD and CVD duties from the United States Treasury to the American companies that are the complainants in a case?
11. Do the Thais consider this diversion of funds an illegal subsidy to United States companies under WTO subsidy rules?
12. Do the Thais feel that the issues raised by this law have been handled properly by the WTO dispute settlement system?
13. Do the Thais plan to seek negotiations about this law during future WTO talks?
14. Do the Thais feel that the United States conforms with WTO AD and CVD rules?
15. Does the United States provide Thailand with the special treatment that developing countries are required to receive under WTO AD and CVD rules?
16. Does the United States adhere to applicable WTO rules when determining the size of any AD and CVD duties?
17. Does the United States adhere to the traffic light approach set up under WTO rules for handling subsidies?

### **III. Burden Questions**

1. Are the costs associated with United States AD and CVD complaints unduly burdensome for the Thai government or for Thai corporations? What are these costs?
2. How much does it cost to hire attorneys in the United States to handle Thai AD and CVD cases?
3. Does the mere initiation of a United States AD or CVD case hinder the ability of Thai firms to continue doing business in the United States?
4. Do importers in the United States shy away from doing business with Thai corporations that are the subject of American AD or CVD investigations or actions?
5. Do the Thais feel that American companies use the filing of AD and CVD cases to harass their Thai competitors?
6. Have American companies altered the way they pursue CVD cases in light of the traffic light approach found in WTO rules?
7. Do the Thais feel that United States AD and CVD laws are designed to discourage foreign firms from doing business in the United States?
8. Do the Thais feel that the Byrd Amendment encourages American corporations to file unfair trade cases so that they can receive the payments provided for under the law?
9. Do the Thais feel that United States firms use the filing of AD and/or CVD cases to keep foreign competitors out of the American market? If so, have the Thais been able to use the WTO to obtain redress for such behavior?

### **IV. Settlement Questions**

1. Does the filing of a dumping complaint in the United States incline Thai corporations to consider



- restricting their exports in exchange for the termination of the complaint?
2. What role does the Thai government play in any process that involves restricting exports in exchange for the termination of an American dumping complaint?
  3. Do the Thais feel that American complainants are aiming for deals that restrict Thai exports when they file AD complaints?
  4. Do the Thais feel that the WTO plays a role in informally resolving unfair trade cases? If so, what is that role?
  5. Under WTO guidelines, a complaint relating to subsidies can be handled either by taking a case to the WTO dispute settlement system or by conducting a domestic investigation and imposing a CVD. Which approach do the Thais prefer to use for handling their subsidized imports? Which procedure does the United States most often use with its imports from Thailand? Why do the Thais prefer one approach over the other? Why do the Thais believe the United States employs one approach instead of the other? Are some cases handled one way, while others are handled another way? Why is this the case?
  6. When faced with a negative finding in a foreign subsidy investigation, which way do the Thais prefer to respond:
    - a. Voluntarily raise the price for the good to offset the value of the subsidy
    - b. Volunteer to terminate the subsidy
    - c. Accept the imposition of a CVD by the foreign government
 Why do the Thais prefer one of the above approaches over the others?
  7. Has the passage of the Byrd Amendment affected the solution the Thais prefer for American subsidy cases (see the preceding question)?
  8. Do the Thais continue to experience “grey area” (for example, VER) demands from the United States as proposed solutions for AD and/or CVD cases even though WTO rules forbid such deals? Do the Thais prefer grey area deals as a means for resolving unfair trade cases? If so, why?

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## ENDNOTES

<sup>1</sup>One illustration of how much tariffs have declined is the drop in the average US duty from nearly 55 percent in 1934 to approximately 4 percent by the end of the Uruguay Round of negotiations in 1994 (see Cohen, Blecker, & Whitney, 2003, p. 183; Jackson, 1997, p. 141).

<sup>2</sup>For a discussion of the international norms pertaining to unfair trade, see Jackson (1997, chaps. 10–11) and Cohen, Blecker, and Whitney (2003, pp. 161–72).

<sup>3</sup>The figures for the WTO are from WTO, *AD Initiations by Affected Country*, *AD Measures by Affected Country*, *CV Initiations by Affected Country*, and *CV Measures by Affected Country*, all obtained from <http://www.wto.org>. It should be noted that these data only relate to Asian developing and newly industrializing countries.

<sup>4</sup>The data for the United States are from United States International Trade Commission (ITC), *Import Injury Investigations Case Statistics, FY 1980–2004*, October 2005 obtained from <http://www.usitc.gov>. The data for the European Union are from European Commission, *Anti-Dumping and Anti-Subsidy Statistics Covering the Year*, obtained from <http://ee.europa.eu/comm/trade>. The share of world trade is from WTO, *Trade by Region, 2005*, obtained from <http://www.wto.org>. The data for the Asian share of US trade are from US International Trade Administration, *National Trade Data*, obtained from <http://www.usita.gov>. The data for the Asian share of EU trade are from European Commission, *Trade Issues: Bilateral Trade Relations*, May 22, 2006, obtained from <http://ee.europa.eu/comm/trade>.

<sup>5</sup>For example, see Gallagher (2000), Kufuor (1998), Kim (2000), Krueger (1999), Nogues (1993), and Qureshi (2000).

<sup>6</sup>For additional information, see Rothgeb and Chinapandhu (2007, pp. 9–10).

<sup>7</sup>It should be noted that the results from a case study are only suggestive. Ideally, research into the type of problem examined in this paper should investigate several countries at multiple points in time. Such work, however, is prohibitively expensive. Even with these practical limitations, the results from this analysis can provide valuable information regarding the difficulties created by unfair trade regulations and the direction future research should take.

<sup>8</sup>For more complete discussions of the origins of US AD and CVD laws, see Congressional Budget Office (CBO) (1994), Viner (1966), and Mastel (1998).

<sup>9</sup>For details, see U.S. House of Representatives (HOR) (2001, p. 92) and CBO (1994, p. 21).

<sup>10</sup>To consult the relevant documents, see HOR (1957, p. 14) and HOR (2001, p. 90).

<sup>11</sup>The US semiconductor industry was especially vocal in calling for rules to combat third country dumping (see Rothgeb, 2001, pp. 187–90).

<sup>12</sup>Due to a lack of clarity in the Uruguay Round Antidumping Agreement, the US continues to use a less than 0.5 percent de minimis during its annual reviews of AD decisions.

<sup>13</sup>For a discussion of special treatment for developing countries, see Gallagher (2000, pp. 169–72) and Benitah (pp. 37).

<sup>14</sup>For details, see ITC (2005), ITA (2000), Low (1993, pp. 101–106), and Rothgeb and Chinapandhu

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(2007, chap. 3).

<sup>15</sup>The interviewed officials were: (1) from the BTIR, the Director and the Assistant Director in the US and EU AD and CVD Section; (2) from the BMTN, a Senior Expert on Multilateral Trade; and (3) from the BOI, two senior members of the International Affairs Division.

<sup>16</sup>The industry representatives interviewed were: (1) from the FTI, a member of the Executive Committee; (2) from the TISIC, the Deputy Secretary General; (3) from the TFPA, the Vice Chairman for International Trade and the Deputy Manager for International Trade; (4) from the TPPG, the Chairwoman for the Group; and (5) from the JWTO, the Chairman of the Subcommittee on Law and Investment.

<sup>17</sup>This research has been approved by the Institutional Review Board (IRB) for Human Subjects Research at Miami University in Oxford, Ohio. It should be noted that IRB approval was in part conditioned on respecting the interviewees' right to decline to answer questions without being pressed for an explanation. In addition to anonymity, most respondents requested that they not be quoted directly.