

**COMMUNICATION FROM THAILAND**

Revision

The following is a revised version, dated 25 September 2002, of a communication from Thailand (WT/WGTCP/W/213) which was issued on 24 September 2002. It is issued at the request of the Permanent Mission of Thailand.

Core Principles

**Doha Declaration**

INTERACTION BETWEEN TRADE AND COMPETITION POLICY

*25. In the period until the Fifth Session, further work in the Working Group on the Interaction between Trade and Competition Policy will focus on the clarification of core principles, including transparency, non-discrimination and procedural fairness, and provisions on hardcore cartels; modalities for voluntary cooperation; and support for progressive reinforcement of competition institutions in developing countries through capacity building. Full account shall be taken of the needs of developing and least-developed country participants and appropriate flexibility provided to address them.*

**1. Core Principles**

1.1 Thailand believes in the principles of non-discrimination, transparency and due process. We believe that the administration and enforcement of a competition law should be subject to these principles in order to guarantee effective enforcement and fair treatment to all parties involved. We recognize that the lack of transparency, the absence of due process and discrimination in the administration and enforcement of the law can seriously hamper the attainment of fair competition in the market. However, in compliance with the spirit of the Doha Declaration, various needs and constraints faced by developing countries will have to be taken into account. We, therefore, propose that "special and differential treatment" constitutes the fourth element of the core principles for competition policy.

1.2 In addition, we are of the view that the approach taken to define these core principles thus far is fundamentally flawed in that the focus has been on the "domestic trade" rather than "cross border trade". This appears odd given that this working group's mandate is to examine the interaction between trade and competition policy. For example, non-discrimination has been used interchangeably with "national treatment", which refers to equal treatment between foreign and

domestic firms operating within a domestic market. This is certainly a view that would serve the interest of those with significant overseas investment that would like to ensure access to the host countries' markets. Most developing countries, however, are importers and exporters, rather than investors. Thus, we propose that priority of the core principles be given to tackling unfair practices in cross border trade, rather than in domestic trade, that have not yet been dealt with in the WTO.

## **2. Non-discrimination**

2.1 In Thailand's view on non-discrimination, a competition law should not *discriminate between export and non-export firms*. That is, if bid-rigging and price or quantity-fixing agreements are prohibited in the national competition law, export cartels should be subject to the same provisions. We believe that the use of export cartels as a strategic trade policy to extract "rents" from foreign countries is unacceptable. A vast number of research reports show that most of these cartels are large companies and that there is little or no efficiency justification for their collusive practices. Export cartels – be they national or international -- represent unfair trade practices that are potentially damaging to developing countries' economies in that they work against our terms of trade. With subsidies, developing countries earn less for their exports, while with cartels, they pay more for imports. Why is it that we have rules against selling goods at too low a price (dumping), but no rules against excessive pricing? If the Doha Declaration is truly a development agenda, then unfair cross-border trade, not unfair domestic trade, should be given priority.

2.2 The Thai Trade Competition Act B.E. 2542 (A.D. 1999) and its enforcement do not *discriminate* among firms based on their origin or nationality nor does it discriminate between exporting firms and non-exporting firms. No exemption is provided to export cartels nor international cartels, such as shipping liners.

## **3. Transparency**

3.1 We agree that laws and regulations, exemptions, guidelines and competition authorities' decisions or court deliberations should be disclosed. We believe that transparency has a universal merit and that Members should promote transparency in the administration and enforcement of the competition law to the extent possible within the domestic legal, institutional and social environment. Thailand's Public Information Law 1997 guarantees access to public information and our Administrative Law 1996 guarantees transparent and fair administrative procedures. Many cases have been brought to the Public Information Committee and the Administrative Court during the last few years.

3.2 We believe that each country should maintain the freedom to decide sectoral exemptions that are consistent with its own national industrial policy. However, we believe that international cartels rarely have a development justification and thus should not be included, and should be removed from, the list of sectoral anti-trust exemptions, in particular shipping conferences and similar rates agreements. Many studies confirm that the existence of liner conferences have not contributed to greater efficiency in the global shipping liners market, including the most recent one from the OECD (Competition Policy in Liner Shipping: Final Report 2002).

3.3 The Thai Trade Competition Act provides block exemptions to central, regional and local administration, state owned enterprises, agricultural cooperatives, and other sectors or industries as stipulated by the ministerial regulation. Until to date, no other exemptions have been promulgated, except for those specified in the law. Again, as mentioned before, Thailand does not provide an exemption for any export or international cartels.

#### **4. Due Process**

4.1 As for due process, we agree that rights to appeal and to have private confidential information protected are crucial. However, each country should design its own appeal process and confidential information protection schemes that are consistent with the local legal, political and institutional environment.

4.2 In case of Thailand, the Prime Minister's Office's regulation concerning the protection of confidential information provides a guideline on the classification and handling of confidential information. Our Trade Competition Act 1999 provides for an administrative appeal procedure. According to the law, an Appeal Committee is to be established and staffed by members elected by the Cabinet. An appeal may be made within 30 days after a decision has been made. The Appeal Committee must deliberate within 90 days. If the complainant is not satisfied with the appellate commission's decision, he or she may bring the case to the administrative court.

#### **5. Special and Differential Treatment**

Finally, with respect to the fourth proposed core principle with regard to special and differential treatment, we believe that developing countries should be allowed to: (1) exempt national and international export cartels. This is because most developing countries' exporters or importers are mainly small scale and may need to bind together to counter the bargaining power of larger buyers or sellers from industrialized countries; and (2) gradually introduce greater transparency and due process in the administration and enforcement of competition law.

#### **6. Conclusion**

Thailand proposes that: (a) the definition of non-discrimination be revised to include discrimination between export and non-export undertakings; (b) current sectoral exemptions that involve cross-border cartels be removed from national competition laws; (c) developing countries be allowed to exempt export cartels for the purpose of countering the bargaining strength of buyers/sellers' market power; and (d) developing countries should be given a time frame to build transparency and due process in the administration and enforcement of the competition law. On our part, we will continue our work in promoting greater transparency and due process in the administration of the competition law.

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