

The Challenges of Anti-Dumping Law Enforcement in Thailand through the Lens of Thai Legal Culture



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Doctor of Philosophy

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Declaration

I hereby declare that the thesis is based on my original work, except for quotations and citations which have been duly acknowledged. I also declare that it has not been previously or concurrently submitted for any other degree at Brunel University or other institutions.

Name: Isaraporn Burana-at

Date: 10 December 2021

Signature: Isaraporn Burana-at

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Abstract

This thesis analyzes Thailand's anti-dumping law (1999–2021) and the legal culture surrounding anti-dumping enforcement in Thailand, as well as the context of this law amendment. It makes an attempt to address the following research questions: How does Thailand's legal culture affect the enforcement of the anti-dumping law framework and its amendment? What are the internal legal cultures and external pressures affecting anti-dumping law enforcement? To answer these two questions, this thesis employs legal realism as a theoretical framework for assessing Thailand's anti-dumping legislation. This thesis examines three factors related to the problem of anti-dumping law enforcement through the lens of legal culture: intervention in the AD consideration process; policy and investment cooperation between the Thai government and foreign countries; and the increasing use of AD measures by emerging countries. From analysis, this thesis suggests that despite efforts to close systemic loopholes, political parties' engagement in investigations and discretionary power are unsolved legal cultural concerns and a significant impediment to AD enforcement.

The thesis also argues that the course of anti-dumping proceedings in Thailand is influenced by the government's public policy and the administration's internal rules on AD, rather than by the actual legal criterion specified in the AD Act, which is modeled after the WTO. In other words, while AD law is important, it is not the primary factor in determining the final AD determination, particularly when the AD committee has complete discretion and is not subject to the checks and balances principle with DFT. The continued influence of politicians and large business corporations, the consistency with which ministerial regulations or ministry announcements are issued, as well as Thailand's economic benefits from large-scale infrastructure projects jointly invested with foreign governments, are all significant factors influencing the enforcement of anti-dumping law. Meanwhile, downstream business protection, Thailand's weak law enforcement system, and Thai government agencies' hypotheses to solve problems that deviate from the real problems are the main factors impeding the anti-dumping law from being effectively applied and protecting businesses within Thailand in accordance with the law's purpose.

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List of Abbreviations

AC	Anti-circumvention
AD	Anti-dumping
ASEAN	Association of Southeast Asian Nations
RCEP	The Regional Comprehensive Economic Partnership
DFT	Department of Foreign Trade
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
IPIT	Central Intellectual Property and International Trade Court
OTCC	Office of Trade Competition Commission, Kingdom of Thailand.
RoO	Rules of origin
WTO	World Trade Organisation

CHAPTER 1 INTRODUCTION

1. Research overview

This thesis analyzes Thailand's anti-dumping law (1999–2021) and the legal culture surrounding anti-dumping enforcement in Thailand, as well as the context of this law amendment. It makes an attempt to address the following research questions: How does Thailand's legal culture affect the enforcement of the anti-dumping law framework and its amendment? What are the internal legal cultures and external pressures affecting anti-dumping law enforcement? To answer these two questions, this thesis employs legal realism as a theoretical framework for assessing Thailand's anti-dumping legislation. This thesis examines three factors related to the problem of anti-dumping law enforcement through the lens of legal culture: intervention in the AD consideration process; policy and investment cooperation between the Thai government and foreign countries; and the increasing use of AD measures by emerging countries. From analysis, this thesis suggests that despite efforts to close systemic loopholes, political parties' engagement in investigations and discretionary power are unsolved legal cultural concerns and a significant impediment to AD enforcement.

The thesis also argues that the course of anti-dumping proceedings in Thailand is influenced by the government's public policy and the administration's internal rules on AD, rather than by the actual legal criterion specified in the AD Act, which is modeled after the WTO. In other words, while AD law is important, it is not the primary factor in determining the final AD determination, particularly when the AD committee has complete discretion and is not subject to the checks and balances principle with DFT. The continued influence of politicians and large business corporations, the consistency with which ministerial regulations or ministry announcements are issued, as well as Thailand's economic benefits from large-scale infrastructure projects jointly invested with foreign governments, are all significant factors influencing the enforcement of anti-dumping law. Meanwhile, downstream business protection, Thailand's weak law enforcement system, and Thai government agencies' hypotheses to solve problems that deviate from the real problems are the main factors impeding the anti-dumping law from being effectively applied and protecting businesses within Thailand in accordance with the law's purpose.

2. The background of Thailand's anti-dumping law problem and the influence of legal culture

For the last decade, Thailand has faced the problem of foreign goods entering the country and dumping in the market, with indicators that this dumping has severely harmed the Thai economy. Thailand's local industry's competitiveness has deteriorated dramatically.¹ Domestic downstream manufacturers and consumers, particularly in the steel-related industries, have overwhelmingly supported dumping goods in Thailand. While dumping items are popular with the people due to their low pricing, their popularity has led to criticisms from other domestic industry groups to the Ministry of Commerce for vulnerabilities in Thailand's anti-dumping mechanism, which Thailand adopted from the WTO.² The Ministry of Commerce has encountered a variety of difficulties in strengthening Thailand's anti-dumping measures in order to prevent foreign goods from circumventing anti-dumping measures and engaging in dumping in the Thai market. The Ministry of Commerce finally decided to resolve this issue by amending the anti-dumping law in 2019, in line with the European Union's rules.³ However, the incidence of dumping in Thailand increased significantly between 2020 and 2021.⁴

In general, Thailand has adopted foreign legal models since it negotiated the Bowring Treaty with the United Kingdom in 1855, and more frequently after Thailand joined the WTO in 1995. Thailand's judicial system has become more internationalized.⁵ However, adopting a foreign legal model into Thailand is more than simply copying the text; it reflects the struggle of law enforcement in Thailand between foreign law and Thai legal culture, which includes broad discretion for authorities, a lack of separation between judicial and political matters, and a patronage system. For a long period of time, the absence of precise and strict enforcement of laws has had a detrimental effect on the growth of domestic law and commerce, creating an economic crisis for specific industries. These problems have been exacerbated by the Thai government's stance on large-scale infrastructure projects, including the double-track railway

¹ Parate Attavipach, Patamaporn Eiamchinda and Apisith John Sutham, 'The 10 Major Problems with the Anti-Dumping Instrument in Thailand' (2005) *Journal of World Trade* 159

² Somboon Sangiambutr and Suporn Kitchompoo, 'Legal measures against dumping by Thai manufacturers Hot Rolled Steel Products: A Case Study' (Krirk University 2013)

³ Siribhusaya Ungphakorn, 'Circumvention of anti-dumping and countervailing measure: Criteria, investigation procedure and legal penalty' (2019) 48 *Thammasart Law Journal*

⁴ Iron and Steel Intelligence Unit, *Thailand Steel Outlook* (2020)

<<https://iiu.isit.or.th/en/reports/Monthly%20Thailand%20Iron%20Summary.aspx>> accessed 23 November 2020

⁵ Dhitiphong Meethong and others, 'The Bowring Treaty with the Economic Impact of Thailand Buddhist Era 2398' (The 12th NPRU National Academic Conference, Nakhon Pathom, 9 July 2020); Deunden Nikomborirak, *The WTO Doha round of trade negotiations: strategic preparation of the Thai industrial sector* (Thailand Development Research Institute 2004) 32

project, which is being developed in collaboration with China and does not include steel manufactured in Thailand as a material for project development. Rather than that, it paves the way for steel imports from China, a product that has been involved in a number of dumping disputes with the Thai steel sector over the last decade, seriously undermining the Thai steel industry.⁶ The committee investigating AD and the Ministry of Commerce responsible for amending the AD law cannot avoid being viewed as full-fledged political representatives exercising unlawful power and facing a legitimacy crisis. More crucially, they confront internal pressure from domestic industries that demand their protection, as the AD law is supposed to do.⁷

The absence of AC provisions has been considered the most critical concern by the Ministry of Commerce, rendering AD enforcement ineffective in today's commercial world. However, attempts to introduce AC provisions, on the other hand, have failed to alleviate the dumping situation. When a scenario like this exists, there should be significant debate among academics and policymakers about how to explain and resolve this long crisis. However, insufficient research has been conducted on the development of AD law in Thailand, and none has been conducted on the effect of Thai legal culture on AD law enforcement. The result is the AD law is still a tool that doesn't deliver the results it should and it is a tool that has yet to be properly considered how it should be developed in the context that Thailand's legal culture may interfere. As a result, the AD law remains an ineffective measure that has yet to be thoroughly analyzed in the context of Thailand's legal culture.

3. *Significance and Contribution of the Research Project*

This is an important research project on Thailand's legal culture and the enforcement of anti-dumping laws. This research project will provide valuable information and discussion for key stakeholders for formulating and implementing effective amendments and practice related to anti-dumping laws in Thailand. In this research project, the researcher will discuss the current legal culture of Thailand in detail and the enforcement of anti-dumping laws. This research project will also cover the impacts of anti-dumping laws on the overall economy of Thailand and consider what are the major hurdles in making appropriate amendments and enforcement

⁶ Editorial, 'Thailand First' Thailand fights with China to support the use of domestic steel' *Prachachat* (Bangkok, 10 September 2019) < <https://www.prachachat.net/economy/news-519103> > accessed 5 May 2020

⁷ Editorial, 'Private sector calls for Ministry of Commerce to cancel AD investigation and solve the problem of high freight costs' *Bangkok Business* (Bangkok, 26 May 2021) < <https://www.bangkokbiznews.com/business/940262> > accessed 5 May 2020

structure to anti-dumping laws.⁸ This anti-dumping research is part of a larger picture that reveals serious flaws in Thailand's law enforcement and justice systems. The current anti-dumping laws and system of Thailand are not good enough to protect the rights and businesses of local stakeholders. There is a need to formulate and implement important amendments in anti-dumping laws for dealing with current challenges.

4. *Research questions*

This thesis analyzes Thailand's anti-dumping law (1999-2021) and the legal culture surrounding the enforcement of anti-dumping law, as well as the context of this law amendment, in an attempt to answer the following research questions:

1. How does Thailand's legal culture affect the enforcement of anti-dumping and amendment frameworks?
2. What are the internal legal cultures and external pressures affecting the enforcement of anti-dumping law?

To answer these two questions, this thesis employs legal realism as a theoretical framework for assessing Thailand's anti-dumping legislation. This thesis will contribute to the development of an analysis of Thailand's legal culture and provide a better knowledge of the critical elements affecting anti-dumping law enforcement and amendment in Thailand.

5. *Legal realism*

This thesis examines Thailand's anti-dumping system through a legal realism perspective. It aims to fill the gaps in the research regarding the impact of internal cultural variables and external forces on Thailand's anti-dumping enforcement and amendment.

The life of the law, according to Oliver Wendell Holmes Jr., is experienced through time, moral and political theory, and public policy. For generations, the law has embodied the story of the nation's growth. Legal realism is described as an emphasis on the law as it exists in practice rather than on the law as written. As such, it is preoccupied with the elements that influence the decision-making process.⁹ Legal realism asserts that law is closely linked to law

⁸ Maher M Dabbah, *International and comparative competition law* (Cambridge University Press 2010)

⁹ Karl N Llewellyn, 'Some realism about realism: Responding to Dean Pound' (1930) 44 *Harvard Law Review* 1222

enforcement and is incomprehensible in its absence.¹⁰ Legal realists employ social science concepts to comprehend human behavior and the relationships that result in a certain legal outcome.¹¹ Additionally, realists believe that social and economic factors should be considered in legal issues. This may be a "unique" circumstance not addressed in the written law. Additionally, realists feel that the law's uncertainty is incurable.¹²

As a result, this thesis focuses on critical domestic factors: discretionary direction, interest groups, political interference, network and seniority. In terms of external variables, this thesis examines the role of the Thai government's project investment cooperation with leading country, as well as the expansion of emerging economies' usage of AD measures.

6. *Source*

The data and material for this thesis were gathered from public sources that include some of the most prominent figures in Thailand's cultural structure and anti-dumping law.

The primary sources for this thesis are: (1) speeches, statements, and official announcements (2) scripts of seminar lectures, workshops, discussions, public lectures, and national and international conferences (3) economic statistics compiled by the government (4) acts, ministerial regulations, ministerial announcements, and judgments

Secondary sources for this thesis include the following: (1) academic books in Thai and English, journal articles, research papers, and master's and doctoral-level theses; and (2) other relevant information from electronic sources as appropriate.

7. *Research gaps in existing literature*

Several studies have examined the implementation of AD law, using Thailand as a case study. Wannapruk Rungsisopin, for example, examined the problems and economic implications of the AD law in 2001 by revealing the calculation of the anti-dumping margin under the AD Agreement on conformity with Article 6 of the General Agreement on Tariffs and Trade.¹³ Boonyarat Chokbandanchai conducted research on legal measures to prohibit dumping in

¹⁰ Joseph William Singer, 'Legal realism now' (1988) 76 California Law Review 465

¹¹ Jerome Frank, *Law and the Modern Mind* (1st edn, Routledge 2009)

¹² H J M Boukema, 'Legal realism and legal certainty' (1980) 66 Archives for Philosophy of Law and Social Philosophy 469

¹³ Wannapruk Rungsisopin, 'The Problems and Effects on Economic Law of Dumping Margin Calculation under Agreement on Implementation of Article VI of Gatt 1994' (Master degree thesis, Chulalongkorn 2001)

Thailand since 1991, even before the AD law was enacted.¹⁴ Kanokrat Sukthon did a comparison study in 2003 of Thailand's and the United States' anti-dumping law investigative processes.¹⁵ In 2002, Panchanok Tanawut studied how each country understands the term "like product" differently and how this results in inconsistency in the use of AD in each country. Meanwhile, Pongsiri Ta-in published an article in the Journal of Criminology and Forensic Science establishing a link between anti-dumping duty evasion and economic crime.¹⁶

However, the enforcement of AD law in the context of organizational and regulatory difficulties requires more analysis through an examination of the background of Thai society's practices and particular conditions, which have been absorbed into Thailand's internal legal culture. There have been no studies published on this matter, and no researchers have been interested in connecting AD law to characteristics of law enforcement that are embedded in the legal culture.

While prior studies have detailed some of the difficulties encountered during the AD investigation process, their analysis was sparse and lacked the findings drawn from a comprehensive study of the entire procedure. Additionally, no research has been conducted on AC law, which is an extension of AD law. Thus, this thesis will examine various aspects of law enforcement in the context of AD law and the addition of AC law as an amendment to AD law that are embedded in legal culture through integration, as well as other external forces that influence this and its connection to the internal legal culture, in order to improve efficiency and protection in order to accomplish the purpose of the AD law and to address issues that have been overlooked.

8. Thesis Structure

Chapter 2 begins with a review of the literature on Thailand's legal culture and an analysis of interventions in the structure of the Thai public administration system, with a particular emphasis on the framework of legal realism, which emphasizes the importance of both internal and external legal culture factors. It aims to ascertain which aspects of Thai legal culture have

¹⁴ Boonyarat Chokebandanchai, 'Anti-dumping measures of Thailand' (Master degree thesis, Chulalongkorn University 1992) < <https://dric.nrct.go.th/index.php?/Search/SearchDetail/36938> > accessed 14 May 2020

¹⁵ Kanokrat Sukthon, 'Investigation Procedure Under WTO Anti-Dumping Agreement : Comparative study between Anti-Dumping Investigation Procedure of Thailand and United states of America' (Master degree thesis, Chulalongkorn University 2003) < <https://www.car.chula.ac.th/display7.php?bib=b1674712> > accessed 5 May 2020

¹⁶ Pongsiri Ta-In, 'Tax Avoidance against Anti-Dumping Tax in Steel Goods Market' (2019) 5 Journal of Criminology and Forensic Science 162

an effect on the bureaucracy's structure. Although legal culture plays a significant role in the study of anti-dumping law within the scope of this thesis, this chapter makes connections between Thailand's anti-dumping law problems and competition law, rules of origin, and the growth of emerging countries in order to gain a better understanding of the Thai anti-dumping law problem. Chapter 2 concludes by highlighting a gap in which the issue of anti-dumping law in Thailand has not been examined from a legal culture perspective.

Chapter 3 aims at understanding the legal culture's historical context, from the general context of how laws are enforced in society to the primary Thai legal culture that plays a role in law enforcement, with a particular emphasis on the expansion and abandonment of Thai legal culture from 1855 to the present. Additionally, this chapter analyzes the roots of anti-dumping law, which resulted in its enforcement in a number of nations and the emergence of anti-dumping evasion. In particular, the more intricate evasion is the source of the difficulty that Thai internal industry has experienced over the last decade.

Chapter 4 investigates the relationship between Thai legal culture and anti-dumping law enforcement difficulties that arise in practice. This chapter begins with the political sector intervening through the use of the public interest concept and the AD committee, which is discussed in connection with the role of the Civil Service Act. It focuses primarily on the AD Committee's and Council of Ministers' discretionary powers, which involve arbitrary, illegal, and unpredictable exercise of power. It then investigates the contradiction between Thailand's legal culture and the paradigm that has been connected to the legal model adopted by Thailand from overseas by demonstrating the forced abandoning of the legal culture and its re-emergence. This chapter also investigates the key factors of defects in the rules of origin, deficiencies in competition law, and refusal to accept punitive damages, all of which are linked to Thai legal culture and have an impact on the development of the anti-dumping legislation framework.

Chapter 5 examines Thailand's external pressures. It begins with an examination of the massive growth in dumping in Thailand, which was one of the primary drivers behind the amendment of Thailand's AD law to address the circumvention of AD measures. This chapter also discusses the Chinese-Thai transport investment cooperation project and the Thai government's infrastructure project, which includes identifying the root causes that make Thailand's AD process more fragile and make the domestic industry more vulnerable to clashes with cheap foreign products that the Thai government has opened channels to enter the domestic market.

This chapter also assesses Thailand's failure to respond to the growing strength of large emerging nations such as China, which cannot be explained solely by examining the AD legal framework but by investigating the key factors influencing Thailand's overall potential: law enforcement, innovation, and its role in international trade.

Chapter 6 focuses on the role of Thai government agencies in addressing the issue of product dumping. It begins with an examination of the AC provisions added to the AD law in 2019. Following the discussion is an examination of signs of the same problem that persisted even after the law was amended. This chapter also looks at the European Union's additional anti-dumping policies, such as implementing AC measures and developing internal industry protection systems.

CHAPTER 2 LITERATURE REVIEW AND METHODOLOGY

Literature review

Introduction

This review of the literature will examine Thailand's legal culture and anti-dumping legislation. The research intends to present the thesis statement that Thailand's legal culture provides impediments to anti-dumping law enforcement and amendment. It raises concerns about the ramifications of the connection between Thailand's legal culture and anti-dumping law enforcement.

Previously published research indicates that a lack of guidelines had a role in Thailand's anti-dumping law failing to be successfully enforced. However, it falls short of establishing a significant correlation between a deficient legal culture and the anti-dumping process, resulting in ineffective enforcement. Additionally, it recommends applying new legal frameworks used by other countries in Thailand and enacting additional measures to address issues. For instance, in the sphere of anti-dumping laws, it has proposed the addition of an anti-circumvention law to resolve more obstacles, but it cannot resolve existing ones. Additionally, the static number of successful cases prior to and following the introduction of new law demonstrates this.

The primary known knowledge is what deficiencies exist in Thailand's bureaucracy and in anti-dumping law, as well as what practices Thailand employs in comparison to other nations, with an emphasis on duty calculation. What this thesis will do is take a step farther by establishing a connection between the culture in which Thailand's dysfunctional bureaucracy originated and the culture in which other literatures take it for granted. What variables account for such defects and how do they relate to the legal system and even the legal framework that Thailand adopted from the international framework in relation to secondary law, the issue of order under that law, as well as the quasi-judicial process used in anti-dumping law.

It will establish the overall culture of the Thai bureaucracy system and then discuss major events that occurred in Thailand and abroad that influenced policy, history, paradigms,

diplomatic relations, and administration. Following that, it will demonstrate how anti-dumping law and other related laws such as rules of origin, competition law, and anti-circumvention law affect the legal system. Finally, it discusses the growth of emerging countries in terms of their participation in anti-dumping and the development of legal systems.

1. Legal culture

1.1 Thailand's bureaucratic structure and political intervention

Thailand's bureaucratic structure, including the judicial system, has a high level of political intervention. Teerakul and Deebhijarn share a similar viewpoint towards the close relationship among politics, bureaucracy and the legal system in Thailand, in which each of their interference has resulted in a lack of efficiency in work.¹⁷ In the same context, another study claims that politicians have a role in determining the direction of public policy, which is not based on genuine demand or real problems, but rather on the benefits of the politician.¹⁸ An example of interference in Thailand was emphasized by another work, stating that the organ manipulating trade competition in Thailand is appointed by the political sector and is the organ under control of the government, whereas in the EU, US, and Japan, that kind of organ is operated in a quasi-judicial system.¹⁹ Additionally, there is evidence that the Federation of Thai Industry is acting as a middleman to facilitate lobbying the anti-dumping committee in order to influence the decision-making process in favor of downstream business.²⁰ Two of the instances underline the systemic intervention. Another research, on the other hand, refutes the preceding premise, claiming that the Thai government and politicians do not interfere in the internal market, given incidents that happened under Prime Minister Abhisith Vejjajiva's three-year government (2008-2011).²¹ The paper generalizes that there has been no interference in

¹⁷ Sanguan Teerakul, 'Politician and government officials' (Office of the Permanent Secretary for the Interior 2008) < http://www.stabundamrong.go.th/web/book/52/b17_52.pdf > accessed 13 July 2022; Wang Bin and others, 'Administrative Policy of Culture Ministry in Thailand and China' (2019) 2 International Journal of Scientific Research and Engineering Development 532

¹⁸ Nutthachai Pudlar and Cherngchan Chongsomchai, 'Political Influence and Intervention in the Justice Procedure in the Investigation of the Police in One of Provincial Police of Provincial Police Region 4' (2017) 7 Journal of Politics and Governance 63 < <http://copag.msu.ac.th/journal/filesjournal/7-3/06122017112333.pdf> > accessed 13 July 2022

¹⁹ Jirattikarn Suriya, 'Legal problematic on the enforcement of competition law' (Master degree thesis, National Institute of Development Administration 2013) < <https://repository.nida.ac.th/handle/662723737/2981> > accessed 13 July 2022

²⁰ Parate Attavipach, Patamaporn Eiamchinda and Apisith John Sutham, 'The 10 Major Problems with the Anti-Dumping Instrument in Thailand' (2005) Journal of World Trade 159

²¹ Jutamanee Samakkeanit, 'Thailand's Foreign Policy in Southeast Asia under the Abhisit Vejjajiva Government (2008-2011): Continuity or Change?' (PhD thesis, The University of New South Wales 2014) < <https://www.coursehero.com/file/76963555/public-versionpdf/> > accessed 13 July 2022

the whole system up to this point, despite the fact that its examples occurred only in those three years. The claim of no interference and the fact that Thailand had so-called judicial activism during the Abhisith time are in direct opposition to one another, and it is obvious that judicial activism and intervention are linked. Furthermore, Samutthavanich points out that although there is no political interference as claimed by Samakkeenit, there is also the military sector which is involved in the system. Asserting that the actual interfering and influencing organ is military is unclear, because in Thailand for the last 20 years, civil administrations and military governments have alternated.²² Overall, the studies are insufficient to grasp the entire system's interventions in which the cultural intervention and the incentive employed in transferring the advantage were not discussed. These studies also fail to address the role of the cabinet and the minister of commerce in lobbying the anti-dumping committee under the anti-dumping law.

1.2 Corruption and bribery

Corruption and bribery are ingrained in the Thai judicial system as a culture.²³ The existence of these factors is supported by an article by Sukkasama stating that Thailand's culture and patronage system contribute significantly to corruption.²⁴ Kittipat extends the premise that patronage is a significant impediment to the bureaucracy, interfering with the economics and democracy in Thailand.²⁵ It has been thought in the same way that patronage system and culture are inextricably linked to social hierarchy and a great deal of influence held by high-ranking individuals.²⁶ Additionally, it is argued that a strong hierarchy is a result of political culture and a seniority system.²⁷ However, there is a counter-argument that patronage systems are advantageous in terms of building and maintaining very strong connections, as well as

²² Chaianan Samutthavanich, *Problems in the development of Thai politics* (Chulalongkorn University Press 1993)

²³ Jaruwan Sukhumalpong, 'The Trend of Corruption in Thailand' (2013)

< https://www.parliament.go.th/ewtadmin/ewt/elaw_parcy/ewt_dl_link.php?nid=1484 > accessed 6 July 2022

²⁴ Sukkasama Sukkasem, 'The dynamics of corruption in the patronage system' (National Defence College 2017)

< http://www.dsdw2016.dsdw.go.th/doc_pr/ndc_2559-2560/PDF/wpa_8268/ALL.pdf > 6 July 2022

²⁵ Kittipat Nonthapattamadul, 'A study of the Thai social problems and the sponsorship system: the role of professional social workers' (2015) 23 *Journal of Social Work* 177

< <https://so04.tci-thaijo.org/index.php/swjournal/article/view/173817> > accessed 13 July 2022

²⁶ Chittima Ansakulcharoen, 'Classes and Political Periods of Thailand' (2015) 5 *Nakhon Phanom University Journal* 7 < <https://so03.tci-thaijo.org/index.php/npuj/article/view/43919> > accessed 13 July 2022

²⁷ Teerapong Cheunchob, 'Political Socialization and Democratic Political Culture Development Embedded in Social Studies Textbooks for Primary and Secondary Educations' (The 48th Academic Conference of Kasetsart University: Humanities and Social Sciences, Bangkok, 3 February 2010)

< https://kukrdb.lib.ku.ac.th/proceedings/kucon/search_detail/result/12263 > accessed 13 July 2022

propelling the organization.²⁸ Additionally, it is confirmed that there are no anomalous actions in government procurement and no evidence of bribery.²⁹ However, Thailand has a high context culture, which results in indirect circumstances, making transparency extremely difficult to attain; if interference occurs, it will be difficult to detect such in the case of corruption.³⁰ At the local unit of local government, a study indicates that transparency in information acknowledgement of residents in that area scores only 68 out of 100, which shows that there is a loophole for corruption.³¹ Two studies goes in the same direction, demonstrating the association between a high context culture and a high power distance, both of which contribute to bribery being more prevalent in that country.³² Also, there is a figure illustrating the patron-client relationship prevalent in Thailand's political society which historically, officials were permitted to retain between 10% and 30% of the money involved as a fee for their services.³³ Additionally, a work confirms the bribery given by foreign entities in relation to money laundering in Thailand.³⁴ Thailand's system disregards transparency and has interference that helps in tax evasion. An example of this is mentioned in the research, where it was discovered that under a government project called the NGV bus, false declarations were made claiming that the products originated in Malaysia in order to qualify for government subsidies, when in fact they originated in another country.³⁵ Even if these studies agree that Thailand has a hierarchy, a system, and particular cultures that are dysfunctional, they lack a substantial body of work that clearly identifies and categorizes all abnormality and dysfunction.

²⁸ Thanarin Harnkiatwong, Rujikarn Sanon and Teeputai Sankard, 'Patronage and Poverty in Thailand' (2020) 2 Journal of Social Sciences Prachachuen Research Network 1 < <https://so03.tci-thaijo.org/index.php/prn/article/view/247890> > accessed 6 July 2022

²⁹ Nipon Poapongsakorn, Amarn Siamwalla and Somkiat Tangkitvanich, 'Economic reforms to reduce political conflict: an introduction and a brief study'(Thailand Development Research Institute, 1 April 2014) < https://tdri.or.th/wp-content/uploads/2013/05/A151_Chapter1.pdf > accessed 6 July 2022

³⁰ Kawpong Polyorat, 'High-Low Context Culture: Application for Marketing Communication' (2011) 10 Khonkaen University Journal 173; Jennifer D Chandler and John L Graham, 'Relationship—Oriented Cultures, Corruption, and International Marketing Success' (2010) 92 Journal of Business Ethics 251

³¹ Jurin Mankong and Nakorn Serirak, 'Assessment of Transparency of Websites and Electronic Data Resource Centers of Municipalities in Thailand.' (2020) 6 Journal of Pacific Institute of Management Science Humanities and Social Sciences 257

³² Jennifer D Chandler and John L Graham, 'Relationship—Oriented Cultures, Corruption, and International Marketing Success' (2010) 92 Journal of Business Ethics 251; Jurin Mankong and Nakorn Serirak, 'Assessment of Transparency of Websites and Electronic Data Resource Centers of Municipalities in Thailand.' (2020) 6 Journal of Pacific Institute of Management Science Humanities and Social Sciences 257

³³ Matias Warsta, 'Corruption in Thailand' (International Management: Asia Swiss Federal Institute of Technology Zurich 22 April 2004) < https://aceproject.org/ero-en/regions/asia/TH/Corruption_in_Thailand.pdf > accessed 13 July 2022

³⁴ Chomkate Ngamkraiwan and others, 'Problems of Money Laundering Within Foreign Banks In Thailand Affecting The Confidence of Foreign Investors' (2016) 9 Journal of Thai Justice System 83 < <https://so04.tci-thaijo.org/index.php/JTJS/article/view/246608> > accessed 13 July 2022

³⁵ Jiratha Thidkrathok and Krisana Vaisumruat, 'Transparency and Accountability of The Customs Department of NGV Buses' (2020) 5 Journal of Social Science and Buddhistic Anthropology 316 < <https://so04.tci-thaijo.org/index.php/JSBA/article/view/244714> > accessed 13 July 2022

They also omit any connection between the issue and a particular group of individuals or the legal authority conferred by each bill of law. Additionally, the bribing system is out of date in the current context.

1.3 External factors exerting influence on Thailand's system

External factors exerting influence on Thailand's system play a significant impact. While no academics disputed this premise, critical legal scholars were particularly central in elaborating the same direction on how the country's legal system was shaped by three key occurrences at the time: the Bowring Treaty, Manusmriti, and the concept of positivism. According to two studies, Thailand has been adopting modern concepts from Western countries in the areas of capitalism and legal system since the signing of the Bowring treaty, a turning point that marked the beginning of the actual influence in Thailand.³⁶ The literature on the Bowring Treaty has a structural flaw in that it concentrates entirely on the Bowring event, while failing to address what may be the dominant factors, such as colonialism and international diplomacy, influencing the treaty, which is World War I. Other studies indicate that prior to the legal reforms implemented during the reign of King RAMA V, Thailand's legal system was derived entirely from the concept of thought in Buddhism via the Manusmriti, an ancient legal text and constitution of the Dharmasutras of Hinduism in ancient India, in order to be consistent in composing any law with the following four main rules: refrain from acting subjectively, aligning with Dhamma, benefiting public interest and adhering to King's Virtues (Tosaphit Ratchatham).³⁷ In the same context, a school of thought known as legal positivism, led by John Austin, came to influence Thailand during the reigns of King RAMA IV and V gained influence in Thailand and superceded the previous one's thought. It has strong evidence demonstrating the use of such positivism concepts in Thailand, as demonstrated by a study indicating that the majority of people involved in legal reform in Thailand are lawyers who graduated from western nations' law schools and decided and agreed to bring western concepts to Thailand.³⁸ Prince Raphi Phatthanasak, Prince of Ratchaburi and a son of King Chulalongkorn or King Rama V, was the most powerful lawyer. He used John Austin's concept

³⁶ Dhitiphong Meethong and others, 'The Bowring Treaty with the Economic Impact of Thailand Buddhist Era 2398' (The 12th NPRU National Academic Conference, Nakhon Pathom, 9 July 2020); Somyos Cheurthai, *Introduction to philosophy of law* (Winyuchon Publication House 2011)

³⁷ Kittasak Prokkati, *Reforming the Thai legal system under European influence* (Winyuchon Publication House 2013) 12; Charan Khosananun, *Thai legal philosophy* (Ramkhamhaeng University Press 2007)

³⁸ Kittasak Prokkati, *Reforming the Thai legal system under European influence* (Winyuchon Publication House 2013) 56

as a foundation for establishing a legal system in Thailand.³⁹ However, these studies have limitations that they focus exclusively on historical events and make no attempt to connect those influences to Thailand's current legal system and culture.

1.4 Power expansion

In light of this changing landscape, researchers have become increasingly interested in power expansion in a global context rather than colonize or acquire lands as in the past. The theory of expansionism mentions that Governments and nations are seen to expand their territory, power, money, or influence through economic development, soft power, military empire-building, or colonialism, according to the notion of expansionism.⁴⁰ Another external force exerting impact on the Thai system at the moment also plays a significant role. According to one study, one of the most influential projects in Thailand is the OBOR or One Belt One Road project by the Chinese government, which forced Thailand to accept that its nation must adjust to the new direction of the global economy.⁴¹ Thailand must work hard to develop a policy that is not biased against any particular country and is extremely neutral. This study continues to demonstrate that Thailand must also invest in infrastructure and amend major provisions. However, another study argues that Thailand is still in a position where it does not fully accept but also does not fully deny this project, similar to Singapore, Malaysia, Indonesia, and Vietnam, because Thailand has not changed its structure to facilitate the project's implementation, similar to Laos, Myanmar, and Cambodia, which have that strong position strongly favoring China.⁴²

It is evident that all aspects of OBOR in relation to Thailand, as mentioned previously, are focused on infrastructure, attitudes and positions, and changes in the broad picture, which still lacks the issue of legal effects in anti-dumping, which will be loosened in practice, affecting domestic industries, particularly the steel industry, which is a critical component in this project.

³⁹ Rapee Phatthanasak , *Lecture of Raphee Phatthanasak* (Sophonpipatthanakorn Publisher 1925)

⁴⁰ Jeffrey W Meiser, *Power and Restraint: The Rise of The United States 1898-1941*, Georgetown University Press 2015)

⁴¹ Nattapong Suwannain, 'China and Its Attempts in Reorganizing World Economic Order: the New Silk Road and Thailand's Appropriate International Economic Policies in Response to the Rise of China' (2019) 9 *Journal of Politics, Administration and Law* 65 < <http://www.polsci-law.buu.ac.th/journal/document/9-1/2.pdf> > accessed 13 July 2022

⁴² Nattasom Tangdajahiran, 'The Impact of China's 'One Belt, One Road' Initiative on Thailand Strategy' (National Defence College 2018) < http://www.dsdw2016.dsdw.go.th/doc_pr/ndc_2560-2561/PDF/8398st/จกฉ. pdf > accessed 13 July 2022

1.5 *Cultural effects on law design*

The cultural effects on law design have a significant impact on the enforcement mechanism. Tungkitwanich and Chaiyawat theorizes the social contract as the notion that good law results from the design of what the community unanimously agrees upon while another scholar believes that changing significant laws in society is impossible until there is a change in culture, which indicates that if the culture changes, changing the law in that direction is also a possibility.⁴³ Another study demonstrates how a culture of equality will result in the formation of laws that guarantee the equality of all people's rights, such as the equality of women and men throughout Europe, where each set of laws represents the region's history.⁴⁴ Additionally, given that the incident occurred in Thailand, a study clearly demonstrates that the root of Thai society is discretion, as in the past, people had a person in their own village to adjudicate any conflicts, and that person was highly acceptable and trusted by all members of that community, but as the community grew larger, that practice was unable to be used.⁴⁵ This analysis also confirms that Thai law has always been relatively permissive of discretion, as seen by the fact that practically every statute has clauses granting broad discretionary authority to the person designated with authority under that law. However, another study contradicts this finding in the area of culture in Thailand, stating that culture is not a winning measure capable of altering the law at will; it is merely a means for people to rebel against rulers.⁴⁶ While the ruler can restrict certain rights of his subjects, the subjects frequently use the culture as a mechanism to exercise their right to claim or ask the ruler under certain favorable circumstances. These studies indicate far too little about the openness of Thai law, which allows for discretion in determining how broad or narrow the discretion would be exercised, and it still lacks a major body of work specifically on anti-dumping law.

⁴³ Somkiat Tungkitwanich and Thani Chaiyawat, 'Looking back on the legislation to solve the discretion problem in Thai society' (Thailand Development Research Institute, 12 October 2017) <

<https://tdri.or.th/2017/10/corruptionformular/>> accessed 6 July 2022; Lawrence M Friedman, 'Legal Culture and Social Development' (1969) 4 *Law & Society Review* 29

⁴⁴ Iris I Varner and Katrin Varner, 'The relationship between culture and legal systems and the impact on intercultural business communication' (2014) 3 *Global Advances in Business Communication Conference and Journal* 1

⁴⁵ Somkiat Tungkitwanich and Thani Chaiyawat, 'Revisiting the law in order to solve the problem of discretion in Thai society' (Thailand Development Research Institute, 12 October 2017)

⁴⁶ Amara Pongsapich, 'Human rights in cultural and religious dimensions' (Equal dignity for all classes

:Literature and Human Rights Studies Conference, Bangkok, August 2009)

< <https://www.nhrc.or.th/getattachment/09e0f216-4ef6-427f-b62d-9a801520afee/>.aspx > accessed 6 July 2022

1.6 *Quality of law enforcement and culture*

The quality of law enforcement is determined by culture. Many recent studies have focused on the negative effects of culture on law enforcement in Thailand stem from the conditions and circumstances of society and culture, which may include relationships within the family or within groups, which play a significant role in creating double standards in legal practice.⁴⁷ The relationship between law enforcement and culture have long been debated which scholars, on the other hand, asserted on community forest law contends that the difficulty in enforcing the rule effectively and fairly stems from the community's rejection of the practices and culture associated with the forest, resulting in an unfair scenario.⁴⁸ These studies demonstrate the danger inherent in analyzing culture via the lens of law without specifying which legislation the culture is analyzing, as culture and law can coexist and produce both harmful and positive outcomes. Additionally, what one community considers to be normal and to be legalized may be considered unusual by another community.

1.7 *Legal process, political issue and cultural factors*

The anti-dumping process, which is a legal process but has turned into a political issue due to cultural factors, has issues to demonstrate what the difficulties are. Critical legal academics have played an especially important role in clarifying how anti-dumping law application is distorted. The relationship between law and culture is engaged both implicitly and explicitly through the following evidence. According to a study, Thailand's election system is primarily based on money, and the political system must assist wealthy individuals.⁴⁹ Another study adds that in order to earn points from voters in Thailand, policy decisions have shifted from being objective to being subjective and unconcerned about long-term effectiveness, and it highlights the role of culture by focusing on the popularity of a policy rather than the underlying causes

⁴⁷ Plernta Tunrangsun, 'Law enforcement problems and the problem of double standards in the Thai justice system' (2010) 7 *Julla Niti Journal* 81

< http://web.senate.go.th/lawdatacenter/includes/FCKeditor/upload/Image/b/s37%20jun_7_6.pdf > accessed 5 May 2020; Somkiat Tungkitwanich, *Corruption menu and exploitation* (Thailand Development Research Institute Foundation, 2014)

⁴⁸ Nattamon Kongcharoen, 'Examining Community Rights Enforcement via the Lens of Legal Culture' (2015) 8 *CMU Journal of Law and Social Sciences* 80 < <https://so01.tci-thaijo.org/index.php/CMUJLSS/article/view/64642> > accessed 6 July 2022; Panya Udchachon, 'Justice and the constitution under the ASEAN Community' (2015) < https://kpi.ac.th/media/pdf/M7_215.pdf > accessed 5 May 2020

⁴⁹ Arthorn Funghthammasarn, Jang Kongchang and Niyom Ratamarit, 'Political and social equilibrium' (2014) < <https://www.kpi.ac.th/knowledge/book/data/524> > accessed 6 July 2022

of problems, particularly during election campaigns.⁵⁰ The decision of politicians is characteristic of politics in that it is based on the viewpoints of voters and the desires of the masses. If a policy is not supported by the public, it will not be executed, which means it must be carefully manipulated.⁵¹ With regards to anti-dumping, a parallel study demonstrates that anti-dumping law is more than a legal measure; it is a measure with a protectionist objective rather than a tax collection purpose, which is the true legal issue.⁵² Another study notes that when anti-dumping measures are applied incorrectly or illegally, they become protectionist measures for trade, and when opponents object, the problem is turned into one of labor standards, politics, and people's welfare and well-being.⁵³ In the case of Thailand, it has a study that highlights the issue of anti-dumping committees applying the public interest principle rather than strictly adhering to anti-dumping law when considering cases by omitting some critical figures, such as steel product volume, from the dumping calculation pursuant to Article 7 of the anti-dumping act, which leaves an amount of opportunity for discretion.⁵⁴ Studies, on the other hand, have been conducted by many authors towards law in action, not law in the book, which sometimes it is vital to implement a law appropriately in order to safeguard people and to establish justice among individuals and society; otherwise, the law will be incapable of delivering fairness to people.⁵⁵ Additionally, it must evaluate the public interest in relation to Thailand's anti-dumping law and the nation's overall interests. Another study argues in the context of anti-dumping that implementing measures that adversely impact those who use such products or make customers bear a disproportionate amount of hardship should be avoided since they will have a detrimental effect on economic stability in the long term.⁵⁶ The strength of these research is that they do not overlook those who are most impacted by the law and may be impacted in real life. Overall, these studies do not mention how to restrict and scope the political role that interferes with the system, or how to limit the use of discretion in a balanced manner. It falls short of highlighting the issue that discretion is not the issue at hand, but rather

⁵⁰ Saksin Udomwittayapaisarn, Pattarapon Tossamas and Pakdee Phosing, 'Decision Theory in Public Policy Formulation' (2019) 16 Journal of Graduate School Sakon Nakhon Rajabhat University 1

⁵¹ Yossathorn Taweephon and others, 'Policy Decision of Citizens, Bureaucrats and Politicians: A Lesson from Decentralization Policy in Thailand' (2018) 11(1) Journal of Southern Technology 221

⁵² Dukgeun Ahn and Wonkyu Shin, 'Analysis of anti-dumping use in free trade agreements' (2011) 45(2) Journal of World Trade 431

⁵³ Yossathorn Taweephon and others, 'Policy Decision of Citizens, Bureaucrats and Politicians: A Lesson from Decentralization Policy in Thailand' (2018) 11(1) Journal of Southern Technology 233

⁵⁴ Vandee Suchatkulvit, 'A Legal Perspective on Thailand's Anti-Dumping Law' (2019) Journal of Intellectual Property Law and International Trade 502

⁵⁵ Taweeyos Srigate, 'Academic principles of use and interpretation of the law' (2015)

< https://www.parliament.go.th/ewtadmin/ewt/elaw_parcy/ewt_dl_link.php?nid=1795 > accessed 6 July 2022

⁵⁶ Wanchai Varavithya, 'Guideline for public interest considerations for fair trade' (2017)

< http://www.dsdw2016.dsdw.go.th/doc_pr/ndc_2559-2560/wpa_8222.html > accessed 6 July 2022

the issue of not requiring real and valid justifications for official orders, particularly those from administrative organs.

2. *Anti-dumping framework in Thailand*

Anti-dumping is a mechanism aimed to protect domestic enterprises from financial and business loss caused by foreign entities, allowing domestic businesses to have a more equitable distribution of market share rather than losing it to foreign entities. The anti-dumping law's ultimate goal is the principle of distributional justice which is the primary motivation for its formation, and it also seeks to maintain a balance of power between different levels of power since businesses may choose to take advantage of power disparity to influence the outcome of trade.⁵⁷

2.1 *Approach to anti-dumping law*

The approach in which the governmental organs deal with the anti-dumping law enforcement problem is not sufficient. In the course of legal development, whenever a new legislation is enacted to address any of Thailand's problems, it must be examined to determine which provisions are deficient.⁵⁸ On a global scale, a regulatory impact assessment (RIA) is a common practice that can be accomplished in two stages: determining the necessity of enacting law and determining the law's worthiness in comparison to alternative possibilities.⁵⁹ Another study emphasizes that all legislative amendments that are not pertinent to the current circumstances must be amended, with the exception of ministry and department reorganization, but in Thailand, there is no strong evidence of conducting RIA, only a couple sentences stating reasons for amendment.⁶⁰ However, without completing RIA, Thailand's system fails to recognize that law must be effective and reflect the true desires of the people, not impose more burden than is necessary by overloading the system with legislation. Scholars have contributed a particularly vital role in building the concept that the addition of anti-circumvention measures was made with the goal of the Ministry of Commerce to use the new provision to plug gaps

⁵⁷ Rishab Khare, 'Anti Dumping Law And Competition Law : A Case Of Intersecting Lines' (2019)

⁵⁸ Thammanit Sumanthakul, 'Modernization of the law' (2007) 9 Administrative Law Journal 60
< <https://dl.parliament.go.th/handle/lirt/553499> >

⁵⁹ Weerawan Paiboonjitaree, 'Regulatory Impact Analysis' (2015) 114 TDRI Report 3
< <https://tdri.or.th/2015/09/wb114/> > accessed 6 July 2022

⁶⁰ Patchara Puksetthi, 'Repealing laws or improving laws that are no longer necessary' (2021) Secretariat of the Senate Journal 6 < https://www.senate.go.th/assets/portals/93/fileups/253/files/san/A2_2_64.pdf > accessed 6 July 2022

and loopholes that anti-dumping law cannot address.⁶¹ Additionally, another study concurs that adopting anti-circumvention legislation is important to eliminate the loophole while also boosting Thailand's steel industry, which is the primary industry subject to anti-dumping laws.⁶² Each study acknowledged the goal and the high probability that enforcing anti-circumvention laws would yield satisfying outcomes, but they all have a flaw to not addressing the actual outcome, a complete failure. According to information from the Ministry of Commerce, since late 2019 to 2020, the year immediately following the addition of the anti-circumvention law, there have been eight successful cases; however, in comparison to 2017, the year before the amendment, there were also eight successful cases.⁶³

2.2 *System's ineffectiveness*

Thailand's system, structure, and human resources are suffering with their ineffectiveness, particularly towards the anti-dumping process. Previous studies have concentrated on the national budget and the number of working people in the system which were increasing, yet the effectiveness ranking has been falling with time. These studies illustrated the downtrend towards the effectiveness of working, regulations and manipulation and follow-up, and law enforcement, falling from 64th to 74th, 67th to 80th and 83rd to 94th, respectively, even though there were increases in budget and human workforce during 2003 to 2013.⁶⁴ In terms of anti-dumping, a smaller scale, a study indicates that the system has distorted information and delayed the information and figures that are considered in the case, indicating that anti-dumping measures have been abused.⁶⁵ However, another study found that the anti-dumping procedure typically takes a long time and requires expertise because the case involves more than two countries, or more if the products are transmitted to further countries before approaching the border.⁶⁶ On the other hand, another study demonstrates a more positive image

⁶¹ Siribhusaya Ungphakorn, 'Circumvention of anti-dumping and countervailing measure: Criteria, investigation procedure and legal penalty' (2019) 48 *Thammasart Law Journal*

⁶² Somboon Sangiambutr and Suporn Kitchompoo, 'Legal measures against dumping by Thai manufacturers Hot Rolled Steel Products: A Case Study' (Krirk University 2013)

⁶³ Department of Foreign Trade, 'Products that Thailand has been imposed by AD measures (50 items)' (DFT 2021) <<https://www.thaitr.go.th/storage/file2/fUANvgP6yQdWJurgltN1QdOp2WascfOoAa6TaWDi.xls>> accessed 2 July 2022

⁶⁴ Sirikanya Tunsakul and Setthaput Suthiwatanareuput, '10-year Thai bureaucracy facts' (Thailand Future Foundation 2013) < http://www1.idd.go.th/Lddwebsite/web_adg/download/คลังความรู้/10%20ปีข้าราชการไทย.pdf > accessed 6 July 2022

⁶⁵ Sakda Thanitcul, 'Emerging Economies and International Economic Law: A Case Study on Thailand' in Shotaro Hamamoto, Hironobu Sakai, and Akiho Shibata (eds), *L'être situé, Effectiveness and Purposes of International Law* (Brill Nijhoff 2015)

⁶⁶ Umair Ghori, 'The Dumping Dragon: Analysing China's Evolving Anti-Dumping Behaviour' (2013) 4 *The Business and Management Review* 14

of bureaucrats in the department of excise tax, indicating that bureaucrats officers, particularly those who work and have responsibility in tax and are millennials, have a variety of skills, a breadth of knowledge, a high level of creativity, and a strict adherence to rules.⁶⁷ Bureaucrats are highly intelligent individuals, but the system lacks defined Key Performance Indicators (KPIs), and millennial bureaucrats struggle to collaborate with the elder generation in the department and ministry. Yet the findings of millennial bureaucrat insights may not be generalizable to all sectors of the system or all millennial bureaucrats which is considered as the findings' weakness. Another study, on the other hand, claims that anti-dumping duties in Thailand are easily evaded by using third-country transmission, despite the fact that they are regulated by the Ministry of Commerce, which employs many trade and tax experts.⁶⁸ These studies reveal both sides, which are an obvious down rating and an attempt to justify that the system is as efficient as it can be. Still these studies fail to cover the issue of rotating positions within the organization, which obstructs the process, as well as the challenge of recruiting individuals to fill organ posts at both the bureau and committee levels.

To further examine the anti-dumping body, so-called “the quasi-judicial procedure,” the overall deficiencies of the quasi-judicial procedure and the confirmation of altering the type of judicial organ in the past are linked. A study demonstrates that the quasi-judicial organ in Thailand is a double-edged sword because it engages in unlawful practices such as abusing power to eliminate political opponents and unabling to refer the organ's decision to the court for consideration.⁶⁹ Legal authors, likewise, concurs in the same direction, stating that the Constitutional Judge Committee and Complaint Committee in the past of Thailand, both of which were quasi-judicial organs, suffered from a lack of mechanisms and effectiveness in examining the use of state power, prompting their transformation into constitutional court and administrative court structures.⁷⁰ Nonetheless, it misses the point that while quasi-judicial

⁶⁷ Sirininthakarn Faisombat, 'Work ideals of the Revenue Department's new generation of civil servants' (2019) < http://www.mpm.ru.ac.th/Documents/Article_MPM17/5914840017.pdf > accessed 20 May 2020

⁶⁸ Thomas J Prusa and Edwin Vermulst, 'United States–Anti-Dumping Measures on Polyethylene Retail Carrier Bags from Thailand: a cat in the bag' (2012) 11 *World Trade Review* 257 < <https://www.cambridge.org/core/journals/world-trade-review/article/united-states-antidumping-measures-on-polyethylene-retail-carrier-bags-from-thailand-a-cat-in-the-bag/30371CA4710B409C586B0ADB41323848> > accessed 6 July 2022

⁶⁹ Pornsan Liangbunlertchai, 'Comprehensiveness of the Election Commission's Office: Another constitutional amendment issue' (2009) 6(1) *Julla Niti Journal* 164 < <https://kpi-lib.com/library/en/books/kpibook-13145/> > accessed 6 July 2022

⁷⁰ Vicha Mahakun, 'Judicial Power: A New Element for Maintaining Justice in Society' (2007) 5 *King Prajadhipok's Institute Journal* 24 < <https://kpi-lib.com/library/books/kpibook-10147/> > accessed 6 July 2022; Editorial, "Origin and evolution of the Constitutional Court" (1999) 1 *Constitutional Court Journal* 8 < http://elibrary.constitutionalcourt.or.th/document/documents/serials/Journal_1.pdf > accessed 6 July 2022

organs benefit from lean organizational structures that can handle cases quickly and also have two levels, which are similar to Thailand's administrative courts, those two stages of the quasi-judicial process are not completely independent of one another since it has interrelations of bureaucrats and committees levels. This is different from the court system that provides distinct levels of check and balance.

2.3 *Unpredictable secondary law*

Unpredictable secondary law creates impediments and intransparency toward people. In order to exploit a loophole in Thailand's anti-dumping law and its subprovisions, a research examined the issue of ministerial regulations, which are secondary law. In Thailand, the administrative section can legislate without approval from the legislative section. Additionally, studies demonstrate that these secondary laws impose a burden on individuals by requiring them to handle documents repeatedly; there are no limits on discretionary usage; there is no clear timeline; and the legislation is not revised when it contradicts contemporary societal conditions.⁷¹ Similarly, another study indicates that Thai bureaucracy officers exercise discretion contrary to general law.⁷² There is a risk that this will be generalizable and that every officer will use discretion unlawfully. However, some studies believe that discretion is required since the benefits include the ability to adjust quickly to changing circumstances without preparing for new legislation.⁷³ It demonstrates the concerns with secondary law, particularly the existence of discretion usage whether employed positively or negatively.

To attain a greater comprehension of the system's larger notion, primary law, such as the anti-dumping act, is also discussed in terms of broad and narrow interpretation, prediction, and effectiveness. Numerous authors stated that, while article 7 of the anti-dumping legislation mentions that the public interest clause is extremely broad, it is vital to provide authority the independence to analyze the effect that would occur and issue particular orders in order to

; Office of the Administrative Court, 'Evolution of the Thai Administrative Court' (Office of the Administrative Court 2010) < https://www.admincourt.go.th/admincourt/upload/webcms/Court/Court_201212_160637.pdf > accessed 6 July 2022

⁷¹ Pakorn Nilpraphan, 'Secondary Law Reform: Tangible Reform' (5 January 2015)

< <http://lawdrafter.blogspot.com/2015/01/blog-post.html> > accessed 13 July 2022; Office of the Public Sector Development Commission, 'The Deregulation of Law' (2003)

< https://hss.moph.go.th/fileupload_doc_slider/2016-12-01-628-410.pdf > accessed 13 July 2022

⁷² Sombat Chotivong, *Problems Concerning the Exercising of State Official's Discretion Prohibiting the Disclosure of Information, a Case Study in Section 15(2) and (3) of the Official Information Act, B.E. 2540* (Dhurakij Pundit University Press 2009) < https://search-library.parliament.go.th/cgi-bin/koha/opac-detail.pl?biblionumber=61770&shelfbrowse_itemnumber=80304 > accessed 13 July 2022

⁷³ Office of the Council of State, *Introduction to the discretion of government officials* (2019)

maximize public benefit.⁷⁴ There is research supporting the extension and use of the public interest clause like article 7 in anti-dumping law to cultural production, which is a measure for the domestic cultural industry to respond to the importation of culture from other countries, which is now severely restricted under the WTO.⁷⁵ In this paper, the author disagrees with the notion that cultural production is unsuitable for use in anti-dumping law and proposes that anti-dumping laws should include a public interest clause that encompasses cultural issues in addition to commerce problems. These studies all agree that broad open provisions are required and should be expanded rather than restricted, despite the fact that the outcome is difficult to predict. Research, on the other hand, reveals that Thailand's anti-dumping law is sufficient in covering all relevant aspects, as it is designed to protect domestic industries under the WTO framework.⁷⁶

While Article 7 provides a broad framework for anti-dumping application, making forecasting difficult, other anti-dumping practices in the country are easy to predict since they are interpreted narrowly. In considering the anti-dumping process, studies support the limited interpretation of like products being in Thailand's practices, which focuses on only physical characteristics without taking other factors into account, because if it is not limited to only physical characteristics, the interpretation will be too broad.⁷⁷ Other studies, nevertheless, refutes Thailand's practices, asserting that in the Thai context, a physical focus on like products will exclude tangible products that are different in appearance but not in function and could potentially be a direct competitor to those relevant products in the country's market.⁷⁸ Physical characteristics, accordingly, are no longer relevant to commerce.

⁷⁴ Nanthawat Boramanun, *Collection of articles on public law* (Office of the Constitutional Court 2013); Worajed Pakeerat, 'Use and Interpretation of Public Law' (2010) 7 *Julia Niti Journal* 53 < https://www.senate.go.th/assets/portals/93/fileups/272/files/S%ub_Jun/3journal/b122%20jul_7_4.pdf > accessed 13 July 2022; Viktoriia Kotsiubska, 'Public interest consideration in domestic and international anti-dumping disciplines' (World Trade Institute 2011) < https://www.wti.org/media/filer_public/82/63/82633863-36ea-42d8-9b8f-9d6a313b77c5/masters_thesis_viktoriiia_kotsiubska.pdf > accessed 13 July 2022

⁷⁵ Tsai-Yu Lin, 'Exploring the Link between Trade and Cultural Protection in the Context of Anti-dumping' (2008) 42 *Journal of World Trade* 563

⁷⁶ Reid M Bolton, "Anti-Dumping and Distrust: Reducing Anti-Dumping Duties under the WTO Through Heightened Scrutiny" (2011) 29 *Berkeley Journal of International Law* 66

⁷⁷ Marco Bronckers and Natalie McNelis, 'Rethinking the like product definition in WTO antidumping law' (1999) 33 *Journal of World Trade* 73; Phanita Choeychom, 'The Interpretation of "Like Product" on Agreement on Technical Barriers to Trade' (Master degree thesis, Thammasat University 2015)

⁷⁸ Konstantinos Adamantopoulos and Diego De Notaris, 'The Future of the WTO and the Reform of the Anti-dumping Agreement: A Legal Perspective' (2000) 24 *Fordham International Law Journal* 30; Robert E Hudec, "Like product": the differences in meaning in GATT Articles I and III in Thomas Cottier and Petros Mavroidis (eds), *Regulatory Barriers and the Principle of Non-Discrimination in World Trade Law* (University of Michigan Press 2000)

Thailand, on the other hand, has a fairly broad interpretation of duty calculation that extends to several figures; for more instances, scholars have long debated and concern about the implementation of the full duty and lesser duty rules, which critical authors assert that in order to deal with dumping more effectively, the full duty rule should be applied since it generally considers the higher calculated figure in the process; thus it produces better results in dealing with dumping.⁷⁹ Thailand, likewise, uses the full duty law, as the US does on a regular basis, but both of the countries' results represent a distinct level of efficacy. On the contrary, numerous legal scholars argue that the EU's implementation of the lesser duty approach effectively eliminates dumping since it does not impose a burden on exporters and reflects genuine damages.⁸⁰ Despite decades of research, anti-dumping users continue to discuss which sort of interpretation principle and computation can be suited for the economic situation and accurately reflect damages. These studies are out of date since they do not include newly amended provisions proposed by the Ministry of Commerce, notably Articles 71/1-71/18, which are more ambiguous in terms of discretion and ministerial authority than Article 7, which these anti-dumping studies analyze.

3. Theoretical frameworks for Thailand's legal policy, enforcement and amendment

There is a significant body of literature on the study of political economy (PE). Many researchers have attempted to better comprehend and explain the nature of the relationships between politics and economics as well as power imbalances in international trade as external factors towards a state. This includes an attempt to incorporate multidimensional components of society, resulting in the adoption of particular legislation and the adjustment of law enforcement. They have also attempted to understand the possibilities of political influence and the role of superpowers. This chapter examines political economy theories, with a focus on factors influencing continuity and change in a state's AD law enforcement and amendment.

This approach focuses on the impact of domestic and international influences on a state's law in terms of stabilising and destabilising features. In terms of influencing variables, this chapter

⁷⁹ Nisha Malhotra and Horatiu A Rus, 'Effectiveness of the Canadian Antidumping Regime' (2009) 35 Canadian Public Policy / Analyse de Politiques 187; Bruce A Blonigen and Thomas J Prusa, 'Dumping and Antidumping Duties' (2015) NBER Working Paper No. w21573
< https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2663231 > accessed 6 July 2022

⁸⁰ Yuka Fukunaga, 'An Effect-Based Approach to Anti-Dumping: Why Should We Introduce a Mandatory Lesser Duty Rule?' (2004) 38 Journal of World Trade 491; Nisha Malhotra and Horatiu A Rus, 'Effectiveness of the Canadian Antidumping Regime' (2009) 35 Canadian Public Policy / Analyse de Politiques 187

also focuses on the characteristics of geopolitics and discretionary power, which are related to governmental legislation.

3.1 External factor regarding geopolitics and power imbalances in international trade

In the context of external factors of this study, the influence of China's commercial position, which is significantly superior to Thailand, influences the enforcement and development of laws and secondary laws in Thailand. This is a drive to force Thailand to comply with what China offers because China is an important trading partner with the potential to be a decisive element in determining the value of Thai production, exports, and GDP each year.⁸¹ Furthermore, because of the huge trade value between them, China has considerable political and diplomatic influence in Thailand, causing Thai political and diplomatic officials to be more lenient with China and very supportive of Chinese initiatives.⁸²

In the framework of this research, it is developing a legal structure that facilitates the importation of particular Chinese goods; while this is counter to the objective of the law, it is extremely beneficial to China's needs.⁸³ As a result, China's direction, pressure, and demand are the most obvious and intense external pressures for Thailand.

This political pressure has had an impact on Thailand's AD legislation enforcement and revisions, particularly the AD case in 2019 that was heavily influenced by the discretionary powers that have long been established throughout the nation. As a result, the country's system, which was riddled with loopholes, directly and indirectly facilitated major infrastructure projects, such as OBOR, and double-tracked railway projects.⁸⁴

⁸¹ Nattapong Suwannain, 'China and Its Attempts in Reorganizing World Economic Order: the New Silk Road and Thailand's Appropriate International Economic Policies in Response to the Rise of China' (2019) 9 *Journal of Politics, Administration and Law* 65 < <http://www.polsci-law.buu.ac.th/journal/document/9-1/2.pdf> > accessed 13 July 2022

⁸² Jiranuwat Sawasnatee and Tai Wan Ping, 'Look back and face 37 years of Thai-Chinese Relations : The Constructive Theory Perspective – From Friend to Enemy, From Enemy to Friend' (2013) 6 *Veridian E-Journal* 94 < <https://he02.tci-thaijo.org/index.php/Veridian-E-Journal/article/download/28297/24326/62312> > accessed 8 August 2022

⁸³ Jesadapan Thongsrinuch, 'Four Decades of Thailand's foreign economic policy towards China from an International Political Economy Perspective' 14 (2017) *Journal of Integrated Sciences* 40 < <https://so06.tci-thaijo.org/index.php/citujournal/article/view/246602> > accessed 8 August 2022

⁸⁴ Trin Aiyara, 'The long and winding railway: domestic politics and the realization of China-initiated high-speed railway projects in Thailand' (2019) 4 *Chinese Political Science Review* 327

Going back to the Bowring Treaty era, another external factor compelled Thailand to adopt specific legal and procedural frameworks.⁸⁵ Certainly, the results have improved the Thai system, making it more transparent and predictable. However, it cannot be ignored that it reflects an external force that has exacerbated Thailand's political situation to such an extent that the entire proposal has been accepted.⁸⁶

This so-called "discretionary authority," which in this case is influenced by political pressure from other nations, has long been established and is commonly recognized among Thais, particularly those in positions of power in the government.⁸⁷ As a result, the "accepted" practice has affected numerous shifts in AD law enforcement, legislative revisions, and the sentiment of authority, as evident in AD cases from 2017 to 2022, when more dumped products were not imposed by AD duties.⁸⁸ To elaborate on the aforementioned political pressure influenced by other states, this pressure directly comes from each of the other states' national interests; for instance, the pressure is used as a tool to benefit one's own country by politically exploiting another country.⁸⁹

At its most basic level, the national interest is universal and simple to define: all states desire to maintain their political autonomy and territorial integrity.⁹⁰ However, once these two interests are protected, national interests might take several forms. Some states may also want to secure more resources or land, while others may want to develop their own political or

⁸⁵ Nucharee Nuchkoom Smith and Robert Brian Smith, 'Has Thailand learnt any Lessons from the Bowring Treaty and the Treaty of Amity?' (2019) 5 Athens Journal of Law 405

⁸⁶ Dhitiphong Meethong and others, 'The Bowring Treaty with the Economic Impact of Thailand Buddhist Era 2398' (The 12th NPRU National Academic Conference, Nakhon Pathom, 9 July 2020)

⁸⁷ Somkiat Tungkitwanich and Thani Chaiyawat, 'Looking back on the legislation to solve the discretion problem in Thai society' (Thailand Development Research Institute, 12 October 2017)

⁸⁸ Department of Foreign Trade, 'Products that Thailand has been imposed by AD measures (50 items)' (DFT 2021) <<https://www.thaitr.go.th/storage/file2/fUANvgP6yQdWJurgltN1QdOp2WascfOoAa6TaWDi.xls>> accessed 2 July 2022; Department of Foreign Trade, 'Notification of the Department of Foreign Trade

showing details, facts and important laws Used as a basis for consideration

Review the need for anti-dumping measures for galvanized cold-rolled steel sheet, Hot-dipped and then painted and cold-rolled steel, anodized or coated with aluminum alloy and hot dipped galvanized and painted of origin of the People's Republic of China, Republic of Korea and Taiwan' (Royal Gazette Thailand 2019); Case AD1025 PRC, Vietnam and Taiwan v Thailand on hot-dipped galvanized and cold-rolled steel sheet products in rolls and non-rolls [2018] Committee < <https://www.thaitr.go.th/th/search/AD1025> > accessed 20 November 2020; Announcement of the Committee on Dumping and Subsidies on Melamine tableware from China [2019] Royal gazette Volume 136 Section 94D

⁸⁹ Miroslav Nincic, 'The National Interest and Its Interpretation' (1999) 61 The Review of Politics 29 < <https://www.jstor.org/stable/1408647> > accessed 8 August 2022

⁹⁰ Mali Thiprajong and Nibondh Tipsrinimit, 'On Power: Political Interests' (2019) 2 Journal of MCU Phetchaburi Review 17 < <https://so03.tci-thaijo.org/index.php/JPR/article/download/253241/169498/957669> > accessed 8 August 2022

economic systems in other territories.⁹¹ This expansion of influence to other regions is the external factor that such regions must evaluate and deal with.

For example, as China grew to be capable of elevating people's quality of life and increasing household income,⁹² it expanded its influence to eliminate competitors by exporting Chinese dumped goods into other nations to capture such a huge proportion of the market as in the Thai steel industry.⁹³ Once Chinese dumped materials are flooded in Thailand, this has benefited and facilitated the OBOR and double-tracked railway programs that will fully be operating; for example, the materials used to construct these infrastructures will be those Chinese dumped products, tremendously boosting China's growth.⁹⁴ This clearly demonstrates China's national interest in spreading its power and influence in other countries, such as Thailand in this case.

In general, national interests must be described in terms of power. Because it can be defined in terms of military, economic, political, diplomatic, or even cultural resources, national power has an absolute meaning.⁹⁵ This raises problems such as whether a state can protect itself against the strength of another state or does a state have the authority to compel another state to change its policies?⁹⁶

Despite the fact that Thailand is a sovereign country in which no other country can interfere in terms of power, the country has been greatly influenced by China for three reasons: China being Thailand's main source of income in the export market,⁹⁷ China owning nuclear

⁹¹ *ibid*

⁹² Somsak Tamboonlertchai, 'China's economic reform experience and lessons' (2013) 31 *Thammasat Economic Journal* 1 < <https://so05.tci-thaijo.org/index.php/TER/article/view/137210/151619> > accessed 21 September 2022

⁹³ Somboon Sangiambutr and Suporn Kitchompoo, 'Legal measures against dumping by Thai manufacturers Hot Rolled Steel Products: A Case Study' (Krirk University 2013)

⁹⁴ Suppakom Khonhlong, 'A Study on China's Overcapacity Problem Solving with Belt and Road Initiative: Case of the Steel Industry' 16 (2022) *Dhonburi Rajabhat University Journal* 71 < <https://so02.tci-thaijo.org/index.php/journaldru/article/download/257436/172984> > accessed 21 September 2022

⁹⁵ Donald E Nuechterlein, 'National interests and foreign policy: A conceptual framework for analysis and decision-making' (1976) 2 *British Journal of International Studies* 246 < <https://www.cambridge.org/core/journals/review-of-international-studies/article/abs/national-interests-and-foreign-policy-a-conceptual-framework-for-analysis-and-decisionmaking/3A15B2B5436B3B05FA015026A99CF886> > accessed 8 August 2022

⁹⁶ Gregory Shaffer, 'New Legal Realism and International Law' in Heinz Klug and Sally Engle Merry (eds), *The New Legal Realism: Studying Law Globally* (Cambridge University Press 2016)

⁹⁷ Ministry of Commerce (Office of the Permanent Secretary), 'Top 15 export products of Thailand by country: China' (2022) < <https://tradereport.moc.go.th/Report/Default.aspx?Report=MenucomTopNCountry&Option=1&Lang=Th&ImExType=1> > accessed 8 August 2022; Nattapong Suwannain, 'China and Its Attempts in Reorganizing World Economic Order: the New Silk Road and Thailand's Appropriate International Economic Policies in Response

weapons,⁹⁸ and the long-standing relationship of China and Thailand.⁹⁹ As a result of these factors, Thai political elites are unable to tolerate, but continue to comply with, China's offers, particularly those aimed at AD law enforcement that are distorted from the true legal standards.¹⁰⁰

This emphasis on relative rather than absolute power stems from a realist view of the international order. To secure their interests, enforce whatever agreements they may have made with other governments, or maintain a desirable domestic and international order,¹⁰¹ all states must rely on their own resources. As states are primarily concerned with relative power, that is, how much power a particular state has in relation to another, a country must politically and economically influence another country's mechanisms to achieve such power.¹⁰² This can be seen in the case of China trying to meddle with Thailand's AD law enforcement.

The ideal international relation is perceived as a key to cooperation between or among states; nevertheless, in reality, it is filled with conflicts and competitions.¹⁰³

Korab-Karpowicz regards nations as the primary actors in the international arena because they are concerned with their own security, operate in pursuit of their own national interests, and compete for power.¹⁰⁴ In certain ways, this endeavour is inextricably linked to the exploitation and influence of other states in economic, political, and legal terms in order to achieve national interests of governments seeking to expand their influence.

to the Rise of China' (2019) 9 *Journal of Politics, Administration and Law* 65 < <http://www.polsci-law.buu.ac.th/journal/document/9-1/2.pdf> > accessed 13 July 2022

⁹⁸ Oraphan Chantao, 'The Strategy of South Korean Government and the International Community on North Korea's Nuclear Weapons Development' (2018) 14 *Journal of Humanities and Social Sciences* 221 < <https://so03.tci-thaijo.org/index.php/eJHUSO/article/download/131676/98829/347318> > accessed 21 September 2022

⁹⁹ Jiranuwat Sawasateer and Tai Wan Ping, 'Look back and face 37 years of Thai-Chinese Relations : The Constructive Theory Perspective – From Friend to Enemy, From Enemy to Friend' (2013) 6 *Veridian E-Journal* 94

¹⁰⁰ Pongsiri Ta-In, 'Tax Avoidance against Anti-Dumping Tax in Steel Goods Market' (2019) 5 *Journal of Criminology and Forensic Science* 162

¹⁰¹ Stephen D Krasner, 'Realist Views of International Law' (2002) 96 *Proceedings of the 12th Annual Meeting (American Society of International Law)* 265

¹⁰² Stephen D Krasner, 'Realist Views of International Law' (2002) 96 *Proceedings of the 12th Annual Meeting (American Society of International Law)* 265

¹⁰³ Thasothorn Tootongkam, 'The International Social Factors from the Security Dimension and Immigrant Problems to the Determination of Thai Foreign Affairs in the decade 2020' (2021) 2 *Thai Research and Management Journal* 1 < <https://so05.tci-thaijo.org/index.php/TRDMJOPOISU/article/download/254242/171874/915709> > accessed 21 September 2022

¹⁰⁴ W Julian Korab-Karpowicz, "Political Realism in International Relations" in Edward N. Zalta (ed), *The Stanford Encyclopedia of Philosophy (Summer 2018 Edition)* (Metaphysics Research Lab, Stanford University 2018)

Obviously, national politics is the area of authority and the legal system. However, international politics has ambiguous authority and legal boundaries, resulting in current or prospective conflict among nations due to the desire to pursue certain authorities and interests of states. As previously stated, states are often unable to guard themselves against the powers of other states, putting them under pressure to change their policies. For example, Thailand has a bureaucratic system that is filled with abuse of discretion,¹⁰⁵ so when there is political and economic pressure from other states in Thailand, the Thai government is unable to enforce the existing AD law as a mechanism to safeguard domestic industries, which was previously Thailand's national key policy.¹⁰⁶

Power and stability are generally what states seek as it leads to their growth, including having greater bargaining power in relation to other states.¹⁰⁷ Thucydides highlights the restrictions imposed on politics by the egoistic nature of humans and the absence of international government in the context of international relations. Thus, these forces contribute to a conflict-based paradigm of international relations in which states are the dominant actors and power and security become the primary concerns. The realist ideas about state actors, egoism, anarchy, power, security, and morality are all present in Thucydides' notion.¹⁰⁸

Each state is accountable for its own survival and has the freedom to define and pursue its own interests and strength. As a result, power has become the dominant factor in influencing interstate relations.¹⁰⁹ "The independent states survive [only] when they are powerful," said the Athenian envoys at Melos.¹¹⁰

China has been accumulating power over the last two decades, and it continues to do so in order to remain a superpower.¹¹¹ As a result, China now has even more bargaining power than

¹⁰⁵ Boonyarat Choekbandanchai, 'The Exercise of Administrative Discretion: The Case Study Regarding the Implementation of National Council for Peace and Order, Order no.10/2016' (2017) 10(1) Naresuan University Law Journal

¹⁰⁶ Pisamai Thongpaitoon, 'Export promotion and development plan in Thailand 1992-1996' (Department of International Trade Promotion 1996) < http://www.ditp.go.th/contents_attach/78261/78261.pdf > accessed 9 August 2022

¹⁰⁷ Karuna Mathulapransan, 'The Factors and Conditions of Conflict in Thai Society' (2021) 12 Journal of Yanasangvorn Research Institute 20 < <https://so04.tci-thaijo.org/index.php/yri/article/download/252619/171448/901950> > accessed 21 September 2022

¹⁰⁸ Laurie M Johnson, *Thucydides, Hobbes, and the Interpretations of Realism* (Publisher Northern Illinois University Press 2020)

¹⁰⁹ Laurie M Johnson, 'Thucydidean realism: Between Athens and Melos' (1995) 5(2) Security Studies 169

¹¹⁰ W Julian Korab-Karpowicz, 'How International Relations Theorists Can Benefit by Reading Thucydides' (2006) 89 The Monist 232

¹¹¹ Prin Panitchapak, 'In the era where "China" plays a role in Thailand, what should be done not to fall under the shadow of the dragon's wings?' Thairath (Bangkok, 30 June 2021)

other countries, while the power of other countries is lowering.¹¹² Thailand, for example, has now fallen below the level where it has bargaining power against China. Due to Thailand's high loss in power, it must adjust to not be China's rival and must significantly favour China by not imposing duties on Chinese dumped products, even though the practice was illegal at the time.¹¹³

In terms of power relationship between states, what happens in reality is conflicting with the ideal one. The "Melian Dialogue," one of the most frequently discussed parts of Thucydides' History,¹¹⁴ presents the classic debate between idealist and realist views: Can international politics be based on a moral order derived from the principles of justice, or will it forever remain a battlefield of competing national interests and power?

Thucydides warns us to be aware of "naive-dreaming about world politics." To demonstrate the contrary, idealists have always attempted to address the question of "what should be" in the system.¹¹⁵ Nevertheless, the exploitation of high-powered states towards the countries with inferior bargaining powers has long existed, in which states with lower bargaining power cannot reject the superior ones'.¹¹⁶

In this aspect, Machiavelli (1469-1527) positions himself as a political pioneer in this regard. His approach is unique because of his way of thinking. His idea is an ideology that states that morality has no place in politics and that any means (moral or immoral) can be used to accomplish specific political goals.¹¹⁷ This represents the reality of a state in which policies and orientations are frequently imposed by politicians for some underlying reason but expressed for another.

The AD Committee, consisting of ministers and politicians, and Thailand's Ministry of Commerce pushed for the AD law to be amended by adding the AC law in 2019, with the stated objective of ensuring that domestic industries acknowledge that the Thai government has done

¹¹² *ibid*

¹¹³ Editorial, 'Thailand First' Thailand fights with China to support the use of domestic steel' Prachachat (Bangkok, 10 September 2019)

¹¹⁴ Felix Martin Wassermann, 'The Melian Dialogue' (1947) 78 Transactions and Proceedings of the American Philological Association 18

¹¹⁵ W Julian Korab-Karpowicz, "Political Realism in International Relations" in Edward N. Zalta (ed), *The Stanford Encyclopedia of Philosophy (Summer 2018 Edition)* (Metaphysics Research Lab, Stanford University 2018)

¹¹⁶ Chanwit Ruengchaithaweek and others, 'The Thai Tapioca Chip Trading Strategic Plan to China' (2018) 29 Chopayom Journal 27 < <https://so01.tci-thaijo.org/index.php/ejChophayom/article/view/126435/95546> > accessed 22 September 2022

¹¹⁷ Niccolo Machiavelli, *The Prince* (Penguin Classics 2003)

everything possible to safeguard domestic industries from dumping.¹¹⁸ Yet, the AC law was enacted to grant authorities complete discretion when investigating imported goods in the absence of strict legislations.¹¹⁹ These provisions are hidden tools to enable the AD committee, composed of ministers and political elites, to make arbitrary decisions on AD cases,¹²⁰ including judging AD cases to create such loopholes as legally allowing Chinese goods to be dumped in Thailand as they have previously been illegally.¹²¹

Meinecke also relied on Machiavellianism's idea that "the state has no higher responsibility than to maintain itself."¹²² States' actions to accomplish specific goals may necessitate economic, political, and legal connections between nations. However, due to the disparities in power among states, such participation may not benefit all stakeholders equally. In this regard, Heinrich von Treitschke, referencing Machiavelli, declared that international agreements were only obligatory inasmuch as they were advantageous and reasonable to the state.¹²³ Perhaps the most serious problem with international relations is that it has a tendency to devolve into its extreme form, which embraces any policy that benefits the state at the expense of other states, regardless of how ethically problematic the policy is.

The high-speed rail project that Thailand granted concessions to Chinese firms to construct and operate in the hope that this Chinese project would reduce unemployment rates by creating more jobs for Thais and that Thai steel suppliers' sales would increase by selling materials used in the construction of these high-speed railways.¹²⁴ Nonetheless, the aforementioned expected outcome turned out to be the opposite, in which not only were more Thais not employed in this project that they lost their working spots to Chinese workers hired for this project, which this is evident in the increasing unemployment rate of 100,000 people in 2017 when the rail project

¹¹⁸ Siribhusaya Ungphakorn, 'Circumvention of anti-dumping and countervailing measure: Criteria, investigation procedure and legal penalty' (2019) 48 *Thammasart Law Journal*

¹¹⁹ See Article 18,19,20,72 and 73 of the Anti-Dumping and Countervailing Act, B.E. 2562 (2019)

¹²⁰ See Article 71/1 to 71/18 of the Anti-Dumping and Countervailing Act, B.E. 2562 (2019)

¹²¹ Editorial, 'Warning for Chinese steel inventories of 100 million tons, discharged around the world' *Thansettakij* (Bangkok, 24 May 2020)

¹²² Friedrich Meinecke, *Machiavellism : the doctrine of raison d'état and its place in modern history* (Douglas Scott tr, Yale University Press 1962)

¹²³ Karl H Metz, "The Politics of Conflict: Heinrich Von Treitschke and The Idea of "Realpolitik", (1982) 3 *History of Political Thought* 269

¹²⁴ Hongpha Subboonrueng and Jintavat Sirirat, 'Thailand - China High - Speed Railway Project: Prospects for Northeastern Thailand Development' (2020) 17 *Journal of the Thai Kadi Research Institute* 50 < <https://so06.tci-thaijo.org/index.php/thaikhadijournal/article/download/246248/166620/861521> > accessed 26 September 2022

was firstly constructed,¹²⁵ but Thai steel suppliers were also facing a substantial loss in the chance of selling their products to this project, which was built in Thailand, their own home.¹²⁶

Even though Hobbes is primarily concerned with the relationship between individuals and the state, and his comments on inter-state relations are limited, Hobbes contributes to some of the core concepts. These include the definition of human nature as egoistic, as well as the belief that politics, which is rooted in power struggles, can be explained and examined scientifically. This reflects Hobbes' conviction in the study of reality in a specific context. One of the most well-known Hobbesian conceptions is that everyone, at any moment, driven by acquisitiveness and motivated to compete for scarce things, is likely to "invade" one another for gain.¹²⁷ As a result, the Hobbesian conception of state relations is centred on the pursuit and struggle for power. The same would later be said of Hans Morgenthau's paradigm of international relations.

Pursuit of power and invasion of territory or other people for gain are thus inextricably linked.¹²⁸ Furthermore, the ambition for power has moved beyond military force to diplomatic pressure, as well as pressure and power in the context of interstate trade.

China's attempts to occupy market space in Thailand, particularly the market share of steel products in order to address the product's oversupply issue in China, and its direct and indirect pressures on local authorities to intervene with Thailand's AD process, clearly represents the link between exploitation and influence in an international trade.¹²⁹

Hobbes does not deny that international law exists. Treaties can be signed between sovereign states to establish a legal foundation for their relations. At the same time, Hobbes appears to recognise that international regulations are frequently unsuccessful in limiting the fight for

¹²⁵ Kanklon Raktham, 'Higher unemployment rate most bachelor's graduates are unemployed in 2017' (The Momentum, 28 February 2017) < <https://themomentum.co/momentum-feature-unemployment-higher-rate-and-graduate-degree-unemployed/> > accessed 26 September 2022; National Statistical Office, 'Summary of survey in working conditions of the population January 2017' (2017) < <http://service.nso.go.th/nso/nsopublish/themes/files/lfs60/reportJan.pdf> > accessed 26 September 2022

¹²⁶ Editorial, 'Seven associations asking to join the Chinese Railways in lobbying for the use of Thai steel' Prachachat (Bangkok, 7 August 2017)

¹²⁷ Thomas Hobbes, *Leviathan* (Penguin Classics 2017); Gregory S Kavka, *Hobbesian Moral and Political Theory* (Princeton University Press 2021)

¹²⁸ Hans J Morgenthau, *Scientific man vs. power politics* (University of Chicago Press 1946); —, *Realism Reconsidered: The Legacy of Hans Morgenthau in International Relations* (Oxford University Press 2007)

¹²⁹ Pongsiri Ta-In, 'Tax Avoidance against Anti-Dumping Tax in Steel Goods Market' (2019) 5 *Journal of Criminology and Forensic Science* 162; Arm Tungnirun, 'When China buys Australian politics' () (Thaipublica, 26 July 2018) < <https://thaipublica.org/2018/07/arm-tungnirun19/> > accessed 22 September 2022

power. States will interpret them to their benefit, and as a result, agreements will be followed or ignored according on the interests of the states involved.

Certain privileged groups in society that influence state policy may be involved in some interpretations for the state's interests. According to E. H. Carr, privileged groups use the idea of the harmony of interests to justify and perpetuate their dominant position.¹³⁰ Carr employs the idea of relativity of thought, which he attributes to Marx and other modern theorists, to demonstrate that the criteria by which policies are judged are the result of circumstances and interests. Furthermore, policies are not founded on some universal rules that are irrespective of the interests of the parties concerned, as idealists would have it.

For example, the interpretation of Article 7 of the AD Act by the AD committee, a group of high-powered politicians with strong ties to the Thai Chamber of Commerce and significant influence over government policy-making, is quite obscure and not linked to the benefit of public interest.¹³¹ This legal discretionary authority wielded by political elites has resulted in dumped products not being subjected to AD duties, particularly with regard to the vast number of Chinese steel products.¹³² This happened as a mere reason for their own benefit, not the sake of public interest; for instance, the elites whose enterprises are tied to steel goods used as materials to their final products, would benefit from the low cost of this dumped steel product.¹³³ The grant of discretionary power allows the elites to discreetly obtain more profits, as demonstrated in the preceding scenario.

Dominant states or groups of nations presenting themselves as the international community as a whole impose international rules or regulations on other countries. They are created to maintain that nations' power. As a result, dominant powers have a vested interest in this. This dominance and extension of influence are factors affecting other states, which are the aims that result in specific advantages.

¹³⁰ E H Carr, *The Twenty Years' Crisis, 1919–1939: An Introduction to Study International Relations* (Palgrave 2001)

¹³¹ Vandee Suchatkulvit, 'A Legal Perspective on Thailand's Anti-Dumping Law ' (2019) *Journal of Intellectual Property Law and International Trade* 502

¹³² Parate Attavipach, Patamaporn Eiamchinda and Apisith John Sutham, 'The 10 Major Problems with the Anti-Dumping Instrument in Thailand' (2005) *Journal of World Trade* 159; Nawarat Jiuhua, 'The use of Anti-Circumvention in Thailand: a study of imported steel products from China under the 7216.33.00 HS Code' (Master's degree thesis, Chulalongkorn 2014)

¹³³ *ibid*

Hans Morgenthau highlights again that all state actors must be viewed merely as political entities seeking their respective interests defined in terms of power.¹³⁴ However, a state would then be able to pursue policies that respected the interests of other states while safeguarding and promoting its own.

Morgenthau also suggests that in order to avoid conflict, states should seek consensus based purely on the satisfaction of their mutual interests. The level of satisfaction, however, fluctuates according to the stake that each stakeholder in that state will experience.¹³⁵ As a result, a compromise for reaching satisfaction may be actual satisfaction on the one hand, but it may also be a circumstance from outside the state that exerts negative pressure on that state on the other.

It is ultimately geared toward the goal of national survival, but it also involves the economy. Effectively protecting citizens' lives from harm is more than just a powerful physical action; it also has prudential moral and economic components.

Power, the central idea of Morgenthau, is nevertheless unclear, as Raymond Aron and other scholars have noted. In politics, it can be both a means and an end. As a result, using merely references to power, security, or national interest to define state activity is inappropriate. International relations cannot be examined in isolation from its broader historical and cultural background.¹³⁶

For example, Thailand's response, which contains absolute discretion within AD law amendment and enforcement in order for Chinese dumped steel goods to be free from AD duties, is linked to the Thai bureaucratic legal culture of granting discretion to officials and politicians, as well as Thailand's previous status as a hierarchical county, highly influencing aristocrats, when back then it was not yet a democratic state.¹³⁷

Although Carr and Morgenthau focus mostly on international politics, their ideas can also be applied to domestic stakeholder relations. To put it another way, being a realist means seeing

¹³⁴ Hans Morgenthau, *Politics Among Nations: The Struggle for Peace and Power* (5th edn, Alfred 1978)

¹³⁵ Ramon Pacheco Pardo, *An Analysis of Hans J. Morgenthau's Politics Among Nations* (Macat Library 2017)

¹³⁶ Raymond Aron, *Peace and War: A Theory of International Relations* (Richard Howard and Annette Baker Fox trs, Doubleday 1966)

¹³⁷ Likhit Dhiravegin, 'The Power Elite in Thailand: A General Survey with a Focus on the Civil Bureaucrats' (1975) 3 *Southeast Asian Journal of Social Science* 1

an issue as a clash of interests and a struggle for power, and seeking peace by identifying shared interests and attempting to satisfy those stakeholders.

Kenneth N. Waltz redefined state relations in a new and distinctive approach in his 1979 book “Theory of International Politics”. He contends that nations in the international system, like enterprises in a domestic economy, have the same basic interest: survival. Internationally, the environment of states' actions, or the structure of their system, is determined by the fact that certain nations favour survival above other short-run purposes and behave with relative efficiency to accomplish that end.¹³⁸

Furthermore, he believes that each state is uncertain about the intentions of others and is concerned that the potential gains from cooperation may favour other states more than itself, leading to dependence on others. States do not willingly subject themselves to increased reliance. Furthermore, security considerations prioritise commercial benefit over political interest.¹³⁹

However, Robert Keohane demonstrates, using game theory, that governments can broaden their sense of their self-interest through economic cooperation and participation in international institutions.¹⁴⁰ States, like individuals, have legitimate interests that others can recognise and respect, as well as the general benefits of adopting a reciprocity principle in their reciprocal connections.¹⁴¹ As a result, states can link themselves to other states by treaties and embrace some shared values.

In the historical, political, and economic context, interest and power are elements that drive the pressure that one state imposes on other states. To reach a power or financial goal, the targeted state must withstand such pressures and manage how to respond to influences that come from outside of that state.

As stated previously on power and state, a state will inevitably be involved in interstate trade and international trade powers in the sense that the structure of international trade is determined

¹³⁸ Kenneth N Waltz, *Theory of International Politics* (Waveland Press Incorporated 2010)

¹³⁹ *ibid* 107.

¹⁴⁰ Robert O Keohane, ‘International Institutions: Two Approaches’ (1988) 32 *International Studies Quarterly* 379

¹⁴¹ Robert Jackson, Georg Sørensen and Jørgen Møller, *Introduction to International Relations: Theories and Approaches* (7th edn, Oxford University Press 2018)

by the interests and power of states acting to maximise their aggregate national income, social stability, political power, and economic growth.¹⁴²

The connection between these interests and the degree of openness to external pressure factors is determined by a state's economic power. The size and level of economic growth of a state determine its power. Furthermore, diverse international trading structures result from the various degrees of these variables. Because distribution of potential economic power is likely to result in an open trading system and states aim to maximise their aggregate economic utility, maximum global welfare is reached under free trade, according to neoclassical trade theory.

However, according to Robert Gilpin and Stephen Krasner, states that are far larger and more developed than their trading partners, the costs and advantages of openness are not symmetrical for all members of the system.¹⁴³ According to Stephen Krasner, the influential and large state will choose an open structure since it will boost its aggregate national revenue and power, as opposed to smaller states that do not have much influence and power on the global arena.

The desires of governments for power and security are clear. Furthermore, states attempt to maintain their dominant positions in the system, even at massive economic expense.¹⁴⁴ In the preceding context, economic expenditure is a negative aspect incurred by the state in order to achieve power and stability. On the other side, in some cases, states have attempted to use their power and influence as a tool for economic benefit.¹⁴⁵ Power, stability, and trade-related issues are thus three aspects that comprise both the origins and mutual effects of strength imbalances, particularly differences in bargaining power and pressure building at the stage of international trade.¹⁴⁶

¹⁴² Stephen D Krasner, 'State Power and the Structure of International Trade' (1976) 28 *World Politics* 317

¹⁴³ Robert G Gilpin, "The Richness of the Tradition of Political Realism" (1984) 38 *International Organization* 287; Stephen D Krasner, 'Regimes and the Limits of Realism: Regimes as Autonomous Variables' (1982) 36 *International Organization* 497 < <https://www.jstor.org/stable/2706531> > accessed 10 September 2022

¹⁴⁴ Shameer M, 'Power Maximisation And State Security' (2017) 21 *World Affairs: The Journal of International Issues* 10 < <https://www.jstor.org/stable/48531459> > accessed 10 September 2022

¹⁴⁵ Rattaphong Sonsuphap, 'Crony Capitalism in Thailand: A Comparative Study between Sarit –Thanom and Thaksin Regime' (2011) 17 *Chandrasekhar Rajabhat University Journal* 82 < <https://li01.tci-thaijo.org/index.php/crujournal/article/view/30235> > accessed 10 September 2022

¹⁴⁶ Nussaiba Ashraf, 'Revisiting international relations legacy on hegemony: The decline of American hegemony from comparative perspectives' (2020) *Review of Economics and Political Science* < <https://www.emerald.com/insight/content/doi/10.1108/REPS-05-2019-0061/full/pdf?title=revisiting-international-relations-legacy-on-hegemony-the-decline-of-american-hegemony-from-comparative-perspectives> > accessed 11 September 2022

We can see that the differences and imbalances in each state's economic power are reflected in global commerce. In this point, trade laws can be applied to address domestic distortions and promote new industries at this time.¹⁴⁷ Furthermore, states have a great degree of discretionary power to influence substantial economic variables and pricing in order to protect national industries.¹⁴⁸ When it comes to concerns of imbalances in international trade, the role of international institutions in governing the world economy is dependent on the powerful governments that are members of them, resulting in little independent impact.¹⁴⁹ This represents the intensity of the impact of state power on the institution's strength and imbalances.

The power imbalance and significant influence of some governments are strongly related with geopolitics, particularly the interaction between influential countries and less influential ones due to geographical characteristics.¹⁵⁰ Because of the aforementioned influence and strength, one of the major assumptions is the inevitability of superpower clashes. This clash determines humanity's political situations.¹⁵¹

Historically, disagreements could lead to war. However, clashes today are heavily associated with expanding economic influence, such as trade partnerships, transportation route cooperation, energy cooperation, port cooperation, and legislative cooperation, all of which help strengthen one state in order to use that strength against competing states. The cooperation sought by those states is intended to boost their capabilities and strengthen their own positions. On the other hand, those states may aim to undermine collaboration between other states and competing states in order to weaken rival states' capabilities.

Relationship building, relationship degradation, and the discontinuation of interstate relations are geopolitical mechanisms, particularly in relation to international trade, because

¹⁴⁷ *ibid*

¹⁴⁸ Stephen D Krasner, 'US Commercial and Monetary Policy: Unravelling the Paradox of External Strength and Internal Weakness' (1977) 31 *Between Power and Plenty: Foreign Economic Policies of Advanced Industrial States* 635 < <https://www.jstor.org/stable/2706317> > accessed 8 September 2022

¹⁴⁹ Benjamas Nillsuwan, 'From International Regime to Regime Complex: Direction and Dynamics of Studying International Cooperation' (2020) 16 *Journal of Social Sciences Naresuan University* 47 < <https://so04.tci-thaijo.org/index.php/jssnu/article/download/206538/164977/> > accessed 11 September 2022

¹⁵⁰ Thasothorn Tootongkam, 'Geopolitical Significance of the War Between Russia and Ukraine in 2020' (2022) 3 *Thai Research and Management Journal* 18 < <https://so05.tci-thaijo.org/index.php/TRDMJOPISU/article/download/259163/174342/960817> > accessed 11 September 2022

¹⁵¹ John Mearsheimer, *The Tragedy of Great Power Politics* (W. W. Norton & Company 2014)

collaboration is vital to increasing international trade influence and outperforming other governments.¹⁵²

In terms of an international relationship, the purposes for China pressuring Thailand to have a legal structure favouring and facilitating Chinese expansion through Thai law enforcement and amendment in general,¹⁵³ particularly AD legislation, are as follows: politically and economically influencing Thailand, increasing the ability of exporting Chinese goods to eliminate Thai competitors in their home country, and increasing bargaining power.¹⁵⁴

Geopolitics is the study of geopolitical impacts (both human and physical) on domestic and international politics and relations.¹⁵⁵ Geopolitics is a method of studying foreign policy that uses geographic characteristics to comprehend, explain, and forecast international political behaviour.¹⁵⁶ Climate, terrain, natural resources, population, and power are all factors.¹⁵⁷ The shift in 'Geography' has continued to effect 'Geopolitics' related to political power, security, protection of national interests, country development, and being considered as one of the variables in determining international relations and policies on a day when the climate, landscape, natural resources, people, and powers have altered in different ways.¹⁵⁸

For instance, steel, one of China's abundant natural resources, has been used in China's development, particularly in real estate construction, throughout the last two decades.¹⁵⁹ Meanwhile, when China's development reached its peak, Chinese demand for domestic steel

¹⁵² Chivit Sarapat, 'Influence of Border Trade Cultural Assimilation and Public Policy (Border Trade and Cultural Encouragement) Affecting the Pattern of Life on People in the Border Community' (2016) 6 *Journal of Development Administration Research* 12 < <https://so01.tci-thaijo.org/index.php/JDAR/article/download/243884/165289/> > accessed 11 September 2022

¹⁵³ Arm Tungnirun, 'Crisis or new opportunity? What will Thailand gain and lose from the One Belt One Road policy?' (The standard, 7 August 2017) < <https://thestandard.co/news-business-thailand-one-belt-one-road/> > accessed 12 July 2022

¹⁵⁴ Polwut Songsakul, 'Lessons learned on Thai high-speed trains: not open for bidding but specifically choose China Bargaining power is almost nonexistent' (The Standard, 24 February 2018) < <https://thestandard.co/high-speed-rail-thailand-china-2/> > accessed 22 September 2022

¹⁵⁵ Richard Devetak, Jim George and Sarah Percy, *An introduction to international relations* (3rd edn, Cambridge University Press 2017)

¹⁵⁶ Graham Evans and Jeffrey Newnham, *The Penguin dictionary of international relations* (Penguin Books 1998)

¹⁵⁷ *ibid*

¹⁵⁸ Natwikhom Phanthuwongphakdi, 'Security Challenges: The Geopolitical Implications of Climate Change' (SDG Insights, 4 December 2021) < <https://www.sdgmovement.com/2021/07/29/sdg-insights-climate-change-to-changes-in-geopolitics/> > accessed 8 August 2022

¹⁵⁹ Kanit Aasakul, 'Keep an eye on the problem of excess Chinese steel supply Continuing to pressure Thai steel prices in 2019' (SCBEIC, 28 January 2019) < https://www.scbeic.com/th/detail/file/product/5727/f8y7m6j1qx/EIC-Article_Steel-price_20190128.pdf > accessed 22 September 2022

declined. Since then, China's steel supply has been oversupplied, forcing China to adopt a steel export policy in order to maintain the stability of Chinese steelmakers.¹⁶⁰ This policy has been implemented to drive steel products to be sold in the global market, including Thailand, at prices lower than fair value, which is regarded as dumping.¹⁶¹

This shift could exacerbate economic and power struggle, resulting in social tensions, state conflict, geopolitical instability and the transition of international political power.¹⁶² States should begin to observe real-world changes and plan to deal with and determine how to interact with these changes in the future, both in terms of country development and the formation of international relations and security policies.

China's export of steel to a global market at a lower price than its fair value has caused conflicts with other countries such as Brazil, the United States, and the United Kingdom, as it has forced steel businesses in those countries to close due to locals being unable to compete with the steel's competitive price.¹⁶³ China, for example, has caused tension in Thailand since Thailand wants to maintain good relations with China.¹⁶⁴ Accordingly, Thailand's domestic industries have been suffering since Thailand does not properly implement current anti-dumping legislation and anti-circumvention.¹⁶⁵

The science of understanding how geography becomes a political representation or a political force is known as geopolitics.¹⁶⁶ The component of Geopolitics that is frequently discussed focuses on political power in a geographical area, particularly the land and sea in relation to the history of diplomacy.¹⁶⁷ Academically, geopolitics is used to examine history and social

¹⁶⁰ *ibid*

¹⁶¹ Editorial, 'Chinese steel destroys the world. Thai entrepreneurs are desperate to fight' *Thansettakij* (Bangkok, 18 February 2016)

¹⁶² Narjaya Tanjapatkul, 'World 2022 and Beyond: A 'new map' of global politics on a bipolar world order. 2022' (the101world, 19 January 2022) < <https://www.the101.world/world-order-and-geopolitics-2022/> > accessed 11 September 2022

¹⁶³ Editorial, 'Chinese steel destroys the world. Thai entrepreneurs are desperate to fight' *Thansettakij* (Bangkok, 18 February 2016)

¹⁶⁴ Editorial, 'Thailand First' Thailand fights with China to support the use of domestic steel' Prachachat (Bangkok, 10 September 2019) < <https://www.prachachat.net/economy/news-519103> > accessed 5 May 2020

¹⁶⁵ *ibid*

¹⁶⁶ Alexander Murphy, Mark Bassin and David Newman, 'Is there a politics to geopolitics?' (2004) 28 *Progress in Human Geography* 619 <

https://www.researchgate.net/publication/249871951_Is_there_a_politics_to_geopolitics > accessed 11 September 2022

¹⁶⁷ Hamidreza Malek Mohammadi, 'Techno-Geopolitics; a pro classical geopolitics challenging critical approach' (2015) 10 *Geopolitics Quarterly* 109 <

http://journal.iag.ir/article_55906_c52f249d0473f655073ff3462c4fdf87.pdf > accessed 11 September 2022

sciences through the lens of geography and political ties. It involves a number of diverse groups that may have a relationship based on shared interests.¹⁶⁸

According to Christopher Gogwilt, geopolitics is a notion that reflects the worldwide structure of such relationships.¹⁶⁹ Geopolitics can be defined as the advantages or disadvantages of one or more characteristics of a state. In the weakness of its own state, the state seeks to minimise that inferior and strengthen its superior. At the same time, the state must maintain or improve the strength of the state's own advantage.

The advantage and disadvantage stem from many areas of the world that are still constrained by geographical reasons. These countries may employ hard power, or physical power, such as military power and economic strength, to force countries to comply in order to overcome their geographical limits.¹⁷⁰ These countries also increase their influence through soft power by convincing and getting people involved without coercion, such as investment in Japanese infrastructure in many countries around the world,¹⁷¹ exporting South Korean culture through movies and music, and Official Development Assistance (ODA),¹⁷² particularly in the case of China's expansion into Central Asia, Southeast Asia, South Asia, and Africa through infrastructure development under the Belt and Road Initiative Project.¹⁷³

Geopolitics is also the study of geopolitical relations in order to determine the political importance of a region or position as hostile, friendly, or fearful that must be intercepted or occupied.¹⁷⁴ As a result, geopolitics is frequently employed to describe territorial issues in many circumstances, including those when it appears ineffective to expand the population or resource base.¹⁷⁵ For example, as China regards Thailand as one of its key allies, suppressing

¹⁶⁸ Peter Jay, 'Regionalism as Geopolitics' (1979) 58 *Foreign Affairs* 485

¹⁶⁹ Christopher GoGwilt, *The Fiction of Geopolitics: Afterimages of Culture, from Wilkie Collins to Alfred Hitchcock* (Stanford University Press 2000)

¹⁷⁰ Justin Gibbins, 'Power play: The United Arab Emirates' new approach to geopolitics' (2017) 9 *Journal of Middle Eastern politics and policy* 23 < https://www.researchgate.net/profile/Justin-Gibbins/publication/323534167_Power_play_The_United_Arab_Emirates_new_approach_to_geopolitics/links/5a9a122045851586a2aa0321/Power-play-The-United-Arab-Emirates-new-approach-to-geopolitics.pdf > accessed 11 September 2022

¹⁷¹ Nissim Kadosh Otmazgin, 'Geopolitics and Soft Power: Japan's Cultural Policy and Cultural Diplomacy in Asia' (2012) 19 *Asia-Pacific Review* 37

¹⁷² Iain Watson, 'Beyond Aid Effectiveness?: Private and Public Partnerships in South Korea's Official Development Assistance (ODA) Strategy as Soft Power Strength and Weakness' (2013) 14 *Asian International Studies Review* 91

¹⁷³ Julie T. Miao, 'Understanding the soft power of China's Belt and Road Initiative through a discourse analysis in Europe' (2021) 8 *Regional Studies Regional Science* 162

¹⁷⁴ Klaus Dodds, 'Cold war geopolitics' in John Agnew, Katharyne Mitchell and Gerard Toal (eds), *A companion to political geography* (Blackwell 2003)

¹⁷⁵ Brian Blouet, *Geopolitics and Globalization in the Twentieth Century* (Reaktion books 2001)

or occupying Thailand is unnecessary.¹⁷⁶ Nevertheless, since Thailand is located in the centre of Southeast Asia, with borders to many nations and ports facing India and Vietnam, China has taken this advantage to expand its influence over Thailand in terms of trade, politics, and law in order to reinforce China's superpower status even Thailand's resources are unessential and small-scaled.¹⁷⁷

Different geographic considerations in each location could act as a trigger for superpower collaboration.¹⁷⁸ On the other hand, it can lead to economic competitiveness and power, which has resulted in social tensions and conflict among governments, resulting in geopolitical instability.¹⁷⁹

A good illustration of this is the post-World War II state struggle for oil and gas amongst countries.¹⁸⁰ As indicated by A.T. Mahan's historical books on the Impact of Sea Power on History, there is also a disagreement about maritime power. This shows the continuous tensions in the struggle for resources. Furthermore, as resources become scarce, the struggle for resources gets more severe, perhaps leading to more intense conflicts.¹⁸¹

The world now is built on geopolitical competition, which is a practical reality and scientifically established, rather than political ideology competition.¹⁸² These are political movements that have an impact on global relations. Sea level and access to an ocean, gulf, or bay are examples of geographical growth through politics leading to geopolitical strength.¹⁸³ Rising sea levels have an impact on the stability of countries with Indian Ocean coastlines that

¹⁷⁶ Jiranuwat Sawasateer and Tai Wan Ping, 'Look back and face 37 years of Thai-Chinese Relations : The Constructive Theory Perspective – From Friend to Enemy, From Enemy to Friend' (2013) 6 Veridian E-Journal 94

¹⁷⁷ Teeraphat Chaipipat, 'Expansion of Transit Trade between Thailand and Southern China and the Upper Mekong River Basin Transportation Development under ASEAN Free Trade Area' (2013) 39 Journal of Social Sciences and Humanities 96 < <https://so04.tci-thaijo.org/index.php/socku/article/view/79936> > accessed 22 September 2022

¹⁷⁸ C Dale Walton, *Geopolitics and the great powers in the 21st century: multipolarity and the revolution in strategic perspective* (Routledge 2007)

¹⁷⁹ Saul Bernard Cohen, *Geopolitics of the world system* (Rowman & Littlefield 2003)

¹⁸⁰ Indra Overland, 'Future Petroleum Geopolitics: Consequences of Climate Policy and Unconventional Oil and Gas' in Jinyue Yan (ed), *Handbook of Clean Energy Systems*. (Norwegian Institute of International Affairs 2015)

¹⁸¹ A T Mahan, *The Influence of Sea Power Upon History: 1660–1783 : A history of naval warfare* (Dover Publications 2012)

¹⁸² Michael Klare, 'The new geopolitics' (2003) 55 Monthly Review 51 < <https://go.gale.com/ps/i.do?id=GALE%7CA105368630&sid=googleScholar&v=2.1&it=r&linkaccess=abs&issn=00270520&p=AONE&sw=w&userGroupName=anon%7Ee06681f8> > accessed 14 September 2022

¹⁸³ Christian Bouchard, 'Emergence of a New Geopolitical Era in the Indian Ocean: Characteristics, Issues and Limitations of the Indianoceanic Order' in Dennis Rumley and Sanjay Chaturvedi (eds), *Geopolitical Orientations, Regionalism and Security in the Indian Ocean* (Routledge 2015)

have a substantial population engaged in agricultural activities in the lowlands along the coast.¹⁸⁴ It is also a group of countries midway between India and China, providing China with an alternate path to the Indian Ocean without crossing via the South China Sea, which is a disputed area between China and numerous Southeast Asian countries.¹⁸⁵ Similarly, the issue of the Malacca Strait via Singapore, a key US ally, is highly crucial to the geopolitical implications of world marine trade.¹⁸⁶ This includes situations where China has offered economic or humanitarian assistance in exchange for access to Myanmar's Indian Ocean ports.¹⁸⁷

The pursuit of geopolitical strength and examination of competitors may be seen in Jakub Grygiel, who noted the United States' sudden shift in geographic focus to China and that emphasis on establishing geopolitical competition can lead to failure.¹⁸⁸ Similarly, Thomas Barnett believes that the United States should consider China as a potential ally rather than a potential competitor in the future world.¹⁸⁹ These highlight the importance of interstate political behaviour and relationship structure.

On interstate political conduct and the structure of relations, politics is first and foremost a matter of who is in charge in a world of inevitable factions and power struggles. To support or oppose one of the protesters' or politicians' agendas is to protect interests in one area of their region, such as natural resource benefits, people and powers.

For instance, Suriyasai Katsasila, one of Thailand's most notable protesters and politicians, was another major advocate for the OBOR project and China's influence in the nation. Katsasila was one of the most powerful figures in the Ministry of Commerce and among the AD committee during the 2019 AD legislative amendment.¹⁹⁰ The new AD version, which incorporates AC law, allows discretion to be used in anti-dumping cases. Katsasila backed this amendment in

¹⁸⁴ Natwikhom Phanthuwongphakdi, 'Security Challenges: The Geopolitical Implications of Climate Change' (SDG Insights, 4 December 2021) < <https://www.sdgmovement.com/2021/07/29/sdg-insights-climate-change-to-changes-in-geopolitics/> > accessed 8 August 2022

¹⁸⁵ *ibid*

¹⁸⁶ Joshua H Ho, 'The Security of Sea Lanes In Southeast Asia' (2006) 46 *Asian Survey* 558 < https://www.viet-studies.com/kinhte/SeaLanes_AsianSurvey.pdf > accessed 14 September 2022

¹⁸⁷ Isabelle Saint-Mézard, 'India's Act East policy: strategic implications for the Indian Ocean' (2016) 12 *Journal of the Indian Ocean Region* 177 < <https://www.tandfonline.com/doi/abs/10.1080/19480881.2016.1226753> > accessed 14 September 2022

¹⁸⁸ Jakub J Grygiel, *Great Powers and Geopolitical Change* (Johns Hopkins University Press 2011)

¹⁸⁹ Thomas P M Barnett, *Great Powers: America and the World After Bush* (Penguin Publishing Group 2009)

¹⁹⁰ Wuyao Zheng and Suriyasai Katsasila, 'Thailand's Response to One Belt One Road Policy' 7 (2021) *Journal of Rangsit Graduate Studies in the group Business and Social Sciences* 234 < <https://rsujournals.rsu.ac.th/index.php/jdbs/article/view/2126/1684> > accessed 26 September 2022

order to maintain the interests of its own Thai political peers having absolute discretion in the AD process and enforcement.¹⁹¹

The superpowers whose dominant positions have exercised influence across the globe are at odds with one another over power, politics, state interests, and intervention, which are considered as some of the aspects addressed in geopolitical issues. Not only are these conflicts occurring among superpowers, but they have also become inevitable tensions for medium-sized developing countries, such as China's influence over Thailand.¹⁹²

Being a superpower in some contexts implies having a very powerful critical movement, which is geopolitics. Furthermore, the inevitable collision of geographical entities in the search for power serves as the geopolitical setting for "realistic" political discussions.

Increased power is dependent on the inevitability of competition and regional allocation. It consists of conquered lands, population increase, and, as a result, rapid expansion of international reach.¹⁹³ Assumptions of competition, as well as the prioritising of political dominance and control, are critical.¹⁹⁴ Strategically, Spykman hypothesised, as did John O'Loughlin and Herman Van Der Wusten,¹⁹⁵ that global events directly influence national interests. States must recognise the interventionist stance, be willing to participate in international political life, and be prepared to defend their interests.¹⁹⁶

Due to bipolar rivalry for world powers, which are two competing players contending for influence and political areas that are all available, geopolitics played an increasingly crucial part in foreign policy from the Cold War onwards.¹⁹⁷ In regard to geopolitics among

¹⁹¹ Sakda Thanitcul and Kanaphon Chanhom, 'An Assessment of Overlapping Regulations and Administrative Agencies' Authority: Case Studies of the Response to External Factors' (2016) 34 Thammasat Economic Journal 20 < <https://so05.tci-thaijo.org/index.php/TER/article/download/137794/102485/365638> > accessed 22 September 2022

¹⁹² Narjaya Tanjapatkul, 'World 2022 and Beyond: A 'new map' of global politics on a bipolar world order. 2022' (the101world, 19 January 2022) < <https://www.the101.world/world-order-and-geopolitics-2022/> > accessed 11 September 2022

¹⁹³ Neil Smith, *American Empire: Roosevelt's Geographer and the Prelude to Globalization* (University of California Press 2004)

¹⁹⁴ Mike Davis, *Late Victorian Holocausts: El Niño Famines and the Making of the Third World* (Verso 2001)

¹⁹⁵ Herman Van Der Wusten, 'Violence, Development, and Political Order' in Colin Flint (ed.), *The Geography of War and Peace: From Death Camps to Diplomats* (Oxford Academic 2004); John O'loughlin, 'The Political Geography of Conflict: Civil Wars in the Hegemonic Shadow' in Colin Flint (ed.), *The Geography of War and Peace: From Death Camps to Diplomats* (Oxford Academic 2004)

¹⁹⁶ Nicholas J Spykman, *America's Strategy in World Politics* (Routledge 2007); Nicholas J Spykman, *The Geography of the Peace* (Harcourt Brace and Company 1944)

¹⁹⁷ Colin S Gray, *The Geopolitics of the Nuclear Era : Heartland, Rimlands, and the Technological Revolution* (Crane Russak and Company 1977); Colin S Gray, *The Geopolitics of Super Power* (The University Press of Kentucky 1988)

superpowers, attempts to obtain weapons systems, the development of technology capacities to monitor the operations of the opposing party, and the military's ability to threaten massive destruction through nuclear war are all clearly reflected. These attempts also include seeking to establish control of territory in order to own land that can be used for military bases as well as control of the economy and other resources required for a continual powerful state in international affairs.

Regarding geopolitical issues between a supower and inferior country, according to Van Evera, governments should not concentrate their geopolitical strategy on smaller states.¹⁹⁸ He contended that the security of larger governments was unrelated to the Third World. This is due to the fact that the industrial potential is insufficient to pose a substantial danger, and large states do not rely on the resources of distant smaller states. However, 911 is an example of a significant threat posed by states perceived to be economically and resource-impaired, and such geographical framings are critical to such "realist" reasoning. Another example is that Thailand's resources are unessential for China, yet China's attempt to acquire influence over this small-scaled country is due to China's desire to strengthen its supower and partially resolve the issue of trade wars with other countries by exporting goods to Thailand.¹⁹⁹ Thus, geostrategic issues come into play since it prioritises the extension of power in a specific area.²⁰⁰

Although it became a matter of technology rather than territory half a century ago, and capital is more important than rural real estate, the momentum for territorial expansion has not surprisingly decreased.²⁰¹ This is because, while humanity has become an urban and industrial race, the urge to control the supplies of important commodities from afar has not vanished.²⁰² Rather than acquiring lands as previously perceived as one country's strength, nowadays influencing power over other states have become a strategically stronger act.²⁰³

¹⁹⁸ Stephen Van Evera, 'Why Europe matters, why the third world doesn't: American grand strategy after the cold war' (1990) 13 *Journal of Strategic Studies* 1

¹⁹⁹ Ekaphon Rakkwamsuk and others, 'Keeping An Eye on Chinese Superpowers: Problems of Finding Strategic Balance Between Economy and Security' (2017) <
https://elibrary.trf.or.th/project_content.asp?PJID=RDG6110004 > accessed 22 September 2022

²⁰⁰ Charles Krauthammer, 'The Unipolar Moment' (1990/1991) 70 *Foreign Affairs* 23; Thomas P M Barnett, *The Pentagon's New Map: War and Peace in the Twenty-First Century* (Berkley 2005)

²⁰¹ Jonathan Nitzan and Shimshon Bichler, *Capital as Power : A Study of Order and Creorder* (Routledge 2009)

²⁰² Stuart Elden, *Terror and Territory: The Spatial Extent of Sovereignty* (University of Minnesota Press 2009)

²⁰³ *ibid*

Geopolitics is closely related to global power, including changes in that power and significant drama in the international arena. These were the result of intense geopolitical competition, and they resulted in a new world order. Jittiphat explained that academically, the world is still a single power system in 2020, with the United States dominating the world, particularly in the military dimension. In the economic dimension, there is a multipolar world in which many nations participate. It was plainly different from the Cold War era, when the world was divided into two powers.²⁰⁴

In the economic dimension, there is no apparent pole of power, prompting each state to strive for it. In an attempt to play a role in the economic dimension, China seeks more international recognition through financial support and the sending of a medical team to assist countries during the pandemic, which, if we assume that one of the elements of being a superpower is being an international supplier of public goods and services (international public goods), China is beginning to answer this question. This is because, from a geopolitical standpoint, any country that aims to be the world's main superpower must be internationally recognised. Meanwhile, when there is no clear power in the economic dimension, it makes some states in some regions of the world a marker that "prospective power pole" tries to establish an alliance with them in various dimensions to promote power and benefits to their state. Strong ties with the targeted state political elite are significantly related with alliance efforts,²⁰⁵ especially if a state is influenced and driven by governmental officials with discretionary powers in the absence of strictly set legislations, such as the context of Thailand's AD enforcement and amendment, that country would be full of loopholes, resulting in domestic industries' benefits being lost.

It can be said that power struggles in various fields today have more diverse dimensions. Furthermore, the effects and roles of each state change throughout time depending on the structure of their relationship. Changes that occur in real-world settings are what nations should begin to pursue and prepare to cope with and determine how to interact with these changes in the future, both in terms of country development and the formulation of international relations and security policies. Power and interests are significant milestones in the way geopolitics connects political issues with issues of state geography, including expanding and minimizing

²⁰⁴ Chittipat Poonkham, 'Taking the pulse of world geopolitics after COVID-19' (the101world, 1 April 2020) <<https://www.the101.world/world-geopolitics-after-coronavirus/>> accessed 8 August 2022

²⁰⁵ Likhit Dhiravegin, 'The Power Elite in Thailand: A General Survey with a Focus on the Civil Bureaucrats' (1975) 3 Southeast Asian Journal of Social Science 1

their strengths and limitations. State-specific factors shape that state's policy in a certain way,²⁰⁶ and that factor is communicated and changed into a feature that differs from what is written down in the law. This is due to the fact that it is a real condition that manifests itself in society and in the implementation of governmental policies. The incorporation of specific elements into policies enables such policies to be reflected in other states as external factors influencing the direction and pressures that other states face. This geopolitical issue reflects on the state's power, interests, and position, or the reality that occurs in the context of that society.

There is competition for influence among numerous countries in the global arena. There must be confrontations between cooperation or agreements with more than one state aimed at establishing strategic ties with another state. The role of states in the competition for power and interests should be rooted in the fact that they know what their state wants, particularly in the world trade competition between China and the United States, which is, in some ways, a bipolar world.²⁰⁷ This will be a great opportunity for developing countries to participate in the bargaining process for their own advantage. These countries must first understand what they want and what strengths and interesting propositions they have to offer in exchange for geopolitical reinforcement of their states.

It is true that some countries, such as Thailand, must strike a balance between the two superpowers and avoid taking extreme positions,²⁰⁸ but striking a balance can be accomplished in two ways. The first is to maintain a passive balance. For example, when China comes to negotiate with Thailand, Thailand is concerned that the US would not be satisfied. When it comes time for the US to negotiate with Thailand, Thailand would rather just stay still because Thailand does not want to get into a dispute with China. As a result, Thailand has not moved or progressed in any way. The second type of negotiation is to maintain a proactive balance, which means that when China comes to discuss, Thailand must have a clear stance on national interests and what Thailand wants. If they are unable to achieve an agreement, the United States will be another opportunity. When the US comes to discuss, Thailand has clear bargaining

²⁰⁶ Suphamit Pitipat, 'State Analysis in Foreign Policy Studies' (the101world, 14 April 2020) < <https://www.the101.world/state-analysis/> > accessed 27 September 2022

²⁰⁷ Sukjai Wongwaisirawat, Suprit Suwannik and Chonnitit Chaisingthong, 'US VS China: Two Superpowers, One Key Turning Point and what Thailand should do' (Bank of Thailand 2020) < https://www.bot.or.th/Thai/ResearchAndPublications/articles/Pages/Article_29Oct2020.aspx > accessed 27 September 2022

²⁰⁸ Wichuda Satitporn, 'Thai Security: Challenges for the Future' (King Prajadhipok's Institute 2016) < https://so06.tci-thaijo.org/index.php/kpi_journal/article/download/244154/165558/849100 > accessed 27 September 2022

power because if the discussions are not for a reasonable benefit, we also have China which seeks a deal with Thailand, so this is a negotiating game to reach an agreement that is in Thailand's best interests.²⁰⁹

When negotiating in the context of global geopolitics, it is critical to assess whether the state's power is high, medium, or low. Thailand and ASEAN are considered to be middle powers in the game of competition between the major powers during Thailand's membership in ASEAN, wherein ASEAN is currently very significant to the United States and China strategically. Thailand's degree of power currently differs from the past, when Thailand was a low-power country with a lenient foreign policy toward superpowers.²¹⁰ As a result, governments must aim to strengthen their involvement in geopolitics in order to create greater bargaining power with superpowers in diverse aspects while negotiating or seeking collaboration on various issues.

Thailand's acceptance of China's influence and power, both formally, as having Thai-China trade agreement leading to the undermining of its domestic industries,²¹¹ and informally, such as the application of broad discretion by the authorities in judging and amending AD related issues to support the dumping of Chinese products, has lowered the country's power.²¹²

In geopolitics, governments should examine not simply whether to accept or reject superpower propositions, but also a more open question: How does the state accept the offer? and what requirements must be met before accepting the offer? In a globally volatile geopolitical world, taking into account broader requirements and recommendations will increase states' immunity and proactive balancing powers.

²⁰⁹ Arm Tungnirun, Thailand in the Global Geopolitical Game: 3M Strategy (the101world, 8 October 2021) <<https://www.the101.world/thailand-geopolitical-strategy/>> accessed 8 August 2022

²¹⁰ *ibid*

²¹¹ Natcha Na Ranong, 'Expanding Chinese influence and policy implications on Thailand' (Office of the Science Promotion Commission research and innovation, 20 July 2020) <<https://researchcafe.org/china-watch/>> accessed 22 September 2022

²¹² Polwut Songsakul, 'Lessons learned on Thai high-speed trains: not open for bidding but specifically choose China Bargaining power is almost nonexistent' (The Standard, 24 February 2018) <<https://thestandard.co/high-speed-rail-thailand-china-2/>> accessed 22 September 2022

3.2 *Governmental legislation decisions and politico-economic considerations*

Political economy is composed of two words: 'economics' and 'politics'. This field of study investigates the link between two branches.²¹³ The first branch investigates how the economy influences politics. Another branch examines how politics influences the economy. Questions frequently discussed in the context of political economics include how a state's economic development plans affect the efficiency of democracy in that state, as well as why certain policies and regulations are enforced and to what extent politics directs them.²¹⁴

Economy differs from economics in that it has a practical meaning and its effectiveness is determined by power. Although that power is related to power from society, culture, history, and location, political power plays a key role.²¹⁵ As a result, Political Economy performs a comprehensive analytical role that connects the economy and other contexts through power.²¹⁶

The core principle of this field is that economics and politics are inextricably linked. This concept began during the Adam Smith era,²¹⁷ until Alfred Marshall later established the idea that politics was separated from economics and more science was included.²¹⁸ That was the beginning of economics in the nineteenth century.²¹⁹

The emphasis of economics on the element of science is on the individuals. This was done by removing social influences, institutional factors, ideological considerations, and even practically the entire power structure.²²⁰ However, it is obvious that in some communities and states, policy-making in countries has not succeeded according to Alfred Marshall's recommended economic principles based on science, causing some policies and laws to fail.²²¹

²¹³ Nalaumon Anusonphat and Teerapong Chaimungkla, 'An Analysis into the Political Economy of Thailand' (2021) 9 *Journal of Administrative and Management Innovation* 1 < <https://so02.tci-thaijo.org/index.php/RCIM/article/download/243359/168034> > accessed 12 September 2022

²¹⁴ Werayut Kanchuchat, 'Read the political economics' (the101world, 9 October 2017) < <https://www.the101.world/101-one-on-one-ep-04-veerayooth/> > accessed 8 August 2022

²¹⁵ Thani Chaiwat, 'Thai political economics in world political economics' (the101world, 17 July 2018) < <https://www.the101.world/thai-political-economy-thanee-interview/> > accessed 8 August 2022

²¹⁶ *ibid*

²¹⁷ Warren J Samuels, 'The Political Economy of Adam Smith' (1997) 87 *Ethics* 189 < <http://www.jstor.org/stable/2380208> > accessed 12 September 2022

²¹⁸ Alfred Marshall, *Principles of economics* (Nabu Press 2010)

²¹⁹ Dusadee Worathamdusadee, 'Review of The Great Transformation: The Political and Economic Origins of Our Time' (2017) 22 *Journal of the Association of Researchers* 267 < <https://so04.tci-thaijo.org/index.php/jar/article/download/242900/165035/839004> > accessed 12 September 2022

²²⁰ Werayut Kanchuchat, 'Read the political economics' (the101world, 9 October 2017) < <https://www.the101.world/101-one-on-one-ep-04-veerayooth/> > accessed 8 August 2022

²²¹ Matulee Yokee and Prapon Sahapattana, 'Policy successes and failure: Waterside housing development project' (2021) 15 *NRRU Community Research Journal* 13 < <https://so04.tci-thaijo.org/index.php/NRRU/article/download/247561/173197/932949> > accessed 12 September 2022

Although it has been successful in certain nations, it has failed in others, leaving people dissatisfied and pushing for a reconsideration of political economy.²²² This raises concerns about the likelihood of developing elements other than economics that focus on the individual. Since the 1990s, particularly following crises such as the Hamburger Crisis, the role of political economy has been increasingly obvious.²²³

On the other hand, some argue that economics has nothing to do with politics at all.²²⁴ However, attempting to separate politics from economics emphasizes the presence of politics in economics. This is because economics is frequently characterized as the allocation of resources, and the allocation of new resources has resulted in a significant shift in social 'power,' and power is a crucial component of politics.²²⁵

The AD legislation is applied to control imported products at a price lower than the fair value of the home country's from being dumped, which will undermine the domestic economy; for instance, if there is no AD law, domestic industries will lose customers since imported merchandise is less expensive for customers to purchase. Consequently, without the law, domestic industries tend to go bankrupt. The AD law has been remarkably efficient in China and the United States,²²⁶ since it regulates a substantial amount of dumping;²²⁷ nevertheless, while being the similar law with slightly different enforcement procedures, this regulation failed in Thailand. The continuous discretion issue, in which politicians interfere in the law, has caused AD law enforcement and amendments to not be suitable for Thailand.

The core of political economy is to examine the economy while taking three other elements into account. The first variable is power, which examines how power influences the economy.²²⁸ The second component is the institution, which may be studied through studying

²²² Stephan Haggard and Steven B Webb 'What Do We Know About The Political Economy Of Economic Policy Reform?' (1993) 8 *The World Bank Research Observer* 143 < <https://doi.org/10.1093/wbro/8.2.143> > accessed 12 September 2022

²²³ Paravee Maneejuk and Woraphon Yamaka, 'Business Cycle with Structural Changes in ASEAN-5' (2018) 22 *Chiang Mai University Journal of Economics* 49 < <https://tcj-thaijo.org/index.php/CMJE/issue/download/11420/Full%2022.2.1> > accessed 12 September 2022

²²⁴ Werayut Kanchuchat, 'Read the political economics' (the101world, 9 October 2017) < <https://www.the101.world/101-one-on-one-ep-04-veerayooth/> > accessed 8 August 2022

²²⁵ *ibid*

²²⁶ World Trade Organization, 'Anti-dumping Initiations by Reporting Member 01/01/1995 - 31/12/2020' (2020) < https://www.wto.org/english/tratop_e/adv_e/AD_InitiationsByRepMem.pdf > accessed 12 July 2022

²²⁷ Xiaohua Bao and Larry D Qiu, 'Is China's Antidumping More Retaliatory than that of the US?' (2011) 19 *Review of International Economics* 374

²²⁸ Somkiat Tangkitvanich and Kupt Phanhinkong, 'Political economy of the welfare system' (Annual Academic Seminar on 'Reducing Inequality and Creating Economic Opportunity' Bangkok, Thailand, 29 November 2010) < http://tdri.or.th/wp-content/uploads/2012/10/sec2.3_paper.pdf > accessed 12 July 2022

institutional management, such as how different countries' parliamentary systems affect them.²²⁹ The third element is ideology, which considers why some policies are frequently chosen even when they have previously been proven to fail.²³⁰ In other words, political economy considers social reality.

The core of political economy differs from the core of other economic disciplines. For example, whereas the Marxist school is concerned with class and focuses on problems or economic dynamics arising from the interaction of classes in society,²³¹ institutional economics will not consider class but will pay attention to rules of society.²³²

Political economy is not the only concept used to address broad issues concerning the formation of a democratic society or the establishment of a welfare state. Political economy, on the other hand, is used to examine more precise and specific elements in society, such as the role and structure of political parties, as well as the design of regulations that make it appear more appealing to attain various benefits.²³³

Political economy is a tool for finding answers to some of the problems that do not appear to be problematic through the lens of other theories because it takes a detailed and specific look at the variables of society. At the same time, political economy is a tool for solving problems that, when examined through the perspective of other theories, cannot be solved. As previously mentioned, political economy is concerned with the factors of power, institutions, and ideology.²³⁴ As a result, while considering why good laws and policies existing in one state cannot be applied equally successfully in other states, as well as being unable to take a template from abroad and develop it to be as good as in the model country, from the perspective of political oligarchs, this might be easily accomplished in this case. However, when the principles of political economy are considered, the result is that there are numerous difficulties. This impediment appears and can be described in conjunction with three elements of political economy. In terms of power, if a person with high political power in a society has a direct

²²⁹ *ibid*

²³⁰ *ibid*

²³¹ Ron J Johnston, 'Marxist political economy, the state and political geography' (1984) 8 *Progress in Human Geography* 473 < <https://journals.sagepub.com/doi/pdf/10.1177/030913258400800401> > accessed 12 September 2022

²³² Bernard Chavance, *Institutional Economics* (1st edn, Routledge 2008)

²³³ George J Stigler, 'The theory of economic regulation' in Thomas Ferguson and Joel Rogers (eds), *The Political Economy* (Routledge 2021)

²³⁴ Somkiat Tangkitvanich and Kupt Phanhinkong, 'Political economy of the welfare system' (Annual Academic Seminar on 'Reducing Inequality and Creating Economic Opportunity' Bangkok, Thailand, 29 November 2010) < http://tdri.or.th/wp-content/uploads/2012/10/sec2.3_paper.pdf > accessed 12 July 2022

interest in the implementation of that legislation, then there will be power friction, making it impossible to enforce the law effectively or even at all.²³⁵ In terms of institutions, the barriers will be existing domestic procedures and rules that do not assist the transition and establishment of new legal instruments.²³⁶ All of these have resulted in failures upon which to build. In ideological terms, states may be impossible to create a society that embraces new legal instruments if other ideologies in society are not ready or even contradict the preamble of new legal instruments, resulting in unsystematic in society and an inability to move up to a really effective legal state.²³⁷

AD legislation, for example, must be applied to prevent foreign imports from being dumped in domestic countries and to safeguard domestic industries from being unjustly pressured out of a market. Despite AD legislation prohibiting the previously mentioned merchandise, the law failed in Thailand since the AD committees who have the official authority to make legal decisions and judgements are frequently interfered by their own personal political motives and own benefits.²³⁸

Institutionally, the AD procedures and mechanisms that include a considerable measure of intervention authority, referred to as Discretionary Authority, have weakened the AD Act. To apply AD duties to particular items, politicians sometimes do not impose AD duties because the certain item is in the public interest, causing AD laws to fail, as evidenced in the execution of Article 7.²³⁹

Ideologically, the barrier of the new legal tools, AC law, to efficiently be practised in Thailand is discretionary authority that is always adhered to by governmental personnel who make legal decisions in the nation.²⁴⁰ This intervention is shown in Section 71/1 - 71/20 AD ACT 2019.

²³⁵ Mali Thippajong and Nibondh Tipsrinimit, 'On Power: Political Interests' (2019) 2 Journal of MCU Phetchaburi Review 17 < <https://so03.tci-thaijo.org/index.php/JPR/article/download/253241/169498/957669> > accessed 8 August 2022

²³⁶ Channarong Iamsamang, 'Problems of discretion in disclosing government information in state higher education institutions' (2017) 8 Academic Journal Phranakhon Rajabhat University 23 < <https://so01.tci-thaijo.org/index.php/AJPU/article/view/95614> > accessed 8 August 2022

²³⁷ Bryan S Turner, Nicholas Abercrombie, Stephen Hill, *The dominant ideology thesis* (Routledge 2014)

²³⁸ Dueanden Nikomborirak, 'Monopoly And Inequality in the Business Sector' (Thailand Development Research Institute (2013) 43 < https://tdri.or.th/wp-content/uploads/2013/05/A151_Chapter2.pdf > accessed 4 July 2022

²³⁹ Announcement of the Committee on Dumping and Subsidies on Melamine tableware from China [2019] Royal gazette Volume 136 Section 94D

²⁴⁰ Thani Chaiyawat and Nipon Poapongsakorn, 'Discretion' in Peerapong Techatattanon (ed), Corruption equation (Thailand Development Research Institute, 2017)

Given what this thesis presents, it is true that, through the eyes of a jurist, researching new legal models in many subjects in different nations and evaluating how they can be adapted to the Thai context is a way that can be employed to assess the dumping problem in Thailand. However, when political economy is considered, the question of whether these laws will be used in order to accomplish the intended objectives and how it will be processed arises. Political economy will be able to improve explanations for why some laws are passed late or quickly, as well as how the provisions are enforced. Also, what is the motivation, and have they changed or not changed throughout the enforcement? These considerations are comparable with the Thai context, which is the core aspect of this thesis in the sense that there is a law, AD Law, adopted herein, but the enforcement procedure and its effect are problematic.

The trap of new additional legislation is a specific example of this. In jurisprudence, it is suggested that Thailand will overcome economic problems such as dumping and related legal issues by elevating the law and enacting more laws because it is believed that if the law is elevated and more laws are enacted, oversight of some trade transactions will be more comprehensive.²⁴¹ Nevertheless, adding more laws are leading to problems and are considered a trap. In reality the existing laws should be enforced to reach their full potential.²⁴²

For example, in jurisprudence, the government has consistently encouraged investment in education and legal research on new laws from other countries for the sake of adding more or better laws in Thailand.²⁴³

In many circumstances, law enforcement effectiveness is not increasing as planned, and the legislation's objectives are not being accomplished. However, legal policymakers and a number of government agencies continue to believe that investing in research and enacting new legislation is the best path forward. Scholars have contributed a particularly vital role in building the concept that the addition of anti-circumvention measures was made with the goal of the Ministry of Commerce to use the new provision to plug gaps and loopholes that anti-

²⁴¹ Siribhusaya Ungphakorn, 'Circumvention of anti-dumping and countervailing measure: Criteria, investigation procedure and legal penalty' (2019) 48 *Thammasart Law Journal*

²⁴² Somkiat Tungkitwanich and Thani Chaiyawat, 'Looking back on the legislation to solve the discretion problem in Thai society' (Thailand Development Research Institute, 12 October 2017) < <https://tdri.or.th/2017/10/corruptionformular/> > accessed 6 July 2022

²⁴³ Taraporn Angkaew, 'Factors affecting the success of healing people affected by trade liberalization: Case study : FTA Fund, Ministry of Commerce' (2017) 12 *Research and Development Journal Valayalongkorn under the Royal Patronage of His Majesty the King Humanities and Social Sciences* 279 < <https://so06.tci-thaijo.org/index.php/vrurdihsjournal/article/view/85227> > accessed 15 September 2022

dumping law cannot address.²⁴⁴ For example, study concurs that adopting anti-circumvention legislation is important to eliminate the loophole while also boosting Thailand's steel industry, which is the primary industry subject to anti-dumping laws.²⁴⁵ However, this legislation is a total failure and cannot provide any satisfactory results. According to information from the Ministry of Commerce, since late 2019 to 2020, the year immediately following the addition of the anti-circumvention law, there have been eight successful cases; however, in comparison to 2017, the year before the amendment, there were also eight successful cases.²⁴⁶

According to Tungkitwanich and Chaiyawat, the only thing to be adjusted is Thailand's discretion abuse, a chronic legal culture issue of the country to enhance law effectiveness in general and in the AD system.²⁴⁷ For example, the newly added provisions in Sections 71/1 to 71/20 of the AD act give the committee and ministers the vague authority to impose ministerial regulations on matters crucial to AC law at their full discretion. These provisions are just as vague as the previous AD statute prior to amendment.

The most problematic part of the law is Section 71/17, which gives the committee discretion to cease the AC measure that prolongs the collection of AD duties without explicitly stating in the law under what conditions it may do so. The efficiency of that legal system (AD system) will improve by reducing the number of discretion abuse, as will the level of protection provided to stakeholders.²⁴⁸

In a society that prioritizes its own networks, which is considered as a collectivism country (Collectivist cultures emphasise the needs and goals of the group as a whole over the needs and desires of each individual. In such cultures, relationships with other members of the group and the interconnectedness between people play a central role in each person's identity.),²⁴⁹ a

²⁴⁴ Siribhusaya Ungphakorn, 'Circumvention of anti-dumping and countervailing measure: Criteria, investigation procedure and legal penalty' (2019) 48 *Thammasart Law Journal*

²⁴⁵ Somboon Sangiambutr and Suporn Kitchompoo, 'Legal measures against dumping by Thai manufacturers Hot Rolled Steel Products: A Case Study' (Krirk University 2013)

²⁴⁶ Department of Foreign Trade, 'Products that Thailand has been imposed by AD measures (50 items)' (DFT 2021) <<https://www.thaitr.go.th/storage/file2/fUANvgP6yQdWJurgltN1QdOp2WascfOoAa6TaWDi.xls>> accessed 2 July 2022

²⁴⁷ Somkiat Tungkitwanich and Thani Chaiyawat, 'Looking back on the legislation to solve the discretion problem in Thai society' (Thailand Development Research Institute, 12 October 2017) <<https://tdri.or.th/2017/10/corruptionformular/>> accessed 6 July 2022

²⁴⁸ *ibid*

²⁴⁹ Wasita Boonsathorn, 'Understanding conflict management styles of Thais and Americans in multinational corporations in Thailand' (2007) 18 *International Journal of Conflict Management* 196 <<https://www.emerald.com/insight/content/doi/10.1108/10444060710825972/full/html>> accessed 14 September 2022

blurred legal ceiling or complex bureaucracy and politics to investigate is also considered as another Thailand's discretion issue. There are no clear details of what the public interests are,²⁵⁰ making it a blurred legal ceiling that high-ranked people can fully exercise their discretion without caring about the public interest or if the country will fully benefit from this. For more instances, as Thailand is a collectivism country that has a high rate of hierarchy and seniority,²⁵¹ when laws are decided and added by the high-ranked people in Thailand, it is the final decision, leading to the issue that there is a gap that high-ranked take this opportunity to use their discretion as it is a blurred legal ceiling. For example, Article 7 of AD law is evident clause which serves as a blank check for the Committee by allowing the Committee to terminate the investigation or refrain from imposing AD measures even when all legal criteria are met. The investigation in Melamine tableware case uncovered clear evidence of Chinese exporters engaging in dumping and the damage to domestic industries, meeting the criteria set forth in Articles 18 to 21. However, the Committee made the unjustifiable decision to terminate the investigation and AD duties by applying Article 7 of the AD Act.²⁵²

In Thailand when discretion is given, there is no positive coming from this but it merely creates loophole as the previously mentioned example. Therefore, reducing the certain Thai legal culture that is mainly discretion which links to the country being collectivism will fill gaps and weaknesses.²⁵³

a blurred legal ceiling or complex bureaucracy and politics to investigate do not result from a lack of legal research or the enforcement of new laws. However, the problem stems mostly from a failure to fine-tune the application of the law to the Thai environment and in accordance with Thai society's morality in order to fill gaps and weaknesses.

In other words, political economy will ask whether a state can develop into a state with high efficiency legislation given its social, political, and cultural background,²⁵⁴ which in this case

²⁵⁰ See Article 7 of the AD Act B.E. 2562 (2019)

²⁵¹ Kawpong Polyorat, 'High-Low Context Culture: Application for Marketing Communication' (2011) 10 *Khonkaen University Journal* 173; Jennifer D Chandler and John L Graham, 'Relationship—Oriented Cultures, Corruption, and International Marketing Success' (2010) 92 *Journal of Business Ethics* 251

²⁵² Announcement of the Committee on Dumping and Subsidies on Melamine tableware from China [2019] Royal gazette Volume 136 Section 94D

²⁵³ Adulyakhup Thongjean and Punchada Sirivunnabood, 'The principles of public prosecutor's discretion not prosecuting the non public interest criminal cases in Thailand' (2013) 16 *Thammasat Review* 1 < <https://sc01.tci-thaijo.org/index.php/tureview/article/view/40750> > accessed 15 September 2022

²⁵⁴ Nalaumon Anusonphat and Teerapong Chaimungkla, 'An Analysis into the Political Economy of Thailand' (2021) 9 *Journal of Administrative and Management Innovation* 1 < <https://so02.tci-thaijo.org/index.php/RCIM/article/download/243359/168034> > accessed 12 September 2022

of Thailand the cultural background is collectivist culture that links with the discretion problem acting as internal pressure that affects Thailand's AD law enforcement. Thailand must consider the second best policy, which is to adjust Thailand's discretion issue, in addition to the first best policy, which is to apply all the best laws as researched from all over the world.

Furthermore, political economy focuses on analysing legislative reasons and determining what essence the drafters and authority seek to conceal and incorporate in the text, as well as what essence they do not want to appear in the law. These difficulties are inextricably tied to the state's power, institutional mechanisms, and ideology, as well as the strengths and weaknesses of diverse social and political interest groups. These interest groups are crucial to inclusive growth, which enriches some while leaving others behind.

Thailand itself faced a clear reflection of the political economy in terms of motivation, power mechanisms, and institutional mechanisms during the 1997 Tom Yum Kung economic crisis.²⁵⁵ At the time, the World Bank introduced western institutional structures to developing countries such as Thailand in order to make development more sustainable.²⁵⁶ These challenges range from broad ones like company governance to more particular regulatory rules like stock market management.²⁵⁷ These processes indicate Thailand's high level of crony capitalism.²⁵⁸ To explain, the state and private sector are too close, resulting in the execution of policies and legislation that favour specific groups.²⁵⁹

However, these mechanisms did not perform well in the Thai context, as noted from the enforcement, legislative, and political power angles that covered state institutions.²⁶⁰ As a

²⁵⁵ Chakri Chaipinit, 'A Critique on Rationale Choice Theory: Limitations on Explanations of Social Phenomenon' (2016) *Burapha Journal of Political Economy* 4 51 <
<http://arcbs.bsru.ac.th/journal/File66909.pdf> > accessed 12 September 2022

²⁵⁶ John Walsh, 'Thailand's inadequate response to the 2008 Economic Crisis: Implications for Vietnam and other countries entering the East Asian economic model' (2010) 26 *VNU Journal of Science, Economics and Business* 37

²⁵⁷ John Fagan, 'The Role of Securities Regulation in the Development of the Thai Stock Market' (2002) 16 *Columbia Journal of Asian Law* 303 <
<https://heinonline.org/HOL/LandingPage?handle=hein.journals/colas16&div=12&id=&page=> > accessed 12 September 2022

²⁵⁸ Byung-Kook Kim and Hyug-Baeg Im, 'Crony Capitalism in South Korea, Thailand and Taiwan: Myth and Reality' (2001) 1 *Journal of East Asian Studies* 5

²⁵⁹ Masami Imai, 'Mixing Family Business with Politics in Thailand' (2006) 20 *Asian Economic Journal* 241 <
<https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1467-8381.2006.00234.x> > accessed 12 September 2022

²⁶⁰ Siripong Chaiamnaysilp, 'Legal problems concerning unfair securities trading practice : A study of insider trading' (Master degree thesis, National Institute of Development Administration 2014) <
<https://repository.nida.ac.th/handle/662723737/3391#> > accessed 13 September 2022

result, we can observe that the three main parts of political economy are used as a suitable lens to examine Thailand's mixed legal and social difficulties.

The World Trade Organization (WTO) established AD legislation as a tool to strengthen a country's economy, notably to protect local businesses from the effect of dumping. Nevertheless, AD legislation is less efficiently administered in Thailand since there is substantial discretion in the enforcement of existing AD law and the recently revised AC law. Thailand's AD mechanism has also been largely affected by the inevitable influence of China's expansion, as China is Thailand's primary source of revenue in the export market.²⁶¹

This caused economists to see that reality does not have a single plane but rather a context, an approach that other disciplines such as sociology, anthropology, and political science have taken for a long time.²⁶² Anthropologists will not assert that man is an economic animal with rationality since they know that what humans consider to be reasonable can always alter depending on the context.²⁶³

Thailand, for example, has a legal culture in which absolute power corrupts absolutely; for more instances, officials employ their own point of view toward rationality in assessing cases. There is no rigorous framework of what criteria must be used in order to be considered rational, such as the use of Article 7 of the AD Act, which immediately terminates all investigations, as evidenced in the 2019 case which the Committee determined that Melamine tableware was not in the public interest,²⁶⁴ despite the merchandise meeting all other legal criteria to impose AD duties. This shows the intervention of authority, "discretion," inside a case involving the governmental personnel's rationality. In general, the rationality required to make AD decisions in Thailand depends on the context of internationally and domestically political influence and personal interest motives involved in cases.

²⁶¹ Nattapong Suwannain, 'China and Its Attempts in Reorganizing World Economic Order: the New Silk Road and Thailand's Appropriate International Economic Policies in Response to the Rise of China' (2019) 9 *Journal of Politics, Administration and Law* 65 < <http://www.polsci-law.buu.ac.th/journal/document/9-1/2.pdf> > accessed 13 July 2022

²⁶² Torn Phitidol, 'Political Economy and Economics Development' (the101 world, 20 June 2019) < <https://www.the101.world/econ-never-dies-thorn-pitidol/> > accessed 8 August 2022

²⁶³ *ibid*

²⁶⁴ Announcement of the Committee on Dumping and Subsidies on Melamine tableware from China [2019] Royal gazette Volume 136 Section 94D

Political economy is becoming more interested in a variety of analytical tools, such as those used to address inequality.²⁶⁵ We used to merely look at the Gini coefficient, but now the study of inequality is told through individual groups.²⁶⁶ More importantly, the story of inequality through the top 1% makes the content incredibly political and opens up new and interesting concerns.²⁶⁷ We can also examine how close they are to the political system and how much influence they have over policy decisions. In other words, it calls into question the political structure that underpins inequality.²⁶⁸

Thailand, for example, frequently alters any legislative mechanism that facilitates China's exports in order to strengthen the diplomatic ties, considered as discretionary authority, even if it weakens its own domestic industries. This is proven by a steel industry that suffered a substantial loss as a result of China's steel dumping. The AC legislation was supposed to act as a tool to lower the amount of imported steels from China; nonetheless, once the AC law was implemented, the number of Chinese steels imported into Thailand tripled,²⁶⁹ leading a myriad of local steel entrepreneurs to go bankrupt.²⁷⁰

In the Thai context, the aforementioned issue is once again covered by the political structure.²⁷¹ Economists with technical knowledge can rise to positions of authority in the policy-making process.²⁷² Politics is sometimes used as a technique to respond to policy formation.²⁷³

The influx of products due to the ineffective AD legislation is positively considered to enhance the overall economy of the nation by leaps and bounds due to the raw material costs decreasing,

²⁶⁵ Nalaumon Anusonphat and Teerapong Chaimungkla, 'An Analysis into the Political Economy of Thailand' (2021) 9 *Journal of Administrative and Management Innovation* 1 < <https://so02.tci-thaijo.org/index.php/RCIM/article/download/243359/168034> > accessed 8 August 2022

²⁶⁶ Nattawut Usavagovitwong, Kwanporn Bunnag and Napas Vatanopas, 'Urban Inequality in Mega-Urban Region: The Synoptic Review from Thai's Context' (2018) 17 *Built Environment Inquiry Journal (BEI)* 157 < <https://www.tci-thaijo.org/index.php/arch-kku/article/download/119308/127630> > accessed 8 August 2022

²⁶⁷ Werayut Kanchuchat, 'The five rivers of modern political economy' (*the101world*, 16 April 2018) < <https://www.the101.world/five-contemporary-political-economy/> > accessed 8 August 2022

²⁶⁸ *ibid*

²⁶⁹ Iron and Steel Intelligence Unit, *Thailand Steel Outlook* (2020) < <https://iiu.isit.or.th/en/reports/Monthly%20Thailand%20Iron%20Summary.aspx> > accessed 23 November 2020

²⁷⁰ Editorial, 'Chinese steel destroys the world. Thai entrepreneurs are desperate to fight' *Thansettakij* (Bangkok, 18 February 2016)

²⁷¹ Khankit Siriphuntrap, 'The Relationship Between Economic Politics And Government' (2017) 2 *Journal of Modern Learning Development* 19 < <https://so06.tci-thaijo.org/index.php/jomld/article/download/240259/163709/823863> > accessed 8 September 2022

²⁷² Wannapa Wamanond, 'Public Policy Process in Thailand: Problems and Solutions' (2018) 19 *Kasem Bundit Journal* 197 < <https://so04.tci-thaijo.org/index.php/jkbu/article/download/86950/90151/303043> >

²⁷³ Rong Boonsuaykhuan, 'Politics of Policy' (2017) 8 *Journal of Yanasangvorn Research Institute* 197 < <https://so04.tci-thaijo.org/index.php/yri/article/download/188665/132257/553397> > accessed 8 September 2022

resulting in a rise in GDP. For instance, the finished commodities have made more profits as a result of their raw components getting cheaper.²⁷⁴

However, most economic development studies in developing nations have gone astray because they are all based on the premise that these countries will experience steady growth (whether they grow slowly or quickly).²⁷⁵ However, empirical data reveals that the majority of developing countries have all experienced times of rapid growth.²⁷⁶ The fundamental issue is volatility,²⁷⁷ which is determined by three key variables: political settlement, rent space, and deal space.²⁷⁸

Thus, the influx of dumping products through the practise of AD enforcement and the discretion of the oligarchs, as previously reasoned, is not a factor to the state's economic growth as the law enforcement which has a loophole of involving authority discretion has hampered the legislation's structure in general.²⁷⁹ Due to this influx of dumped goods, not only has the demand and supply structure towards the country's goods highly fluctuated but the negotiation power of the Thai government with China has also become weaker. For more instances, the weakened power will be resulted from Thailand heading in the direction of merely relying on commodities imported from China. Accordingly, Thais will solely be consuming Chinese products which the prices could be increased in any day depending on the Chinese entrepreneurs, leading to the higher rate of the Chinese monopoly power.

On the one hand, volatility is associated with a lack of responsive mechanisms, which is associated with the literature on institutional economics especially in the context of political trust. Having a mechanism that does not respond well to society, on the other hand, is linked to trust, which is one of institutional economics' focus areas.²⁸⁰ Furthermore, it is a social

²⁷⁴ Phatchamon Ngamlamyuang and Korbkiat Piyasirananda, 'Anti-dumping, Subsidies, and Safeguards : Which is the best measure for WTO members?' (2018) 36 Rompruek Journal Krirk University 56 < <https://so05.tci-thaijo.org/index.php/rompruekj/article/download/140800/104332/374049> > accessed 19 September 2022

²⁷⁵ Werayut Kanchuchat, 'The five rivers of modern political economy' (the101world, 16 April 2018) < <https://www.the101.world/five-contemporary-political-economy/> > accessed 8 August 2022

²⁷⁶ *ibid*

²⁷⁷ Lant Pritchett, Kunal Sen and Eric Werker, *Deals and Development: The Political Dynamics of Growth Episodes* (Oxford University Press 2017)

²⁷⁸ Jonathan Said and Khwima Singini, 'The political economy determinants of economic growth in Malawi (2014) ESID Working Paper No 40' < https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2519148 > accessed 8 August 2022

²⁷⁹ Somkiat Tungkitwanich and Thani Chaiyawat, 'Looking back on the legislation to solve the discretion problem in Thai society' (Thailand Development Research Institute, 12 October 2017) < <https://tdri.or.th/2017/10/corruptionformular/> > accessed 6 July 2022

²⁸⁰ Issakul Unhaket, 'Institutional Economics on Trust' (the101world, 23 June 2021) < <https://www.the101.world/trust-and-doctor-and-vaccine-covid19/> > accessed 8 August 2022

interaction that influences trading, which is a fundamental economic activity. Trust, according to institute economics, a sub-stream of economics, as well as political economy, reduces the cost of many economic activities, particularly monitoring and enforcement costs.²⁸¹

Although institutional economists have classified three levels of trust: interpersonal trust, which is the most fundamental, institutional trust, which is comparable to trust in the rules of society ensuring that all activities in society are fair, and political trust, which is the highest level,²⁸² however, institutional economists believe that in the broader picture of the state, the first two levels of trust may not always be sufficient and that political trust is required.²⁸³ This is because political trust drives institutional trust.²⁸⁴ To put it another way, political trust is trust in the process of making rules.²⁸⁵ If regulations are designed unfairly or with doubt, it is difficult to build trust.

For example, ministerial regulations, a secondary law offering procedural specifics of Thai AD litigation, are set by the Ministry of Commerce and the committee who are associated with a political sector.²⁸⁶ The approval of the National Legislative is not required in these ministerial regulations, which the necessity for eligibility checks has automatically been cut out of the process.²⁸⁷ This has given the oligarchs authority over all ministerial regulations that have been issued. Consequently, this corrupt power that corrupts absolutely in this case has weakened the public's trust towards the political system when it comes to filing AD lawsuits.²⁸⁸

Given that Thailand's AD law has a substantial amount of discretionary authority, the objectives, risks and costs that are anticipated to arise must be taken into consideration. It is increasingly crucial in developing countries with limited resources, such as Thailand, to know

²⁸¹ *ibid*

²⁸² Valeria Sodano, 'Trust, economic performance and the food system: can trust lead up to unwanted results' in J H Trienekens and S W F Omta (eds), *Paradoxes in Food Chains and Networks. Proceedings of the 5th International Conference on Chain and Network Management in Agribusiness and the Food industry* (Wageningen University 2002)

²⁸³ Issakul Unhaket, 'Institutional Economics on Trust' (the101world, 23 June 2021) < <https://www.the101.world/trust-and-doctor-and-vaccine-covid19/> > accessed 8 August 2022

²⁸⁴ Yida Zhai, 'Traditional Values and Political Trust in China' (2018) 53 *Journal of Asian and African Studies*. 350 < <https://journals.sagepub.com/doi/abs/10.1177/0021909616684860> > accessed 13 September 2022

²⁸⁵ Marcia Grimes, 'Procedural fairness and political trust' in Sonja Zmerli and Tom W G van der Meer (eds), *Handbook on political trust* (Edward Elgar Publishing 2017)

²⁸⁶ Apisith John Sutham and Chalermwut Nilratsirikul, 'Thailand - Trade remedies' (Weerawong, Chinnavat & Partners Ltd, 2020) < <http://www.weerawongcp.com/data/know/121.pdf> > accessed 5 May 2021

²⁸⁷ Amorn Chanthasomboon, 'Knowledge of Ministerial Regulation Drafting' (1981) < https://www.doe.go.th/prd/assets/upload/files/hrad_th/14b4cd7f099a3a819e6eb05516ae56bb.pdf > accessed 7 May 2020

²⁸⁸ Nawarat Jiuhua, 'The use of Anti-Circumvention in Thailand: a study of imported steel products from China under the 7216.33.00 HS Code' (Master's degree thesis, Chulalongkorn 2014)

which path they are taking, which enterprises and sectors will be Thailand's next protagonists. This is due to the fact that the country's strategy does not imply bringing good values together; rather, it entails establishing a social contract that prioritises goals while socialising risk by having the public have a shared perspective of what costs would be a trade-off.²⁸⁹

The notion that distinguishes Keynes' theories from other schools of thought can be summarised in a single sentence: "What is good for the individual may not be good for the entire economy."²⁹⁰ This is the heart of the Keynesian concept to be wary of because it appears to contradict Thai society's underlying assumptions, which often regard what is beneficial for the individual as implicitly good for the public, which may not always be true.²⁹¹

No matter how sharp the theory or how precisely the policy is formulated, the journey from policy to social results remains long.²⁹² As a result, political economy is interested in investigating practical issues. *Understanding the Policymaking Process in Developing Countries* is a book that questions policymakers and practitioners why end results frequently depart from early predictions.

The author offers a multi-level problem in the following order: (1) policy formation process (2) policy content (3) behaviour of government officials (4) stakeholder motivation (5) relationships between national and local authorities.²⁹³

Furthermore, he considers other factors such as political compatibility between regimes and policy thinking, as well as structural constraints such as bureaucracy and social conflict. All of which have an impact on the policy's success, both directly and indirectly.²⁹⁴

All of this is to explain why so many great policies have failed to advance the country, or why a goal so stunning on paper is always impossible to achieve in practice,²⁹⁵ such as, AD policy

²⁸⁹ Naphon Phumma and Werayut Kanchuchat, 'Things Keynes Reiterate and Keynes Forgotten Words' (the101world, 29 May 2020) < <https://www.the101.world/economy-keynes/> > accessed 8 August 2022

²⁹⁰ John Maynard Keynes, *The General Theory of Employment, Interest, and Money* (Palgrave Macmillan 2018) 64

²⁹¹ Richard C Koo, 'Why Won't the Japanese Economy Recover?' (2002) Australian Chief Executive: Official Journal of the Committee for Economic Development of Australia 12

²⁹² Werayut Kanchuchat, 'The five rivers of modern political economy' (the101world, 16 April 2018) < <https://www.the101.world/five-contemporary-political-economy/> > accessed 8 August 2022

²⁹³ William Ascher, *Understanding the Policymaking Process in Developing Countries* (Cambridge University Press 2017)

²⁹⁴ *ibid*

²⁹⁵ Werayut Kanchuchat, 'Read the political economics' (the101world, 9 October 2017) < <https://www.the101.world/101-one-on-one-ep-04-veerayooth/> > accessed 8 August 2022

against international price discrimination of foreign goods and AC legislation which was implemented particularly towards the dumped steel products in Thailand. This AC law's details were adopted from the European Union;²⁹⁶ yet it certainly is not suitable for Thailand due to the discretion. For instance, as the AC enforcement has to go through the AD procedures first,²⁹⁷ which comprise an absolute discretion of governmental personnels' own benefit sake associated with the private sector,²⁹⁸ the AC legislation has certain structural constraints of the political and bureaucratic systems. As a result, AC law is not effectively enforced, and dumped items are not subject to AD duties. Domestic political conditions and international political pressures, especially those of such influential countries as China and US, are the variables in Thailand's policy formation and implementation.²⁹⁹

The interpretation of threatening variables allows us to understand the larger picture and consider Thailand as a component of global capitalism and politics. To some extent, the nature of capitalism and the conditions of international politics have a large impact on the path that a country will choose to pursue.³⁰⁰ Internal politics, however, remains a significant factor in choosing the path since, even when each country is under intense pressure, each country sees a different "way out."³⁰¹

Therefore, politics is an important element of state decision-making towards law enforcement and amendment direction.³⁰² Political factors have strongly influenced such developing countries as Thailand more than developed countries.³⁰³

²⁹⁶ Council Regulation (EC) 2016/1036 on protection against dumped imports from countries not members of the European Community [2016]

²⁹⁷ Siribhusaya Ungphakorn, 'Circumvention of anti-dumping and countervailing measure: Criteria, investigation procedure and legal penalty' (2019) 48 *Thammasart Law Journal*

²⁹⁸ Anti-Dumping and Countervailing Act, B.E. 2562 (2019), s 71/1 to 71/18

²⁹⁹ Werayut Kanchuchat, 'Read the political economics' (the101world, 9 October 2017) < <https://www.the101.world/101-one-on-one-ep-04-veerayooth/> > accessed 8 August 2022

³⁰⁰ Werayut Kanchuchat, 'How Thailand got to this point: 4 types of interpretation' (the101world, 21 August 2017) < <https://www.the101.world/how-political-economy-explains-thai-econ-development/> > accessed 8 August 2022

³⁰¹ Ratchadakorn Aimampai, Tachanant Issaradet and Surapon Suyaprom, 'Political Behavior Development Model Of People That Affecting To The Decision In General Election' (2021) 22 *Sirindhorn Prismatic Journal* 193 < <https://so06.tci-thaijo.org/index.php/jsrc/article/download/248367/172063/930217> > accessed 13 September 2022

³⁰² Chanintorn Pensute, 'Thailand 4.0 Economics and Political Contexts' (2017) 8 *Journal of Political Science and Public Administration* 67 < <https://so05.tci-thaijo.org/index.php/polscicmujournal/article/download/91314/71730/225692> > accessed 13 September 2022

³⁰³ Saowanit Chulawong, 'The Critiques of Capitalism in Thai Literature' (2018) 4 *Journal of Humanities and Social Sciences* 9 < <https://so03.tci-thaijo.org/index.php/eJHUSO/article/download/131559/98724/346978> > accessed 10 September 2022

Political economy in developed countries is less important in some ways than in developing countries. This is because industrialised countries' social, legal, and political systems have evolved to the point where they are powerful enough till there is a functional democracy which leads us to clearly foresee the elements influencing policy decisions.³⁰⁴ Furthermore, the policy's mechanism of action is so simple that environmental and social conditions have little impact.³⁰⁵

However, this does not rule out the possibility of political economy playing a role. It simply shifts its focus to incorporate more different sorts of knowledge, such as behavioural analysis of interest groups, collaborating with people using robots or artificial intelligence, and capitalist lobbying procedures.³⁰⁶ These new directions can also be seen in developing-country sentiment.³⁰⁷

For instance, previously, while the AD law was in effect, there was a flood of imported raw materials from China, driving Thai steel industrialists to demand the AD law to be amended. Yet, the request was neglected once it was presented to the government. The entrepreneurs then approached the Federation of Thai Industries for cooperation in pressuring and lobbying the Ministry of Commerce to implement AC law.³⁰⁸ While the solution was being considered for the issue of AC legislation, there was a dispute of viewpoints between two groups of entrepreneurs: those who agreed and those who disagreed to manage the influx of Chinese merchandise. To elaborate, those who opposed did so due to the production costs,³⁰⁹ which could escalate as Chinese products, which are the materials for completely finished and semi-finished steel products, were subjected to AD duties. The core conflict of AD law enforcement and amendment can be regarded to be the issue of capital.

³⁰⁴ Thani Chaiwat, 'Thai political economics in world political economics' (the101world, 17 July 2018) < <https://www.the101.world/thai-political-economy-thanee-interview/> > accessed 8 August 2022

³⁰⁵ *ibid*

³⁰⁶ Chanintorn Pensute, 'Thailand 4.0 Economics and Political Contexts' (2017) 8 *Journal of Political Science and Public Administration* 67 < <https://so05.tci-thaijo.org/index.php/polscimujournal/article/download/91314/71730/225692> > accessed 13 September 2022; Rattaphong Sonsuphap, 'Crony Capitalism in Thailand: A Comparative Study between Sarit –Thanom and Thaksin Regime' (2011) 17 *Chandrakasem Rajabhat University Journal* 82 < <https://li01.tci-thaijo.org/index.php/crujournal/article/view/30235> > accessed 10 September 2022

³⁰⁷ Saowanit Chulawong, 'The Critiques of Capitalism in Thai Literature' (2018) 4 *Journal of Humanities and Social Sciences* 9 < <https://so03.tci-thaijo.org/index.php/eJHUSO/article/download/131559/98724/346978> > accessed 10 September 2022

³⁰⁸ Parate Attavipach, Patamaporn Eiamchinda and Apisith John Sutham, 'The 10 Major Problems with the Anti-Dumping Instrument in Thailand' (2005) *Journal of World Trade* 159

³⁰⁹ Tran Viet Dung, 'Anti-Dumping Policy from a Competition Perspective: An Artificial Shield for National Champions in Open Market What to Do About It?' (2006) *Asia Competition Law Bulletin* 57

Capital, which originated with Marx, is one word that represents political economy.³¹⁰ According to Marx, capital has a larger meaning than financial capital. It is the foundation of an economy that accumulates capital from the foundations of society, politics, history, and geography.³¹¹ As a result, when Marx speaks of class, he refers to the unequal ability to accumulate capital.³¹² People who acquire capital more quickly will utilise more capital to construct a social and political framework that will promote his own capital accumulation over time, resulting in capital reproduction.³¹³ On the one hand, it aims to preserve capitalist position.³¹⁴ Inequality in society, on the other hand, must be maintained.³¹⁵ As a result, the concept of capital remains at the heart of political economic knowledge. However, political economy later applied the concept of capital to explain more things, such as the capital that society has together is called culture, co-investment that creates community; fighting over capital accumulation creates competition; capital accumulation in a modern area creates a city; or even a conflict that comes from the nature of capital accumulation under an unfair structure.³¹⁶

Thailand, for example, has accumulated social capital through politics and history that underlines the connection between aristocrats and culture that grants them discretionary powers. As Thailand's traditional law enforcement and power structures had been lost during the Bowring Treaty and due to current foreign political influences,³¹⁷ particularly the Chinese government who were accumulating capital in Thailand, Thai authorities who have high discretion in the AD legal process use their power to accumulate capital for themselves, both

³¹⁰ Phichit Likitsomboon, 'Marx and capital systems that are just imaginary' (the101world, 12 February 2021) < <https://www.the101.world/re-reading-marxism-in-21-st-century/> > accessed 10 September 2022

³¹¹ Thani Chaiwat, 'Thai political economics in world political economics' (the101world, 17 July 2018) < <https://www.the101.world/thai-political-economy-thanee-interview/> > accessed 8 August 2022

³¹² Karl Marx, *Capital: volume I* (Penguin UK 2004)

³¹³ Sarayut Siraporn and Sutee Prasatset, 'Capital Accumulation of Family Business Groups and Conflicts in Industrial Development in the Eastern Region: A Case Study of TPI Public Company Limited' (2020) 11 *Journal of Politics, Administration and Law* 479 < <http://ojslib3.buu.in.th/index.php/law/article/view/6708> > accessed 13 September 2022

³¹⁴ Chonlada Nakyai, 'From Karl Marx to Bill Gates : The Impossibility of 'Creative' Capitalism' (2018) 40 *Literature journal Silpakorn University* 211 < <https://so04.tci-thaijo.org/index.php/jasu/article/download/187735/131838/548425> > accessed 13 September 2022

³¹⁵ *ibid*

³¹⁶ Thani Chaiwat, 'Thai political economics in world political economics' (the101world, 17 July 2018) < <https://www.the101.world/thai-political-economy-thanee-interview/> > accessed 8 August 2022

³¹⁷ B Jan Terwiel, "The Bowring Treaty: Imperialism and the Indigenous Perspective" (1991) < https://thesiamsociety.org/wp-content/uploads/1991/03/JSS_079_2f_Terwiel_BowringTreaty.pdf > accessed 7 July 2022

for their own benefits and crony capitalists.³¹⁸ As a result, the AD legislation is filled with abusers of discretion and is not transparent.

Mainstream or Orthodox Economics has increasingly used the term capital in recent years, encompassing financial capital, human capital, social capital, beauty capital, and health capital.³¹⁹ Capital requires accumulation, and capital accumulation promotes productivity.³²⁰ As a result, Marxism is incorporated into mainstream and secondary economics (Heterodox Economics), such as political economy.

The goal of capital management in political economy is to strike a balance between "Efficiency" and "Equality".³²¹ Thai society does not practise good capital management, according to the notion of capital. In Thai society, there are two types of people: those with a lot of capital and the ability to rapidly collect capital, such as huge business groups and politicians, and those with little capital and no capacity to accumulate capital, such as small enterprises.³²² As a result, social inequality is growing over time, and the first group seeks efficiency and growth to boost capital accumulation, whilst the latter would demand capital redistribution to provide them with more access to resources. These two groups' opposing viewpoints cause conflict in Thai society.

This is because the capital is accumulated under unjust structures. Accordingly, the unfair structures include an ambiguous AD law enforcement structure that doesn't prioritise the interests of the domestic industries but rather prioritise on preventing the conflicts that could

³¹⁸ Stithorn Thananithichot, 'Political family in Thai democracy' (2013) 11(2) King Prajadhipok's Institute Journal

³¹⁹ Tewodros Zerihun, 'Human capital and economic growth: causality and co-integration analysis' (PhD thesis Jimma University, 2014) < <https://opendocs.ids.ac.uk/opendocs/handle/20.500.12413/5442> > accessed 14 September 2022; WEN Hua, 'Being Good-Looking Is Capital': Cosmetic Surgery in China Today' (2009) 8 Asian Anthropology 89 < <https://www.tandfonline.com/doi/abs/10.1080/1683478X.2009.10552588?journalCode=raan20> > accessed 14 September 2022

³²⁰ Frederik Berend Blauwhof, 'Overcoming accumulation: Is a capitalist steady-state economy possible?' (2012) 84 Ecological Economics 254 < <https://www.sciencedirect.com/science/article/abs/pii/S0921800912001267> > accessed 8 August 2022

³²¹ Jonas Agell, 'Efficiency and Equality in the Labour Market' (2004) 50 CESifo Economic Studies 255 < <https://academic.oup.com/cesifo/article-abstract/50/2/255/277936> > accessed 14 September 2022

³²² Sarayut Siraporn and Sutee Prasatset, 'Capital Accumulation of Family Business Groups and Conflicts in Industrial Development in the Eastern Region: A Case Study of TPI Public Company Limited' (2020) 11 Journal of Politics, Administration and Law 479 < <http://ojslib3.buu.in.th/index.php/law/article/view/6708> > accessed 13 September 2022

occur with China,³²³ Thailand's key trading partner, as seen from the melamine tableware case.³²⁴

Political economy directly presents the problems of the state, particularly state capitalism, to call into question the state's economic and industrial development by focusing on the emergence of several important controversies, such as the debate about the problem of income distribution, the debate about ways to find a way out of capitalism's economic crisis, controversies about inequality and poverty, and debates about approaches to solving environmental problems.³²⁵ These arguments could be founded on disputes between individual interest groups within the state.³²⁶

Theories of political economy such as Marxism theory, Keynes theory, Institutional Economic Theory, and the study of economic historical dimensions all contribute to explaining economic, social, political, and cultural phenomena in a given state context. This also resulted in answers to concerns about the course of government economic policies or even legal policy.

Political-economic analysis, which leads to the understanding of a specific problem in society, can be done in four dimensions: totality, historical, dialectic, and critical.³²⁷ These tools were created in order to provide a complete analytical process for explaining the underlying causes of problems and crises. A true understanding of the core causes of problems and crises will lead to solutions, mitigation of the situation's negative impacts, and good preparation to deal with problems that may develop successfully, rather than hypothesising the problem in the incorrect direction.

For example, the problem of anti-dumping commodities in Thailand is likely to remain and worsen, particularly with regard to Chinese steel imports.

³²³ Arm Tungnirun, Thailand in the Global Geopolitical Game: 3M Strategy (the101world, 8 October 2021) <<https://www.the101.world/thailand-geopolitical-strategy/>> accessed 8 August 2022

³²⁴ Announcement of the Committee on Dumping and Subsidies on Melamine tableware from China [2019] Royal gazette Volume 136 Section 94D

³²⁵ Nutprapha Moksart, 'Political economics analysis' *Prachathai* (Bangkok, 26 November 2018)

³²⁶ Kamonrat Pramotephan, 'Political Economy on National Maritime Benefits of Thailand: A Case Study of Promoting Policies of Marine and Coastal Tourism in Thailand During 2003-2018' (2020) 15 Proceedings of The 15th RSU National Graduate Research Conference 2170 <<https://rsujournals.rsu.ac.th/index.php/rgrc/article/view/1873>> accessed 14 September 2022

³²⁷ Brice Nixon, 'Dialectical Method and the Critical Political Economy of Culture' (2012) 10 Journal for a Global Sustainable Information Society 439 <<https://triple-c.at/index.php/tripleC/article/view/371>> accessed 14 September 2022

The Ministry of Commerce claimed that adding more provisions to AD legislation would solve the dumping matter.³²⁸ Nonetheless, evidence has revealed that since 2019, when AC legislation was first enacted in Thailand, the figure of steel dumping has not dropped, but rather increased by 300%.³²⁹

A detailed review of this prior case indicates that dumped products were not imported into Thailand due to the AD legislation's inability to handle all sorts of dumping, but rather to the practice of discretionary authority in AD cases. This has resulted in some products not being subject to AD duties in the first place. It is also found that the AC legislation includes the discretionary power that the AD law does, which, as a whole, is the source of the problem that has not been fixed and has remained a recurring problem despite the revisions of the AD law.

In addition to being developed to critique the dominant paradigm, Political-economic analysis serves as a defence mechanism against the expansion of imperialism by other disciplines that tend to dominate and occupy space while attempting to describe the world in just one way.³³⁰

For example, when there is a problem with anti-dumping law in Thailand, Thai legal specialists first consider the lack of legal provisions rather than cultural, political and legal elements, and individual motivation as determinants of the decisions made in the AD process.³³¹ This has caused government officials to conclude that the cause of the excess Chinese steel commodities is the absence of newly revised AD legislation. As a result, the underlying anti-dumping issues have never actually been resolved.

Furthermore, the analysis and connection of the four aspects of political economy will benefit in looking at the facts, conditions, problems, and consequences of the development process that leads to social inequality and produces a set of values that contradict reality. As a result of the methods used to show the system's shortcomings, political economy is a secondary science (heterodox economics) that, as previously said, focuses on criticism of mainstream science.³³²

³²⁸ Siribhusaya Ungphakorn, 'Circumvention of anti-dumping and countervailing measure: Criteria, investigation procedure and legal penalty' (2019) 48 *Thammasart Law Journal*

³²⁹ Iron and Steel Intelligence Unit, *Thailand Steel Outlook* (2020) <<https://iiu.isit.or.th/en/reports/Monthly%20Thailand%20Iron%20Summary.aspx>> accessed 23 November 2020

³³⁰ Nalaumon Anusonphat1 and Teerapong Chaimungkla, 'An Analysis into the Political Economy of Thailand' (2021) 9 *Journal of Administrative and Management Innovation* 1 <<https://so02.tci-thaijo.org/index.php/RCIM/article/download/243359/168034>> accessed 12 September 2022

³³¹ Duenden Nikhomborirak, Wirawan Paiboonjittaree and Natthanicha Lefilibert, 'Regulatory Impact Analysis' 2014 <https://tdri.or.th/2015/04/ria_final/> accessed 8 September 2022

³³² Roger E Backhouse, 'Progress in Heterodox Economics' (2000) 22 *Journal of the History of Economic Thought* 149 <<https://www.cambridge.org/core/journals/journal-of-the-history-of-economic->

Political economy has drawn attention to examine long-held beliefs and ideas, such as the use of discretion in Thailand's AD law enforcement, which involves both international and domestic interventions. Despite the obvious evidence as previously mentioned, the government officials still do not change their assumptions in solving the actual root of the dumping issue. This also includes the purpose of driving change in order to construct a system of a just society that achieves balance and covers more aspects.³³³

Political economy illustrates that holistic analysis and education in all dimensions contribute to understanding and leads to the effective development of critical thinking processes, which are the foundation of political economics studies in order to understand and change the world.³³⁴ Conversely, if evaluated from different theoretical perspectives, such as those of Maxists, Democrats, Adam Smith, and Keynes, the process of comprehending in greater depth may yield a wide range of interpretations and applications. The emphasis in Marxism is on highlighting contradictions,³³⁵ whereas in democracy, the emphasis is on cooperation.³³⁶ Additionally, individuals who believe in Adam Smith's viewpoint emphasize on the free market mechanism without intervention resulting from special interest groups, so-called "Laissez-faire",³³⁷ whilst Keynes' viewpoint focuses on state interventionism.³³⁸

According to Marxist theory, the terms "market" and "society" relate to the conflict between the capitalists and the working class.³³⁹ Marx claimed that the introduction of the market system resulted in the transition of social ties from dependent to exploitative relationships that benefited capitalists.³⁴⁰ Marx emphasised the role of the state in preserving and reinforcing the

thought/article/abs/progress-in-heterodox-economics/FEA567D88F2C6A102E01B8FE849FB953 > accessed 14 September 2022

³³³ Werayut Kanchuchat, 'Read the political economics' (the101world, 9 October 2017) <

<https://www.the101.world/101-one-on-one-ep-04-veerayooth/> > accessed 8 August 2022

³³⁴ Nutprapha Moksart, 'Political economics analysis' *Prachathai* (Bangkok, 26 November 2018)

³³⁵ Erik Olin Wright, 'Working-Class Power, Capitalist-Class Interests, and Class Compromise' (2000) 105 *American Journal of Sociology* 957 < <https://www.journals.uchicago.edu/doi/abs/10.1086/210397> > accessed 14 September 2022

³³⁶ John D Stephens, 'The Scandinavian Welfare States: Achievements, Crisis and Prospects' (1995) United Nations Research Institute for Social Development <

<https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.603.7583&rep=rep1&type=pdf> > accessed 14 September 2022

³³⁷ Mark Skousen, *The Big Three in Economics: Adam Smith, Karl Marx, and John Maynard Keynes: Adam Smith, Karl Marx, and John Maynard Keynes* (Routledge 2015)

³³⁸ *ibid*

³³⁹ Erik Olin Wright, 'Working-Class Power, Capitalist-Class Interests, and Class Compromise' (2000) 105 *American Journal of Sociology* 957 < <https://www.journals.uchicago.edu/doi/abs/10.1086/210397> > accessed 14 September 2022

³⁴⁰ Karl Marx, *Capital: volume III* (Penguin UK 1992) 114

relationship in order to prolong the process of capital accumulation and generate the class struggle.³⁴¹

In a democratic society, however, "market" and "society" can also refer to capitalist and worker cooperation as a result of class compromise.³⁴² The welfare state system of Scandinavian countries is an example of such a model, which believes that the economy should involve the state, capital, and labour in a tripartism to maintain a balance between capital accumulation and resource distribution, or focusing on the middle path rather than the highest efficiency.³⁴³ Furthermore, "market" and "society" may refer to the ideological conflict of economic ideology between Adam Smith's laissez faire and state intervention in the economy (interventionism) for the possibility of reducing liberalism's dominance, as also stated by Keynes.³⁴⁴ Thus, the use of the four aspects of political economic tools in the study helps in understanding the root cause of the problem, making the analysis thorough and sufficient for identifying options appropriate for each country's economic context, society, and politics.

Some countries believe that the major cause of today's problems is the capitalist crisis.³⁴⁵ This enables historical developments to produce "innovation" or economic management strategies that are compatible with local contexts, values, and cultures in order to deal with changes such as the Great Depression and challenges.³⁴⁶ The unemployment in postwar Europe, which allowed society to rule the economy (embedded liberalism) in many nations, created an environment in which the state prioritised full employment and security in order to solve the unemployment problem.³⁴⁷ As a result, the welfare state was the state's method for easing tensions at the time.³⁴⁸

³⁴¹ *ibid* 633.

³⁴² John D Stephens, 'The Scandinavian Welfare States: Achievements, Crisis and Prospects' (1995) United Nations Research Institute for Social Development <
<https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.603.7583&rep=rep1&type=pdf> > accessed 14 September 2022

³⁴³ Diane Sainsbury, 'The Scandinavian Model and Women's Interests: The Issues of Universalism and Corporatism' (1988) 11 *Scandinavian Political Studies* 337 <
<https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1467-9477.1988.tb00375.x> > accessed 14 September 2022

³⁴⁴ Sanford Ikeda, *Dynamics of the Mixed Economy toward a Theory of Interventionism* (Routledge 1996); Mark Skousen, *The Big Three in Economics: Adam Smith, Karl Marx, and John Maynard Keynes: Adam Smith, Karl Marx, and John Maynard Keynes* (Routledge 2015)

³⁴⁵ Nutprapha Moksart, 'Political economics analysis' *Prachathai* (Bangkok, 26 November 2018)

³⁴⁶ Margaret Weir and Theda Skocpol, 'State Structures and the Possibilities for "Keynesian" Responses to the Great Depression in Sweden, Britain, and the United States' in Peter B Evans, Dietrich Rueschemeyer and Theda Skocpol (eds), *Bringing the State Back In* (Cambridge University Press 2010)

³⁴⁷ Jude C Hays, *Globalization and the new politics of embedded liberalism* (Oxford University Press 2009)

³⁴⁸ Jude C Hays, Sean D Ehrlich and Clint Peinhardt, 'Government Spending and Public Support for Trade in the OECD: An Empirical Test of the Embedded Liberalism Thesis' (2005) 59 *International Organization* 473 <

The core of Thailand's issues with AD law are not related to the absence of legal provisions, but rather to the influence of Chinese political and economic factors, as well as the intervention of Thai government personnel, whose motivation was driven by potential benefits from China, to exercise absolute discretion over the AD process and amendment.

The presentation of political economy on the impact of capitalism from the Industrial Revolution to the present has led to the conclusion that economic development should be a comprehensive process that integrates all dimensions of knowledge, and that economic development is linked to social development, human resource development, and environmental development.³⁴⁹ The integration of knowledge across all dimensions has resulted in the development of important arguments to the structures and systems that are critical to understanding complicated situations. Creating innovative ideas is similar to developing a management system that seeks to integrate the theoretical world with the practical world in order to deal with future risks, uncertainty, and effects.

In conclusion, political economy leads to a multidimensional worldview that explains social phenomena, which cannot be defined separately but must incorporate all elements, including political, economic, social, and cultural dimensions. This approach of thinking is referred to as a holistic analytical process, and it is used to evaluate and challenge the presence of current problems as well as to cope with global change.

Political economy is a perspective that represents the relationship of power, interests, and political and economic pressures that originate both within and beyond the country in the framework of this research. This connection links to a legal policy developed by Thai authorities to achieve certain objectives that are difficult to define as a policy that best benefits Thailand. Evidence linked to the country's intense political, economic, financial, and investment elements is included in the way of thinking and rationale behind the amendment of the legislation and the execution of some AD law on some disputes.

<https://www.cambridge.org/core/journals/international-organization/article/abs/government-spending-and-public-support-for-trade-in-the-oecd-an-empirical-test-of-the-embedded-liberalism-thesis/2AE3B3E10AC52F47B451709E4B444392> > accessed 14 September 2022

³⁴⁹ Oskar Lange, *Political Economy: Volume 2* (Elsevier 2013)

4. *Competition law*

Competition law protects the internal market by preventing large corporations from undermining local entrepreneurs, putting small businesses, which make up the majority of the market, at risk. Competition law is frequently incorporated with anti-dumping law to help see a more complete picture, as in the context of Thailand, the two laws are mutually supportive. Anti-dumping, accordingly, which was revised over a similar length of time as the competition law's, has the obligation to safeguard the internal market against pressure from outside the country, which could result in market destruction.

4.1 *Relationship between competition law and anti-dumping law*

Competition law and anti-dumping law are frequently debated in terms of whether they complement each other or undermine the market system. According to numerous scholars, if any corporation or group of firms abuses its influence improperly over the market at an improper level, the government can apply a tool called antitrust or competition law to address these behaviors that violate the competition. When trade barriers are reduced, enterprises will face competition from outside, which will come in the form of imports, and it is at this point that anti-dumping laws will come into play.³⁵⁰ The legal authors, thus, concluded that anti-dumping and competition law complement one another.³⁵¹ Additionally, another study indicates that if no general rule of competition law is implemented, anti-dumping law becomes necessary. Previous researches have nearly entirely focused on how these two rules support and depend on each other and only a few works in literature demonstrate that these measures ruin the nature of market mechanism. This is supported by studies that anti-dumping laws stifle the market's natural competition and provides additional detail that competition law requires businessmen to compete fairly and reasonably for all market participants.³⁵² Accordingly, the natural competition in the market was severely harmed after the concept of anti-dumping was

³⁵⁰ Edwin Vermulst, 'Competition and anti-dumping: continued peaceful co-existence?' (1999); Ian Wooton and Maurizio Zanardi, 'Trade and competition policy: anti-dumping versus anti-trust' (University of Glasgow, 2002); Tran Viet Dung, 'Anti-Dumping Policy from a Competition Perspective: An Artificial Shield for National Champions in Open Market What to Do About It?' (2006) *Asia Competition Law Bulletin* 57

³⁵¹ Shupikile Mastara, 'Anti-dumping or protection: an analysis of competition issues in dumping investigations' (Master degree thesis, University of Cape Town 2016); Rishab Khare, 'Anti Dumping Law And Competition Law : A Case Of Intersecting Lines' (2019)

³⁵² Ingo Schmidt and Sabine Richard, 'Conflicts between antidumping and antitrust law in the EC' (1992) 27 *Intereconomics* 223; Competition Commission of India, 'Study on Antidumping and Competition Law' (2008) < http://164.100.58.95/sites/default/files/Antidumping_20090420151657.pdf > accessed 12 July 2022; Will Kenton, 'Anti-Dumping Duty' (Investopedia 6 October 2020) < <https://www.investopedia.com/terms/a/anti-dumping-duty.asp> >

introduced, as per the academics. Yet claiming that the establishment of anti-dumping concepts injured the market system is not always correct as its situation changes over time and market players' behavior changes. Still studies identify the disadvantages of anti-dumping legislation, including the fact that it does not resolve the issue of inappropriate market power usage, frequently creates twisted markets rather than resolving the issue, and is frequently monitored when used.³⁵³ Previous studies reveal that anti-dumping legislation is frequently the most damaging to the market mechanism when compared to competition legislation. By assessing whether they support or contradict another, and how to amend the legislation in the broadest sense to obtain the most effective conclusion is necessary. Even when these two laws are cited together in an article, they are frequently discussed in terms of whether they support or contradict one another and which one is superior. However, in the context of Thailand, where these two laws have been amended over a similar time period and under similar changing conditions, there has not been any detailed study of whether and to what extent the amendments to competition law are effective and which parts can be adapted to anti-dumping law. There is also no research on the failure of the first competition law amendment, and anti-dumping legislation amendments are expected to follow and have already done so in detail.

4.2 Monopoly

Competition law has been associated with monopolies that lead to corruption within a country. If a monopoly does not exist, the possibility of corruption decreases, and when the possibility of corruption decreases, the obstacle to law enforcement in general decreases. In the context of Thai legal culture and competition law, studies agree that monopolies are a source of growing corruption in Thailand, as profits from monopolies are desired by businessmen, politicians, and bureaucrats with the authority to grant or maintain monopoly protection in the country's market. As can be observed, many instances of corruption stem from the fact that authorities grant monopoly power to private entities through concessions to conduct business in a variety of sectors such as telecommunications, public transportation, and natural resources.³⁵⁴ These

³⁵³ Sutee Supanit, Weerawat Chantachot and Saowanee Assawaroj, 'The Master Plan Project of the Ministry of Commerce 1997-2006: Legal research under the Ministry of Commerce' (Thailand Development Research Institute 1999) < <https://tdri.or.th/wp-content/uploads/2012/11/A90.pdf> > accessed 12 July 2022; Ian Wooton and Maurizio Zanardi, 'Trade and competition policy: anti-dumping versus anti-trust' (University of Glasgow, 2002)

³⁵⁴ Nipon Poapongsakorn, Amarn Siamwalla and Somkiat Tangkitvanich, 'Economic reforms to reduce political conflict: an introduction and a brief study'(Thailand Development Research Institute, 1 April 2014) < https://tdri.or.th/wp-content/uploads/2013/05/A151_Chapter1.pdf > ; Duenden Nikomborirak, 'The Trade Competition Act 1999: Limitations and Reforms' (2011) 92 Thailand Development Research Institute Journal 4 < <https://tdri.or.th/wp-content/uploads/2012/09/wb92.pdf> > accessed 12 July 2022

studies provide consistent evidence that systemic abnormalities frequently occur in high-value businesses that serve as a channel for high-level bureaucrats. Dysfunctionality in the system, moreover, has somehow led the committee to judge the case in an arbitrary manner. According to another study, the primary issue with competition law enforcement in Thailand is the structure of the committee, which is susceptible to interference from politicians and special interest groups in cases involving alcoholic beverages and cable television during the government led by Chuan Leekpai's prime ministership.³⁵⁵ Although the cases mentioned in the studies are directly related to the issue of body concerning transparency, they cannot be applied to generalize other cases.

5. *Rules of Origin*

The rules of origin are key regulations to consider before applying the anti-dumping law, however they still have issues. The rules of origin are a minor component inside the anti-dumping law process that plays a significant role. According to a study, the scope of the agreement on rules of origin implementation is a significant issue for anti-dumping measures and is one of the barriers, despite the fact that rules of origin are a mechanism that is not limited to use with anti-dumping law.³⁵⁶ However, another study indicates that rules of origin are critical in determining the origin of a product for anti-dumping purposes, and another comparable study reveals that non-preferential origin impacts whether anti-dumping or anti-subsidy charges apply.³⁵⁷ Similarly, studies indicate that the design method and application of origin rules during anti-dumping investigations are becoming increasingly dependent on one another. While the relationship between two sets of regulations is often accounted for by systematic concerns, it is possible to analyze the anti-circumvention law as another aid in determining whether it can be consistently applied in that country's legal system as well.³⁵⁸

³⁵⁵ Duenden Nikomborirak and Suneeporn Thawankul, 'Monopoly on business and politics' (Academic Seminar on 'Towards a Decade After the Economic Crisis What have you learned and improved?' Chonburi, Thailand, 9 December 2006) < http://tdri.or.th/wp-content/uploads/2013/02/dd_final.pdf > accessed 12 July 2022

³⁵⁶ World Customs Organization, 'Rules of Origin - Handbook WCO' < <http://www.wcoomd.org/~media/wco/public/global/pdf/topics/origin/overview/origin-handbook/rules-of-origin-handbook.pdf> > accessed 5 May 2020

³⁵⁷ Maarja Saluste, 'Rules of Origin and the Anti-Dumping Agreement' (2017) 12 *Global Trade and Customs Journal* 54; McGuireWoods, 'What to do when duties have been imposed? How to Avoid Circumvention and Fraud to Customs Origin' (McGuireWoods 2014) < <https://www.mcguirewoods.com/news-resources/publications/EIAS-Circumvention-and-customs-fraud.pdf> > accessed 5 May 2020

³⁵⁸ Tomohiko Kobayashi, 'Can We Secure Consistency Between Rules of Origin and Measures to Prevent Circumvention of Anti-Dumping Measures Under the WTO Framework? —With Special Focus on the Recent Administrative and Judicial Trends in the U.S.' (2021) 16(5) *Public Policy Review* 1; Edwin Vermulst, 'EU anti-circumvention rules: do they beat the alternative?' (2015) 57 *Robert Schuman Centre for Advanced Studies Research Paper No RSCAS Paper No. RSCAS 2015/57* < <https://ssrn.com/abstract=2637796> or <http://dx.doi.org/10.2139/ssrn.2637796> > accessed 5 May 2020

This paper discusses the necessity for anti-circumvention legislation to aid in the application of the Rules of Origin which are currently lacking in the fact that anti-circumvention law must employ the Rules of Origin as a foundation to determine the origin before applying the anti-circumvention. It misses the point that anti-circumvention has a function in assisting anti-dumping law rather than assisting origin rules.

To see more specifically in the context of Thailand, however, in terms of effectiveness, researches indicate that the laws of origin used in Thailand are extremely extensive and complicated, dispersed throughout numerous areas of regulations, and extremely difficult to access by exporting entrepreneurs.³⁵⁹ Furthermore, Thailand currently lacks rules that explicitly and directly specify the regulations governing product origin; instead, it relies on secondary law. Additionally, organs with the authority to issue certificates of origin for products lack specific legislation that governs their use, particularly the Thai Chamber of Commerce and the Federation of Thai Industries, which issue certificates. This creates a problem of unlawful subrogation and corruption during the consideration process, and there are still no clear penalties. Thailand should have main legislation that clearly defines the rules of origin. A study supports this notion by citing a case of petroleum evasion from Malaysia to Thailand without paying customs and excise taxes, with officers being aware of the unlawful activity and receiving bribes. This has an effect on the bureaucracy and judicial system, as well as on tax collection.³⁶⁰ In terms of rules of origin, these studies have yet to adequately study the relationship between rules of origin and anti-circumvention legislation, specifically how rules of origin can assist in supporting all processes within the system and ultimately connect to anti-dumping law as a unified idea. It continues to avoid discussing duties officers and internal customs department rules that affect country of origin declarations.

In this case, it has brought the Australian origin system into comparison with the Thai system. A study recommends in this problem that Australia's product origin indicating system explicitly state the amount to which a component in a product is manufactured domestically in order to avoid confusion about the product's origin or nationality.³⁶¹ In part of the recommendation

³⁵⁹ Peeradon Dechma, 'Rules of Origin' (Master degree thesis, Thammasat university 2015)

³⁶⁰ Laddawan Chanthep, 'The problem of avoiding excise taxes and customs duties according to the law on fuel imports in the southern region of Thailand' (Dhurakij Pundit 2015) < https://grad.dpu.ac.th/upload/content/files/ปี%203%20ฉบับที่%203%20เมษายน%20-%20กรกฎาคม%202558/73-Jour_V3_No_3_ปัญหาการหลีกเลี่ยงการเสียภาษีสรรพสามิตและภาษีศุลกากร.pdf > accessed 12 July 2022

³⁶¹ Department of Industry and Science, New Australian food origin labeling system (2015) < http://www.ditp.go.th/contents_attach/131143/131143.pdf > accessed 12 July 2022

regarding the method used by Australia, it is missing an indication that the method is applicable to other products because it is used with ready-to-cook and ready-to-eat food packaged in packages with physical characteristics and trade patterns that are distinct from the products on which Thailand faces anti-dumping issues, which are primarily woven fabric, glass, and steel.

6. *Emerging countries*

6.1 *Emerging country's obstacle and response*

Emerging countries were severely hampered by powerful powers. Emerging countries were directly targeted by anti-dumping measures enacted by developed countries such as the US, preventing these countries from contributing a key role in global trade. Legal scholars shared the same viewpoint that even though China joined the WTO which aided its expanding opportunities for trade and exports, the country became the target of protectionism policies, particularly anti-dumping measures; for more instances, China has the highest number of anti-dumping measures initiated against them, pointed out by numerous studies, 1478 cases, which resulted in impeding China's exports, rendering product rejection and Chinese entrepreneurs losing revenue.³⁶² Anti-dumping measures could potentially be seen as a protectionism weapon against emerging economies; yet emerging countries have become a shield to safeguard their economies. The challenges in adjusting the country to overloaded anti-dumping cases are achievable. When examined closely, being heavily targeted by anti-dumping measures did not make it difficult for China to accomplish good structural anti-dumping law use. It is unveiled through legal analysts that China, a huge emerging country with a substantial economic footprint, was rapidly changing its role to become anti-dumping measures' a heavy user in the past decades.³⁶³ Thus, China has reduced the likelihood of being attacked by anti-dumping measures from foreign markets since then. Between 1995 and 2020, more than 1,200 anti-dumping cases were filed against other nations, especially the US, by emerging countries such as India and China.³⁶⁴ With more of China's response against the United States, Cai and Tungnirun trace the development of China's law reform process following the establishment

³⁶² Stefano Schiavo, Chiara Tomasi and Min Zhu, 'Anti-dumping activities against China: patterns and effects' (2020) 38 *Economia Politica* 7; World Trade Organization, 'Anti-dumping Initiations by Reporting Member 01/01/1995 - 31/12/2020' (2020) < https://www.wto.org/english/tratop_e/adp_e/AD_InitiationsByRepMem.pdf > accessed 12 July 2022

³⁶³ Patrick A Messerlin, 'China in the World Trade Organization: antidumping and safeguards' (2004) 18 *The World Bank Economic Review* 105; Xiaohua Bao and Larry D Qiu, 'Is China's Antidumping More Retaliatory than that of the US?' (2011) 19 *Review of International Economics* 374

³⁶⁴ World Trade Organization, 'Anti-dumping Initiations by Reporting Member 01/01/1995 - 31/12/2020' (2020) < https://www.wto.org/english/tratop_e/adp_e/AD_InitiationsByRepMem.pdf > accessed 12 July 2022

of the republic which focuses on the development of civil and commercial law in relation to Chinese organs.³⁶⁵ China has a role in the WTO and IMF, as well as plans to establish an Asian Infrastructure Investment Bank (AIIB) and dispute resolution hub arising from the One Belt One Road project, which has significant implications for developing regulations and law at the international level and distancing itself from the system created by the US through the WTO and IMF.

6.2 *The effect of China's adjustments towards Thailand*

Anti-dumping measures and adjustments by emerging countries have had an indirect impact on other countries. Legal studies have identified Thailand as one of the nations where China has dumped products in the Thai market, harming Thai sellers as a result of China's inability to export them to the United States during its protectionist policies.³⁶⁶ Likewise, the effects of the adjustment can be seen by scholars not just in dumped exports but also in trade expansionism policies. Emerging countries were restructuring their economic and legal systems from the effect of US protectionism measures; for example, China launched the OBOR project, which is the economic and legal development corresponding to Marxism that influenced Deng Xiaoping, one of China's leaders, to focus on economic change rather than sole law reform, as part of its system reform. Thus the OBOR project has strengthened the country's influential power to control other countries' supply chains and resolve international trade conflicts and legal issues. Legal experts noticed and asserted that the project has also had an influence on Thailand through government procurement and the influx of Chinese commodities into the domestic market, both of which have been detrimental to Thailand's economy.³⁶⁷ Prior studies on China's adaptive policies and their impacts were constrained, potentially due to a language barrier, which provided a very limited extent to investigate in-

³⁶⁵ Arm Tungnirun, Academic Symposium "China 5.0: Economy, Politics, Technology and Law in China in the New Era" (Faculty of Law Chulalongkorn University Conference, Bangkok, September 2018); Kevin G Cai, 'The one belt one road and the Asian infrastructure investment bank: Beijing's new strategy of geoeconomics and geopolitics' (2018) 27 *Journal of Contemporary China* 831

³⁶⁶ Bank of Thailand, Monetary Policy Report June 2019

< <https://www.bot.or.th/English/PressandSpeeches/Press/2019/Pages/n3762.aspx> > accessed 12 July 2022;

Krisana Vaisamruat and Rangsan Sukhampha, 'The US-China Trade War: Its Causes Competitions and Impacts' (2021) 34 *Parichart Journal Thaksin University* 233

³⁶⁷ Surapong Charoenwattanasuk, 'One Belt One Road (OBOR)' (2017) <

http://www.dsdw2016.dsdw.go.th/doc_pr/ndc_2560-2561/PDF/m8574/8574พล.ร.ต.สุรพงษ์ศรีเจริญวัฒน์.pdf >

accessed 12 July 2022; Arm Tungnirun, 'Crisis or new opportunity? What will Thailand gain and lose from the One Belt One Road policy?' (The standard, 7 August 2017) < <https://thestandard.co/news-business-thailand-one-belt-one-road/> > accessed 12 July 2022

depth effects on Thailand. This thesis paper, thus, will fill in the gaps to provide a more thorough picture of the situation.

6.3 Thailand is weaker in legal and economic systems than emerging countries

Because of other countries' legal strategic planning and their prominence in global trade, Thailand's economic and legal systems appear to be inferior in comparison to emerging countries'. Studies have indicated that Thailand's neighboring countries, such as China and India, which are emerging in terms of culture, direction, and law enforcement, have brought upstream sources of income through their free trade and developmental policies, which include anti-dumping as one of the crucial factors contributing to massive growth.³⁶⁸ Emerging countries, unlike Thailand, have made plans to establish solutions for their economies, as exemplified by their rapid responses to anti-dumping measures. Additionally, myriad academics concur that all of China's economic models necessitate legal reform in the form of enabling legislation.³⁶⁹ A clear and comprehensive legal framework, which Thailand lacks, is perhaps one of the most influential variables driving China's rise and evolution. The contrasts between the Chinese and Thai legal systems are well-established; a meta-analysis concluded that China's legal system differs from Thailand's on a significant scale. Among critical legal scholars who focused on demonstrating China's legal system, Tungnirun and Potter are the most explicit in drawing on the major aspect of the Chinese legal system as having a mindset toward using law as a policy tool.³⁷⁰ China's central government is supreme, but it delegates significant authority to county governments. Secondary law must not contradict primary law, however in China, it is not required to have primary law give the authority high flexibility. This is dexterity in enacting secondary legislation to facilitate policy testing and innovation through regulatory flexibility, which is not the case in Thailand, causing the country's response to be delayed as most power is assigned and responsible to the central government, indicated by legal studies. Previous studies' concentration on superior points of China's legal system cannot be

³⁶⁸ T P Bhat, Atulan Guha and Mahua Paul, 'India and China in WTO–Building Complementarities and Competitiveness in the External Trade Sector' (2006) < https://niti.gov.in/planningcommission.gov.in/docs/reports/sereport/ser/stdy_indch.pdf > accessed 12 July 2022

³⁶⁹ Ezra F Vogel, *Deng Xiaoping and the transformation of China* (Belknap Press of Harvard University Press 2011); Arm Tungnirun, 'Can the theory of law and development apply to China?' (PIER Economic Seminar, Bangkok, 16 January 2018)

³⁷⁰ Arm Tungnirun, 'Reform of Chinese law after the founding of the People's Republic of China' < <http://law.hcu.ac.th/upload/files/pdf/Law/การปฏิรูปกฎหมายภายหลังการก่อตั้งสาธารณรัฐประชาชนจีน.pdf> > accessed 12 July 2022; Arm Tungnirun, '70 years of People's Republic of China' (The 101 World, 2 October 2019) < <https://www.the101.world/arm-tungnirun-interview/> > accessed 12 July 2022; Pitman B Potter, *The Chinese legal system: Globalization and local legal culture* (Routledge 2001)

deemed conclusive since it ignores the fact that China is a communist government that practically holds all power; thus flexibility, equitable power allocation, and other policy testing may not be as the scholar stated in practice.

Despite the similarities of India and Thailand's common ground towards anti-dumping are stated in legal contributions that they both faced the issue of exporting shrimp to the United States and were pressured by US anti-dumping measures, and their business characteristics are similarly comparable, especially in small family enterprises, studies draw a contrast to the countries' turning point.³⁷¹ While India has various economic justifications offered to support anti-dumping legislation and reasons based on economic efficiency to support the imposition of anti-dumping duties in India, Thailand has prompted experts to emphasize that the difficulty stems from the country's delayed and unsupportive legal and economic systems, which have been causing Thailand to suffer and weaken its systems.³⁷² The aforementioned studies on the inferior point of Thailand and India in comparison suffer from a structural flaw in that they focus entirely on the greater scheme of things while failing to account for the finer level of analysis. As a result, the authors fail to address what may be the dominating variables affecting the delayed process and unsupportive legal system, such as legislative process or policymaker decision and incentive. Besides, Thailand's inferior system is attributed to its higher degree of corruption and lower transparency rate when compared to emerging countries, which are believed among many critical legal scholars to be better at self-adjusting and growing much faster than Thailand. The giant leap in development in rising countries such as China is supported by data showing the corruption rate in China and India is lower than in Thailand, and China adheres to the principle of rule by law rather than rule of law, which results in very strong legal enforcement.³⁷³ Nonetheless, it has long been debated whether China's rule of law can fully substitute and be adequately justified as the universal rule of law. The lack of

³⁷¹ Simi T B, 'India, Thailand and US on anti-dumping measures relating to shrimp: Another case calling for clarity in the wto rules' (2008) 2 Trade Law Brief; Prajongporn Tanmanee, 'Strategies for Increasing Thailand and India's Trade Capabilities Under the FTA' (2007) < https://www.ditp.go.th/contents_attach/78094/78094.pdf > accessed 12 July 2022

³⁷² Aradhna Aggarwal, 'Anti dumping law and practice: an Indian perspective' (2002) Indian Council for Research on International Economic Relations Paper No.85 <<http://www.icrier.org/pdf/antiDump.pdf>> accessed 20 November 2020; Deunden Nikomborirak, 'Market efficiency and government regulations' (Thailand Development Research Institute, 17 March 2014) < <https://tdri.or.th/2014/03/wb100/> > accessed 12 July 2022

³⁷³ Anti-Corruption Action Center, Office of the National Economic and Social Development Council, 'Corruption Perception' (2019) < https://www.nesdc.go.th/article_attach/article_file_20210201184051.pdf > accessed 6 July 2022; David Lawrence and Johnny Patterson, 'Rule of Law in China: A priority for businesses and Western Governments' (The foreign policy center, 24 September 2018); Benjamin Van Rooij, 'Implementation of Chinese environmental law: regular enforcement and political campaigns' (2006) 37 Development and Change 57

information on China's position on the rule of law may make it difficult to conclude that it is a country with effective legal enforcement.³⁷⁴ While legal analysts have been instrumental in establishing that China has made significant strides in anti-dumping, these studies do not address the issue of level of participation at the international level, where China and India play a prominent role that are substantially different from Thailand's. Additionally, despite having an anti-dumping framework gained from the WTO, it lacks the issue of room for adaptation, which both countries fill in order to perfect the law.

Conclusion

This literature review paves the way for a literature on anti-dumping law and culture in Thailand's administrative bureaucracy, demonstrating that the provisions of anti-dumping law themselves do have two major issues: first, the principle for calculating damages and the transaction of dumping, and second, other related laws such as rules of origin. In the case of Thailand, there is only one study expressing the government's aim to address ineffective anti-dumping law usage by amending and adding the anti-circumvention law. Overall, it lacks substantial knowledge necessary to relate the problem to its true source and effectively address it. In the course of studying culture in Thailand's administrative bureaucracy, it comes across issues such as bribery, corruption, and political influence in deciding public policy. Similarly, it still lacks a connection between those issues in depth and the anti-dumping process in Thailand, which is a quasi-judicial process, and it lacks the issue of broad discretion, which was also recently incorporated in a new law amendment.

This thesis will demonstrate that Thailand's anti-dumping law and legal culture shape the concept of anti-dumping law as a structure and mechanism designed to protect markets from injury. Meanwhile, Thailand's legal culture is both supportive of and constraining to the country's law enforcement system. In this regard, law and legal culture combine to create a measure employed by authorities in the system to alter the direction of operation to the point where it is occasionally distorted, causing the blame to be placed on a lack of legislation rather than a real problem.

³⁷⁴ World Justice Project, 'Rule of Law Index' (2020) < <https://worldjusticeproject.org/our-work/research-and-data/wjp-rule-law-index-2020> > accessed 6 July 2022

Anti-dumping legislation and Thai legal culture, as a symbolic system and an element that comprise and relate to one another, should be analyzed through a correlating method that provides in-depth insight into law enforcement at various levels, ranging from culture as a paradigm for human resources in systems and people to behavior in participation or interference in the legal system.

Changing the fundamentals of legal culture across the system and establishing legal structures that enable development are critical components of maximizing the effectiveness of existing law. When a culture has been practiced in the system for a long period of time and is deeply ingrained, whether in positive or negative ways, whether due to internal or external factors, the culture moves behind the scenes and creates a risk in analyzing real problems and real solutions to those problems that can be overshadowed.

Methodology

Introduction

The preceding section evaluated the literature on legal culture and AD law, as well as their relationship to issues directly and indirectly relevant to the question. This chapter discusses the methodologies used to address those questions. It begins by describing how to use those doctrinal and analytical research methods through secondary sources. Following that, a description of the unit of analysis is provided. After that, the analysis's objectives and approach to the problem are explained.

1. Research design

This thesis is based on a combination of doctrinal and analytical research approaches, as well as an examination of all secondary literature. In this doctrinal study, it examines the context of the AD law, as well as the ministerial regulations and ministerial announcements that are implemented pursuant to the AD law, and synthesizes issues of AD law in Thailand in order to identify flaws and draw preliminary conclusions. Simultaneously, the study relies on an analytical approach to critical evaluation, utilizing available facts and secondary data from other interdisciplinary fields such as politics and history, economics, sociology, and development studies, in order to adhere to legal realism, a philosophical perspective that emphasizes the actual law in practice and the factors that influence decision-making. In the framework of this research, legal realism reveals recurrent pragmatic evidence, whereas political economy reveals the certain sources of influence that heavily interfere with the AD procedure. The purpose of this research is to better understand the relationship between AD law and Thai legal culture, as well as to address research issues about the impact of internal legal culture and pressure on AD enforcement in Thailand. The research findings will be used to develop concepts that will contribute to the growth of law enforcement in Thailand as well as the tools necessary for practice.

This thesis is based on the following major sources: the AD Act 1999; Ministerial Regulations and Ministry of Commerce announcements that are enforced pursuant to the AD Law from 1999 to 2021; the Ministry of Commerce and Bank of Thailand Annual Report; the disclosed essential facts of the Trade Interests and Remedies Division's final determination report; the

Judiciary; and the AD committee's final determination; news articles, journal articles, and books.

2. *Units of analysis*

Throughout the writing process, the researcher sought opportunities to participate in academic discussions and debates at seminars and other intellectual forums, including a workshop on the Rule of Law and Policy co-hosted by the Thailand Institute of Justice (TIJ) and the Institute for Global Law and Policy (IGLP) for Scholars and Emerging Leaders, as well as a seminar on political ideologies, history, and contemporary issues co-hosted by the Oxford University Department of Continuing Education.

The research raises the question of how likely it is to be analyzed in the Thai context, particularly given Thailand's extremely abstract legal system and dearth of different sources of information. Hence, employing Thailand as an analytical unit is difficult.

For the purposes of this study, 'Thailand' was defined as 72 provinces and one special administrative region, Bangkok. This excludes the four southern provinces that adhere to Islamic law, namely Pattani, Yala, Narathiwat, and Songkhla,³⁷⁵ because, since 1855, when Thailand faced a significant economic and legal turning point with the signing of the Bowring Treaty, the southern provinces have had a distinct history and have remained highly autonomous from the central part due to their remote location from the capital,³⁷⁶ which makes comparison difficult. Additionally, the areas described have distinct social and cultural systems and political histories.³⁷⁷ However, in the research section on the analysis of industrial production's competitiveness, it was noted that this area does not have different components.³⁷⁸ As a result, research conducted outside of the realm of legal culture encompassed all 76 provinces and one special administrative district.

³⁷⁵ Application of Islamic Law in the Provinces of Pattani, Narathiwat, Yala and Satun Act, B.E. 2489 (1946) < <http://web.krisdika.go.th/lawHeadPDF.jsp?formatFile=pdf&hID=0> > accessed 12 July 2022

³⁷⁶ Boonaue Boonrit, 'The insurgency in the three southern border provinces and the identity of the local people and behavior of government officials' (2013) 14(2) Kasem Bundit Journal 46 < <https://so04.tci-thaijo.org/index.php/jkbu/article/view/25267> > accessed 12 July 2022

³⁷⁷ Sutin Sanongphan, 'The Political Violence in the Three Southern Border Provinces of Thailand' (2012) 4(2) Rajamangala University of Technology Srivijaya Research Journal 31 < <http://rdi.rmuts.ac.th/rmutsvtj/download/year4-issue2-2555/p31.pdf> > accessed 12 July 2022

³⁷⁸ Ramadan Panjor, 'Politics of Words in Pa(T)Tani: Constructing "Peace" in Ethnopolitical Conflict' (Master degree thesis, Thammasat University 2015) < <https://peaceresourcecollaborative.org/wp-content/uploads/2019/09/การเมืองของถ้อยคำในชายแดนใต้-ปาตานี.pdf> > accessed 6 July 2022

3. *The purpose of the analysis*

Thailand's difficulties are reflected in Transparency International's rankings. Thailand earned a score of 36 out of 100 for transparency and was ranked 104th out of 180 nations in the 2020 Corruption Perceptions Index.³⁷⁹ This indicates Thailand's ongoing battle against corruption, which is related to law enforcement and external pressures that work against Thailand's ranks. Additionally, the problem has been prolonged and intensified as Thailand's ranking has declined since 2012.³⁸⁰

This susceptibility serves as a catalyst for this research, which aims to expose the legal system's ambiguities and shortcomings as a result of particular attitudes and behavioral norms in complicated social circumstances. Meanwhile, the research compiled a chronology of historical events to demonstrate that while the law does not exist in a vacuum, many components of the Thai legal system do. The purpose of this thesis is to develop law enforcement, namely Thailand's AD law, through comprehensive research of the law's core principles and rationale, resulting in the correction and evaluation of legislative instruments and previous AD rulings. This thesis focuses on ambiguity, finding the gap between the law and reality in Thai society through an analysis of cultural factors affecting law enforcement and AD legislation amendment in Thailand. All of these will result in proposals for organizational and legislative adjustments to address Thailand's AD law problem.

4. *Analytical approach*

Legal culture does not develop in isolation. Legal culture is inextricably related to and entwined with the political and social history of a country.³⁸¹ Relationships are defined by their capacity to transmit influence or to constrain influence. The thesis analysis establishes and elucidates the connection between what rules wish to communicate and how legal culture wishes to represent identity. In Thailand, the trend in legal education is to emphasize the text rather than discuss enforcement difficulties and legal cultural aspects, as legal culture has always been

³⁷⁹ Corruption Perceptions Index (Transparency International 2020) < <https://www.transparency.org/en/cpi/2020> > accessed 20 November 2021

³⁸⁰ *ibid*

³⁸¹ Lawrence M Friedman, 'Legal Culture and Social Development' (1969) 4 *Law & Society Review* 29

viewed at a fairly abstract level.³⁸² This thesis seeks to shift the emphasis away from a textual analysis of law and toward an examination that incorporates cultural and legal traditions.

By exposing the complexity and dominance of the legal culture that suffocates the law's effectiveness, legal culture analysis challenges the bureaucratic structure and directs attention to the upstream of the law enforcement process. Including legal culture in the study does not imply that its influence is inferior to its absence and that it should not be criticised until it has been adequately observed. This research is merely speculative and illustrative of how things might be altered. The investigation was conducted by analyzing the regulations' substance and evaluating recurrent practical variables. The scope of normative analysis will be expanded to demonstrate that there is more to it than what appears to be rules.

When presenting a legal cultural perspective, preconceptions, prejudices, and limits may be questioned as they may portray the subjective condition of culture as being either too good or too bad. However, incorporating cultural perspectives that impact the structure of law enforcement in society enables the examination of significant abrupt changes involving the assumptions of changing authorities, establishing rules, and enforcing them in society. Dismantling the legal cultural structure removes hypothesis restrictions and leaves room for assumptions that are frequently missed within the circle of government entities responsible for drafting or proposing legal revisions.

Examining the authority and political relationships of law enforcement officials requires more than a reading of the written legislation. Rather than that, it is an examination of the legal order that places hypotheses behind discretionary legislation or ministerial regulations. This research may not be sufficient to resolve the issue. Instead of that, it reveals the problem on a deeper level, calling into question the "truth" created by the state. In the context of the argumentative approach presented in this thesis, it challenges the assumption that Thai government agencies believe that anti-dumping legislation is insufficient by arguing that legal culture is likely to be the root cause of the problem of AD law enforcement in Thailand and by collecting evidence from existing literature and analyzing significant data movements to substantiate that argument.

³⁸² Anon Sakvorawit, 'Is teaching law in Thailand the right way?' (MGR Online, 29 May 2019) < <https://mgronline.com/daily/detail/9620000050977> > accessed 6 July 2022

Chapter 4 discusses the fundamental assumptions in the context of Thai legal culture and the anti-dumping law enforcement issues that arise in actual practice. It begins with the political sector's interference through the application of public interest principles, highlighting the AD committee's and cabinet's discretionary power, which threatens arbitrary and unpredictable exercise of power as well as demonstrates the tension between Thai legal culture and the paradigm associated with the foreign legal model adopted by Thailand. Article 7, which is the instrument addressing and connecting legal issues and political economy aspects, is one of the most powerful and controversial provisions in this chapter. This study leads to Chapter 5, which analyzes external pressures on Thailand's internal legal culture and creates the framework for Chapter 6's concepts, which address the context of the hypothesis that traces of the same problem persist.

5. *Limitations and obstacles*

Analysis usually produces results that cannot be generalized beyond the materials but they provide a more in-depth understanding of the specific surrounding legal culture in Thailand. It cannot always accurately simulate actual results, but can be effective for switching the perspectives of law amendment in Thailand between variables.

Some parts of this work have encountered difficulties in analysing data because in finding the link of past events to the present, all angles must be analysed to avoid the input of one's own assumptions beyond the evidence there is, and it must give readers a picture of how the events over more than a hundred years have taken root in the Thai legal system.

We have speculated that criticism may arise, for example, at some point that history is linked to legal culture and law enforcement problems that are distant and outdated but we have demonstrated solid connections through academic evidence. In this study, the overlap between when the new law was not enacted until it has been in effect for one year might cause unexpected obstacles such as a sudden transformation of the legal culture rendering the key theme of the story ended, but we have mitigated the risk by closely monitoring enforcement, especially the updated trade numbers, in order to be able to analyse in a timely manner whether anything has changed in its essence, although defects still exist and are linked to the assumptions.

Conclusion

This thesis is an examination of Thailand's significant legal culture and AD law. This thesis employs both a doctrinal and analytic approach to analysis. The thesis draws on secondary data from a variety of interdisciplinary sources to contextualize both the AD law and other societal issues affecting Thailand. This thesis proceeds with its examination by using legal cultural variables to call into question the bureaucratic structure and by focusing on the process underlying law enforcement. It demonstrates the complexity and dominance of the legal culture, which suffocates the law's effectiveness. Through the sorting and synthesis of data under the analytical unit in Thailand, this thesis proposes a research approach for challenging the assumptions of Thai government agencies on anti-dumping law solutions. By calling into question what is disregarded, the argumentative strategy focuses on the framework of law enforcement in Thailand, which is shaped by the legal culture. The research intends to reveal another aspect of the current state of knowledge on Thai legal culture and AD law.

CHAPTER 3 THE ROLE OF LEGAL CULTURE AND DEVELOPMENT OF ANTI-DUMPING

3.1 *Legal culture*

3.1.1 *What is legal culture?*

When it comes to legal culture, the picture is frequently unclear. At times, its scope is ambiguous. Occasionally, the terms "legal culture" and "legal tradition" are used synonymously. It is not so fixed that it may be compared to a "living law" that changes in response to prevailing social conditions.³⁸³ Legal culture can be considered to be a subset of the greater culture of that country within the same social context.³⁸⁴

In an era where practically every aspect of human conduct is governed by law, law is pervasive in almost every aspect of life today, making it impossible to distinguish between legal culture and culture. While there is no apparent distinction between culture and legal culture, and the term is frequently used without definition, it can refer to very different issues.³⁸⁵

Legal culture is defined as a network of law-related values and attitudes.³⁸⁶ These values and attitudes are the result of social interactions and are driven by a group of paradigms in response to something. These interactions can be driven by a number of different ideas, but they characterize the individuals involved in the legal process in that society and contribute to the development of a distinct legal culture in that country. Thus, legal culture is shaped by how members of society learn and grow up with regard to values, attitudes, and justice.³⁸⁷

In today's world, legal culture is not a form of law that everyone sees and accepts as a social mechanism. It is distinct from law that is established in a clear written form after going through the legislative process and is universally accepted as a concrete social mechanism. However, legal culture is defined as a collection of significant variables that exist outside of the standards and legal institutions. These significant factors include values, behaviors, and attitudes toward

³⁸³ Nelken D, 'Thinking About Legal Culture' (2014) 1 *Asian Journal of Law and Society* 255; David Nelken, 'Eugen Ehrlich, living law, and plural legalities' (2008) 9 *Theoretical Inquiries in Law* 443

³⁸⁴ Lawrence Rosen, *The Anthropology of Justice Law as Culture in Islamic Society* (Cambridge University Press 1989)

³⁸⁵ Csaba Varga, *Comparative legal cultures* (New York University Press 1992)

³⁸⁶ Lawrence M Friedman, 'Legal Culture and Social Development' (1969) 4 *Law & Society Review* 29

³⁸⁷ *ibid.*

the law.³⁸⁸ When the law is depicted as encompassing more than just legislation, the role of law in society and the true authority of operators and institutions are described as being included in the law. Similarly, values, practices, and attitudes are elements that broaden the scope of the “law”.³⁸⁹

Although values, practices, and attitudes toward the law are associated with a common legal culture within a community, the values, practices, and attitudes that individuals hold can vary depending on their role in the legal process.³⁹⁰ As a result, legal culture can be classified into two categories: internal legal culture and external legal culture. Internal legal culture refers to the legal operator's attitude toward the law.³⁹¹ On the other side, external legal culture refers to the broader public's attitude toward the law.³⁹²

While a society's internal and external legal cultures may share common values, attitudes, and practices, in some societies, both cultures may hold divergent ideals.³⁹³ The fact that both cultures share a common set of values, regardless of whether those values are right or wrong from the perspective of those outside the society, satisfies members of society, whether as legal operators or members of the general public, in terms of the outcome of the law and its enforcement.

On the other hand, if both cultures have divergent values and there is only one dominant culture that impacts legal practice, individuals who adhere to the opposing culture will be dissatisfied and they may raise doubts on the concept of "justice."³⁹⁴ A society's legal culture may be apparent and transferred through the legislation, or it may be invisible and not conveyed through the provisions of the law, but may be hidden at some point without anyone being aware of its existence.

³⁸⁸ James L Gibson and Gregory A Caldeira, 'The Legal Cultures of Europe' (1996) 30 *Law & Society Review* 55

³⁸⁹ Naruemol Tibwongsa and Sitthikorn Saksang, 'Meaning and Characteristic of Law : Completion of Law Affecting Thai Politics and Government' (2019) 3(2) *Law and Local Society Journal* 21 < <https://so04.tci-thaijo.org/index.php/ljsj/article/view/189825/138524> > accessed 6 July 2022

³⁹⁰ Richard A Posner, *Law and Legal Theory in England and America* (Oxford University Press 1997)

³⁹¹ Lawrence M Friedman, 'Legal Culture and Social Development' (1969) 4 *Law & Society Review* 29

³⁹² *ibid*

³⁹³ Michael W Spicer, 'Value conflict and legal reasoning in public administration' (2009) 31 *Administrative Theory & Praxis* 537

³⁹⁴ Boonchoo Na Pomphet, 'Legal Culture, Perspective Reproductions, and the Thai Legal Professionals' (2018) 11(1) *CMU Journal of Law and Social Sciences* < <https://so01.tci-thaijo.org/index.php/CMUJLSS/article/view/111448> > accessed 6 July 2022

3.1.2 How is legal culture related to the law and how does it have a concrete influence on the law?

The apparent absence of legal culture and rigid factors raises concerns about the relationship and influence of legal culture on the laws actually implemented in society. The relationship between culture and law has existed for an extended period of time. Law and culture do not work in isolation in society, which is why legal culture now blurs the line between law and culture. Identifying which element is more influential can be a tough analysis to complete because culture influences the law and the law influences culture.³⁹⁵ A culture of equality may enable legislation to certify individuals' rights and to ensure that those rights are not violated. Meanwhile, the adoption of legislation authorizing punitive damages has contributed to the development of a culture of intense judicial exercise in some nations.

However, if we examine the context of each region prior to the widespread adoption of written legislation, we notice that cultural background plays a role in the establishment of law, and law is one of society's cultural achievements.³⁹⁶

An era without written language or legislation perfectly represents the culture of the society it belongs to. Traditional African laws are based on natural justice and are not concerned with determining what is right or wrong. Rather than that, they attempt to maintain social ties in order to sustain society as a whole.³⁹⁷ The search for a solution is shared by members of the community who are closely related, rather than by strangers. Similarly, the culture of Islamic law tends to be oriented around re-establishing social connections rather than involving state or religious power in the disagreement.³⁹⁸ Similarly, traditional rural Chinese culture is driven by personal ties and trust, a rule that has also been written down.³⁹⁹

Cultural background involves origin of legal culture and the legal culture itself is frequently regarded as the cause of specific characteristics of the legal system.⁴⁰⁰ The concept of rationality as the heart of Western civilization has resulted in western rules and laws that are

³⁹⁵ Lawrence M Friedman, 'Legal Culture and Social Development' (1969) 4 Law & Society Review 29

³⁹⁶ Mark Brown, 'An Unqualified Human Good'? On Rule of Law, Globalization, and Imperialism' (2018) 43 Law & Social Inquiry 1391

³⁹⁷ Max Gluckman, 'Natural justice in Africa' (1964) 9 Natural Law Forum 25

³⁹⁸ Lawrence Rosen, *The Anthropology of Justice Law as Culture in Islamic Society* (Cambridge University Press 1989)

³⁹⁹ Ling Li, 'Rule of law in a Party-state – A conceptual interpretive framework of the constitutional reality of China' (2015) 2 Asian Journal of Law And Society 93

⁴⁰⁰ Lawrence M Friedman, 'Legal Culture and Social Development' (1969) 4 Law & Society Review 29

still universally accepted today. Furthermore, individualism, legalism, and intellectualism are at the heart of European legal culture, which is said to be historically constant.⁴⁰¹ Consistency, logic, adaptability, learning style, and a clear separation between law and non-law are profoundly entrenched in European legal culture. Since English law is geared toward entrepreneurs, it is a legal option that is often employed in international commerce contracts.⁴⁰² Consumers are prioritized in French legislation. Because German society grew up with systematic order, the Swedish legal system is less systematic than German law.⁴⁰³ On the other hand, in the context of Southeast Asian countries, the presence of essential attitudes and values, such as rationality, is somewhat ambiguous. Southeast Asian countries such as Thailand, Laos, Myanmar, and Cambodia have a strong relationship with spirits, religion, and karma as the core of their culture, hence the legal procedure is based upon what the supernatural decides to be right or wrong.⁴⁰⁴ These forms of judicial proceedings were eventually abolished.⁴⁰⁵

The way in which each country's laws address certain issues reflects the country's unique attitudes, national history, political situation, and economic status. Things that society is familiar with and adheres to in the past have had an effect on the overall legal culture, and the legal culture itself has an effect on how law structures and legal institutions are organized in that country. While some countries share a common customary legal system, the legal cultures that have developed around it are distinct. For instance, while both the United States and England have customary legal systems, England exemplifies a legal culture characterized by dignity and aristocracy. This is not the same as the attitude towards the law in the American judicial system. The English court system's concept of dignity and aristocracy was developed by comparing the judge-to-lawyer ratio.⁴⁰⁶

⁴⁰¹ Franz Wieacker, 'Foundations of European legal culture' (1990) 38 *The American Journal of Comparative Law* 1

⁴⁰² Lawrence M Friedman, 'Legal Culture and Social Development' (1969) 4 *Law & Society Review* 29

⁴⁰³ *ibid*

⁴⁰⁴ Athit Srichand, 'Diving through fire, an ancient Thai judicial method. Sacred is the judge.' (SilapaWattanatham 25 October 2019) < https://www.silpa-mag.com/history/article_40782 > accessed 6 July 2022

⁴⁰⁵ Kittisak Jermstithprasert, 'Using the evidence law of 'diving through fire' that appeared in the council about 'Khun Chang Khun Phaen' (2008) 1(1) *Journal of Judicial process* <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwj7kJfD0_L4AhVURWwGHfXuDDYQFnoECAUQAQ&url=https%3A%2F%2Fso04.tci-thaijo.org%2Findex.php%2FJTJS%2Farticle%2Fdownload%2F245499%2F166740%2F854194&usg=AOvVaw3SWUSHsiQ6vfJg0E3waUhW> accessed 12 July 2022

⁴⁰⁶ Richard A Posner, *Law and Legal Theory in England and America* (Oxford University Press 1997)

The judicial process's structure reflects the legal culture of that society. Trial by jury represents a considerably more concentrated legal culture of direct social involvement than countries that use merely a panel of judges to hear the facts and make decisions.⁴⁰⁷ Furthermore, the punitive damages system reflects a culture that favors judicial claims while also promoting a more intense judicial culture than countries that do not have such a system because people may not want to pay litigation costs because the expected net benefits from litigation may be insufficient.⁴⁰⁸ However, if the litigation has the prospect of achieving a net benefit greater than the cost of the litigation, it will encourage members of society to exercise their rights through the courts. On the other hand, the popular culture of judicial use, one of the United States' legal cultures, developed as a result of the rights granted to citizens by the state through the long-battled American constitution, an immigrant population, racial and ethnic differences, wealth, and population collapse.⁴⁰⁹ All of these variables are catalysts for a culture of judicial exercise, which has resulted in a large number of lawsuits in the United States.

On the other hand, legal culture, in the form of national attitudes and values, influences the law through public policy, which has occasionally become a factor for arbitrators in legal disputes. While resolving legal disputes is subject to the criteria and factors specified by law, in some cultures, written law has permitted national objectives expressed in the form of public policy to play a significant part in determining the verdict's direction.

The relationship of culture with law makes it, on the one hand, a valuable tool for affirming the values and practices that people in society agree on, and it provides society with tenets to fight against state power or authoritarian powers that make laws to enforce against the values that benefit the people.⁴¹⁰ Furthermore, culture is an important reference point for developing appropriate laws in a society based on the cultural, living, and geographical characteristics of that society.⁴¹¹ However, law enforcement in society is sometimes hindered from being as successful as it should be because the legal culture has reduced that efficiency.

⁴⁰⁷ Thomas W Church Jr, 'Examining local legal culture' (1985) 10 American Bar Foundation Research Journal 449

⁴⁰⁸ A Mitchell Polinsky and Steven Shavell, 'Punitive damages: An economic analysis' (1997) 111 Harvard Law Review 869

⁴⁰⁹ Richard A Posner, *Law and Legal Theory in England and America* (Oxford University Press 1997)

⁴¹⁰ Peter Häberle, "Constitutional Theory: Constitution as Culture and the Open Society of Constitutional Interpreters" in Markus Kotzu (ed) (Nomos/Hart 2018)

⁴¹¹ Charles de Montesquieu, 'The Spirit of the Laws' in Anne M Cohler, Basia Carolyn Miller and Harold Samuel Stone (eds), *Cambridge Texts in the History of Political Thought* (Cambridge University Press 2017)

Legal culture is related to the law in that it undermines the success of law enforcement in some societies. The success of law enforcement is jeopardized when societies attempt to reform laws by adopting foreign legal frameworks and enforcing them in their own countries. One of the components that determines whether or not legal reforms will be successful is the legal culture of the model country and the legal culture of the country that adopts that legal framework. Legal transplants are unlikely to succeed because of a legal cultural foundation comprised of quite distinct values, practices, and attitudes.⁴¹² While this is not a complete failure of implementation, as the model law may be enacted in the country with the permission of all relevant government authorities, the failure referred to is a practical failure, not a written failure. Failure to implant legal templates between societies inevitably results in confrontations between legal cultures and divergent interpretations. It is prevalent because states prefer to harmonize any laws that emerge in society in order to adapt to the way their society already operates, regardless of how it appears to impair the law's efficacy when compared to the efficiency that the law provided to the original country.

The clash between legal culture and the law of another society even renders adopting a legal template from another society unsatisfactory because it has a legal culture in that society acting as a wall. But when the clashes occur, the legal culture of the country that adopted the legal template does not remain unchanged because culture, while it may change slowly, does change.⁴¹³ The relationship between the law and the developing legal culture may be discovered later. Asian countries, for example, enacted equal rights legislation for men and women later than Western ones.⁴¹⁴ However, over the last decade, there has been a surge in the number of women on corporate boards of directors.⁴¹⁵

The inextricable link between society's legal culture and the law connects it to the study of how laws work in society, how laws are enforced in society, and whether societal pressures can intensify or dilute the legal culture, resulting in the law being tightened or loosened, positively or negatively enforced. It is an analysis that connects unseen legal culture to written law and

⁴¹² Mark Van Hoecke, 'Legal culture and legal transplants' (2014) *Law, Society and Community: Socio-Legal Essays in Honour of Roger Cotterrell* 273

⁴¹³ Agnieszka Kubal, 'Migrants' relationship with law in the host country: Exploring the role of legal culture' (2013) 34 *Journal of Intercultural Studies* 55

⁴¹⁴ World Bank, 'Legal progress towards gender equality' (The World Bank Group 2019) < <https://datatopics.worldbank.org/sdgatlas/goal-5-gender-equality/> > accessed 6 July 2022

⁴¹⁵ Christina Milhomem, 'Women on boards: 2020 progress report' (MSCI 2020) < <https://www.msci.com/www/women-on-boards-2020/women-on-boards-2020-progress/02212172407> > accessed 6 July 2022

considers how an abstract legal culture might concretely influence the structure of law enforcement and laws.

3.1.3 What is Thailand's legal culture and what role does it play in Thai legislation, particularly the AD law?

Thailand's legal culture is similar to that of other countries during the period when there was no written law in society. Thailand's legal culture was founded on dispute settlement, in which a closely linked individual in the community made decisions using his or her own judgment and discretion.⁴¹⁶ The use of discretion by a member of the community to resolve disputes was viewed by Thai society, before the establishment of codified law, as a value that society agreed might assist members of society in resolving conflicts and continuing to live together peacefully.

Despite the existence of written laws, the foundations of Thai legal culture have also been passed down through the ages of Thailand. The authority's discretion has not been abandoned. This internal legal culture of those in positions of legal authority, which includes values and a favorable attitude towards discretion, also contributes to the formation of another Thai legal culture: the emphasis on seniority and patronage, which are linked to the personal relationships and influence of politicians and the political sector.⁴¹⁷

This internal legal culture has evolved beyond criminal justice to include trade issues, most notably tariffs on imported goods. Prior to 1855, the effect of domestic legal culture on the taxation of imported products resulted in double taxation, as multiple aristocrats desired to tax the same product and there was no clear tax rate.⁴¹⁸ Foreign countries, particularly those from the West, were confronted with volatile commodity prices. Through the signing of the Bowring Treaty with the United Kingdom and a number of other European countries in 1855, Thailand was compelled to abandon its internal legal culture, which obstructed trade. As a result of

⁴¹⁶ Somkiat Tungkitwanich and Thani Chaiyawat, Revisiting the law in order to solve the problem of discretion in Thai society (Thailand Development Research Institute, 12 October 2017)

⁴¹⁷ The Extraordinary Committee considering the study of the solution to the problem of the patronage system in the Thai bureaucracy system under National Legislative Assembly, 'Solving the problem of patronage system in the Thai government system' (National Legislative Assembly 2016)
< <http://lib.mnre.go.th/lib/book/ooppatam.pdf> > accessed 6 July 2022

⁴¹⁸ Dhitiphong Meethong and others, 'The Bowring Treaty with the Economic Impact of Thailand Buddhist Era 2398' (The 12th NPRU National Academic Conference, Nakhon Pathom, 9 July 2020)

abolishing the procedure of proving innocence or guilt through adhering to superstitions and religion, a new taxation system and judicial system were created.⁴¹⁹

Thailand rapidly entered full international trade after abandoning its own legal culture in 1855. However, authorities, whether aristocrats or bureaucrats, who formerly benefited from the traditional social structure, still yearn for unrestricted power. Thus, when the world's colonization situation improved, Thailand no longer needed the protection of European powers against colonization.⁴²⁰ The strain on rulers and others in positions of legal authority has been reduced. The same internal legal culture that had been compelled to disappear reappeared. Thailand's internal legal culture is manifested in newly enacted legislation and foreign legal models adopted as a result of Thailand's participation in international trade agreements.

Thailand has accepted anti-dumping legislation as one of the models of foreign law to be implemented within the country. Although, historically, when it comes to trade and business law, such as AD law, legal culture has not played a significant role, structural and law enforcement issues in Thailand are increasingly being discussed in the context of political conflict,⁴²¹ and even the Thailand Development Research Institute has begun to speak more straightforwardly about Thai legal practice and those in power's use of discretion in the legal process.⁴²² However, Thai legal culture is more pervasive in society than contentious political conflicts or the criminal justice system. Thai legal culture has also penetrated the legal frameworks adopted by Thailand from overseas. As a result, the issue of Thai legal culture has not been properly addressed and the country is still a long way from building a concrete system.

The issue of Thai legal culture is often overlooked in favor of more visible challenges. Due to the fact that other matters take precedence over legal cultural issues, when law enforcement encounters difficulties, relevant government agencies frequently disregard the country's internal legal culture challenges. The AD law is another example of a law that does not function fully in the Thai environment, leaving domestic industry vulnerable to dumping. Ministry of

⁴¹⁹ B Jan Terwiel, "The Bowring Treaty: Imperialism and the Indigenous Perspective" (1991) < https://thesiamsociety.org/wp-content/uploads/1991/03/JSS_079_2f_Terwiel_BowringTreaty.pdf > accessed 7 July 2022

⁴²⁰ Robin Roth, 'On the colonial margins and in the global hotspot: Park–people conflicts in highland Thailand' (2004) 45 *Asia Pacific Viewpoint* 13

⁴²¹ Somkiat Tungkitwanich, *Corruption menu and exploitation* (Thailand Development Research Institute Foundation, 2014)

⁴²² Somkiat Tungkitwanich and Thani Chaiyawat, 'Looking back on the legislation to solve the discretion problem in Thai society' (Thailand Development Research Institute, 12 October 2017) < <https://tdri.or.th/2017/10/corruptionformular/> > accessed 6 July 2022

Commerce representatives presented guidelines for strengthening the anti-dumping system through the implementation of anti-circumvention rules.⁴²³ However, the adoption of anti-circumvention rules has not yielded satisfactory concrete results.

Failure to achieve satisfactory results in law enforcement, even after the law is amended, may be a result of a lack of understanding of the actual complexity of the issue. Without delving into the underlying legal culture, we may be unable to fully comprehend the events or obstacles that arise during the legal process. On the other hand, if we can identify the origins of contemporary ideas and practices, we will be able to address issues relating to law enforcement procedures, law amendment, and more effective adoption of a legal framework. The discovery may be made by examining that society's legal culture. This thesis will examine the concept of Thai legal culture from a variety of perspectives in order to provide a more comprehensive picture of the issue and useful details for AD law, including political history, legal history, current social and commercial conditions, international investment, and trade bargaining power in the global arena.

Legal cultures vary by region, and when any type of law is applied in that area, the results will reflect the area's realistic thoughts and behavior. Thus, while individual countries may be obligated to adopt one of these legal templates within their countries, indigenous practices based on long-held beliefs and practices continue to exert significant influence and may even supersede what is written in the law. Additionally, legal culture is critical in forecasting the outcome of the law in society.⁴²⁴ Due to the strong influence of Thailand's legal culture, which includes the internal legal culture of its users, AD legislation operates differently than the original foreign-enforced version. Friedman discussed the distinctions between internal and external legal culture, stating that internal legal culture refers to the attitudes and practices of individuals who exercise legal authority.⁴²⁵ These thoughts and behaviors manifest themselves in the AD rulings that are determined and reviewed by the AD committee and the DFT, which include political parties that are not participating in the legal process but play a significant role in interfering with the judicial process. These groups' views and behaviors are inextricably linked to the internal legal culture. Simultaneously, there is occasional external pressure exerted on those in the judicial system, such as the need to maintain a strong political base. On the other hand, Thailand's external legal culture refers to the values and attitudes toward the

⁴²³ Sakon Harnsuthiwarin, 'Anti-dumping, subsidies and evasion' *Bangkok Business* (Bangkok, 18 June 2019)

⁴²⁴ *ibid*

⁴²⁵ Lawrence M Friedman, 'Legal Culture and Social Development' (1969) 4 *Law & Society Review* 29

law held by those who lack the legal authority that politicians or government officials do. Although the external legal culture has begun to alter values and adopt a negative attitude toward discretion,⁴²⁶ this just challenges the internal legal culture to emphasize and question its values, methods, and thoughts in an environment that is relatively free of pressure. Internal legal culture is frequently encouraged by those who benefit from it, typically government officials and influential politicians associated with significant corporate groups in Thailand.⁴²⁷

Thai legal culture places a strong impact on Thai law and enforcement. One could argue that Thailand's legal culture greatly impairs the law's effectiveness. Internal legal culture and legal authority, particularly politicians, members of the House of Representatives, senators, and the Council of Ministers, are the primary drivers, contributing to the negative effect of the legal culture rather than positively promoting and enforcing the law in accordance with social conditions and the law's purpose. Not entirely have the values and attitudes that view law as a mechanism of exploitation been abandoned. In turn, such ideals were approved through legislation that guaranteed the powerful people unlimited authority. Thus, in Thailand's predicament, the law is not a tool for resolving social problems; rather, it is a source of difficulties, as it derives from the internal legal culture, which allows laws to be made or adapted to conform to the authority's distorted and arbitrary culture of internal law.

3.1.4 Conclusion

Current laws and law enforcement practices in countries frequently exhibit the imprint of a legal culture shaped by national history, political situation, and economic status, all of which contribute to the formation of values, attitudes, and practices toward the laws of that society. In some societies, the existence of a legal culture can be diluted over time, as with the erosion of adherence to natural justice principles that existed during a period when a community lacked a "written law." Meanwhile, the existence of a legal culture exists in some civilizations and does not disappear through time, as evidenced by the adherence to the rationality of law principles embodied in the laws of western countries. In certain societies, such as Thailand, the

⁴²⁶ Boonyarat Chokebandanchai, 'The Exercise of Administrative Discretion: The Case Study Regarding the Implementation of National Council for Peace and Order, Order no.10/2016' (2017) 10(1) Naresuan University Law Journal

⁴²⁷ Jaruwan Sukhumalpong, 'The Trend of Corruption in Thailand' (2013) < https://www.parliament.go.th/ewtadmin/ewt/elaw_parcy/ewt_dl_link.php?nid=1484 > accessed 6 July 2022; Editorial, 'Law enforcement issues: The problem of double standards in the Thai judicial process' (2011) Julllaniti Journal 81 < http://web.senate.go.th/lawdatacenter/includes/FCKeditor/upload/Image/b/s37%20jun_7_6.pdf > accessed 6 July 2022

dominance of legal culture has been restored after a period of decline. This demonstrates the movement of culture within society. Legal culture serves as a catalyst for the exercise of legal rights and the advancement of legislation that promotes individual equality. At the same time, legal culture can work against the law's effectiveness. The effect of legal culture has the potential to permeate the law, regardless of whether society agrees on and enacts a new legislation or adopts a foreign legal framework. By researching how the law functions in a society and taking into account the legal cultural factors, problems originating in the law and legal system of a society may be explored in greater detail and exposed to the core of the problem.

3.2 Development of Anti-Dumping

3.2.1 Introduction

This section will demonstrate the fundamentals of what forms of dumping Thailand faces, how it affects the market, and how Thailand deals with it. Dumping has a substantial long history back to the start of 20th century when many countries began to seriously compete in aspect of business growth in order to be in the forefront of global market. It was believed at that time that it will be achieved by marketing strategy and more importantly by various trade barriers which are tariff and non-tariff barriers.

When it comes to dumping which is one of the measures to gain leadership in world's business, there are many types of method. One of the chemical producers in Germany used to export its products with the price below cost of production which means that they were at a loss.⁴²⁸ They did so since they would like to be greater than domestic producers in national market. The consequence is that a large number of firms operating in these areas in the US were gradually shut down according to the overflow of dumping as they were not able to compete with the German. At the same time, many other companies had seen that this strategy was very effective so they decided to do so in other countries as well. It resulted in the **distortion of product's price in the global market which does not naturally follow price mechanism** combined with other trade barriers at that time. Finally, economic recession had occurred not to mention the devaluation of currency conducted by certain countries so as to gain advantages in

⁴²⁸ N David Palmeter, 'Material Retardation in the Establishment of an Industry Standard in Antidumping Cases' (1987) 21 Journal of World Trade 113

exports.⁴²⁹ This is one of the reasons behind the world war II as the world economy had come to the worst.⁴³⁰

3.2.2 *Types of Dumping Practice*

Dumping comes in a variety of forms. Even though it is based on the same principles, Thailand is affected by some sorts, which cause plenty of issues. Exports with a price different from an ordinary course of trade, often below the normal price, into importing countries whether for reducing the oversupplies of the exporters or gaining further market share or by some other reasons is called “dumping”. Nevertheless, dumping is not against to any rules of GATT or WTO but when the dumping brings about significantly detrimental effect to importing countries (it is technically called material injury) they encountered with the Anti-dumping measure which is one of the tariff barriers could be used to tackle against the foreign producers dumping the products in importing nations. However, the anti-dumping measure to be used must be qualified under three conditions which it has to have the evidence of actual dumping, the injurious effects of domestic producers and the causation between the dumping and the effects.⁴³¹

The type of dumping in international trade can be classified as follows. The first one to mention is **price dumping**.⁴³² This means to export certain products from one country to another as commercial activities by way of exporting price is below normal value of the same products sold within exporting or producing country itself. The second type is **service dumping** which is commonly seen as a freight dumping. It reinforces goods and commodities to be exported in relatively lower price compared to the exports from other countries. The third one is **exchange dumping** where exporters would like to be superior than their counterparts so they decided to use currency depreciation as their method to distort the value of their products to be lower than the actual.⁴³³ The last one is **social dumping**. This is related to low-wage workers who are

⁴²⁹ Steven M Hoffer, 'May Exchange Rate Volatility Cause Dumping Injury?' (1992) 26 *Journal of World Trade* 61

⁴³⁰ J Michael Finger and Nellie T Artis, *Antidumping: How it works and who gets hurt* (University of Michigan Press 1993)

⁴³¹ Angelos Pangratis and Edwin Vermulst, 'Injury in Anti-Dumping Proceedings—The Need to Look Beyond the Uruguay Round Results' (1994) 28 *Journal of World Trade* 61
< <https://kluwerlawonline.com/journalarticle/Journal+of+World+Trade/28.5/TRAD1994028> > accessed 6 July 2022

⁴³² Daniel M Bernhofen, 'Price dumping in intermediate good markets' (1995) 39 *Journal of International Economics* 159

⁴³³ Bruce A Blonigen and Stephen E Haynes, 'Antidumping investigations and the pass-through of antidumping duties and exchange rates' (2002) 92 *American Economic Review* 1044

chosen to be employed in certain industries so as to reduce cost of production such as prisoner or captive. However, from time to time it is likely to be illegal if they use child workers.⁴³⁴

This work will concentrate on price dumping because that is what Thailand is dealing with, and it is relevant to this research. Price dumping could be various but it is mainly emphasized on three categories as follows.

Sporadic dumping is a technical term refers to the action that manufacturers would like to release commodities that are flooded in its market by exporting to overseas market. This is what China has done to Thailand in order to dump oversupplied steel products into the Thai market and sell them at rock-bottom prices. Advantages of this action is internal market of the country of exporter will not be distorted and affected by oversupply which may bring about deviant prices of products.⁴³⁵ Manufacturers might have to accept any fixed prices which will be sold in international market even it might be very low compared to normal value. This is because when pros and cons of this action are compared it is evident that if manufacturer decided to terminate certain parts of production or lessen production capacity it might have detrimental effects on workers as they will be laid off or on inventory as they might be depreciated as the time goes by. As the above reasons, manufacturers might determine that they are willing to be at loss at certain period of time and they are going to make up afterward.

Continuous dumping is another one that producers decided to do in order to transform the scale of their production. In this scenario, producers believed that the cost of production can be extremely lower if there is a large production volume.⁴³⁶ Thus, they determine to do so as it could reduce the cost of their products and gain more profits. However, a large number of product flow into the market might bring about dramatic changes of product's price sold in the market as it tends to have oversupplies at the time. They tackle this problem by permanent dumping their products in other countries to maintain the structure of price within the country of manufacturer. They use the margin between the profits made by internal trading to offset the loss from sales in abroad. When the dumping continues for a period of time, they might raise the price so that they do not have to use their profits to offset the dumping and from time

⁴³⁴ Luis F Lopez-Calva, 'Child labor: myths, theories and facts' (2001) 55 *Journal of International Affairs* 59 < <https://www.jstor.org/journal/jinteaffa> > accessed 6 July 2022

⁴³⁵ Jean-Marc Leclerc, 'Reforming anti-dumping law: Balancing the interests of consumers and domestic industries' (1998) 44 *McGill Law Journal* 111

⁴³⁶ Jacob Viner, 'Dumping: A problem in international trade' (1924) 18 *American Journal of International Law* 391

to time they could lower the price of product sold domestically in order to be more superior than other producers in aspect of price as they do not have to gain some more profits to do the offset. However, almost all of the producers do not need to do so and they continue to sell at the same price point in domestic.

The last primary cause of dumping is that producers would like to eliminate other producers in importing country, it is called **Predatory dumping**. Their strategy is that they are going to set the price in a point lower than the cost in order to wipe other producers out of the market by conducting in a short period of time. Finally, the market is going to be monopoly and such producer will raise the price to as high as they would like to. This is accounted for unfair trade practice and it causes injurious effect to economic system.⁴³⁷ What China has done to Thailand is sporadic and predatory dumping, which is a factor that highlights the inefficiency of the law and law enforcement.

3.2.3 Effects of Dumping Practices

The impact after the dumping has taken place is at first the consumers in that country tend to be more benefited than before as they can consume certain products in lower price. Apart from consumers, certain producers who use such products as a material to develop into other product will also get benefits since they can reduce cost of production, gain more profits and have stronger potentiality when export their products to third country compared to other exporters from other nations. Conversely, if it is in the case of continuous and predatory dumping, damages in domestic business seems to be drastic and it is not worthwhile to allow those action to be taken place within the country compared to the benefits that domestic consumers gained because when the dumpers have had almost all the market share of certain products in its control, they are going to raise the price to offset the loss they suffered at the beginning and consumers will then have no choice but buying their products at any price. Thailand is at the point where consumers enjoy using cheap steel products from China, but the Thai manufacturer suffers losses, and consumers will suffer in the future from expensive steel from China that jumps up very quickly, and they will have no other Thai steel options because they will go bankrupt.

⁴³⁷ Jonathan Eaton and Leonard J Mirman, 'Predatory dumping as signal jamming' in Akira Takayama, Michihiro Ohyama and Hiroshi Ohta (eds), *Trade, policy, and international adjustments* (Academic Press 1991)

3.2.4 *Handling of dumping practices and the conditions*

The General Agreement on Tariffs and Trade (GATT) is an agreement that aims to minimize barriers to international trade by eliminating or reducing quotas, tariffs, and subsidies while preserving key rules with purpose to reconstructing and liberalizing global trade. The GATT was refined and absorbed into the World Trade Organization (WTO) with 164 signatories to its agreements.⁴³⁸

In terms of WTO principles and exceptions, the requirement to comply with the WTO Agreements and its enforcement with all trading partners, such as equitable treatment of the Most Favored Nation or MFN, is critical to the smooth flow of goods.⁴³⁹ While member countries must adhere to this principle, WTO also allows exceptions for countries in certain circumstances such as the imposition of anti-dumping measure as specified in Article 6 of the GATT and the Agreement on Implementation of Article VI of GATT 1994 known as “Anti-Dumping Agreement”, allowing governments to use anti-dumping measures to protect their domestic industries from dumping.⁴⁴⁰

Each member country bound by the agreement must act to achieve its objectives and ensure that such agreements are legally supported by domestic laws and that such domestic laws are consistent with such agreements. In monist states, for instance, a national judge can directly apply an international agreement and citizens can directly invoke it just as if it were national law, giving treaties the same effect as domestic legislation.⁴⁴¹ Nevertheless, in dualist systems, international law does not exist as domestic law that national judges can apply unless a state adjusts its domestic legislation to comply with the agreement or enacts domestic legislation that expressly incorporates the agreement.⁴⁴²

An example of a dualist state is Thailand, where Article 178 of the Constitution and Article 4 of the Procedures for the Preparation of Contract Act establish the principle that any agreement that affects the rights and obligations of the people or the way in which government officials

⁴³⁸ WTO, ‘Members and Observers’ (2022) < https://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm > accessed 27 September 2022

⁴³⁹ Phatchamon Ngamlamyuang and Korbkiat Piyasirananda, ‘Anti-dumping, Subsidies, and Safeguards : Which is the best measure for WTO members?’ (2018) 36 *Romphruek Journal* 55 < <https://so05.tci-thaijo.org/index.php/romphruekj/article/view/140800> > accessed 29 September 2022

⁴⁴⁰ Tibor Scharf, Wolfgang Mueller and Nicholas Khan, *EC and WTO Anti-Dumping Law: A Handbook* (2nd edn, Oxford University Press, 2009)

⁴⁴¹ Apinya Leenchawee, *Public International Law* (Sukhothai Thammathirat University Press 2009)

⁴⁴² *ibid*

exercise their authority,⁴⁴³ such as the AD law, requires the National Assembly's approval before it can enter into force in Thailand.⁴⁴⁴ As a result, Thailand has enacted AD legislation to support the AD procedure.

Member countries, including Thailand, thus develop domestic laws to facilitate the investigation, and effective implementation of such AD measures within their jurisdictions on imported goods. The internal laws amendments in accordance with the previously mentioned Agreement are not limited to the enactment of specific anti-dumping laws, but can be amended to any law even as a rule in a ministerial level.⁴⁴⁵

For example, previously in Thailand, in order to investigate and implement anti-dumping measures stated in the GATT, the country issued two laws: the Act on Exporting and Importing Goods B.E. 2522 Section 5(6) and Section 6 and the Ministerial Regulation on Commerce on the collection of special fees on imported goods, B.E. 2539 (1996). Even though the enforcement of these laws was already adequate to comply with above agreements, Thailand enacted the AD law B.E. 2542 in order to merely integrate all AD laws into one act to be more systematically effective.⁴⁴⁶ This example shows that the member countries are not required to issue specific AD Act, but are able to merely adjust details listed in WTO agreements to each of the countries' existing regulations.

Developing domestic AD legislations can facilitate the anti-dumping procedure. Article 2 (2) (A) and (B) of Ministerial Regulation Volume 119 Section 112A (on October 31st, 2002), for example, expand Article 19 of Thailand's AD act 2019 and Article 3 of AD Agreement on material injury to a domestic industry, addressing 15 more detailed factors for establishing the consequent impact of dumping on domestic business thus facilitating AD procedure in Thailand. Another example is Announcement of the Ministry of Commerce on 19 March 2021 regarding sampling in the determination of anti-dumping margin [2021] Royal gazette Volume

⁴⁴³ Pornchai Danwivat, 'Treaty under Article 190 paragraph two of the Constitution' (2011) Jullaniti 43 < http://web.senate.go.th/lawdatacenter/includes/FCKeditor/upload/Image/b/b134%20jul_8_4.pdf > accessed 29 September 2022; Ministry of Foreign Affairs, *Draft of the Procedures for the Preparation of Contract Act* (2020) < [https://treaties.mfa.go.th/pdf/การรับฟังความคิดเห็นเอกสารสรุปสาระสำคัญร่างพรบ\(5พค2563\).pdf](https://treaties.mfa.go.th/pdf/การรับฟังความคิดเห็นเอกสารสรุปสาระสำคัญร่างพรบ(5พค2563).pdf) > accessed 29 September 2022

⁴⁴⁴ Ministry of Foreign Affairs, Treaty: Guidance on Practice and Procedures (Department of Treaties and Legal Affairs) < <https://treaties.mfa.go.th/สนธิสัญญา/หลักเกณฑ์และกระบวนการทำสนธิสัญญา> > accessed 29 September 2022

⁴⁴⁵ Ministry of Commerce, List of 11 Announcements and Ministerial Regulations (2022) < https://www.thaitr.go.th/th/measure_info/ad/law > accessed 29 September 2022

⁴⁴⁶ Vandee Suchatkulvit, 'A Legal Perspective on Thailand's Anti-Dumping Law' (2019) *Journal of Intellectual Property Law and International Trade* 502

138 Section 62D which elaborates on AD investigation and dumping margin calculation in context of Thailand.

The goal of anti-dumping measure is to remove the trade distortive effect of dumping and restore fair trade. The WTO allows the employment of anti-dumping measures as a fair competition instrument to provide relief to domestic industry from dumping injury. These actions were taken in order to accomplish the following goals of the WTO: improving the effectiveness of rules governing international trade, discouraging new trade barriers, which could impede international trade, and lastly achieving greater trade liberalization, which was done by reducing tariff and non-tariff barriers.

As the author did mention that dumping is not prohibited under GATT; however, it protects member's domestic business when the injurious effects occur according to Article VI GATT. This article is the exception of Most Favoured Nations rules (MFN),⁴⁴⁷ so it is allowed to use anti-dumping measure against only the country of exporter who dumped their goods. Article 1 of the AD Agreement establishes that a Member may not impose an anti-dumping measure unless it determines, through an investigation conducted in accordance with the provisions of the AD Agreement, that there are dumped imports as specified in Article 2, material injury to a domestic industry as specified in Article 3, and a causal link between the dumped imports and the injury as stipulated in Article 3.5. Thus, there are a set of conditions that is strictly implemented and have to be fulfilled prior to the imposition of anti-dumping measure.

The conditions are, Firstly, the consideration of whether the dumping has actually occurred. To be specific, normal price which is normally traded in exporting country will be compared with exporting price to see whether the latter are lower than the former. If it is in the case that no normal price demonstrated in exporting country, the price of product selling in third country might be used instead otherwise constructed normal value will be calculated and chosen to be compared. There might be obstacles when it comes to circumstances of Monopoly and Monopolistic Monopoly market as the government do have a key role in pricing of raw material and products so in this case authorities of importing countries could adjust the price so as to reflect the actual figure.

⁴⁴⁷ Warren F Schwartz and Alan O Sykes, 'Toward a positive theory of the most favored nation obligation and its exceptions in the WTO/GATT system' (1996) 16 *International Review of law and economics* 27

Secondly, dumping consequences or tends to have **detrimental effect towards domestic producers** manufacturing like products. Thus, if the importing countries do not have one specific kind of industry identical with the one imported from another country, this will not constitute the injuries suffered by importing country but might cause damages to the third country exporting that product into importing country instead.

Lastly, anti-dumping duties imposed in any cases must not exceed the dumping margin which is the differences between export and normal value. Additionally, initiation of investigation is required before the imposition of any anti-dumping measures. This is the essential principle behind the application of anti-dumping measures under the WTO system.

Once the conditions are met, the AD measure will levy additional import duties on the specific product from the specific exporting country in order to bring its price closer to the "normal value" or to alleviate the injury to domestic industry in the importing country, according to Article 9.1 of the AD Agreement. Furthermore, Article 16.4 of the AD agreement stipulates that member countries shall immediately and thoroughly notify the Committee on Anti-Dumping Practices of all preliminary and final anti-dumping actions including a semi-annual report on all investigations. A report is required to collect data and ensure that the AD measure is being used properly.

Nonetheless, even the conditions come into force as domestic law in Thailand, the above conditions have not been so effective to the extent that can seriously protect local business as it has certain problems such as the interpretation and lack of highly strict enforcement.

Anti-dumping agreement (ADA) has been more clear-cut in 1994.⁴⁴⁸ ADA does not consider any reasons behind dumping claimed by exporters to exempt any anti-dumping measures imposed on them such as their necessity of doing so since the economic crisis within their country or the oversupply of certain products in their market. Moreover, ADA will be implemented in aspect of only price dumping not service dumping or currency depreciation. Thailand adopted this entire framework into the 1999 and 2019 versions of the anti-dumping act, thus theoretically they will be used unaffectedly and with limited variables.

⁴⁴⁸ Anti-Dumping Agreement, 'Marrakesh Agreement Establishing the World Trade Organization' (1994) 1 Multilateral Agreements on Trade in Goods, Annex A

3.2.5 *Attempting to evade Anti-dumping duties*

To circumvent the anti-dumping duties, there are many ways that have been found used by exporting countries or individual exporters according to the practices within the EU.

A **minor modified products** is one way out that has been chosen by the exporters as it can maintain the key substances and characteristics of the products so it can be used normally in an ordinary way that this products have been used as before and furthermore it is not required to pay the duties under the anti-dumping measure since they do not fall under any categories imposed by the duties. It is noted that the minor modified products are going to be used by the same buyer and industry as it can potentially keep essential characteristics. One example of this scenario is the case of certain chemical substances which are previously imported in the form of powder and right after the imposition of anti-dumping duties, the imports are instead in the form of paste and it is not obliged to pay the anti-dumping duties.⁴⁴⁹

Another way to circumvent is the **importation of parts instead of fully finished products**. Take the case of Bicycle as an example. There were imports of bicycles from China into the EU with a very cheap price. After that, it had an imposition of anti-dumping duties on those bicycles. Exporters at that time decided to export parts of bicycles into certain firms in the EU to assemble all the components and sold as completed bicycle. This can evade the duties imposed by importing countries.⁴⁵⁰

Apart from above methods, there is **transshipment** process. This method is quite similar to the previous one but the process of assembly does taken place in the third country before exporting to the target market. This might occur as one country might be imposed anti-dumping duties but another country is not under such duties. Thus, the first country has to export parts into another country having an assembly operation there and exporting to intended market as producers would like to. It seems to be that the products are imported from the country which is not under an obligation to pay anti-dumping duties but in fact it does.⁴⁵¹ Products from China

⁴⁴⁹ Yanning Yu, 'Circumvention and Anti-circumvention in Anti-dumping Practice: A New Problem in China's Outbound Trade' (2007) 41 *Journal of World Trade* 1015
< <https://kluwerlawonline.com/journalarticle/Journal+of+World+Trade/41.5/TRAD2007039> > accessed 6 July 2022

⁴⁵⁰ Henrik Olsson, 'Circumvention of EC Anti-Dumping Measures' (Master degree thesis, Lund University 1999)

⁴⁵¹ Folkert Graafsma and Joris Cornelis, 'Anti-Circumvention: A Comparison' (2016) 11 *Global Trade and Customs Journal* 542

< <https://heinonline.org/HOL/LandingPage?handle=hein.kluwer/lotcuj0011&div=91&id=&page=> > accessed 6 July 2022

will be sent to Vietnam before entering Thailand because anti-dumping taxes will not be levied, and because Vietnam, like Thailand, is a member of the ASEAN region, it will benefit from additional government subsidies.

The fourth form of circumvention way is quite complex compared to the rest. It comes from the situation that, for example, importing country imposes anti-dumping duties on one specific products from country Z but it has an **exception on the product which is imported for certain industries or it has a special condition which might be paying half of the duties**. It is possible that one company using that material and is not under an exception will ask another company which benefits from this policy to import instead.

The last and the most straightforward method is **false declaration**. Country of origin, Tariff Classification Number or abnormally low-priced declaration are used by exporters to evade the anti-dumping duties.⁴⁵²

3.2.6 Conclusion

Dumping causes price distortions, and Thailand faces numerous types, which have a negative impact on domestic producers. However, certain groups enjoy cheap products without realizing that they would be more expensive in the future, which is detrimental for them. Thailand adopted this entire framework into the 1999 and 2019 versions of the anti-dumping act

When Anti-Dumping law is enforced and someone tries to evade it, the result is having Anti-Circumvention law to deal with those actions. Thus, it renders the additional Anti-circumvention provisions that Thailand brings to the hope that it will deter foreign products and make the Thai industry stand in the economy.

However, with Thailand's existing law enforcement basis which is not as effective as the western countries and specific cultural conditions make this amendment does not seem to be a bright path.

⁴⁵² Simon Holmes, 'Anti-circumvention under the European Union's New Anti-Dumping Rules' (1995) 29 Journal of World Trade 161

CHAPTER 4 IMPACT OF INTERNAL LEGAL CULTURE ON ANTI-DUMPING LAW REALM

Introduction

This chapter discusses the relationship between Thai legal culture and the anti-dumping enforcement concerns raised in the practices. It begins with the political sector's intervention through the use of public interest and the AD committee and concludes with the Civil Service Act's role. It focuses primarily on the AD Committee's and Cabinet's discretionary authority, which exposes them to the possibility of arbitrary and unpredictable exercise of power. It then addresses the tension between Thailand's legal culture and the paradigm associated with the foreign legal model adopted by Thailand. It demonstrates the forced abandonment of legal culture and its resurgence. This is followed by an examination of the rule of law in the Thai context, which reflects government officials' perspectives on the domestic industry, a key stakeholder in the anti-dumping procedure. Additionally, this chapter addresses the critical issues of inferior rules of origin, deficiencies in competition law, and refusal to accept punitive damages, all of which are related to Thai legal culture and have an effect on the development of the anti-dumping law framework.

Introduction of Anti-dumping Procedure in Thailand

Generally, the anti-dumping procedure (AD procedure) begins when a domestic business's performance deteriorates to the point where it can no longer compete with products imported from overseas at significantly cheaper prices. This characteristic of the scenario could be regarded as the entry of dumped imports causing serious harm to domestic businesses. Dumping actions are considered to be illegal and are subject to retaliation under Article 12 of Thailand's Anti-Dumping and Countervailing Act BE 2542 (1999) (AD Act) and Article VI:1 of GATT 1994. As a result, the domestic company may file a petition with the Department of Foreign Trade (DFT) to begin an investigation into the matter. If the investigation reveals that dumping has occurred, the Committee on Dumping and Subsidies (the Committee) will impose anti-dumping duties (the duties) on the products under investigation.

The anti-dumping investigation procedure begins with the filing of a petition that details the entity submitting the request, including the business type, products, and suspected origin of

dumped imports. After that, the DFT will determine whether the claimant submitting the request is qualified under Article 33 of the AD Act. Then, the DFT will send the questionnaires to interested parties who are domestic producers of like products, including the person who submitted the request, the person who supports the request, the person who opposes the request, and the person who neither supports nor opposes the request. Interested parties may respond to the questionnaire or not, but their failure to do so will result in an affirmative or negative conclusion based on the facts provided under Article 27 of the AD Act. Following that, the DFT and Committee will determine if dumping occurred and whether damages occurred to those enterprises and domestic industries as defined in Articles 18 to 20, as well as whether there is a causal link between dumping and damages as defined in Article 21 of the AD Act.

This stage is the most detailed and problematic because it contains a great deal of ambiguity, and the AD Act empowers the Committee, which consists of almost all positions assigned by the Council of Ministers, to issue Ministerial Regulations and Notifications for the execution of this Act under the Ministry of Commerce pursuant to Articles 72 to 78 of the AD Act. During the two stages of consideration by the DFT and the Committee, which theoretically take one and a half years pursuant to Article 54 of the AD Act, the provisional measure may be enforced as a temporary measure assisting domestic businesses pursuant to Articles 41 and 42 of the AD Act. Both the preliminary and final decisions may be to terminate the investigation or to discover dumping and subsequently impose duties for a period of up to five years in accordance with Article 57 of the AD Act. When the Committee considers it appropriate pursuant to Article 56 and 57 of the AD Act, the duties may be evaluated to continue to be imposed or terminated prior to the designated period. Finally, if interested parties are dissatisfied with the Committee's final determination, they may appeal to the Central Intellectual Property and International Trade Court (the IPIT Court) pursuant to Article 61 of the AD Act.

Cultural influence towards problems of Anti-dumping procedure in Thailand

The overall situation of anti-dumping in Thailand lies both within the opaque area of being a substantive issue itself, and of being a procedural issue. However, the former seems to be more easily solved than the latter as it is part of a deep-rooted culture in the Thai legal system; specifically, the interference of external factors in legal enforcement. The procedural issue is not limited to the shortening of the period of a case or rearranging the hierarchy or the organizational system, but the adaptation of legal culture and enforcement towards the

consideration of the case.⁴⁵³ It was discovered that there are factors that support the distorted legal culture and make legal enforcement in Thailand inefficient, which include:

4.1 A culture of intervention in the justice system by the political sector

This section demonstrates how and at what point in the process the political sector exerts influence, distorting the process from the way it should be lawfully. Article 72 of the AD Act binds the political sector to the AD procedure by appointing the Minister of Commerce as chairperson and six qualified people nominated by the Council of Ministers as members. The committee plays a significant role and serves as the heart of the AD procedure, as evidenced in part by Article 73 of the AD Act, which clearly gives the Committee with authority to approve an agreement to suspend dumping, issue Ministerial Regulations and Notifications for the execution of this Act and appoint subcommittees as they deem appropriate. Simultaneously, the Committee has vast functions disguised in the AD Act where explicit criteria are not available, instead relying on the Committee's sole discretion to determine a case.

4.1.1 Injury determination of consequent impact on domestic producers under Article 18 of the AD Act.

To determine injury to a domestic industry, three primary positive evidences shall be used: the volume of the dumped product, the effect of dumping on the prices of like products in the domestic market, and the consequent impact of dumping on the domestic industry, as defined in Article 18 of the AD Act. However, this article does not elaborate on the extent to which the requirements apply. The Committee then published in the Royal Gazette Ministerial Regulation Volume 119 Section 112A (on October 31st, 2002). Article 2 (2) (A) and (B) of this Ministerial Regulation address 15 factors for establishing the consequent impact of dumping on domestic business, and they appear to cover justifiable events that the Committee must examine. However, it is surprising that all articles of this Ministerial Regulation empower the Committee with complete authority to comply or not comply with these requirements, rendering these lists meaningless and incapable of predicting the outcome of an investigation.

The influence of politics is closely related to this issue as it concerns certain fragile circumstances such as large-scale business. Politicians often have a key role in anti-dumping proceedings in Thailand. As a result, there is definitely lobbying along with additional hidden

⁴⁵³ Gary Horlick and Edwin Vermulst, 'The 10 Major Problems with the Anti-Dumping Instrument: An Attempt at Synthesis' (2005) 39 Journal of World Trade 67

benefits in the anti-dumping process through the final decision of the case. In some cases, apart from the lobbying by the Federation of Thai Industries at the committee stage, there is lobbying since the DFT stage of the case.⁴⁵⁴ To explain, so as to initiate the investigation it is first necessary to determine the circumstances and evidence of the case to assess whether it is suitable for continuation. In considering this issue, political pressure is the main factor rather than the facts and legal issues of the case and this has repeatedly taken place in Thailand. The influence coming from politics as well as downstream business pressure via the Federation of Thai Industries is frequently publicized as talk of the town at the time through newspapers and social media and this could be a very sensitive issue as they have doubly emphasized the adverse effect of imposing anti-dumping duties, which is the higher price of certain materials regardless of the origin of them in the market, which then directly increases the cost of living within the nation.⁴⁵⁵

4.1.2 Increasing costs of production and living as political pressure on the Committee to apply Article 7 of the AD Act.

According to Article 7 of the AD Act, which contains provisions not found in the WTO legal framework,⁴⁵⁶ anti-dumping and countervailing proceedings must take into account the interests of domestic industry, consumers, and the general public. This provision imposes a broad requirement on investigative authorities to assess the impact of AD measures on importers, end users, and the general public. The public interest clause is a flexible tool for determining which course of action is preferable in light of a difficult economic scenario, such as a pandemic. On the other hand, this clause serves as a blank check for the Committee, exposing it to the risk of making an unlawful determination by allowing it to terminate the investigation or refrain from imposing AD measures even when all legal criteria are met. Personal interests or political popularity may influence the Committee's use of this useful clause in an unlawful manner. Furthermore, this phrase serves as a channel for the function of political economy in terms of the amount of influence of large countries in the region that heavily impact Thailand, as well as the legal policy implementation by the Thai government, particularly with regard to dumping. To illustrate, the details are about highlighting the issue of intentional adjustment of certain internal legislations in order to be in conformity with the

⁴⁵⁴ Parate Attavipach, Patamaporn Eiamchinda and Apisith John Sutham, 'The 10 Major Problems with the Anti-Dumping Instrument in Thailand' (2005) *Journal of World Trade* 159

⁴⁵⁵ *ibid*

⁴⁵⁶ Apisith John Sutham and Chalermwut Nilratsirikul, 'Thailand - Trade remedies' (Weerawong, Chinnavat & Partners Ltd, 2020) < <http://www.weerawongcp.com/data/know/121.pdf> > accessed 5 May 2021

political and economic circumstances between countries by eliminating the core of AD law, which is protection for domestic industries.

It is claimed that the DFT and the Committee have never relied solely on public interest considerations to terminate an investigation or refuse to impose AD measures.⁴⁵⁷ However, it can be observed that they are entirely relying on this provision but never officially relying on it. The Committee's final determination in the case of Melamine tableware from China in 2019, as published in the Royal Gazette Volume 136 Section 94D on April 11, 2019,⁴⁵⁸ is a good illustration of the covert application of the public interest clause. The product under investigation contains chemical components that differ from those of the people filing AD requests, but the difference is not evident and the product can be substituted at much lower prices, thereby undermining domestic producers' market share. The investigation uncovered clear evidence of Chinese exporters engaging in dumping and the damage to domestic industries, meeting the criteria set forth in Articles 18 to 21 of the AD Act for imposing AD duties on those dumped imports. However, the Committee stated in part in its final determination that the employment rate of domestic producers of like products is unaffected, and after considering the impact on domestic restaurant businesses that use more expensive tableware when imposing AD measures, the Committee decided to terminate the investigation and refrain from imposing the AD duties. Through the application of Article 7 of the AD Act, this determination constitutes unproportionality of reasoning. Even though employment is mentioned in the Committee's reasons, it is only one of 15 criteria used to determine the damages suffered by domestic businesses.⁴⁵⁹ Domestic businesses are still suffering in various ways, despite the fact that their employment rate has not changed. Meanwhile, according to Statista Research Department on GDP contribution in Thailand in 2020 by sector, the automobile and home appliance industries are those of key importance to the Thai economy, with food services having a 6 times lower GDP contribution.⁴⁶⁰ Selecting one less influential factor and combining it with poor argumentation on the public interest clause is analogous to applying Article 7 as the sole tool for determining the case.

⁴⁵⁷ *ibid*

⁴⁵⁸ Announcement of the Committee on Dumping and Subsidies on Melamine tableware from China [2019] Royal gazette Volume 136 Section 94D

⁴⁵⁹ The Ministerial Regulations of the Ministry of Commerce [2002] Royal gazette Volume 119 Section 112A

⁴⁶⁰ Statista Research Department, Gross domestic product (GDP) contribution in Thailand in 2020 by sector < <https://www.statista.com/statistics/1023315/thailand-gdp-value-contribution-by-sector/> > accessed 6 July 2022

4.1.3 The use of power by the political sector through the Minister's channel and the imbalance of two organs, the DFT and the Committee.

According to article 6 of the AD Act, the Minister of Commerce has the authority to issue Ministerial Regulations on any criteria and procedures relating to the determination of dumping, which may be carried out by the issuance of the Ministry of Commerce's Notification. The AD act appoints the Minister of Commerce to have a key role in anti-dumping investigations. Even though the Minister is the Chairperson of the Committee pursuant Article 72 and has the power to cast an additional vote as a “casting vote” in the event of an equality of votes pursuant to Article 77, the Minister's actual and highly influential role is not the abovementioned, but rather the absolute power to recruit members of the Committee and direct the final determination of the case. This authority is not expressly stated in the AD Act, but it is contained in Section 57 (2) of the Civil Service Act, B.E. 2551 (2008), which states that all instatements to the government service as civil servants and appointments shall be subject to approval by the Minister in Charge and the Council of Ministers.⁴⁶¹ According to Article 72, the Committee consists of six qualified persons appointed by the Council of Ministers and nine higher level executive positions, including the head of a ministerial level government agency and the head of a departmental level government agency. As a result, qualified persons are definitely members assigning directly from the political sector as stated in the AD Act, but the remaining members are from an indirect approach but are nevertheless significantly connected to the political sector.

When political influence from the Minister and the Council of Ministers is transferred to the Committee by assignment of positions exercising power to decide the case, the Committee is theoretically not only exerting power alone over the AD procedure, but also over the DFT determining the case. According to Articles 39 and 40 of the AD Act, the DFT has the authority and responsibility to examine issues of dumping and injury, summarize the findings, and present its findings to the Committee for a mutually agreed-upon final determination. These two organs, the DFT and the Committee, are in charge of both the anti-dumping investigation and the injury determination process. The AD Act does not empower the Committee to act independently of the DFT, so the views of the two organs should be equally weighted in the pursuit of mutual determination, and the two organs should collaborate constructively to

⁴⁶¹ Civil Service Act B.E. 2551 [2008], Official Translation
< https://www.ocsc.go.th/sites/default/files/attachment/law/act_law2551en.pdf > accessed 6 July 2022

provide checks and balances in power and deter unlawful conduct and incorrectness. However, in practice, when opposing viewpoints exist, the DFT's viewpoint is typically dismissed, while the Committee's viewpoint is chosen and implemented as the official determination without announcing the DFT's disagreement to the public. In 2019, the case of Melamine tableware from China is still a good example of this abnormality.⁴⁶²

Having two organs working on the AD procedure in Thailand should allow for effective power decentralization and check and balance. When the political-related committee holds significant power over the DFT, however, balances and decentralization do not occur as they should under AD law. Despite the fact that Article 61 of the AD Act allows interested parties who are dissatisfied with the final determination to appeal to the Central Intellectual Property and International Trade Court (IPIT Court) to have the final determination revised, only two cases have been heard by the IPIT Court in the last 24 years.⁴⁶³ There is no official proof as to why practically all interested parties did not proceed, but it can be assumed that the 30 day appeal period from the date of receipt of the notification of the determination is too short to prepare this legally and economically complicated case. More likely, dissatisfied parties opted to request a review of the need to maintain the application of an anti-dumping duty under Article 56 of the AD Act, asking whether to terminate the imposition or adjust the rate of the anti-dumping duty. On the other hand, the request under Article 56 can be made after the anti-dumping duty has been in effect for at least one year, or before one year if the Committee deems it appropriate. This causes the determination to revert to the unsatisfied pathway, where it is confronted with a non-transparent determination. Three current organs in Thailand dealing with AD procedures are well-positioned in the context of textual legislation but cannot completely function in real practice owing to political interference resulting from imbalanced empowerment.

⁴⁶² Announcement of the Committee on Dumping and Subsidies on Melamine tableware from China [2019] Royal gazette Volume 136 Section 94D

⁴⁶³ Sakol Harnsuthivarin, 'Intellectual Property and International Trade Court over Anti-dumping and Countervailing Measures Cases' (2017) < <https://ipitc.coj.go.th/th/file/get/file/20200513dd8af8caab4b7ee8c83a83eb0d40b1b6152414.pdf> > accessed 6 July 2022; Apisith John Sutham and Chalermwut Nilratsirikul, 'Thailand - Trade remedies' (Weerawong, Chinnavat & Partners Ltd, 2020) < <http://www.weerawongcp.com/data/know/121.pdf> > accessed 5 May 2021

4.1.4 The comparison of the DFT and the Committee in Thailand and the ITA and ITC in the United States

In the previous section, it is shown that the responsibilities of two organs dealing with the AD procedure in Thailand all overlap when it comes to the same issues, dumping investigation, and damages suffered. Overlapping responsibilities should raise the level of correctness examination, but in Thailand, this is not the case. When the structures of other WTO member countries are examined, another possible solution becomes more apparent.

In the US, there are distinct roles for two entities, the International Trade Commission (ITC) and the International Trade Administration (ITA), when it comes to different aspects of the AD procedure. The first body is the ITA, who consider whether dumping has occurred, while the subsequent body is the ITC who consider whether the dumping which occurred has contributed to material injury.⁴⁶⁴ This prevents one organ from dominating another and **reduces the potential for monopoly and abuse of power by the officials in the judicial organisation.** As a result, there is a **balance of power between two organs regarding the consideration of dumping.** Such a balance of power will accordingly lead to greater justification in using the power of any authority within those organs whereas **Thailand does not have that structure**

Another observation is that the structure of two organs in the United States does not have the opportunity to examine the correctness of each other's processes and results, as Thailand does, because they have separate responsibilities when it comes to different aspects of the case.⁴⁶⁵ The case, however, can be reviewed subsequently by the United States Court of International Trade. *Tak Fat Trading Co., Plaintiff v. United States, Defendant, and Coalition for Fair Preserved Mushroom Trade* (2002) is one of the ITC and ITA's contentious decisions that went to the United States Court of International Trade Obviously, not all cases are sent to the court for review. However, there is no evidence in the US of significantly obstructing the case from being heard in court, despite the fact that only a small number of cases have been heard in court, and the AD law in the US allows submission for revision by the ITC as well,⁴⁶⁶ which is similar to the situation in Thailand.

⁴⁶⁴ Michael O Moore, 'Rules or Politics?: An Empirical Analysis of ITC Anti-Dumping Decisions' (1992) 30 *Economic Inquiry* 449

⁴⁶⁵ Richard D Boltuck, 'An Economic Analysis of Dumping' (1987) 21 *Journal of World Trade* 45

⁴⁶⁶ *ibid*

Organs and empowering legal structures are clearly seen as differences between Thai and US practice, possibly resulting in various hierarchy amongst organs rather than being on the same level. Meanwhile, options for interested parties are similarly defined, allowing them to proceed to court or submit to the commission, but the practical chosen decision is significantly different, as evidenced by statistics of court filings. This raises the question of whether other legal, political, or cultural variables in Thailand are influencing the outcome.

4.1.5 In-depth analysis of the committee's conflict of interest risk

Conflict of interest must not occur in the determination of an AD case because it is one of the most important and mandatory principles for determining legal issues. The value of this principle has been widely accepted for a long time, to the extent that the WTO's AD framework does not need to directly stipulate in the framework because member countries should have reasonably practiced. The conflict of interest concept is similar to the rule of law and the legal state principles, both of which are deeply rooted in the legal practices of democratic states.⁴⁶⁷

Adopting the WTO's framework on AD does not mean adopting the conflict of interest principle word for word, but it is a principle that democratic states must already have and do not need to address again. As a result, Thailand's Anti-Dumping and Countervailing Act BE 2542 (1999) (AD Act), which was first implemented in Thailand, did not include a conflict of interest clause.

The Committee's practice in Thailand during the last 20 years has been contentious in terms of unproportionality and unclear legal reasoning. There were allegations and proof of lobbying and personal business networking involving members of the Committee who could gain or lose their own business or political interests based on the termination of the investigation or the implementation of AD duties on specific products.⁴⁶⁸

All ministers are simultaneously doing their own business indirectly through nominees, family members, or even their personal drivers, holding shares instead, while the ministers themselves occupy a position and act in the national interest.⁴⁶⁹ Thus, the Committee, whose members are directly and indirectly assigned and influenced by the Minister and the Council of Ministers,

⁴⁶⁷ David Kinsella and David L Rousseau, 'Democracy and Conflict' in Jacob Bercovitch, Victor Kremenyuk, I William Zartman (eds), *The SAGE Handbook of Conflict Resolution* (Sage Publications 2009)

⁴⁶⁸ Editorial, 'Manufacturers oppose 'AD steel' measures' *Thansettakij* (Bangkok, 17 February 2013)

⁴⁶⁹ Editorial, 'Corruption Cycle' (Anti-Corruption Organization of Thailand, 17 March 2017)
< <http://www.anticorruption.in.th/2016/th/detail/135/5/วงจรรักษาผลประโยชน์> > accessed 6 July 2022

and whose chairperson is also the Minister of Commerce, as per Civil Service Act B.E. 2551 (2008) Section 57 (2) and AD Act Article 72, must unavoidably serve personal needs of ministers who also act as business owners.⁴⁷⁰

The DFT is another organ involved in the AD procedure that has a distinct level of relevance when it comes to political intervention. Members of the DFT are permanent civil servants; therefore, their positions are not affected by the government or the term of a minister.⁴⁷¹ Members of the Committee, on the other hand, are subject to the discretion of the Minister and the Council of Ministers, who hold temporary positions due to frequent relocation of positions and government instability, as evidenced by the fact that in the 89 years since the establishment of Thai democracy, only one government, led by Thaksin Shinawatra, has fully occupied a four-year term.⁴⁷² Furthermore, the DFT has various working groups that rotate through the AD cases, reducing the risk of absolute lobbying. Even if the DFT plays a more transparent and dependable role in the AD system, as previously stated, the Committee has greater control over the DFT in determining and structuring the case.

The committee's contentious role, which had been disguised for 24 years, became clear in 2019 when Article 77 of the AD Act was changed to stipulate that "any committee member who has an interest in an issue requiring a decision is not permitted to attend a meeting on that matter". This approach attempts to remove the criticism of the Committee's lack of transparency and hidden benefits while emphasizing that the long-debated claims are extremely likely to be true. The next question is whether this approach will actually solve the problem. The possibility of success can be predicted in part by analyzing the rest of the article on the AD act itself. According to Article 78 of the AD Act, the Committee has the authority to appoint sub-committees to carry out specific tasks. Article 78 itself serves the preamble of AD law well by expediting case determination and then applying measures alleviating losses if dumping and damages are discovered during the investigation. However, sub-committees, who are likewise selected at the Committee's exclusive discretion, are not bound by the conflict of interest rule provided in Article 77, allowing sub-committees to engage in activities that the Committee is banned from doing under Article 77. On the one hand, not prohibiting subcommittees from

⁴⁷⁰ Pradit D and others, 'Pattern Structure Policy Corruption Affecting Policy formulation of Local Administrative Organizations' (2020) 14 Rajapark Journal 109

< <https://so05.tci-thaijo.org/index.php/RJPJ/article/view/247433/168641> > accessed 6 July 2022

⁴⁷¹ Department of Foreign Trade, 'Executive structure' (DFT 2020) < <https://www.dft.go.th/th-th/dft-aboutt-organize> > accessed 20 May 2020

⁴⁷² Editorial, 'Profile: Thaksin Shinawatra' (BBC, 24 June 2011) < <https://www.bbc.com/news/world-asia-pacific-13891650> > accessed 6 July 2022

having conflicts of interest may boost the likelihood of recruiting a diverse range of expertise to establish groups working quickly to facilitate the AD procedure. However, the AD Act does not limit the scope of power of subcommittees, allowing them to carry out any tasks assigned by the Committee. It can be anticipated that the sub-committees will have the authority to thoroughly determine cases if the committee assigns them to do so without consideration of conflicting interests. As a result, the amendment to Article 77 banning the Committee from having a conflict of interest in a case they determine may not solve the problem because it has numerous means of circumventing the effect of Article 77. This should be investigated further because the amendment has only been in place for a year, and it is far too early to conclude that it does not work.

4.1.6 Price Undertaking and the Role of the Committee as a Representative of the Political Sector

After a request to conduct an AD investigation is submitted in accordance with Article 33 of the AD Act, the consideration will begin and launch a preliminary determination in accordance with Article 41, followed by a final determination in accordance with Article 49. If the preliminary determination finds dumping action and damages, the Committee may apply a provisional measure by imposing a provisional duty or a guarantee of such duty in accordance with Article 41. In the meantime, an anti-dumping determination may be terminated for any particular foreign exporter without the imposition of a provisional measure or an anti-dumping duty if an agreement on price undertaking can be reached between that exporter and the DFT in accordance with Article 41. Both the provisional measure and the price undertaking agreement are intended to quickly alleviate losses experienced by domestic industries prior to going through the full AD procedure, which takes around two years to reach a final determination. On the one hand, a provisional measure under Article 41 has the function of securing AD duties that exporters must pay after the final determination is executed, while the investigation continues until the final determination confirms the dumping action and damages suffered, as well as the AD duties that exporters must pay. On the other side, a price undertaking agreement under Article 43 can completely stop the AD procedure, providing a strong incentive for exporters to negotiate a deal.

It is true that executing a price undertaking agreement still leaves the exporters with a "price to pay" rather than walking away without payment. However, given the organ negotiating this deal and the widely open conditions stipulated in the AD Act itself, the "price to pay" may be

significantly lower than it should be in final determination. According to Article 43, the DFT is responsible for making such an agreement with the exporter. Nevertheless, the last phrase of Article 43 leaves a risky condition granting the Committee authority, stating that such an agreement will come into force only once it has been authorized by the Committee. The Committee is the organ concluding the price undertaking agreement. However, at the time of finalization, the information is still inaccurate as to whether it can remove injuries and damages caused by dumping because the investigation is only halfway completed. In one negative aspect, the price undertaking agreement became a loophole, allowing the Committee and the exporters who agreed on a satisfactory figure to terminate the AD procedure based on the Committee's deemed appropriateness without considering legal elements. In another problematic aspect, unclear final AD duties become a threatening measure of the Committee pressuring the exporter to execute the price undertaking agreement, indirectly making the price undertaking agreement a favorable incentive for the exporter. Letting price undertaking agreement, a highly sensitive public interest issue carried out by government agencies and practically based on the principle of free will, as employed in contract law fundamentals, is not appropriate. Interfering with political power through the Committee and allowing the Committee to have power over the execution of this agreement causes the AD procedure to become non-transparent, resulting in unlawful and corrupted behavior, and the most important thing is that domestic industries will not obtain the protection that they should obtain under the AD law.

4.1.7 Deeply ingrained hierarchy from the Civil Service Act that affects power equality

The chain of command is useful in government administration for allocating tasks and ensuring that administrative actions and orders are legal. According to the Civil Service Act, B.E. 2551 (2008), the brief chain of command begins with the Prime Minister, Ministers, and Permanent Secretaries, and then moves to officials who allocate work from the policy stage to the operational stage. The Civil Service Act serves as the framework for Thai government operations, giving administrative positions, both political and bureaucratic, high dominance and wide ranges of power, while giving operational positions limited opportunity to express their opinions, only conforming to administrative positions' orders. This system is useful and widely used because it can deter unnecessary opposition, obstructing policy progress. However, the AD procedure that Thailand adopted from the WTO clearly and intentionally leaves operational officers in the form of the DFT and administrative officers in the form of

the Committee equally have their voice evaluating cases and reaching an acceptable consensus. The collision of an adopted framework and a local act with a long-standing local practice causes AD practice in Thailand to revert to its traditional practice.

According to Article 72 of the AD Act, the Committee's structure is dependent on governmental delegates who are nominated by the Council of Ministers based on their experience in one of several disciplines, including international trade, economics, accounting, law, agriculture, and industry. This committee is in charge of finalizing the AD investigation and imposing anti-dumping duties.

As described in the preceding section, the Committee's dominance over the DFT makes the Committee the only organ dealing with and finalizing both the consideration of dumping and injury suffered simultaneously. The absence of the DFT's participation throughout the consideration stage may result in a lack of balance and sufficient rationale in decisions and revisions. Despite the Committee's expertise in various fields, the Committee does not have enough experience in practice compared to the DFT to analyze any relevant facts, which may result in a lack of actual understanding of the matter prior to the imposition of anti-dumping duties. This is because the Committee's position is rotated based on the government and minister's term of office, therefore some members of the Committee are considering AD cases for the first and last time.

Given the Committee's practically louder voice over the DFT, the Committee has the potential to shape the direction of the case by selecting parts of information, figures, and elements while eliminating them as supporting the political sector's interests. Leaving or selecting a certain piece of information has far-reaching consequences in terms of judgment. In determining whether domestic industries have suffered damages, which is one of the conditions for imposing AD duties, even Articles 19 to 21 of the AD Act set criteria, but they are too broad, leaving the Committee on behalf of the Minister to enact the Ministerial Regulation Volume 119 Section 112A on the royal gazette (on October 31, 2002). Article 2 (2)(A) and (B) of this Ministerial Regulation appears to address 15 criterias for narrowing the scope of damages; however, it gives the Committee full authority to stick or not stick to these criterias, leaving a channel for the Committee to indulgently select their preferred choice without listening to opposition from the DFT. This is reflected in the case of Chinese-imported citric acid, whose final decision was published in the Royal Gazette Volume 121 Section 2D (on January 13, 2004). The Committee in this case chose to conduct on-the-spot verification in accordance with

Article 29 of the AD Act, which was adopted from Article 6.7 of the AD agreement of the WTO. However, choosing to do so does not allow the Committee to verify whatever they see appropriate, because Article 29 itself does not leave the door open to do so, intending strict verification to be conducted. Nonetheless, the Ministry of Commerce's Anti-dumping Procedure Handbook specifically allows the Committee to pick entities and undertake verifications as they see appropriate.⁴⁷³ Overall, this demonstrates the ability to subjectively select entities to check and set criterias to determine damages, reflecting the unfair power to shape and control the case's findings.

The practice of opening a channel for the Committee members who are closely connected to the political sector or who are themselves politicians to have a high degree of dominance and hierarchy over AD procedures results from a deeply ingrained and familiar administrative chain of command, which has a detrimental effect on the efficacy of the WTO-adopted legal framework. When viewed in context, this behavior is unacceptable since it connects the quasi-judicial process to the political sector and an unjust heirachy, a system that should not have occurred.

4.1.8 Abuse of power through the authorized application of Article 7

Having two separate organs that analyze various aspects of AD cases and examine one another's working processes has been shown to be less problematic in terms of negative interference and justification, as demonstrated in the EU and US systems.⁴⁷⁴ When the Committee has dominating authority over the DFT, despite the fact that they have equal voice under AD law, it appears as though there is only one organ with absolute authority over AD cases. In practice, the combination of political intervention with a monopolistic organ makes exercising power extremely broad and difficult to examine, increasing the possibility of power abuse. Abuse of authority may take the shape of extreme and overt corruption and bribery, or it may take the form of beating around Article 7, which states that public interest is one among the factors considered in AD determination. Thus, Article 7 appears to authorize the Committee

⁴⁷³ Trade Interests and Remedies Division, 'Anti-Dumping Guide' (Ministry of Commerce, 2021) <https://www.thaitr.go.th/storage/measure_info/HTXEDZVOnhvnVh0GRrR5gGqPJ8bplCXqo7XJbjkW.pdf> accessed 20 November 2021

⁴⁷⁴ Edwin Vermulst, 'The 10 major problems with the anti-dumping instrument in the European community' (2005) 39 *Journal of World Trade* 105

to exercise broad discretion in making determinations, which is hazardous in the context of Thailand.

Article 7 specifies that anti-dumping and countervailing measures must weigh the interests of domestic industry, consumers, and the general public. This unique Thai AD article serves a useful purpose by allowing suitable flexibility to interested parties when implementing the sole AD principle does not yield reasonable results. However, applying this article requires the Committee to interpret on a case-by-case basis without limiting the scope of how far the case is considered under Article 7, giving the Committee full authority to continue or terminate the entire AD procedure while arguing that they consider the interests of domestic industry, consumers, and the public. The wide-open nature of Article 7 and the complete power of the Committee also expose the proceedings to the potential of interference by an unneeded but influential organ. The Federation of Thai Industries (FTI), a private-sector organization that brings together industrial leaders and represents Thai manufacturers at both national and international levels, as well as working with the government to develop national policies, frequently serves as a go-between for downstream industries to lobby the Committee during the AD procedure.⁴⁷⁵ FTI has frequently raised the issue of public interest, unofficially participated in the investigative process, and attempted to encourage the Committee to take Article 7 into account. The committee's investigation has presumably been terminated as a result of this.⁴⁷⁶ Meanwhile, Article 7 does not provide predictability in case determination because it allows the Committee to improvise based on the country's situation, but unpredictability is acceptable provided Article 7 is used with straightforward interpretation and transparency.⁴⁷⁷ Because Article 7 is not a core provision of AD law and does not override other sections intensely establishing criteria such as dumping and damages, which are core parts of determination, employing Article 7 by claiming public interest should not be the dominating default measure over other criteria. However, in Thai AD procedures, the use of Article 7 takes precedence over other factors. It has the ability to accelerate the imposition of AD or to abruptly terminate the AD procedure, rendering other valued criteria meaningless. Such dominance can be interpreted as a tactic to abruptly cease all AD procedures, with the government's purpose being to protect downstream businesses from higher material costs if

⁴⁷⁵ Apisith John Sutham, Parate Attavipach and Patamaporn Eiamchinda, '10 Major Problems with the Anti-Dumping Instrument in Thailand' (2005) 39 *Journal of World Trade* 159

⁴⁷⁶ Laurids S Lauridsen, 'Foreign direct investment, linkage formation and supplier development in Thailand during the 1990s: The role of state governance' (2004) 16 *The European Journal of Development Research* 561

⁴⁷⁷ Kevin Wongleedee, 'Important motivation factors for foreign reinvestments in Thailand' (2016) 6(180) *Актуальні проблеми економіки* 19

AD duties are levied on certain imports, hence saving them from going bankrupt. Saving small fragile local downstream businesses is good for overall domestic economic growth, which is in line with the government's mission; however, local upstream businesses that have already been severely harmed by dumped imports are constantly facing dumped imports and risking bankruptcy as a result of the termination of the AD procedure, which does not result in the imposition of AD duties. Definitely, every decision affects both advantaged and disadvantaged people, but it is appropriate if the decision is based on evaluating legal criteria without any hidden incentives. Incentives are assumed to come from a large number of downstream businesses, with a large number of people providing a large political popularity base.⁴⁷⁸ This reflects the political economy perspectives that the authorities use to determine how to execute anti-dumping policies. When politics comes into play as an influencing factor, the Committee, a closely affiliated political organ, prioritizes the application of the public interest clause over other clauses. This is a flagrant disregard for fundamental AD provisions as a result of the frequent and improper use of Article 7 for the political sector's benefit.

The Committee's final determination of the case of low carbon wire rods from Ukraine and Indonesia in 2004, as published in the Royal Gazette Volume 121 Section 92D on August 20, 2004, demonstrates the Committee's clearly irrational use of Article 7 to reverse the DFT's investigation report, indicating clear dumping and severe damage to domestic low carbon wire rod manufacturers. The DFT even proposed imposing provisional duties on such products from both countries in order to alleviate domestic industry damage, but the Committee abruptly terminated the anti-dumping proceedings and cancelled the duties, arguing that imposing anti-dumping duties on such products at the time would have a negative effect on the national economy, given the benefits to industries, the public, and consumers. The committee's conclusion is made without additional information, implying that the committee prefers to preserve downstream industries such as local construction and the consumers of such industries, which engage a broader spectrum of people than the few domestic low carbon wire rod producers.

In this example, the Committee believes that because upstream manufacturers are insignificant in comparison to downstream enterprises and consumers, protecting the latter group is more beneficial. However, calculating the number of people and protecting the majority does not

⁴⁷⁸ Corinne M Krupp and Susan Skeath, 'Evidence on the upstream and downstream impacts of antidumping cases' (2002) 13 *The North American Journal of Economics and Finance* 163

reflect the actual harm done to the side that was not chosen to be protected. At this stage, the true impact may not be apparent because downstream businesses and consumers may continue to benefit from low-cost imported items as a result of the Committee's decision to terminate the AD procedure under Article 7. However, terminating the AD procedure and duties causes actual harm by leaving upstream businesses completely vulnerable to dumped imports, resulting in the closure of an increasing number of upstream businesses that provide a long-term source of processed materials for downstream manufacturers in the country. Due to a lack of local upstream enterprises, downstream businesses are forced to use imported commodities, which may result in price increases when domestic direct competitors gradually close their businesses due to the unbearable price war. Thus, downstream businesses are forced to use expensive imported supplies, which are far more expensive than imposing AD duties on those imports at the beginning. This has a long-term detrimental effect on both the upstream and downstream sectors. The Committee's determination, whether or not influenced by political motives, should take into account the long-term economic consequences.

Using Article 7 to completely terminate the AD procedure despite the fact that other evidence indicates dumping and damage to domestic sectors is a disproportionate application because the failure of a few upstream enterprises can create a massive wave of economic harm. Low carbon wire rods and Melamine tableware are both examples of irrational reasoning based on Article 7. Theoretically, the flexibility of Article 7 is more likely to result in a determination that is satisfactory to all interested parties.⁴⁷⁹ It can be used as a criterion for developing AD measures that strike a balance between continuing to impose duties to mitigate upstream business damage and discontinuing all AD procedures to dissuade downstream businesses from increasing their costs.⁴⁸⁰ As with the low carbon wire rods instance, the situation can be resolved by striking a compromise between reducing anti-dumping duties as necessary to aid downstream businesses while protecting upstream industries, rather than abolishing all procedures and duties..⁴⁸¹ Thus, Article 7 is a wide-open route that does not constrain the Committee's conclusion. It can be utilized as a destructive element by twisting this article in

⁴⁷⁹ Vandee Suchatkulvit, 'A Legal Perspective on Thailand's Anti-Dumping Law ' (2019) *Journal of Intellectual Property Law and International Trade* 502

⁴⁸⁰ *ibid* 513.

⁴⁸¹ Robert W McGee, 'Recent Antidumping Cases involving Companies in Russia and Ukraine' (Proceedings of the Thirteenth Annual World Business Congress, International Management Development Association, Maastricht, 14 July 2004)

order to obtain hidden incentives, or as a supporting element by applying balances to interested parties.

4.1.9 Confidentiality or non-transparency – Difficulties brought about by political interference

Confidentiality and non-transparency have been identified as major issues in Thailand's legal system, dating all the way back to 1855.⁴⁸² **As before, any legal procedure was never disclosed and it placed foreigners living in Thailand in an unfair situation. However, Thailand was influenced by the British Bowring Treaty during colonial times, which mandated that judicial procedure be publicly disclosed till the present day, thereby lessening procedural intransparency.**⁴⁸³ **However, anti-dumping, a newly enacted law in Thailand, has not been fully disclosed to the public, leaving some potential for confidentiality.** It is true that applying information disclosure rules must be accompanied with the confidentiality of certain sensitive information of the parties but it must be possible to maintain balances in due process of law.

Confidentiality is a legal principle that is frequently applied in court cases to shield interested parties from publicly disclosing personal and sensitive information that directly affects the owner or interested party. The existence of a confidentiality clause in Article 26 of Thai AD law provides enough security for people holding sensitive information while allowing for non-transparent acts via confidential consideration. Where the facts of the consideration are not made public, it is difficult to ascertain whether the committee collects and considers the case independently of other influential factors, most notably political benefit. In turn, political interference creates an incentive for the Committee to conduct secret hearings and avoid disclosing details because a determination with conflicting or inadequate details will generate criticism against the Committee and the Ministry. Thus, publishing a determination omitting details and addressing only the final results while stating the need for confidentiality is a way out under Article 26.

According to Article 26 of the AD Act, no information that is confidential in substance or content or that is provided on a confidential basis shall be disclosed during the determination process. Disclosure of information provided on a confidential basis requires prior authorization

⁴⁸² Dhitiphong Meethong and others, 'The Bowring Treaty with the Economic Impact of Thailand Buddhist Era 2398' (The 12th NPRU National Academic Conference, Nakhon Pathom, 9 July 2020)

⁴⁸³ Sawaeng Bunchalermwipas, *The Thai Legal History* (Winyuchon 2019)

from the information provider. The provider of such information shall be requested to submit non-confidential summaries of the information for the determination.

Allowing information providers with the power to disclose or conceal their information throughout the AD procedure is permissible because it respects data ownership and the right of the provider to protect its business from information leakage abuse by a malevolent individual. Meanwhile, Article 26 expands the scope of material that can be concealed, allowing for the concealment of any information that is confidential in substance or content. The substance and content of Article 26 are effectively those that allow the Committee to determine if they qualify, as there are no ministerial regulations or notifications for the execution under this AD Act addressing the scope and establishing additional criteria for Article 26. Due to the ambiguous scope of Article 26, the Committee and its officials effectively expand the confidentiality of proceedings and base information used to determine dumping. As a result, the AD inquiry is frequently treated in a confidential manner. Thus, anyone other than the interested parties in the case will be denied access to particular case information and will be unable to make inquiries about the case, specifically regarding the method used for anti-dumping consideration, because the information is treated as confidential, which it is not. Meanwhile, Article 10 of the AD Act lessens interested parties' right to information by stating that the Ministry of Commerce has the authority to prescribe fees or charges as appropriate, up to 10,000 THB (approximately 220 GBP) for inquiring information pursuant to notifications for the execution of this AD Act under the Ministry of Commerce Volume 138 Section 62D effective on March 19, 2021. (and notifications for the execution under the DFT as effective April 12, 2001).

Additionally, Article 26 covers the publication of the Committee's determination. When it comes to exposing any committee decision, only the final anti-dumping determination and the duties to be imposed will be disclosed, while the injury and dumping margin calculations, which are two critical elements in determining the AD case, remain vague due to the Committee's arbitrary classification of certain information as confidential. Thus, the details of the approach under investigation, the methods for calculating injury, and other data are not sufficiently detailed to be visible to even interested parties. This precludes interested parties from independently backtesting and analyzing the determination and duties. Nondisclosure of

specific information, a lack of precise computation and disclosure rules are all causes and consequences of one another.⁴⁸⁴

The vague and overbroad confidentiality rule in Article 26 combined with the existence of a closely political-related committee results in an uncontrollable and excessive practice, impeding full transparency in the AD procedure while harmoniously strengthening the political sector's power through the AD procedure.

4.2 Discretion-based culture and lack of transparency

Discretion is the authority to make subjectively the right or wrong decision, and it is the authority of officials to act in line with their own judgment and conscience.⁴⁸⁵ Discretion is abused when judicial conduct is arbitrary, imaginative, or irrational. Discretion regularly perplexes people, and its effects are uncertain. It sends confusing messages to the public, which is contrary to the fundamentals of good law, which must give a clear signal indicating legal or illegal action.⁴⁸⁶ Sending ambiguous signals to people appears to imply that they cannot predict or act, but must instead wait and accept whatever judgment is rendered. Discretion can initially result in both positive and negative outcomes. However, establishing positive resilience can be extremely costly and nearly impossible in the context of Thailand.

In Thailand, one of the difficulties in creating positive resilience is the excessive use of discretion and the inclusion of discretion as a mandatory element in law. Thailand's legislative problems follow a pattern: if an act contains five articles, the sixth gives the person in charge the authority to execute, amend, or conduct as it deems appropriate.⁴⁸⁷ Meanwhile, every statute has a sixth clause. This contributes to the excessive reliance on discretion in Thai legal procedure. However, minimizing excessive discretion by excluding the sixth clause from the bill is likewise difficult, as the legislative and administrative sections will not enact and approve the law.⁴⁸⁸ By rejecting legislation that lacks that "sixth clause," discretion becomes a requirement in all legislation.

⁴⁸⁴ Bruce A Blonigen and Thomas J Prusa, 'Dumping and Antidumping Duties' (2015) NBER Working Paper No. w21573 < https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2663231 > accessed 6 July 2022

⁴⁸⁵ Kent Greenawalt, 'Discretion and Judicial Decision: The Elusive Quest for the Fetters That Bind Judges' (1975) 75 Columbia Law Review 359

⁴⁸⁶ Thani Chaiyawat and Nipon Poapongsakorn, 'Discretion' in Peerapong Techatattanon (ed), *Corruption equation* (Thailand Development Research Institute, 2017)

⁴⁸⁷ *ibid*

⁴⁸⁸ *ibid*

While the well-known discretion clause has been widely enacted, it has also been heavily criticized for verdicts that rely heavily on discretion, prompting society to debate the so-called "judicial activism" philosophy, which holds that courts can and should consider the broader societal implications of their decisions in addition to the applicable law.⁴⁸⁹ This raises concerns in Thai society about the predictability and legitimacy of the legal system and its enforcement.

Unlimited authority exercising power, which occurred frequently prior to the Bowring Treaty period and implicitly required every legislation to have such a broad discretion clause, currently reflects a critical deep-rooted cultural value that the authority has consistently upheld and abused. As a result, Thai individuals and scholars may lack sufficient pushback to overt and dubious exercises of discretion. This further underscores the importance of "some people's regulations" or so-called "discretion" while examining Thai social and cultural roots.⁴⁹⁰

Discretion is a frequently employed measure in Thai law, whether in locally enacted legislation or in frameworks adopted from abroad, such as the AD law and the recently amended Anti-Circumvention Law (AC law). The primary indicator of where discretion is exercised is the phrase "where the... deems appropriate" in the article. **In the consideration by the Committee, although it is mandatory to state the reason in any order, in practice, most commands will be reasoned as "It is appropriate to ..."**⁴⁹¹ **The determination may always be amended without citing any cause related to anti-dumping law and does not have to be amended for any reason other than appropriateness. Additionally, the item contains concealed discretion by implicitly stating that "the Minister in charge and control of the Act's execution shall have the authority to issue Ministerial Regulations and Notifications for the execution of the Act". This implicit clause allows ministerial regulations and notifications for execution to be fully implemented just by ministerial approval without the consent of the national legislative body, implying that they are not subject to review for appropriateness, proportionality, and lawfulness.**

⁴⁸⁹ Christopher Wolfe, *Judicial activism: bulwark of freedom or precarious security?* (Rowman & Littlefield 1997); Khemthong Tonsakulrungruang, 'The Constitutional Court of Thailand: From Activism to Arbitrariness' in Albert H Y Chen and Andrew Harding (eds), *Constitutional Courts in Asia: A Comparative Perspective* (Cambridge University Press 2018)

⁴⁹⁰ Somkiat Tungkitwanich and Thani Chaiyawat, 'Looking back on the legislation to solve the discretion problem in Thai society' (Thailand Development Research Institute, 12 October 2017) < <https://tdri.or.th/2017/10/corruptionformular/> > accessed 6 July 2022

⁴⁹¹ Weerasak Krueathep, 'Local government initiatives in Thailand: Cases and lessons learned' (2004) 26 *Asia Pacific Journal of Public Administration* 217

There are 65 provisions in the AD Law that handle both substantive and procedural aspects of AD investigation, and 18 of those articles are incorporated directly or indirectly into discretionary measures, accounting for about 30% of the AD provisions. Additionally, there are at least 14 relevant sub-regulations that contain detailed rules and administrative procedures for AD investigations,⁴⁹² all of which are the result of those discretion clauses cumulating to create up to 32 provisions that the Committee can fully control through its broad discretion. Having a large number of discretionary provisions is likely to render the AD framework ineffective and prevent it from accomplishing the objectives of the AD statute. Furthermore, the legislative and the Ministry of Commerce ignore the failure of the AD Law, allowing the change on the part of the AC Law with the same flaw because the law amendment itself is not able to completely tackle the problem. In response, if discretion is substantially curtailed, leaving solely for areas of necessity, the AD law will become more significant, providing a clear rationale to all interested parties, including the nation.

Discretion plays an overly important role in Thai law enforcement, particularly in AD legislation, which, of course, decreases transparency. As a result, in the Thai context, the question of discretion is indistinguishable from the issue of transparency. Excessive discretion is not evident in other places, such as the European Union, however transparency difficulties may occur at some point during the process. The first issue of transparency that arises in the EU is the absence of verification reports by Commission officials handed to the interested parties and in the hearing process, there are no official transcripts or reports sent to interested parties.⁴⁹³ Another issue is the rationale for each country's vote on the imposition of anti-dumping measures has been kept secret, and in some cases, despite actual dumping, the outcome of the vote indicates a preference for not imposing AD duties, casting doubt on member states.⁴⁹⁴ **Finally, the selection of countries to the non-market economy status (NME) list,**⁴⁹⁵ granting exceptions called producers' or exporters' individual treatment (IT),⁴⁹⁶

⁴⁹² Apisith John Sutham and Chalermwut Nilratsirikul, 'Thailand - Trade remedies' (Weerawong, Chinnavat & Partners Ltd, 2020) < <http://www.weerawongcp.com/data/know/121.pdf> > accessed 5 May 2021

⁴⁹³ Lucy Davis, 'Anti-dumping investigation in the EU: how does it work?' (2009) ECIPE Working Paper no 04/2009 < <https://ecipe.org/wp-content/uploads/2014/12/anti-dumping-investigation-in-the-eu-how-does-it-work.pdf> > accessed 6 July 2022

⁴⁹⁴ Dirk De Bièvre and Jappe Eckhardt, 'Interest groups and EU anti-dumping policy' (2011) 18 *Journal of European Public Policy* 339

⁴⁹⁵ Helena Detlof and Hilda Fridh, 'The EU treatment of non-market economy countries in anti-dumping proceedings' (2007) 2 *Global Trade and Customs Journal* 265

⁴⁹⁶ Donghui Fu, 'EC anti-dumping law and individual treatment policy in cases involving imports from China' (1997) 31 *Journal of World Trade* 73

and Exemption of the rule of One Country One Duty, and Market Economy Treatment (MET).⁴⁹⁷

It can be seen that there is a lack of transparency in the anti-dumping process in different countries that can arise from different aspects and the methods for resolving issues vary according to each country's unique legal culture.⁴⁹⁸ **In the EU, there is a lack of transparency in the rules that are not clear enough but in the context of Thailand the discretion of the staff becomes highly relevant.**

The following parts will discuss where discretion currently lies in the AD procedure and how it affects the determination either negatively or positively. This is the starting point for considering one of the major cultural and structural changes in the underlying problem of anti-dumping in Thailand.

4.2.1 Interpretation and application of like products

AD measures may have a significant impact not just on the losing exporter who bears AD duties, but also on other domestically interested individuals who face the increased cost of purchasing such imported products. However, people losing some of the benefits of purchasing a cheap product contributes to long-term domestic economic protection by preventing significant domestic entrepreneurs from going bankrupt as a result of unlawful dumped imports. On the other hand, domestic entrepreneurs requesting AD investigations want to protect their businesses to the fullest extent possible from cheap dumped imports eroding their competency; thus, they submit AD investigation requests stating that products expected to be identical to theirs are being sold below their normal value and causing material injury to them, all of which constitute illegal dumping practices. Concluding whether the items specified in the request are identical is one of the most challenging aspects of the AD procedure, as being or not being a "like product" is a critical sign of success or failure of the investigation.⁴⁹⁹ Entrepreneurs requesting an AD investigation naturally wish for all products specified in the request to be considered "like product" and thus subject to AD duties, whereas exporters and domestic businesses utilizing such imported products wish for the products specified in the

⁴⁹⁷ Robert M MacLean, 'Adored and despised in equal measure: an assessment of the EU's principle of market economy treatment in anti-dumping investigations against China' in Christoph Herrmann and Jörg Philipp Terhechte (eds), *European Yearbook of International Economic Law 2012* (Springer 2012)

⁴⁹⁸ David Nelken, 'Using the concept of legal culture' (2004) 29 *Australian Journal of Legal Philosophy* 1

⁴⁹⁹ Panchanok Tanawut, 'Interpretation of "Like Product" Under the WTO Antidumping Agreement' (Master degree thesis, Chulalongkorn university 2002)

request to not be considered "like product" and thus the AD investigation to be terminated. When making this conclusion, regardless of the outcome, it must be consistent with the anti-dumping measures' objectives and should be limited to the necessities, as like product determination is a subset of the final determination on AD investigations.

The definition of a like product is spelled out in Article 4 of the AD Act, which states that "like product" means a product which is identical in all respects to the product under consideration, but in the absence of such a product, shall mean a product which has characteristics closely resembling those of the product under consideration. It is debatable whether this article adheres to the previously established necessity principle. Additionally, how much of this article is corrupted by discretionary practice and pushed beyond the bounds of necessity?

In global practice, "like product" determination is primarily based on two distinct sets of criteria: functional and physical characteristics.

The interpretation that focuses on function rather than physical characteristics results in wider possibilities regarding the enforcement of anti-dumping duties. This is because it is easier to prove that both products are alike even if the appearance is different because they may have the same or similar functions or they can be substitutable. This interpretation is parallel to the actual trade these days as there are many products made to serve consumers in one specific area of demand through various type of product designs. Thus, in order to consider likeness among the products, scrutiny on only physical characteristics seems to be inadequate at present. As a consequence, it could endanger domestic businesses as they are not protected from dumping which could occur. In contrast, this interpretation (function focus) also leads to more barriers to trade than necessary compared to the actual damages resulting from dumping since each nation would extend the scope of like products too widely in order to protect domestic producers.⁵⁰⁰

To consider "like product" under this condition, the products have to be alike or have significant similarity in characteristics and uses. The consideration is on a case-by-case basis in terms of physical characteristics, end users, customer perceptions, common manufacturing

⁵⁰⁰ Rex J Zedalis, 'A Theory of the GATT Like Product Common Language Cases' (1994) 27 Vanderbilt Journal of Transnational Law 33

facilities and employees, channels of distribution, and price. Apart from those factors, interchangeability is another crucial criterion.⁵⁰¹

Another interpretation is to specify the definition of like products which holds that like products must be alike in all aspects of their characteristics compared to the product under consideration or the dumping investigation. However, in the case of absence of such like products, the definition of like product will cover the one that has very similar characteristics with the consideration of certain factors which are physical and technical characteristics, chemical substances, the similarity in use, and other factors such as substitutability and channel of distribution.⁵⁰²

The interpretation above which highlights physical characteristics is collocated with the definition and approach to interpretation of the World Trade Organization (WTO). Such interpretation, as a result, will not lead to the expansion of the definition which might be too broad, and instead brings about the closest meaning to the actuality of each product. The reason behind this type of interpretation is that it will impose anti-dumping duties to a value that is equal to the damages of the dumping suffered by domestic businesses. If they interpret too broadly, the imposition of duties might cover products not related to the dumping. On the contrary, the definition limited to only certain aspects of like products might be too narrow and not connected to the latest business world developments, so there can easily be products with different characteristics and designs which can still be substitutable.⁵⁰³ One might have an argument that even if the definition is too narrow, in the area of high-technology products, the consideration that concentrates on physical characteristics is needed in order to provide a more justified process of investigation and hearing regarding the dumping which occurred.

In Thailand's process of consideration, it primarily focuses on physical characteristics. It specifies furthermore in the case of an absence of like products that they will use the most similar product to be considered to decide whether they are very similar. However, the AD Act, Ministerial Regulations, and Notifications for the execution of the AD Act make no mention of the considerations considered in finding "the most similar product." Meanwhile, international trade law may take into account elements such as scientific name, customs

⁵⁰¹ Marco Bronckers and Natalie McNelis, 'Rethinking the like product definition in WTO antidumping law' (1999) 33 *Journal of World Trade* 73

⁵⁰² Edwin Vermulst, *EU Anti-Dumping Law & Practice* (2nd edn, Sweet & Maxwell 2010) 852

⁵⁰³ Konstantinos Adamantopoulos and Diego De Notaris, 'The Future of the WTO and the Reform of the Anti-dumping Agreement: A Legal Perspective' (2000) 24 *Fordham International Law Journal* 30

classification number, and the chemical and physical structure of the product. Moreover, it is also necessary to consider commercial ads and related documents.⁵⁰⁴

Considering a "like product" under the criterion that it must be identical in all respects as defined in Article 4 of the AD Act is self-evident. Being straightforward allows Article 4 to play it safe without raising disputes; yet, Article 4 does not address the widely anticipated debate over determining "the most similar product," which results in implicit discretion being employed without even an obvious discretion clause enabling it. By leaving critical provisions such as "similar goods" without a detailed list of criteria, the possibility of inaccuracy and subjective assessment is increased. Discretion, in one sense, is a beneficial policy that fills the gap left by the legislation; nonetheless, there is evidence of the Committee's exceeding its discretion in defining "similar products." Frequently, the committee's judgment goes direct and emphasizes customs classification as the major and most important factor in assessing similar products,⁵⁰⁵ rendering other aspects essentially irrelevant, even though customs classification must be merely one of the criteria. Prioritizing customs classification cannot be accounted for as an illegal conduct committed by the Committee because Article 4 of the AD Act lacks specific criteria and sequence, and 14 sub-regulations that address AD procedures in depth similarly omit details regarding "like product."

A defective provision on "like product" provides a basis for decisions both within and outside the scope of the necessity principle.⁵⁰⁶ Adhering to the rule that "like product" must be identical in all respects and choosing to strictly adhere to the customs classification system for determining "the most similar product" are practices that demonstrate extremely limited criteria and a very narrowly defined scope of interpretation in order to avoid exceeding the necessity. However, reducing and refining the criteria is not always regarded as necessary; it may even be considered superfluous if it is an improper use of judgment to do so. Necessity does not mean that the criteria for determination should be subjectively limited to only customs classification, which is not even specified in the AD Law; rather, necessity in the context of "like product" must be indicated by considering all criteria that necessarily reflect the true identity of that product. Thus, while the clause itself appears to provide measures consistent

⁵⁰⁴ Won-Mog Choi, *'Like products' in international trade law: towards a consistent GATT/WTO jurisprudence* (Oxford University Press 2003)

⁵⁰⁵ Panchanok Tanawut, 'Interpretation of "Like Product" Under the WTO Antidumping Agreement' (Master degree thesis, Chulalongkorn 2002)

⁵⁰⁶ Panos Delimatsis, 'The Principle of Necessity in the WTO – Lessons for the GATS Negotiations On Domestic Regulation' (2013) Tilburg Law School Research Paper No. 04/2014

with necessity, the law's loopholes and the Committee's discretion result in few criteria being applied beyond necessity.

The case of Chinese Melamine tableware in 2019, as published in the Royal Gazette Volume 136 Section 94D on April 11, 2019, exemplifies the severe dispute between the two sides over product components, appearance, and substitutability. Chinese exporters contended that the product under AD investigation is tableware made entirely of Melamine resin, despite the fact that they were producing and exporting tableware made entirely of 17 to 22% Melamine resin, resulting in significant differences in surface, physical characteristics, product standards, and materials. China Chamber of International Commerce (CCIC) substantiated this argument by stating that tableware comprised entirely of Melamine resin is referred to as "Melamine tableware," but tableware comprised of only 17 to 22% Melamine resin is referred to as "plastic tableware." Additionally, "plastic tableware" is significantly less expensive than "Melamine tableware" due to the usage of very inexpensive raw materials, making these two forms of tableware incomparable. These two arguments established that because the Chinese product is not comparable to the subject product in every respect, it cannot be regarded as a like product and the AD investigation should be terminated. On the other hand, domestic manufacturer Srithai Superware Public Company Limited argued that the two items are interchangeable and that the distinctions alleged by the Chinese exporter are not obvious. Additionally, the Thai Industrial Standards Institute (TISI) stated that tableware is a product covered by TISI standard No. 524-2539, which does not take into account the amount of Melamine resin included. Finally, the Committee ignored this debate, focusing exclusively on the customs classification of like product, despite the fact that the aforementioned reasons are well-founded and a determination can be reached after a thorough review of the objections and further evidence.

On the plus side, relying exclusively on customs classification to determine like products may yield the same results as utilizing additional factors with a shorter review period. Additionally, it appears as though the committee's scope is limited to what is necessary to interpret like product. However, there is no guarantee that the criteria chosen will yield the correct result in all circumstances. Inaccuracies can be extremely detrimental to an entrepreneur, whether they are domestic or international. As a result, what appears to be within the bounds of necessity can become illegal.

In summary, having a non-inclusive "like product" clause is akin to establishing a channel for implicit discretion. When discretion is introduced, unsupported and self-indulgent habits are

introduced as well. Even while this approach appears to be simple to employ, requiring only one or two conditions, and appears to be within the realm of necessity, it exposes the practitioner to the possibility of doing an unlawful act. It is critical to adapt those regulations or practices to the specific circumstances of each nation. Thailand's internal cultural traditions necessitate various adjustments in order to achieve the anti-dumping law's intended outcome.

4.2.2 Injury

The elements necessary to impose an AD measure on imported goods are as follows: there must be an act of dumping in accordance with Article 13, there must be injury to domestic industry in accordance with Articles 19 and 20, and there must be a causal relationship between the dumping and the injury in accordance with Article 21.

To determine if such activity constitutes dumping, the selling price must be less than its normal value. The authorities must track down and compare these numbers. It is not difficult to do so, as the selling price is the most straightforward and simple proof available in the market. Concerning the normal value, there are some issues with the imprecise and hidden formula used in Thailand's AD procedure. However, in this section, we will concentrate on the issues of injury determination and causal relationship because they are the most complex and involve the most discretion in the AD procedure.

We shall examine three issues concerning injury determination: To begin, there is a disregard for the use of threat of material injury and the exercise of positive discretion. Second, unpredictability of effect and the disproportionate involvement of ministerial regulations in determining injury. Thirdly, a failure to verify the information's accuracy and prioritization.

The disregard for the threat of material injury and the application of positive discretion

Article 19 stipulates that if any provision does not indicate otherwise, injury pursuant to this Act shall mean:

- (1) material injury to a domestic industry;
- (2) threat of material injury to a domestic industry; or
- (3) material retardation of the establishment or development of a domestic industry.

Article 19 provides three methods for establishing injury, all of which are derived from Article 3 of the Anti-dumping Agreement (ADA). However, the Committee treated these three procedures unequally because they are only partially implemented. Certain procedures have been overlooked due to a lack of explicit regulation and the Committee's discretion.

Only the proof of material injury under 19 (1) has a high success rate and has become the petitioner's most commonly employed channel in comparison to the others for two reasons.

The first reason for promoting the use of material injury as a claim is that it is the only type of injury for which Thailand's AD law places a premium on specifying what constitutes material injury through Article 20 and the Ministerial Regulation Volume 119 Section 112A published in the royal gazette on November 11, 2002.

Article 20 stipulates that a determination of material injury to a domestic industry pursuant to section 19 (1) shall be based on positive evidence in relation to the following cases:

- (1) the volume of the dumped product and the effect of dumping on prices in the domestic market of the like products; and
- (2) the consequent impact of dumping on the domestic industry.

Article 20 establishes a framework for expanding Article 19(1) by incorporating three additional conditions: volume, price, and consequent impact. Meanwhile, the Ministerial Regulation defines the volume of dumped imports as implying that the claimed country's imports must significantly increase. Additionally, it refers to the effect of price dumping, which includes price undercutting, price suppression, and price depression. Finally, it describes the consequent impact of dumping on the domestic industry by incorporating 15 additional factors into four categories: production capacity, market share, profit growth, and employment.

As a result, material injury under Article 19 (1) becomes more obvious in the AD investigation request, as domestic industry is naturally enthused about competition in markets for similar goods and is concerned about their enterprises' capabilities. As a result, they would be quickly detected if a large quantity of like product entered the country, resulting in a fall in product pricing and a decline in business. The most critical thing is that this is information that is readily available in the market and is insider knowledge from the domestic business owners

themselves.⁵⁰⁷ Once they saw their earnings had decreased, they decided to make an AD request to the DFT.⁵⁰⁸ Having their own proof that has already been documented can readily be used to substantiate the claim, providing easily verifiable information that increases the likelihood of success and the imposition of AD duties on the imported items targeted by the entity filing the request.

The second reason for the increased prevalence of material injury as a claim under Article 19 (1) is the Committee's practice of declining to prove injury in other ways. The Committee's refusal to protect domestic business lowers the avenues accessible to it and also eliminates the option of protecting it in accordance with the intent of the AD statute.

It is true that proving under Article 19 (1) is simpler and more stable because it uses evidence from actual facts that occurred within the last three years to demonstrate how information trends change, whereas proving under Articles 19 (2) and (3) has the nature of simply predicting the future based on current information. However, the Committee should not dismiss the proofs based on Article 19 (2) or (3) due to their reduced success rate. This is reflected in the Committee on Dumping and Subsidies' announcement regarding the final determination of the Television Picture Tubes case, which was published in Volume 124, Section 146D of the Royal Gazette on October 29, 2007, indicating that one of the applicants for the anti-dumping investigation liquidated their business during the investigation due to its inability to withstand the intense dumping at the time.⁵⁰⁹ Despite apparent harm to the business, the committee decided to terminate the anti-dumping investigation, and no anti-dumping duties were applied on this product. Meanwhile, the remaining domestic producers of this product filed a request for an anti-dumping investigation, arguing that there is more than a threat of material injury to their businesses, as defined in Article 19 (2), because one has already declared bankruptcy, and thus it is reasonable to impose AD duties on that product. Nonetheless, the committee insisted on concluding the probe completely.⁵¹⁰ On the other hand, it is clear that there are instances abroad when allegations with a threat of material injury and material retardation have been successful, such as the United States – International Trade Commission Investigation of

⁵⁰⁷ Trade Interests and Remedies Division, 'Anti-Dumping Guide' (Ministry of Commerce, 2021)
<https://www.thaitr.go.th/storage/measure_info/HTXEDZVOnhvnVh0GRrR5gGqPJ8bplCXqo7XJbjkW.pdf>
accessed 20 November 2021

⁵⁰⁸ *ibid*

⁵⁰⁹ Announcement of the Committee on Dumping and Subsidies on final determination of Television Picture Tubes case [2007] Royal gazette Volume 124 Section 146D

⁵¹⁰ *ibid*

Softwood Lumber from Canada and Morocco.⁵¹¹ – and the case Anti-Dumping Measures on Certain Hot-Rolled Steel from Turkey.⁵¹²

Countries that are frequent users of AD measures, such as the United States, also have a well-defined procedural practice of threat of material injury, demonstrating that entrepreneurial channels are not overlooked. In the US, if the International Trade Commission (ITC) is not able to find the material injuries resulting from the dumping, the ITC could investigate “threat of material injury”. Threat of material injury could be found if it actually occurs or is imminent.⁵¹³ ITC has also developed a detailed guideline to consider using the increase of market share from imports, the maximum capacity of exporters not yet being depleted, increasing of inventory, and product transfer are the factors within the scope of threat of injury consideration.⁵¹⁴ Practically, the ITC concentrates on inventory where there is a huge amount of it or the loss of market share in the exporting country. Then, it has to identify a relationship between imports with the objective of dumping and the injury suffered by the domestic industry. The ITC uses the margin of dumping to estimate the levels related to the categories above by focusing on whether dumping is the main cause of material injury.⁵¹⁵ In this stage, the ITC definitely considers the amount of the dumping margin together with the quantity and value of the imports, and the adverse effect of such imports against the US.⁵¹⁶ All of this demonstrates the seriousness with which the US organ wishes to preserve its domestic business, even though the actual injury has not yet occurred.

The WTO's framework for AD law incorporates all three procedures, which Thailand has fully embraced as set forth in Article 19. However, it is increasingly clear that even if the legislation requires proof of a threat of material injury or material retardation, the Committee disregards the presence of those two channels; as a result, domestic business is tacitly deprived of chances. This is an example of the Committee exercising negative discretion and squandering an opportunity. However, the committee may constructively exercise its broad discretion in order

⁵¹¹ Jeffrey L Dunoff, 'The Many Dimensions of Softwood Lumber' (2007) 45 Alberta Law Review 319

⁵¹² Jamal Machrouh, 'Morocco faces its First Commercial Dispute before the WTO: Morocco-Hot-Rolled Steel Case (Complaint from Turkey)' (2019) Policy Center for the New South

⁵¹³ Richard D Boltuck, 'An Economic Analysis of Dumping' (1987) 21 Journal of World Trade 45

⁵¹⁴ Roberto Soprano, 'The Threat of Material Injury in Antidumping Investigations: A Threat to Free Trade' (2010) 11 The Journal of World Investment & Trade 67

⁵¹⁵ *ibid*

⁵¹⁶ A Paul Victor, 'Injury Determinations by the United States International Trade Commission in Antidumping and Countervailing Duty Proceedings' (1983) 16 NYU Journal of International Law and Politics 749

to foster a supportive climate for domestic business, ensuring that it has the right to protect itself through the entire range of AD investigation procedures specified in Article 19.

Unpredictable outcomes and an excessive role for ministerial regulations in determining injuries

Ministerial regulations were mentioned previously as a means of extending the definition of the term "material injury". Three ministerial regulations, however, have a role in this regard. **Ministerial regulations** also have an interesting role in dumping investigations in Thailand as they provide further details on the injury consideration.⁵¹⁷ Such additional information may be provided to ensure that the injury calculation is appropriate for Thailand's economic situation. On the contrary, they may potentially skew the judgment and make it subjective. However, the most serious flaw in ministerial regulations is that they are enforced without regard to their appropriateness, and they are too easily altered by the administration. The amendment was simple and did not require much scrutiny because they do not require approval from the National Legislative Assembly,⁵¹⁸ providing officials or committees with unrestricted discretion to determine injury.

As a result, injury caused by dumping is another point to be considered in discretion based and transparency issue. It is worth noting that the criteria above are not static and can be adapted along with various cases. For example, the Ministry of Commerce's 2004 announcement regarding sampling in determining anti-dumping margin has been repealed and amended three times, each time only two years apart, switching back and forth between proportions, statistics, and numbers; additionally, the committee retains discretion to improvise case by case.⁵¹⁹ Ministerial Regulations that are not clear and strict can create a loophole for subjective judgements. **It risks placing the power of discretion prior to the enforcement of the rule, resulting in unpredictable but highly influential practice.**

Unpredictable practice stems not only from discretionary clauses in ministerial regulations, but also from the fact that the ministerial rules themselves contain a large number of particular requirements. Having a large number of particular rules provides the advantage of being

⁵¹⁷ Anti-Dumping and Countervailing Act, B.E. 2542 (1999), s 6

⁵¹⁸ Amorn Chanthasomboon, 'Knowledge of Ministerial Regulation Drafting' (1981) <https://www.doc.go.th/prd/assets/upload/files/hrad_th/14b4cd7f099a3a819e6eb05516ae56bb.pdf> accessed 7 May 2020

⁵¹⁹ Announcement of the Ministry of Commerce on 19 March 2021 regarding sampling in the determination of anti-dumping margin [2021] Royal gazette Volume 138 Section 62D

stringent and explicit about when anti-dumping duties should be applied. For example, Ministerial Regulations Prescribing Criteria and Methods for Consideration of Internal Industry Damage from Dumping, B.E. 2545 (2002), contains nine paragraphs and twenty-five points of requirements for consideration. This is regarded as an extremely thorough appraisal of the company's competence and influence. However, the Ministerial Regulations' broad and abstract words lack sufficient practicality. Among the twenty-five prerequisites are economic phrases that must be reinterpreted and are extremely broad and must be resolved by the Committee, leaving a variety of gaps that can be exploited.⁵²⁰

Although some circumstances involving the assessment of injury determination are covered in several ministerial regulations, they do not address all critical issues such as threat of material injury, material retardation, and the specific role and hierarchy of the DFT and the Committee which accounts for the most important issues of concern in the anti-dumping context. A lack of certain essential provisions whether in the AD Act or Ministerial Regulations continue to be absent even though the latest amendment of AD Act in 2019 has been made.

The absence of comprehensive and clear ministerial regulations in Thailand's AD statute, optimism, may be a result of officers' lack of experience in AD cases, preventing them from seeing vulnerabilities. Comprehensive Ministerial regulations resulting from extensive experience are reflected in Indonesia's AD procedure, where the Peran Komite Anti-Dumping Indonesia (KADI) as a governmental body dealing in particular with anti-dumping issues has become one of the most active members initiating investigations and imposing anti-dumping duties against global traders.⁵²¹ Ministerial Decree No.427/MPP/KEP/10/2000 restructures the Indonesian Anti-dumping Committee and KADI's organizational structure to reflect a thorough understanding and experience with AD cases that should be prioritized through the issuance of Ministerial Regulations to strengthen the Committee system.⁵²² Lack of experience is definitely an obstacle in issuing Ministerial Regulations that address immediate difficulties. On the other hand, pessimism regarding the absence of comprehensive and unambiguous ministerial regulations in Thailand's AD law may be attributable to the authorities' attempt to create loopholes. Under the AD Act, the injury must be solely the result of the dumping.

⁵²⁰ Razeen Sally, 'Thai trade policy: from non-discriminatory liberalisation to FTAs' (2007) 30 *The World Economy* 1594

⁵²¹ Erry Bundjamin, 'The 10 Major Problems with the Anti-dumping Instrument in Indonesia' (2005) 39 *Journal of World Trade* 125

⁵²² Yulianto Syahyu, 'The Indonesian Antidumping Law from Perspective of Lawrence M. Friedman's Concept' (2019) 6 *International Journal of Research in Humanities and Social Studies* 1

Consideration may include the factors of changing behavioural patterns among the consumers, diminution of demand, prices, and the number of products sold above the normal price from the consideration of injury which is an essential aspect in the context of anti-dumping. Those ideal approaches to practice can be applied; however, because of the disproportionate importance of ministerial regulations establishing broad and abstract criteria, ideal approaches could be an illusion as it is undeniable that in practice the Committee can include other factors, for example, political pressure intentionally or accidentally into the consideration and reasons for economic benefits in relation to Thailand's political relations with other countries in the region, particularly China. As a result, those ideal approaches may be inapplicable in cases where the products concerned are key agricultural or industrial products as these might be in connection with large-scale firms and important foreign traders with the Thai government.⁵²³

Giving Ministerial Regulations an excessive amount of authority and the ability to expand or contract the scope of injury determination criteria can make certain factors used in consideration from time to time cannot be precise enough to examine whether the domestic producers or industries suffered injury. For instance, in the 2003 case of Phthalic anhydride, a chemical compound imported from Japan, the Committee determined that no material injury occurred to the domestic industry because production lines for this product continued to expand in Thailand.⁵²⁴ However, an increase in the production line or sales amount cannot be correctly and solely assumed to indicate that such a firm is not suffering from dumping. Any scale of business or industry can be injured by dumped imports and have reasonable grounds to obtain relief.⁵²⁵

Ministerial regulations, in principle, provide valuable details that the AD Act does not, simplifying the administration of AD law for both authorities and interested parties. Ministerial regulations, on the other hand, are frequently vague in Thailand, necessitating the Committee's

⁵²³ Anek Laothamatas, 'Business and politics in Thailand: New patterns of influence' (1988) 28 *Asian Survey* 451; Pradit D and others, 'Pattern Structure Policy Corruption Affecting Policy formulation of Local Administrative Organizations' (2020) 14 *Rajapark Journal* 109
< <https://so05.tci-thaijo.org/index.php/RJPJ/article/view/247433/168641> > accessed 6 July 2022

⁵²⁴ Announcement of the Department of Foreign Trade Investigation on dumping of Phthalic anhydride originated from Japan [2002] Royal gazette Volume 119 Section 12D

⁵²⁵ Angelos Pangratis and Edwin Vermulst, 'Injury in Anti-Dumping Proceedings—The Need to Look Beyond the Uruguay Round Results' (1994) 28 *Journal of World Trade* 61
< <https://kluwerlawonline.com/journalarticle/Journal+of+World+Trade/28.5/TRAD1994028> > accessed 6 July 2022

authority and discretion to interpret. As a result, it is a source of unpredictable injury considerations and results.

The absence of verification of the information's authenticity and prioritizing

The AD process begins with the filing of a petition that details the individual submitting the request, including the business type, products, and likely source of dumped imports. The DFT will next distribute the questionnaires to interested parties who are domestic producers of like product, including those who submit the request, those who support the request, those who oppose the request, and those who do not support nor oppose the request.⁵²⁶ After collecting all relevant evidence from interested parties, the DFT and the Committee will determine if dumping occurred and what damage was caused to those enterprises and domestic industries.⁵²⁷ If dumping occurs, it is determined by the export price being less than the normal value of like product, as defined in Article 13 of the AD Act, resulting in a margin of dumping, as defined in Article 18 of the AD Act.

In principle, all information submitted to the DFT must be verified for accuracy, including product type, selling price, production costs, profit margins, imports, and exports, as these are critical variables in determining whether an individual's action is considered "dumping" and results in injury to the domestic industry.⁵²⁸ Verifying the correctness of information, which is typically financial data about the business, can be accomplished by auditing by a certified auditor. Ministerial regulations Volume 117 Section 27A, published in the Royal Gazette on March 28, 2000, simply require the submission of recorded accounting information without mandating that it be audited using internationally standardized accounting processes. The absence of data validation is a flaw that stems from the data collection process's inception via questionnaire. This weakness enables the applicant's firm to appear more damaged than it actually is by distorting accounting statistics. On the other hand, this vulnerability enables exporters to misrepresent information in order to portray their operations as less violent than they actually are.

⁵²⁶ Trade Interests and Remedies Division, 'Anti-Dumping Guide' (Ministry of Commerce, 2021) <https://www.thaitr.go.th/storage/measure_info/HTXEDZVOnhvnVh0GRrR5gGqPJ8bplCXqo7XJbjkW.pdf> accessed 20 November 2021

⁵²⁷ *ibid*

⁵²⁸ Judith Czako, Johann Human and Jorge Miranda, *A handbook on anti-dumping investigations* (Cambridge University Press 2003)

Auditing is a subject on which the Anti-Dumping Agreement does not elaborate, but instead empowers each country to develop its own methods for collecting and verifying information given in AD cases. Due to this lack of detail, Thailand significantly differs from the EU in terms of data collection and verification of AD cases. The EU has procedures in place to verify the information sent into the case. In practice, the officials will consider dumping cases in both the injury and duty calculation stages based on the information derived from the collection of questionnaires which are submitted by the exporters of such products. Subsequently, there will be a survey conducted in the origin country of the exporters so as to repeatedly verify the information which is firstly submitted. It also includes the survey on domestic producers in the scope of the actual injury suffered. Once they have completely gathered the information it continues to the stage of dumping margin and injury calculation. The officials are able to additionally collect the information afterwards in cases where it is needed.⁵²⁹ Meanwhile, in Thailand, Article 29 of the AD Act offers the Committee the option of conducting on-the-spot verification, which is not an obligatory step and so leaves strict verification out. Additionally, on-the-spot verification enables the Committee to select which businesses to verify. As a result, information that is not randomly selected for validation may be false or distorted, and when it is included in an AD case, it becomes information that influences the inquiry, resulting in a misrepresentation of the determination.

The inclusion of incorrect information in the AD procedure exacerbates the issue of frequently prioritizing specific criteria for dumping and determining injury. Prioritizing customs classification and employment rate, as previously mentioned in the case of Melamine tableware from China in 2019, as published in the Royal Gazette Volume 136 Section 94D on 11 April 2019, results in a distinctive manner of conduct that is a weakness, making it easy for interested parties to assess which aspects of information they should use or modify in order to be successful in an AD case.⁵³⁰

Thus, what Thailand's AD procedure should address is not only preventing deception, but also avoiding excessive emphasis on a few circumstances in dumping and injury determination. The Committee in Thailand should follow the distinctive US procedure of the ITC, International Trade Commission, which does not prioritize any factor above others with regard to the

⁵²⁹ Lucy Davis, 'Anti-dumping investigation in the EU: how does it work?' (2009) ECIPE Working Paper no 04/2009 < <https://ecipe.org/wp-content/uploads/2014/12/anti-dumping-investigation-in-the-eu-how-does-it-work.pdf> > accessed 6 July 2022

⁵³⁰ The announcement of the Committee on Dumping and Subsidies regarding Melamine tableware from China [2019] Royal gazette Volume 136 Section 94D

consideration of injury but it is concerned about the adverse effects towards domestic businesses and this is considered on a case by case basis.⁵³¹ In specific types of product which are highly sophisticated to manufacture, there are from time to time difficulties in making price comparisons whether such dumped imports cause injury to domestic industry. In this case, the ITC will emphasize a selling price below fair value, price suppression, price depression, losses, and downward trends of profits. Also, it is noted by the ITC that in each and every area of industry there might be many criteria; for example, a firm that still has high profits and a high degree of stability while enjoying an increase in product volumes along with production capacity might still be suffering from dumping.⁵³² This is an interesting aspect of consideration used in the US that Thailand is able to consider and apply as well for the most accurate results and to avoid bias in one direction or the other.

However, it can be challenging to assign equal weight to all conditions in Thailand, as the country prioritizes only one or two. Thus, the EU's practice of prioritizing a few conditions and then considering all others is intriguing because it accords some factors a bit more weight than others, which is consistent with Thai practice while not ignoring others. In EU practice, the volume of dumped imports and their effect on the price of the product in terms of internal industries, such as price undercutting, price depression, and price suppression, are first considered.⁵³³ Apart from these two criteria, there are a number of factors included in the consideration in the aspect of effects against a group of domestic producers. To explain, injury is measured in terms of loss of market share of that particular product, the reduction of price, production line, sales, profits, overall products and other scenarios depending on the particular type and characteristics of the business. These are all simultaneously considered.⁵³⁴

Validating information and paying equal attention to all conditions are critical indicators of how AD inquiry and determination can result in effective AD measures addressing dumping. A good AD measure must take into account all relevant data about domestic product dumping. When contemplating injury, none of the reflections should be the product of a single circumstance. As a result, data validation and equal consideration of all situations are critical components in defining injury and AD measures. Ambiguous practices in these critical

⁵³¹ Phoroi Attachet. 'A study of injury consideration used in certain countries as a model of application in Thailand' (Master degree thesis, Chulalongkorn university 2010)

⁵³² *ibid*

⁵³³ Ivo Van Bael and Jean-François Bellis, EU anti-dumping and other trade defence instruments (Kluwer Law International BV 2011)

⁵³⁴ *ibid* 536-41.

indicators encourage increased discretion, which is associated with increased flexibility but also with interference.

4.2.3 Captive production

Captive production is the production line that describes the process of producing one product within the country.⁵³⁵ In detail, in order to build one product, it cannot be denied that it comprises various parts. The upstream products or the origin materials of particular products are not publicly sold in the market but produced only for use as the final completed downstream products. To this point, the upstream production will be considered in the light of whether it will be included in the terms “domestic industry” and subsequently assessed in the stage of injury consideration.⁵³⁶

Article 24. A domestic industry pursuant to this Act is domestic producers of the like products whose collective output constitutes more than one half of the total domestic production of those products, except in the following cases:

- (1) if any producer of the like products is an importer of a dumped product or is related to an importer or a foreign exporter of a dumped product, in which case such producer may be deemed as not being part of the domestic industry;
- (2) if in the territory of the country, market of the like products is divided into more than one markets, producers of the like products in each market shall be deemed as a separate domestic industry, if it appears that producers of the like products of one market sell all or almost all of their products in that market and other domestic producers of the like products do not supply their products to that market in a sufficient manner so as to match the demand of such market.

A producer shall be deemed to be related to an importer or a foreign exporter of a dumped product pursuant to paragraph one (1) if it appears that either party can control one another or both of them are controlled by, or jointly control, a third person, either directly or indirectly, provided that there are grounds for believing or suspecting that

⁵³⁵ Meng Tao, 'Dumping and antidumping regulations with specific reference to the legal framework in South Africa and China' (Master degree thesis, University of the Free State 2006)

⁵³⁶ PR Thulasidhass, 'Constructive Methods and Abuse of Antidumping Laws: A Legal Analysis of State Practice within the WTO Framework' (2012) 13 *The Estey Centre Journal of International Law and Trade Policy* 183

the effect of the relationship is such as to cause the producer concerned to behave differently from other non-related producers. In this case, a party shall be deemed to

Article 24 of Thailand's AD Act is the only provision that addresses domestic industry without acknowledging the presence of captive production. Captive production is also not mentioned in ministerial regulations or the Ministry of Commerce's announcements. Additionally, no provision for captive production was introduced in the 2019 anti-dumping law revision.

Captive production is enforced in the United States, and it appears that Thailand can come up with details to further enact this. As general information, in the US, the ITC points out that upstream production and its outcome will be separated from the amount of domestic industry.⁵³⁷ The ITC also provides conditions to narrow which scenarios can be excluded from domestic industry. It holds that the upstream production must involve the transference of the product within the country and it must be completely excluded from the market.⁵³⁸ Additionally, it must be a key part of the downstream products. Thus, any products under these conditions will be accounted for under the concept of captive production. It is interesting that the ITC asserts that captive production imported from outside the boundary will be determined as imports and included in the normal anti-dumping calculation. Such items cannot be considered under the captive production terms. There is also an exception in this regard in the scenario where the imports are not in a competitive position with other domestic like products.⁵³⁹ As a result, it will not be considered in the anti-dumping calculation.

This separation performed by the ITC within the US scenario brings about advantages towards the parties in the case of market share held by both imports and domestic products for sale becoming more concentrated and precise since it excludes the products which are not in direct connection with the dumping. Such practice will potentially support the ITC in finding the injury suffered by domestic producers rather than accumulating all the products without the concern of captive production.⁵⁴⁰

⁵³⁷ Michael Y Chung, 'US Antidumping Laws: A Look at the New Legislation' (1994) 20 *North Carolina Journal Of International Law And Commercial Regulation* 495

⁵³⁸ *ibid*

⁵³⁹ Daniel W Klett and Todd T Schneider, 'Price Sensitivity and ITC Injury Determinations—A Matter of Definition' (1994) 28 *Journal of World Trade* 95

⁵⁴⁰ Aluisio de Lima-Campos, 'Nineteen Proposals to Curb Abuse in Anti-dumping and Countervailing Duty Proceedings' (2005) 39 *Journal of World Trade* 239

Particularly in the US, the rules are specifically designed for assorted production lines which comprise normal consumption and captive production. This issue plays a crucial role in injury consideration because the issue of whether the status of particular business is accounted for as domestic industry is the turning point of the case.

Under Thailand's provisions, the details of captive production are also unavailable, similar to the case in the EU. This could result from the framework of the EU which serves as the model provisions, Council Regulation No 384/96, and the practice by Thai officers and the legislator at the time.⁵⁴¹ Thus, there is no separation of whether one particular product will be generally sold, produced in the captive production line, or used in downstream industry. As a result of the lack of separation, the volume of products produced by the interested parties in the AD instance is erroneous. If the volume of products identified in the AD investigation exceeds the volume of products actually dumped, the Committee may find that there was dumping or a greater dumping margin than should have resulted in higher AD duty rates. If the volume of products examined is smaller than the volume of products actually dumped, the Committee may determine that no dumping occurred or that the dumping margin was less than the actual dumping margin. This could result in the suspension of the AD investigation and the imposition of AD measures pursuant to Article 28 of the AD Act and Section 2 of Ministerial Regulation Volume 119 Section 112A, published in the Royal Gazette on November 11, 2002, which provides that if the Committee determines that the dumping margin is less than 2%, the investigation will be immediately terminated. As a result, domestic industry continues to be harmed by dumping.

Because Thailand lacks rules or even practices governing captive manufacturing, the calculation of dumping-related items is questionable. Uncertainty stems from the committee's decision to accept or reject any volume of the products. The Committee has discretion to act in this manner because there is no legal structure governing how this matter should be considered. Without captive production, anti-dumping regulations are ineffective and offer loopholes for the committee to exploit in the grey area. While accepting or rejecting an amount of a stakeholder's products into the AD inquiry results in a completely different ultimate judgment. Such wildly divergent results leave interested parties unable to forecast or plan for.

⁵⁴¹ Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1996] OJ L 56

The imposition of detailed provisions in captive production could lead to clear and effective practice in the consideration of anti-dumping. Thailand should not take it for granted as it is one of the potential means of improvement so as to raise the level of justification and easily assess the actual injury that might be suffered by particular producers but cannot be alleviated at the moment. The separation of captive production and the ordinary production for general consumption from the consideration of domestic industry supports the accurate and justifiable investigation in which the officials could track the actual occurrence of dumping.⁵⁴² Importantly, it can deter the abuse of discretion in ambiguous area where Thailand does not have comprehensive legal protection for its domestic industry.

4.2.4 Full duty and lesser duty rules

Anti-dumping duties are calculated and then imposed through assorted approaches in each nation. It will look at two major users and what approach they chose, as well as which points Thailand should consider to employing them in order to comply with the local culture.

Regarding the AD tax ceiling, Thailand's AD Act provides a broad framework in Article 49.

Article 49 In the case where the Committee gives a final determination that an anti-dumping duty shall be imposed, the rate of the anti-dumping duty shall be that which would be adequate to remove the injury and shall in no case exceed the margin of dumping.

This section reflects the Thai system's imposition of AD duties, which focuses exclusively on applying a level of duties sufficient to eliminate the harm caused by dumping to domestic industry. This approach is entirely compatible with Thai court precedent in civil tort cases, where the court will force the infringer to pay just the damages the victim actually suffers, such as medical expenditures and a lack of work chances. The court will not order the offender to pay compensation as a punishment since Thai courts do not uphold punishment by imposing damages in excess of the real harm, commonly known as "punitive damages."

Similarly, the EU has its own means of dealing in this regard which is called the "lesser duty" rule. It refers to the collection of anti-dumping duties at a level that is **just enough** for the cessation of damages while the figure must not exceed the dumping margin. The EU functions

⁵⁴² PR Thulasidhass, 'Constructive Methods and Abuse of Antidumping Laws: A Legal Analysis of State Practice within the WTO Framework' (2012) 13 *Estey Centre Journal of International Law & Trade Policy* 183

in a similar manner to Thailand's Article 49. In detail, the lesser duty rule consists of two parts for consideration which are the injury margin and the dumping margin, which will be simultaneously considered. In the case where **injury margin is lower** than dumping margin, the duties to be imposed will be equal to the injury.⁵⁴³ However, if the injury margin is higher than the dumping margin, the duties to be imposed will be equal to the dumping margin.⁵⁴⁴ Considering the issue in greater depth, the **key prospect is the comparison and the decision to choose the lower figure to be imposed as duty.**⁵⁴⁵

The lesser duty rule used by the EU and Thailand brings about justification in the aspect of duties imposed against exporters as it is designed to truly alleviate the damages so as not to punish the exporters. It is able to effectively reflect the actual injury compared to the full duty rule used by the US which focuses on the equalization of dumping margins and duties alone without concern for the actual damages which occurred.⁵⁴⁶

Conversely, the US has chosen to collect them under the “full duty” rule.⁵⁴⁷ The ITA as the responsible organ in this regard calculates the dumping margin on the grounds of the questionnaires answered by the interested parties with certain evidence. These will be considered along with the decision of the ITC, another organ that has the function of considering whether there is any injury suffered by domestic industry. All in all, the dumping margin that is calculated must cover the possibility that the exporters in such cases will not decide to dump their product or sell it below the fair value within the US repeatedly.⁵⁴⁸

The way that the US has calculated and collected anti-dumping duties mainly focuses on the balance between the anti-dumping duties and dumping margin. To be specific, both of them have to be equalized as the duties have to reflect the actual calculated margin without any exception. This concept might contribute to the collection of higher duties than the actual

⁵⁴³ Thinam Jakob, 'Lesser duty rule and community interest in anti-dumping proceedings- The Community System in Perspective' (2001) 36 *Intereconomics* 191

⁵⁴⁴ *ibid* 192-95.

⁵⁴⁵ *ibid* 197.

⁵⁴⁶ Yuka Fukunaga, 'An Effect-Based Approach to Anti-Dumping: Why Should We Introduce a Mandatory Lesser Duty Rule?' (2004) 38 *Journal of World Trade* 491

⁵⁴⁷ Bruce A Blonigen and Thomas J Prusa, 'Dumping and Antidumping Duties' (2015) NBER Working Paper No. w21573 < https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2663231 > accessed 6 July 2022

⁵⁴⁸ Michael J Coursey and David L Binder, 'Hypothetical Calculations Under the United States Antidumping Duty Law: Foreign Market Value, United States Price, and Weighted-Average Dumping Margins' (1989) 4 *American University International Law Review* 537

damages arising to local businesses as they are restricted by the idea that duties have to be balanced with the dumping margin figure rather than the real injury.

Both methods of enforcement of AD duties have a number of pros and downsides. In the context of Thailand, the application of the lesser duty rule in Thailand comes with a repetitive problem which is the obscurity of the exact way the rule is used by the Thai authorities. The issue stems from the introduction of Article 7, which requires consideration of the public interest while deciding the AD's duties. That is why, when AD duties are calculated, lower numbers are not always used as a ceiling for the imposition of AD duties, as demonstrated in the case of coated paper and paperboard from China, Indonesia, Korea, Japan, and Chinese Taipei, as published in Volume 129 Section 111D of the Royal Gazette on July 12, 2012.⁵⁴⁹ This once again leads to a poor reputation regarding the transparency of the anti-dumping process in Thailand. To be specific, this rule has been slightly modified when the Thai authorities apply it to certain cases. The rule is not employed with the original objective of the lesser duty rule as mentioned previously. The imposition of the lesser duty rule is sometimes **made in favour of downstream producers** as they seem to be automatically exempted from high duties so they can enjoy low cost of production. This is because the dumped imports which are sometimes crucial materials for certain industries are subject to low anti-dumping duties according to the permission of using the lesser duty rule. Thus, downstream industries who lean on such materials will not be affected significantly by the anti-dumping duties. In addition, both the injury margin and the non-injurious figure **which are important parts in the calculation** of the lesser duty rule are completely disregarded in the stage of applying the lesser duty rule.⁵⁵⁰

Given the difficulties inherent in assessing AD obligations in Thailand, which has already implemented the lesser duty principle, the full duty rule is particularly appealing to Thailand, as Thailand has repeatedly been impacted and dumped by similar products, primarily steel, woven fabric, and glass.⁵⁵¹ if Thailand applies the full duty rule, it will be a powerful weapon that enables the associated organ to take action to alleviate and deter the problem. However,

⁵⁴⁹ Announcement of the Department of Foreign Trade Investigation on dumping of coated paper and paperboard originating from China, Indonesia, Korea, Japan and Chinese Taipei [2012] Royal gazette Volume 129 Section 111D

⁵⁵⁰ Yuka Fukunaga, 'An Effect-Based Approach to Anti-Dumping: Why Should We Introduce a Mandatory Lesser Duty Rule?' (2004) 38 Journal of World Trade 491

⁵⁵¹ Department of Foreign Trade, 'Products that Thailand has been imposed by AD measures (50 items)' (DFT 2021) <<https://www.thaitr.go.th/storage/file2/fUANvgP6yQdWJurgltN1QdOp2WascfOoAa6TaWDi.xls>> accessed 2 July 2022

the full-duty theory is viewed as inherently causing exporters to bear AD duties in excess of the actual harm. If the full-duty principle is implemented in Thailand, it runs the potential of the authorities imposing exorbitant and arbitrary duty rates, a risk that Thailand's law enforcement system is already facing.

Adopting the full-duty principle may serve to highlight the issue of unlimited and discretionary enforcement. Simultaneously, Thailand's adoption of the lesser duty principle has created confusion. On the other hand, the confusion in estimating the AD obligations ceiling, on the other hand, does not emerge from the use of the lesser duty or full duty rule. However, in Thailand, disputes arise as a result of disobedience to one principle and the unpredictable application of public interest clauses that are occasionally tainted with political intent, forcing the authorities to alternate between less duty and full duty principles to be applied in the AD case. This back and forth swing can be attributed in part to Thailand's political and economic situation at the time.

It is quite difficult to deny that experience, historic and economic background, trade systems, and other factors within each nation are able to bring about unique enforcement.⁵⁵² Discretion is an inescapable component of the Thai legal system. It can be seen that the organisations or governmental bodies dealing with anti-dumping procedures in the US and EU have done effective work as they are almost free from political influences and their decisions can be used as the rules for subsequent cases. In the case of the EU, even though the rules are used as a model for Thai legislation with regard to anti-dumping and the stages and procedures of the cases are accordingly very similar to the EU, it is undeniable that EU rules are specifically suitable for that region as the economic and social backgrounds are different. Additionally, the EU has a very long period of time practicing this kind of law by initiating and defending various cases. As a result, they have far more experience compared to Thailand. It is essential to suitably apply those US and EU laws with a very high degree of caution so as to achieve effective results as the EU and US have done.

4.2.5 Vague calculation of dumping margins and initiation of the case

Although the anti-dumping investigation including the method of dumping margin calculation is relatively complicated, it is still necessary to publicize unequivocal details to achieve transparency of the overall process. Additionally, this will also bring about clear anticipation

⁵⁵² David H McElreath and others, *Introduction to law enforcement* (1st edn, CRC Press 2013)

and steadiness of application. Normal value and export price are two critical figures that must be compared at the same level of trade (ex-factory price), resulting in a dumping margin that will be considered if it is less than two percent, as specified in Article 28 of the AD Act and Section 2 of Ministerial Regulation Volume 119 Section 112A published in the royal gazette on November 11, 2002, immediately terminating the AD investigation, or if it is greater than two percent, imposing AD duties.⁵⁵³

Article 2.1 of anti-dumping agreement of the WTO as well as Article 15 of AD Act in Thailand establish the same principle, stating that a normal value is the price paid or payable by an independent buyer in the exporting country, in the ordinary course of trade, for like products destined for domestic consumption. However, in some situations normal value is not appropriate to so do as the price in certain markets might be **distorted as a result of the political or economic situation in such countries**. Thus, the use of the normal value might result in unforeseen situations or uncertain outcomes. “**Constructed normal value**” has become a measure to alleviate this problem. Interestingly, the **success of almost all anti-dumping cases in the world**, completely imposing AD measures, has been **through the calculation of constructed normal value rather than the method of finding the normal value** as ordinary.⁵⁵⁴ Constructed normal values are useful in situations where the normal price does not appear to exist, or that the export price is unreliable because of association or a compensatory arrangement between the parties involved, or because of the particular market situation in the exporting country renders it impossible to obtain a proper comparison, the normal value shall be determined from an export price in the ordinary course of trade of the like products exported from an exporting country to an appropriate third country or a price calculated from the cost of production in the country of origin plus a reasonable amount for administrative, selling and other costs, as well as profits incurred. Following that, the constructed normal value is used in the calculation of dumping margins, rather than the normal value in specific circumstances.⁵⁵⁵

In global practice including in the EU, provided that the use of domestic market prices results in unsuitability and irrationality due to **interference towards the market** or any form of price distortion, most users have chosen to apply constructed normal value as it could reflect the

⁵⁵³ Ministerial Regulation of 11 November 2002 [2002] Royal gazette Volume 119 Section 112A

⁵⁵⁴ Edwin A. Vermulst, *The WTO Anti-Dumping Agreement: A commentary* (Oxford University Press 2005)

⁵⁵⁵ Edwin Vermulst and Gary Horlick, 'Problems with Dumping and Injury Margin Calculations in Ten User Countries' (2007) 2 *Global Trade and Customs Journal* 1

most accurate actual domestic market price through the steps of a formula.⁵⁵⁶ While normal values are derived from actual market data, they may be raw statistics that have been manipulated by a variety of factors and thus do not accurately reflect reality. Thus, in order to exclude those interventions from the raw data prior to calculating the dumping margins, the constructed normal value is responsible for changing the non-reflecting normal value to more closely reflect the truth. While in **Thailand, the authorities have refused the use of constructed normal value** as they claimed that the application might result in higher dumping margins than necessary whereas the information of the third country sale price can be obtained effortlessly and domestic market prices result in irrationality. Refusing to use constructed normal values is demonstrated in the final determination of the AD investigation for clear glass block products originating in China, Volume 124 Section 114D of the Royal Gazette (on September 14th, 2007), which accepts raw data from Chinese exporters obtained through questionnaire surveys as normal values,⁵⁵⁷ despite the fact that China's market is heavily subsidized by the government. It begs the issue as to why the committee chose not to use the constructed normal value in such a straightforward scenario. The committee's reasoning appears to contradict the constructed normal value concept in this case, because applying the constructed normal value to the anti-dumping margin calculation results in AD duties that are equal to the injury sustained, not excessive or less than the injury suffered. Refusing to employ constructed normal value, despite the fact that AD Act Article 15 permits its use, seems to be more unpleasant in the view of foreigners. Unpleasant circumstances may arise as a result of the case concerning canned pineapple between Thailand and the US when the US producer is subjected to lower anti-dumping duties on the condition that the third country's price and constructed normal value are used.⁵⁵⁸ Thus, in the aspect of the **Thai authorities they might gain more duty if they do not apply the third country price** against the dumped imports. Overall, it appears as though there is no compelling reason for Thailand's committee not to utilize the constructed normal value, even if it is equitable to all interested parties. Look more deeply, the lack of strict adherence to one concept may also represent Thailand's implementation of foreign political and economic policies during the AD case.

⁵⁵⁶ Keon Ho Lee, 'Ten Major Problems with Dumping Margin Calculations in Korea' (2007) 2 Global Trade and Customs Journal 47

⁵⁵⁷ Announcement of the Department of Foreign Trade Investigation on dumping of Clear glass block products which are originated from the China [2007] Royal gazette Volume 124 Section 114D

⁵⁵⁸ Benjamas Chinapandhu and John M Rothgeb Jr 'The Problems US Dumping and Subsidy Regulations Pose for Thailand: Evidence from the Steel and Pineapple Sectors' (2011) 19 Journal of Economics and Politics 19

However, there is evidence that Thailand used to calculate the dumping margin using the constructed normal value,⁵⁵⁹ but the approach was very contentious. Of course, if the constructed normal value is used in the context of Thailand, extreme caution must be exercised, as it has been noted that the approach's weakness is that the information of expenses and profits used in the calculation were almost certainly gathered **under suspicious circumstances** as well as the figure of the final constructed normal value which often has no reasonable grounds in price.⁵⁶⁰ **This could deter the abuse through wide and improper discretion by the officials and the Committee bringing other incidents into consideration.** In Thailand, **when it is a constructed figure, it means that it has been modified and calculated through a formula which may undergo intervention and modification in order to obtain numbers that meet the conditions of the interventionist. Moreover, when the calculation formula is not disclosed this renders complicated problems in anti-dumping lawsuits.** Additionally, in the final determination of the AD investigation of tubes and steel pipes from the Republic of Korea, evidence and debates surrounding methods of calculating the constructed normal value appeared.⁵⁶¹ The Committee chose to use constructed normal value based on the cost of production in the country of origin plus a reasonable amount for administrative, selling and other costs, as well as profits incurred. To calculate the cost of production of tubes and steel pipes in the Republic of Korea, the Committee decided to use Product Code Numbers (PCN), which group goods with similar production costs together under the same PCN to make cost determination easier. This appears to be an efficient approach for reducing the time required to calculate the constructed normal value's manufacturing cost. However, there is an issue of accuracy, as the Thai AD method requires each PCN to be excessively broad, encompassing an excessive number of steel goods of varying grades. PCN classifies steel pipe products into two categories: welded pipe and galvanized pipe, and the identification does not take into account other aspects that differentiate the product. In this case, it was highly contentious that API5L pipe, API5CE pipe, and PE steel pipe have such disparate manufacturing costs that they cannot be classified under the same PCN because they have such disparate manufacturing costs in reality, and once they become products subject to AD investigation, they result in incorrect

⁵⁵⁹ Announcement of the Department of Foreign Trade Investigation on dumping of Phthalic anhydride originated from Japan [2002] Royal gazette Volume 119 Section 12D; The announcement of the Committee on Dumping and Subsidies regarding final determination of Television Picture Tubes case [2007] Royal gazette Volume 124 Section 146D

⁵⁶⁰ David Palmeter, 'A Commentary on the WTO Anti-dumping Code' (1996) 30 Journal of World Trade 43

⁵⁶¹ Case AD1032 *Republic of Korea v Thailand on Tubes and steel pipes* [2017] Committee < <https://www.thaitr.go.th/th/search/AD1032> > accessed 1 November 2021

dumping calculations.⁵⁶² Clearly, overly broad categorisation of PCN leads to double standards.⁵⁶³ Thus, while shortening the constructed normal value calculation procedure through the use of PCN may expedite the investigation and determination process, Thailand's PCN must be more extensive and detailed, or the entire AD inquiry will be incorrect. The application of the on PCN has to be revised to assess whether it results in proper justification.⁵⁶⁴

Despite the WTO's legal framework for AD law, each country's AD procedures complicate matters for exporters involved in AD investigations, as governments frequently enforce finer details themselves, as with PCN.⁵⁶⁵ In the Thai context, finer details not only make it difficult for exporters in the AD procedure but also create uncertainty because they face the discretion of the Committee and officials. This could be highly criticized in Thailand where conditions frequently involve unpredictability and discretion.

In Thailand, the difficulty in determining dumping margins stems from a lack of acceptance of the constructed normal value. Even if the Committee were to use the constructed normal value, the calculating process would appear to be unreliable. However, these issues were exacerbated by the case's reluctance to disclose the computation process freely to the public or to interested parties. This demonstrates the state's reluctance to conduct the AD procedure properly and honestly.

4.2.6 Issues with the standing requirement

When an anti-dumping action is initiated, one of the difficulties is the qualification of domestic producers or the claimant at the time the AD investigation request is submitted. Article 33 of the AD Act establishes the standing requirement.

Article 33. A person or persons may **act on behalf of a domestic industry** to request the Committee to conduct anti-dumping determination by submitting a request to the Department of Foreign Trade.

⁵⁶² *ibid*

⁵⁶³ Keon Ho Lee, 'Ten Major Problems with Dumping Margin Calculations in Korea' (2007) 2 *Global Trade and Customs Journal* 47

⁵⁶⁴ Paul Waer, 'Constructed Normal Values in EC Dumping Margin Calculations—Fiction, or a Realistic Approach?' (1993) 27 *Journal of World Trade* 47

⁵⁶⁵ C Satapathy, 'Review of WTO rules on antidumping and countervailing measures' (2006) 41 *Economic and Political Weekly* 263

A request pursuant to paragraph one shall be supported by domestic producers of like products whose collective output constitutes **more than one half** of the production quantity of those who express either support or opposition to the request collectively.

The production quantity of those expressing support shall not be less than **one fourth** of the total domestic production quantity of the like products.

This could be a disaster for the claimant if it is subsequently found that the claimant is not qualified to make a request when the case is forwarded to the following stage or even in the stage of the final decision as the whole investigation can be terminated and the outcome will be void pursuant to Article 34 of AD Act which was adopted from Article 5.3 of the Anti-dumping Agreement of the WTO which states that related officials have to examine all the evidence submitted to ensure that it is accurate and reasonable. It will be connected to the point above where the submitted evidence concerns the status of the domestic producers (standing requirement) who request AD investigation. There are a number of reports of the WTO showing that a lack of such qualification in any stage of the case will result in the immediate cessation of the case.⁵⁶⁶

The requirement to qualify as a domestic industry qualified to request an AD investigation is one of the impediments to small businesses exercising their AD claims. Thailand, on the other hand, has eased some of the quantitative qualification requirements, making quantitative disqualification uncommon. Domestic industry is defined in the WTO Anti-Dumping Agreement (ADA) as domestic producers whose output accounts for a major proportion of total domestic output. However, the AD Act expressly states that domestic producers' necessary output must exceed half of overall domestic production output. As a result, the DFT has limited discretion in defining the domestic industry's legal standing and representation.⁵⁶⁷

When evaluating the qualifications required under the AD Act for initiating an AD inquiry, one of the challenges that can arise is that they may exclude the small and medium sized firms with minor effects towards the overall national economy from the AD procedure and to deal only with large-scale enterprises which have a substantial influence over the domestic market. Standing requirements addressing the quantity of total production has been debatable over time

⁵⁶⁶ Edwin Vermulst, 'Adopting and Implementing Anti-Dumping Laws – Some Suggestions for Developing Countries' (1997) 31 *Journal of World Trade* 5

⁵⁶⁷ Apisith John Sutham and Chalermwut Nilratsirikul, 'Thailand - Trade remedies' (Weerawong, Chinnavat & Partners Ltd, 2020) < <http://www.weerawongcp.com/data/know/121.pdf> > accessed 5 May 2021

whether it renders a more effective process of the anti-dumping case or if **it dilutes the level of protection towards the minor domestic producers as they cannot access the justification for the only reason that they have too small a scale of their businesses.** On the other hand, small and medium-sized businesses can initiate an AD investigation by bringing together entrepreneurs who produce the same product in the required quantity under the AD Act. While small and medium-sized businesses may require more work to initiate an AD investigation than large businesses, the Thai AD Act greatly reduces their prerequisites. This is perhaps the element of the AD Act that Thailand excels at because it is tailored to the status and size of the Thai economy and there is very little discretion in examining only one issue, the interpretation of expressing support.

The puzzle lies in the interpretation of the conduct of expressing explicit support for the claim. **It could be differently interpreted that the support above must contain the submission of information of supporters** to the DFT, or a person requesting an AD investigation can just hand the AD petition form to the DFT, stating supporters' information. According to the Ministry of Commerce's notification regarding the submission of an AD investigation, Royal Gazette Volume 138 Section 62D (on March 19, 2021),⁵⁶⁸ It has been implicitly demonstrating that the latter interpretation has been chosen to be used by the DFT in contemporary practice. Indeed, the DFT's current approach is more helpful to the claimant than the previous one, as it makes it easier to initiate an AD investigation. However, if the DFT does not verify that the applicant has obtained complete support as required by Article 33 of the AD Act, it may serve as a conduit for filing an erroneous petition that is susceptible to forgeries. DFT and the Committee interpret these procedures. Therefore, if support under Article 33 is to be reviewed more rigorously and unambiguously, a ministry announcement must be released outlining how the DFT and the Committee would check the sponsor's authenticity, while also establishing clear and predictable rules.⁵⁶⁹

The conditions provided in Thailand's AD Act are more favourable to small and medium-sized enterprises than those specified in the WTO's AD Agreement, as they require claimants to own a lower percentage of total production. Thus, small and medium-sized businesses have access to the AD process, or if their overall production does not meet the standards of Article 33, they

⁵⁶⁸ The announcement of the Ministry of Commerce of 19 March 2021 regarding submission of an AD investigation [2021] Royal gazette Volume 138 Section 62D

⁵⁶⁹ Apisith John Sutham, Parate Attavipach and Patamaporn Eiamchinda, '10 Major Problems with the Anti-Dumping Instrument in Thailand' (2005) 39 Journal of World Trade 159

can merge with other businesses to get the required proportion. However, there must be evidence that more entrepreneurs support the AD investigation's submission. Thailand currently lacks clear rules, preferring broad principles that benefit claimants but may result in unfounded filings.

4.3 *A legal culture that ignores expertise but focuses on seniority*

In Thailand, there are two primary authorities involved in anti-dumping proceedings: the DFT and the Committee, which considers anti-dumping cases concurrently in accordance with Article 29 of the AD Act. However, the members of these two organizations are entirely distinct and rotate for very different reasons. As a result, seniority, rather than level of knowledge, plays a significant role in the AD method.

Under Thailand's AD Act, DFT is a department within the Ministry of Commerce with the authority to consider anti-dumping matters. DFT is organized into the following thirteen departments.⁵⁷⁰

1. Department Secretariat Office
2. Legal Division
3. Finance Division
4. Trade and Investment Cooperation Division
5. Rice Trade Administration Division
6. General Merchandise Trade Administration Division
7. Import and Origin Certification Administration Division
8. Trade Agreement and Measures Management Division
9. Trade Protection and Countermeasures Division
10. Import-Export Standard Division
11. Trade Privileges Division
12. Information and Communication Technology Center
13. Foreign Trade Service Bureau

Anti-dumping procedures are directly supervised by the Trade Defense and Countermeasure Division. Officers in this division are separated into smaller units and assigned to each dumping

⁵⁷⁰ Department of Foreign Trade, 'Structure of Department of Foreign Trade' (DFT 2020)
< <https://www.dft.go.th/th-th/dft-about-system> > accessed 20 May 2020

case.⁵⁷¹ Officers in this division, like those in other divisions and departments within the Ministry of Commerce, are permanent civil servants.⁵⁷² In Thailand, it is indisputable that permanent civil officials are practically appointed based on seniority rather than expertise, as stipulated by the Civil Service Act, B.E. 2551. (2008). This Act's mechanism regulates the methods and conditions for appointment to certain permanent civil service positions. While the Act's provisions also assess competence and knowledge, these two factors are related to a civil servant's seniority and duration of service in the government, as specified in Article 57 of the Civil Service Act. As a result of this system, seniority becomes the primary criterion for any nomination to any position. When knowledge is not deemed necessary, a shortage of specialized authorities occurs in the AD procedure. Deficiency in the experienced officials and specific experts also leads to certain dark spots in Thailand. The inferior experience and technical skills of officials might actually come from the very beginning of civil servant recruitment. Although today there are more young specialized officials working in certain specific area, the remainder are non-specialized.⁵⁷³

When expertise is not critical to the position, officers from other divisions can be assigned to conduct AD investigations without prior legal training or adequate practice, as the Civil Service Act does not require. Thus, there is a rotation within or across the department once every couple of years or even annually.⁵⁷⁴ As a result, officers become frustrated with having to learn and manage new types of tasks, particularly when dealing with AD cases and other important procedures. With the complication of the anti-dumping process which is an amalgamation of business, trade, and legal issues, officials who have no specific knowledge and experience in the legal and accounting professions might face difficulties in doing so. Additionally, in cases where they have gained sufficient familiarity and experience in anti-dumping issues through actual work, it is mostly at the very same period of time they have to be rotated to another division or department. This affects the anti-dumping process as a whole in terms of both the quality of the decision and the time consumed, which is frequently extended.

Due to the insufficient number of officials specializing in AD investigations, consideration is frequently delayed, as this is not typical domestic civil and commercial litigation. In China and

⁵⁷¹ Department of Foreign Trade, 'Trade Defense and Countermeasure Division Structure' (DFT 2020) < <https://www.thaitr.go.th/th/page/structure> > accessed 20 May 2020

⁵⁷² Department of Foreign Trade, 'Executive structure' (DFT 2020) < <https://www.dft.go.th/th-th/dft-aboutt-organize> > accessed 20 May 2020

⁵⁷³ Sirininthakarn Faisombat, 'Work ideals of the Revenue Department's new generation of civil servants' (2019) < http://www.mpm.ru.ac.th/Documents/Article_MPM17/5914840017.pdf > accessed 20 May 2020

⁵⁷⁴ *ibid*

the European Union, **despite the lack of expertise like Thailand,**⁵⁷⁵ **the difference is that the seniority culture does not appear as prominent as in Thailand and there are stable politics and limited cultural interventions compared to Thailand.** China as an example has struggled with the problem of the judicial review process because the involved parties do not opt for this as a method to solve their cases instead of court decisions due to a shortage of experts.⁵⁷⁶ This kind of problem also takes place in the EU. There is a problem of insufficient judicial reviews on substantive issues such as specialized courts, and more expertise is needed to take part in the anti-dumping process than before as in practice it might take a couple of years to have a case going through two courts, whereas the anti-dumping agreement has provisions imposing the need for a prompt review. It can probably be seen that the EU's procedure might not have sufficient time to consider the case in depth due to their high caseload and shortage of expertise.⁵⁷⁷ However, the EU and China have a track record of success and good protection for domestic producers due to a good structural enforcement structure and the adaptation of organs to the problem.

However, the shortage of expertise in Thailand is considerably worse because the Thai bureaucracy system does not support and does not prioritize expertise persons. The lack of experience in AD procedure is even more visible in the form of the committee, another body in charge of AD inquiry. According to Article 72, the committee is made up of political officials, full-time civil servants appointed by the Council of Ministers, and nominated individuals with expertise in law, trade, and finance. All members must be appointed and endorsed by the Council of Ministers, which is the heart of the Thai administration and political sector. It has already been stated that the appointment is at the discretion of the Council of Ministers. The discretionary procedure for appointing committee members represents the left of expertise behind, but also highlights the political sector's personal relationship with the committee members.

The political sector's personal relationship with a member of a committee or administrative board of a government agency or state enterprise is also evident in the discretionary appointment of members to administrative boards such as the State Railway of Thailand Board,

⁵⁷⁵ Editorial, 'Specialized civil servants with 36 types of expertise, usually retired at the age of 60, have continued to work in accordance with the new rules of the Office of the Civil Service Commission to address the problem of skill shortages.' *Prachachat* (Bangkok, 7 December 2019)

⁵⁷⁶ Veron Mei-Ying Hung, 'China's WTO Commitment on Independent Judicial Review: Impact on Legal and Political Reform' (2004) 52 *The American Journal of Comparative Law* 77

⁵⁷⁷ Edwin Vermulst, 'Judicial Review of Anti-dumping Determinations in the EU' (2012) 7 *Global Trade and Customs Journal* 240

the Electricity Authority of Thailand Board, the Airports Authority of Thailand Board, and the Port Authority of Thailand Board.⁵⁷⁸ This intensely intimate relationship is mirrored in the tradition of the entire committee resigning when ministers are replaced.⁵⁷⁹ Although several board members have extensive experience, they were forced to resign. Neither the change of ministers nor the dissolution of the Council of Ministers results in the expiration of the term of the committee members. This is also reflected in Article 75 of the AD Act, which indicates that the committee members' terms are independent of the ministerial term.

However, the legislation cannot withstand the manner in which the Council of Ministers and the committee members conduct themselves which demonstrates their sensitivity to political influences when they consider the case and it runs the risk of impartiality and leads to incorrect conduct and decisions. As can be observed, the AD act amendment does not tackle negligence of expertise, a concentration on high-ranking officials, or personal relationships and this is a hidden problem to which the Thai government has to pay attention.⁵⁸⁰ These issues erode the overall effectiveness of the anti-dumping process and **exacerbate the gap of discretionary misuse, ultimately damaging AD procedure and enforcement.**

4.4 Legal culture and enforcement historically adopted from the Western nations

4.4.1 Thailand's Legal environment factors underlying the signing of Bowring Treaty agreement

Thailand, formerly known as Siam,⁵⁸¹ has always been governed by written law,⁵⁸² but in fact, the nobility wielded such influence over legal practice that written law was rendered nearly ineffective. Numerous aristocratic customs were arbitrary to the extent that they did not satisfy

⁵⁷⁸ Editorial, 'Criticism throughout the Ministry of interior. 'Anupong' approves 'Chatchai' to sit as chairman of the PEA board. contrary to the Ministry of Finance guidelines' *Workpointtoday* (Bangkok, 12 August 2021); Editorial, 'The Cabinet has set up a new board of State Railway of Thailand , "Chirut" as the chairman of the two high-speed train lines.' *Workpointtoday* (Bangkok, 16 October 2019); Editorial, 'The Cabinet has given the green light to set up a new Port Authority Board.' *Bangkok Business* (Bangkok, 24 December 2019)

⁵⁷⁹ Editorial, 'Board of SRT resigns as a whole "Kulits" goodbye and leave a new set of board clear existing problems' *Thaipublica* (Bangkok, 30 September 2019); Editorial, 'Board of Port Authority all resigns' *Matichon* (Bangkok, 3 August 2019)

⁵⁸⁰ Bidhya Bowornwathana, 'The Politics of Becoming a Top Bureaucrat in the Thai Bureaucracy' (2014) 32 *Asia Pacific Journal of Public Administration* 125

⁵⁸¹ David Streckfuss, 'The mixed colonial legacy in Siam: Origins of Thai racist thought' in Laurie J. Sears, (ed), *Autonomous Histories, Particular Truths: Essays in Honor of John R. W. Smail* (Madison Center for Southeast Asian Studies, University of Wisconsin 1993)

⁵⁸² Chris Baker and Pasuk Phongpaichit, "Thammasat, Custom, and Royal Authority in Siam's Legal History" in Andrew Harding and Munin Pongsapan (eds), *Thai Legal History: From Traditional to Modern Law* (Cambridge University Press 2021)

the state's population or the foreigners that came to trade with Siam at the time.⁵⁸³ The arbitrarily high rate and redundant import duties imposed by aristocrats seeking to enrich themselves exposed foreign trading partners to an unjustifiable and unpredictable high cost of goods, leaving them unsure whether they would make a profit or a loss each time they sold products to Siam.⁵⁸⁴ The aristocracy's arbitrary behavior hampered the establishment of a global trading system and the expansion of Siam's economy for state development. However, Siam was primarily interested in territorial expansion at the time, not in commercial development. Thus, interest in the regions was the motivation for the 1826 Burney Treaty between the Kingdom of Siam and the United Kingdom of Great Britain and Ireland, which resolved the allotment of several disputed Malaysian areas which are Kedah, Kelantan, Perlis, Terengganu, and Pattani whereby the latter officially became one particular province of Thailand. Specifically, the Burney Treaty did not comprehensively contain the consensus on trade.⁵⁸⁵

Even over 30 years later, Siam did not perceive its tax and judicial systems as impediments and hence did not propose a solution. On the other hand, other powers, particularly the United Kingdom, viewed this practice as a serious issue and wished to safeguard their citizens when conducting business with Siam. As a result, the United Kingdom negotiated the Bowring Treaty with Siam in 1855.⁵⁸⁶ The Bowring Treaty had the effect of abolishing the aristocracy's double taxation of imports and replacing it with a unified taxation structure.⁵⁸⁷ Moreover, certain local trade agents and aristocrats were excluded from transactions between foreign traders and local traders according to the Bowring Treaty as **there were trade interventions by agents which caused obstruction and unnecessary costs.**⁵⁸⁸ It also exempted foreigners who committed crimes within the State of Siam from entering Siam's criminal justice system, which was replete with procedures based on ancient religious beliefs and the accused were not

⁵⁸³ Rawin Leelapana, Andrew Harding and Eugénie Mérieau, "Thai Legal History: A Brief Literature Review" in Andrew Harding and Munin Pongsapan (eds), *Thai Legal History: From Traditional to Modern Law* (Cambridge University Press 2021)

⁵⁸⁴ Thamrongsak Petchlertanan, 'Government Reform during the Reign of King Rama V' (2017) 4 *RSU International Journal of College of Government* 28

⁵⁸⁵ Kobkua Suwannathat-Pian, 'The Quiet Affairs in the Siamese-Malay Relations in the Nineteenth Century' (1984) 13 *Jebat: Malaysian Journal of History, Politics and Strategic Studies* 19

⁵⁸⁶ B Jan Terwiel, "The Bowring Treaty: Imperialism and the Indigenous Perspective" (1991)

< https://thesiamsociety.org/wp-content/uploads/1991/03/JSS_079_2f_Terwiel_BowringTreaty.pdf > accessed 7 July 2022

⁵⁸⁷ *ibid*

⁵⁸⁸ Mogens Buch-Hansen, 'The territorialisation of rural Thailand: between localism, nationalism and globalism' (2003) 94 *Tijdschrift voor economische en sociale geografie* 322

required to be proven in a procedure consistent with international evidence.⁵⁸⁹ it was claimed by the British and other foreign residents, as well as diplomats, that there were numerous loopholes, ambiguities, instabilities, and unpredictable adjudication problems within the judicial system. Thus, they were not willing to be under Siam's jurisdiction but instead under the British Consulate in Bangkok.⁵⁹⁰

The aforementioned impediments to Thai tax law and criminal justice have not been resolved as Siam believed necessary, but altered in response to foreign states' perceptions of them as backward and unfair. Additionally, the process of establishing a treaty to fix the Siamese system occurred during the Western nations' colonial era in Southeast Asia. Siam was consequently pressed to submit to a new strategy recommended by Britain in order to forge a strong alliance capable of surviving the colonial era.⁵⁹¹ Contemporary judicial procedure, in the eyes of the Siamese state at the time, was a tool for survival against colonial forces. On the other hand, it is obvious that Siam viewed the West's acceptance of those legal frameworks as a sign that Siam was about to enter a new age in the blink of an eye.⁵⁹²

4.4.2 The Bowring Treaty's Persistent Influence on Thailand Today and How It Affects Legal Models and Varying Enforcement

The Bowring Treaty has been discussed as having a great influence on the transformation of Thai law, which is one of the factors in the legal culture and enforcement historically adopted from the Western nations. Entering the Bowring agreement encouraged other Western countries to enter a treaty with Siam with the same obligations as the Bowring Treaty, and removed Siam from the risk of falling under the direct influence of the British Empire and other Western countries like other nearby countries.⁵⁹³ It is undeniable that the signing of the Bowring Treaty also encouraged Siam's potential along with elevating its level of national protection through contemporary development so as to obtain Western benefits including

⁵⁸⁹ Tamara Lynn Loos, *Subject Siam: Family, law, and colonial modernity in Thailand* (Cornell University Press 2006)

⁵⁹⁰ Tomas Larsson, 'Western imperialism and defensive underdevelopment of property rights institutions in Siam' (2008) 8 *Journal of East Asian Studies* 1

⁵⁹¹ Richard S Horowitz, 'International law and state transformation in China, Siam, and the Ottoman Empire during the nineteenth century' (2004) 15 *Journal of World History* 445

⁵⁹² Barney Smith, "Philip Bowring. Free Trade's First Missionary: Sir John Bowring in Europe and Asia" (2015) 46 *Asian Affairs* 316

⁵⁹³ Rachel V Harrison and Peter A Jackson, 'Siamese Modernities and the Colonial West' (2009) 17 *South East Asia Research* 325

science, technology, and other kinds of knowledge.⁵⁹⁴ These advantages may contribute to the circumstances that made policy makers, the elite, or administrative civil servants and politicians at the time aware that if they conformed to the wishes of the Western powers' they could ensure the security of their country.

This awareness not only remained over the following decades, but still today through the **passing on of knowledge and experience from generation to generation**. Even though Thailand was under the pressure of war, colonialism, and international politics in certain periods of its history, causing foreign legal frameworks to be adopted, when the situation changed in the following century each state had more evident sovereignty. At the same time, Thailand is no longer subject to colonial pressures. However, as a result of the abrupt changes brought about by the Bowring Treaty, government officials and administrators of that era continued to **pass that paradigm to future generations** until it was rooted in the system to accept overseas legal framework. The acceptance of a legal framework from abroad is still popular with Thai lawmakers. Popularity has been demonstrated in a great number of the noble elites in the past who subsequently held major administrative and legislative positions in the country were sent for their education or obtained Thai King's scholarships and other governmental funds to pursue legal studies in European countries, particularly the United Kingdom.⁵⁹⁵ To summarize, they were all educated within a Western paradigm and developed legal preferences through time for the implementation, modification, and ratification of Western law in Thailand.⁵⁹⁶ It is true that adopting a framework from a foreign country is like shortening the path to success without having to experience the process of trial and error. However, adopting legislation with a framework suited to another country necessarily leads to different outcomes when applied in Thailand's highly specific environment. It cannot be denied that many provisions of the laws are effective in elevating the Thai legal system to be more international.⁵⁹⁷ However, it cannot be denied as well that the whole legal framework which is applied in the landscape of the Thai context, **regardless of how they had to be adjusted or**

⁵⁹⁴ Malinee Khumsupa, 'Siam Avoids Colonization, Bangkok is the Exchange' (2020) 12 *Journal of Integrated Sciences* 153

⁵⁹⁵ Likhit Dhiravegin, 'The Power Elite in Thailand: A General Survey with a Focus on the Civil Bureaucrats' (1975) 3 *Southeast Asian Journal of Social Science* 1

⁵⁹⁶ Nichapa Thichakornsakul, 'Ayutthaya in Rattanakosin Era From the Reign of King Rama I to King Rama V: A Documentary Research on Literature and Official Documents' (2019) 16 *Journal of the Thai Kadi Research Institute* 1

⁵⁹⁷ Nucharee Nuchkoom Smith and Robert Brian Smith, 'Has Thailand learnt any Lessons from the Bowring Treaty and the Treaty of Amity?' (2019) 5 *Athens Journal of Law* 405

whether they were suitable for the specific conditions of Thailand, is like using a wine cork to cover a Pad Thai dish. These do not necessarily fit together very effectively.

The current adoption of Western legal models without considering even the slightest adaptation of the provisions or processes to the Thai context was not caused solely by overnight changes brought about by the Bowring Treaty, but also by three other factors relating to country's development, primarily a modernized interdisciplinary, expanded consumer market due to free trade patterns, and the elevation of wellbeing and standard of living, specifically in the aspect of financial capability due to free trade.⁵⁹⁸ As a result of these factors, Thailand is open to accepting practically any new legal model proposed by developed countries.

However, while adopting new legal models from developed countries is not difficult in theory, doing so does not always imply that we have inherited the original country's form of law enforcement as well. From time to time, it is difficult for governmental administrative sectors or lawmakers who are in charge of certain duties or positions in running the country to include the essence of flawlessly applying international legal frameworks in Thailand as a prototype country.⁵⁹⁹

As can be observed, the presence of a foreign legal framework in Thailand has contributed to the system's stability in past years, as seen by the development of the Customs Act, the Criminal Procedure Act, and even the adoption of anti-dumping and competition laws. However, over time the law enforcement system has not been as straightforward and stable as it was in the early days when the framework was adopted under the control and pressure of the Bowring Treaty because it has been distorted according to the specific culture of Thailand. Although law enforcement in Thailand is currently better than it was before Thailand joined the Bowring Treaty, since the signing was not motivated by a consensus that Thailand's law enforcement was warped, signing to avoid colonialism makes it appear as though it was accepted unwillingly. Thus, the administrative and political sectors are unaware that the law enforcement problem exists and should be resolved. Staying in the former unorganized system, on the other hand, may make it easier to sustain the benefits for their groups. These principles have been passed down extensively to

⁵⁹⁸ Hans-Dieter Evers, 'Trade and state formation: Siam in the early Bangkok period' (1987) 21 *Modern Asian Studies* 751

⁵⁹⁹ Andrew J Harding, 'The Eclipse of the Astrologers: King Mongkut, His Successors, and the Reformation of Law in Thailand' in Penelope Nicholson and Sarah Biddulph (eds), *Examining Practice, Interrogating Theory: Comparative Legal Studies in Asia* (Brill Nijhoff 2008)

the political heirs of a few of Thailand's oldest political families, who currently dominate the legislative and administrative branches of the government.⁶⁰⁰ When unpredictable law enforcement comparable to that which existed prior to 1853 intersects with **Western legal frameworks, which in some aspects are more flexible than Thai laws because there are different cultures of enforcement, the system is unable to eliminate the abuse of discretion and achieve strict enforcement.**

The anti-dumping law is a well-known Western legal framework that came from the WTO's ratification and has been implemented in Thailand since 1997.⁶⁰¹ The WTO expects all Member States to protect themselves against dumping through AD duties. However, the WTO's AD legal framework includes flexibility for Member States to issue their own rules, either in addition to or different from the framework,⁶⁰² in order to more effectively protect their domestic industries.

However, the application and amendment of the laws in this section are still made on the basis of copy and paste, with no actual adaptation to the Thai context. Additionally, Thai law enforcement entities have not adapted to that legal framework. Therefore, it leads to a failure in the enforcement of the anti-dumping law which therefore cannot truly protect Thai industry as it does in the prototype countries. Indeed, the Ministry of Commerce has issued ministerial regulations and ministry announcements under the AD Act to provide additional details about Thailand's implementation of AD, but those additional statutes were enacted to encourage the use of unlawful discretion, a practice that is notoriously difficult to rectify in Thailand. As a result, Thailand's unethical practices become more evident in the AD procedure. When the AD law is amended in 2019 to include additional measures, it becomes similar to replaying the original drama. This is not the last component in the solution for dumping in Thailand because of its deep roots, and the real challenge of better adapting the law into the Thai context of law enforcement will have to play a more universal role.

The Bowring Treaty's influence on adopting Western legal frameworks as a shortcut to progress persists. On the other side, the Bowring Treaty has little effect on the transparent and

⁶⁰⁰ Stithorn Thananithichot, 'Political family in Thai democracy' (2013) 11(2) King Prajadhipok's Institute Journal

⁶⁰¹ Vandee Suchatkulvit, 'A legal perspective in Thailand's Anti-Dumping Law' Journal of Intellectual Property and International Trade 502

⁶⁰² Jeffrey Kucik and Eric Reinhardt, 'Does Flexibility Promote Cooperation? An Application to the Global Trade Regime' (2008) 62 International Organization 477

straightforward implementation of the law, as it cannot withstand deeply ingrained Thai practices in the judicial system and government, as the ruling class does not believe in and adhere to it. The Bowring Treaty's remaining influence was insufficient **to reduce the abuse of discretion caused by the distorted legal culture**. Relying mostly on the side of the Western blueprint, favouring slightly modifying or imitating these laws then enforcing them in Thailand may not be wholly suitable for the legal culture and practice in Thailand.⁶⁰³ A conventional paradigm excision, which has been in place for 116 years,⁶⁰⁴ could be accomplished by increasing awareness of their law enforcement shortcomings and adjusting the legal framework to close the legal system's weak point caused by Thailand's social and cultural context.

4.5 The flaw of rules of origin as the basis for Anti-Dumping and Anti-Circumvention laws: Another obstacle to the development of structural and cultural law enforcement

The Rules of Origin (RoO) are sets of rules that describe which country is the product's origin and what benefits it receives from the importing country.⁶⁰⁵ Meanwhile, the product's country of origin will inform you of any tariffs or restrictions that the product would face in the importing country.⁶⁰⁶ Certain products from specific countries may be subject to AD duties in Thailand if their country of origin is subject to the AD measure that Thailand is enforcing.⁶⁰⁷ Similarly, when Thailand enacts anti-circumvention legislation (AC), it is even more critical to consider the country of origin because if the product originates in a country that is subject to AD measures but avoids them, AC measures will automatically take effect without requiring an AD investigation.⁶⁰⁸ Thus, determining the country of origin of a product results in a wide range of benefits and obligations, such as determining if the products originated in a member country of the Global System of Trade Preferences (GSTP),⁶⁰⁹ thereby obtaining tax and non-tax benefits.⁶¹⁰ However, there are no universally applicable guidelines for determining the

⁶⁰³ Hartmut Behr, 'The European Union in the legacies of imperial rule? EU accession politics viewed from a historical comparative perspective' (2007) 13 *European Journal of International Relations* 239

⁶⁰⁴ Since the enforcement of the Bowring Treaty

⁶⁰⁵ Kala Krishna, "Understanding rules of origin" (2005) NBER Working Paper No. 11150 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=663516 > accessed 6 July 2022

⁶⁰⁶ *ibid*

⁶⁰⁷ Department of Foreign Trade, 'Products that Thailand has been imposed by AD measures (50 items)' (DFT 2021) <<https://www.thaitr.go.th/storage/file2/fUANvgP6yQdWJurgltN1QdOp2WascfOoAa6TaWDi.xls>> accessed 2 July 2022

⁶⁰⁸ Siribhusaya Ungphakorn, 'Circumvention of anti-dumping and countervailing measure: Criteria, investigation procedure and legal penalty' (2019) 48 *Thammasart Law Journal*

⁶⁰⁹ Rolf J Langhammer, 'The developing countries and regionalism' (1992) 30 *Journal of Common Market Studies* 211

⁶¹⁰ Rajan Sudesh Ratna, 'GSTP Rules of Origin—Developing Country's Perspective' (2007)

country of origin. That is, each region may stipulate independently, or some regions may not stipulate at all. Additionally, having a region's own country-of-origin legislation is insufficient because it results in inconsistent results between the regional set of laws. Similarly, the absence of regulations governing regions or countries of origin can result in unpredictable outcomes and rule abuse. Thailand lacks such standards, and the absence of specific principles in this area creates gaps through which policies can be applied illegally. As a result, certain products are intentionally or negligently misrepresented in their country of origin. Thus, the rules of origin are inextricably tied to the AD investigation, as all AD investigations begin with the question of the product's country of origin.

4.5.1 The Essence of Origin Rules

The rules of origin (RoO) are of importance since the development and movement of investments, workers, and cross-border transactions are on the increase. Due to globalization, products seem to have two or more connection points towards various countries. As a result, one particular product has the high possibility to be passed through various production lines taking place in various territories.⁶¹¹ This led to difficulties in naming the country of origin of the product as such the concept was to develop a system for determining a country of origin. Rules of origin can be roughly explained as the set of conditions with the aim to classify whether one particular product should be labelled as the product of one particular country.⁶¹² To give the origin, or in this scenario the process of giving nationality to the product, it has to pass various stages and conform to a wide range of conditions.

The rules of origin are mainly concerned with the conditions to offer one particular nationality to one particular product. However, there is no mutually agreed rule on this issue such as for example the Vienna Convention which is mainly about international treaties, or the GATT which is in relation to international trade. **The absence of such international rules on this issue leads to the setting up of particular regional rules** applied in certain areas such as North America and the European Union where the government cannot bear such absence of

< https://www.researchgate.net/profile/Rajan-Ratna/publication/238662768_GSTP_Rules_of_Origin_-_Developing_Country%27s_Perspective/links/555bb9b008ae6aea0816ca81/GSTP-Rules-of-Origin-Developing-Countrys-Perspective.pdf > accessed 6 July 2022

⁶¹¹ Antoni Esteveordal, Jeremy Harris and Kati Suominen, Multilateralising preferential rules of origin around the world (2009) IDB Working Paper Series No. IDB-WP-137 < <https://www.econstor.eu/handle/10419/115376> > accessed 5 May 2020

⁶¹² Kala Krishna, "Understanding rules of origin" (2005) NBER Working Paper No. 11150 < https://papers.ssrn.com/sol3/papers.cfm?abstract_id=663516 > accessed 6 July 2022

international rules and therefore seeks mutual rules to apply.⁶¹³ However, when global guidelines are compiled, it is discovered that each country has some RoO concepts in common. This demonstrates the essence of the RoO in global practice including two main types of this rule which are the preferential rules and non-preferential rules.⁶¹⁴

Preferential Trading Area (PTA) and Free Trade Area (FTA) nations which frequently impose special rates of tariff as well as even non-tariff imposition will subsequently launch the certain conditions for one particular product to comply in order to obtain such benefits almost right after the formation of such PTA or FTA, and this is called Preferential Rules of Origin (PRoO).⁶¹⁵ The preferential rules can also be separated into two subcategories which are used as assistance for developing countries and for certain closed groups of countries. In relation to the one designed for developing countries, it is commonly known it as “GSP” as an abbreviation.⁶¹⁶ The rule has a role in determining whether such products originate from the countries that are on the list which has special treatment, such as lower taxes and duties.⁶¹⁷ Meanwhile, the non-preferential rules apply where there is no trade preference. Members of the WTO agreed in the Agreement on Rules of Origin to discuss and adopt common or "harmonized" non-preferential rules of origin. After the "harmonization work programme" is completed, all WTO members will apply identical rules of origin for all non-preferential purposes. However, these negotiations have not yet finished, and not all WTO members apply non-preferential origin standards.⁶¹⁸

When determining the country of origin, it is critical to analyze the manufacturing process by which the product is manufactured. The most common criterion for rules of origin is the origin criteria which can subsequently be separated into two main issues which are the product that is wholly obtained or produced within one particular territory, the product which is not-wholly

⁶¹³ N David Palmetier, 'Rules of origin or rules of restriction-a commentary on a new form of protectionism A Commentary on a New Form of Protectionism' (1987) 11 Fordham International Law Journal 1

⁶¹⁴ Stefano Inama, *Rules of origin in international trade* (2nd edn, Cambridge University Press 2022)

⁶¹⁵ Maria Donner Abreu, 'Preferential rules of origin in regional trade agreements' in Rohini Acharya (ed), *Regional Trade Agreements and the Multilateral Trading System* (Cambridge University Press 2016)

⁶¹⁶ Robert E Baldwin and Tracy Murray, 'MFN tariff reductions and developing country trade benefits under the GSP' (1977) 87 The Economic Journal 30

⁶¹⁷ Peter J Lloyd, 'Rules of origin and fragmentation of trade' in Leonard K. Cheng and Henryk Kierzkowski (eds), *Global Production and Trade in East Asia* (Springer 2001)

⁶¹⁸ 'Introduction to Rules of origin' (WTO, 2022) <https://www.wto.org/english/tratop_e/roi_e/roi_e.htm> accessed 6 July 2022

obtained or produced within one particular territory according to the stages of the production line and countries related.⁶¹⁹

The first one is **Wholly Obtained Criteria** which points out the product that is manufactured within one particular country until the finished product. In the part of **wholly obtained** or produced products, there are certain sub-conditions which might apply to a product to obtain such origin from where a product is naturally occurring, such as live animals that are born or raised, plants that are harvested or grown, and minerals that are extracted from within a single country. Furthermore, the wholly produced category can include a product that is taken and modified from the waste or the leftover remains of consumed products that have been used in such territory, in addition to those products which are freshly made in that territory.

Secondly, in the part of **not-wholly obtained** or produced products, this is possible in the case where the unprocessed or basic materials originate from one particular country and are transferred to another country so as to serve the production line there, whereupon the final product is created ready for export to the global market. This is where the substantial transformation condition has come to the fore in considerations so as to properly assign the most suitable and precise origin to the product in question. Practically, this condition can be assessed in certain ways from the consideration of the changing of tariff classification according to the **HS code** to the proportion of the ingredients, material, value addition, content as well as the changes of the product structure.⁶²⁰ **Not-wholly obtained products can be the case of Minimal Operation Criteria** which describes the product concerned with a fraction of the process which might be outside the main country of operation and production line. Meanwhile, **Not-wholly obtained products can be analyzed through Substantial Transformation Criteria stipulating** at least two countries involved in the production line. Therefore, so as to assign the country of origin to such a product it is necessary to examine among such countries whether one of them is the location where the last substantial transformation has taken place. In this section, the **HS code** comes into play as in order to

⁶¹⁹ Olivier Cadot and others, 'Product-specific rules of origin in EU and US preferential trading arrangements: an assessment' (2006) 5 World Trade Review 199

⁶²⁰ Kala Krishna, "Understanding rules of origin" (2005) NBER Working Paper No. 11150 < https://papers.ssrn.com/sol3/papers.cfm?abstract_id=663516 > accessed 6 July 2022

consider the substantial transformation it is acceptable and allowed to take the crossover of the tariff classification as additional criteria to achieve the most suitable result.⁶²¹

In addition to considering the country of origin with the production line as shown above, the country of origin can also be determined from **consignment condition** and **documentary evidence** which serves to certify compliance with the conditions of the production line and consignment criteria above.⁶²² Consignment criteria or shipment conditions provide that the preferential treatment generally covers only the products that are directly shipped from the country of the manufacturer to the country of the market so as to carefully limit the qualified products from the country under certain agreements while certain agreements offer such benefits towards the countries where the products might not be delivered via direct routes.⁶²³ Finally, Operational Certification Procedure or **documentary evidence** is one of the methods for establishing country of origin. This is able to unify the acknowledgement of the country of origin granted by each particular country.⁶²⁴ This is not the optimal method for determining the country of origin, as certification must be performed by a central authority recognized by all members, as without such a central body even the product has been **affirmed** by one particular market with the label, may possibly be **denied** by another nation for the reason of poor credibility of the affirmation process.⁶²⁵ This is another loophole that manufacturers especially from developing countries have faced divergence in the decisions.⁶²⁶

Each approach for determining the country of origin is weighted differently due to the number of components and calculations involved. Each method has its strengths and weaknesses while it has its goal to affirm that the country of origin appearing on the product is precise and

⁶²¹ Olivier Cadot and Jaime De Melo, 'Why OECD countries should reform rules of origin' (2007) 23 *The World Bank Research Observer* 77

⁶²² Stefano Inama, *Rules of origin in international trade* (2nd edn, Cambridge University Press 2022)

⁶²³ Paul Brenton, 'Preferential rules of origin' in Jean-Pierre Chauffour and Jean-Christophe Maur (eds), *Preferential Trade Agreement Policies for Development : A Handbook* (The World Bank 2011) <<https://openknowledge.worldbank.org/bitstream/handle/10986/2329/634040PUB0Pref00Box0361517B0PUBLI C0.pdf>> accessed 6 July 2022

⁶²⁴ Erlinda M Medalla and Jenny D Balboa, 'ASEAN rules of origin: Lessons and recommendations for best practice' (2009) Economic Research Institute for ASEAN and East Asia <https://www.researchgate.net/publication/46479457_ASEAN_Rules_of_Origin_Lessons_and_Recommendations_for_Best_Practice> accessed 6 July 2022

⁶²⁵ Antoni Esteveordal, Jeremy Harris and Kati Suominen, 'Multilateralising preferential rules of origin around the world' (2009) IDB Working Paper Series No. IDB-WP-137 <<https://www.econstor.eu/handle/10419/115376>> accessed 5 May 2020

⁶²⁶ Antoni Esteveordal and Kati Suominen, 'Rules of origin: a world map and trade effects' (2004) *The Origin of Goods: Rules of Origin in PTAs 1* <<https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.533.9627&rep=rep1&type=pdf>> accessed 5 May 2020

accurate **without the abuse or circumvention of any origin**. Many of these rules are detailed differently in each country or region. It is, nevertheless, based on the same objective: to require the product to be labelled as being of origin from the country with the greatest intensity of origin.⁶²⁷ Thus, a country that acts as a representation or only acts as a port of entry for port of origin fraud, or that performs simple assembly, reassembly, or packing, is disqualified from being designated as the country of origin of that product.

Although the RoO is a criterion for accurately specifying the country of origin, it remains a fragmented principle, making it difficult to identify the country of origin. Thailand is one of the countries that lacks explicit rules of origin and hence employs the aforementioned approaches in an ad hoc manner. The next section will address the consequences of a country's lack of an official RoO, with a particular emphasis on Thailand.

4.5.2 *The absence of RoO*

Since the Uruguay round of negotiations, the rules of origin have been addressed as an additional component of the negotiations, including the pathway that each nation must examine when establishing the rules, which include general details and a mechanism for resolving disputes.⁶²⁸ In the stage of international negotiation, such as the several rounds of GATT negotiations which have been taking place through decades, this rule has been almost taken for granted and the GATT agreement itself has no adequate space for such detailed provisions. The one and only trace similar to this issue is Article IX which is named as marks of origin. It is evident as the cornerstone of almost all the negotiations as can be seen in the International Convention on Simplification and Harmonization of Customs Procedures (the Kyoto Convention) which has the details of the application of the rules of origin only in the part of the annex of the agreement.⁶²⁹ However, the annex's content is too limited to be employed as a universal law applicable to all countries. Thus, in the absence of a global RoO, the solution to this problem is to set up separated and proper international or regional agreements so all the necessary details can be fitted in and practically applied.

⁶²⁷ Aksel Erbahar and Laura Puccio, 'Circumvention of anti-dumping: a law and economics analysis of proportionality in EU rules' (2016) 50 *Journal of World Trade* 391

⁶²⁸ Joseph A LaNasa III, 'Rules of origin and the Uruguay round's effectiveness in harmonizing and regulating them' (1996) 90 *American Journal of International Law* 625

⁶²⁹ General "Kyoto Convention" Annex [2000] assessment 2, F19

Due to the absence of universal rules governing RoO, each country or region is free to create its own internal RoO, impeding uniformity in determining the country of origin. The different rules of origin set up in each nation might lead to consequences such as having two product nationalities at the same period of time in the case of one particular product since the **conditions applied so as to give the origin do vary.**⁶³⁰ The stability of international trade is truly affected as the manufacturers are not able to forecast whether their product is under the origin of country A or B and therefore what pros and cons will follow. Thus, they cannot have a well-prepared plan to handle this situation. Moreover, the sudden switch of the rules of origin in certain scenarios possibly leads to the incentives of the producers in that country to append unnecessary procedures into the production line so as to be qualified and obtain such origin as they would wish. This consequences in surplus cost and other problems will undeniably affect the individual customers within the country. Products with different countries of origin are inevitably going to face unequal treatment in the scenario of one particular region or country according to the preferential regime in the aspects of taxes, duties, and quotas imposed at the time, but the preciseness can eliminate the unnecessary and unexpected cost incurred by the manufacturers at the time of the export. Products that are on the international markets and which require frequent transportation to reach markets around the globe are the concern of all manufacturers who must understand how to act so as to comply with the rules and laws needed to conform with the intention to have their products labelled under the country they actually prefer.⁶³¹

North America and the European Union are the two major continents and groups of countries that form the rules of origin. Despite the fact that the laws of origin were developed internally, the United States was unable to avoid the issue of inconsistency, which was regarded as one of the hurdles, as is also the case in the EU.⁶³² Meanwhile, the European Union has been criticized

⁶³⁰ Rod Falvey and Geoff Reed, 'Rules of origin as commercial policy instruments' (2002) 43 *International Economic Review* 393

⁶³¹ Xuepeng Liu and Huimin Shi, 'Anti-dumping duty circumvention through trade rerouting: Evidence from Chinese exporters' (2019) 42 *The World Economy* 1427

⁶³² Oliver Cadot and others, 'Assessing the Effect of NAFTA's Rules of Origin' (2002) *Laboratoire d'Economie Appliquée (INRA) Research Unit Working Papers* 0306

< https://www.researchgate.net/publication/5162601_Assessing_the_effect_of_NAFTA%27s_rules_of_origin > accessed 5 May 2020

for enacting rules of origin as a means of stimulating the economy which is unjust from the standpoint of developing countries.⁶³³

The rules of origin, especially those adopted in North America and the European Union, lead to more united and effective rules. However, it is argued by certain nations in the form of controversial cases that the application of such rules and the details themselves are frequently unjust from the standpoint of developing countries.⁶³⁴

In the US, there are two legal frameworks and rules in relation to the marking and each of them has been drafted and launched by different organisations which are under the US Tariff Act and the Federal Trade Commission (FED), where the one drafted by the FED is applied with the intention to maintain the standard of consumption for the individual consumers as a whole.⁶³⁵ The producers who would like to transmit their products overseas might face the obstruction as they can lack certainty in the matter of how their products will be marked. Additionally, the non-preferential rules in enforcing trade-related measures such as the application of tariffs and import quotas has been composed through the practice of court cases and the customs body, thus it literally results in more confusion among the users as it might not be united and in accordance with the rest of the conditions within the rules such as NAFTA rules of origin and rules of origin marking.⁶³⁶

In the practical way that the US makes its decision concerning the origin of a particular product through the decision of the court and customs body, it is consequently complex and places a heavy burden upon the exporter as well as the manufacturers because it is almost the application of a **case-by-case method** that is used to deal with this essential issue. As a result, there was an accumulation of rules so as to have a united application reducing complaints with regard to the rules of origin problems. However, the marking rules of the Federal Trade Commission are excluded from such evolution. Well-organised rules increase stability and transparency towards the overall application and are mainly used and determined based upon the crossover

⁶³³ Shigekazu Kawashima and Deffi Ayu Puspito Sari, 'Time-varying Armington elasticity and country-of-origin bias: from the dynamic perspective of the Japanese demand for beef imports' (2010) 54 *Australian Journal of Agricultural and Resource Economics* 27

⁶³⁴ *ibid*

⁶³⁵ N David Palmetter, 'Rules of origin or rules of restriction-a commentary on a new form of protectionism A Commentary on a New Form of Protectionism' (1987) 11 *Fordham International Law Journal* 1

⁶³⁶ Oliver Cadot and others, 'Assessing the Effect of NAFTA's Rules of Origin' (2002) *Laboratoire d'Economie Appliquée (INRA) Research Unit Working Papers* 0306
< https://www.researchgate.net/publication/5162601_Assessing_the_effect_of_NAFTA%27s_rules_of_origin >
accessed 5 May 2020

of the tariff classification according to the HS code as internationally used. All in all, even the rules of origin and their development in the US are improved and well-established but this has to be considered and harmonised by the international agreement on rules of origin by the WTO.

Lack of unified rule causes certain industries face problems of marking requirement for the manufacturers of **watches and clocks** where the US rule requires them to mark the origin on and inside of certain parts of the machine.⁶³⁷ This could pose a huge and unnecessary burden on the manufacturers as they have to take very special care on the production line to a far greater extent than would normally be necessary for watch and clock manufacturers. Those parts inside the watches and clocks are too sensitive to label with any letters and if it were possible to do so it might result in a higher cost of production which is not necessary as the origin can be shown and clarified in some other ways instead.

There was an attempt to mutually discuss this problem between the US and EU as it might affect such areas of business and other trade competencies to a certain level. The EU, as an importer of silk from China and cotton from Turkey and Egypt, is the main hub of the manufacturers who transform those materials into scarves and other textile products and then export to the US. The problem that the EU had faced is that as a result of such negotiation all the textile products which had such sources of materials and production lines could not be labelled as having EU origin. Accordingly, they have to be labelled under the country from which such material (woven silk and cotton) originated and the product will be restricted by the quotas imposed by the US against such countries to limit the quantities of textiles imported into its territory. There was a subsequent meeting among Japan, Hong Kong, Switzerland, and Thailand in relation to this issue followed by the mutual agreement between the US and EU.

There was a conflict after the above agreement had been satisfactorily completed as the subsequent law as a bill launched by the US did not comply with the agreement as such. The meeting with the intention to reach mutual satisfaction did take place in certain issues but did not result in a clear-cut framework from all countries.⁶³⁸

In the scenario of the EU, the rules of origin are roughly described in detail if one particular product is manufactured in two or more countries. The last place where such a product has

⁶³⁷ Joseph A LaNasa III, 'Rules of origin and the Uruguay round's effectiveness in harmonizing and regulating them' (1996) 90 *American Journal of International Law* 625

⁶³⁸ Franklin Dehousse, Katelyne Ghemar and Philippe Vincent, 'The EU-US Dispute concerning the New American Rules of Origin for Textile Products' (2002) 36 *Journal of World Trade* 67

been substantially processed, which accounts for the most important stage of manufacture will be the origin of the product.⁶³⁹ However, there are certain exceptions applied in the EU towards certain products. It is shown that there was a movement of conditions within the rule so as to be in accordance with the **dynamic economic situation**.

Dating back to the year 1989, there was a crisis with regard to photocopier imports and exports at the time.⁶⁴⁰ The rule launched by the EU to tackle such problems provided an exception towards certain stages of the production line which allowed that even though this stage was performed in the territory of the EU, there would be no accumulated process fulfilled in the EU.⁶⁴¹ Thus, it was possible to exclude certain photocopiers from being named as having an origin in a particular country of the EU and thus being considered an EU product.⁶⁴² However, there were contentious issues at the time with regard to the application of such exceptions as they could lead to consequences in the form of a **less stable process and lower stability as a whole**.

The following interesting point to mention is that of semiconductors as the EU has launched a set of conditions stating that to have the origin of a product in the EU, the manufacturer in relation to the semiconductor must assemble and diffuse the product.⁶⁴³ To explain, at the time, if one particular manufacturer in the EU had its production line as only an assembly stage, they were not qualified to place the label on the product with that particular country in the European Union.⁶⁴⁴ As a consequence, this condition is indirectly a measure to give an **incentive to such manufacturers to append additional actual processes which must be performed in the EU** so as to have the origin in the EU. This can be analysed as one alternative way to **gain financial investment** in the region by the application of certain rules towards foreign firms. Without the

⁶³⁹ Paul Brenton and Miriam Manchin, 'Making EU trade agreements work: the role of rules of origin' (2003) 26 *The World Economy* 755

⁶⁴⁰ Edwin Vermulst, 'EU anti-circumvention rules: do they beat the alternative?' (2015) 57 *Robert Schuman Centre for Advanced Studies Research Paper No RSCAS Paper No. RSCAS 2015/57* < <https://ssrn.com/abstract=2637796> or <http://dx.doi.org/10.2139/ssrn.2637796> > accessed 5 May 2020

⁶⁴¹ *ibid*

⁶⁴² Paul Brenton and Miriam Manchin, 'Making EU trade agreements work: the role of rules of origin' (2003) 26 *The World Economy* 755

⁶⁴³ Harald Gruber, 'Trade policy and learning by doing: the case of semiconductors' (1996) 25 *Research policy* 723

⁶⁴⁴ Anne O Krueger, 'Free trade agreements as protectionist devices: Rules of origin', (1993) *NBER Working Papers* 4352 < <https://ideas.repec.org/p/nbr/nberwo/4352.html> > accessed 5 May 2020

consideration of whether this action is justifiable, it is definitely the case that this practice of the EU is **not only legal but an effective economic stimulation method**.⁶⁴⁵

The EU's approach of using RoO to indirectly promote regional investment is similar to the concept of cumulation which is one of the measures to foster the area of commercial transactions among the countries in the region and to facilitate financial movement.⁶⁴⁶ It provides a way to include the origin of the product on the basis of a scale of foundation material used in that particular product. As a result, materials in the product which originated from one of the members in a particular regional trade agreement will be considered as a material originating from the country where the production line was located or the final stage of the production was carried out as an exporting country.⁶⁴⁷ The various origins within the area of a particular regional trade agreement will be integrated into just one origin through this method. This serves to internally and regionally **boost cooperation among the members which also stimulates the growth in the region**.⁶⁴⁸ The cumulative method can be supportive in the aspect of overall product price reduction, which will be a key advantage to the consumers as it motivates the manufacturers to gather and select the materials found within their designated regional area. Accordingly, the cost of production in terms of transportation and shipment of the materials prior to the stage of the production line will be significantly lower as it does not require greater distances and costs compared to the importation of materials from beyond the regional area. The growth of transactions among the members will be steadily increased which simultaneously achieves the objectives of the regional cooperation. It is necessary to note that this approach to implementation must be considered with the risk of abuse as it could be used as trade restriction method to protect those regional businesses and exclude the outer ring of manufacturers from the right to compete fairly according to the key guidelines of the WTO, of which one is to lower the barriers towards international trade. Details of to what extent the cumulative method will be applied have to be clearly stated since complications will lead to distortion.

⁶⁴⁵ Mico Delescluse, Matthieu Delescluse and Michal, 'The EU trade policy is an important contribution to overcome slow economic growth in the EU countries. Challenge this point of view' (2008)
< https://mpa.ub.uni-muenchen.de/7186/1/MPRA_paper_7186.pdf > accessed 6 July 2022

⁶⁴⁶ Pamela Bombarda and Elisa Gamberoni, 'Firm heterogeneity, rules of origin, and rules of cumulation' (2013) 54 *International Economic Review* 307.

⁶⁴⁷ Patricia Augier, Michael Gasiorek and Charles Lai Tong, 'The impact of rules of origin on trade flows' (2005) 20 *Economic Policy* 568

⁶⁴⁸ *ibid*

Overall, the absence of universal RoO rules encourages each country to develop its own method for determining the country of origin of goods brought into its territory as precisely as possible. Each territory establishes its own rules, which creates conflicting outcomes and enables the employment of custom-designed rules of origin for purposes other than determining product origin. The absence of a RoO governed by unified principles reduces the predictability of international trade, particularly in the context of AD and AC law enforcement, as discussed in the next section.

4.5.3 Relationship between the RoO and the AD law in context of Thailand

Rules of origin must be studied along with the Thai anti-dumping and anti-circumvention law as it is undeniable that these areas of law are connected in many aspects. The rules of origin are inextricably related to the AD investigation. Thus, the uncertainty around the application of the rules of origin might impair anti-dumping and anti-circumvention practices, as all AD investigations begin with the determination of the country of origin of the goods.

The precise origin through the examination along with the well-organised and reasonable rules of origin is needed prior to the imposition of certain tariff rates, quantitative quotas and anti-dumping duties on them. **In the situation of Thailand, the Customs Department is the agency to handle this matter through the establishment of internal rules of the Customs Department to work within the organisation,⁶⁴⁹ and this is the point where the conditions for defining the country of origin have not been elevated as it is not approved by the legislature even though it is one of the origins of a weak anti-dumping law structure. This is not to mention the interference and non-transparency at the officer level at which the decision may be subjective according to the adjustment of the origin of the product based on bribery.**

The unclear rules of origin of Thailand form part of an internal problem affecting the industry and leaving space for intervention and abuse of power. Thus, the development of the rules of origin must be done with the aim of not only taking the recommendations and internal practices of each country together but dealing with a gap in the law enforcement culture. Otherwise, it will be the same as other laws that Thailand adopted as a framework from abroad, as there will still be problems in its application which make

⁶⁴⁹ Notification of the Customs Department 17/2561 [2018]
< <http://www.ratchakitcha.soc.go.th/DATA/PDF/2561/E/078/11.PDF> > accessed 6 July 2022

it less effective than it should be. The imperfections in the rules of origin and the unfamiliarity of law enforcement in Thailand have worsened the legal culture with regard to legal enforcement with regard to anti-dumping. Rules of origin provide support on one side which may not be the main law and may have no direct effect on structural changes, but if the rules of origin are accurate and properly enforced, this will positively affect the anti-dumping and anti-circumvention, at least in part. Ineffective rules of origin will encourage circumvention.

As we can see, the anti-circumvention rules are added by virtue of the latest amendment of the Anti-dumping Act in 2019.⁶⁵⁰ It is undeniable that the issue of rules of origin has come to the fore, and it is crucial to consider the situation in depth so as to reach the most effective and suitable framework to apply along with the bill to enhance the application of anti-dumping and anti-circumvention laws and the precise imposition of the duties. The fact that Thailand's RoO lacks clarity and is closed to the public on the grounds that it is a government agency's internal regulation creates a gap for interested parties or officers responsible for assigning the country of origin for the product, resulting in a country of origin that is inconsistent with the actual country of origin. Abuse of the RoO may be driven by a desire to evade certain obligations as a product of one particular country into another where there is no such obligation to which the exporters or manufacturers have to conform.⁶⁵¹ The selection of the country to be its origin might result in a dramatically higher cost or relatively lower cost especially in the aspect of taxes and duties the company has to bear. Avoiding being labelled as having a country of origin that is subject to AD measures is sometimes circumvented by declaring place of fractions of the production line to be considered as production having taken place in that country with the hidden intention to obtain certain benefits that they should not have as they might be qualified under another country of origin. Alternatively, an attempt is made to create a product labeled as having a country of origin that can benefit from the importing country by shipment or transmission to another vessel via another vessel, making it appear to have originated from another country rather than its actual origin.⁶⁵² Such transportation tactics could be abused or distorted as a loophole allowing certain parties to claim a fraudulent origin in relation to the circumvention issue. The transshipment as such will be used as one of the methods to hide the actual country of origin, and if properly enforced, the RoO can prevent them from obtaining

⁶⁵⁰ Anti-Dumping and Countervailing Act, B.E. 2562 (2019), s 71/1 to 71/18

⁶⁵¹ Edwin A Vermulst, Paul Waer and Jacques H J Bourgeois, *Rules of Origin in International Trade: a comparative study* (University of Michigan Press 1994)

⁶⁵² Kala Krishna, "Understanding rules of origin" (2005) NBER Working Paper No. 11150
< https://papers.ssrn.com/sol3/papers.cfm?abstract_id=663516 > accessed 6 July 2022

unentitled advantages or combine them to shoulder the tax burden that such goods are obligated to pay.⁶⁵³ As a result, if the items are investigated for misrepresentation of origin in order to avoid the AD tax, the anti-circumvention law is the weapon to address this particular problem.⁶⁵⁴ From the producers' standpoint, origin evasion could **lessen their financial burden as the duties or other taxes they have to pay might vary from country to country**, and they have incentives to evade these charges to reduce their overall expenses. Simultaneously, it is not difficult to cooperate with the authorities responsible for the RoO in order to avoid disclosing the actual origin of the product, because the RoO in Thailand is not entirely clear regarding the conditions required for product origin, and the official has the discretion to make a final determination regarding the country from which the products originate without further investigation or review by other authorities or courts.

In Thailand, the lack of principles and strict implementation of the RoO encourages transshipment in order to benefit from regional trade agreements.⁶⁵⁵ This has a significant impact on Thailand's steel sector, which is expected to be valued at more than \$3.4 billion by 2021,⁶⁵⁶ particularly on steel products originating in China. The high extent of the damage can be seen from the case **AD1020** Hot-Rolled Boron Alloyed Steel Coils and Uncoiled 2018,⁶⁵⁷ **AD1024** Cold Rolled Stainless Steel Coils, Plates and Strips 2019⁶⁵⁸, **AD1026** High Carbon Wire Rods and Other Alloyed High Carbon Wire Rods 2020 and **AD1043** Hot-dipped galvanized cold-rolled steel sheet in coils and non-rolls, 2020.⁶⁵⁹ Such investigations undertaken between 2018 and 2020 indicate that steel products were shipped via Vietnam routes with the intent of shifting the origin of the products from China to Vietnam, thus taking advantage of ASEAN tariffs and avoiding Thailand's AD tax on Chinese steel products.

Thailand's first challenge is to resolve RoO, as it is a fundamental rule that underpins the implementation of AD and AC law. The difficulty is not only maintaining unity and public

⁶⁵³ Richard Friman, 'Just passing through: Transit states and the dynamics of illicit transshipment' (1995) 1 *Transnational Organized Crime* 65

⁶⁵⁴ Yanning Yu, *Circumvention and Anti-circumvention Measures: The Impact on Anti-dumping Practice in International Trade* (Wolters Kluwer 2008)

⁶⁵⁵ Harry Grubert and John Mutti, 'Taxes, tariffs and transfer pricing in multinational corporate decision making' (1991) 73 *The Review of Economics and Statistics* 285

⁶⁵⁶ Iron and Steel Intelligence Unit, *Thailand Steel Outlook* (2020)

<<https://iiu.isit.or.th/en/reports/Monthly%20Thailand%20Iron%20Summary.aspx>> accessed 23 November 2020

⁶⁵⁷ Department of Foreign Trade, 'Products that Thailand has been imposed by AD measures (50 items)' (DFT 2021) <<https://www.thaitr.go.th/storage/file2/fUANvgP6yQdWJurgltN1QdOp2WascfOoAa6TaWDi.xls>> accessed 2 July 2022

⁶⁵⁸ *ibid*

⁶⁵⁹ *ibid*

access to rules, but also enforcing them transparently, with no excessive discretion exercised by internal authorities, and with validation of those decisions.

While RoOs are not the primary concern of anti-dumping experts, in the Thai context, they can serve as an experiment for developing rules and enforcing them in order to achieve their intended objective of increasing protection for domestic businesses.

4.5.4 The current RoO's progress

The absence of universally unified RoO is not completely overlooked. Along with North America and the European Union, international organizations are investigating and collecting data on each state. The World Trade Organization and World Customs Organization (WCO) are the two bodies dealing with this issue consisting of around 30 committees from the WTO and 20 of them coming from the WCO. The consideration is partly in connection with the Harmonized Commodity Description and Coding System (HS code) of the tariff nomenclature.⁶⁶⁰ Each nation is required to provide information of their preferential rules of origin which they domestically apply to the WTO as preparation of the development of international rules of origin and this is under the supervision of the Trade Policies Review Body and the Committee on Regional Trade Agreements as well.⁶⁶¹ The WCO has conducted the analysis with regard to HS code, and this has already been handed over to the WTO so as to keep up the pace to form the final draft of the international agreement. It is crucial to form international standards in relation to rules of origin as the united system potentially brings about the effective transmission of international transactions and trade stability.⁶⁶²

However, establishing a Rule of Origin applicable to all WTO member states has been fraught with controversy and proposals.⁶⁶³ The terminology section sparked controversy, namely the definition of “not wholly produced or obtained products” in relation to the consideration of origin. Changes to the draft of RoO have been suggested in certain ways by Iran, Sri Lanka, Mexico, Brazil, India, Egypt, and the Republic of Korea. Specifically, Iran has suggested the

⁶⁶⁰ Marina Foltea, 'The WTO-WCO: A Model of Judicial Institutional Cooperation?' (2012) 46 Journal of World Trade 815

⁶⁶¹ Thomas J Dillon Jr, 'The World Trade Organization: a new legal order for world trade' (1995) 16 Michigan Journal of International Law 349

⁶⁶² Dayong Yu, 'The harmonized system-Amendments and their impact on WTO members' schedules' (2008) WTO Staff Working Paper No. ERSD-2008-02, < https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1117865 > accessed 6 July 2022

⁶⁶³ Patricia Augier, Michael Gasiorek and Charles Lai Tong, 'The impact of rules of origin on trade flows' (2005) 20 Economic Policy 568

issue of the addition of a **clear definition in certain legal terms** in the context of the rules of origin as well as the concerns of each nation in the aspect of **information exchange**, particularly in the obstacles of technical instruments found in the forms of trade restriction methods. Sri Lanka has a different view of the amendment in this regard and suggested a new figure for the proportions in the consideration of determining the origin of a product which is not wholly produced in one territory. Sri Lanka suggested to reduce the percentage of the value addition criteria applied to the product to 35 percent.⁶⁶⁴ In addition to Iran and Sri Lanka, **Mexico** also suggested a series of proposals towards the amendment of the whole provisions in relation to the rules of origin. They also presented the notion that there should be certain products which should be under **special rules of origin apart from the general type which** apply to other ordinary consumer products and they suggested further in relation to the certificate of origin and its process that apart from setting up a central system for appointing the country of origin to products, there should be a **revision organ** to double check the use of such origin to determine whether it has been switched or abused afterwards.⁶⁶⁵

Generally, it is widely known that each government of each nation has tried its best in terms of its capability to maintain lawfulness to protect their domestic industries from dumped imports in particular products. The Thai government is unsurprisingly concerned that the **steel industry is facing severe crisis** in the aspect of price compared to those overwhelmed by China. Hence, apart from the emphasis on the application of both anti-dumping and anti-circumvention regulatory matters, it is crucial to consider the RoO as one of the sub-issues within this area.⁶⁶⁶

Thus, apart from the focus on anti-dumping in the light of the WTO and Thailand, the progressive stages to elevate the rules of origin are equally essential, since otherwise this can substantially block the success of anti-dumping application as a whole. In the scenario of Thailand where there are currently no rules of origin specifically and domestically imposed, it is necessary to consider that any imposition of such rules might affect the figure especially in terms of the international investment that has already taken place in Thailand, which may also affect future investment potential. It is true that regional trade agreements or free trade agreements are ultimately crucial for the national economy as a whole, yet the rules of origin

⁶⁶⁴ Rajan Sudesh Ratna, 'GSTP Rules of Origin–Developing Country's Perspective' (2007)
< https://www.researchgate.net/profile/Rajan-Ratna/publication/238662768_GSTP_Rules_of_Origin_-_Developing_Country%27s_Perspective/links/555bb9b008ae6aea0816ca81/GSTP-Rules-of-Origin-Developing-Countrys-Perspective.pdf > accessed 6 July 2022

⁶⁶⁵ *ibid*

⁶⁶⁶ Rod Falvey and Geoff Reed, 'Economic effects of rules of origin' (1998) 134 *Weltwirtschaftliches Archiv* 209

as a functional and additional measure have to be carefully considered in terms of their pros and cons to determine whether they might lead to economic progression or recession. It is worthy of note that in the economic situation among the developing countries, such as Thailand, there are a number of SMEs (Small and Medium Enterprises) which are highly sensitive to unexpected costs as they might still have fragile financial support and foundations.⁶⁶⁷ Thus, specifically in the scenario of developing countries, they have to pay close attention to this issue as it might damage individual and local businesses, and might result in a disastrous domino effect afterwards.

While the international ROO remains incomplete, Thailand became a signatory to the Regional Comprehensive Economic Partnership (RCEP) on 15 November 2020, the world's largest trade pact spanning 2.2 billion people and 30% of global GDP,⁶⁶⁸ which built on the ASEAN+1 Agreements.⁶⁶⁹ The RCEP will increase economic integration between Asian nations, particularly through the use of single rules of origin and accumulation rules that will facilitate the movement of commodities across the region, allowing for more imported products to qualify for preferential tariff rates.

Rule of origin are substantial elements enhancing the application of anti-dumping and anti-circumvention provisions enforced in the territory, especially in Thailand. Reinforcing the application of rules of origin might directly and indirectly elevate the level of domestic business protection. Most importantly, the development of rules of origin must be done with the aim of not only incorporating each country's recommendations or participating in regional RoO rules such as the RCEP, but also addressing a gap in the law enforcement culture, ensuring that it is free of interference and transparent, eliminating unpredictability, vagueness, and instability, and not ignoring Thailand's specific discretionary problems. Otherwise, it will be the same as the law when Thailand adopted the framework from abroad but still had some issues with misuse, making it less effective than it should be.

⁶⁶⁷ Tulus Tambunan, 'Development of SME in ASEAN with Reference to Indonesia and Thailand' (2008) 20(1) Chulalongkorn Journal of Economics 53

⁶⁶⁸ See the Association of Southeast Asian Nations <[https://asean.org/asean-hits-historic-mileston e-signing-rcep/](https://asean.org/asean-hits-historic-mileston-e-signing-rcep/)> accessed 26 October 2021

⁶⁶⁹ Apisith John Sutham and Chalermwut Nilratsirikul, 'Thailand - Trade remedies' (Weerawong, Chinnavat & Partners Ltd, 2020) <<http://www.weerawongcp.com/data/know/121.pdf>> accessed 5 May 2021

4.6 The failure of the Competition Law amendment that the Anti-Dumping Law amendment follows: the unchanged underlying culture

Competition law, along with anti-dumping law, is one of the laws that Thailand adopted from overseas and was first enforced in 1999.⁶⁷⁰ Although Thailand has had laws governing internal trade since 1947,⁶⁷¹ they have a fragmented substance, such as competition rules that adopted templates from other nations as a result of the development of Free Trade Agreements. As a result, these two laws can be deemed to have originated in Thailand at the same time period.

Despite their disparate mechanisms, the two laws share a common goal: to foster fair competition in the market and to protect domestic operators from unlawful trade practices such as selling products below cost in order to drive other operators out of the market or to establish market dominance and use that power to discourage other operators' potential.

Both laws, if fully implemented in accordance with the objectives embodied in foreign model laws, would produce flawless results. Both regulations, however, appear to be ineffective when seen in the context of Thai law enforcement, power structures, and cultures. **In theory, these two laws would act to complement each other but in the context of Thailand it might be different because both laws are rooted in the same deficiencies in enforcement and legal culture, making them not as effective as expected.**⁶⁷² The inefficiency is obvious in the vast number of issues entering the AD and Competition Commission for investigation. However, the number of successful cases until the enforcement of the measure is minimal, not to mention the number of instances that are rarely seen in court. It raises the question of whether the competition law processes are as alarming as the AD procedure. This is another scene that shows how the adoption of a legal framework in a foreign country does not completely render effective enforcement in Thailand. Despite the amendment or adoption of the law, the provisions are still based on a foreign framework without **developing the culture of enforcement in Thailand, and therefore it would not be effective.** On the surface, one overlapping problematic issue between anti-dumping and competition law is that the operation

⁶⁷⁰ Commission, 'History of Thai Trade Competition Law' (Office of Trade Competition Commission, 2020) < <https://otcc.or.th/history-of-thailands-trade-competition-law/> > accessed 5 May 2021

⁶⁷¹ *ibid*

⁶⁷² Thossapon Thassanakulpan, 'Why Thai People Don't Respect The Law' (2012) 5 Niti Sangkomsart Chiangmai University Journal 40 < <https://so01.tci-thaijo.org/index.php/CMUJLSS/article/view/64589> > accessed 4 July 2022

and structure of these two committees contribute to the investigation's confusion and intransparency.

What the competition law has in common with Thailand's anti-dumping rules is that it was revised in 2017,⁶⁷³ two years before the anti-dumping law was amended. Several aspects of competition legislation were amended, including the committee's structure and independence from government entities.⁶⁷⁴ This adjustment appears to be aimed at resolving the intervening case determination issue and is expected to be a positive step forward for anti-dumping rules. However, with the revision of the competition legislation, it appears to have a contentious case in 2020. The Trade Competition Commission has approved the merger of CP Retail Development Co., Ltd., a subsidiary of Charoen Pokphand Foods Public Company Limited, and Tesco Stores (Thailand) Co., Ltd. (Tesco-Lotus retail manager), even though this merger will increase the Charoen Pokphand Group's market dominance in the wholesale and retail segment to 83.97 percent. Whereas, in the same year in the United Kingdom, the merger of Sainsbury's and ASDA was called off due to concerns that the merger would damage the grocery industry by capturing over 60% of the market share.⁶⁷⁵

These findings raised doubts on the committee's reasoning and whether modifying the anti-dumping statute by adding clauses or mandating that the Committee is forbidden from engaging in business or politics would be beneficial, given that comparable measures already exist in the competition law. These concerns are raised since the committee's decision has not yet resulted in fair justice.

4.6.1 The linkage of competition law and anti-dumping law

In the contemporary world, the hands of businessman have been shackled by competition law that helps in making the competition reasonable for all market players. With the emergence of anti-dumping concepts and ideas, fair competition within the market has also been significantly affected. The effect of anti-dumping laws is to address the activity of a country which is involved in exporting products while charging a lower price than the cost in the home country, thus seeking to get rid of competitors in that export market in order to more strongly influence

⁶⁷³ The trade competition commission, 'About the Trade Competition Commission ' (Office of Trade Competition Commission, 1 October 2018) < <http://www.otcc.or.th> > accessed 13 April 2021

⁶⁷⁴ Kanoknai Thavornpanich, 'Trade competition law reform: the new hope of Thai society?' (The 101 World, 15 April 2017) < <https://www.the101.world/on-new-competition-law/> > accessed 4 July 2022

⁶⁷⁵ Fengyi Zhang, 'The Analysis of Asda-Sainsbury's Merger/Acquisition' (2021) 5 Journal of Finance Research 1 < <https://ojs.s-p.sg/index.php/jfr/article/viewFile/5741/pdf> > accessed 4 July 2022

that market instead. This kind of activity affects the competitors who behave by trading fairly in the market by creating a significantly unfavourable impact on competition.⁶⁷⁶ The rules and regulations of anti-dumping are a device that can tackle the unlawful activities in relation to dumping carried out by foreign enterprises. The rules and regulations of competition law **act to complement** the laws of anti-dumping and **these two laws would therefore act to complement each other**. Initially, the rules and regulations of anti-dumping and competition were studied to work together to achieve their objectives.⁶⁷⁷ The rules and regulations of competition law have put certain limits on business activities which might negatively impact the market. Anti-dumping and Competition law are used as a protectionist device to avoid any kind of distortion and disturbance in the market.⁶⁷⁸

The jurisprudence behind the anti-dumping rules and regulations explains the prohibition of dumping on diverse financial and social grounds. The idea of distributional justice is considered as one of the purposes behind the improvement of anti-dumping laws and regulations aimed at preserving stability between the various ranges of power among the many different states.⁶⁷⁹ The rules and regulations of anti-dumping law impose anti-dumping duties so as to stop these trade disturbances by foreign entities that would like to dominate the market.⁶⁸⁰ Meanwhile, the situation of a weak and fragile domestic market structure for some product lines necessitates the idea of competition law to address companies that seek to dominate the market in order to increase their market share and cause trade disruptions. That is the ultimate significance of these two laws.

The numerous competition and anti-dumping legal guidelines originated with an equal objective. The rules and regulations of anti-dumping laws are without a doubt designed to cope with injury caused or likely to be caused by imported goods priced lower than the typical prices sold in the exporting country that attack the importing country. The targets surrounding the usage of anti-dumping law are to tackle modern-day dumping exercises that result in unfair

⁶⁷⁶ Maher M Dabbah, *International and comparative competition law* (Cambridge University Press 2010)

⁶⁷⁷ Kati Kulovesi, "International trade disputes on renewable energy: testing ground for the mutual supportiveness of WTO law and climate change law" (2014) 23(3) *Review of European, Comparative & International Environmental Law* 342

⁶⁷⁸ Tancrede Voituriez and Xin Wang, "Real challenges behind the EU–China PV trade dispute settlement" (2015) 15(5) *Climate Policy* 670

⁶⁷⁹ Aradhna Aggarwal, "Trade Effects of Anti-dumping in India: Who Benefits?" (2010) 25 *The International Trade Journal* 112

⁶⁸⁰ Chad P Bown, "Trade Policy Flexibilities and Turkey: Tariffs, Anti-dumping, Safeguards, and WTO Dispute Settlement" (2014) 37(2) *The World Economy* 193 < <https://onlinelibrary.wiley.com/doi/abs/10.1111/twec.12114> > accessed 4 July 2022

and illegal behavior.⁶⁸¹ The impacts of dumping activities have resulted in the companies deciding to seek protection from the imposition of anti-dumping duties for maintaining their domestic businesses. Meanwhile, the rules and regulations of competition law seek to promote beneficial and fair competition and to reduce the activities that lead to market domination resulting in higher prices of product due to predatory pricing policy.⁶⁸²

In certain aspects, the continuous evolution of anti-dumping laws and competition laws has led to each set of legal guidelines attempting to support the other in order to foster a good market environment. However, the interference of a distorted legal culture in Thailand raises the question of whether these tools produce satisfactory results for all stakeholders, as it is extremely difficult to prevent intervention by politics and business with conflicts of interest in Thailand.⁶⁸³ Consumption of goods in economics may be a function of the actual consumer's decision-making power over whom and at what price level they wish to exchange their money for a particular product or service.⁶⁸⁴ However, anti-dumping or competition laws are not intended to limit consumer power, but rather to ensure the smooth operation of the domestic economy by protecting domestic operators, who are also market participants, from damage.⁶⁸⁵

4.6.2 Thai trade competition law

Originally, Thailand used The Trade Prevention of Unreasonable Profits Act, 1947, which addressed retail and wholesale prices.⁶⁸⁶ But under the existing product and service market system in Thailand, after entering the Bowring Treaty in 1855, most market structures are semi-competitive or monopolistic. Monopolistic competition, or the oligopoly market basically makes “freedom of choice” very limited, while having that kind of market structure gives large business operators an advantage and leverages their existing market power, enabling retailers to sell their products based on their original pricing set by the big operators. The large operator

⁶⁸¹ Reid M Bolton, “Anti-Dumping and Distrust: Reducing Anti-Dumping Duties under the WTO Through Heightened Scrutiny” (2011) 29 Berkeley Journal of International Law 66

⁶⁸² Ivo Van Bael and Jean-François Bellis, *EU anti-dumping and other trade defence instruments* (Kluwer Law International BV 2011)

⁶⁸³ Tobias D. Ketterer, “EU anti-dumping and tariff cuts: Trade policy substitution?” (2015) 39(5) *The World Economy*, 576 < <https://onlinelibrary.wiley.com/doi/10.1111/twec.12305> > accessed 4 July 2022

⁶⁸⁴ Anek Laothamatas, *Business associations and the new political economy of Thailand: From bureaucratic polity to liberal corporatism* (Routledge 2020)

⁶⁸⁵ Mitsuo Matsushita, Thomas J. Schoenbaum, Petros C. Mavroidis, and Michael Hahn, *The World Trade Organization: law, practice, and policy* (3rd edn, Oxford University Press 2015)

⁶⁸⁶ Somjin Santawarak, 'Observations on government market interference' [1981] 1(12) *Kasetsart University Journal* 14

may then create a monopoly, possibly by limiting the quantity of goods available until the product is scarce and the price can be set higher.⁶⁸⁷

Solving the problem of product prices alone was not successful. The limited freedom of choice mentioned arises not only in the case of individuals buying conventional consumer goods but includes government procurement as well. This is often due to bid rigging, where many vendors agree who will win a contract in each auction. In addition, during that decade, the decision from the Supreme Court of Thailand was established according to the Judgment of the Supreme Court 297/2501(AD 1958) which held that a price fixing agreement is a commercial policy in trade and is not contrary to public order and morality, and hence is not illegal.⁶⁸⁸ This further encourages entrepreneurs to collude for maximum profit, especially in the case of trade partners with the Thai government, and state enterprises who often engage in auction fraud to ensure that everyone can win project bids at the highest prices and do not have to actually compete on price with their rivals in a manner which would make projects more affordable. This reflects a strongly ingrained paradigm in Thai society that privately agreed trade problems should not be handled by the state, even if it costs the state the benefit of having to purchase items at a higher price than would be the case with an auction without such private agreement.

According to information on the official website of the Office of the Trade Competition Commission of Thailand, there are 96 cases of trade competition under the consideration of the committee, of which 84 have been completed by the committee.⁶⁸⁹ It resolved to terminate 81 cases and sent the public prosecutor to prosecute 3 cases, but the prosecutor was ordered not to sue by the court.⁶⁹⁰ As a result, there has never been a single trade competition case to be considered by Court. This is the main reason why it has not been possible to proceed to criminally punish those who are accused of wrongdoing, because the offence cannot be clearly seen to be infringing the law in the commission's view and it is not possible to obtain sufficient evidence to convict the offender. A situation in which a case is referred to the committee but almost no cases are heard in court is comparable to the case of the AD investigation, in which the Supreme Court of Thailand heard only two appeals, in 2007 and 2015, both of which were related to the same AD investigation on glass blocks from Indonesia. Even later, when the Trade Competition Act (B.E. 2540, 1999) was applied, the Supreme Court decided to reverse

⁶⁸⁷ Somchart Krailassuwan, 'History of Thai maritime trade' (2019) 1 Maritime Technology and Research 9

⁶⁸⁸ Case 297/2501 Galong v Kradon [1958] Supreme Court of Thailand

⁶⁸⁹ primary mechanism in the supervision and enforcement of the Competition Law in Thailand

⁶⁹⁰ The trade competition commission, 'About the Trade Competition Commission ' (Office of Trade Competition Commission, 1 October 2018) < <http://www.otcc.or.th> > accessed 13 April 2021

the original ruling that price fixing is illegal, but in the past 21 years after the enforcement of the 1999 Act there have been no cases of conviction and real punishment, and most importantly, the law does not apply to state enterprises with very high procurement numbers.⁶⁹¹ Although the Trade Competition Act (B.E. 2560, 2017) does apply to state enterprises, no cases have been considered or punished.

In reality, the market structures of Thailand can easily lead to a firm attaining a dominant position in which it is not subject to any effective competitive constraints from other operators on the market. The path to market dominance is made easier by the fact that Thailand has never enacted competition laws or imposed concrete punishments. This strength enjoyed by an enterprise in any particular market enables it to operate independently of competitors whereby it can influence its rivals or customers in its own favour.⁶⁹² This means, for example, that it can put its prices up without having any fear that somebody is going to compete and undercut those prices. Typically, this would involve the dominant firm indulging in strategic behaviour which is intended to eliminate other people from the market who might be as efficient as itself.⁶⁹³ In practice, consumer complaints may be made with the Ministry of Commerce or the committee, although they may not necessarily result in the cessation of unfair trade practices.

The duty of competition law is to ensure that businesses with powerful market positions must not be allowed to try to squeeze out rivals by abusing their power. Larger business can often be hard to compete with but competition law imposes limits on what a dominant business can do. For example, it can be illegal for a dominant business to prevent customers buying from its competitors. To stop supplying existing customers in order to eliminate competition from them or to deliberately make losses in order to push out a competitor before hiking prices, known as predatory pricing, are both strategies which are illegal. As a small business you can be a victim if you are wrongly squeezed out by a dominant competitor. Competition law protects businesses and consumers from anti-competitive activities. Being dominant is not illegal, but abusing the dominant position is illegal.⁶⁹⁴

⁶⁹¹ Case 2022/2519 Maplub v Luksa Transportation and Construction Co.,Ltd [1976] Supreme Court of Thailand

⁶⁹² Pattamon Permsri, 'Market Structure And Competitive Behavior Of The Industry In Thailand' (Master's degree thesis, Thammasat University 2016)

⁶⁹³ Dueanden Nikomborirak, 'Monopoly And Inequality in the Business Sector' (Thailand Development Research Institute (2013) 43 < https://tdri.or.th/wp-content/uploads/2013/05/A151_Chapter2.pdf > accessed 4 July 2022

⁶⁹⁴ Einer Elhauge and Damien Geradin, *Global competition law and economics* (2nd edn, Bloomsbury Publishing 2011)

This is linked to the lack of freedom and interference in law enforcement through a distorted Thai legal culture. One cannot help but wonder whether it was true or that the business operators in Thailand would all behave correctly in contrast to the many other countries where this law is so seriously enforced that some operators have been ordered to pay fines equivalent to tens of millions of baht.⁶⁹⁵ Or is it possible that that it is because the industry which is most likely to exhibit unlawful conduct is frequently the largest and most influential industry in Thailand's political and economic system **causing interference in the judicial process.**⁶⁹⁶

4.6.3 Trade Competition Act Amendment

The new law of the Trade Competition Act (B.E. 2560), also called the TCA, came into effect on the 5th of October, 2017. The Trade Competition Act is the principal legislation regulating enterprise operators in Thailand concerning the problems related to fair trade and competition. With the change in the Trade Competition Act (B.E. 2542, 1999), the Trade Competition Act introduced **Office of Trade Competition Commission (OTCC)**, which is an unbiased agency that has the strength and power to suspend the operators, compelling them to cease and rectify any action breaching regulations concerning the prohibition of monopolies and unfair exchange practices.⁶⁹⁷ The Trade Competition Act authorizes limitations on the movements of the operator, either on themselves or with different operators. Examples of such kind of rules and regulations include conditions wherein the operator with a commanding position in the marketplace is confined by resolving unfair situations imposing a burden upon every other operator whose trade is restricted by manufacturing, purchase or distribution of products or restriction of opportunities in selling items, receiving or supplying services or acquiring credit scores from the different operators, or uncooperative mediation of the operation of the commercial enterprise. Any infraction of the Trade Competition Act involving the operator is illegitimate under criminal and/or administrative consideration.⁶⁹⁸

While previously the Thai Competition Commission ran under and funded by the Thai Ministry of Commerce, the Thai Competition Commission is now self-sufficient in its budget and

⁶⁹⁵ Watinee Khamdee and Rungsang Kritayapong, 'Legal issues relating to legal proceeding for claiming compensation regarding joint action of monopolistic competition or restrict or reduce market competition' (2019) 5 Journal of Pacific Institute of Management Science Sripatum University

⁶⁹⁶ Ammarn Siamwala, *Politics And Business Interests Under 1997 Thai Constitution* (Thailand Research Fund King Prajadhipok's Institute 2003)

⁶⁹⁷ Cassey Lee, "Competition law enforcement in Malaysia: Some recent developments" (2014) 51 Malaysian Journal of Economic Studies 77

⁶⁹⁸ Sinisa Milosevic and Dejan Trifunovic, "The Impact of the Competition Policy on Economic Development in the Case of Developing Countries" (2018) 20(2) Ekonomski Horizonti 157

personnel. The former officers of the law enforcement agencies along with police, investigators, and public prosecutors are also enlisted. It is expected that this new structure will extensively reinforce the Office of the Trade Competition Commission's self-determination and administrative abilities and make bias and undue impact much less likely to occur.⁶⁹⁹ The committee's 2017 amendments demonstrate that lawmakers are beginning to notice the committee's structure and independence in examining these matters as a critical issue. However, the new committee structure has been in place for four years with no tangible evidence of how the committee has shifted its focus.

Another major amendment concerns state-owned enterprise procurement. The old structure of competition law consisted of several exceptions for nationally-owned businesses, leaving space for unfair changes and abusive opposition activities. Under the Trade Competition Act (B.E. 2560), this act is enforced in the context of state enterprise activities which have to be strictly overseen for the advantage of the public interest, because most financial transactions of state enterprises consist of tax payments from citizens. If state enterprises are not controlled under this act it will provide more loopholes for auction fraud in government infrastructure projects. The Trade Competition Act (B.E. 2560) incorporates precise definitions, enforcements, and covers the state enterprise transactions including those of PTT, a dominant state enterprise in the energy and power market of Thailand, and which plays an important role as a supplier and operator.

The rules and regulations of M&A have additionally been revised to better tackle business operators who might conduct a merger that could result in a significant reduction in competition in a particular market, which might create a monopoly or a business operator that has significantly enhanced market power.⁷⁰⁰ This relates to the issue of business operators in conjunction with other business operators who are competitors in the same market taking action to monopolize or reduce competition, or to control the competition in the market through actions such as price fixing, quantity fixing, auction fraud, and so on. It may also be linked to a reduction in the quality of the product, or poor service. Under the Trade Competition Act (B.E. 2542, 1999), provisions regarding the control and limitation of merger activity have been largely unenforceable due to a lack of detail within the policies and the absence of specific

⁶⁹⁹ Thai Thi Minh, "Unpacking the systemic problems and blocking mechanisms of a regional agricultural innovation system: An integrated regional-functional-structural analysis" (2019) 173 *Agricultural Systems* 268

⁷⁰⁰ Huong Ly Luu, "Regional harmonization of competition law and policy: An ASEAN approach" (2012) 2 *Asian Journal of International Law* 291

criteria. Mergers are now clearly described and might require both pre-merger approval (in case of a merger which could motivate a monopoly or bring about a dominant market position) and a post-merger notification concerning the final results of the merger within seven days of the date of the merger.⁷⁰¹

However, Thailand's competition law amendments continue to ignore the issue of cartels, which may limit the understanding and enforcement of competition law as the authorities continue to adhere to a fundamental understanding based on Thailand's old law, which has not been extended to other complex forms of unfair competition. In some aspects, mergers and cartels are relevant as they can possibly lead to unfair competition in the market. A merger is where two or more companies are joined into one entity, thus combining their market shares, but a cartel involves an agreement whereby the firms are still independent but are committed to act as agreed.

Competition law must explicitly define and distinguish between hardcore cartels and non-hardcore cartels. Cartels are the most serious form of anti-competitive agreement, and occur when a number of competing businesses work together and are complicit in an agreement not to compete against each other in order to benefit themselves. The most obvious form of a cartel is a price fixing agreement where a number of competitors agree to fix their prices. They might all agree that the next week they will all raise their prices to an agreed level and consumers will suffer accordingly. A more complicated case is the situation known as big rigging, where a project goes out to competitive tender asking a number of companies to bid competitively to win a contract. The result is that the bidders collude, taking turns to win contracts at uncompetitive prices. Differently priced bids will be offered to create the illusion of competition, and while the lowest bid will win, clearly the likelihood is that the price will be higher than a truly competitive price should be.

Hardcore cartel refers to an agreement between competitors in the same market which monopolizes or reduces competition or restricts competition in the market by setting the purchase/selling price, limiting the production/buying/selling quantity, sharing the buying/selling area, or committing auction fraud.⁷⁰² This severely affects the market. Non-hardcore cartels refer to an agreement between operators who may be competitors or partners

⁷⁰¹ Pornchai Wisuttisak, "Regulation and competition issues in the Thai electricity sector" (2012) 44 Energy Policy 185

⁷⁰² Alison Jones, Brenda Sufrin and Niamh Dunne, *EU competition law: text, cases, and materials* (Alison Jones and Brenda Sufrin, *EU competition law: text, cases, and materials* (7th edn, Oxford University Press 2019)

in any market which monopolizes or reduces competition or restricts competition in the market, but may have a business necessity such as a reduction in product quality or lower standard of service.⁷⁰³ A vertical cartel, for instance, involves a producer and the retailers, if the producer decides to increase the sales price and the retailers then do exactly the same thing. If the combined market share does not exceed the stipulated percentage it is possible to get away with such a cartel.⁷⁰⁴ In contrast, horizontal cartels arise if, for instance, all supermarkets agree jointly to increase the price of one thing. Once again, if the combined market share does not exceed the stipulated percentage it is possible to do this without inviting punishment.⁷⁰⁵

While the issue of cartels has not been fully addressed in current competition law, legislators have made significant attempts to provide meaningful protections for domestic enterprise. One aspect that jumps out is the broadening of the scope of sanctions for competition law violations. The administrative and criminal penalties have been extended under the Trade Competition Act (B.E. 2560), such that offenders may additionally be fined twenty times the once-a-year revenue of the employer, up from the preceding maximum of THB 6 million, in step with the offence. The Trade Competition Act (B.E. 2560) empowers the office of the trade competition commission to enforce administrative fines self-sufficiently and to request the general public prosecutor to do so in opposition to competition whilst criminal sanctions are being sought.⁷⁰⁶ If the general public prosecutor refuses to do so, then the office of trade competition commission is entitled to request the preferred legal professional to recall the case and, if considered appropriate, to publish an order form in addition to prosecution. If the legal professional insists that there is insufficient evidence, then the result shall be notified to the OTCC and a joint operating organization installed which will reconsider whether to terminate the case or approve it for further prosecution. Such measures make it especially difficult for offenders to avoid punishment and it is therefore possible to have a deterrent effect on competition.⁷⁰⁷

⁷⁰³ Xavier Vives, *Competition Policy in the EU: Fifty Years on from the Treaty of Rome* (1st edn, Oxford University Press, 2009)

⁷⁰⁴ Paul W Dobson and Michael Waterson, 'The competition effects of industry-wide vertical price fixing in bilateral oligopoly' (2007) 25(5) *International Journal of Industrial Organization* 935

⁷⁰⁵ Alexis Jacquemin and Margaret E Slade, 'Cartels, collusion, and horizontal merger' (1989) 1 *Handbook of industrial organization* 415

⁷⁰⁶ Rita Yi Man Li and Yi Lut Li, "The role of competition law: an Asian perspective" (2013) 9(7) *Asian Social Science* 47 < <https://www.ccsenet.org/journal/index.php/ass/article/view/27929> > accessed 20 November 2020

⁷⁰⁷ Filip Tuytschaever and Frank Wijckmans, *Vertical agreements in EU competition law* (Oxford university press 2011)

This section asserts that the competition legislation has been theoretically amended. However, simply amending the competition legislation does not guarantee fair competition. Overcoming this issue cannot be accomplished by adding provisions; rather, it requires an understanding of how existing provisions were implemented ineffectively.

4.6.4 Absence of motivation in the form of punitive damages

Thailand's trade competition law has been amended, but the amendment has not resulted in real outcomes in terms of boosting domestic industry protection, as the law's preamble states. The competition law revisions cover areas that the anti-dumping law did not, such as introducing provisions to reform the Committee to make it more independent and free of political pressure. One could argue that the effects of the competition law modifications were likewise a failure, and that anti-dumping legislation has not been amended properly. This demonstrates that the solution is still not at the source of the problem and that the underlying practice may be the root cause of the problem, leaving the underlying culture intact. However, in the framework of competition law, Thailand might choose another concept that has the ability to assist in concretely promoting legal enforcement, and that principle is punitive damages, which can be compared to and used in the context of anti-dumping law.

It is surprising that **punitive damages are not applied in the Thai legal system** in any branches of domestic law, even commercial and trade law in which **any breach can have a serious business impact**.⁷⁰⁸ Additionally, although many articles are amended and further provisions including the anti-circumvention section are added, punitive damages which are considered to be easier to add compared to the whole new anti-circumvention section have still not been introduced by the amendment committee. It is connected to the issue of cartels in the global market which are on the increase, and it is worth considering to what extent Thailand will be able to survive in this day and age without the effective clauses preventing the occurrence of severe harm to Thailand's economic stability and its level of competency in the global market in the aspect of being a weak spot which can be easily attacked. It serves not only to protect against foreign abuse but also domestic business abuse that removes competitiveness and variety from the market. In the situation where punitive damages are not re-considered to be included in the law amendment is undesirable, but considering the Thai

⁷⁰⁸ Saisiri Siriviriyakul, 'The imposition of punitive damages: a comparative analysis', (Master degree's thesis, University of Illinois at Urbana-Champaign 2012); Hironari Momioka, "Punitive Damages Revisited: A Statistical Analysis of How Federal Circuit Courts Decide the Constitutionality of Such Awards" (2017) 65(3) Cleveland State Law Review 379

context, not adding punitive damages results from the tort laws of Thailand whereby there are no punitive damages and in practice the court will not award punitive damages to the parties involved.⁷⁰⁹ **Lack of punitive damages causes people to prefer not to sue, and to have a lack of interest in initiating cases. Meanwhile, the Thai courts never give punitive damages and do not have clear rules on such issues. Moreover, the execution of the case is not efficient in bringing the full amount of the judgment so this has resulted in the absence of punitive damages as part of the law amendment. The lack of punitive damages makes people realize that nothing is serious if they break the rules, even in the matters of trade.**

4.6.5 Conclusion

The problems of the Trade Competition Act implemented in Thailand can be varied, even as it has been currently enforced for roughly two decades (both 1999 and 2017 Acts). However, the law still does not potentially reach the utmost preamble of the agreement. It is drawn in the light of tackling inequitable trade including limited competitive market circumstances and its related areas in addition to the formation of monopoly business entities. The ability of this law together with the law enforcement and its procedures are on an unstable path. These following problems of the competition law issues as demonstrated below are worth considering since they are similar to the context of the anti-dumping law amendment and procedures.

Firstly, it is undeniable that the law which is newly launched might cause the **fluctuation of enforcement and interpretation** in almost all aspects. The situation is not far different from the existing anti-dumping act and the anti-circumvention section in the additional part of the current amendment of the anti-dumping act as related officials do not to some extent clearly comprehend the application of the act, but in spite of that the Ministry of Commerce through the Department of Internal Trade has offered an essential training course providing additional knowledge to elevate the level of expertise of the members of staff in relation to a thorough and precise process and interpretation of these laws.

Secondly, it is a **lack of understanding of laws and enforcement**. Mutual comprehension has to be in place among the associated litigants and users. Hence, wrapping up documents containing key elements which must be understood about legal conditions and procedures have

⁷⁰⁹ Sakda Thanitcul, 'Law and Legal Process of the Product Liability Act in Thailand' (2013) 20(2)(3) Journal of International Cooperation Studies 27

to be produced and widely publicized. Another pathway to reach a higher level of comprehension is the development of certain courses related to the overall situation and to build an in-depth understanding of the application. This can be achieved successfully through academic classes, gatherings of scholars and experts, or workshops held not only for the members of staff but also for other people who are interested to participate in this development. Additionally, the administrative officials from the central government and certain groups of businesses in the market at the time are also needed for the shaping of comprehension since this will thoroughly gather all aspects of this issue from all related players in this regard. The representatives of certain organisations related to the economy and the law should be involved in this regard as well. As a result, the application and enforcement of this act will be developed to the extent that almost every party can understand and apply it in the right way. **When there is understanding among the stakeholders, the audit process is being watched by more people. It will develop, for example, in the event of the acquisition of CP and TESCO in Thailand on November 2020 in which the public media are very interested. Although the Committee has reached the conclusion that the merger was not a monopoly, it was ruled that this case was under the dominant characteristics, thus placing a condition for the company not to acquire the same type of business within three years.**⁷¹⁰

Thirdly, non-transparency, abuse of discretion, and interference by political and large-scale capital sectors in the country are key factors causing inconsistent facts and judgments. This makes it impossible to reduce the concrete dominance or monopoly in the market. Although the Competition Act prohibits the committee from taking on a political role or otherwise being associated with politics, in practice, committees can be subject to personal interference by political sectors or capital groupings associated with politics. As a result, the provisions on this subject are rendered impractical.⁷¹¹

This law reform should potentially raise the efficiency in relation to the enforcement of the Competition Act in Thailand according to a new structural change of the Board including the quantity and qualifications of members of staff as well as a wider range of powers that can be

⁷¹⁰ 'Decisions Of The Trade Competition Commission For Permission To Merge Businesses Between CP Retail Development Company Limited And Tesco Store (Thailand) Company Limited' (2020) Trade Competition Commission Thailand < https://www.prachachat.net/wp-content/uploads/2020/12/ผลคำวินิจฉัย_CP-Tesco_18122563-final.pdf > accessed 3 July 2022

⁷¹¹ Thannapat Jarenpant, 'The Rule Of Authoritarianism And The Justice Problem Through The Life Of Anan Phakprapai' (2021) 11 Journal of Political Science and Public Administration Pibulsongkram Rajabhat University 77

exercised through the current Board. There is, currently, no room for backward steps in this law revolution, Nevertheless, these newly developed rules have to be implemented along with other essential factors which are not less important compared to the theoretical amendment so as to be a potential method to effectively tackle the current trade problems.⁷¹²

The competition law in Thailand has many amendments but so far there has been no case prosecuted by the court and no actual sanction imposed. It raises the question whether the amendment of the anti-dumping law which focuses on similar points that competition law has done will be successful without structural changes in legal enforcement.

⁷¹² Mark Williams, 'Competition law in Thailand: seeds of success or fated to fail?' (2004) 27 *World Competition Law and Economics Review* 459

CHAPTER 5 EXTERNAL FACTORS AFFECTING THAILAND'S ANTI-DUMPING SITUATION

Introduction

In addition to the unique Thai law enforcement culture rendering enforcement ineffective in raising the level of protection towards domestic industry as it should, there are still causes from outside the country that exacerbate this problem. These external influences are a reflection of the anti-dumping aspect associated with the political economy, specifically the role and negotiation strength of states in different spectrums.

Dumping of imported goods is not strictly regulated. Non-strict management is also evident in the influx of goods via cooperation projects between China and Thailand and infrastructure projects undertaken by the Thai government, which promote the use of Chinese-made construction materials over those manufactured in Thailand.⁷¹³ The arrival of goods at such a low price that they are deemed dumping but are legalized can be considered indirect dumping that the Thai government implicitly approves as legitimate. These proposed foreign investments are external factors that exacerbate the difficulty of protecting domestic industry and prolong the unresolved anti-dumping situation in Thailand. The proposals of foreign nations to invest or co-invest with Thailand, together with the decisions of the administrative sector and the Council of Ministers, with full discretion as indicated in Chapter 4, make the Thai state neglect the domestic industry. Finally, these collaborations have increased the role of large rising economies such as China in the region, while further degrading Thailand's economy and negotiating leverage.⁷¹⁴ Thailand appears to be leaning aggressively toward embracing connections with China for political and economic reasons. The decision was made with the hope of forming close connections with big countries while ignoring Thailand's domestic industry protection and the implementation of the AD law policy in accordance with the spirit of the AD law.

⁷¹³ Editorial, 'Thailand First' Thailand fights with China to support the use of domestic steel' *Prachachat* (Bangkok, 10 September 2019)

⁷¹⁴ Prin Panitchapak, 'In the era where "China" plays a role in Thailand, what should be done not to fall under the shadow of the dragon's wings?' *Thairath* (Bangkok, 30 June 2021)

This raises the question of Thailand's future ability to build a wall to protect its domestic industries. Because, even if these collaborations are in their infancy, Thai businesses are already facing plenty of issues, whether it is the AD process, which does not fully protect them, or the process itself, which is rife with discretion and corruption. If the Thai government is obligated to increase business collaboration and investment, will it further lower the wall that the government should erect to defend the country's industry, and how will they continue their business?

5.1 Dumped imports as a positive factor for legislation but an accelerator of a distorted structure: The overwhelming effects of steel products in Thailand through circumvention and mega infrastructure projects

5.1.1 Introduction

China's entire manufacturing capacity has expanded significantly over the last decade, particularly for steel products.⁷¹⁵ When Chinese steelmakers' production capacity increases to the point that the supply of steel products exceeds the demand for steel in China, they seek to sell their existing steel supplies.⁷¹⁶ When steelmakers are unable to sell their products domestically, they must export them to other markets.⁷¹⁷

Chinese steel exports to other countries are advantageous in terms of cost and profit to exporters since products are manufactured in China at extremely low labor and raw material costs.⁷¹⁸ When Chinese products are exported abroad, customers frequently purchase Chinese-made goods.⁷¹⁹ However, Chinese exporters frequently export at a price that is less than the typical value or even less than the cost, as some Chinese exporters are not only interested in selling their products but also in eliminating competitors in the global market.⁷²⁰

⁷¹⁵ Editorial, China admits that it is not easy to solve the overflow of steel. New manufacturers enter markets after prices have risen.' *Posttoday* (Bangkok, 17 May 2016)

⁷¹⁶ Nawarat Jiuha, 'The use of Anti-Circumvention in Thailand: a study of imported steel products from China under the 7216.33.00 HS Code' (Master's degree thesis, Chulalongkorn 2014)

⁷¹⁷ Editorial, 'Warning for Chinese steel inventories of 100 million tons, discharged around the world' *Thansettakij* (Bangkok, 24 May 2020)

⁷¹⁸ Janet Ceglowski and Stephen Golub, 'Just how low are China's labour costs?' (2007) 30(4) *World Economy* 597

⁷¹⁹ Peter Navarro, 'The economics of the China Price' (2006) *China Perspectives* 13

⁷²⁰ Arati Shroof, 'Made in China 2025 Disappears in Name Only' (Indo-Pacific Defense Forum, 23 March 2020) < <https://ipdefenseforum.com/2020/03/made-in-china-2025-disappears-in-name-only/> > accessed 5 May 2021

The situation in 2015 demonstrates the extent to which Chinese exporters have eliminated competition. Throughout 2015, all markets to which China exported steel to be sold experienced a severe situation as a result of the market's fierce competition, while also suffering the burden of loss. Finally, many steel manufacturers were forced to reduce production capacity, lay off employees, and even shut down production lines or businesses.

Not even the largest companies in the world steel industry, ranging from major steel manufacturers in the United States, such as US Steel Corp., had to announce two rounds of layoffs totaling nearly 3,000 employees. Nucor steel production in Louisiana has been temporarily halted pending an increase in steel pricing.⁷²¹ Or even a company: ArcelorMitalis, the world's largest steelmaker, announced the shutdown of its Indiana facility, laying off approximately 5,000 workers to maintain other production lines, and announcing a 50% reduction in steel production, after acknowledging that steel sales are making a loss.⁷²² The situation is similar to what happened to the Brazilian steel factory, CSN in Rio de Janeiro, which was forced to shut down the smelting furnace. CSN is one of the ten lowest-cost steel mills in the world. Additionally, that Thai steel maker, SSI UK, the steel division of the Sahaviriya Group in England, was forced to shut down the steel mill and lay off almost 2,000 workers earlier.⁷²³

In the case of Thailand, the dumping has raised awareness of the need for additional regulation, such as anti-circumvention legislation. On the other side, it demonstrates the fundamental flaw in Thailand's law enforcement structure. Chinese exporters' decision to dump some goods despite knowing it was illegal is not solely due to a lack of channels to drain the product, but also because some countries' law enforcement structures are vulnerable to dumping and speeding up Chinese products in order to attack the domestic market more easily. Additionally, Thailand has plans to create big-scale infrastructure projects that will require a large amount of steel as raw material, and the required quantity is claimed to exceed the capability of domestic steelmakers.⁷²⁴ It is believed that this will pave the way for Chinese steel products to establish a stronger foothold in the country.

⁷²¹ Editorial, 'Chinese steel destroys the world. Thai entrepreneurs are desperate to fight' *Thansettakij* (Bangkok, 18 February 2016)

⁷²² *ibid*

⁷²³ *ibid*

⁷²⁴ Editorial, '7 associations to lobby the Thai state to use "Thai steel" in the Chinese railway project' *Prachachat* (Bangkok, 7 August 2017)

This chapter will demonstrate the primary element causing the distorted structure in Thailand: Chinese dumping of goods. Due to Thailand's inadequate anti-dumping enforcement mechanism, more illegally dumped products are sold in the domestic market. Meanwhile, despite efforts to remedy the situation through new legislation, the injury persisted. Additionally, there are plans for infrastructure projects that appear to be an indirect way of legalizing China's dumping of goods.

5.1.2 Dumping and Injury

In certain circumstances where one particular country has a **high capacity in producing** consumer products, the price of their product is extremely low compared to like products from other countries **without the necessity to subsequently dump their product** as the price is lower than the market price. As a result, with a lower cost of production, they seem to be leaders in the price competition.⁷²⁵

Countries that would like to have a great market share in the global market have to develop and support their business for domestic consumption and to compete with international traders in these very competitive days so as to obtain more national income. The country which achieves a substantial level of high performance in industrial production, having a lower cost of production, and high capacity in manufacturing, is superior to other countries. However, they may face an oversupply problem as the quantity of products circulating within the country exceed the demand.

However, the People's Republic of China (PRC) has prominent potential when it comes to the global market as they have relatively low wages while the production volume is extremely high. This allows the exports from China to prevail as they are cheaper compared to those from other countries.⁷²⁶ Despite the pros above, the goods produced each calendar year tend to be overabundant and they have to be transmitted to other countries at relatively low prices, lower than the price used to trade normally. Domestic producers of the same products in other countries, as a consequence, are suddenly disadvantaged since their product prices are higher than those from China and cannot even compete on the domestic market when the Chinese

⁷²⁵ M Ayhan Kose and Eswar Prasad, *Emerging markets : resilience and growth amid global turmoil* (Brookings Institution Press 2010)

⁷²⁶ Janet Ceglowski and Stephen Golub, 'Just how low are China's labour costs?' (2007) 30(4) *World Economy* 597

products flow in. These activities will generally distort the market and result in injurious effects against domestic businesses.⁷²⁷

Their low-priced products are the key success of China and it stimulated other countries to initiate various strategies and schemes to handle this situation, and many started to create legal measures to achieve the protection of domestic business. Anti-dumping measures are definitely one of the chosen methods.⁷²⁸

The steel industry is one of the key factors in national development in Thailand and it is related to other key industries including a wide range of subsequent steel products that serve as primary materials in industries such as technology, healthcare, construction and electronics.⁷²⁹

It can be categorized into three groups which are the processes related to raw steel⁷³⁰, semi-finished steel⁷³¹, and finished steel products⁷³².

In Thailand, only finished and semi-finished steel products are domestically manufactured, rather than raw steel products. Actually, if Thailand could produce upstream steel by itself, it could bear steel dumping from China because domestic steel prices are not much higher compared to China. This is not to say that if domestic operators are able to withstand Chinese dumping, what Chinese exporters have done is legal. All of this means that Thailand has the option to boost the steel industry's competence, but has chosen not to do so, and it erodes the Thai steel industry's strength, even in the absence of dumping. As a result, when dumping occurs in Thailand, Thailand suffers significant damage.

The Thai steel industry's vulnerability arises from the hidden expenses and invisible barriers associated with establishing a steel factory.⁷³³ According to the results from the extremely

⁷²⁷ Min-Hua Chiang, 'China–ASEAN economic relations after establishment of free trade area' (2019) 32(6) *The Pacific Review* 267

⁷²⁸ Louise Curran, 'EU Trade Defence Actions against China and Their Impacts: The Cases of Textiles and Footwear' (2009) 43(6) *Journal of World Trade* 1281

⁷²⁹ James P Durling and Thomas J Prusa, 'The trade effects associated with an antidumping epidemic: The hot-rolled steel market, 1996–2001' (2006) 22(3) *European Journal of Political Economy* 675

⁷³⁰ The first group, raw steel production, is the process that smelts a metal from iron ore with its outcome of Sponge Iron and Pig iron then they become fundamental material to be subsequently produced as semi-finished steel products.

⁷³¹ Semi-finished steel products are smelting of Sponge Iron, Pig iron as well as scraps from raw steel production into Billet (rounded-shape steel), Slab (flatten-shape steel), Bloom and Beam Bank as well as Ingot.

⁷³² Completely finished steel products which is steel forming which consists of hot and cold forming and coating.

⁷³³ Tortrakul Yamanak and Torphat Yamanak, 'Construction permit bribery, who can solve it?' (2019) *Anti-Corruption Organization of Thailand* < <http://www.anticorruption.in.th/2016/th/detail/1518/4/สิ้นบนการออกใบอนุญาตก่อสร้าง%20ใครจะแก้ได้?> > accessed 3 July 2022

costly investment and environmental problems of setting up the plant in relation to the surrounding area, setting up a factory to produce self-use steel from the upstream production is very costly due to the construction cost and operational fees paid to the government, not to mention the bribery arising from cultural intervention by the political sector and non-transparency.⁷³⁴ Additionally, the legal structure of allocating land use for the industry is not well-organized as a result of politicians often being those who have land in major districts and it is their influence that will lead to the establishment of industrial areas far from or near to their land. From time to time, it leads some industrial zones being located near the community making it impossible to engage in certain heavy industries because of various complaints from the neighbourhood.⁷³⁵

Initially, when there was an excess of supply, Chinese exporters sought to sell their stocks in order to generate cash to reinvest in their firms. However, removing surplus supplies risks illegal dumping. As a result, Chinese exporters must select a low-risk foreign market. Although all WTO members have the same AD legal model pursuant to obligation that WTO members agree to apply this legal model, the variation lies in the rigor with which it is enforced.

Exporting their oversupplied steel products to other countries is more difficult to make it through in the case of exporting to the US or EU compared to Thailand as those countries have high strength in anti-dumping and anti-circumvention law **without a distorted legal culture in enforcement and non-transparency as well as improper intervention.**⁷³⁶ Thus, it is easier to send the products to developing countries like Thailand as it still has gap in law and those countries are likely to be unable to outright tackle the problem or cease the dumped imports due to weak regulations and enforcement. Even though the Committee imposed anti-dumping measures on certain steel products specifically H beam steel, from 2002 to 2017,⁷³⁷ with exception of sales into Export Processing Zone under the Industrial Estate Authority of Thailand Act, B.E. 2550 (2007) and sales to promoted persons under the Investment Promotion

⁷³⁴ Boonyong Lowongwat, 'Laws to control environmental problems from industrial factories' (1992) 4(2) Civil Engineering and Construction Journal Kasetsart University 195

⁷³⁵ Sakda Silakorn, 'Political economics on capital accumulation: a case study of land for development Amata Nakorn Industrial Estate Chonburi Province' (2019) 7 Burapha Journal of Political Economy 23 < <http://www.polsci-law.buu.ac.th/pegjournal/document/7-2/2.pdf> > accessed 20 November 2020

⁷³⁶ Peter Cai, *Understanding China's belt and road initiative* (Lowy Institute for International Policy 2017)

⁷³⁷ The first stage commenced on October 2002 where it took 5-year period with the imposition of duty around 27 percent of CIF price from any company exported H-beam into Thailand. In October 2008, the second phase started with the same percentage and condition of duty however this period took only 3 years. Coming to the last stage which initiated from October 2012 with 5-year period. In this last period, the duty imposed on H-beam had been reduced to roughly 13 percent.

Act (No. 3) B.E. 2544 (2001), around 472 firms have still been affected by dumped products imported to Thailand and they urged the government to impose the measure further related to this problem.⁷³⁸

The reason why the domestic industry continues to be harmed even after the AD tax is imposed on Hot rolled steel with an H-shaped cross-section is due to the evasion of Chinese exporters as they would like to relieve the problem of business interruption and remain superior in the aspect of cheaper prices.⁷³⁹ The evasion was accomplished by exporting its product in the form of colour-coated steel, aluminum alloy amalgamation, and Cobalt enamel steel in order to be classed in different categories which do not attract the duties.⁷⁴⁰ Moreover, some products have been shipped to Vietnam so as to be transformed into pipe before importation to Thailand where they obtain a special tariff rate.

The damage to Thailand's steel sector is not solely due to obvious evasion, but more to Thailand's non-compulsory approach to time intervals for information in AD investigations, which allows dumping to avoid being subject to AD duties. Article 54 of AD act requires that the AD investigation take into account trends in the amount of imports under investigation and the damage they cause to domestic industry over a 12-month period.⁷⁴¹ However, Thailand's AD Act does not prescribe a time frame for data selection, but the DFT handbook indicates that data should be selected within the last three years to account for trends.⁷⁴² Three years is sufficient time for exporters who wish to engage in dumping to act and evade. However, choosing the length of the data interval is not required by law. In the case of hot-dipped galvanized cold-rolled steel sheet products in rolls and non-rolls, as published in the Royal Gazette Volume 135 Section 109D (May 15, 2018), the selection of data to consider only one

⁷³⁸ Nawarat Jiuhua, 'The use of Anti-Circumvention in Thailand: a study of imported steel products from China under the 7216.33.00 HS Code' (Master's degree thesis, Chulalongkorn 2014)

⁷³⁹ Xiang Liu and Hylke Vandenbussche, 'European Union Anti-dumping Cases Against China An Overview and Future Prospects With Respect to China's World Trade Organization Membership' (2002) 36 *Journal of World Trade* 1125

⁷⁴⁰ Department of Foreign Trade, 'Notification of the Department of Foreign Trade showing details, facts and important laws Used as a basis for consideration

Review the need for anti-dumping measures for galvanized cold-rolled steel sheet, Hot-dipped and then painted and cold-rolled steel, anodized or coated with aluminum alloy and hot dipped galvanized and painted of origin of the People's Republic of China, Republic of Korea and Taiwan' (Royal Gazette Thailand 2019)

⁷⁴¹ Anti-Dumping and Countervailing Act, B.E. 2562 (2019), s 54 Initiation of an anti-dumping proceeding until a final determination is reached that an anti-dumping duty shall be imposed or that there is no dumping nor injury shall be completed within one year as from the date of the notice of investigation, unless there is a need for an extension which shall not exceed six months.

⁷⁴² Trade Interests and Remedies Division, 'Anti-Dumping Guide' (Ministry of Commerce, 2021)

<https://www.thaitr.go.th/storage/measure_info/HTXEDZVOnhvnVh0GRrR5gGqPJ8bplCXqo7XJbjkW.pdf> accessed 20 November 2021

year results in the conclusion that there is no potential for dumping or harm to the industry in that year. It was peculiar because actual dumping had been discovered a year before and a year after.⁷⁴³ Non-compulsory time intervals for information selection need the use of discretion to prolong or shorten the time interval for information selection, resulting in incorrect results, skipping progressively evolving trends before or after.⁷⁴⁴

5.1.3 Pressure on legislation and unprogressive results

Thailand used to be the target of foreign investment due to the cheaper cost of production including raw materials, workers, and land. There are several policies encouraging foreign entities to set up plants in designated areas in Thailand under the supervision of the Board of Investment Thailand (BOI) who grant both tax and non-tax incentives to foreign investors. This attracted a wide range of foreign companies.⁷⁴⁵ However, Thailand is currently not one of the cheapest countries in terms of production costs in the view of foreign companies following the adjustment of the minimum daily wage by virtue of the National Wage Committee and political instability in the last decade. Simultaneously, Vietnam and especially China are taking leading positions in this region.⁷⁴⁶ Thus, **Thailand has been switched into a position where it has to protect itself from dumped imports.** Meanwhile, China has become the main destination which almost all anti-dumping measures aim to attack.⁷⁴⁷

At a time when China began to participate in global commerce and increased its dumping activities. It was discovered that the implementation of anti-dumping duties is not completely effective in protecting domestic businesses and certain countries have decided to impose anti-circumvention rules to tackle these problems.⁷⁴⁸ Generally, according to the EU and US, those countries not only have anti-dumping measures but also long-practiced anti-circumvention mechanisms to solve the problem of evasion of anti-dumping duties. Anti-circumvention has

⁷⁴³ Case AD1025 *PRC, Vietnam and Taiwan v Thailand on hot-dipped galvanized and cold-rolled steel sheet products in rolls and non-rolls* [2018] Committee < <https://www.thaitr.go.th/th/search/AD1025> > accessed 20 November 2020

⁷⁴⁴ Thomas J Prusa, 'On the spread and impact of anti-dumping' (2001) 34(3) *Canadian Journal of Economics/Revue canadienne d'économie* 591

⁷⁴⁵ Kevin Wongleedee, 'Important motivation factors for foreign reinvestments in Thailand' (2016) 6(180) *Актуальні проблеми економіки* 19

⁷⁴⁶ Jonathan Stromseth, 'The Testing Ground: China's Rising Influence in Southeast Asia and Regional Responses' (Brookings Institution, November 2019)

⁷⁴⁷ Yuefen Li, 'Why is China the World's Number One Anti-Dumping Target?' (2005) *China in a globalizing world* 75 <https://unctad.org/system/files/official-document/gdsmdpb20051_en.pdf> accessed 20 November 2020

⁷⁴⁸ Gerwin Van Gerven, 'New Anti-Circumvention Rules in EEC Anti-Dumping Law' (1988) *The International Lawyer* 809

its function to impose the duties on the products which are not on the anti-dumping lists and do not require a new investigation as the anti-dumping rules do. Thus, it is quicker to prevent and tackle the problem of dumping within the nation. However, in the past decades, Thailand has not had such anti-circumvention laws to serve that purpose. The consequences were that domestic producers were still bounced by the lower-priced products overflowing in Thailand and the sales volumes went down continuously.

The damage caused to Thailand's steel sector by dumping and the absence of AD measures to deal with such imports prompted steel firms to lobby the Federation of Thai Industries and the Ministry of Commerce for legal protection for their businesses. **This compelled legislative drafters to strengthen the level of legal protection through the 2019 amendment.**⁷⁴⁹

However, even though dumping motivates the law amendment in this regard, it is just a solution that addresses the tip of the iceberg. This does not address the flawed culture and intervention that are at the heart of the issue, as discussed in Chapter 4. Also, it is undeniable that this is partly due to the lack of transparency and constant interference in the enforcement of the anti-dumping law. It can be seen from the number of steel products in 2020, one year after the new legislation, anti-circumvention, has come into effect, that there is still 300% more steel spilling into the country, so it can be said that dumping is a positive factor for legislation but an accelerator of the distorted structure.⁷⁵⁰

Interference is still pervasive in all Thai laws and will continue to be so in the anti-circumvention law, resulting in dumping having a detrimental effect on domestic industry.

Normally, it is useful to observe the activities taken by other active users deterring China as a model answer and framework to tackle these problems regarding anti-dumping. Case studies or actual situations in other countries, especially the countries within the EU community who are likely to have long experience in practices to tackle dumped imports, can be useful lessons and can probably serve as the role model so as other countries can adjust and impose those measures within the country itself. However, it could be said that each and every nation does not have identical politics and economic backgrounds. As a result, the business sector's drive to enact legislation to address this issue is not a solution. Simultaneously, Chinese dumping prompted Thailand to implement the AC approach, which is theoretically beneficial to the

⁷⁴⁹ Editorial, 'Urgently amend the law tackling anti-dumping tax evasion' *Prachachat Business* (Bangkok, 4 January 2019)

⁷⁵⁰ Iron and Steel Intelligence Unit, Thailand Steel Outlook (2020)

<<https://iiu.isit.or.th/en/reports/Monthly%20Thailand%20Iron%20Summary.aspx>> accessed 23 November 2020

judicial system. However, due to the unique characteristics of Thailand, it is still difficult to limit the quantity of products that are actually dumped.

5.1.4 Analysis of Infrastructure Project

Dumped imports from China, offered at a very low price, have coincided with the infrastructure projects in Thailand which require great quantities of material such as steel. Thailand has a lack of infrastructure, especially in transportation. The Thai government initiated the mega project of railway route extension and the reconstruction of single-track to double-track railway lines through making concessions with China. This raises concern among domestic steel producers regarding Chinese steel products that are going to be the main supply of material used in these projects, and domestic producers will not fairly benefit from the projects. Moreover, they requested the government to launch a “Made in Thailand” policy to ensure that local materials will definitely be used in this upcoming project. However, the Ministry of Transportation had discussions with domestic producers to reconsider their price so as to be more competitive compared to low-priced Chinese steel products as well as to improve their capacity to supply the material to achieve the project aims without a shortage in supply.⁷⁵¹ The Thai government, on the other side, has two arguments for using steel produced in Thailand as the primary raw material for construction: price and quantity.⁷⁵²

In terms of price, Thailand definitely faces difficulties when it comes to huge transportation projects. Financial problems seem to have driven the Thai government to use Chinese steel products which are both adequate and cheaper, rendering lower costs. However, the private sector argued that it is also the main objective of the government to protect domestic producers from closing down plants, layoffs, and other problems resulting from sales volume regression in their companies due to the Chinese steel disruption.⁷⁵³

In terms of quantity, the government reported that the demand for steel products in Thailand amounted to 7 million tonnes per year in 2017 while local producers were only able to produce

⁷⁵¹ Piratorn Punyaratabandhu and Jiranuwat Swaspitchayaskun, 'The political economy of China–Thailand development under the one belt one road initiative: Challenges and opportunities' (2018) 51(4) *The Chinese Economy* 333

⁷⁵² Editorial, 'seven associations to lobby the Thai state to use “Thai steel” in the Chinese railway project' *Prachachat* (Bangkok, 7 August 2017)

⁷⁵³ Trin Aiyara, 'The long and winding railway: domestic politics and the realization of China-initiated high-speed railway projects in Thailand' (2019) 4 *Chinese Political Science Review* 327

around 2.5 million tonnes per year.⁷⁵⁴ It is apparent that imported steel is needed and 60 percent of the demand is served by imports. The above figure reflects the demand in general situations. It means that if the government proceeds with the railway and high-speed train, the demand will inevitably skyrocket.⁷⁵⁵ The question is whether local producers can serve such huge demand.

Theoretically, balancing between supporting domestic producers and the improvement of transportation at reasonable cost is the knot that has to be untied. This can be seen in the challenge facing a government which on the one hand had been trying to amend anti-dumping laws so as to reduce the volume of steel imports from China that cause injury to domestic producers, and on the other hand would like to utilize low-cost materials instead of costly domestic ones. In this respect, the use of Chinese steel reflects an emphasis on the cost-effectiveness of the project, which mainly considers financial factors. At the same time, it is linked to the development of political and economic relations with China as a major supplier of the project.

However, in terms of enforcing the anti-dumping rule, allowing Chinese-made steel to be the primary material in construction projects entails another significant disadvantage that the government must carefully evaluate in addition to price and quantity. The concessions given to China by the Thai government are likely to become fully authorised indirect dumping in the view of Thai manufacturers (simultaneously selling Chinese steel in the form of project material instead of direct sales into the market) as it will cause domestic producers to suffer in the same manner as normal dumping, but the Thai government itself is the key in letting China play a role within the domestic infrastructure projects.⁷⁵⁶ Another concern of Thai producers is that the Government Procurement and Supplies Management Act B.E. 2560 contains specific clauses which do not prioritize local material in any government project so they also requested that the Act should give privileges to local materials through amendment.⁷⁵⁷

⁷⁵⁴ Editorial, 'Chinese steel destroys the world. Thai entrepreneurs are desperate to fight.' *Thansettakij* (Bangkok, 18 February 2016)

⁷⁵⁵ Jisun Kim, 'Increased Trade Barriers in Southeast Asia-Following a Rapid Rise in Steel Imports' (2016) 1 *Asian Steel Watch* 78

⁷⁵⁶ Shang-su Wu and Alan Chong, 'Developmental Railpolitics: The Political Economy of China's High-Speed Rail Projects in Thailand and Indonesia' (2018) 40 *Contemporary Southeast Asia* 503

⁷⁵⁷ Boonruk Vanborsel and Kumpon Subsomboon, 'Prequalification criteria, according to the government procurement and supplies management Act, BE 2560 (2017): branch/type, class, right to bid, ability to carry out' (2018) 192 *MATEC Web Conference* <https://www.matec-conferences.org/articles/mateconf/abs/2018/51/mateconf_iceast2018_02037/mateconf_iceast2018_02037.html> accessed 20 November 2020

Additionally, if Thailand's law enforcement and anti-dumping investigation systems remain as lax as they are today, it is highly likely that raw materials from project investigations will leak into the domestic market, putting downward pressure on steel prices and further damaging the Thai steel industry. AD law enforcement is at a significant danger of laxity as a result of **the mega infrastructure project which was started off by the government who arranged the utilities so there was some sort of intervention by the administration.**⁷⁵⁸ Having material spills into the project and minimal excess products that might have slipped out into the regular market will have the local producers and distributors drowning in a price dumping war.

5.1.5 One-Belt-One-Road Initiative by China: How does it affect law and economics in the context of anti-dumping?

Chinese-made construction materials entered the Thai market in a variety of ways, not just through the procurement of large-scale utility projects initiated by the Thai government, as discussed in the preceding section. However, it also took the form of a joint project between China and other countries known as the One-Belt-One-Road project (OBOR). OBOR is not simply a means of exporting Chinese goods or lending money under the guise of collaboration to increase investment and transportation; OBOR is a project that conceals its true objective of dumping and ruining the country's domestic economy. OBOR is one of the important tools for enhancing China's role in the global geopolitical game, especially in the Asian region, and for increasing international economic and political power in the global arena. The OBOR will place Thailand's related domestic businesses at the bottom of the competitiveness table, and, most importantly, push the transparency issue which is part of Thailand's law enforcement culture problem into a dark age. This is another external factor affecting the legal culture in Thailand. This is a mega project that could certainly affect the country's future imports and exports, and specifically the global trade and services which are closely connected to the application of anti-dumping laws in Thailand.

Silk Road Economic Belt and Twenty-first century Maritime Silk Road are described as the One-Belt-One-Road Initiative (OBOR) comprising a gigantic network of infrastructure projects to be built and headed by Chinese investment. It includes railways, roads, oil and natural gas pipelines, telecommunications, electricity projects, ports and other coastal infrastructure projects, and as a result, certain blank spaces specifically in Asia will be

⁷⁵⁸ Mana Nimitmongkol, 'Corruption And State - Owned Enterprise Development' (PhD thesis, Chandrakasem Rajabhat University 2011)

connected by way of this infrastructure network.⁷⁵⁹ This project is designed to promote regional and global economic cooperation. However, it is highly criticized on the issue of the debt trap, hidden abuse intentions, and transparency.⁷⁶⁰

The objectives of OBOR are to **export over-supply commodities** resulting from Chinese development policies and to enhance China in finding new routes for economic growth and economic security by expansion of the external markets for Chinese goods. It is plotted to reform the existing international economic system mostly dominated by the US and allow China to play a more important role including the **increasing use of Ren Min Bi (RMB)** or the Chinese Yuan by other countries.⁷⁶¹ It is probably applied to serve diplomatic and strategic objectives for the Asia-Pacific region as it is reported that certain ports under the OBOR project are designed to be used as a dual port, including military and economic purposes. OBOR is more than transportation route and is a symbol of power relations and a split of power as can be seen in Kazakhstan, a former part of the USSR, where a huge commercial hub will be built.⁷⁶²

Asian Infrastructure Investment Bank or AIIB, a new China-led development bank, has dedicated itself to lend for infrastructure projects in Asia where China is the largest stakeholder, holding 26.6 % of voting power allowing China to play a more active role in global governance and development.⁷⁶³ The registered capital of \$100 billions of which over 31% comes from China can be seen as China's effort to provide an alternative to the US-dominated "Bretton Woods" financial institutions such as the IMF and World Bank.⁷⁶⁴ AIIB promises to offer loans with fewer strings attached than the World Bank and related institutions, operating like an investment bank.

John Ohnesorge emphasized how OBOR affects other countries and the world's response. In developing countries' point of view, this could be low financing costs for useful projects and for many countries which cannot potentially access funds from existing domestic and

⁷⁵⁹ Peter Cai, *Understanding China's belt and road initiative* (Lowy Institute for International Policy 2017)

⁷⁶⁰ John Hurley, Scott Morris and Gailyn Portelance, 'Examining the debt implications of the Belt and Road Initiative from a policy perspective' (2019) 3(1) *Journal of Infrastructure, Policy and Development* 139

⁷⁶¹ Xin Chen, 'The Globalization of the Chinese Yuan (CNY) and Its Rising Role in the International Currency System' (2016) 2(2) *China and WTO Review* 303

⁷⁶² Jeanne L Wilson, 'The Eurasian Economic Union and China's silk road: implications for the Russian-Chinese relationship' (2016) 17 *European Politics and Society* 113

⁷⁶³ Hong Yu, 'Motivation behind China's 'One Belt, One Road' initiatives and establishment of the Asian infrastructure investment bank' (2017) 26(105) *Journal of Contemporary China* 353

⁷⁶⁴ Ming Wan, 'The AIIB versus the World Bank and the ADB' in *The Asian Infrastructure Investment Bank: The Construction of Power and the Struggle for the East Asian International Order* (Palgrave Macmillan 2016)

international financial institutions.⁷⁶⁵ The project claims that it potentially enhances employment for local workers, however, it was pointed out by Thai scholars that the construction taking place in Laos does not do so as Chinese workers have been overwhelmingly employed in the area in a wide range of jobs, while local workers are employed in low-skilled jobs like drivers.⁷⁶⁶ Additionally, in certain areas, China might export their low-skilled workers thus local workers will not totally benefit from the project. This project is criticized in serving Chinese contractors, not recipient countries. Additionally, a lack of local expertise probably leads to an adverse effect in the long run with regard to construction standards.

Sri Lanka has been raised as a case study of a debt trap resulting from OBOR.⁷⁶⁷ They had to hand over an entire port to China on a 99-year lease because they were unable to repay loans used to fund it, while there is little apparent need for the port for the small island. Despite handing over the port, Sri Lanka is more indebted to Beijing due to high-interest rates on existing loans - nearly \$13 billion. Malaysia, under the former prime minister Najib Razak, signed \$22 billion Beijing-backed projects which were subsequently terminated by Prime Minister Mahathir Bin Mohamad due to the reason that borrowing money from outside and having projects which are not necessary is very costly.⁷⁶⁸

Every country should bear in mind whether such infrastructure is needed in the context of their own development. If it is needed, governments must carefully consider the financial conditions and specifically the interest rate. If it is not worth doing so, it could be better to decline such OBOR deals. Furthermore, a projection of the capacity and frequency of commuters using such infrastructure like railways should be considered with other actual factors like a comparison between travelling by other vehicles that might be cheaper, and such projects might not be worthwhile as it could be a deceptive figure.⁷⁶⁹

⁷⁶⁵ John Ohnesorge, 'Driving Safely On China's One-Belt One-Road' (The 2019 TIJ-IGLP Workshops for Scholars and Emerging Leaders on the Rule of Law and Policy, Bangkok, January 2019)

⁷⁶⁶ Bruno Jetin, 'One Belt-One Road Initiative' and ASEAN Connectivity: Synergy Issues and Potentialities' in B.R. Deepak (eds), *China's Global Rebalancing and the New Silk Road* (Springer 2018)

⁷⁶⁷ Veasna Var and Sovinda Po, 'Cambodia, Sri Lanka and the China debt trap' (East Asia Forum, 18 March 2017) <<https://www.eastasiaforum.org/2017/03/18/cambodia-sri-lanka-and-the-china-debt-trap/>> accessed 20 November 2020

⁷⁶⁸ Rahman Embong, Hans-Dieter Evers and Rashila Ramli, 'One Belt, One Road (OBOR) and Malaysia: A Long-Term Geopolitical Perspective' (2017) Institute of Malaysian & International Studies Universiti Kebangsaan Malaysia Working paper No.5

⁷⁶⁹ Chen Lanjian and Zhang Wei, 'China OBOR in Perspective of High-Speed Railway (HSR)—research on OBOR economic expansion strategy of China' (2015) 3(8) *Advances in Economics and Business* 303

Apart from a great amount of investment in this project spent across the globe, China has its intention not only to show the strength of its financial superiority but also the **legal power expansion**. They mark those commercial ports as legal hubs specifically concerning business, trade, and commercial law and the judicial process. It could be seen in Singapore that there are a number of highly-trusted arbitrations as a mediator of international trade conflicts resulting from commercial contracts signed between various international firms and entities. This model might be imitated in some ways by China in part under the OBOR. However, certain matters of concern are that in the case of Singapore they have reached the highly-credited position through a long process of application and practice achieved by expertise, but in the case of China they aim to reach that position of first place along with their financial projects. It is interesting to point out **to what extent this legal project potentially shapes the framework of overall international trade norms and law**. There are concerns that China might use those legal hubs as an expansion of international trade and commercial adjudication influence in their own favour, so they can potentially be used as landmark decisions and an essential precedent for certain legal interpretations or judgements afterwards.⁷⁷⁰ This possibly offers China significant beneficial power in various aspects in the long run particularly in geopolitical and political economic positions in the region and globally.

Anti-dumping itself is one of the branches under international trade law that should be carefully examined in this regard. It is widely known that China has encountered a huge number of anti-dumping cases as the accused involving many countries, especially cases involving the EU, the US, and certain Asian countries. With their very low-priced products according to certain factors regarding the cost of production, Chinese manufacturers and exporters have been frequently blamed for dumping and this entails the initiation of cases which can possibly end with the imposition of anti-dumping duties on their products. While the importing countries are working their best to protect domestic manufacturers and maintain the stability of national businesses, Chinese firms are facing trade barriers including higher costs resulting from the duties paid and also other obstacles like complicated procedures that have to be additionally completed, not to mention certain costs incurred when some manufacturers and exporters make up their mind to push their product into a designated market whether it is legal or not. Evasion and circumvention possibly play a role in this stage. Hence, the extension of legal power and influences through designated commercial ports by setting up international arbitration centres

⁷⁷⁰ Donald J Lewis and Diana Moise, 'One Belt One Road ("OBOR") Roadmaps: the Legal and Policy Frameworks' in Julien Chaisse and Jędrzej Górski (eds), *The Belt and Road Initiative* (Brill Nijhoff 2018)

supported by China is such a remarkable tool to effectively reinforce China in handling this situation in the long run.

The main objectives of the OBOR program have an impact on both legal, economic, and political aspects towards Thailand, even though the investment takes place outside of Thailand. This is because it means that **Thailand will not be able to export some of its products abroad as before**. This is evident from the project of Infrastructure Investment which has a certain impact upon the construction and steel sectors. It is interesting to observe the direction of these changes towards the anti-dumping law that will be mostly led by China and it could be said that in the worst case the anti-dumping law amendment recently conducted in Thailand at the time of this paper might be impractical as it probably cannot be used where a great competitor in the global market is not the EU or the US as in the decades before, but instead China. **The current anti-dumping and anti-circumvention acts might not be the proper measures to protect and maintain stability of Thai businesses in the global market even though they have been recently amended.**

Moreover, if some parts of this project have been invested in Thailand as promised by the Chinese and Thai governments, that will definitely weaken related Thai businesses because some parts of Chinese products, in addition to directly entering the project, will inevitably have slipped into the domestic market without anti-dumping duties being imposed.

The question is why will that happen? The answer goes back to the culture of intervention in the justice system by the political sector, non-transparent law enforcement, and most importantly the generosity among international businessmen and government officials that makes problems happen. If there is a good process to limit the Chinese products within the project, the adverse effect will be narrow as the consequences will be even better than leaving the enforcement system as it is.

5.2 The challenging situation among regional emerging country in the context of anti-dumping: Hard struggle for Thailand to overcome

5.2.1 Introduction

The exponential development in the implementation of AD duties and the response to AD duties imposed on its own country is a perfect depiction of China, Asia's growing country. Chinese exporters, the Chinese government, and representatives of Chinese government

agencies participating in AD investigations abroad can resolve anti-dumping disputes without affecting exports that are the subject of AD investigations, either through unquestionable means or through questioning by citizens and scholars of the importing country. This chapter will demonstrate how China's strengths relate to the AD issue and what forces China to become an active user in this respect. Additionally, how is that strength gained through adaptability? At the same time, it demonstrates the impact of China's strength on Thailand and how Thailand, as a developing country in the Asian region that has a lot of AD disputes with China, can leverage China's strengths to strengthen Thailand's AD procedure and thereby protect the country's industry.

5.2.2 China's strength in addressing AD issues and development: concerns for many countries including developed ones

China's inexpensive and simple products make it more like domestic goods in importing countries and vulnerable to AD investigations. However, China's position in the AD conflict has become stronger over time. A stronger participation in the WTO, strict enforcement of rules, and the evolution of export products from agricultural products to innovative products with more complex technologies will be discussed in this section.

China is among the influencing countries applying anti-dumping measures.⁷⁷¹ Their influential actions are criticized by scholars in that they will last for merely a short period of time followed by their cessation. However, from another point of view, it could be believed that their aggressive actions might last longer than estimated due to the reason that those countries have been placed in the context where they reasonably assumed that almost all the trade protectionism measures applied on the global stage have been designed to serve the advantages of the most developed countries or groups of countries which are the US and the EU. As a result, they have maintained a strong stance in the anti-dumping disputes.

Within a framework, it cannot be denied that all countries are well-structured and comprehensive but the enthusiasm for solving problems at the foundation level is different from country to country. It is true that Asian countries still have lower average transparency rates than Western countries.⁷⁷² China is among the Asian countries but it

⁷⁷¹ Nakgyoon Choi, 'Did Anti-dumping Duties Really Restrict Import?: Empirical Evidence from the US, the EU, China, and India' (2017) 21(1) East Asian Economic Review 3

⁷⁷² Corruption Perceptions Index (Transparency International 2020) < <https://www.transparency.org/en/cpi/2020> > accessed 20 November 2021

has to be admitted that this country has undergone tremendous cultural, economic, social, and legal changes which is far different from the situation in Thailand.

However, China has been coming under closer scrutiny. Any research done at that time had been conducted in the context of the US and EU rather than developing countries. When China is growing at a dramatically faster pace than they did, certain rounds of negotiation, take the July 2008 round for example, cannot be successfully done due to the reason that it is not possible to effectively deal with China.⁷⁷³ It is evidently shown that the negotiations regarding the anti-dumping legal framework will not be drawn by only leading developed countries like the US and EU as has been done before, but by the collaboration of developing country who is now an essential part of this drive. The role that used to belong to developed countries has been now transferred to China and partly India who have gradually attempted to protect their trade interests and superiority in global trade through the application of anti-dumping measures.⁷⁷⁴

Various international firms decided to shift their business direction towards these huge developing countries and their allies rather than the opposition as they realized that the success of negotiation and the favourable actions in the stage of international trade law will be to some extent determined by the ideas of those countries and the level of participation in this area of interest will also focus on them. This dramatic shift can be seen in the past two decades as in around 1997 China had no position in the top rank of the countries using anti-dumping measures. However, in around the year of 2003 onwards, China and India were coming up to lead with India in the first rank and China in the position of the closest follower. They held the rank above any other countries at that time.⁷⁷⁵

Even though the situation had been dramatically changed, it was almost totally taken for granted as there was a focus on the economic crisis in relation to the fluctuation of currency on the global market and miscellaneous points such as the initiation of digital transformation and the emerging concerns of patents as an example, which the global and local media took as the main focus.⁷⁷⁶ The reasons behind why the US and EU at the time had not enough concern for this emergence might be that they had continued to believe that the anti-dumping measures

⁷⁷³ Faizel Ismail, 'An assessment of the WTO Doha round July–December 2008 collapse' (2009) 8 *World Trade Review* 579

⁷⁷⁴ Chad P Bown, 'The WTO and antidumping in developing countries' (2008) 20(2) *Economics & Politics* 255

⁷⁷⁵ Dukgeun Ahn and Wonkyu Shin, 'Analysis of anti-dumping use in free trade agreements' (2011) 45(2) *Journal of World Trade* 431

⁷⁷⁶ Chad P Bown, *Global antidumping database version 1.0* (2005) Policy research working paper No.3737 <<https://openknowledge.worldbank.org/handle/10986/8641>> accessed 20 November 2020

were perfectly drawn in their own favour and would be almost unbeatable. Thus, they had ignored the suggestion to amend the rules or to find other ways to fulfil their objectives. Accordingly, the related organs within the nation, and in this case in the US and EU, possibly saw that situation as the ordinary course of events occurring in global trade.

The US and EU as well as the international bodies dealing with international trade mostly run by developed countries might erroneously forecast the impact of actions carried out by China. In this regard, they should be aware of other emerging countries in ASEAN as they are gradually becoming prominent countries in area of global producers and suppliers.⁷⁷⁷ The rules and practices are conducted under the assumption that the emerging cases from those countries are temporary and there is no need to seriously handle them.

Actually, the cases with regard to anti-dumping initiated by emerging Asian countries are on the upward trends due to certain grounds which can be the widespread application of anti-dumping measures through widening areas of industry in those countries. The use of such measures as counterattacking weapons has gained popularity and the uncertainty of whether those countries will decide to stop using such measures when the US and EU as well as those from other developed countries cease to do so. All of these and other reasons which can be beyond our expectation possibly lead to the increase of anti-dumping measures applied by emerging countries in Asia.⁷⁷⁸

The situation cannot be solved by just a perfect deal leading to financial or monetary benefits among the developed nations as done before otherwise the situation will be the same apart from the changing of roles in which the US and EU might be substituted by mostly China. To this point the author does not specifically take the side of the developed or developing but points out that in this day and age, international trade and transactions and the allocation of benefits must be equally and justifiably managed, and it should not be controlled by certain groups of countries. So as to stop that crisis happening in the days ahead, the US and EU should make up their mind to amend certain rules with regard to anti-dumping, even at the moment when emerging countries including China and India are still conforming to the rules. Developing countries who are quite influential in the international trade body should bear in mind this issue and revise the overall situation. In this regard, the US and EU are chosen as representatives of

⁷⁷⁷ Hyun-Ji Kim and Moonsung Kang, 'Trade Diversion Effects of Anti-dumping Duties in Selected ASEAN Countries' (2017) 13 *Journal of International Trade & Commerce* 153

⁷⁷⁸ Antonella Forganni and Heidi Reed, 'Circumvention of Trade Defence Measures and Business Ethics' (2019) 155 *Journal of Business Ethics* 29

the developed countries in international bodies as they frequently oppose the suggestion leading to the amendment of the rules since in order to launch any new rules they must be accepted by the members and these two countries frequently did not agree as such. The World Trade Organization as the main and key organ of international trade which is mainly responsible for setting up and reserving the stability of international trade should take another step to participate in finding the solution. Rounds of negotiation that have been passed can be our lesson not to let them go by without the attempt to amend and apply rules to be more dynamic and up to the current situation and crisis.

Another factor contributing to China's increased engagement is its eagerness to implement the AD law within its own territory. China, as a key country in the Asian region, has accepted AD regulations and has chosen to comply with them, as the WTO standard requires. However, there is **room for adaptation according to the different backgrounds of politics and economics**. Adaptability is not limited to the content of AD legislation; it also encompasses adaptation within the enforcement system. In the case of China, China adheres to the principle of rule by law rather than rule of law, which results in very strong legal enforcement.⁷⁷⁹ Rule by law is a notion that views the governing authority as somehow above the law, with the capacity to create and enforce legislation wherever they see appropriate, regardless of the impact on greater liberties enjoyed by the public.⁷⁸⁰ Adhering to the rule of law and ensuring that the law is detailed on all conditions and legal proceedings would help to reduce the discretionary gap between what is considered fair or unfair, equal or unequal, as required by the rule of law principle. These adaptation and enforcement systems do not go far enough to violate the WTO's requirements. Meanwhile, while China is subject to AD regulations imposed by other nations, China may protect itself against dumped imports into their territory by vigorously enforcing AD procedures, which make China strong.

In certain aspects, the rules with regard to the law enforcement of anti-dumping imposed by China are actually stricter than the standard given by the WTO with better procedures and enforcement since China has the strict obligation imposed by the government and related

⁷⁷⁹ David Lawrence and Johnny Patterson, 'Rule of Law in China: A priority for businesses and Western Governments' (The foreign policy center, 24 September 2018); Benjamin Van Rooij, 'Implementation of Chinese environmental law: regular enforcement and political campaigns' (2006) 37(1) *Development and Change* 57

⁷⁸⁰ Arm Tungnirun, Academic Symposium "China 5.0: Economy, Politics, Technology and Law in China in the New Era" (Faculty of Law Chulalongkorn University Conference, Bangkok, September 2018); Editorial, 'WTO praises China's open market policy pointing to stimulate the atmosphere of global trade' *Info Quest* (Bangkok, 1 June 2010)

organs to consider public interest prior to the application of any duties.⁷⁸¹ On the other hand, The WTO and Thailand's AD laws and enforcement are broadly created and modified. In terms of the WTO, a loose legal framework is beneficial since it allows nations that adopt it to tailor it to their own legal environments. However, once Thailand has adopted a legislative framework for domestic enforcement, Thailand is not obligated to transfer that structure on to any other country. Thailand is exclusively responsible for adapting to the law enforcement environment in its own country. As a result, Thailand is not required to maintain broad AD legislation, as the WTO does.

However, having a greater role as a result of its success in the WTO or being reinforced through strict implementation of regulations may not be sufficient to make China stronger in terms of preventing AD measures. Thus, China has set the direction for the development of products manufactured in its own country, moving away from the status of a producer of basic goods such as agricultural products or consumer goods that lack sophistication in their mechanism and toward the status of an innovator and the development of innovative products that reduce the risk of exporting "like product" to the importing country while also reducing the risk of being imposed by AD measures.

In the past, the exports from emerging countries like China and India are often agricultural or agriculturally-based products or basic consumer goods like bicycles. Occasionally, it could be technology-related but it is undeniable that they are categorized as only the middle to high range.⁷⁸² Therefore, it is not surprising that the research has shown that even the import figure of the goods originating from the EU into India is around 15 percent but only around 8 percent is accounted for and under the initiation on anti-dumping procedures.⁷⁸³

The situation is quite similar when considering the percentage of the imports belonging to the US in India which amounts to 8 percent while the figure of the anti-dumping cases is only under 5 percent of the whole. For the EU, 12 and 8 percent respectively are the number of

⁷⁸¹ Aradhna Aggarwal, 'Anti dumping law and practice: an Indian perspective' (2002) Indian Council for Research on International Economic Relations Paper No.85 <<http://www.icrier.org/pdf/antiDump.pdf>> accessed 20 November 2020; Patrick A Messerlin, 'China in the World Trade Organization: antidumping and safeguards' (2004) 18 The World Bank Economic Review 105

⁷⁸² Sophia Murphy and Karen Hansen-Kuhn, 'Counting the costs of agricultural dumping' (Institute for Agriculture & Trade Policy, June 2017) <https://www.iatp.org/sites/default/files/2017-06/2017_06_26_DumpingPaper.pdf> accessed 20 November 2020

⁷⁸³ Pooja Verma and Shahid Ahmed, 'Anti-dumping actions on Indian exports: an exploratory analysis' (2019) 7(4) Indian Journal of Economics and Development 1

imports within Chinese territory and the cases initiated.⁷⁸⁴ It is worth noting that today, the complex and advanced technology products are gradually starting to originate from the emerging countries as well. Previously, those products were mostly manufactured within these emerging countries but they were in the role of made to order manufacturers who held the production line as a result of low wages in those countries. However, there are many lines of products that truly originate from emerging countries with the whole process of the production including research and development from the initiation of the outline of the product together with the local experts until the finished product is launched. Smartphones are one thing in particular that fit into this explanation. Apple is the former example in this scenario with its production lines located in China. Huawei and Xiaomi are the latter and interesting examples of the product fully developed within the emerging countries. It is necessary to point out after the explanation above that the context of anti-dumping can be switched in certain areas of business.⁷⁸⁵ To explain, it is possible to see the scenario in which the dumping can occur within these kinds of products in advance, and the percentage of cases initiated by the emerging markets against developed countries in relation to advanced technology products might be on an upward trend. Those figures previously mentioned might stem from the characteristics of competitiveness of the products, and additionally the targets set by emerging countries themselves are also the components to build it as well.

China also frequently attacks the developing countries surrounding them, including Thailand, as they are of equal potential and similar gross production. Korea, Japan and Taiwan are certain targets in the sights of China. China has imposed AD duties on a variety of Thai products during the last decade, most notably on a wide variety of chemical substances such as Methyl Methacrylate Acid, Terephthalic Acid, Polyformaldehyde Copolymer, Bisphenol A, and Ethenolamines.⁷⁸⁶ More interestingly, China and India as big emerging countries account for crucial attacks on each other.⁷⁸⁷ In this scenario, the anti-dumping applications taken by China

⁷⁸⁴ Dirk De Bièvre and Jappe Eckhardt, 'Interest groups and EU anti-dumping policy' (2011) 18(3) *Journal of European Public Policy* 339

⁷⁸⁵ Astrid Pepermans, 'The Huawei Case and What It Reveals About Europe's Trade Policy' (2016) 21(4) *European Foreign Affairs Review* 539

⁷⁸⁶ Department of Foreign Trade, 'Products that Thailand has been imposed by AD measures (50 items)' (DFT 2021) <<https://www.thaitr.go.th/storage/file2/fUANvgP6yQdWJurgltN1QdOp2WascfOoAa6TaWDi.xls>> accessed 2 July 2022

⁷⁸⁷ Parul Kochher, 'India and China Antidumping Wars: Who is the Winner?' (2009) 3 *Globsyn Management Journal* 61

and India as the influential countries in Asia have led to the awakening of Asian countries themselves when compared to the developed countries such as the US or EU.

To explain, any actions done by huge emerging countries possibly affect the smaller-scale economy countries like Thailand rather than the stronger ones. These two countries are seeking to attack the developing countries surrounding them rather than the leading countries as the percentage showed previously. The proportion can be seen as in around the year of 2004 to 2010 the US had applied several anti-dumping measures against China and India while India was not in the prominent stage of the number of imported goods in the US.⁷⁸⁸ For the record, the EU has applied anti-dumping measures against China in the proportion of more than 700 percent compared to China's actions in return.⁷⁸⁹ The anti-dumping measures thus seem to be crucial for those developed nations to save their domestic industries. This, as a result, might be the key reason behind certain countries in Asia, including Thailand, taking consideration of the amendment as well as the adaptation of the legal practice in this area to handle the dynamic situation where huge emerging countries are taking more active roles in international trade. In Thailand as a framework of this research, the essential grounds and sensitive occasions of the amendment of this rule in relation to anti-dumping are mainly the faster pace of the China, India and surrounding Asian countries in certain areas of industries. It can be said that the changing of the legal framework of anti-dumping as well as anti-circumvention in this day and age will not have a main focus on the developed nations but on the new emerging countries.

China's vocalization in global trade discussions as a new fast-growing economy has sparked discussions that have been dominated by industrialized countries for a lengthy period of time. Additionally, China's rigorous adherence to strict law enforcement has compelled China to play a greater role in initiating AD investigations and responding to AD measures, requiring both developed and developing countries such as Thailand to be prepared to cope with more than ever before. Finally, China has reinforced its innovation capabilities for locally made products in order to withstand long-term AD investigations. These are the elements that low-strength neighboring countries such as Thailand must consider when developing.

⁷⁸⁸ Nakgyoon Choi, 'Did Anti-dumping Duties Really Restrict Import?: Empirical Evidence from the US, the EU, China, and India' (2017) 21(1) *East Asian Economic Review* 3

⁷⁸⁹ Jappe Eckhardt, 'Firm lobbying and EU trade policymaking: Reflections on the anti-dumping case against chinese and vietnamese shoes (2005–2011)' (2011) 45(5) *Journal of World Trade* 965

5.2.3 What can Thailand learn from China's strength?

In the context of new fast-growing superpowers in the region, it is evident that Thailand is facing economic setbacks due to political instability and, of course, a distorted legal culture. These defectives have not been properly developed making Thailand difficult to perfectly stand in the region. The relevance of surrounding countries to the problem is that if the surrounding countries can do that better, it inevitably places Thailand not only in a stagnant position, but pushes it down to the end of the table. Hence, raising the matter of surrounding countries is like looking outwards on how other states have responded to the issue, and considering which points should be adapted or modified. It is evident in this chapter that the author mentions China which are active users, unlike Thailand which is quite passive, not to mention Vietnam which is in the ASEAN community and has much stronger international trade potential in this decade. In the context of Thailand, to cope well with the AD situation of this decade, it is necessary to analyze not only in terms of how the western legal template is written, but the paths of emerging countries that are in the same region must be carefully considered.

It must be understood that Asian countries' legal systems and government operations are on average less transparent than those in Europe or America.⁷⁹⁰ Low transparency hinders the state's development in all areas, compared to countries with strong transparency.⁷⁹¹ As a result, the majority of Asian countries are classified as developing countries. Few countries have effective and transparent government operations and legal systems, which qualify them as developed countries like Singapore.⁷⁹²

However, when a large developing country such as China, which has significant commercial power in the region, adopts foreign legal templates such as the AD law and localizes them through strong and efficient law enforcement. It has strengthened China's trade dominance in the area and exacerbated the recession in countries such as Thailand.

Thailand is also attempting to disassociate itself from the recession by amending its anti-dumping legislation and introducing anti-circumvention clauses to protect domestic industry

⁷⁹⁰ Corruption Perceptions Index (Transparency International 2020) <<https://www.transparency.org/en/cpi/2020>> accessed 20 November 2021

⁷⁹¹ Anne Janet DeAses, 'Developing Countries: Increasing Transparency and Other Methods of Eliminating Corruption in the Public Procurement Process' (2004) 34 Pub Cont LJ 553

⁷⁹² Muhammed Ali, 'Eradicating Corruption—The Singapore Experience' (The Seminar on International Experiences on Good Governance and Fighting Corruption) (2000) <<https://tdri.or.th/wp-content/uploads/2013/04/ali.pdf>> accessed 20 November 2020

from dumped imports. However, it is also characterized by law enforcement laxity and a hidden use of Thai discretion. Additionally, Thailand lacks exceptional invention and has not generated high-tech innovative products. As a result, Thai exports remain fundamental consumer items that are vulnerable to being identical when exported to international markets, posing a danger of AD investigation. What constitutes a component that contributes to China's strength is still a point of contention for Thailand. This takes Thailand closer to recession than it was previously.

Even lax law enforcement and a lack of new product creation are challenges for Thailand and may take a long time to address. However, Thailand can take a more active role in implementing AD measures to preserve domestic industry, as China has done. Thailand's internal industry will play a larger part in the global AD process if it is given the ability to apply for additional AD investigations. Increasing the chances for industry insiders to participate in the AD process lowers the entry barrier for small and medium-sized businesses. The most effective method of lowering the barrier is to lower litigation costs.

It is true that even financial burden with regard to the anti-dumping procedures from the initiation through the investigation until the final stage of decision might be relatively high and often feature as complaints from the developing countries in many cases, the overall benefits that might derive from the application of such anti-dumping rules can possibly cover the cost that has been paid.⁷⁹³ However, in Thailand, it might take up to two years before an applicant for an AD investigation is fully recovered. Thus, it appears as though launching a case on one's own behalf is a waste of money. Thus, the existence of extremely high costs for commencing an AD investigation and submitting requests for further information throughout the AD investigation process has discouraged domestic industry that is not financially strong from making a complaint. The high fees are not imposed in accordance with WTO law, but are instead imposed internally through the issuance of ministerial regulations. Thus, in order to address the high costs that obstruct the execution of AD investigations, it is the responsibility of Thai government agencies to amend ministerial regulations. It is not necessary to make a claim to WTO to amend this aspect of the regulations.

Meanwhile, Article 10 of the AD Act erodes interested parties' right to information by stating that the Ministry of Commerce has the authority to prescribe appropriate fees or charges, with

⁷⁹³ Eunjo Lee, 'The Use of Antidumping Agreement of the WTO and Legal Capacity of Developing Countries', (Master's Degree thesis, Seoul National University 2016)

fees of up to 10,000 THB (approximately 220 GBP) for inquiring information pursuant to notifications for the execution of this AD Act under the Ministry of Commerce Volume 138 Section 62D effective on March 19, 2021 (and notifications for the execution under the DFT as effective April 12, 2001). The charge, which can reach 10,000 baht, is more than the minimum monthly income in Thailand, which is just 336 baht per day worked.⁷⁹⁴ As a result, even individuals seeking an AD inquiry may not be paid the minimum wage. However, designating a price that is more than the minimum wage is a designation that does not account for other costs associated with an AD inquiry, such as attorney fees.

Although filing a request for an AD investigation does not require the involvement of a lawyer or accountant,⁷⁹⁵ the Ministry of Commerce's announcement regarding the submission of an AD investigation, Volume 138 Section 62D of the royal gazette (on 19 March 2021), requires the Investigation Request Form which includes a mandatory entry for accounting-specific information and a glossary of anti-dumping law terms. Additionally, the normal value and dumping margin must be determined. As a result, filing a claim without the assistance of someone with specialized knowledge is practically difficult. Filing in manually runs the danger of presenting erroneous dumping and injury information, and Thai AD law is silent on the extent to which the Committee and the DFT will allow for amendments after the applicants submit an AD investigation request.

The exorbitant fees imposed as hurdles hindered the domestic industry from participating in AD investigations as fully as they should. On the other hand, it is not a hindrance for countries with a higher economic status than Thailand, such as the US, the EU, or large emerging economies such as China, to join the Thai AD investigation process, because the financial cost that they, as an alleged dumper, have to bear is relatively low according to the currency value and the structure of legal costs built in developing and emerging countries. Not surprisingly, they account for those who are not adversely and seriously affected by such rules and policies. When the cost of anti-dumping case operations from the developed countries' standpoint is relatively low and they are capable of handling it with no financial tension so they can fully exercise their rights and do whatever it takes to keep their products on the market with the

⁷⁹⁴ Ministry of Labour, The minimum wage rate (Ministry of Labour Thailand, 1 January 2020)

<<https://www.mol.go.th/อัตราค่าจ้างขั้นต่ำ>> accessed 20 November 2021

⁷⁹⁵ Trade Interests and Remedies Division, 'Anti-Dumping Guide' (Ministry of Commerce, 2021)

<https://www.thaitr.go.th/storage/measure_info/HTXEDZVOnhvnVh0GRrR5gGqPJ8bplCXqo7XJbjkW.pdf> accessed 20 November 2021

lowest possible AD duty burden or to avoid all AD duties entirely. As a result, these products continue to flood the domestic market, having a negative effect on the domestic manufacturing sector. The Thai government's fee rules have evolved into such that they limit the opportunities of domestic businesses, which are in desperate need of protection. On the other hand, these guidelines do not impose any restrictions on developed or major emerging economies that are influential and capable of inflicting damage on domestic industry. As a result, when those countries enter the AD investigation process, they are indirectly advantageous.

Another strength of large emerging economies is their strong political systems. As can be seen, China has launched an AD investigation and implemented AD measures on a broad range of products. Additionally, with the support of the Chinese Chamber of Commerce, it urges its domestic industries to fully participate in the overseas AD investigation process.⁷⁹⁶

It is true that each industry in the country has a unique spectrum of commercial value, and as a result, they have varying degrees of influence over the progressive stages of raising awareness among related governmental organs about the need to protect their industries from being overwhelmed by dumped imports. Heavy and large-scale industries, such as steel and chemicals, typically succeed in gaining government awareness.⁷⁹⁷ However, protecting domestic industry against dumping in Thailand often means prioritizing certain types of goods and abandoning others. Thailand overlooks the reality that Thai agricultural products are a major driver of the economy and are under threat from low-cost foreign agricultural products. Protecting agricultural products and their byproducts against dumping is demonstrated by the frequent AD cases involving shrimp, vitamins, and textiles in the United States.⁷⁹⁸ Meanwhile, rubber and paper are the obvious examples in the European Union.⁷⁹⁹

Thailand continues to face a conflict between the advantages of the political sector and the aims of economic progress. As a result, accelerating the investigation of AD on agricultural products dumped into Thailand will have a detrimental effect on the food sector and the

⁷⁹⁶ Gustav Brink, 'Anti-dumping and China: three major Chinese victories in dispute resolution' (2014) 47 *The Comparative and International Law Journal of Southern Africa* 4

⁷⁹⁷ Dirk De Bièvre and Jappe Eckhardt, 'Interest groups and EU anti-dumping policy' (2011) 18 *Journal of European Public Policy* 339

⁷⁹⁸ Akbar Marvasti and David W Carter, 'Domestic and imports sources of supply to the US shrimp market and anti-dumping duties' (2016) 43(6) *Journal of Economic Studies* <<https://www.emerald.com/insight/content/doi/10.1108/JES-06-2015-0109/full/html>> accessed 20 November 2020

⁷⁹⁹ Dibyendu Maiti, 'Anti-Dumping, competitiveness and consumer welfare: a study on commodity prices with a special reference to India' (2012) 51(1-2) *Indian Economic Review* <<https://www.jstor.org/stable/44376241>> accessed 2 July 2022

livelihoods of a large number of people. Additionally, agricultural commodities are industries produced by low-income individuals,⁸⁰⁰ implying that they have no capacity to conduct AD investigations. As a result, Thailand has resorted to subsidizing farmers rather than encouraging them to undertake AD investigations. Additionally, such financial support for agriculture is consistent with the Thai political sector's goal of gaining favor with the country's huge farmer community and thus increasing their chances of re-election in the future.⁸⁰¹ On the other hand, heavy industry sectors such as steel and chemicals contribute significantly to the country's GDP growth, prompting the government to recognize the industry as a driving force behind the anti-dumping amendment, as they are adversely affected by dumped imports of steel products, primarily from China and India.⁸⁰² While encouraging the steel sector to begin anti-dumping investigations benefits the steel industry, it also increases the price of some agricultural implements made of steel imported from China, which has a negative impact on agribusiness.

Whether urged or pressed, the government agency responsible for commercial policies and regulations, in particular, the government administration, which is the supreme authority in establishing anti-dumping rules, has been unable to disassociate itself from its political popularity addiction. Furthermore, this is related to some personal gains resulting from the adoption of legal, economic, and political policies that are especially consistent and lenient in the direction of certain large countries. As a result, the mechanism by which dumping decisions are made remains dependent on changes in the political popularity rating. It is true that every government in the world wishes to retain its popularity with the public, and the Chinese government is no exception. However, political stability in Thailand is extremely fragile, and no administration can last as long as China. As a result, anyone assumes an executive role desires to remain in government and maintain the electorate's popularity for as long as possible. Certainly, the imposition of AD measures can improve government popularity in the eyes of a particular industry because it prevents local businesses from being wiped out of the market and losing their 30% to 50%, and in certain circumstances, 100% market share.⁸⁰³ However, it has

⁸⁰⁰ Busabong Chaicharoenwattana, Bunmi Lee and Thepkon Songkhla, *Legal Obstacles and Development Policies Affecting Poverty in Thailand* (King Prajadhipok's Institute 2002)

⁸⁰¹ Editorial, 'Looking at the rice-pledging case until the next campaign policy' *iLaw* (Bangkok, 29 September 2017) <<https://ilaw.or.th/node/4636>> accessed 22 November 2019

⁸⁰² Office of the National Economic and Social Development Council, *Gross Domestic Product : Q4/2020* (NESDC, 2021) <https://www.nesdc.go.th/nesdb_en/ewt_news.php?nid=4445> accessed 2 July 2021

⁸⁰³ Henrik Isakson, 'When Anti-dumping Meets Globalization: How Anti-dumping Can Damage the Supply Chains of Globalized European Companies' (2008) 3 *Global Trade and Customs Journal*

altered the perceptions of some domestic customers, who believe that states are limiting their opportunity to purchase cheaper items from abroad.

Thailand lags behind China on multiple fronts, including the lack of strict enforcement of laws and the creation of a wall against domestic industry to obstruct access to AD investigations. This is a critical intersection that enables China to be an active country in AD law, effectively protecting domestic industry from dumping. Additionally, Thailand does not develop innovative items in the same way that China does. This places Thailand at a high risk of being subjected to the "Like product" criteria, which is at the heart of the AD investigation and thus exposes products exported from Thailand to AD measures in foreign markets, as the barrier to entry for "Like products" produced in Thailand is extremely low.

Conclusion

Increased exports result in a drain on excess supply. Occasionally, excess stock is imported into Thailand by way of dumping. Anti-dumping measures come as a safety method serving the government as an alternative way to help the domestic businesses in crisis.⁸⁰⁴ Simultaneously, large emerging economies employ AD strategies to fight another country that employs similar measures against them, so reducing their competitors in the global trade arena and strengthening their own economies.⁸⁰⁵

In the issue of emerging countries, it demonstrates a participation, legal awareness, modification of law and strict enforcement. External variables outside Thailand have both beneficial and negative consequences, especially the high level of dumping in Thailand, which prompted a review of the law and the addition of significant provisions to expedite the AD procedure in dealing with duty avoidance. Simultaneously, external factors such as China's investment cooperation in infrastructure and network projects have weakened Thailand's AD process and exposed the domestic sector to competition from low-cost products from foreign countries to whom the Thai government has opened channels of entry. This is a direction in Thailand that embraces China's approach, entering too deeply into the political economy and geopolitical role, and disregarding the actual basis of AD law as a tool to safeguard domestic industry. Thailand's position has weakened due to the sensitivity of the country's law

⁸⁰⁴ Sasatra Sudsawasd, 'Tariff liberalization and the rise of anti-dumping use: Empirical evidence from across world regions' (2012) 26 *The International Trade Journal* 4

⁸⁰⁵ J Michael Finger and Nellie T Artis, *Antidumping: How it works and who gets hurt* (University of Michigan Press 1993)

enforcement system in AD procedures and the growing strength of large emerging economies such as China. Thailand's AD process is deficient in terms of law enforcement, innovation, and its position in the international economic arena. On the other hand, that is precisely what China has accomplished over the last decades. Thailand's AD process has challenges inherent in the country's own law enforcement system, as well as the country's strength in the region where it has become an active user of the AD process. This begs the question of how Thailand should proceed in resolving this matter.

CHAPTER 6 THE COMPASS OF AMENDMENT

Introduction

The existence of AD law in Thailand was initially overlooked by Thai government entities due to the absence of a clear and significant dumping occurrence in Thailand. As such, the AD measure is merely a model of law that Thailand is compelled to implement as a result of its WTO membership. However, in recent years, inexpensive Chinese items, particularly steel, have been offered in Thailand, leading domestic enterprises to be unable to sell their products and incur losses, prompting government agencies to take anti-dumping measures seriously. And when anti-dumping efforts fail to generate the desired results, government agencies work to resolve the issue.

This chapter discusses the assumptions made by the Thai government agency and the solution chosen to the dumping problem. And what purpose does such a solution serve in relation to the issue at hand? Additionally, this chapter discusses how, in addition to resolving surface issues such as adopting AC legal templates to close gaps, it is likely to be considered when examining foreign policy approaches to dumping. Where and how do we need to begin making adjustments to defend Thailand's domestic businesses?

6.1 The illusion of moving forward through the new Anti-Dumping and Anti-Circumvention Act 2019: The truth of remaining stagnant or even taking a step back

6.1.1 Introduction

Chapters 4 and 5 demonstrate numerous flaws in Thailand's AD procedure. What stands out is the confusion surrounding the data selection process and the parameters under which the AD tax should be levied. These ambiguities have corrupted the AD investigative process and judgements, created an absence of a clear standard, and been associated with excessive discretionary powers. The uncertainty stems primarily from political sector interference, with the minister and the Council of Ministers serving as the primary drivers in the AD committee. Additionally, interference is frequently motivated by a desire to retain political favor with a large population of consumers and downstream industries compared to other industries. Additionally, the problem of dumping is exacerbated by China's investment cooperation and large-scale network projects, through which the Thai government allows products that have

previously been subjected to dumping in Thailand to enter the domestic market legitimately without being subjected to AD duties.

Considering this assumption, the answer to the problem is to constrain authority and to exclude political groups from the AD investigative system by a modification in the appointment committee's structure and the elimination of as many discretionary powers provisions as possible. Additionally, it must offer information in some areas of the AD law to ensure that the criteria are clear, rather than let authorities interpret the law for themselves.

However, the Ministry of Commerce, as the agency charged with protecting domestic industry from dumping, did not perceive the issue as this thesis hypothesized. However, the Ministry of Commerce expects that Thailand will experience significant dumping, particularly of steel exports, as a result of the absence of AC measures.⁸⁰⁶ The Ministry of Commerce decided to amend the AD law by introducing an AC provision aimed at reducing the number of products causing harm to the domestic market and thereby promoting economic stability through strengthened anti-dumping measures. The Ministry of Commerce chose to enforce AC provisions in 2019, but a year later, the scenario with Thailand's dumping demonstrates that the Ministry's estimates were inaccurate, resulting in a 300 percent increase in steel spillage into the country.⁸⁰⁷ Indeed, the existing AD statute lacks the legal authority to regulate such misuse and operation, and AC provisions are necessary to facilitate the extension of the AD duty to goods intended to escape the AD tax. However, that is not a method that will result in a successful resolution of the problem that the Ministry of Commerce wants to address.

This section discusses how the Ministry of Commerce made incorrect assumptions and mishandled the anti-dumping investigation. Also, the solution chosen by the Ministry of Commerce is similarly faulty in that it is dominated by ambiguous terms and broad discretionary powers connected to political interference, which is the only shortcoming in the original AD statute. Overall, this thesis argues that there are still issues in the solution, and hence such additional legislation is ineffective.

⁸⁰⁶ Siribhusaya Ungphakorn, 'Circumvention of anti-dumping and countervailing measure: Criteria, investigation procedure and legal penalty' (2019) 48 *Thammasart Law Journal*

⁸⁰⁷ Iron and Steel Intelligence Unit, *Thailand Steel Outlook* (2020)

<<https://iiu.isit.or.th/en/reports/Monthly%20Thailand%20Iron%20Summary.aspx>> accessed 23 November 2020

6.1.2 Law amendment and unresolved issues

Circumvention and its rules preventing such conduct are **not highly recognisable** with legal practices in Thailand both in the stages of individual and government as the users and the enforcement of the law.

The initiation of this amendment was first commenced by various concerns in the form of requests, including unsatisfactory and unacceptable statements towards the Ministry of Commerce, which were submitted by a great number of domestic business entities. Those handing in such criticism were mainly involved in the steel industry since they encountered very high competitiveness for their products, especially in terms of the selling price in the domestic market according to the circumvention of steel products duties by foreign exporters and traders.⁸⁰⁸ As a consequence, steel manufacturers and traders in Thailand have been suffering from financial difficulties, driving them and the government to elevate the level of domestic business protection as a result. The steel industry was a key driver of the amendment of this law, due to the high export volume compared to Thailand's GDP.⁸⁰⁹

The new anti-dumping law has recently been added by the provisions of anti-circumvention to tackle the evasion of anti-dumping duties which might be applied if those products had been imported directly into Thailand's territory from a particular country of origin.⁸¹⁰ AC provisions are developed to shield domestic manufacturers, traders and business entities from imported commodities that are circumvented by overseas firms or individuals acting as exporters to evade certain rates of anti-dumping duties which would normally be imposed on such goods.⁸¹¹ However, it is actually stationary since nothing has changed dramatically in practice. It is the illusion of moving forward since Thailand is in the exact same place; if compared with the rest of a fast-moving world, Thailand might even be considered to be taking a step back.

The most important aspect of the revision lies in its addition, the anti-circumvention provision, which provides for the **automatic expansion** of legal power originally from the anti-dumping rules to the products which are circumvented at the time. It is conceded that this addition

⁸⁰⁸ Editorial, 'Urgently amend the law tackling anti-dumping tax evasion' *Prachachat Business* (Bangkok, 4 January 2019); Editorial, 'Chinese steel destroys the world. Thai entrepreneurs are desperate to fight.' *Thansettakij* (Bangkok, 18 February 2016)

⁸⁰⁹ Editorial, 'Speed up the law amendment to tackle anti-dumping duties evasion' *Prachachat* (Bangkok, 4 January 2019)

⁸¹⁰ Anti-Dumping and Countervailing Act, B.E. 2562 (2019), s 71/1 to 71/14

⁸¹¹ Deunden Nikomborirak, *The WTO Doha round of trade negotiations : strategic preparation of the Thai industrial sector* (Thailand Development Research Institute 2004) 32

potentially shortens the process in cases of anti-dumping duty evasion. However, it cannot render automatic expansion if the enforcement of anti-dumping is ineffective or cannot be done as such.⁸¹² Because the AC method is an extension of the AD method, if the AD method does not impose AD duties on the product, the AC method has no legal effect on such products. For example, the committee may find that there is actual steel dumping. However, the power of Article 7 promotes downstream businesses that use steel as a component. No AD duties will be applied on steel products since greater production costs will damage downstream industries. In this case, no AD duties are charged on steel products. So, despite the surge of steel into Thailand, whether legitimately or illegally brought in, the AC measure could not tax those products.

The addition of AC provisions gives the law more details, seeming to potentially fill gaps and increase the efficiency of the process. However, it does not overcome the obstacle of enforcement. This is an important milestone in the discussion of the issue of amending the Thai Anti-Dumping Law. It does not reflect the structural solution of law enforcement by the people involved, or it may be just theoretical because, in fact, political influence and business interference both in the form of personal interests and the interests of allied countries which economically and politically connected to geopolitics and political economy power still play a vital role in the deflection of the process according to the context of Thailand. **Structural amendments to law enforcement and reducing improper intervention are also needed.**

The Anti-Dumping and Countervailing Act, B.E. 2542 (1999) has already been amended and the the Anti-Dumping and Countervailing Act, B.E. 2562 (2019) was officially issued in the Royal Gazette on 22 May 2019. It was made effective 180 days after the time it was officially issued.⁸¹³ There are a total of 20 articles in the newly added provisions, running from Section 71/1 to Section 71/20. Five of the twenty articles, accounting for more than a quarter of the additional provisions, also provide the committee and ministers with the power to impose ministerial regulations and ministry announcements on issues central to AC law. The new provisions, supposedly intended to address the ambiguity of AD law, are just as vague as the previous AD statute. The ambiguous statement is in Article 71/3, which examines if there has been a change in trading patterns, which is critical in determining whether a product intends to evade AD restrictions. Additionally, Section 71/4 empowers the minister to develop

⁸¹² Ian Brown, 'The evolution of anti-circumvention law' (2006) 20 *International Review of Law Computers & Technology* 239

⁸¹³ *The Anti-Dumping and Countervailing Act, B.E. 2562* (Royal Gazette Kingdom of Thailand 2019)

calculations and conditions for his own assessment. Similarly, Section 71/6 does not establish a clear framework within which domestic industry can operate in order to defend itself.

The most contentious section is Section 71/17, which grants the committee discretionary authority to terminate the AC measure that extends the collection of AD duties without specifying in the statute which type of circumstances the committee may terminate. Indeed, not all committees are disposed to exercise arbitrary authority in order to terminate the extension of AD duties collection and the Committee would almost certainly cease collecting such duties if it was determined that no circumvention occurred. However, there is no certainty that this will be the case through legal provisions. The situation with Section 71/17 is even worse than the cessation of AD duty collection, because there was originally a Ministerial Regulation published in the Royal Gazette Volume 119 Section 112A (on 11 November 2002) stipulating that if the dumping was less than 2%, the process could be terminated. Meanwhile, no criteria have been established in the AC rules, and there is no provision authorizing the ministerial regulation to be applied to the AC method as well.

6.1.3 New provisions and remaining discretion

It is accepted that the industry plays a role and pushed the amendment, but pushing in the wrong direction may not be a useful action because it brings about additional texts while the basis of weak enforcement remains stagnant. As such, this is the most significant obstacle and challenge for the Thai legal system and AD procedure.

Both the pivotal and general provisions contain clauses providing for official discretion. Additionally, it is worth noting that in some instances, the laws may not directly provide discretion. However, the indisputable practice has been spread to the point where officials have grown accustomed to it, and there is no viable remedy to this problem. Thailand's anti-circumvention regulations limit the duration of the process to nine months, with a maximum extension of three months pursuant to Article 71/16. Even while it stipulates that the term of extension cannot exceed three months, the actual duration may be one to two years or longer, similar to the scenario in the AD inquiry. **This is yet another discretionary role in delaying law enforcement and the inability to protect business in the country. At least, the discretion should be removed from the provision but the problem is that this is element**

is not drawn from the law, and therefore has also not been removed from the actual practice which sometimes consists of discretion which is too wide.⁸¹⁴

Simultaneously, there are expressly stated discretionary provisions that are critical to anti-circumvention considerations. The ambiguous statement appears in Article 71/3, which examines whether trade patterns have changed, which is critical in determining whether a product intends to bypass AD restrictions. Additionally, Section 71/4, which elaborates on the trade pattern, empowers the minister to formulate calculations and criteria for his own assessment. These clauses establish the scope of the circumvention's interpretation and practice, stating what and to what extent the circumvention entails and will be applied.

Sections 71/3 and 71/4 provide an overview of the circumvention principle. Firstly, the way trade and transaction of such particular business and product have performed will be examined in aspects of the **pattern**, which will be selected as a period of time through the **ordinary course of trade and cycle of a particular product**.⁸¹⁵ It aims to see whether there is a change of such movement and figure, specifically quantity and prices, running in the market at the time. Such outstanding fluctuation will be in the light of circumvention if it can be examined that there are no other reasonable grounds behind such event except the circumvention of such product from the anti-dumping duties into the domestic market.⁸¹⁶ It is frequently considered that such change is an essential element **attacking prices and quantity** of particular products as a consequence of the evasion of anti-dumping measures.⁸¹⁷

These two provisions also develop that **the transmission of minor modified products** instead of the one traded in the ordinary course of business, exportation via a third country, whether single or multiple nations as a port of last departure before the entrance of Thai Border as well as the **importation of unfinished or partly-finished products** instead of the fully-composed and functioned products with the hidden **purpose of evading** certain duties then having an additional production line to comprise the rest of procedures in Thailand or other countries considered to be the use of **third-nation avoidance** are all accounted for the effort of changing pattern of trade which can be, together with other potential factors, considered as

⁸¹⁴ Section 71/16 of the Anti-Dumping and Countervailing Act, B.E. 2562 (2019)

⁸¹⁵ Section 71/3 (1) of the Anti-Dumping and Countervailing Act, B.E. 2562 (2019)

⁸¹⁶ Simon Holmes, 'Anti-circumvention under the European Union's new anti-dumping rules' (1995) 29(3) *Journal of World Trade* 161

⁸¹⁷ Section 71/3 (2) of the Anti-Dumping and Countervailing Act, B.E. 2562 (2019)

circumvention and a violation of the Act.⁸¹⁸ Additionally, false declarations of import have been used to circumvent AD duties.⁸¹⁹

However, the final paragraph of both articles emphasizes that this detailed examination of circumvention must be in compliance with the Ministerial Regulation, which is the argument we have made in arguing that it fosters uncertainty and the possibility of discretion returning to the AC process. What's worse is that it's been nearly two years since the AC law took effect. However, no such ministerial regulation exists. Indeed, ministerial regulation is a manifestation of the administration's unrestricted discretion. However, failing to issue ministerial regulations worsens the situation because the AC provisions are inadequately detailed. Consequently, the authorities' discretion cannot be avoided in the interpretation.

The problem of a clear-cut definition of what circumvention is and a timeframe for the procedure mean there are still some problems with interpretation and ambiguity, which could lead to abuse of discretion. Thus, clearer standards and norms need to be established in subsequent amendments and criteria for determining the case should be separated into each element in any case.

6.1.4 Other Controversial AC Law Issues

The anti-circumvention rules are designed to fulfil the anti-dumping measure in the case that such a measure cannot be applied thoroughly to the product at risk. Anti-dumping duties have to pass several stages before the imposition, while anti-circumvention is questioned in terms of the stages of consideration possibly not being enough to impose as a level of effectiveness for anti-circumvention rules to particular products equal to the imposition of anti-dumping duties.⁸²⁰ However, it can be observed that the anti-circumvention measure has already leaned on the anti-dumping measure process and certain processes are possibly excluded to tackle the circumvention at a faster pace. **In this regard, it can be seen from another view that the increasing stages of consideration might create more vulnerability because the process will involve more committees. Multi-layered deliberation could indeed provide the best**

⁸¹⁸ Section 71/4 of the Anti-Dumping and Countervailing Act, B.E. 2562 (2019)

⁸¹⁹ Jai S Mah, 'Anti-circumvention and the Harmonized Rules of Origin in the WTO' (1999) 22 World Competition 111 <<https://heinonline.org/HOL/LandingPage?handle=hein.kluwer/wcl0044&div=14&id=&page=>> accessed 18 September 2020

⁸²⁰ YiJun Tian, 'Problems of Anti-Circumvention Rules in the DMCA & More Heterogeneous Solutions' (2004) 15 Fordham Intellectual Property, Media & Entertainment Law Journal 749

solution but, in the Thai context, it could also be a weakness that allows multiple channels of intervention to exist.⁸²¹

There are further arguments opposing the existence of AC law, although they are argued in the context of universal enforcement, not in Thailand. Certain publications and scholars point out that the anti-dumping duties and anti-circumvention measures might not be necessary to tackle the problems.⁸²² The question that must be raised is **whether such an additional section is effective** and whether the circumvention **could be tackled by other methods rather than the anti-circumvention measure itself**. These questions draw the consideration of the extent to which the anti-dumping and anti-circumvention law should be further amended and in which way. Furthermore, such an amendment might be ineffective, even after it has been enacted.⁸²³ Additionally, it is demonstrated that it may theoretically be handled under the existing customs and export and import of goods acts. However, the presentation did not describe how the customs law would be implemented or how it would defend domestic industry in a manner comparable to the usage of AD and AC regulations. However, while considering the benefits of customs law in relation to the application of AD and AC legislation, Customs laws have the potential to significantly increase the use of AD and AC measures in determining the country of origin for goods for which Thailand lacks a systematic RoO criteria. In this sense, customs laws can bolster AD and AC procedures.

6.1.5 Conclusion

It is true that, for some provisions, Thailand has to adopt foreign frameworks due to international obligations based on the conventions it has joined.⁸²⁴ When the Anti-Dumping Act reached the point that it had to be amended, provisions of anti-circumvention were added as the final pinpoint of revision, if based on the EU's model. However, adding provisions as a solution will not work in the Thai context; rather, it reflects the Thai government agency paradigm of responding to the problem of ineffective legal enforcement of anti-dumping law by adding measures that cannot be properly implemented within the system. The next level

⁸²¹ J Edgardo Campos and Sanjay Pradhan, 'The many faces of corruption: tracking vulnerabilities at the sector level' (2007) The World Bank <<https://openknowledge.worldbank.org/handle/10986/6848>> accessed 11 November 2020

⁸²² Michael Webb, 'The Ambiguous Consequences of Anti-Dumping Laws' (1992) 30(3) *Economic Inquiry* 437

⁸²³ Shushanik Hakobyan, 'Do Anti-dumping Duties Still Matter? The Curious Case of Aluminium Foil' (2018) 17(4) *World Trade Review* 557

⁸²⁴ Kittisak Prokkati, *Background and principles of the use of Juristic Method in civil law and common law* (Winyuchon 2008)

should contemplate returning to the basics of law enforcement structures to provide the most effective and **localised provisions** in the review process for more stringent checks and balances than those used abroad, thus preventing the abuse of discretion by law enforcement entities and other forms of potential interference. By resolving these issues, the Thai system will progress rather than stagnate or regress.

6.2 *Adaptation of EU frameworks towards change: Is it worth pursuing?*

6.2.1 *Introduction*

While the global trade environment is rife with dumping, each country has attempted to develop mechanisms to prohibit such actions in order to defend its domestic industry. Along with the anti-dumping law that the majority of countries have implemented, the AC measure mentioned in the preceding section has gained attention from some countries, as exporters seek opportunities to avoid AD duties either through changes to the product itself or through changes to the product's origin. The European Union has also adopted the AC technique, as outlined in Article 13 of Council Regulation (EC) No 2016/1036 on June 8, 2016 on protection against dumped imports from non-EU member countries (OJ L 176/21).⁸²⁵ Thailand's adoption of an additional AC approach in its anti-dumping system is one of the ways in which Thailand follows the European Union's lead as a model country, over which the European countries have had legal influence for 166 years. However, the AC approach has not been successful in Thailand.

This chapter discusses the European Union's other reactions to dumping, including how, in addition to enforcing AC measures, the EU has practiced, detailed, and responded to the dumping problem in order to keep up with the current situation. Additionally, what factors does the EU consider when developing AD and AC processes that Thailand could employ to further improve its practice on AD and AC measures beyond simply getting a legislative template?

6.2.2 *A focus on regional countries and the adoption of new social factors*

Collaborations of nations frequently result in privileges, including benefits of product origin, where items are accounted to be manufactured on the member states' territory, allowing for an agreement to lower the tax barrier. This enables exporters from non-member countries to take

⁸²⁵ Council Regulation (EC) 2016/1036 on protection against dumped imports from countries not members of the European Community [2016]

advantage of the presence of several member states that may grant these privileges in order to make their goods appear to have originated in those member states, thereby obtaining tax privileges and, in some cases, exemption from AD duties, as the AD duties measure may not be imposed on goods produced on the Member State's territory at the time.

Thailand is one of the ASEAN Economic Community's 10 member states (ASEAN).⁸²⁶ Thailand has extensive trade relations with Vietnam, which is also an ASEAN member.⁸²⁷ This makes it uncommon to apply AD duties on Vietnamese-made products, as Vietnamese-made products do not engage in dumping against Thai-made products.⁸²⁸ However, the existence of ASEAN membership has enabled non-member countries such as China, which has heavily dumped imports into Thailand over the last decade and has been subjected to AD measures, to export goods from China to Vietnam first in order to distort the origin of the products and thus avoid being subjected to AD duties.

Thailand has attempted to address the issue of AD duty evasion by enacting AC legislation that addresses false representations of origin or transshipment in order to conceal the true country of origin. However, it does not cover all possible avoidances in high-risk situations.

What the European Union has done is to launch legislation that also tackles the problem of **products shipped offshore from a continental area** and the Exclusive Economic Zone of EU Member States. This is because previous legislation did not cover this situation, and it remains a loophole for exporters to sidestep their products into the EU.⁸²⁹ These intensive and progressive provisions are highly valuable for Thailand in terms of the elevation of anti-dumping and the anti-circumvention process because Thailand lacks details of AD and AC laws that specify specific conditions for investment promotion zones, industrial estates, and a port that is an exclusive economic zone with ASEAN member countries. Additionally, because the European Union takes regional economic cooperation into account, it requires the EU to publish a guide in all EU languages on trade defense instruments, including the AD procedure and investigation for joint surveillance and measures to protect intra-regional trade from illegal

⁸²⁶ Kusuma Snitwongse, 'Thailand and ASEAN: Thirty years on' (1997) 5(1) Asian Journal of Political Science 87

⁸²⁷ Jirayut Srimuang, Relations between Thailand and Vietnam in the New Millennium Period: Perspective of International Political Economy (2016) 2(2) Burapha Political Economy Journal < <http://www.polsci-law.buu.ac.th/pegjournal/document/2-2/5.pdf> > accessed 2 July 2022

⁸²⁸ Department of Foreign Trade, 'Products that Thailand has imposed by AD measures (50 items)' (DFT 2021) <<https://www.thaitr.go.th/storage/file2/fUANvgP6yQdWJurgltN1QdOp2WascfOoAa6TaWDi.xls>> accessed 2 July 2022

⁸²⁹ Commission, 'EU modernises its trade defence instruments' (Brussels, 23 January 2018)

trade attacks. Regional cooperation for trade defense will be facilitated by providing information on these measures to small and medium-sized businesses and is not limited by language barriers or the cost of access. Economic cooperation is a defining feature of the European Union's trade policy and legislation. This is an opportunity to strengthen cooperation in the regions of which Thailand is a member. Thailand is a member of the RCEP Group, for which the RoO rules are being developed as a foundation for the development of trade protectionism enforcement mechanisms.⁸³⁰ This is the first regional entry point directly related to the enhancement of AD and AC implementation that must be pursued.

Apart from recognizing the aforementioned economic cooperation, the EU's legal framework is adaptable to new social factors such as the environment and labor rights. The EU adapted the “lesser duty rule” to impose the duties depending on the dumping margin and calculation in terms of edited price.⁸³¹ It will cover the **cost of environmental rules compliance**, such as the regulations from the Emissions Trading System.⁸³² This will illustrate the cost of business better than in the past where, for example, only key expenses such as research and development of infrastructure could be taken into account. The EU will also put further concentration on environmental and social issues in the consideration of anti-dumping than before as in the case of the country related to the infringement of labour or environmental international agreement.⁸³³

It is unquestionably something that Thailand's AD process should adapt to in light of these social and environmental factors. However, it is not the most critical concern Thailand faces in comparison to closing loopholes created by the importation of products and evasion of AD duties via channels in areas of economic cooperation with Thailand.

6.2.3 Streamlining the AD process and incorporating mechanisms that benefit small businesses.

The EU trade defence instrument (TDIs) was determined by the EU Commission to be amended as it is not updated according to the current global trade situation. Since 1995, it has

⁸³⁰ National News Bureau of Thailand, Parliament Ratifies RCEP Treaty (Bangkok, 12 February 2021) <https://thainews.prd.go.th/en/news/detail/TCATG210212112059830> accessed 23 November 2021

⁸³¹ Alexander Sandkamp, 'The trade effects of antidumping duties: Evidence from the 2004 EU enlargement' (2020) 123 *Journal of International Economics* 103307

⁸³² Kiliane Huyghebaert, 'Changing the Rules Mid-Game: The Compliance of the Amended EU Basic Anti-Dumping Regulation with WTO Law' [2019] 53 *Journal of World Trade* 417

⁸³³ Wolfgang Müller, *The EU's new trade defence laws: A two steps approach*, *The Future of Trade Defence Instruments* (Springer 2018) 45

been the first important amendment towards the anti-dumping issue.⁸³⁴ This amendment emphasises the equivalence of domestic business, consumers and importers. It also brings a shorter period for the process regarding anti-dumping, which leads to a more **effective outcome** as well as **transparency** in the overall procedures. The most important point is that this amendment is designed to tackle the current fast-moving changes in global trade since the EU encountered weak dealing with the dumped goods imported to the EU.

The EU offers a more expedited procedure that will take a maximum of an 8-month period instead of 9 months **without an extension of time by the discretion of a committee, like in Thailand.**⁸³⁵ The length of the AD process has an effect on the cost. The cost to a business of participating in a lengthy AD investigation and not knowing when the process will conclude has pushed entrepreneurs to the brink of insecurity. The shorter the process time, the more quickly businesses can determine whether their goods are subject to AD duties and to what extent their costs are calculated, or whether their products can compete in the domestic market, or whether they need to develop a new business line, a new product, or new manufacturing processes to compete with the influx of products that are ultimately not subject to AD duties. All of these businesses have additional time to adjust their business plans, lowering the risk of a business going bankrupt, which would have a negative impact on overall employment.

In some ways, the risks associated with this business are related to the financial strength of certain businesses, particularly if they are required to pay AD duties upon completion of the investigation process. These are small businesses that face a high risk of failure. These are the motivations behind another European Union policy aimed at establishing a system that facilitates predictable financial planning. Predictability of anti-dumping duty imposition was also developed within the context of EU practice. There will be a **3-week period of prior notification to the exporters of the duties** they have to pay so they have time to arrange a financial plan and other issues before the imposition. This period will then be revised to be extended to 2 to 4 weeks.⁸³⁶

⁸³⁴ Ivo Van Bael and Jean-François Bellis, *EU anti-dumping and other trade defence instruments* (Kluwer Law International BV 2011) 20

⁸³⁵ European Commission, *TDI-TRADE DEFENCE INSTRUMENTS, ANTI-DUMPING & ANTI-SUBSIDY - A Guide for Small and Medium-Sized Businesses* (Publications Office of the European Union 2018)

⁸³⁶ Edwin Vermulst and Juhi Dion Sud, *The new rules adopted by the European Union to address “significant distortions” in the anti-dumping context, The Future of Trade Defence Instruments* (Springer 2018) 63

6.2.4 A focus on all sectors in the commercial context

When it comes to disputes over dumping, which frequently occur in the context of Thailand, heavy industries such as construction materials, chemicals, electronic components, and plastics are frequently involved. Because these industrial sectors frequently have a high market value, AD stakeholders are frequently domestic entrepreneurs in countries with large business sizes. As a result, small and medium-sized industries become virtually invisible in the context of AD investigation, and Thailand's AD framework becomes less focused on small and medium-sized businesses.

However, in order to protect businesses, the EU also gives purpose to small and medium-sized businesses. Unlike in other countries, it often prioritises the large firms and leaves small local businesses behind, believing that taking them for granted might not result in that much injurious effect. However, it is better to look after every single business, regardless of size, as they could suffer from any economic situation as well. Moreover, the effects that befall small and medium-sized businesses will be more severe than a large company due to their financial strength, experiences, business strategy, team competency and so forth. **SME helpdesk** is built for small and medium-sized businesses in order to facilitate and strengthen their participation in AD investigations.⁸³⁷

This framework is the key method for maintaining EU trade competition and the protection of local businesses. It **emphasises the support of participation by SMEs businesses** and a shorter period for anti-dumping investigation. Meanwhile, when this policy is combined with the shortened AD process outlined in the preceding section, It is more advantageous for SMEs that believe it is worthwhile to initiate an AD investigation.

Considering the large number of SME businesses in Thailand, this progressive change of the EU is quite interesting to draw a legal framework in Thailand. It will cause businesses throughout the country to become aware of their own AD legal rights. All in all, another step that Thailand should take, apart from the current amendment, is to focus on small businesses affected by dumping since Thailand currently has small local businesses that have been severely affected for a certain time by the larger local companies and the overflow of products from China.

⁸³⁷ Hélène Juramy, 'Anti-Dumping in Europe: What About Us (ers)?' (2018) *Global Trade and Customs Journal* 13

The EU continues to strengthen the engagement of all sectors in the AD process by establishing a new procedure that allows a trade union to participate in a dumping investigation as it is the representative of all workers who might face disadvantages from dumping that has occurred.⁸³⁸ Thus, improvements to the EU system must consider not only the impact on business owners, but also the impact on workers in those industries. In these aspects, it is worth observing the amendment done by the EU so as to apply in Thailand as well because it will demonstrate the injury to that country's industry more clearly than Thailand does by using the employment rate as one of the factors for determining the injury from dumping.

6.2.5 The prompt response to the issue and the stance of the EU representative on the anti-dumping issue

Trade defence instruments of the EU before the amendment do not account for total ineffectiveness for business protection, but the same legal provisions have remained since the initiation of the WTO in the 1990s. Thus, it must be amended to be more compatible with the current situation and make the EU the world's leader in global trade. Protective methods of the EU in the past were highly effective and should be more effective in the years ahead as well. The outstanding problems stated by the commission, with regards to this amendment, are the **oversupply** of certain products like steel and aluminium which Thailand also faces.⁸³⁹ This response of the EU is **quite responsive** as this amendment is on the reference of the proposal made by the commission since 2013 when the crisis was not quite severe. However, it had to go through certain processes of consideration until it was launched in 2017.⁸⁴⁰

Simultaneously, the EU became aware of China's massive dumping. Additionally, the EU is conducting a review of its subsidy calculations, which may include the cost of goods imported from countries with distorted market systems. The legislation of the EU regarding the calculation of the dumping margin has been drawn to specifically concern products imported from certain countries that have dramatic market distortion or a government with important

⁸³⁸ Tibor Scharf, Wolfgang Mueller and Nicholas Khan, *EC and WTO Anti-Dumping Law: A Handbook* (2nd edn, Oxford University Press, 2009)

⁸³⁹ Damian Wnukowski, 'Granting Market Economy Status to China: Implications for the EU and Poland' (2016) Polish Institute of International Affairs 902

⁸⁴⁰ Regulation (EU) 2017/2321 of the European Parliament and of the Council of 12 December 2017 amending Regulation (EU) 2016/1036 on protection against dumped imports from countries not members of the European Union; Regulation (EU) 2016/1037 on protection against subsidised imports from countries not members of the European Union; Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union

influence on the trade market.⁸⁴¹ Thailand should have provisions that deal specifically with certain products from certain countries in order to improve the dumping issues. Besides, the EU also has rules that allow new subsidies found in the future investigation to be calculated together with the former duties imposed to collectively tackle illegal acts.⁸⁴² This effectively discourages anti-dumping duty evasion.

Since the influx of Chinese goods began, the EU's serious position on anti-dumping has been obvious. The negotiators in the European Parliament and the Council reached an agreement on the proposal adopted by the Commission in November 2016 to change the EU's anti-dumping and anti-subsidy legislation. Moreover, President Jean-Claude Juncker was interviewed right after the meeting, stating:

“Europe stands for open and fair trade, but as I have said time and again, we are not naïve free traders. That's why we have to make sure that, while upholding the multilateral, rules-based trade system, our legislation allows us to ensure that our companies operate on a level playing field. This is not about any country in particular, simply about making sure that we have the means to take action against unfair competition and the dumping of products in the EU market that leads to the destruction of jobs. Our words have to be followed by decisive actions and this is the kind of action our companies and citizens expect from us. I commend the European Parliament and our governments for having lived up to these expectations.”

The Commissioner for Trade Cecilia Malmström also said,

“We believe that the changes agreed today to the legislation strengthen the EU's trade defence instruments and will ensure that our European industry will be well equipped to deal with the unfair competition they face from dumped and subsidised imports now and in the future. Having a new methodology in place for calculating dumping on imports from countries that have significant distortions in their economies is essential to address the realities of today's international trading environment. The Commission has repeatedly stressed the importance of free, but fair, trade and the agreement today endorse that view. These negotiations have been tough at times and addressed some thorny issues but the speed with which this legislation was agreed is a testimony to our

⁸⁴¹ Van Bael and Bellis, *EU anti-dumping and other trade defence instruments* (6th edn, Wolters Kluwer 2019)

⁸⁴² *ibid* 453-461

commitment that the EU must have effective tools to tackle unfair international trade. With today's successful outcome, the EU will have an anti-dumping methodology in place which will deal head-on, with the market distortions which may exist in exporting economies."⁸⁴³

Thailand lacks a prompt response to concerns and a thorough examination of goods from some nations, as well as the ability to adjust cost calculations to reflect the actual economic situation in some exporting countries with distorted domestic markets. Thailand still has the potential to improve its response to challenges and the Thai state's approach should be more strict.

6.2.6 Conclusion

It is both appropriate and unsuitable to develop Thailand's AD process along the lines of the EU. Appropriateness can be seen in the EU's concept of participation of all sectors, major and small firms, and even trade unions. Processes have also been shortened in order to stimulate broader investigation activities, particularly those conducted by small and medium-sized firms. Establishing process assurance and predictability while taking new social and environmental elements into account is something Thailand should work on in the future.

Thailand, on the other hand, is unable to fully apply the EU's new advancements within the country due to a lack of structural and legal enforcement modifications. In the context of Thailand, it should be highlighted that some issues would require significant work as they might be deep, rotten holes based on the distorted culture and structure of legal enforcement in Thailand. When Thailand successfully resolves structural issues, the EU's concept is extremely suited to be pursued.

Although this thesis aims to address the issue of anti-dumping law in Thailand, anti-dumping law is structured as a tool for dynamic commercial defence. Thus, when it has been amended by adding anti-circumvention provisions following the directions of the EU and the further adjustment of the enforcement structure mentioned above, it should consider what developments under the EU law are likely to adapt to this decade's economy, which is indeed knowledge that Thailand should consider in order to build upon what has been amended and not remain stagnant as it has been for a long time.

⁸⁴³ Commission, 'Commission welcomes agreement on new anti-dumping methodology' (4 October 2017) <<http://trade.ec.europa.eu/doclib/press/index.cfm?id=1736>> accessed 3 September 2018

CHAPTER 7 CONCLUSION

7.1 *Conclusion*

This thesis analyzes Thailand's anti-dumping law (1999–2021) and the legal culture surrounding anti-dumping enforcement in Thailand, as well as the context of this law amendment. It makes an attempt to address the following research questions: How does Thailand's legal culture affect the enforcement of the anti-dumping law framework and its amendment? What are the internal legal cultures and external pressures affecting anti-dumping law enforcement? To answer these two questions, this thesis employs legal realism as a theoretical framework for assessing Thailand's anti-dumping legislation. This thesis examines three factors related to the problem of anti-dumping law enforcement through the lens of legal culture: intervention in the AD consideration process; policy and investment cooperation between the Thai government and foreign countries; and the increasing use of AD measures by emerging countries. From analysis, this thesis suggests that despite efforts to close systemic loopholes, political parties' engagement in investigations and discretionary power are unsolved legal cultural concerns and a significant impediment to AD enforcement.

The thesis also argues that the course of anti-dumping proceedings in Thailand is influenced by the government's public policy in the form of political economy roles and directions and the administration's internal rules on AD, rather than by the actual legal criterion specified in the AD Act, which is modeled after the WTO. In other words, while AD law is important, it is not the primary factor in determining the final AD determination, particularly when the AD committee has complete discretion and is not subject to the checks and balances principle with DFT. The continued influence of politicians and large business corporations, the consistency with which ministerial regulations or ministry announcements are issued, as well as Thailand's economic benefits from large-scale infrastructure projects jointly invested with foreign governments, are all significant factors influencing the enforcement of anti-dumping law. Meanwhile, downstream business protection, Thailand's weak law enforcement system, and Thai government agencies' hypotheses to solve problems that deviate from the real problems are the main factors impeding the anti-dumping law from being effectively applied and protecting businesses within Thailand in accordance with the law's purpose.

It is indisputable that the implementation of a state's legal policy is influenced by a combination of economic and political variables,⁸⁴⁴ which are some of the most important aspects in government decisions. If there are dimensions associated to undermining or improving a country's stability, political and economic influence, whether at the domestic or international level, is a factor that governments find difficult to ignore.⁸⁴⁵ Although the implementation of legal policy from the perspective of jurists focuses on the legal component of how the legal instrument can lead to results, society is not led by a sector made only of lawyers and not driven solely to solve legal concerns.⁸⁴⁶

External forces that impact the manner in which the Thai government chooses to pursue its policies are unquestionably multidimensional and have existed since the time when Thailand was pressured to sign the Bowring Treaty in 1855.⁸⁴⁷

The movement of political power from major western countries at the time pushed Thailand to surrender to those countries in order to avoid colonialism.⁸⁴⁸ Thailand paid a price for doing so, including the loss of its ability to conduct trials against specific persons, the forced abolition of the old trade taxation system, and the reduction of Thai aristocracy power in numerous industries, including the import and export of products.⁸⁴⁹

On the other side, in terms of economics, Thailand's urge to join the treaty was a window of opportunity that provided the Thai state with access to a broader global market and resulted in a growing economy.⁸⁵⁰

Following the period of Thailand's accession to the WTO, it was undeniably due to economic incentives that Thailand sought to boost its exports and implement more foreign-oriented

⁸⁴⁴ Duenden Nikhomborirak, Wirawan Paiboonjittaree and Natthanicha Lefilibert, 'Regulatory Impact Analysis' 2014 < https://tdri.or.th/2015/04/ria_final/ > accessed 8 September 2022

⁸⁴⁵ Khankit Siriphuntrap, 'The Relationship Between Economic Politics And Government' (2017) 2 *Journal of Modern Learning Development* 19 < <https://so06.tci-thaijo.org/index.php/jomld/article/download/240259/163709/823863> > accessed 8 September 2022

⁸⁴⁶ Premika Boonkerd, 'Workplace Spirituality of lawyers' (Master degree thesis, Thammasat University 2015) < http://ethesisarchive.library.tu.ac.th/thesis/2015/TU_2015_5702036053_3367_2078.pdf > accessed 8 September 2022

⁸⁴⁷ Dhitiphong Meethong and others, 'The Bowring Treaty with the Economic Impact of Thailand Buddhist Era 2398' (The 12th NPRU National Academic Conference, Nakhon Pathom, 9 July 2020)

⁸⁴⁸ Nucharee Nuchkoom Smith and Robert Brian Smith, 'Has Thailand learnt any Lessons from the Bowring Treaty and the Treaty of Amity?' (2019) 5 *Athens Journal of Law* 405

⁸⁴⁹ *ibid*

⁸⁵⁰ B Jan Terwiel, 'The Bowring Treaty: Imperialism and the Indigenous Perspective' (1991) < https://thesiamsociety.org/wp-content/uploads/1991/03/JSS_079_2f_Terwiel_BowringTreaty.pdf > accessed 7 July 2022

policies.⁸⁵¹ Furthermore, Thailand has the power and political incentives to prove that Thailand is totally on the liberal side, particularly in alliance with influential western countries.⁸⁵²

Most recently, Thailand encountered external pressures that had a substantial political and economic influence, such as China's growth in the region through the OBOR project, which intends to unite governments of Asian countries through infrastructure collaboration.⁸⁵³ Thailand, in particular, embraced the agreement proposed by China because Thailand would like to form a strong alliance with an influential country such as China in order to strengthen Thailand's position in international politics, which would lead to economic benefits by having China as an important and influential trading partner.⁸⁵⁴

Over the last decade, China is growing influence in the global, Southeast Asian area, and has created political and investment challenges that have had a significant impact on Thailand.⁸⁵⁵

When we look beyond the context of this AD research, we can see that China's political and economic influence on Thailand is considerably stronger. Thailand's position, in particular, is fully consistent with China's position on continuing the "One China Policy,"⁸⁵⁶ which China had contested with Taiwan in the event that US House of Representatives Speaker Nancy Pelosi made an official visit to Taiwan in August 2022.⁸⁵⁷ Furthermore, Thailand took a neutral stance on problems that should not be neutral, such as Myanmar's execution of political prisoners.⁸⁵⁸

⁸⁵¹ Pisamai Thongpaitoon, 'Export promotion and development plan in Thailand 1992-1996' (Department of International Trade Promotion 1996) < http://www.ditp.go.th/contents_attach/78261/78261.pdf > accessed 9 August 2022

⁸⁵² Dhitiphong Meethong and others, 'The Bowring Treaty with the Economic Impact of Thailand Buddhist Era 2398' (The 12th NPRU National Academic Conference, Nakhon Pathom, 9 July 2020)

⁸⁵³ Hong Yu, 'Motivation behind China's 'One Belt, One Road' initiatives and establishment of the Asian infrastructure investment bank' (2017) 26(105) *Journal of Contemporary China* 353

⁸⁵⁴ Nattapong Suwannain, 'China and Its Attempts in Reorganizing World Economic Order: the New Silk Road and Thailand's Appropriate International Economic Policies in Response to the Rise of China' (2019) 9 *Journal of Politics, Administration and Law* 65 < <http://www.polsci-law.buu.ac.th/journal/document/9-1/2.pdf> > accessed 13 July 2022

⁸⁵⁵ Prin Panitchapak, 'In the era where "China" plays a role in Thailand, what should be done not to fall under the shadow of the dragon's wings?' *Thairath* (Bangkok, 30 June 2021)

⁸⁵⁶ Editorial, 'Ministry of Foreign Affairs announces Thailand's stance on the One China Policy' (Bangkok Insight, 3 August 2022) < <https://www.thebangkokinsight.com/news/politics-general/politics/920939/> > accessed 8 September 2022

⁸⁵⁷ Su-Lin Tan, 'U.S. House Speaker Nancy Pelosi meets Taiwan's president despite China's warnings' (CNBC, 2 August 2022) < <https://www.cnbc.com/2022/08/03/-us-house-speaker-nancy-pelosi-meets-taiwans-president.html> > accessed 8 September 2022

⁸⁵⁸ Lalita Hanwong, 'Because the state wants to cause fear in society: Behind the scenes of the execution of 4 activists in Myanmar' (The Matter, 27 July 2022) < <https://thematter.co/social/myanmar-coup/181540> > accessed 8 September 2022

This is because Thailand considers Myanmar to be one of China's regional allies, and China has made no objections to what Myanmar's military government has done.⁸⁵⁹

These significantly represent Thailand's fear of Chinese dominance, and any conflict with China will have a detrimental impact on Thailand's diplomacy, investment, and exports, as China is a major trading partner for the Thai economy.

The rise of China's dominant role is intriguing because, typically, other countries in the world that are moving up to become superpowers or challenging superpowers are all wealthy nations such as England, America, or even Japan.⁸⁶⁰ However, although China is becoming a superpower, or even now that it is a superpower, it is still a developing country with a middle-income per capita. There are still many impoverished people in the country, and it is unlikely to become a high-income country within the next decade. China's dominance on the global arena thus creates a power and economic sentiment that differs from that of other countries in the past because China did not ascend to power by money, but through the supply of inexpensive raw materials, particularly labour, and high demand for natural resources.⁸⁶¹

The Belt and Road Initiative (BRI) has become a strategy of the century in the Xi Jinping era, with the expectation that China will emerge as a global superpower in several dimensions, particularly trade.⁸⁶²

Currently, commerce between China and BRI participants has increased and the proportion has risen. China has become the top trading partner for the BRI's 25 participant countries, impacting public sentiment in those countries.⁸⁶³

Despite the fact that China is Thailand's top trading partner, Thailand is China's 12th largest trading partner.⁸⁶⁴ It represents a significant disparity in bargaining power. As a result, while

⁸⁵⁹ *ibid*

⁸⁶⁰ Werayut Kanchuchat, 'Read the political economics' (the101world, 9 October 2017) <<https://www.the101.world/101-one-on-one-ep-04-veerayooth/>> accessed 8 August 2022

⁸⁶¹ *ibid*

⁸⁶² Christopher K Johnson, 'President Xi Jinping's Belt and Road Initiative: A Practical Assessment of the Chinese Communist Party's Roadmap for China's Global Resurgence' (2016) <http://wise.co.th/wise/References/Global_Mega_Trends/OBOR_Xi_Jinping.pdf> accessed 8 August 2022

⁸⁶³ Phiriyaporn Boonkham, 'BRI strategy and its impact on the Thai economy' (Silpakorn University 2020) <<http://isas.arts.su.ac.th/wp-content/uploads/2563/history/05600642.pdf>> accessed 8 August 2022

⁸⁶⁴ Werayut Kanchuchat, 'Read the political economics' (the101world, 9 October 2017) <<https://www.the101.world/101-one-on-one-ep-04-veerayooth/>> accessed 8 August 2022

Thailand is not China's primary commercial partner, China is Thailand's primary trading partner, and the Thai government must pay close attention.

In terms of trade structure with China, it was discovered that during the BRI era, China was Thailand's most significant market, however the majority of Thailand's exports to China are just raw commodities or semi-raw materials with minimal added value. The number one export commodity from Thailand to China at the time is still semi-raw material, namely plastic pellets, which accounted for 10.26% (worth over \$3 billion USD), followed by rubber products and chemicals, which accounted for 9.37 and 9.06 percent, respectively.⁸⁶⁵ The majority of products imported from China by Thailand are electrical machinery and components, which accounted for 14.93 percent (worth more than \$7 billion), followed by machinery and components and household appliances, which accounted for 9.87 and 8.69 percent, respectively.⁸⁶⁶ As a result of this trade framework, Thailand has always run a trade deficit with China.

China has become Thailand's number one trading partner under the BRI plan, and it plays a significant role in providing the majority of Thailand's export revenue. However, the structure of most Thai products exported to China is a raw material and semi-raw material product with low added value, and China does not import these products from Thailand for consumption but rather uses them as parts or raw materials to manufacture products exported to other countries. Thailand is thus simply one of the supply chains in China, and the more China is damaged by the trade war with the US, the less probable it is that China will purchase these raw and semi-raw resources from Thailand.⁸⁶⁷ It reflects Thailand's lack of economic power, and the Thai government tends to cooperate with China on whatever China wants or provides.

External pressures that are either coercive or positive incentive towards Thailand have led in the government implementing policies that are lenient in the direction of pressure and

⁸⁶⁵ Ministry of Commerce (Office of the Permanent Secretary), 'Top 15 export products of Thailand by country: China' (2022) <
<https://tradereport.moc.go.th/Report/Default.aspx?Report=MenucomTopNCountry&Option=1&Lang=Th&ImExType=1> > accessed 8 August 2022

⁸⁶⁶ Ministry of Commerce (Office of the Permanent Secretary), 'Top 15 imported products in Thailand by country: China' (2022) <
<https://tradereport.moc.go.th/Report/Default.aspx?Report=MenucomTopNCountry&Option=2&Lang=Th&ImExType=0> > accessed 8 August 2022

⁸⁶⁷ Werayut Kanchuchat, 'Read the political economics' (the101world, 9 October 2017) <
<https://www.the101.world/101-one-on-one-ep-04-veerayooth/>> accessed 8 August 2022

incentives over time. It is possible to argue that implementing a policy in this direction is not wrong.⁸⁶⁸

On the other side, policy implementation in this direction has resulted in beneficial outcomes such as lowering the risk of becoming a colonial country, improving Thailand's position in international trade, and increasing income from exporting goods to foreign markets.⁸⁶⁹ This beneficial outcome can be observed in Thailand's implementation of WTO legal instruments, which provided Thailand with the tools to establish a more conducive environment for economic growth as well as mechanisms to better protect domestic industry.⁸⁷⁰

However, executing policies in this direction without addressing the country's structure, context, and long-term outcomes, as well as the absence of development in the foundations of attitudes and the structure of the power system, resulted in problems with the structure of law and law enforcement. These issues are difficult to resolve because they are intertwined with deeply rooted practises and values held by people, resulting in a cultural legal issue that pervades the problem of power structure and law enforcement in accordance with the objective of that legal instrument. Furthermore, some external pressures were so powerful that legal channels were purposefully designed to facilitate government judgments that wished to embrace the requirements of superpowers while completely disregarding other concerns.⁸⁷¹

In the context of Thailand, particularly over the last 10-20 years, it might be demonstrated that any pressure, positive or negative, is an external pressure condition, but it will not support change unless politics and internal structures alter.⁸⁷² The change must be primarily attributable to an internal structural and foundation change. The issue of internal structure and foundation,

⁸⁶⁸ Jesadapan Thongsrinuch, 'Four Decades of Thailand's foreign economic policy towards China from an International Political Economy Perspective' 14 (2017) *Journal of Integrated Sciences* 40 < <https://so06.tci-thaijo.org/index.php/citujournal/article/view/246602> > accessed 8 August 2022

⁸⁶⁹ Sawaeng Bunchalermwipas, *The Thai Legal History* (Winyuchon 2019); Pisamai Thongpaitoon, 'Export promotion and development plan in Thailand 1992-1996' (Department of International Trade Promotion 1996) < http://www.ditp.go.th/contents_attach/78261/78261.pdf > accessed 9 August 2022

⁸⁷⁰ The World Trade Organization, 'Trade Policy Reviews: Thailand: December 1995' < https://www.wto.org/english/thewto_e/countries_e/thailand_e.htm > accessed 9 August 2022

⁸⁷¹ Wuyao Zheng and Suriyasai Katasila, 'Thailand's Response to One Belt One Road Policy' 7 (2021) *Journal of Rangsit Graduate Studies in the group Business and Social Sciences* 234 < http://www.dsdw2016.dsdw.go.th/doc_pr/ndc_2560-2561/PDF/8398st/%E0%B8%A3%E0%B8%A7%E0%B8%A1.pdf > accessed 9 August 2022

⁸⁷² Julaluck Punthung, 'Thailand political solution: science and art that has no formula for success in the social context of Thailand' 6 (2017) *Journal of MCU Social Science Review* 691 < <https://so03.tci-thaijo.org/index.php/jssr/article/view/242258> > accessed 9 August 2022

which is frequently associated with major legal culture in Thailand, raises the question of how Thai legal culture affects enforcement.

Thai legal culture prohibits Thailand from implementing the WTO provisions to their full potential. While the WTO-received template contains various instances and conditions necessary to protect domestic businesses in the spirit of AD law, Thailand has some deeply embedded practices that do not appear in provisions at first glance. On this topic, for example, discretion is still stipulated in secondary legislation issued by the administration and officials participating in the AD itself.⁸⁷³ Another example is Section 7 of the AD Act, which clearly shows openness to authorities' discretion.⁸⁷⁴

Furthermore, the issue of hierarchy and seniority in government organisations, particularly ministries, as well as the disparity between the DFT and the Committee as a result of long practice regarding committee culture and close relations with the Council of Ministers, is a major impediment to reaching consensus on the AD measures to be applied in a specific case in accordance with the law's preamble.⁸⁷⁵ These generate interventions in order to achieve certain results.

To the question of how Thai legal culture influences amendment, the conclusion is that Thai legal culture is a variable that leads the assumption of law amendment to divert from the true problem, resulting in the changes made to AD law not being at the source of the problem. To explain, adding provisions without removing provisions with discretion issues in the form of ministerial regulations and clauses in AD law renders amendment ineffective.⁸⁷⁶

Internal legal culture constitutes the legal cultural barriers to AD law enforcement in Thailand. Internal legal culture consists mostly of paradigms and values pertaining to the accumulation of powers by individuals or groups of people to grant them absolute discretion over the law.⁸⁷⁷

⁸⁷³ Somkiat Tungkitwanich and Thani Chaiyawat, 'Looking back on the legislation to solve the discretion problem in Thai society' (Thailand Development Research Institute, 12 October 2017) < <https://tdri.or.th/2017/10/corruptionformular/> > accessed 6 July 2022

⁸⁷⁴ Vandee Suchatkulvit, 'A Legal Perspective on Thailand's Anti-Dumping Law ' (2019) *Journal of Intellectual Property Law and International Trade* 502

⁸⁷⁵ Sukkasama Sukkasem, 'The dynamics of corruption in the patronage system' (National Defence College 2017) < http://www.dsdw2016.dsdw.go.th/doc_pr/ndc_2559-2560/PDF/wpa_8268/ALL.pdf > 6 July 2022

⁸⁷⁶ Amorn Chanthasomboon, 'Knowledge of Ministerial Regulation Drafting' (1981) < https://www.doe.go.th/prd/assets/upload/files/hrad_th/14b4cd7f099a3a819e6eb05516ae56bb.pdf > accessed 7 May 2020; Siribhusaya Ungphakorn, 'Circumvention of anti-dumping and countervailing measure: Criteria, investigation procedure and legal penalty' (2019) 48 *Thammasart Law Journal*

⁸⁷⁷ Pakorn Nilraphan, 'Secondary Law Reform: Tangible Reform' (5 January 2015)

Furthermore, such individuals or groups of individuals are protected by other values such as seniority and hierarchy. These are also specified in the civil service act, which is tied to strong linkages between the political sector, particularly the ministers, civil servants, and national legislative.⁸⁷⁸

External pressures that worsen AD law enforcement in Thailand include emerging countries' high production capacity and the pursuit of international markets to deplete oversupplied products,⁸⁷⁹ particularly markets with weak defensive barrier structures. This has resulted in increased international economic and political power through investment cooperation projects,⁸⁸⁰ which are used to persuade target states to accept particular conditions in order to incorporate these investment projects. On the other side, it is used as a political economics incentive to enable target countries, such as Thailand, to establish policies in favour of those projects. These projects, however, are harmful to domestic industries that are not fully protected by AD measures.

7.2 *Literature review*

Chapter 2 explores the literature on Thailand's legal culture and analyzes interventions in the Thai bureaucratic structure. Additionally, it reviews literature on anti-dumping law issues in Thailand that is connected to issues of competition law, rules of origin, and the evolution of emerging economies in order to gain a better understanding of the anti-dumping law problem in Thailand. This thesis chooses legal realism as the theoretical framework for analyzing the factors of legal culture within Thailand and external pressures in order to describe the impact of these factors on the enforcement of anti-dumping laws and, in particular, to discuss the method of exercising discretion with an emphasis on control and centralization of government officials. Certain aspects of legal culture are cultural weapons capable of influencing Thailand's bureaucratic structure and exercise of power. Although dumping is motivated by economic

< <http://lawdrafter.blogspot.com/2015/01/blog-post.html> > accessed 13 July 2022; Office of the Public Sector Development Commission, 'The Deregulation of Law' (2003)

⁸⁷⁸ Likhit Dhiravegin, 'The Power Elite in Thailand: A General Survey with a Focus on the Civil Bureaucrats' (1975) 3 Southeast Asian Journal of Social Science 1

⁸⁷⁹ Pongsiri Ta-In, 'Tax Avoidance against Anti-Dumping Tax in Steel Goods Market' (2019) 5 Journal of Criminology and Forensic Science 162

⁸⁸⁰ Nattapong Suwannain, 'China and Its Attempts in Reorganizing World Economic Order: the New Silk Road and Thailand's Appropriate International Economic Policies in Response to the Rise of China' (2019) 9 Journal of Politics, Administration and Law 65 < <http://www.polsci-law.buu.ac.th/journal/document/9-1/2.pdf> > accessed 13 July 2022

gain rather than cultural origins and practices, legal culture also has an effect on the strength of the anti-dumping issue.

7.3 *The Background of legal culture and anti-dumping law*

Chapter 3 examines the historical background of legal culture in relation to the laws that are implemented in society, as well as the primary Thai legal culture that plays a role in law enforcement, with a particular emphasis on the expansion and abandonment of Thai legal culture from 1855 to the present. Prior to 1855, the West considered Thailand as a realm enveloped in fragmented aristocratic influence rather than a unitary controlled state. Following the 1855 Bowring Treaty with the United Kingdom and many European nations, Thailand was in the process of being forced to quit the influential societies of the reigning and unconventional nobility and embrace a more regulated and predictable social environment. As a result, when Thailand came under less colonial pressure in Southeast Asia, the majority of the aristocracy sought to avoid institutionalized environments that were unfavorable to them. However, since Thailand's accession to the World Trade Organization, Thailand's legal policy has been shaped by the obligation to adopt additional legal templates from outside the country for enforcement in Thailand. Thailand has enacted several laws, one of which is an anti-dumping law. Thus, Thailand's legal culture clashed with and opposed such ordered and predictable laws. As a result of the shift in the context in which law is applied from western countries to Thailand, the numerous legal frameworks implemented by Thailand are inextricably related to the Thai legal culture. While foreign legal frameworks contribute to the improvement of Thailand's legal system, Thailand's legal culture simultaneously leads to the diminishing efficacy of such legal frameworks. Thailand is confronted with these ties from the time the AD legislation was adopted in Thailand until the AD law was amended through the introduction of the AC provision. The introduction of the AC provisions into Thailand has been reflected in the origins and evolution of the AD law, as well as the flaws of the AD measure, which this chapter investigates. Additionally, the growth of AD circumvention, particularly sophisticated evasion, is the basis of the problem that Thailand's domestic sector has been experiencing for the last decade.

7.4 *Impact of Internal Legal Culture on Anti-Dumping Law Realm*

Chapter 4 investigates the relationship between Thai legal culture and actual anti-dumping enforcement concerns. It begins with the political sector's intervention via the public interest

principle and the AD committee's presentation in conjunction with the Civil Service Act's role, with a particular emphasis on the AD committee's and Council of Ministers' discretionary powers, which risk arbitrary and unpredictable exercise of power. It then addresses the tension between Thai legal culture and the paradigm associated with the foreign legal model adopted by Thailand. It demonstrates the forced departure of legal culture and its resurgence. This is followed by an examination of the rule of law in the Thai context, which represents government officials' perspectives on the domestic industry, a critical stakeholder in the anti-dumping procedure. Additionally, this chapter addresses the critical issues of deficient rules of origin, shortcomings in competition law, and refusal to accept punitive damages, all of which are related to Thai legal culture and have an effect on the development of the anti-dumping law framework.

Intervention, particularly in the AD issue, originated with the political sector, which exerted its authority through the AD committee and Article 7 of the AD Act, which was utilized to bolster downstream sectors, which served as the primary source of political popularity. This involvement is not only an attempt; it is the result of a legal loophole that allows the political sector to exercise discretion in cases of AD. Three vulnerabilities exist, the first of which is centered on the absence of specific provisions in some situations. The absence of specific rules may be a result of the WTO's structure for the AD model law and the requirement for each Member State to adopt its own measures to comply with local practice. The second gap emerges because the AD Act specifically states that the committee has the ability to make whatever determinations it deems appropriate. This weakness reveals the authority's intention to interject unlimited authority. The third gap arises as a result of the AD Act's requirement that additional details be provided in ministerial regulations or ministry announcements. While it is unclear whether this third vulnerability was intended to accommodate the authority's discretion as a second loophole, granting the authority to issue ministerial regulations or announcements amounts to a complete transfer of legislative authority to the administrative sector in terms of issuing conditions governing the consideration of AD cases. Furthermore, some ministerial regulations or announcements eventually end up empowering the minister with discretionary authority.

Another component of Thailand's legal culture is a bureaucratic system that prioritizes seniority by age and proximity to senior civil servants or politicians over expertise. True competence-based proficiency has never been explicitly acknowledged by the Civil Service Act, the

legislative framework governing the appointment and transfer of positions in Thailand's bureaucratic system. The occurrence of conditions for which no clear and quantifiable indications exist results in the formation of a fuzzy system. Since 1855, when Thailand adopted the legal model of the Bowring Treaty, the ambiguity of Thailand's legal and administrative system has been reflected. At that time, justice and the rule of law became delicate problems in Thailand in the eyes of foreign powers. This instability persists today as a result of the legal system's uncertainties, particularly in the context of AD law enforcement in Thailand. This is emphasized further by the absence of rules of origin as a main signal for AD investigation. Government entities charged with enhancing the legal system, particularly commercial law, frequently divert attention away from the legal culture at the heart of law enforcement concerns in order to highlight the absence of alternative legal measures. The focus on amending the AD law in the manner in which the competition law has been implemented is an attempt to sidestep the system's true problem, which is the legal cultural barrier.

7.5 External Factors Affecting Thailand's Anti-Dumping Situation

Chapter 5 discusses Thailand's external pressures. It begins with an examination of the dramatic growth in dumping in Thailand, one of the primary issues that prompted Thailand's AD law to be amended to address circumvention of AD procedures. Eliminating competitors through the sale of low-priced goods becomes even more problematic when AD legislation is involved. Thailand has been an easy target for elimination due to the fragility of the Thai law enforcement system, which is so weak and fragile that it gets victimized more than any other country. The dumping of steel products in Thailand was a critical element in Thailand amending the AD law, as the steel sector represents the Thai state's and legal system's failures, increasing the invisible cost burden on company operators. e.g. excessive bribes to process factory permits and allotments of land for industrial establishments.

The Chinese-Thai transport investment cooperation project and the Thai government-led infrastructure project have resulted in a clash over the sourcing of raw materials for the project, particularly steel. Increased pricing for Thai-made steel and a depleted supply of Thai-made steel have caused the Thai government to prefer Chinese-made steel. This increases the vulnerability of the domestic industry to competition from low-cost foreign products for which the Thai government has established avenues of entry into the domestic market. It has sparked significant resistance from Thailand's domestic steel sector, and the Thai government is attempting to negotiate with the industry.

Thailand's AD process, which was previously precarious due to a lack of strict enforcement, has become much more precarious as a result of the influx of Chinese goods via intergovernmental joint venture projects. Additionally to these factors, this chapter examines the Thai state's failure to respond to the growing strength of large emerging nations such as China, which cannot be explained solely by examining the AD legal framework, but rather by examining the key factors influencing Thailand's overall potential, which are law enforcement, innovation, and its role in international trade.

7.6 *The Compass of Amendment*

Chapter 6 focuses on the route Thai government agencies are taking in addressing the issue of product dumping. It begins with an examination of the new AC provisions incorporated into the AD Act in 2019. Following the discussion, an examination of traces of the same problem that remained even after the statute was revised. That is, there are also attempts to delegate the authority of deliberation under the AC Law to the committee's discretion and through politics, which plainly demonstrates the failure of the AC Law's resultant increase in dumping of goods even after it is enforced. Additionally, the great anticipation that Thailand's adoption of the EU Guidelines on AC would achieve the same excellent results as the EU rendered Thailand even more ignorant to variables other than simply replicating the law. This chapter examines the European Union's other responses to dumping, in addition to enforcing AC measures to develop internal industry protection mechanisms, with a particular emphasis on accepting new social factors, regional cooperation, and a focus on all sectors, including the workforce and small businesses in the region.

7.7 *Implications of this study and recommendations for further research.*

The following are the general findings of this thesis, based on the analyses offered in Chapters 3–6: To begin, the true impediment to the execution of AD law and the protection of Thailand's domestic industry from dumping is not a lack of provisions addressing the avoidance of AD measures, but rather the uncertainty surrounding Thailand's law. Its systems and order are corrupted as a result of the Thai legal culture's influence. Second, the exercise of discretion is a critical component of AD consideration and is one of Thailand's legal cultures, as well as the origin of other sublegal cultures, particularly when external pressures such as the spread of influence of emerging major countries in the region and joint investment between governments are present.

This thesis shows several points within the research that there are a number of defects in the practical application of the regulation in different stages and aspects throughout this legal framework in Thailand. The characteristics of the Thai system mentioned in this work stimulate the occurrence of dumping due to the weaknesses of the law enforcement structure, which is easily influenced by large political and private sectors during the process of investigation and consideration. The amendment might not be the ideal answer to a legal problem. What entrepreneurs are looking for is the actual legal justification and standard of protection in the long run, which can be dynamically adapted towards global trade.

After examining several factors affecting the effectiveness of AD law enforcement, this thesis proposes a solution worth considering for Thailand's AD law enforcement problem, which is divided into three major structures: personnel and organizational structure development, development of provisions and other developments.

7.7.1 Personnel and Organizational structure development

Position appointment and relocation

Human resources development is one of crucial points and urgent problems to be solved. In investigation and consideration processes, specialised officers and committee are almost a turning point for any case as they drive all stages from the beginning to the final decision. Not only will having experts in anti-dumping investigation and measure help, but they also should have specific areas of knowledge depending on the cases at hand. Economics, accounting and legal experts are needed, together with experts in particular areas of business. The qualification of any officers who will be assigned in certain cases must be clearly stated and strictly followed as certain businesses can be extraordinarily complex and have uncommon features. This can raise the standard and efficacy of forthcoming cases. **It is a practical idea to have a professional look at the case continuously. However, the alternation of the reviewer must be maintained to prevent corruption and external interference.**

Specifically, the DFT Job relocations should not occur frequently, since this will hinder the officer responsible for AD cases from completing their knowledge and expertise in AD cases, thereby reducing the efficiency of the management system. Dumping in Thailand is hampered by a lack of qualified and experienced personnel. On the committee's side, there should be recruitment criteria that are not overly broad in order to eliminate the loophole in which political parties can pick persons who are close to them as committee members. Additionally,

while the committee is chaired by the Minister of Commerce, members of the committee may be recruited in ways other than by giving the political sector exclusive authority to appoint committee members, as this exposes the committee to the risk of political interference during the recruiting process.

Several organs

Having several organs in the process of consideration seems to be more successful.⁸⁸¹ Thus, in Thailand, the structure of the process and organisation should be amended to have at least two bodies with equal power and influence in practice, the DFT and the Committee, rather than two organs, with the Committee effectively having more power and influence by directing the case alone. **This separation of the organisation also reduces the monopoly of power. In addition, it must not overpower any other organisation because that leads to a monopoly and motivates many stakeholders to intervene.**

The fact that one organization possesses significantly more power and influence than another might be a problem due to the lack of **checks and balances** as well as the proper revision of certain decisions. These organs must be **independent**, reviewing decisions without interference. Specifically speaking, one of the methods is it **should not be appointed and funded by the Ministry of Commerce and the cabinet.**

Role of court

It is true that parties may appeal the committee's decision to the Central Intellectual Property and International Trade Court (IPIT). Additionally, in cases involving AD, quasi-judicial proceedings in which the committee takes the lead in the trial can be more expedient than a court hearing. However, as demonstrated by this thesis, several of the AD Committee's judgements have generated much disagreement over their legality. However, nearly no cases of AD have been referred to IPIT. As a result, a number of committee decisions were erroneous but were unchallenged by the courts. The court review is regarded as complete the judicial process. There will be no interference with the appointment of judges, and there will be no chance of committee pressure. Additionally, there are two appeals of petitions levels.

⁸⁸¹ Gary N Horlick, 'The 10 Major Problems with the Anti-dumping Instrument in the United States' [2005] 39 Journal of World Trade 169

Assigning the Central Intellectual Property and International Trade Court to have a more active role from the first stage of case initiation will cement the role of the courts, which guarantees fairness and transparency rather than committee-style hearings. Anti-dumping law in Thailand and the way it is practised can be developed via the previous decisions of the Central Intellectual Property and International Trade Court. They can be used as the grounds or references for forthcoming cases in the context of injury consideration.

7.7.2 Development of provisions

Provisions that should be repealed

Reducing the use of discretion at the committee level by amending discretionary provisions which are channels where interference and abuse of discretion can be used. The rules that govern this must not provide much flexibility because it will be too lax in the context of Thailand. The provision, which lacks clarity and leaves the Committee or Minister free to act as they see appropriate, should be repealed. Including the paragraph which could clearly describe the criteria but does not do so, indicating that the Minister's authority to issue ministerial regulations or ministerial announcements should be repealed. Abolishing the use of ministerial regulations and ministry announcements is also needed because it is the level of a directive that has been issued by the minister without revision by the Council of State and the legislative assembly causing the provisions to deviate.

However, in matters that are rapidly changing in response to global trade conditions, such as specifying the conditions for consideration of the commercial form of certain emerging goods with unique characteristics that cannot be evaluated using the criteria applicable to ordinary goods, it is reasonable to allow the issuance of ministerial regulations or ministry announcements to prescribe specific rules urgently. All must be founded on the idea that the AD trial cannot be conducted primarily by the application of rules promulgated by the government or political parties.

Finally, when it comes to implementing the public policy principles set forth in Article 7 of the AD Act, it is an effective tool because it enables the committee to create AD measures that are consistent with Thai society and the Thai economy at the moment. However, this is a principle that does not feature in the WTO-adopted framework for AD law, and it is also quite broad and imprecise, prompting the committee to adopt this paragraph unconditionally. As a result, this

thesis argues that Section 7 of the AD Act should be repealed because it does more harm than good.

Additional provisions that should be enacted

The **opposition of captive production provisions** should be enacted so as to be separated from the normal production of general consumption, which can lead to effective consideration of dumping and injury. Additionally, Thailand should establish and consistently implement Rules of Origin (RoO). However, due to the lack of provisions on the RoO, Thailand began joining the RCEP in 2021 to develop the provision, although it is not yet complete.

The critical point is that Thailand's AD legislation must include provisions requiring all decisions, whether preliminary or final, to disclose detailed reasons in the order required by the law, in order to avoid judgments based on discretionary personal feelings or concealed personal interests.

7.7.3 Other developments

Assistance to Small and Medium-Sized Businesses

It should have expertise and government institutions handing support to small and medium-sized companies to facilitate access to anti-dumping processes and have active and effective participation in any process regarding anti-dumping. Giving enterprises at risk of significant dumping impact access to protective processes improves the local industry's competitiveness.

Moreover, essential information with regards to anti-dumping measure and procedure suggested by related governmental division should be circulated throughout the domestic producers so they will be able to fully comprehend what action they have to take when they realise that they are facing dumped imports and suffer from such action or be at risk of an incident.

License application system

Generally, some types of commercial operations are permitted in Thailand with the acquisition of a license. Obtaining a license from a government agency is inextricably related to the authorities using their authorities.

As stated in the thesis, on the subject of heavy industry, such as the steel sector, the legal and enforcement system needs to be amended, ranging from the law related to the allocation of industrial areas and obtaining a license for certain industries. The entire system should be transparent without bribery. This gives the opportunity to local businesses by leveraging the existing laws. In the steel industry, for example, there will be more upstream steel factories, thus making the cost lower and enhancing competitiveness so as not to be severely affected by imported products. Improving Thailand's government licensing system can assist firms in lowering expenses and avoiding the hidden costs that are illegally requested of them.

Long-term impact assessments of the policies

A full assessment of the long-term impact of projects that the Thai government intends to invest in with foreign countries should be conducted; otherwise, Thailand may profit from not having to invest much, but may lose out on domestic business, which is a critical engine of the economy. Additionally, governments should increase funding for research and development in order to encourage local businesses to innovate and create new products, which are critical weapons for surviving the ferocious global trade war in particular. It is more about surviving off the same product, which is a significant shortcoming of Thailand's business that hinders it from growing the market as widely as other countries in the region can.

7.7.4 Suggestions for further research

This is an important research project on Thailand's legal culture and the enforcement of anti-dumping laws. This research project provided valuable information and discussion for key stakeholders for formulating and implementing effective amendments and practice related to anti-dumping laws in Thailand. In this research project, the researcher discussed the current legal culture of Thailand in detail and the enforcement of anti-dumping laws. This research project also covered the impacts of anti-dumping laws on the overall economy of Thailand and considered what are the major hurdles in making appropriate amendments and enforcement structure to anti-dumping laws.⁸⁸² This anti-dumping research is part of a larger picture that reveals serious flaws in Thailand's law enforcement and justice systems. The current anti-dumping laws and system of Thailand are not good enough to protect the rights and businesses

⁸⁸² Maher M Dabbah, *International and Comparative Competition Law* (Cambridge University Press 2010)

of local stakeholders. There is a need to formulate and implement important amendments in anti-dumping laws for dealing with current challenges.

Finally, based on all of the analysis, an area worthy of further investigation is the continuity and change in Thailand's legal culture toward law enforcement, particularly in light of the abolition of the military junta, the introduction of low context culture, and the growing role of Gen Z in Thai society. It will be interesting to observe whether and to what extent the dysfunctional Thai legal culture can be abandoned via the lens of the GEN Z movement, challenging the state's long-standing arbitrary power.

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Appendix I

**ANTI-DUMPING AND COUNTERVAILING OF
FOREIGN PRODUCTS ACT
B.E 2542 (1999)**

Unofficial Translation

ANTI-DUMPING AND COUNTERVAILING OF FOREIGN PRODUCTS ACT,
B.E. 2542 (1999)¹

BHUMIBOL ADULYADEJ, REX.

Given on the 22nd Day of March B.E. 2542 (1999);
Being the 54th Year of the Present Reign.

His Majesty King Bhumibol Adulyadej is graciously pleased to proclaim that:

Whereas it is expedient to have a law on anti-dumping and countervailing of foreign products;

This Act contains certain provisions in relation to the restriction of right and liberty of person, in respect of which section 29 in conjunction with section 50 of the Constitution of the Kingdom of Thailand so permit by virtue of law;

Be it, therefore, enacted by the King, by and with the advice and consent of the National Assembly, as follows:

Section 1. This Act is called the “Anti-Dumping and Countervailing of Foreign Products Act, B.E. 2542 (1999)”.

Section 2. This Act shall come into force at the expiration of ninety days as from the date of its publication in the Government Gazette.²

Section 3. The Prevention of Dumping Act, B.E. 2507 (1964) shall be repealed.

Section 4. In this Act:

“injury” means injury pursuant to Chapter III;

“domestic industry” means a domestic industry pursuant to Chapter IV;

¹ Translated by Ms. Sukpuck Phongsathit under contract for the Office of the Council of State of Thailand's Law for ASEAN project.- Initial version- pending review and approval.

² Published in the Government Gazette, Vol. 116, Part 22 a, Page 59, on 31 March B.E. 2542 (1999)

“product under consideration” means a product which is alleged to have been dumped or subsidized;

“like product” means a product which is identical in all respects to the product under consideration, but in the absence of such a product, shall mean a product which has characteristics closely resembling those of the product under consideration;

“level of trade” means a series of stages in the distribution of a product until it reaches a consumer;

“margin of dumping” means the extent to which a foreign export price is lower than a normal value;

“interested party” means:

(1) a foreign producer, a foreign exporter, an importer of a product under consideration or a trade association whose majority members are producers, exporters or importers of the product under consideration, as the case may be;

(2) a government of the country which exports a product under consideration;

(3) a domestic producer of the like products or a trade association whose majority members are producers of such products; or

(4) other person as prescribed by the Minister of Commerce;

“duty” means a provisional duty, an anti-dumping duty or a countervailing duty, as the case may be;

“Committee” means the Committee on Dumping and Subsidies.

Section 5. The Minister of Finance shall have charge and control of the execution of this Act only in relation to the operation of the Customs Department and shall have the power to issue Ministerial Regulations pursuant to section 11 for the execution of this Act.

The Minister of Commerce shall have charge and control of the execution of this Act and shall have the power to issue Ministerial Regulations and Notifications for the execution of this Act.

Such Regulations and Notifications shall come into force upon their publications in the Government Gazette.

Section 6. The Minister of Commerce shall have the power to issue Ministerial Regulations on any criteria and procedures concerning the determination of dumping, subsidies, injury, anti-dumping and countervailing actions, review, retaliatory measure, as well as any action in relation to this Act to the extent that they are not contrary to, or inconsistent with, the provisions of this Act.

Where appropriate, Ministerial Regulations pursuant to paragraph one may specify that any particular case may be conducted by way of an issuance of the Notification of the Ministry of Commerce.

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CHAPTER I General Provisions

Section 7. Anti-dumping and countervailing actions shall take into consideration the interests of the domestic industry, the consumers and the public.

Section 8. For the purpose of enforcing this Act, where the Committee deems appropriate, it may request in writing to the Customs Department to register an import or export of any product or to gather any particular information pertaining to the import or export of the product. In this case, the Customs Department shall have the power to require an importer or an exporter to notify any fact as the Committee may request and shall apply the relevant customs law to this case.

Section 9. A person submitting a request to the Committee to determine anti-dumping or countervailing actions, an importer or a foreign exporter may request details pertaining to the facts which were used as a basis for the imposition of a provisional measure, a duty or a review of duty pursuant to the criteria and procedures prescribed by the Ministry of Commerce.

The request pursuant to paragraph one shall not be submitted after the expiration of one month as from the date of imposition of the provisional measure or duty.

Section 10. In the case where this Act requires that anyone may make a request for the determination of anti-dumping or countervailing actions, make an agreement, request for review of measures, as well as request of any information, the Ministry of Commerce shall have the power to prescribe fees or charges as appropriate to the burden involved in carrying out such request.

Section 11. Refund of duty or duty guarantee pursuant to this Act shall be in accordance with the criteria and procedures as prescribed in the Ministerial Regulations.

CHAPTER II Dumping

Section 12. Dumping which causes injury to a domestic industry is unlawful and actions may be taken against it.

Section 13. Dumping pursuant to this Act is an export of a product into Thailand for commercial purposes with the export price being less than the normal value of the like products.

Section 14. An export price is a price of export from an exporting country to Thailand as may be paid or payable.

In the case where it appears that the export price does not exist or that the export price is unreliable because of association or a compensatory arrangement between the parties involved, the export price may be calculated on the basis of the price at which the product is first resold to an independent buyer. In the case where the product is not resold to an independent buyer, or not resold in the condition as imported, the export price may be calculated on the basis of any particular criteria which are appropriate to such case.

In cases pursuant to paragraph two, the calculation of an export price shall deduct expenses and charges, as well as taxes, duties and profits incurred between import and resale.

Section 15. A normal value is the price paid or payable by an independent buyer in the exporting country, in the ordinary course of trade, for like products destined for domestic consumption. The normal value may be determined by the sale of such product in a sufficient quantity which constitutes not less than five per cent of the export quantity of that product from the exporting country to Thailand. However, a lower ratio of sale quantity may be used as a basis for consideration if it can be demonstrated that the sale price determined by the quantity of such product is the price in the market of the exporting country.

In the case where it appears that the price pursuant to paragraph one does not exist, or that the export price is unreliable because of association or a compensatory arrangement between the parties involved, or because of the particular market situation in the exporting country renders it impossible to obtain a proper comparison, the normal value shall be determined from the following prices:

(1) an export price in the ordinary course of trade of the like products exported from an exporting country to an appropriate third country, if it can be demonstrated that that price is indicative of the price in the market of the exporting country; or

(2) a price calculated from the cost of production in the country of origin plus a reasonable amount for administrative, selling and other costs, as well as profits incurred.

In the case where the price pursuant to paragraph one or the price pursuant to paragraph two (1) is lower than the cost of production plus the administrative, selling and other costs, once the sale of such product within an extended period of time in substantial quantities has been examined, if it appears that those prices do not provide for the recovery of all costs within a reasonable period of time, that price shall not be deemed as the price in

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the ordinary course of trade and shall be disregarded when determining the normal value, unless that price is higher than the weighted average per unit cost of production which appears in the determination of anti-dumping.

Section 16. In the case where an exporting country is a non-market economy, the determination of the normal value pursuant to section 15 shall be based on a proper comparison with existing price information in third countries which are market economies and which are appropriate for comparison. If an appropriate third country cannot be found, the normal value shall be determined from the price of the like products sold in Thailand or from any other basis as may be appropriate to such a case.

Section 17. In the case of import of a product into Thailand by exporting from other country which is not the country of origin, the existing price information in the exporting country shall be used as the basis in determining the normal value pursuant to section 15. However, if there are due reasons, the price in the country of origin may be used as the basis in determining the normal value, particularly in the case where that product is merely transhipped through the exporting country, or that product is not produced in the exporting country, or that there is no comparable price in the exporting country.

Section 18. A margin of dumping shall be determined by a fair comparison and shall be made at the same level of trade and at the same period of time. Due consideration shall also be accorded for differences which affect price comparability. In the case where the export price and the normal value are not based on the same level of trade or at the same period of time, different elements affecting price comparability shall also be adjusted.

Subject to paragraph one, unless there are due reasons to do otherwise, the procedure for determining the margin of dumping per unit shall be as follows:

(1) a comparison between a weighted average normal value and a weighted average export price;

(2) a comparison between a normal value and an average export price of each transaction; or

(3) in the case where it appears that export prices to the domestic market are substantially different from one buyer to another, the export regions, or the export periods, and the procedures pursuant to (1) and (2) cannot demonstrate the actual condition of dumping, a comparison shall be made between the weighted average normal value and the average export price of each transaction.

A determination of the margin of dumping may be done through sampling procedures pursuant to the criteria and procedures prescribed by the Minister of Commerce.

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CHAPTER III
Injury

Section 19. If any provision does not indicate otherwise, injury pursuant to this Act shall mean:

- (1) material injury to a domestic industry;
- (2) threat of material injury to a domestic industry; or
- (3) material retardation of the establishment or development of a domestic industry.

Section 20. A determination of material injury to a domestic industry pursuant to section 19(1) shall be based on positive evidence in relation to the following cases:

- (1) the volume of the dumped product and the effect of dumping on prices in the domestic market of the like products; and
- (2) the consequent impact of dumping on the domestic industry.

In the case where dumping of any product from more than one exporting countries is subject to the dumping determination simultaneously, if it appears that the margin of dumping and the volume of import from each country are more than the *de minimis* rule pursuant to section 28, the determination of injury pursuant to section 19(1) may be done through a cumulative assessment of the imports of each country, if it is appropriate in light of the conditions of competition among the dumped products and between the dumped product and the like product in the domestic market.

Section 21. In determining injury pursuant to section 19(1), a causal relationship between the dumped product and injury to the domestic industry shall be based on an examination of all relevant evidence. Apart from the effect of dumped products, the effects of other factors which at the same time appear to cause injury to the domestic industry shall also be taken into consideration. Such factors shall include the volume and price of an imported product not sold at a dumped price, contraction in demand, changes in the pattern of consumption, trade restrictive practices, competition between foreign and domestic producers, technological development, export performance and productivity.

Section 22. A determination of a threat of material injury to a domestic industry pursuant to section 19(2) shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances where dumping would cause injury must be clearly foreseen and imminent, or there is an imminent likelihood of further

increase of dumped products which, if no preventive action is taken, material injury is likely to occur. In this case, the following factors may be considered:

- (1) a significant increase rate of dumped products indicating the likelihood of substantially increased import of such product;
- (2) substantial increase in and freely disposable capacity of an exporter indicating the likelihood of substantially increased import, while taking into account the availability of other export markets that may absorb such increased exports;
- (3) clarity of the effect on prices of dumped products which have a significant depressing or suppressing effect on prices of like products in the domestic market and the likelihood of increased demand for further import of such product;
- (4) inventories of the dumped product.

Section 23. A determination of material retardation of the establishment or development of a domestic industry pursuant to section 19(3) shall be based on facts indicating that material retardation is likely to occur, including the possibility or period of time for the establishment and development of the domestic industry.

CHAPTER IV Domestic Industry

Section 24. A domestic industry pursuant to this Act is domestic producers of the like products whose collective output constitutes more than one half of the total domestic production of those products, except in the following cases:

- (1) if any producer of the like products is an importer of a dumped product or is related to an importer or a foreign exporter of a dumped product, in which case such producer may be deemed as not being part of the domestic industry;
- (2) if in the territory of the country, market of the like products is divided into more than one markets, producers of the like products in each market shall be deemed as a separate domestic industry, if it appears that producers of the like products of one market sell all or almost all of their products in that market and other domestic producers of the like products do not supply their products to that market in a sufficient manner so as to match the demand of such market.

A producer shall be deemed to be related to an importer or a foreign exporter of a dumped product pursuant to paragraph one (1) if it appears that either party can control one another or both of them are controlled by, or jointly control, a third person, either directly or indirectly, provided that there are grounds for believing or suspecting that the effect of the relationship is such as to cause the producer concerned to behave differently from other non-related producers. In this case, a party shall be deemed to

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control another party if the former is legally or practically in a position to exercise restraint or direction over the latter.

In the case where the market is divided pursuant to paragraph one (2), injury shall be determined only by the effect occurred in that market, even where a major proportion of the domestic industry is not injured. An anti-dumping duty shall only be imposed on the dumped product consigned for specific consumption in that market. However, if it appears that in practice the imposition of anti-dumping duty only on the dumped product consigned for consumption in that market is not feasible or when the exporter of the dumped product does not have a proposal for an appropriate agreement within a reasonable period of time pursuant to section 44, an anti-dumping duty may be imposed on all dumped products in Thailand.

CHAPTER V Anti-Dumping Determination

Part 1 General Provisions

Section 25. An anti-dumping determination other than those provided under this Chapter shall be in accordance with the criteria and procedures as prescribed in the Ministerial Regulations.

Section 26. Any information which is confidential by substance and content or which is provided on a confidential basis shall not be disclosed by any conduct during the determination process.

Disclosure of information which is provided on a confidential basis shall obtain prior consent from the provider of the information. The provider of such information shall be requested to furnish non-confidential summaries for the determination. If the provider of the information fails to furnish such a summary and does not give consent for the disclosure of the information within the specified period of time, such information may be disregarded.

Section 27. In the case where any interested party refuses to submit evidence, or fails to do so within the specified period of time, or does not cooperate for the obtaining of evidence or obstructs the anti-dumping proceeding, the determination may consider only existing facts or may consider a result which is less favourable to that interested party.

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Section 28. An anti-dumping determination shall be terminated where it appears that the margin of dumping or the volume of dumped imports is below the criteria prescribed in the Ministerial Regulations.

Section 29. In determining anti-dumping actions, the Department of Foreign Trade or the Committee, as the case may be, may proceed to verify the accuracy of the allegation or evidence relating to the determination.

Such verification of accuracy may be conducted at any point of the anti-dumping proceeding and may be conducted in Thailand, the exporting country or related countries.

Section 30. Prior to the announcement of the final determination of the Committee relating to the result of investigation on dumping and injury, the Department of Foreign Trade shall notify the interested parties of the information and facts which were used as the basis for the determination in order to allow interested parties an opportunity to submit rebuttal arguments to protect their interests. Due time shall be allowed for the submission of such rebuttal arguments.

Section 31. When there is a notice of investigation on dumping and injury pursuant to section 39, if the situation demonstrates that finally an anti-dumping duty may be imposed before the date of application of a provisional measure, the Committee may request the Customs Department to collect duty guarantee pursuant to this Act for products under consideration which were imported at a specified period of time. In this case, the Customs Department shall have the power to collect the guarantee at the amount as requested by the Committee.

Part 2

Initiation of the Proceeding

Section 32. An anti-dumping proceeding shall be initiated when a request is made by the Department of Foreign Trade or a person or persons pursuant to section 33.

Section 33. A person or persons may act on behalf of a domestic industry to request the Committee to conduct anti-dumping determination by submitting a request to the Department of Foreign Trade.

A request pursuant to paragraph one shall be supported by domestic producers of like products whose collective output constitutes more than one half of the production quantity of those who express either support or opposition to the request

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collectively. The production quantity of those expressing support shall not be less than one fourth of the total domestic production quantity of the like products.

Submission of the request shall be in accordance with the criteria and procedures as prescribed by the Ministry of Commerce.

Section 34. If a request pursuant to section 33 contains incomplete or incorrect detail or evidence, the Department of Foreign Trade shall notify the person submitting the request to rectify it within the specified period of time.

Once the request is complete and correct with details and evidence, the Department of Foreign Trade shall submit the request to the Committee for consideration.

Section 35. When the Committee receives a request pursuant to section 32, the Department of Foreign Trade shall notify the government of the relevant exporting country of such a request.

Section 36. A person submitting a request may withdraw the request, but if the notice of investigation on anti-dumping and injury pursuant to section 39 has been made, the Committee may terminate or continue the anti-dumping determination.

Section 37. In the case where the Committee gives a determination that the request on dumping and injury is admissible, the Department of Foreign Trade shall proceed with an investigation without delay.

If the Committee gives a determination that the request on dumping or injury is inadmissible, the Department of Foreign Trade shall notify such determination to the person submitting the request without delay.

Section 38. If any government complains that dumped products from other countries which were imported into Thailand are causing injury to a domestic industry of that country and the Committee determines that it is appropriate to conduct anti-dumping determination based on such allegation, the Department of Foreign Trade shall proceed as the Committee determines and shall apply the provisions of this Chapter, *mutatis mutandis*. In any case, such anti-dumping determination shall receive prior approval by the World Trade Organization.

When the Department of Foreign Trade deems appropriate, or when a domestic industry complains that import from other country is being dumped in another country and which causes injury to the domestic industry, and the Department of Foreign Trade deems the complaint to be admissible, the Department of Foreign Trade shall request the officials of that country to conduct an anti-dumping determination.

Criteria and procedures for the conduct pursuant to paragraphs one and two shall be as prescribed in the Ministerial Regulations.

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Part 3
Investigation of Dumping and Injury

Section 39. In an anti-dumping determination, the Department of Foreign Trade shall have the power and duty to investigate issues on dumping and injury, beginning with an issuance of the notice of investigation on dumping and injury in the Government Gazette and publish an advertisement in both Thai and English daily newspapers as it deems appropriate.

A notice of investigation on dumping and injury shall contain the following items:

- (1) identification of a product;
- (2) an exporting country and relevant countries;
- (3) brief facts;
- (4) a request for detailed information, as well as relevant fees;
- (5) a time period for interested parties to submit their written comments on facts and views;
- (6) a specified period of time for interested parties to indicate their intention to submit oral declaration pertaining to the investigation on dumping and injury.

The Department of Foreign Trade shall inform the person submitting the request of the notice of investigation on dumping and injury. In the case where it is aware of the addresses of foreign exporters, importers or the representatives of such persons, the Department of Foreign Trade shall inform such persons in writing of the notice of investigation.

Section 40. Once the investigation on dumping and injury is completed, the Department of Foreign Trade shall summarize the result of the investigation and present its views to the Committee for their determination.

Part 4
Provisional Measure

Section 41. In the case where the Committee gives a preliminary determination that there is dumping and injury, if it appears at that time that there is a need to prevent further injury to the domestic industry, the Committee may apply a provisional measure by imposing a provisional duty or a guarantee of such duty.

A provisional duty imposed pursuant to paragraph one shall not be higher than the estimated margin of dumping at the time of the preliminary determination.

In the case where a provisional measure is applied, the provisions of the customs law and the tariff law shall apply to the imposition of the provisional duty as such duty is an import tariff pursuant to those laws. The provisional duties collected, including money required by the duty guarantee shall be secured in compliance with sections 51 and 52 until the circumstances which require compliance of such sections cease to exist.

Section 42. A provisional measure shall not be applied sooner than sixty days as from the date of the notice of investigation on dumping and injury.

The application of a provisional measure shall be for as long as necessary and shall satisfy the following criteria:

- (1) in normal cases, such application shall not exceed four months;
- (2) if there is a request from a foreign exporter representing a significant proportion, the Committee may announce an extension of the imposition of a provisional duty beyond four months but not exceeding six months;
- (3) in the case where there is a determination whether the imposition of duty lower than the margin of dumping would be sufficient to remove injury, the Committee may announce an extension of the imposition of a provisional duty pursuant to (1) beyond four months but not exceeding six months, or pursuant to (2) beyond six months but not exceeding nine months.

Part 5

Agreement to Suspend Dumping

Section 43. An anti-dumping determination may be terminated for any particular foreign exporter without an application of a provisional measure or an imposition of an anti-dumping duty, if an agreement can be made between that exporter and the Department of Foreign Trade on price undertaking or suspension of export of the products at dumped prices.

The Department of Foreign Trade may make such an agreement only where it is satisfied that the agreement will remove injury resulting from dumping. However, such an agreement may not specify a price increase of more than necessary to eliminate the margin of dumping.

An agreement will come into force only when it is approved by the Committee.

Section 44. An agreement may be made after the Committee gives its preliminary determination.

A foreign exporter or the Department of Foreign Trade may propose that an agreement shall be made.

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The Department of Foreign Trade may decide not to accept a foreign exporter's proposal to make an agreement due to policy reasons or any reason. If it is possible to notify such reasons, the reasons shall be notified to the foreign exporter.

Section 45. The fact that any foreign exporter does not propose an agreement or that the exporter fails to accept a proposal to make an agreement by the Department of Foreign Trade shall not be considered as a detriment to that exporter.

Section 46. A foreign exporter who makes an agreement or that if with the Department of Foreign Trade shall provide information within the specified period of time and shall allow the Department of Foreign Trade to verify the accuracy of such information. If there is a breach of the agreement, available information may be used in the imposition of a provisional measure and the anti-dumping proceeding may be continued.

Section 47. Even where an agreement is made, the Committee may continue the anti-dumping determination if the foreign exporters so wish in making the agreement, or where an agreement can only be made with some foreign exporters, or when there is a breach of the agreement, or the Committee deems appropriate due to other grounds.

In cases pursuant to paragraph one, once the anti-dumping determination is completed, if the Committee gives a final determination that:

(1) there is no dumping or no injury, in which case implementation of that agreement shall be terminated. However, if it appears at that time that there would be dumping or injury if the agreement was not implemented, the Committee may decide to continue the implementation of that agreement for a reasonable period of time;

(2) there is dumping and injury, in which case the agreement shall continue to be implemented;

(3) there is dumping and injury due to the breach of the agreement, in which case the Committee may decide to impose an anti-dumping duty not exceeding ninety days prior to the date of application of a provisional measure. However, such measure shall not apply to dumped products which were imported before the breach of the agreement.

Section 48. The provisions of Chapter VIII shall apply to the agreement to suspend dumping, *mutatis mutandis*.

CHAPTER VI Anti-Dumping Duty

Section 49. In the case where the Committee gives a final determination that an anti-dumping duty shall be imposed, the rate of the anti-dumping duty shall be that which would be adequate to remove the injury and shall in no case exceed the margin of dumping.

An anti-dumping duty to be imposed shall be proportionate to each foreign exporter with dumped products and shall be used on a non-discriminatory basis, unless it is an implementation of an agreement to suspend dumping pursuant to part 5 of Chapter V.

In the case where an anti-dumping duty is imposed on any product, the provisions of the customs law and the tariff law shall apply to the imposition of such duty as it is an import tariff pursuant to those laws. An anti-dumping duty collected shall be secured in compliance with section 59 until the circumstances which require compliance of such section cease to exist.

Section 50. In the case where the margin of dumping is determined by sampling procedures pursuant to section 18 paragraph three, an anti-dumping duty shall be imposed in proportionate amount to each exporter against whom the sampling technique was used. For those against whom the sampling technique was not used, the rate to be imposed shall not exceed the weighted average rate of the margin of dumping. However, if any person subjected to such duty provides complete and correct facts about his or herself within the period of time specified by the Committee, the Committee shall impose an appropriate rate of anti-dumping duty for such person, unless such individual imposition of anti-dumping duties would be unduly burdensome and may prevent the timely completion of the investigation pursuant to section 54 due to the vast number of persons providing such facts. In this case, an anti-dumping duty at the rate not exceeding the weighted average rate may be imposed.

Section 51. In the case where there is injury pursuant to section 19(1), or injury pursuant to section 19(2) which if a provisional measure was not applied, injury pursuant to section 19(1) would have occurred, the Committee may impose an anti-dumping duty retroactively from the application of the provisional measure, pursuant to the criteria and procedures as prescribed by the Minister of Commerce.

If the anti-dumping duty which the Committee imposes pursuant to paragraph one is at a higher rate than the provisional duty, the difference shall not be collected. However, if the anti-dumping duty is at a lower rate than the provisional duty, the difference shall be refunded.

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Section 52. In the case where there is injury pursuant to section 19(2) or (3), the Committee may impose an anti-dumping duty from the date of the final determination that there is injury pursuant to section 19(2) and (3), as the case may be. Duties collected or securities applied pursuant to the provisional measure shall be refunded without delay.

In the case where the Committee gives a final determination that there is no dumping or no injury, provisional duties collected or securities provided pursuant to the provisional measure shall be refunded without delay.

Section 53. In the case where a measure pursuant to section 31 is applied, the Committee may impose an anti-dumping duty after the date of the notice of investigation, but shall not exceed ninety days prior to the date of application of the provisional measure, if the facts appear as follows:

(1) there was dumping of that product and there was injury or the importer knew or should have known that the foreign exporter was dumping and that there might be injury; and

(2) injury was caused by an acceleration of imports of the dumped product in such massive quantity within a relatively short period of time which, in light of the timing, the volume of imports and other conducts, indicates that the remedial effect of the anti-dumping duty will be seriously undermined if no anti-dumping duty is imposed prior to the date of application of the provisional measure.

Prior to the imposition of an anti-dumping duty pursuant to paragraph one, the importers shall be provided with an opportunity to express their views.

CHAPTER VII

Duration of Investigation

Section 54. Initiation of an anti-dumping proceeding until a final determination is reached that an anti-dumping duty shall be imposed or that there is no dumping nor injury shall be completed within one year as from the date of the notice of investigation, unless there is a need for an extension which shall not exceed six months.

CHAPTER VIII

Duration of Anti-Dumping and Review

Section 55. An anti-dumping duty pursuant to Chapter VI shall be applied for the entire period during which there is dumping and injury.

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Section 56. Review of the need to continue an application of an anti-dumping duty shall be made when the Committee deems appropriate or when the request is made by the interested parties after the anti-dumping duty has been applied for at least one year. In such a request, the interested parties may ask the Committee to review whether to terminate the imposition or to change the rate of the anti-dumping duty, provided that they shall present sufficient evidence concerning the problem of dumping or injury which warrants the need for review of the application of such duty during that time.

The review shall be conducted expeditiously and shall be completed within one year as from the date of the notice for the review.

The review shall not affect the imposition of the anti-dumping duty during the review period.

Section 57. An anti-dumping duty shall be imposed for a period of time not exceeding five years as from the date of its application or from the most recent review which includes both dumping and injury problems, except where the Committee deems appropriate or a person or persons acting on behalf of a domestic industry make a request within a reasonable period of time before the expiration of such period that termination of imposition of the anti-dumping duty would lead to the continuation or recurrence of dumping.

Section 58. Any foreign exporter or producer who has not exported dumped products during the anti-dumping determination may request for review of the imposition of an anti-dumping duty with respect to their products specifically. However, the person or persons making the request shall prove that they are not related to any foreign exporter or producer who is subjected to the imposition of such anti-dumping duty. In this case, section 24 paragraph two shall apply, *mutatis mutandis*.

During the review pursuant to paragraph one, an anti-dumping duty shall not be imposed on such foreign exporter or producer. However, if subsequently the Committee gives a determination that there is dumping or that the person or persons making the request are related to the foreign exporter or producer who is subjected to the imposition of such anti-dumping duty, the Committee may impose an anti-dumping duty for the period during which an anti-dumping duty was not levied and section 31 shall apply, *mutatis mutandis*.

Section 59. An importer may request for a refund of an anti-dumping duty at any particular point in time if that person is able to prove that the margin of dumping does not exist or that the margin of dumping is reduced to a level which is below the anti-dumping duty being applied.

The request for a refund of duty pursuant to paragraph one shall be submitted to the Committee within six months as from the date such duty becomes payable.

Section 60. The provisions of Parts 1, 2, 3 of Chapters V and VI shall apply to the review and refund of duty pursuant to this Chapter, *mutatis mutandis*.

CHAPTER IX Court Appeal of a Determination

Section 61. Any person who is not satisfied with the final determination of the Committee pursuant to section 49 or the determination of the Committee on the request for review pursuant to sections 56, 57, 58 and 59 shall make an appeal of such determination to the Central Intellectual Property and International Trade Court within thirty days as from the date of receipt of the notification on the determination.

An appeal pursuant to paragraph one shall not be a cause for mitigation of the imposition or refund of duty pursuant to this Act, unless the Central Intellectual Property and International Trade Court decide otherwise.

CHAPTER X Subsidies

Section 62. In this Chapter:

“government” also includes government agencies;

“enterprise” means an enterprise or industry or a group of enterprises or industries.

Section 63. A subsidy pursuant to this Act is any particular type of benefit conferred because the government of the country of origin or the exporting country acts as follows:

- (1) provides financial contribution which includes;
 - (i) any action which would finally result in the receipt of fund or liabilities being reduced or eliminated;
 - (ii) government revenue that is otherwise due by an enterprise is foregone or not collected;
 - (iii) purchase of products, provision of assets or any other services other than the general infrastructure;

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(iv) payment to a funding mechanism or entrustment or directing a private sector to carry out any particular type of functions pursuant to (i), (ii) or (iii);

(2) provides income or price support regardless of its form, both directly and indirectly, with a view to increase an export of, or reduce an import of, any product.

The exemption of an exported product from taxes or duties borne by the like products when destined for domestic consumption, or the remission of such taxes or duties in amounts not in excess of those which have accrued, shall not be deemed as a financial contribution pursuant to paragraph one (1).

Section 64. The following subsidy shall be deemed specific:

(1) a subsidy which is granted to certain enterprises, either legally or practically;

A subsidy, whose criteria or conditions are generally applicable to all enterprises at the same level of trade without preference, which is consistent with basic economic reasons and where such criteria are strictly adhered to, shall not be deemed as a specific subsidy.

In determining whether or not a subsidy is granted to certain enterprises, factors other than criteria or conditions pursuant to paragraph two shall be taken into account. Such factors shall include (i) the fact that certain enterprises receive or make use of that subsidy more than other enterprises and (ii) discretion exercised in the decision to grant subsidy. In this case, the diversification of relevant economic activities and the length of time during which the subsidy programme has been in operation shall be taken into consideration.

(2) a subsidy which is granted to certain enterprises located within a designated geographical area, but the setting or change of tax and duty rates with generally applicable criteria or conditions shall not be deemed as a specific subsidy pursuant to this section.

The determination of whether or not there is a specific subsidy pursuant to paragraph one shall be based on positive evidence.

Section 65. The following subsidies which are specific in character pursuant to section 64 shall be actionable:

(1) subsidies granted to an export, either legally or practically, pursuant to the manner as prescribed in the Ministerial Regulations;

(2) subsidies granted to encourage the use of domestic over imported products;

(3) subsidies having adverse effect on the interests of the country, which mean those that are:

(i) causing injury to a domestic industry;

(ii) nullifying or impairing benefits accrued directly or indirectly, especially the benefits of concessions bound under the Agreements of the World Trade Organization;

(iii) causing serious prejudice to the interests of a country in the manner as prescribed in the Ministerial Regulations.

The application of provisions under this section to agricultural products shall be in accordance with the criteria and procedures as prescribed in the Ministerial Regulations.

Section 66. A specific subsidy as prescribed by the Minister of Commerce relating to the following cases shall not fall within the categories of those against which a countervailing duty may be imposed:

(1) assistance for research activities;

(2) assistance to disadvantageous regions; or

(3) assistance to promote implementation of laws or regulations on the promotion and conservation of environmental quality.

Section 67. In the case where there is subsidization pursuant to section 65,

(1) the Department of Foreign Trade shall notify the country granting the subsidy in order to consult and propose the matter for dispute settlement pursuant to the processes and procedures provided under the World Trade Organization Agreement on Subsidies and Countervailing Measures, and the Committee shall determine any particular countervailing measure which is appropriate to the case;

(2) the Committee shall proceed to determine countervailing actions by the imposition of a countervailing duty.

In the case where actions pursuant to (1) and (2) are carried out simultaneously, if it finally appears that countervailing measures pursuant to both (1) and (2) may be used, the Committee shall impose only one countervailing measure.

Section 68. A countervailing duty shall be calculated from the benefit conferred during the time at which it appears in the determination that there is subsidization, and shall be determined by the rate per unit of the products of each recipient of the subsidy.

If the recipient of the subsidy incurs burden or any expenses payable to the subsidizing government, the recipient may request for deduction of such expenses. However, the burden of proving such facts is borne by the recipient.

The countervailing duty shall be imposed only to remove injury and shall not exceed the benefit conferred to the recipient.

Section 69. The calculation of the benefit conferred shall adhere to the following criteria:

(1) government provision of equity capital shall not be considered as conferring a benefit, unless the investment is inconsistent with the usual investment practice of the private sector of the country of origin or the exporting country;

(2) a loan shall not be considered as conferring a benefit, unless there is a difference between the amount that the enterprise receiving the loan pays on the government loan and the amount the enterprise would pay on a comparable commercial loan which the enterprise could actually obtain on the market. In this case, the benefit conferred shall be a difference between these two amounts;

(3) a loan guarantee shall not be considered as conferring a benefit, unless there is a difference between the amount that the enterprise receiving the guarantee pays on a loan guaranteed by the government and the amount the enterprise would pay on a comparable commercial loan guaranteed by a private sector, and (2) shall apply, *mutatis mutandis*;

(4) where a government provides an asset or service or purchases products shall not be considered as conferring a benefit, unless the provision is made for less than adequate remuneration or the purchase is made for more than adequate remuneration. The adequacy of remuneration shall be determined in relation to prevailing market conditions in the country providing the asset or service or purchasing the products.

The calculation of the benefit conferred shall be in accordance with the criteria and procedures as prescribed in the Ministerial Regulations. Such Ministerial Regulations may specify that any one particular case shall be as prescribed by the Ministry of Commerce.

Section 70. In imposing a countervailing duty, the provisions of Chapters II, III, IV, V, VI, VII, VIII and IX shall apply, *mutatis mutandis*, except in the following cases:

(1) the provisions of section 42(2) and (3) shall not apply to the application of a provisional measure;

(2) an agreement to suspend subsidization between an exporter and the Department of Foreign Trade shall also be approved by the exporting country.

Section 71. When the Committee receives a request from a person acting on behalf of a domestic industry or a proposal by the Department of Foreign Trade to determine countervailing actions, the Committee shall notify the country whose products are under consideration as being subsidized and shall request for consultation with that country without delay in order to make an agreement to terminate the countervailing determination or to suspend subsidization.

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Consultation may be conducted at any point during the countervailing determination and the Committee shall accord due opportunity for such consultation. However, consultation shall not affect any course of action during the countervailing determination procedures.

In the consultation, the Committee shall accord an opportunity to the country whose products are under consideration to receive information relating to the determination, except the part where the Committee deems as being confidential.

CHAPTER XI The Committee

Section 72. There shall be a committee called the “Committee on Dumping and Subsidies” consisting of the Minister of Commerce as Chairperson, the Permanent Secretary of the Ministry of Commerce, the Permanent Secretary of the Ministry of Finance, the Permanent Secretary of the Ministry of Foreign Affairs, the Permanent Secretary of the Ministry of Agriculture and Cooperatives, the Permanent Secretary of the Ministry of Industry, the Secretary-General of the Board of Investment, the Director-General of the Department of Foreign Trade, the Director-General of the Department of Internal Trade, the Director-General of the Department of Trade Negotiations*, one person assigned by the Consumer Protection Board and six qualified persons appointed by the Council of Ministers as members.

The Director-General of the Department of Foreign Trade shall be secretary and shall appoint officials of the Department of Foreign Trade as assistant secretaries.

The appointment of qualified members pursuant to paragraph one shall be made from persons with knowledge and expertise in international trade, economics, accounting, law, agriculture and industry, being one expert from each field.

Section 73. The Committee shall have the powers and duties as follows:

- (1) to determine anti-dumping and countervailing actions pursuant to this Act;
- (2) to approve an agreement to suspend dumping or subsidization;
- (3) to provide advice for the issuance of Ministerial Regulations and Notifications for the execution of this Act;
- (4) to consider the appointment of sub-committee;
- (5) to execute other functions as provided in this Act or as assigned by the Council of Ministers.

Section 74. A qualified member holds office for a term of four years.

In the initial term, at the expiration of two years, one half of the total qualified members shall vacate office by lot. Qualified members’ vacation of office by lot shall be deemed as vacation of office at an expiration of their terms.

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Section 75. Other than vacation of office by term, a qualified member vacates office upon:

- (1) death;
- (2) resignation;
- (3) being dismissed by the Council of Ministers due to disgraceful behavior, negligence or dishonesty in the discharge of duty, or incapability;
- (4) having been sentenced by a final judgment, except under an offence of negligence or petty offences;
- (5) being incompetent or quasi-incompetent;
- (6) being bankrupt.

Section 76. In the case where a position of a qualified member becomes available before the expiration of his or her term, a qualified member to replace that member shall be appointed expeditiously, unless the remaining term of such qualified member is less than ninety days. In such a case, a replacement may not need to be appointed.

A replacing qualified member pursuant to paragraph one shall hold office for the equivalent remaining term of the qualified member he or she replaces.

Section 77. At the meeting of the Committee, the presence of not less than one-half of the total number of members is required to constitute a quorum. In the case where the Chairperson is not present at the meeting or is unable to perform his or her duty, the members being present shall elect one among themselves to preside over at the meeting.

A decision shall be made by a majority of votes. Each member shall have one vote. In case of an equality of votes, the person who presides over at the meeting shall cast an additional vote as a casting vote.

In the meeting, if there are opposition views, such views shall be recorded together with the reasons therefor in the reports of the meeting. However, any member may request that his or her opposition view be included in the determination of the Committee.

Section 78. For the purpose of performing its duties, the Committee shall have the power to appoint sub-committees to perform any particular task.

CHAPTER XII
Transitional Provisions

Section 79. The determinations of anti-dumping and subsidies whose procedures are ongoing prior to the date this Act comes into force shall proceed in accordance with the Notification of the Ministry of Commerce on the Imposition of Anti-dumping and Countervailing Duties B.E. 2539 (1996) and the Export and Import of Goods Act B.E. 2522 (1979) until their completion.

Countersigned by:
Mr. Chuan Leekpai
Prime Minister

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Appendix II

**ANTI-DUMPING AND COUNTERVAILING OF
FOREIGN PRODUCTS ACT
B.E 2562 (2019)**

สำนักงานคณะกรรมการกฤษฎีกา

พระราชบัญญัติ

สำนักงานคณะกรรมการกฤษฎีกา

การตอบโต้การทุ่มตลาดและการอุดหนุนซึ่งสินค้าจากต่างประเทศ

พ.ศ. ๒๕๕๒

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา

ภูมิพลอดุลยเดช ป.ร.

ให้ไว้ ณ วันที่ ๒๒ มีนาคม พ.ศ. ๒๕๕๒

เป็นปีที่ ๕๔ ในรัชกาลปัจจุบัน

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา

พระบาทสมเด็จพระปรมินทรมหาภูมิพลอดุลยเดช มีพระบรมราชโองการโปรดเกล้าฯ

ให้ประกาศว่า

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา

โดยที่เป็นการสมควรให้มีกฎหมายว่าด้วยการตอบโต้การทุ่มตลาดและการอุดหนุน
ซึ่งสินค้าจากต่างประเทศ

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา

พระราชบัญญัตินี้มีบทบัญญัติบางประการเกี่ยวกับการจำกัดสิทธิและเสรีภาพของ
บุคคล ซึ่งมาตรา ๒๙ ประกอบกับมาตรา ๕๐ ของรัฐธรรมนูญแห่งราชอาณาจักรไทย บัญญัติให้
กระทำได้โดยอาศัยอำนาจตามบทบัญญัติแห่งกฎหมาย

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา

จึงทรงพระกรุณาโปรดเกล้าฯ ให้ตราพระราชบัญญัติขึ้นไว้โดยคำแนะนำ และ
ยินยอมของรัฐสภา ดังต่อไปนี้

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา

มาตรา ๑ พระราชบัญญัตินี้เรียกว่า “พระราชบัญญัติการตอบโต้การทุ่มตลาดและ
การอุดหนุนซึ่งสินค้าจากต่างประเทศ พ.ศ. ๒๕๕๒”

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา

มาตรา ๒^๑ พระราชบัญญัตินี้ให้ใช้บังคับเมื่อพ้นกำหนดเก้าสิบวันนับแต่วันประกาศ
ในราชกิจจานุเบกษาเป็นต้นไป

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา

มาตรา ๓ ให้ยกเลิกพระราชบัญญัติป้องกันการทุ่มตลาด พ.ศ. ๒๕๐๗

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา

มาตรา ๔ ในพระราชบัญญัตินี้

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา

“ความเสียหาย” หมายความว่า ความเสียหายตามหมวด ๓

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา

“อุตสาหกรรมภายใน” หมายความว่า อุตสาหกรรมภายในตามหมวด ๔

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา

“สินค้าที่ถูกพิจารณา” หมายความว่า สินค้ารายที่ถูกล่ามหนำที่มีการทุ่มตลาด

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา

หรือได้รับการอุดหนุน หรือสินค้ายที่ถูกล่ามหนำที่มีการหลบเลี่ยงมาตรการตอบโต้การทุ่มตลาด

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา

หรือการอุดหนุน

^๑ ราชกิจจานุเบกษา เล่ม ๑๑๖/ตอนที่ ๒๒ ก/หน้า ๕๙/๓๑ มีนาคม ๒๕๕๒

“สินค้าชนิดเดียวกัน” หมายความว่า สินค้าที่มีคุณสมบัติเหมือนกันทุกประการกับสินค้าที่ถูกพิจารณา แต่ในกรณีที่ไม่มีสินค้านี้ดังกล่าวให้หมายความว่าสินค้าที่คล้ายคลึงกันอย่างมากกับสินค้านี้ดังกล่าว

“ขั้นตอนทางการค้า” หมายความว่า ขั้นตอนต่าง ๆ ในการจำหน่ายสินค้าทอดต่าง ๆ จนถึงผู้บริโภค

“ส่วนเหลืออมการทุ่มตลาด” หมายความว่า ส่วนที่ราคาส่งออกจากต่างประเทศต่ำกว่ามูลค่าปกติ

“ผู้มีส่วนได้เสีย” หมายความว่า

(๑) ผู้ผลิตในต่างประเทศ ผู้ส่งออกจากต่างประเทศ ผู้นำเข้าซึ่งสินค้าที่ถูกพิจารณา หรือสมาคมในทางการค้าที่มีสมาชิกส่วนใหญ่เป็นผู้ผลิต ผู้ส่งออก หรือผู้นำเข้าซึ่งสินค้าที่ถูกพิจารณาแล้วแต่กรณี

(๒) รัฐบาลของประเทศแหล่งกำเนิดหรือประเทศผู้ส่งออกซึ่งสินค้าที่ถูกพิจารณา

(๓) ผู้ประกอบสินค้าตามมาตรา ๗๑/๑

(๔) ผู้ผลิตสินค้าชนิดเดียวกันภายในประเทศ หรือสมาคมในทางการค้าที่มีสมาชิกส่วนใหญ่เป็นผู้ผลิตสินค้านี้ดังกล่าว หรือ

(๕) บุคคลอื่นตามที่รัฐมนตรีว่าการกระทรวงพาณิชย์ประกาศกำหนด

“อากร” หมายความว่า อากรชั่วคราว อากรตอบโต้การทุ่มตลาด หรืออากรตอบโต้การอุดหนุน แล้วแต่กรณี

“คณะกรรมการ” หมายความว่า คณะกรรมการพิจารณาการทุ่มตลาดและการอุดหนุน

มาตรา ๕ ให้รัฐมนตรีว่าการกระทรวงการคลังรักษาการตามพระราชบัญญัตินี้ เฉพาะในส่วนที่เกี่ยวกับการดำเนินงานของกรมศุลกากร และให้มีอำนาจออกกฎกระทรวงตามมาตรา ๑๑ เพื่อปฏิบัติการตามพระราชบัญญัตินี้

ให้รัฐมนตรีว่าการกระทรวงพาณิชย์รักษาการตามพระราชบัญญัตินี้ และให้มีอำนาจออกกฎกระทรวงและประกาศเพื่อปฏิบัติการตามพระราชบัญญัตินี้

กฎกระทรวงและประกาศนั้น เมื่อได้ประกาศในราชกิจจานุเบกษาแล้วให้ใช้บังคับได้

มาตรา ๖ ให้รัฐมนตรีว่าการกระทรวงพาณิชย์มีอำนาจออกกฎกระทรวงกำหนดหลักเกณฑ์ วิธีการ และเงื่อนไขเกี่ยวกับการพิจารณาการทุ่มตลาด การพิจารณาการอุดหนุน การพิจารณาความเสียหาย การพิจารณาตอบโต้การทุ่มตลาดและการอุดหนุน การพิจารณาการหลบเลี่ยงมาตรการตอบโต้การทุ่มตลาดและการอุดหนุน การพิจารณาตอบโต้การหลบเลี่ยงมาตรการตอบโต้การทุ่มตลาด

๒ มาตรา ๔ นิยามคำว่า “สินค้าที่ถูกพิจารณา” แก้ไขเพิ่มเติมโดยพระราชบัญญัติการตอบโต้การทุ่มตลาดและการอุดหนุนซึ่งสินค้าจากต่างประเทศ (ฉบับที่ ๒) พ.ศ. ๒๕๖๒

๓ มาตรา ๔ นิยามคำว่า “ผู้มีส่วนได้เสีย” (๒) แก้ไขเพิ่มเติมโดยพระราชบัญญัติการตอบโต้การทุ่มตลาดและการอุดหนุนซึ่งสินค้าจากต่างประเทศ (ฉบับที่ ๒) พ.ศ. ๒๕๖๒

๔ มาตรา ๔ นิยามคำว่า “ผู้มีส่วนได้เสีย” (๒/๑) เพิ่มโดยพระราชบัญญัติการตอบโต้การทุ่มตลาดและการอุดหนุนซึ่งสินค้าจากต่างประเทศ (ฉบับที่ ๒) พ.ศ. ๒๕๖๒

และการอุดหนุนการทบทวนมาตรการ รวมทั้งการดำเนินการใด ๆ อันเกี่ยวกับพระราชบัญญัตินี้ได้
เท่าที่ไม่ขัดหรือแย้งกับบทบัญญัติแห่งพระราชบัญญัตินี้^๕

ในกรณีที่สมควร กฎกระทรวงตามวรรคหนึ่งนั้นจะกำหนดให้กรณีหนึ่งกรณีใด
อาจกระทำได้โดยออกเป็นประกาศกระทรวงพาณิชย์ก็ได้

หมวด ๑

บททั่วไป^๖

มาตรา ๗^๗ การตอบโต้การทุ่มตลาดและการอุดหนุน และการตอบโต้การหลบเลี่ยง
มาตรการตอบโต้การทุ่มตลาดและการอุดหนุน ให้คำนึงถึงประโยชน์ของอุตสาหกรรมภายใน ผู้บริโภค
และประโยชน์สาธารณะประกอบกัน

มาตรา ๘^๘ เพื่อประโยชน์ในการใช้บังคับพระราชบัญญัตินี้ เมื่อคณะกรรมการ
เห็นสมควรจะให้กรมการค้าต่างประเทศมีหนังสือขอให้กรมศุลกากรดำเนินการจัดทำทะเบียนการ
นำเข้าหรือส่งออกสินค้าใด หรือรวบรวมข้อมูลข่าวสารอย่างหนึ่งอย่างใดเกี่ยวกับการนำเข้าหรือส่งออก
สินค้าก็ได้ ในกรณีนี้ให้กรมศุลกากรมีอำนาจกำหนดให้ผู้นำเข้าหรือผู้ส่งออกแจ้งข้อเท็จจริงใด ๆ
ตามที่คณะกรรมการร้องขอได้ และให้นำกฎหมายว่าด้วยศุลกากรในส่วนที่เกี่ยวข้องมาใช้บังคับแก่กรณีนี้

มาตรา ๙^๙ ผู้ซึ่งยื่นคำขอให้คณะกรรมการดำเนินการพิจารณาตอบโต้การทุ่มตลาด
หรือการอุดหนุน หรือพิจารณาตอบโต้การหลบเลี่ยงมาตรการตอบโต้การทุ่มตลาดหรือการอุดหนุน
ผู้นำเข้า ผู้ประกอบสินค้า ผู้ผลิตในต่างประเทศ หรือผู้ส่งออกจากต่างประเทศอาจขอรายละเอียด
ที่เกี่ยวกับข้อเท็จจริงที่ใช้เป็นฐานในการกำหนดมาตรการชั่วคราว การกำหนดอากรตอบโต้การทุ่มตลาด
หรือการอุดหนุน การขยายการเรียกเก็บอากรตอบโต้การทุ่มตลาดหรือการอุดหนุน การทบทวนอากร
หรือการคืนอากร แล้วแต่กรณี ได้ ตามหลักเกณฑ์ วิธีการ และเงื่อนไขที่กระทรวงพาณิชย์ประกาศ
กำหนด

คำขอตามวรรคหนึ่งให้ยื่นภายในหนึ่งเดือนนับแต่วันที่มาตรการชั่วคราว การกำหนด
อากรตอบโต้การทุ่มตลาดหรือการอุดหนุน การขยายการเรียกเก็บอากรตอบโต้การทุ่มตลาดหรือ
การอุดหนุน การทบทวนอากรหรือการคืนอากร มีผลใช้บังคับ

^๕ มาตรา ๖ วรรคหนึ่ง แก้ไขเพิ่มเติมโดยพระราชบัญญัติการตอบโต้การทุ่มตลาดและการ
อุดหนุนซึ่งสินค้าจากต่างประเทศ (ฉบับที่ ๒) พ.ศ. ๒๕๖๒

^๖ หมวด ๑ บททั่วไป มาตรา ๗ ถึง มาตรา ๑๑ แก้ไขเพิ่มเติมโดยพระราชบัญญัติการตอบโต้การ
ทุ่มตลาดและการอุดหนุนซึ่งสินค้าจากต่างประเทศ (ฉบับที่ ๒) พ.ศ. ๒๕๖๒

^๗ มาตรา ๗ แก้ไขเพิ่มเติมโดยพระราชบัญญัติการตอบโต้การทุ่มตลาดและการอุดหนุนซึ่งสินค้า
จากต่างประเทศ (ฉบับที่ ๒) พ.ศ. ๒๕๖๒

^๘ มาตรา ๘ แก้ไขเพิ่มเติมโดยพระราชบัญญัติการตอบโต้การทุ่มตลาดและการอุดหนุนซึ่งสินค้า
จากต่างประเทศ (ฉบับที่ ๒) พ.ศ. ๒๕๖๒

^๙ มาตรา ๙ แก้ไขเพิ่มเติมโดยพระราชบัญญัติการตอบโต้การทุ่มตลาดและการอุดหนุนซึ่งสินค้า
จากต่างประเทศ (ฉบับที่ ๒) พ.ศ. ๒๕๖๒

มาตรา ๑๐^{๑๐} ในกรณีที่พระราชบัญญัตินี้กำหนดให้ผู้ใดอาจมีค่าขอให้พิจารณา
 ตอบโต้การทุ่มตลาดหรือการอุดหนุน พิจารณาตอบโต้การหลบเลี่ยงมาตรการตอบโต้การทุ่มตลาด
 หรือการอุดหนุน ให้ทำความตกลง ให้บทวนมาตรการ ให้คืนอากร ตลอดจนการขอข้อมูลข่าวสาร
 ใดนั้น ให้กระทรวงพาณิชย์มีอำนาจออกประกาศกำหนดให้มีการเรียกเก็บค่าธรรมเนียมหรือค่าใช้จ่าย
 ได้ตามความเหมาะสมแก่ภาระในการดำเนินงานดังกล่าว

มาตรา ๑๑^{๑๑} เว้นแต่พระราชบัญญัตินี้จะบัญญัติไว้เป็นอย่างอื่น การคืนอากรหรือ
 หลักประกันการชำระอากรตามพระราชบัญญัตินี้ให้เป็นไปตามหลักเกณฑ์และวิธีการที่กำหนดใน
 กฎกระทรวง

หมวด ๒

การทุ่มตลาด

มาตรา ๑๒ การทุ่มตลาดที่ก่อให้เกิดความเสียหายแก่อุตสาหกรรมภายในเป็นการ
 กระทำอันมิชอบที่อาจตอบโต้ได้

มาตรา ๑๓ การทุ่มตลาดตามพระราชบัญญัตินี้ ได้แก่ การส่งสินค้าเข้ามาใน
 ประเทศไทยเพื่อประโยชน์ในทางพาณิชย์ โดยมีราคาส่งออกที่ต่ำกว่ามูลค่าปกติของสินค้าชนิด
 เดียวกัน

มาตรา ๑๔ ราคาส่งออก ได้แก่ ราคาส่งออกจากประเทศผู้ส่งออกมายังประเทศ
 ไทยตามที่ได้ชำระหรือควรจะมีการชำระกันจริง

ในกรณีที่ไม่ปรากฏราคาส่งออกหรือราคาส่งออกนั้นไม่น่าเชื่อถือ เนื่องจากมีการ
 ร่วมมือกันหรือจัดให้มีการชดเชยประโยชน์กันระหว่างผู้ที่เกี่ยวข้องให้คำนวณหาราคาส่งออกจากราคา
 สินค้าที่ได้อำนาจต่อไปทอดแรกยังผู้ซื้ออิสระ แต่ในกรณีที่สินค้านั้นไม่มีการจำหน่ายต่อไปยังผู้ซื้อ
 อิสระหรือไม่ได้อำนาจต่อไปตามสภาพสินค้าที่เป็นอยู่ในขณะนำเข้า ให้คำนวณราคาส่งออกตาม
 หลักเกณฑ์อย่างหนึ่งอย่างใดที่เหมาะสมแก่กรณีดังกล่าว

ในกรณีตามวรรคสอง การคำนวณหาราคาส่งออกให้หักค่าใช้จ่ายและค่าภาระต่าง ๆ
 ตลอดจนภาษีอากร และกำไรที่ได้รับอันเกิดขึ้นระหว่างการนำเข้าและการจำหน่ายต่อไปอีกด้วย

มาตรา ๑๕ มูลค่าปกติ ได้แก่ ราคาที่ผู้ซื้ออิสระในประเทศผู้ส่งออกได้ชำระหรือควร
 จะมีการชำระกันจริงในทางการค้าปกติสำหรับสินค้าชนิดเดียวกันที่ขายเพื่อการบริโภคภายในประเทศนั้น

^{๑๐} มาตรา ๑๐ แก้ไขเพิ่มเติมโดยพระราชบัญญัติการตอบโต้การทุ่มตลาดและการอุดหนุนซึ่ง
 สินค้าจากต่างประเทศ (ฉบับที่ ๒) พ.ศ. ๒๕๖๒

^{๑๑} มาตรา ๑๑ แก้ไขเพิ่มเติมโดยพระราชบัญญัติการตอบโต้การทุ่มตลาดและการอุดหนุนซึ่ง
 สินค้าจากต่างประเทศ (ฉบับที่ ๒) พ.ศ. ๒๕๖๒

โดยพิจารณาจากการขายสินค้าดังกล่าวในปริมาณใดปริมาณหนึ่งที่เหมาะสมซึ่งไม่น้อยกว่าร้อยละห้าของปริมาณสินค้านั้นที่ส่งออกจากประเทศผู้ส่งออกมายังประเทศไทย แต่จะนำปริมาณการขายที่ต่ำกว่านั้นมาเป็นเกณฑ์ในการพิจารณาก็ได้ ถ้ามีเหตุอันรับฟังได้ว่าราคายาที่พิจารณาจากปริมาณสินค้าดังกล่าวเป็นราคาในตลาดประเทศผู้ส่งออก

ในกรณีไม่ปรากฏราคาตามวรรคหนึ่งหรือราคานั้นไม่น่าเชื่อถือเนื่องจากการร่วมมือกันหรือจัดให้มีการชดเชยประโยชน์กันระหว่างผู้ที่เกี่ยวข้อง หรือตลาดในประเทศผู้ส่งออกมีลักษณะเฉพาะทำให้ไม่อาจหาราคาที่เปรียบเทียบกันได้โดยเหมาะสม ให้พิจารณาหามูลค่าปกติจากราคาต่อไปนี้

(๑) ราคาส่งออกในทางการค้าปกติของสินค้าชนิดเดียวกันที่ส่งออกจากประเทศผู้ส่งออกไปยังประเทศที่สามที่เหมาะสม ถ้ามีเหตุอันรับฟังได้ว่าราคานั้นแสดงถึงราคาในตลาดประเทศผู้ส่งออก หรือ

(๒) ราคาที่คำนวณจากต้นทุนการผลิตในประเทศแหล่งกำเนิดรวมกับจำนวนที่เหมาะสมของค่าใช้จ่ายในการจัดการ การขาย และค่าใช้จ่ายอื่น ๆ ตลอดจนกำไรต่าง ๆ ที่เกิดขึ้น

ในกรณีที่ราคาตามวรรคหนึ่งหรือราคาตามวรรคสอง (๑) ต่ำกว่าต้นทุนการผลิตรวมกับค่าใช้จ่ายในการจัดการ การขาย และค่าใช้จ่ายอื่น ๆ เมื่อได้พิจารณาการขายสินค้าดังกล่าวในช่วงระยะเวลาหนึ่งที่สมควรโดยมีปริมาณการขายที่มากพอแล้ว ถ้าปรากฏว่าราคาเหล่านั้นจะไม่สามารถทำให้ต้นทุนได้ภายในเวลาที่เหมาะสม จะถือว่าราคานั้นเป็นราคาในทางการค้าปกติที่จะนำมาพิจารณาหามูลค่าปกติไม่ได้ เว้นแต่ราคานั้นสูงกว่าต้นทุนการผลิตแล้วเฉลี่ยถ่วงน้ำหนักต่อหน่วยที่ปรากฏในการพิจารณาตอบโต้การทุ่มตลาด

มาตรา ๑๖ ในกรณีที่ระบบเศรษฐกิจของประเทศผู้ส่งออกไม่ใช่กลไกตลาดการหามูลค่าปกติตามมาตรา ๑๕ ให้พิจารณาเทียบเคียงจากข้อมูลราคาที่เป็นอยู่ในประเทศที่สามซึ่งมีระบบเศรษฐกิจที่ใช้กลไกตลาดและเหมาะสมแก่การเปรียบเทียบ แต่ถ้าหาประเทศที่สามที่เหมาะสมไม่ได้ ให้พิจารณาจากราคาของสินค้าชนิดเดียวกันที่จำหน่ายในประเทศไทยหรือจากพื้นฐานอื่นใดตามที่เหมาะสมแก่กรณี

มาตรา ๑๗ ในกรณีเป็นการนำสินค้าเข้ามาในประเทศไทยโดยการส่งออกจากประเทศอื่นซึ่งมิใช่ประเทศแหล่งกำเนิด ให้ใช้ข้อมูลราคาที่เป็นอยู่ในประเทศผู้ส่งออกนั้นเป็นเกณฑ์ในการหามูลค่าปกติตามมาตรา ๑๕ แต่ถ้ามีเหตุอันควรจะใช้ราคาในประเทศแหล่งกำเนิดเป็นเกณฑ์ในการหามูลค่าปกติก็ได้ โดยเฉพาะในกรณีที่สินค้านั้นเป็นเพียงการขนถ่ายผ่านประเทศผู้ส่งออก หรือสินค้านั้นไม่มีการผลิตในประเทศผู้ส่งออก หรือไม่มีราคาที่จะเปรียบเทียบกันได้ในประเทศผู้ส่งออก

มาตรา ๑๘ การพิจารณาหาส่วนเหลืออมการทุ่มตลาดให้มีการเปรียบเทียบอย่างเป็นธรรมและให้กระทำที่ขั้นตอนทางการค้าเดียวกันและในเวลาเดียวกัน โดยคำนึงถึงบรรดาข้อแตกต่างที่มีผลกระทบต่อเปรียบเทียบราคาประกอบด้วย ในกรณีที่ราคาส่งออกและมูลค่าปกติมีได้อยู่บนขั้นตอนทางการค้าเดียวกันหรือเวลาเดียวกัน ให้มีการปรับลดองค์ประกอบต่าง ๆ ที่แตกต่างกันอันมีผลกระทบต่อเปรียบเทียบราคาออกด้วย

ภายใต้บังคับวรรคหนึ่ง วิธีการหาส่วนเหลือของการทุ่มตลาดต่อหน่วยให้ปฏิบัติ
ดังต่อไปนี้ เว้นแต่จะมีเหตุสมควรที่จะใช้วิธีการอื่น

(๑) เปรียบเทียบระหว่างมูลค่าปกติถัวเฉลี่ยถ่วงน้ำหนักกับราคาส่งออกถัวเฉลี่ยถ่วง
น้ำหนัก

(๒) เปรียบเทียบระหว่างมูลค่าปกติกับราคาส่งออกของธุรกรรมแต่ละรายโดยเฉลี่ย
หรือ

(๓) ในกรณีที่ปรากฏว่าราคาส่งออกมายังตลาดภายในประเทศมีความแตกต่างกันใน
สาระสำคัญระหว่างผู้ซื้อต่างคนกัน ภูมิภาคที่ส่งออก หรือระยะเวลาที่ส่งออก และวิธีการตาม (๑)
หรือ (๒) ไม่อาจแสดงสภาพแท้จริงของการทุ่มตลาดได้ ให้เปรียบเทียบระหว่างมูลค่าปกติถัวเฉลี่ยถ่วง
น้ำหนักกับราคาส่งออกของธุรกรรมแต่ละรายโดยเฉลี่ย

ในการหาส่วนเหลือของการทุ่มตลาดจะใช้วิธีการสุ่มตัวอย่างตามหลักเกณฑ์และวิธีการ
ที่กระทรวงพาณิชย์ประกาศกำหนดก็ได้

หมวด ๓

ความเสียหาย

มาตรา ๑๙ ถ้าบทบัญญัติใดมิได้แสดงให้เห็นเป็นอย่างอื่น ความเสียหายตาม
พระราชบัญญัตินี้หมายความว่า

(๑) ความเสียหายอย่างสำคัญที่เกิดแก่อุตสาหกรรมภายใน

(๒) ความเสียหายอย่างสำคัญที่อาจเกิดแก่อุตสาหกรรมภายใน หรือ

(๓) อุปสรรคล่าช้าอย่างสำคัญต่อการก่อตั้งหรือการพัฒนาอุตสาหกรรมภายใน

มาตรา ๒๐ การพิจารณาว่ามีความเสียหายอย่างสำคัญที่เกิดแก่อุตสาหกรรม
ภายในตามมาตรา ๑๙ (๑) ต้องมีพยานหลักฐานโดยตรงสนับสนุนเกี่ยวกับกรณีดังต่อไปนี้

(๑) ปริมาณของสินค้าทุ่มตลาดและผลของการทุ่มตลาดที่มีต่อราคาของสินค้าชนิด
เดียวกันในตลาดภายในประเทศ และ

(๒) ผลกระทบของการทุ่มตลาดนั้นที่มีต่ออุตสาหกรรมภายใน

ในกรณีที่มีการทุ่มตลาดสินค้าใดจากประเทศผู้ส่งออกมากกว่าหนึ่งประเทศอยู่ระหว่าง
การพิจารณาตอบโต้การทุ่มตลาดพร้อมกัน ถ้าปรากฏว่าส่วนเหลือของการทุ่มตลาดและปริมาณการ
นำเข้าจากแต่ละประเทศดังกล่าวมีจำนวนมากกว่าเกณฑ์ขั้นต่ำตามมาตรา ๒๘ การพิจารณาความ
เสียหายตามมาตรา ๑๙ (๑) จะประเมินผลของการนำเข้าจากแต่ละประเทศดังกล่าวรวมกันก็ได้ ถ้า
กรณีมีความเหมาะสมต่อสภาพการแข่งขันในระหว่างสินค้าทุ่มตลาดด้วยกันและในระหว่างสินค้าทุ่ม
ตลาดกับสินค้าชนิดเดียวกันในตลาดภายในประเทศ

มาตรา ๒๑ ในการพิจารณาความเสียหายตามมาตรา ๑๙ (๑) ความสัมพันธ์
ระหว่างสินค้าทุ่มตลาดกับความเสียหายต่ออุตสาหกรรมภายใน จะต้องพิจารณาจากพยานหลักฐานที่
เกี่ยวข้องทั้งหมด โดยนอกจากผลจากสินค้าทุ่มตลาดแล้วจะต้องพิจารณาผลจากปัจจัยต่าง ๆ ที่ปรากฏว่า

ก่อให้เกิดความเสียหายแก่อุตสาหกรรมภายในในเวลาเดียวกันประกอบด้วย ปัจจัยดังกล่าวให้รวมถึง ปริมาณและราคาของสินค้านำเข้าที่มีได้ขายในราคาที่มีการทุ่มตลาด การที่อุปสงค์ลดลง การเปลี่ยนแปลงรูปแบบการบริโภค การผูกขาดตัดตอนทางการค้า การแข่งขันระหว่างผู้ผลิตในต่างประเทศและผู้ผลิตภายในประเทศ การพัฒนาทางด้านเทคโนโลยี ประสิทธิภาพในการส่งออก และความสามารถในการผลิต

มาตรา ๒๒ การพิจารณาว่ามีความเสียหายอย่างสำคัญที่อาจเกิดแก่อุตสาหกรรมภายในตามมาตรา ๑๙ (๒) ต้องมีข้อเท็จจริงสนับสนุนอันมิใช่เป็นเพียงการกล่าวอ้าง หรือการคาดการณ์ หรือความเป็นไปได้ที่ไกลเกินเหตุ โดยจากเหตุการณ์ที่เปลี่ยนแปลงไปทำให้เห็นได้ว่าการทุ่มตลาดนั้นอาจก่อให้เกิดความเสียหายอย่างเห็นได้ชัดและใกล้จะเกิดขึ้น หรือมีแนวโน้มว่าอาจมีสินค้าทุ่มตลาดเพิ่มขึ้นอย่างเห็นได้ชัด อันอาจก่อให้เกิดความเสียหายอย่างสำคัญได้ถ้าไม่ดำเนินการป้องกันเสียก่อน ในการนี้อาจพิจารณาจากปัจจัยดังต่อไปนี้

(๑) อัตราเพิ่มขึ้นที่เห็นได้ชัดของสินค้าทุ่มตลาดอันแสดงให้เห็นความเป็นไปได้ว่าอาจมีการนำเข้าสินค้าดังกล่าวเพิ่มขึ้นอย่างมาก

(๒) ชัดความสามารถของผู้ส่งออกได้เพิ่มขึ้นอย่างเห็นได้ชัดและระบายสินค้าได้อย่างอิสระอันแสดงให้เห็นความเป็นไปได้ว่าอาจมีการนำเข้าสินค้าดังกล่าวเพิ่มขึ้นอย่างมาก ทั้งนี้ให้คำนึงถึงการมีอยู่ของตลาดส่งออกอื่นที่อาจรองรับสินค้าส่งออกที่เพิ่มขึ้นประกอบด้วย

(๓) ความชัดเจนของผลของราคาสินค้าทุ่มตลาดที่เป็นการกดหรือลดราคาของสินค้าชนิดเดียวกันในตลาดภายในและแนวโน้มที่เพิ่มขึ้นของการนำเข้าสินค้านั้น

(๔) ปริมาณคงเหลือของสินค้าทุ่มตลาด

มาตรา ๒๓ การพิจารณาว่ามีอุปสรรคล่าช้าอย่างสำคัญต่อการก่อตั้งหรือการพัฒนาอุตสาหกรรมภายในตามมาตรา ๑๙ (๓) ต้องมีข้อเท็จจริงที่ทำให้คาดหมายได้ว่าจะทำให้เกิดความล่าช้าอย่างสำคัญซึ่งรวมถึงความเป็นไปได้หรือระยะเวลาในการก่อตั้งหรือการพัฒนาอุตสาหกรรมภายในด้วย

หมวด ๔

อุตสาหกรรมภายใน

มาตรา ๒๔ อุตสาหกรรมภายในตามพระราชบัญญัตินี้ ได้แก่ ผู้ผลิตสินค้าชนิดเดียวกันภายในประเทศที่มีผลผลิตรวมกันได้เกินกึ่งหนึ่งของปริมาณการผลิตรวมภายในประเทศของสินค้าชนิดนั้นเว้นแต่ในกรณีดังต่อไปนี้

(๑) ถ้าผู้ผลิตสินค้าชนิดเดียวกันรายใดเป็นผู้นำเข้าสินค้าทุ่มตลาด หรือมีความเกี่ยวข้องกับผู้นำเข้าสินค้าทุ่มตลาดหรือผู้ส่งออกสินค้าทุ่มตลาดจากต่างประเทศ ในกรณีเช่นนี้จะไม่ถือว่าผู้ผลิตดังกล่าวเป็นส่วนหนึ่งของอุตสาหกรรมภายในก็ได้

(๒) ถ้าในอาณาเขตของประเทศได้มีการแบ่งตลาดของสินค้าชนิดเดียวกันเป็นตลาดมากกว่าหนึ่งตลาดขึ้นไป จะถือว่าผู้ผลิตสินค้าชนิดเดียวกันในแต่ละตลาดเป็นอุตสาหกรรมภายในแยก

ต่างหากจากกันก็ได้ ถ้าปรากฏว่าผู้ผลิตสินค้าชนิดเดียวกันของตลาดหนึ่งขายสินค้าของตนทั้งหมดหรือเกือบทั้งหมดในตลาดนั้น และผู้ผลิตสินค้าชนิดเดียวกันรายอื่นภายในประเทศมิได้ส่งสินค้าไปยังตลาดนั้นมากพอควรแก่ความต้องการของตลาดดังกล่าว

ให้ถือว่าผู้ผลิตมีความเกี่ยวข้องกับผู้นำเข้าสินค้าทุ้มตลาดหรือผู้ส่งออกสินค้าทุ้มตลาดจากต่างประเทศตามวรรคหนึ่ง (๑) ถ้าปรากฏว่าฝ่ายใดฝ่ายหนึ่งสามารถควบคุมอีกฝ่ายหนึ่งหรือทั้งสองฝ่ายถูกควบคุมโดยบุคคลที่สาม หรือทั้งสองฝ่ายร่วมกันควบคุมบุคคลที่สาม ทั้งนี้ ไม่ว่าโดยทางตรงหรือทางอ้อม โดยมีเหตุให้เชื่อหรือสงสัยได้ว่าผลจากการเกี่ยวข้องกันจะเป็นเหตุให้ผู้ผลิตรายนั้นมีพฤติกรรมแตกต่างจากผู้ผลิตรายอื่นที่ไม่มีความเกี่ยวข้องกันเช่นว่านั้น ในการนี้ให้ถือว่าฝ่ายหนึ่งควบคุมอีกฝ่ายหนึ่งได้ถ้าฝ่ายแรกอยู่ในฐานะทางกฎหมายหรือทางปฏิบัติที่จะยับยั้งหรือสั่งการฝ่ายหลังได้

ในกรณีที่มีการแบ่งตลาดตามวรรคหนึ่ง (๒) ความเสียหายให้พิจารณาจากผลที่เกิดขึ้นเฉพาะในตลาดนั้น แม้ว่าส่วนใหญ่ของอุตสาหกรรมภายในประเทศจะไม่เสียหายก็ตาม และให้เรียกเก็บอากรตอบโต้การทุ้มตลาดสำหรับสินค้าทุ้มตลาดที่ส่งมาเพื่อการบริโภคเฉพาะในตลาดนั้นได้ แต่ถ้าปรากฏในทางปฏิบัติว่าการเรียกเก็บอากรตอบโต้การทุ้มตลาดเฉพาะสินค้าทุ้มตลาดที่ส่งมาเพื่อการบริโภคในตลาดนั้นไม่อาจปฏิบัติได้ หรือเมื่อผู้ส่งออกสินค้าทุ้มตลาดไม่มีข้อเสนอทำความตกลงที่เหมาะสมภายในเวลาอันควรตามมาตรา ๔๔ จะเรียกเก็บอากรตอบโต้การทุ้มตลาดจากสินค้าทุ้มตลาดทั้งหมดที่ส่งเข้ามาในประเทศไทยก็ได้

หมวด ๕

การพิจารณาตอบโต้การทุ้มตลาด

ส่วนที่ ๑

บททั่วไป

มาตรา ๒๕ การพิจารณาตอบโต้การทุ้มตลาดนอกจากที่ได้บัญญัติไว้ตามหมวดนี้แล้ว ให้เป็นไปตามหลักเกณฑ์และวิธีการที่กำหนดในกฎกระทรวง

มาตรา ๒๖ ข้อมูลข่าวสารใดเป็นข้อมูลข่าวสารที่ต้องปกปิดโดยสาระและเนื้อหา หรือผู้ให้ข้อมูลข่าวสารนั้นขอให้ปกปิด การพิจารณาจะต้องไม่กระทำการใดให้เป็นการเปิดเผยข้อมูลข่าวสารนั้น

ข้อมูลข่าวสารที่ผู้ให้ข้อมูลข่าวสารขอให้ปกปิดนั้น การเปิดเผยจะต้องได้รับความเห็นชอบจากผู้นั้นก่อน และในการพิจารณาจะต้องขอให้ผู้ให้ข้อมูลข่าวสารจัดทำย่อสรุปที่สามารถเปิดเผยได้เพื่อประกอบการพิจารณา ถ้าผู้ให้ข้อมูลข่าวสารนั้นไม่จัดทำย่อสรุปดังกล่าวและไม่แจ้งความยินยอมให้เปิดเผยข้อมูลข่าวสารที่ให้มาภายในเวลาที่กำหนด ในการนี้จะไม่รับฟังข้อมูลข่าวสารนั้นประกอบการพิจารณาก็ได้

มาตรา ๒๗ ในกรณีที่ผู้มีส่วนได้เสียผู้ใดปฏิเสธที่จะนำพยานหลักฐานมาแสดง หรือไม่นำพยานหลักฐานดังกล่าวมาแสดงภายในเวลาที่กำหนด หรือไม่ให้ความร่วมมือเพื่อให้ได้มาซึ่งพยานหลักฐาน หรือขัดขวางกระบวนการพิจารณาตอบโต้การทุ่มตลาด การพิจารณาจะรับฟังเพียงข้อเท็จจริงเท่าที่มีอยู่หรืออาจรับฟังไปในทางที่ไม่เป็นคุณแก่ผู้นั้นก็ได้

มาตรา ๒๘ การพิจารณาตอบโต้การทุ่มตลาดให้เป็นอันยุติ หากปรากฏว่าส่วน เหลื่อมการทุ่มตลาดมีจำนวนน้อยกว่าเกณฑ์ที่กำหนดในกฎกระทรวง หรือมีปริมาณการนำเข้าสินค้า ทุ่มตลาดน้อยกว่าเกณฑ์ที่กำหนดในกฎกระทรวง

มาตรา ๒๙ ในการพิจารณาตอบโต้การทุ่มตลาด กรมการค้าต่างประเทศหรือ คณะกรรมการ แล้วแต่กรณี จะดำเนินการเพื่อให้มีการตรวจสอบความเป็นจริงของข้อกล่าวอ้างหรือ พยานหลักฐานอันเกี่ยวกับการพิจารณาก็ได้

การตรวจสอบความเป็นจริงนั้นจะกระทำในขั้นตอนใดของกระบวนการพิจารณา ตอบโต้การทุ่มตลาดและจะกระทำในประเทศไทย ประเทศผู้ส่งออก หรือประเทศที่เกี่ยวข้องก็ได้

มาตรา ๓๐ ก่อนที่จะประกาศคำวินิจฉัยขั้นที่สุดของคณะกรรมการเกี่ยวกับผลการ ใต้สวนการทุ่มตลาดและความเสียหาย ให้กรมการค้าต่างประเทศแจ้งให้ผู้มีส่วนได้เสียทราบถึงข้อมูล และข้อเท็จจริงที่ใช้เป็นพื้นฐานในการพิจารณาวินิจฉัย เพื่อให้ผู้มีส่วนได้เสียมีโอกาสยื่นข้อโต้แย้งใน การป้องกันผลประโยชน์ของผู้มีส่วนได้เสียเหล่านั้น ทั้งนี้ ต้องให้ระยะเวลาอันควรสำหรับการยื่นข้อ โต้แย้งดังกล่าว

มาตรา ๓๑ เมื่อมีการประกาศใต้สวนการทุ่มตลาดและความเสียหายตามมาตรา ๓๙ แล้ว หากพฤติการณ์มีเหตุอันควรเชื่อว่าเป็นขั้นที่สุดอาจต้องมีการเรียกเก็บอากรตอบโต้การทุ่ม ตลาดตั้งแต่ก่อนวันใช้บังคับมาตรการชั่วคราว คณะกรรมการอาจขอให้กรมศุลกากรเรียกหลักประกัน อากรตามพระราชบัญญัตินี้สำหรับสินค้าที่ถูกพิจารณาที่นำเข้ามาตามระยะเวลาที่กำหนดได้ ในการนี้ ให้กรมศุลกากรมีอำนาจเรียกหลักประกันตามจำนวนที่คณะกรรมการมีคำขอ

ส่วนที่ ๒

การเริ่มต้นกระบวนการพิจารณา

มาตรา ๓๒ ให้เริ่มดำเนินการกระบวนการพิจารณาตอบโต้การทุ่มตลาด เมื่อมีคำขอ ของกรมการค้าต่างประเทศหรือของบุคคลหรือคณะบุคคลตามมาตรา ๓๓

มาตรา ๓๓^๑ บุคคลหรือคณะบุคคลอาจยื่นคำขอในนามของอุตสาหกรรมภายใน ต่อกรมการค้าต่างประเทศเพื่อให้คณะกรรมการดำเนินการพิจารณาตอบโต้การทุ่มตลาด

^๑ มาตรา ๓๓ แก้ไขเพิ่มเติมโดยพระราชบัญญัติการตอบโต้การทุ่มตลาดและการอุดหนุน ซึ่งสินค้าจากต่างประเทศ (ฉบับที่ ๒) พ.ศ. ๒๕๖๒

คำขอตามวรรคหนึ่งจะถือว่าเป็นคำขอที่ยื่นในนามของอุตสาหกรรมภายในได้ต่อเมื่อได้รับการสนับสนุนจากผู้ผลิตสินค้าชนิดเดียวกันในประเทศซึ่งมีการผลิตรวมกันเกินกึ่งหนึ่งของปริมาณการผลิตสินค้าชนิดเดียวกันของผู้ที่ได้แสดงความเห็นทั้งส่วนที่สนับสนุนและส่วนที่คัดค้านรวมกัน ทั้งนี้ ไม่ว่ากรณีใดปริมาณการผลิตของฝ่ายสนับสนุนนั้นต้องไม่น้อยกว่าหนึ่งในสี่ของปริมาณการผลิตสินค้าชนิดเดียวกันทั้งหมดในประเทศ

การยื่นคำขอตามวรรคหนึ่ง ให้เป็นไปตามหลักเกณฑ์ วิธีการ ระยะเวลา และเงื่อนไขที่กระทรวงพาณิชย์ประกาศกำหนด

มาตรา ๓๔ ถ้าคำขอตามมาตรา ๓๓ มีรายละเอียดหรือหลักฐานไม่ครบถ้วนหรือไม่ถูกต้องให้กรมการค้าต่างประเทศแจ้งให้ผู้ยื่นคำขอดำเนินการให้ครบถ้วนหรือถูกต้องภายในเวลาที่กำหนด

เมื่อคำขอมีรายละเอียดและพยานหลักฐานครบถ้วนและถูกต้องแล้ว ให้กรมการค้าต่างประเทศเสนอคำขอต่อคณะกรรมการเพื่อพิจารณา

มาตรา ๓๕ เมื่อคณะกรรมการได้รับคำขอตามมาตรา ๓๒ แล้ว ให้กรมการค้าต่างประเทศแจ้งให้รัฐบาลของประเทศผู้ส่งออกที่เกี่ยวข้องทราบถึงการมีคำขอดังกล่าว

มาตรา ๓๖ ผู้ยื่นคำขออาจถอนคำขอได้ แต่ถ้าได้มีการประกาศไต่สวนการทุ่มตลาดและความเสียหายตามมาตรา ๓๙ แล้ว คณะกรรมการจะยุติการพิจารณาตอบไต่สวนการทุ่มตลาดหรือดำเนินการพิจารณาต่อไปก็ได้

มาตรา ๓๗ ในกรณีที่คณะกรรมการมีคำวินิจฉัยว่าคำขอมูลเกี่ยวกับการทุ่มตลาดและความเสียหาย ให้กรมการค้าต่างประเทศดำเนินการไต่สวนต่อไปโดยไม่ชักช้า

ถ้าคณะกรรมการมีคำวินิจฉัยว่าคำขอนั้นไม่มีมูลเกี่ยวกับการทุ่มตลาดหรือความเสียหายให้กรมการค้าต่างประเทศแจ้งคำวินิจฉัยดังกล่าวให้ผู้ยื่นคำขอทราบโดยไม่ชักช้า

มาตรา ๓๘ ถ้ารัฐบาลของประเทศใดร้องเรียนว่าสินค้าทุ่มตลาดจากประเทศอื่นที่นำเข้ามาจำหน่ายในประเทศไทยก่อให้เกิดความเสียหายแก่อุตสาหกรรมภายในของประเทศนั้น และคณะกรรมการมีคำวินิจฉัยเห็นสมควรให้ดำเนินการพิจารณาตอบไต่สวนการทุ่มตลาดตามที่ถูกร้องเรียนนั้น ให้กรมการค้าต่างประเทศดำเนินการตามคำวินิจฉัยของคณะกรรมการต่อไป โดยให้นำบทบัญญัติในหมวดนี้มาใช้บังคับโดยอนุโลมได้ แต่การพิจารณาตอบไต่สวนการทุ่มตลาดดังกล่าวต้องได้รับความเห็นชอบจากองค์การการค้าโลกก่อน

เมื่อกรมการค้าต่างประเทศเห็นสมควร หรือเมื่ออุตสาหกรรมภายในร้องเรียนว่ามีการนำสินค้าจากประเทศอื่นเข้าไปทุ่มตลาดในอีกประเทศหนึ่งและก่อให้เกิดความเสียหายต่ออุตสาหกรรมภายใน และกรมการค้าต่างประเทศเห็นว่าคำร้องดังกล่าวมีมูล ให้กรมการค้าต่างประเทศดำเนินการร้องขอให้ทางการประเทศนั้นดำเนินการพิจารณาตอบไต่สวนการทุ่มตลาดต่อไป

หลักเกณฑ์และวิธีการในการดำเนินการตามวรรคหนึ่งและวรรคสอง ให้เป็นไปตามที่กำหนดในกฎกระทรวง

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา

ส่วนที่ ๓

การไต่สวนการทุ่มตลาดและความเสียหาย

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา

มาตรา ๓๙ ในการพิจารณาตอบโต้การทุ่มตลาด ให้กรมการค้าต่างประเทศเป็นผู้มีอำนาจหน้าที่ไต่สวนประเด็นการทุ่มตลาดและความเสียหาย เริ่มต้นโดยการออกประกาศไต่สวนการทุ่มตลาดและความเสียหายในราชกิจจานุเบกษา และลงโฆษณาในหนังสือพิมพ์รายวันหรือ

สำนักงานคณะกรรมการกฤษฎีกา

เผยแพร่โดยวิธีการอื่นใดทั้งภาษาไทยและภาษาอังกฤษเพื่อให้สาธารณชนรับรู้ ตามที่เห็นสมควร^๓ ประกาศไต่สวนการทุ่มตลาดและความเสียหายต้องมีรายการดังต่อไปนี้

(๑) ระบุสินค้า

สำนักงานคณะกรรมการกฤษฎีกา

(๒) ประเทศผู้ส่งออกและประเทศที่เกี่ยวข้อง

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา

(๓) ข้อเท็จจริงโดยสังเขป

(๔) การขอรับข้อมูลข่าวสารอันเป็นรายละเอียดตลอดจนค่าธรรมเนียมที่เกี่ยวข้อง

(๕) ระยะเวลาให้ผู้มีส่วนได้เสียเสนอข้อเท็จจริงและความเห็นเป็นหนังสือ

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา

(๖) กำหนดเวลาให้ผู้มีส่วนได้เสียแจ้งความจำนงขอแถลงการณ์ด้วยวาจา ประกอบการไต่สวนการทุ่มตลาดและความเสียหาย

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา

ให้กรมการค้าต่างประเทศแจ้งประกาศไต่สวนการทุ่มตลาดและความเสียหายให้ผู้ยื่นคำขอทราบ และในกรณีที่ทราบที่อยู่ของผู้ส่งออกจากต่างประเทศ ผู้นำเข้าหรือตัวแทนของผู้บุคคลดังกล่าว ให้กรมการค้าต่างประเทศแจ้งเป็นหนังสือให้ผู้บุคคลเหล่านั้นทราบประกาศนั้นด้วย

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา

มาตรา ๔๐ เมื่อได้ดำเนินการไต่สวนการทุ่มตลาดและความเสียหายเสร็จแล้ว ให้กรมการค้าต่างประเทศสรุปผลการไต่สวนและเสนอความเห็นต่อคณะกรรมการเพื่อพิจารณาวินิจฉัยต่อไป

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา

ส่วนที่ ๔

มาตรการชั่วคราว

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา

มาตรา ๔๑ ในกรณีที่คณะกรรมการมีคำวินิจฉัยเบื้องต้นว่ามีการทุ่มตลาดและความเสียหาย ถ้าขณะนั้นปรากฏว่ามีความจำเป็นต้องป้องกันความเสียหายแก่อุตสาหกรรมภายใน คณะกรรมการอาจใช้มาตรการชั่วคราวโดยประกาศเรียกเก็บอากรชั่วคราวหรือหลักประกันการชำระอากรชั่วคราวดังกล่าวได้

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา

อากรชั่วคราวที่เรียกเก็บตามวรรคหนึ่ง จะต้องไม่สูงกว่าส่วนเหลือของการทุ่มตลาดที่ประเมินขณะที่มีคำวินิจฉัยเบื้องต้น

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา

^๓ มาตรา ๓๙ วรรคหนึ่ง แก้ไขเพิ่มเติมโดยพระราชบัญญัติการตอบโต้การทุ่มตลาดและการอุดหนุนซึ่งสินค้าจากต่างประเทศ (ฉบับที่ ๒) พ.ศ. ๒๕๖๒

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา

ในกรณีมีการใช้มาตรการชั่วคราว ให้นำบทบัญญัติกฎหมายว่าด้วยศุลกากรและกฎหมายว่าด้วยพิกัดอัตราศุลกากรมาใช้บังคับแก่การเรียกเก็บอากรชั่วคราวเสมือนอากรดังกล่าวเป็นอากรขาเข้าตามกฎหมายนั้น และอากรชั่วคราวที่เก็บได้รวมทั้งเงินที่บังคับจากหลักประกันการชำระอากรนั้นให้เก็บรักษาไว้เพื่อปฏิบัติตามมาตรา ๕๑ และมาตรา ๕๒ จนกว่าจะสิ้นเหตุที่จะต้องปฏิบัติตามมาตราดังกล่าว

มาตรา ๔๒ มาตรการชั่วคราวจะนำมาใช้ก่อนหกสิบวันนับแต่วันประกาศใช้สวนการค้าการทุ่มตลาดและความเสียหายไม่ได้

มาตรการชั่วคราวต้องใช้ตามระยะเวลาที่จำเป็นและตามหลักเกณฑ์ดังต่อไปนี้

(๑) กรณีปกติจะกำหนดให้เก็บเกินสี่เดือนไม่ได้

(๒) ถ้ามีคำขอของผู้ส่งออกจากต่างประเทศที่มีสัดส่วนมากพอสมควร คณะกรรมการจะประกาศขยายเวลาเก็บอากรชั่วคราวเกินกว่าสี่เดือนแต่ไม่เกินหกเดือนก็ได้

(๓) ในกรณีมีการพิจารณาประเด็นว่าถ้าเรียกเก็บอากรต่ำกว่าส่วนเหลือของการทุ่มตลาดจะเพียงพอต่อการขจัดความเสียหายที่เกิดขึ้นได้หรือไม่ คณะกรรมการจะประกาศขยายเวลาการเก็บอากรชั่วคราวกรณีตาม (๑) เกินกว่าสี่เดือนแต่ไม่เกินหกเดือนหรือกรณีตาม (๒) เกินกว่าหกเดือนแต่ไม่เกินเก้าเดือนก็ได้

ส่วนที่ ๕

ความตกลงเพื่อระงับการทุ่มตลาด

มาตรา ๔๓ การพิจารณาตอบโต้การทุ่มตลาดอาจยุติลงสำหรับผู้ส่งออกจากต่างประเทศรายหนึ่งรายใดโดยไม่มีการใช้มาตรการชั่วคราว หรือไม่เรียกเก็บอากรตอบโต้การทุ่มตลาด ถ้าสามารถทำความตกลงกันได้ระหว่างผู้ส่งออกรายนั้นกับกรมการค้าต่างประเทศเกี่ยวกับการเปลี่ยนแปลงราคาหรือระงับการส่งออกสินค้าในราคาทุ่มตลาด

กรมการค้าต่างประเทศจะทำความตกลงได้ต่อเมื่อกรณีเป็นที่พอใจว่าความตกลงนั้นจะจัดผลเสียหายจากการทุ่มตลาดได้ แต่ความตกลงดังกล่าวจะกำหนดให้มีการเพิ่มราคาสูงกว่าที่จำเป็นเพื่อขจัดส่วนเหลือของการทุ่มตลาดไม่ได้

ความตกลงจะมีผลใช้บังคับได้ต่อเมื่อได้รับความเห็นชอบจากคณะกรรมการแล้ว

มาตรา ๔๔ การทำความตกลงจะกระทำได้ภายหลังที่คณะกรรมการมีคำวินิจฉัยเบื้องต้นแล้ว

ความตกลงนั้น ผู้ส่งออกจากต่างประเทศจะเป็นฝ่ายเสนอหรือกรมการค้าต่างประเทศจะเป็นฝ่ายเสนอก็ได้

กรมการค้าต่างประเทศจะไมยอมรับข้อเสนอทำความตกลงของผู้ส่งออกจากต่างประเทศเพราะเหตุผลในทางนโยบายหรือเหตุผลใด ๆ ก็ได้ และถ้าเป็นกรณีที่สามารถแจ้งเหตุผลให้ได้ ก็ให้แจ้งให้ผู้ส่งออกจากต่างประเทศทราบด้วย

มาตรา ๔๕ การที่ผู้ส่งออกจากต่างประเทศผู้ใดไม่เสนอทำความตกลงหรือไม่ยอมรับข้อเสนอทำความตกลงของกรมการค้าต่างประเทศ จะต้องไม่นำเหตุนั้นมาพิจารณาไปในทางเสียประโยชน์ต่อผู้ยื่น

มาตรา ๔๖ ผู้ส่งออกจากต่างประเทศที่ทำความตกลงกับกรมการค้าต่างประเทศ ต้องให้ข้อมูลข่าวสารตามระยะเวลาที่กำหนด และต้องยอมให้กรมการค้าต่างประเทศตรวจสอบความเป็นจริงของข้อมูลข่าวสารนั้นได้ ถ้ามีการฝ่าฝืนความตกลงก็อาจใช้ข้อมูลเท่าที่มีอยู่ในการกำหนดมาตรการชั่วคราวและดำเนินกระบวนการพิจารณาตอบโต้การทุ่มตลาดต่อไปได้

มาตรา ๔๗ แม้ได้มีการทำความตกลงกันแล้ว คณะกรรมการจะดำเนินการพิจารณาตอบโต้การทุ่มตลาดต่อไปก็ได้ ถ้าผู้ส่งออกจากต่างประเทศประสงค์เช่นนั้นในการทำความตกลง หรือเมื่อมีการฝ่าฝืนความตกลง หรือคณะกรรมการเห็นสมควรเพราะเหตุอื่น

ในกรณีตามวรรคหนึ่งเมื่อสิ้นสุดการพิจารณาตอบโต้การทุ่มตลาด ถ้าคณะกรรมการมีคำวินิจฉัยขั้นที่สุดว่า

(๑) ไม่มีการทุ่มตลาดหรือไม่มีความเสียหาย ก็ให้ยุติการดำเนินการตามความตกลงนั้น แต่ถ้าปรากฏในขณะนั้นว่ากรณีนี้จะมี การทุ่มตลาดหรือมีความเสียหายเกิดขึ้นถ้าได้มีการดำเนินการตามความตกลงนั้น คณะกรรมการจะวินิจฉัยให้ดำเนินการตามความตกลงนั้นต่อไปตามระยะเวลาที่สมควรก็ได้

(๒) มีการทุ่มตลาดและมีความเสียหาย ก็ให้ดำเนินการตามความตกลงนั้นต่อไป

(๓) มีการทุ่มตลาดและมีความเสียหายเนื่องจากมีการฝ่าฝืนความตกลง คณะกรรมการอาจวินิจฉัยให้เก็บอากรตอบโต้การทุ่มตลาดตั้งแต่ก่อนวันประกาศใช้บังคับมาตรการชั่วคราวไม่เกินเก้าสิบวันก็ได้ แต่จะใช้กับสินค้าทุ่มตลาดที่นำเข้าก่อนมีการฝ่าฝืนความตกลงนั้นไม่ได้

มาตรา ๔๘ ให้นำบทบัญญัติแห่งหมวด ๘ มาใช้บังคับกับความตกลงเพื่อระงับการทุ่มตลาดโดยอนุโลม

หมวด ๖

อากรตอบโต้การทุ่มตลาด

มาตรา ๔๙ ในกรณีที่คณะกรรมการมีคำวินิจฉัยขั้นที่สุดว่าให้มีการเรียกเก็บอากรตอบโต้การทุ่มตลาด อัตราอากรตอบโต้การทุ่มตลาดนั้นให้กำหนดได้เพียงเพื่อขจัดความเสียหายและจะเกินกว่าส่วนเหลือของการทุ่มตลาดมิได้

อากรตอบโต้การทุ่มตลาดต้องกำหนดให้เหมาะสมกับผู้ส่งออกจากต่างประเทศแต่ละรายที่ทุ่มตลาดโดยไม่เลือกปฏิบัติ เว้นแต่เป็นการดำเนินการตามความตกลงเพื่อระงับการทุ่มตลาดตามส่วนที่ ๕ ของหมวด ๕

ในกรณีที่มีการเรียกเก็บอากรตอบโต้การทุ่มตลาดจากสินค้าใด ให้นำบทบัญญัติกฎหมายว่าด้วยศุลกากรและกฎหมายว่าด้วยพิกัดอัตราศุลกากรมาใช้บังคับกับการเรียกเก็บอากรดังกล่าวเสมือนอากรนั้นเป็นอากรขาเข้าตามกฎหมายนั้น และอากรตอบโต้การทุ่มตลาดที่เก็บได้ให้เก็บรักษาไว้เพื่อปฏิบัติตามมาตรา ๕๙ จนกว่าจะสิ้นเหตุที่จะต้องปฏิบัติตามมาตราดังกล่าว

มาตรา ๔๙/๑^{๙๔} ในกรณีที่ผู้นำเข้าไม่ชำระอากรหรือชำระอากรตอบโต้การทุ่มตลาดไม่ครบถ้วนหรือค้างชำระค่าอากรดังกล่าว ให้เป็นอำนาจของกรมศุลกากรในการเรียกเก็บอากรเงินเพิ่มและเบี้ยปรับ การกักของ การยึดหรืออายัดทรัพย์สิน การขายทอดตลาด และการดำเนินการเกี่ยวกับของตกค้าง รวมทั้งการลดเงินเพิ่ม งดหรือลดเบี้ยปรับ ทุเลาการชำระอากรตอบโต้การทุ่มตลาดเงินเพิ่มและเบี้ยปรับ

ในกรณีที่ผู้นำเข้าไม่เห็นด้วยกับการประเมินอากร เงินเพิ่มและเบี้ยปรับ การลดเงินเพิ่มและงดหรือลดเบี้ยปรับ ของกรมศุลกากรตามวรรคหนึ่ง ให้อุทธรณ์ต่อคณะกรรมการพิจารณาอุทธรณ์ตามกฎหมายว่าด้วยศุลกากร

ให้นำบทบัญญัติกฎหมายว่าด้วยศุลกากรและกฎหมายว่าด้วยพิกัดอัตราศุลกากรมาใช้บังคับแก่การดำเนินการตามวรรคหนึ่งและวรรคสองโดยอนุโลม

บทบัญญัติในส่วนที่เกี่ยวกับการจ่ายเงินสินบนหรือเงินรางวัลตามกฎหมายว่าด้วยศุลกากรไม่นำมาใช้กับการเก็บอากร เงินเพิ่ม และเบี้ยปรับที่จัดเก็บได้จากอากรตอบโต้การทุ่มตลาดตามมาตรานี้

มาตรา ๔๙/๒^{๙๕} ผู้นำเข้าอาจยื่นคำขอคืนอากรตอบโต้การทุ่มตลาดต่อกรมศุลกากรได้หากภายหลังปรากฏว่ามีการส่งสินค้าที่ได้ชำระอากรตอบโต้การทุ่มตลาดกลับออกไปนอกราชอาณาจักรและให้เป็นอำนาจของกรมศุลกากรในการพิจารณาคืนอากรตอบโต้การทุ่มตลาด ทั้งนี้ ให้นำมาตรา ๒๘ แห่งพระราชบัญญัติศุลกากร พ.ศ. ๒๕๖๐ บทกำหนดโทษที่เกี่ยวข้อง และบทบัญญัติในส่วนที่เกี่ยวกับการเปรียบเทียบ มาใช้บังคับโดยอนุโลม

มาตรา ๕๐^{๙๖} ในกรณีที่หาส่วนเหลือมการทุ่มตลาดโดยใช้วิธีการสุ่มตัวอย่างตามมาตรา ๑๘ วรรคสาม อากรตอบโต้การทุ่มตลาดให้กำหนดให้เหมาะสมกับผู้ได้รับการสุ่มเป็นตัวอย่างแต่ละราย

สำหรับผู้ที่ไม่ได้รับการสุ่มเป็นตัวอย่าง ให้กำหนดอัตราไว้ไม่เกินอัตราถัวเฉลี่ยถ่วงน้ำหนักของส่วนเหลือมการทุ่มตลาด แต่ถ้าผู้ที่ไม่ได้รับการสุ่มตัวอย่างรายใดได้ให้ข้อเท็จจริงเกี่ยวกับตนโดยครบถ้วนถูกต้องภายในเวลาที่กรมการค้าต่างประเทศกำหนด ให้คณะกรรมการกำหนดอัตราอากรตอบโต้การทุ่มตลาดให้เหมาะสมสำหรับผู้นั้น เว้นแต่การกำหนดอัตราอากรตอบโต้การทุ่มตลาด

^{๙๔} มาตรา ๔๙/๑ เพิ่มโดยพระราชบัญญัติการตอบโต้การทุ่มตลาดและการอุดหนุนซึ่งสินค้าจากต่างประเทศ (ฉบับที่ ๒) พ.ศ. ๒๕๖๒

^{๙๕} มาตรา ๔๙/๒ เพิ่มโดยพระราชบัญญัติการตอบโต้การทุ่มตลาดและการอุดหนุนซึ่งสินค้าจากต่างประเทศ (ฉบับที่ ๒) พ.ศ. ๒๕๖๒

^{๙๖} มาตรา ๕๐ แก้ไขเพิ่มเติมโดยพระราชบัญญัติการตอบโต้การทุ่มตลาดและการอุดหนุนซึ่งสินค้าจากต่างประเทศ (ฉบับที่ ๒) พ.ศ. ๒๕๖๒

สำหรับแต่ละรายจะเป็นภาระเกินสมควรและอาจทำให้การไต่สวนไม่เสร็จภายในกำหนดเวลาตาม มาตรา ๕๔ เนื่องจากมีผู้ได้ให้ข้อเท็จจริงดังกล่าวเป็นจำนวนมาก จะกำหนดอัตราอากรตอบโต้การ ทุ่มตลาดไม่เกินอัตราถ่วงเฉลี่ยถ่วงน้ำหนักดังกล่าวก็ได้

มาตรา ๕๑ ในกรณีที่มีความเสียหายตามมาตรา ๑๙ (๑) หรือมีความเสียหายตาม มาตรา ๑๙ (๒) ซึ่งถ้ามิได้มีการใช้มาตรการชั่วคราวมาก่อนจะทำให้เกิดความเสียหายตามมาตรา ๑๙ (๑) ได้ คณะกรรมการจะกำหนดให้เรียกเก็บอากรตอบโต้การทุ่มตลาดตั้งแต่มีการใช้มาตรการ ชั่วคราวก็ได้ ตามหลักเกณฑ์และวิธีการที่รัฐมนตรีว่าการกระทรวงพาณิชย์ประกาศกำหนด

ถ้าอากรตอบโต้การทุ่มตลาดที่คณะกรรมการกำหนดตามวรรคหนึ่งมีอัตราสูงกว่า อากรชั่วคราวส่วนต่างที่เกิดขึ้นนั้นจะเรียกเก็บมิได้ แต่ถ้าอากรตอบโต้การทุ่มตลาดมีอัตราต่ำกว่า อากรชั่วคราวก็ให้คืนผลต่างของอากรส่วนที่เกินให้ด้วย

มาตรา ๕๒ ในกรณีที่มีความเสียหายตามมาตรา ๑๙ (๒) หรือ (๓) คณะกรรมการ อาจกำหนดให้เรียกเก็บอากรตอบโต้การทุ่มตลาดได้ตั้งแต่วันที่ที่มีคำวินิจฉัยขั้นที่สุดว่ามีความเสียหาย ตามมาตรา ๑๙ (๒) และ (๓) แล้วแต่กรณี และอากรที่เรียกเก็บหรือหลักประกันต่าง ๆ ที่ได้บังคับใช้ ตามมาตรการชั่วคราวให้คืนโดยไม่ชักช้า

ในกรณีที่คณะกรรมการมีคำวินิจฉัยขั้นที่สุดว่าไม่มีการทุ่มตลาดหรือไม่มีความเสียหาย บรรดาอากรชั่วคราวที่เรียกเก็บหรือหลักประกันที่ให้ไว้ตามมาตรการชั่วคราวให้คืนโดยไม่ ชักช้า

มาตรา ๕๓ ในกรณีที่มีการใช้มาตรการตามมาตรา ๓๑ คณะกรรมการอาจ กำหนดให้เรียกเก็บอากรตอบโต้การทุ่มตลาดหลังจากวันประกาศไต่สวนแต่ต้องไม่เกินเก้าสิบวันก่อน วันที่ใช้มาตรการชั่วคราวก็ได้ ถ้าปรากฏข้อเท็จจริงต่อไปนี้

(๑) เคยมีการทุ่มตลาดสินค้ารายนั้นและมีความเสียหายหรือผู้นำเข้าได้รู้หรือควรได้รู้ ว่าผู้ส่งออกจากต่างประเทศได้ทุ่มตลาดและอาจมีความเสียหาย และ

(๒) ความเสียหายได้เกิดขึ้นจากการเร่งนำเข้าสินค้าทุ่มตลาดเป็นจำนวนมากภายใน เวลาอันสั้น ซึ่งจากช่วงเวลา ปริมาณการนำเข้าและพฤติการณ์อื่นที่เกี่ยวข้องชี้ให้เห็นว่าจะบั่นทอนผล การใช้บังคับอากรตอบโต้การทุ่มตลาดเป็นอย่างมาก หากไม่กำหนดให้มีการเรียกเก็บอากรตอบโต้การ ทุ่มตลาดก่อนวันที่ใช้มาตรการชั่วคราว

ก่อนการเรียกเก็บอากรตอบโต้การทุ่มตลาดตามวรรคหนึ่ง ต้องให้ผู้นำเข้าได้มีโอกาส เสนอความเห็นด้วย

หมวด ๗

ระยะเวลาการไต่สวน

มาตรา ๕๔ การเริ่มต้นกระบวนการพิจารณาตอบโต้การทุ่มตลาดจนถึงการ ดำเนินการให้มีความวินิจฉัยขั้นที่สุดว่าให้มีการเรียกเก็บอากรตอบโต้การทุ่มตลาดหรือมีความวินิจฉัยขั้น

ที่สุดว่าไม่มีการท่วมตลาดและไม่มีความเสียหาย ต้องดำเนินการให้แล้วเสร็จภายในหนึ่งปีนับแต่วันประกาศใช้ ส่วน เว้นแต่ในกรณีที่มีเหตุจำเป็น ให้ขยายได้อีกไม่เกินหกเดือน

หมวด ๘

ระยะเวลาตอบโต้การท่วมตลาดและการทบทวน

มาตรา ๕๕ อากรตอบโต้การท่วมตลาดตามหมวด ๖ ให้นำมาใช้ได้ตลอดเวลาที่มีการท่วมตลาดและมีความเสียหาย

มาตรา ๕๖ การทบทวนความจำเป็นในการใช้บังคับอากรตอบโต้การท่วมตลาดต่อไปให้กระทำได้เมื่อคณะกรรมการเห็นสมควรหรือเมื่อมีคำขอจากผู้มีส่วนได้เสียหลังจากได้ใช้บังคับอากรตอบโต้การท่วมตลาดมาแล้วไม่น้อยกว่าหนึ่งปี โดยในคำขอดังกล่าวผู้มีส่วนได้เสียอาจขอให้คณะกรรมการพิจารณาทบทวนเพื่อยุติการเรียกเก็บหรือเปลี่ยนแปลงอัตราอากรตอบโต้การท่วมตลาดได้ แต่ต้องเสนอพยานหลักฐานเพียงพอเกี่ยวกับปัญหาการท่วมตลาดหรือความเสียหายที่สมควรให้มีการทบทวนการใช้บังคับอากรดังกล่าวในระหว่างนั้น

การพิจารณาการทบทวนจะต้องพิจารณาโดยรวดเร็ว และจะต้องเสร็จสิ้นภายในหนึ่งปีนับแต่วันประกาศให้มีการทบทวน

การพิจารณาทบทวนไม่กระทบถึงการเรียกเก็บอากรตอบโต้การท่วมตลาดในระหว่างนั้น

มาตรา ๕๗ อากรตอบโต้การท่วมตลาดให้เรียกเก็บได้เป็นระยะเวลาไม่เกินห้าปี นับแต่วันเริ่มใช้บังคับหรือนับแต่วันที่ผลการทบทวนครั้งสุดท้ายซึ่งมีการพิจารณาทบทวนทั้งปัญหาการท่วมตลาดและปัญหาความเสียหายใช้บังคับ เว้นแต่เมื่อคณะกรรมการเห็นสมควรให้ทบทวนหรือเมื่อบุคคลหรือคณะบุคคลมีคำขอในนามของอุตสาหกรรมภายในให้ทบทวนภายในเวลาที่กระทรวงพาณิชย์ประกาศกำหนด และคณะกรรมการมีคำวินิจฉัยว่าการยุติการเรียกเก็บอากรตอบโต้การท่วมตลาดจะทำให้มีการท่วมตลาดและความเสียหายต่อไปหรือฟื้นคืนมาอีก ทั้งนี้ การพิจารณาทบทวนจะต้องดำเนินการให้แล้วเสร็จภายในหนึ่งปีนับแต่วันประกาศให้มีการทบทวน

การพิจารณาทบทวนไม่กระทบถึงการเรียกเก็บอากรในระหว่างระยะเวลาที่อากรตอบโต้การท่วมตลาดตามวรรคหนึ่งยังมีผลใช้บังคับ แต่หากการพิจารณาทบทวนไม่แล้วเสร็จหลังพ้นกำหนดระยะเวลาที่อากรตอบโต้การท่วมตลาดมีผลใช้บังคับ ให้คณะกรรมการเรียกหลักประกันการชำระอากรในระหว่างนั้นจนกว่าผลการพิจารณาทบทวนจะใช้บังคับ

ในกรณีที่คณะกรรมการมีคำวินิจฉัยว่าการยุติการเรียกเก็บอากรตอบโต้การท่วมตลาดจะทำให้มีการท่วมตลาดและความเสียหายต่อไปหรือฟื้นคืนมาอีก ให้เรียกเก็บอากรตอบโต้การท่วมตลาดตั้งแต่วันที่มีการเรียกหลักประกันการชำระอากรตามวรรคสอง

ในกรณีที่คณะกรรมการมีคำวินิจฉัยให้ยุติการเรียกเก็บอากรตอบโต้การท่วมตลาด บรรดาหลักประกันการชำระอากรที่ให้ไว้ในระหว่างการทบทวน ให้คืนโดยไม่ชักช้า

^{๑๗} มาตรา ๕๗ แก้ไขเพิ่มเติมโดยพระราชบัญญัติการตอบโต้การท่วมตลาดและการอุดหนุน ซึ่งสินค้าจากต่างประเทศ (ฉบับที่ ๒) พ.ศ. ๒๕๖๒

มาตรา ๕๘^{๑๘} ผู้ส่งออกจากต่างประเทศหรือผู้ผลิตสินค้าในต่างประเทศรายใดซึ่งมิได้ส่งสินค้าพุ่มตลาดเข้ามาในช่วงระยะเวลาที่นำข้อมูลมาใช้ในการไต่สวนการพุ่มตลาดแต่ได้ส่งสินค้าพุ่มตลาดเข้ามาหลังช่วงระยะเวลาดังกล่าว อาจขอให้ทบทุนการเรียกเก็บอากรตอบโต้การพุ่มตลาดสำหรับตนเป็นการเฉพาะรายได้ โดยต้องแสดงให้เห็นว่าตนไม่มีความเกี่ยวข้องกับผู้ส่งออกจากต่างประเทศหรือผู้ผลิตสินค้าในต่างประเทศรายอื่นซึ่งอยู่ในบังคับถูกเรียกเก็บอากรตอบโต้การพุ่มตลาดดังกล่าว

ให้ถือว่าผู้ขอทบทุนมีความเกี่ยวข้องกับผู้ส่งออกจากต่างประเทศหรือผู้ผลิตสินค้าในต่างประเทศรายอื่นตามวรรคหนึ่ง ถ้าปรากฏว่าฝ่ายใดฝ่ายหนึ่งสามารถควบคุมอีกฝ่ายหนึ่ง หรือทั้งสองฝ่ายถูกควบคุมโดยบุคคลที่สาม หรือทั้งสองฝ่ายร่วมกันควบคุมบุคคลที่สาม ทั้งนี้ ไม่ว่าโดยทางตรงหรือทางอ้อม ในการนี้ ให้ถือว่าฝ่ายหนึ่งควบคุมอีกฝ่ายหนึ่งได้ ถ้าฝ่ายแรกอยู่ในฐานะทางกฎหมายหรือทางปฏิบัติที่จะยับยั้งหรือสั่งการฝ่ายหลังได้

ในระหว่างการทบทุนตามวรรคหนึ่งจะเรียกเก็บอากรตอบโต้การพุ่มตลาดกับสินค้านำเข้าที่ส่งออกหรือผลิตจากผู้ขอทบทุนดังกล่าวไม่ได้ แต่คณะกรรมการอาจขอให้กรมศุลกากรเรียกหลักประกันอากรก็ได้ ในการนี้ ให้กรมศุลกากรมีอำนาจเรียกหลักประกันอากรตามจำนวนที่คณะกรรมการมีคำขอ

ในกรณีที่คณะกรรมการมีคำวินิจฉัยว่ามีการพุ่มตลาด ให้เรียกเก็บอากรตอบโต้การพุ่มตลาดย้อนหลังไปนับแต่วันที่ประกาศให้มีการทบทุน แต่หากคณะกรรมการมีคำวินิจฉัยว่าไม่มีการพุ่มตลาด ให้คืนหลักประกันอากรที่เรียกไว้โดยไม่ชักช้า

การพิจารณาทบทุนจะต้องดำเนินการให้แล้วเสร็จภายในหนึ่งปีนับแต่วันประกาศให้มีการทบทุน

มาตรา ๕๙^{๑๙} ผู้นำเข้าอาจขอคืนอากรตอบโต้การพุ่มตลาดในขณะหนึ่งขณะใดได้ ถ้าผู้นั้นพิสูจน์ได้ว่าไม่มีส่วนเหลือมการพุ่มตลาด หรือส่วนเหลือมการพุ่มตลาดลดลงต่ำกว่าอากรตอบโต้การพุ่มตลาดที่ใช้บังคับ

การขอคืนอากรตามวรรคหนึ่ง ให้ยื่นคำขอต่อกรมการค้าต่างประเทศภายในหกเดือนนับแต่วันชำระอากร

การพิจารณาคืนอากรต้องดำเนินการให้แล้วเสร็จภายในหนึ่งปีนับแต่วันที่คณะกรรมการรับคำขอ เว้นแต่ในกรณีที่มีเหตุจำเป็นให้ขยายเวลาได้อีกไม่เกินหกเดือน

มาตรา ๖๐^{๒๐} ให้นำบทบัญญัติในหมวด ๒ หมวด ๓ หมวด ๔ ส่วนที่ ๑ ส่วนที่ ๒ ส่วนที่ ๓ ของหมวด ๕ และหมวด ๖ มาใช้บังคับแก่การทบทุนและการขอคืนอากรตามหมวดนี้ โดยอนุโลม

สำนักงานคณะกรรมการกฤษฎีกา สำนักงานคณะกรรมการกฤษฎีกา สำนักงานคณะกรรมการกฤษฎีกา

^{๑๘} มาตรา ๕๘ แก้ไขเพิ่มเติมโดยพระราชบัญญัติการตอบโต้การพุ่มตลาดและการอุดหนุนซึ่งสินค้าจากต่างประเทศ (ฉบับที่ ๒) พ.ศ. ๒๕๖๒

^{๑๙} มาตรา ๕๙ แก้ไขเพิ่มเติมโดยพระราชบัญญัติการตอบโต้การพุ่มตลาดและการอุดหนุนซึ่งสินค้าจากต่างประเทศ (ฉบับที่ ๒) พ.ศ. ๒๕๖๒

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา

หมวด ๙

การอุทธรณ์คำวินิจฉัยต่อศาล

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา

มาตรา ๖๑ ผู้ใดไม่พอใจคำวินิจฉัยขั้นที่สุดของคณะกรรมการตามมาตรา ๔๙ หรือ

คำวินิจฉัยของคณะกรรมการในการขอให้ทบทวนตามมาตรา ๕๖ มาตรา ๕๗ มาตรา ๕๘ และมาตรา ๕๙ ให้อุทธรณ์คำวินิจฉัยดังกล่าวต่อศาลทรัพย์สินทางปัญญาและการค้าระหว่างประเทศได้ภายใน

สาม

สามสิบวันนับแต่วันได้รับแจ้งคำวินิจฉัยนั้น

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา

การอุทธรณ์ตามวรรคหนึ่งไม่เป็นเหตุให้ทุเลาการเรียกเก็บหรือคืนอากรตามพระราชบัญญัตินี้ เว้นแต่ศาลทรัพย์สินทางปัญญาและการค้าระหว่างประเทศจะสั่งเป็นอย่างอื่น

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา

หมวด ๑๐

การอุดหนุน

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา

มาตรา ๖๒ ในหมวดนี้

“รัฐบาล”^{๒๐} หมายความว่า รัฐบาลของประเทศแหล่งกำเนิดหรือประเทศผู้ส่งออกซึ่งสินค้าที่นำเข้ามาในประเทศไทย และให้หมายความรวมถึงหน่วยงานของรัฐด้วย

“วิสาหกิจ”

หมายความว่า วิสาหกิจหรืออุตสาหกรรม หรือกลุ่มวิสาหกิจ หรือกลุ่มอุตสาหกรรม

“การอุดหนุน”

หมายความว่า การอุดหนุนตามพระราชบัญญัตินี้ ได้แก่ การได้รับประโยชน์อย่างหนึ่งอย่างใดเนื่องจากรัฐบาลกระทำการดังต่อไปนี้

(๑)

ให้ความช่วยเหลือทางการเงิน ซึ่งหมายความรวมถึง

(ก)

การกระทำใด ๆ เกี่ยวกับการโอนเงิน เช่น การให้เงิน การให้กู้ยืมเงิน การเข้าร่วมทุน หรือการกระทำใดเกี่ยวกับการเพิ่มขีดความสามารถทางการเงิน หรือการลดภาระหนี้

เช่น

การค้ำประกันเงินกู้

(ข)

การทำให้รายได้ที่รัฐบาลพึงจะจัดเก็บได้ตามปกติต้องสูญเสียไป เช่น การให้เครดิตภาษีหรือการให้สิ่งจูงใจทางภาษีอากรอื่น แต่การให้สินค้าส่งออกได้รับการยกเว้นหรือลดหย่อนภาษีอากรประเภทที่เรียกเก็บจากสินค้าชนิดเดียวกันที่ใช้เพื่อการบริโภคภายในประเทศ

สำนักงาน

คณะกรรมการกฤษฎีกา

สำนักงาน

คณะกรรมการกฤษฎีกา

^{๒๐} มาตรา ๖๐ แก้ไขเพิ่มเติมโดยพระราชบัญญัติการตอบโต้การทุ่มตลาดและการอุดหนุนซึ่ง

สินค้าจากต่างประเทศ (ฉบับที่ ๒) พ.ศ. ๒๕๖๒

^{๒๑} มาตรา ๖๒

นิยามคำว่า “รัฐบาล” แก้ไขเพิ่มเติมโดยพระราชบัญญัติการตอบโต้การทุ่มตลาดและการอุดหนุนซึ่งสินค้าจากต่างประเทศ (ฉบับที่ ๒) พ.ศ. ๒๕๖๒

^{๒๒} มาตรา ๖๓

แก้ไขเพิ่มเติมโดยพระราชบัญญัติการตอบโต้การทุ่มตลาดและการอุดหนุนซึ่งสินค้าจากต่างประเทศ (ฉบับที่ ๒) พ.ศ. ๒๕๖๒

หรือการคืนภาษีอากรดังกล่าวในจำนวนไม่เกินภาษีอากรที่เกิดขึ้นไม่ถือว่าเป็นการให้ความช่วยเหลือทางการเงิน

(ค) การจัดหาสินค้าหรือบริการอื่นใดนอกจากสาธารณูปโภคทั่วไป หรือการซื้อสินค้า หรือ

(ง) การให้เงินผ่านกลไกสนับสนุนทางการเงิน หรือการมอบหมายหรือสั่งให้เอกชนดำเนินการอย่างหนึ่งอย่างใดตาม (ก) (ข) หรือ (ค) ซึ่งไม่แตกต่างจากการดำเนินการตามปกติที่รัฐบาลพึงดำเนินการเอง

(๒) ให้การสนับสนุนด้านรายได้หรือด้านราคาไม่ว่าในรูปแบบใดทั้งทางตรงและทางอ้อมเพื่อเพิ่มการส่งออกสินค้าใดหรือลดการนำเข้าสินค้าใด

มาตรา ๖๓/๑^{๒๓} การอุดหนุนที่มีลักษณะเจาะจงและก่อให้เกิดความเสียหายแก่อุตสาหกรรมภายในเป็นการกระทำอันมิชอบที่อาจตอบโต้ได้

มาตรา ๖๔^{๒๔} การอุดหนุนใดที่ให้แก่วิสาหกิจบางรายจะเป็นการอุดหนุนที่มีลักษณะเจาะจงหรือไม่ ให้พิจารณาจากหลักเกณฑ์ดังต่อไปนี้

(๑) การที่รัฐบาลให้การอุดหนุนแก่วิสาหกิจบางรายโดยชัดแจ้ง เป็นการอุดหนุนที่มีลักษณะเจาะจง

(๒) การอุดหนุนที่มีกฎหมาย กฎ หรือระเบียบกำหนดหลักเกณฑ์หรือเงื่อนไขเกี่ยวกับการได้รับการอุดหนุนและจำนวนเงินอุดหนุนที่ใช้เป็นการทั่วไปและมีการปฏิบัติตามหลักเกณฑ์หรือเงื่อนไขนั้นอย่างเคร่งครัด ไม่เป็นการอุดหนุนที่มีลักษณะเจาะจง ทั้งนี้ หลักเกณฑ์หรือเงื่อนไขดังกล่าวต้องไม่เอื้อประโยชน์แก่วิสาหกิจบางรายมากกว่าวิสาหกิจรายอื่น และต้องสอดคล้องกับเหตุผลพื้นฐานทางเศรษฐกิจ เช่น การกำหนดจำนวนลูกจ้างหรือขนาดของวิสาหกิจ

(๓) ในกรณีที่ไม่เข้าหลักเกณฑ์การอุดหนุนที่มีลักษณะเจาะจงตาม (๑) และ (๒) หากคณะกรรมการมีเหตุอันควรเชื่อได้ว่ามีการอุดหนุนที่มีลักษณะเจาะจงโดยพฤตินัย คณะกรรมการอาจนำปัจจัยอื่นดังต่อไปนี้มาพิจารณาประกอบด้วย (ก) การจำกัดจำนวนวิสาหกิจที่จะได้รับการอุดหนุน (ข) การให้วิสาหกิจบางรายได้รับหรือได้ใช้ประโยชน์จากการอุดหนุนมากกว่าวิสาหกิจรายอื่น (ค) จำนวนเงินอุดหนุนที่ให้แก่วิสาหกิจบางรายมีสัดส่วนที่มากกว่าที่ให้แก่วิสาหกิจรายอื่น และ (ง) การมีดุลพินิจที่จะเลือกให้การอุดหนุน ทั้งนี้ ให้คำนึงถึงความหลากหลายทางเศรษฐกิจที่เกี่ยวข้องและระยะเวลาที่มีโครงการอุดหนุนดังกล่าวด้วย

การอุดหนุนที่ให้แก่วิสาหกิจบางรายที่ตั้งอยู่ในบางพื้นที่ทางภูมิศาสตร์เป็นการอุดหนุนที่มีลักษณะเจาะจง แต่หากการอุดหนุนนั้นเป็นการกำหนดหรือเปลี่ยนแปลงอัตราภาษีอากรที่มีหลักเกณฑ์หรือเงื่อนไขใช้บังคับเป็นการทั่วไป ไม่ถือว่าเป็นการอุดหนุนที่มีลักษณะเจาะจง

การอุดหนุนดังต่อไปนี้ให้ถือว่าเป็นการอุดหนุนที่มีลักษณะเจาะจงและมีให้นำความในวรรคหนึ่งและวรรคสองมาใช้บังคับ

^{๒๓} มาตรา ๖๓/๑ เพิ่มโดยพระราชบัญญัติการตอบโต้การทุ่มตลาดและการอุดหนุนซึ่งสินค้าจากต่างประเทศ (ฉบับที่ ๒) พ.ศ. ๒๕๖๒

^{๒๔} มาตรา ๖๔ แก้ไขเพิ่มเติมโดยพระราชบัญญัติการตอบโต้การทุ่มตลาดและการอุดหนุนซึ่งสินค้าจากต่างประเทศ (ฉบับที่ ๒) พ.ศ. ๒๕๖๒

(๑) การอุดหนุนที่มีเงื่อนไขเพื่อการส่งออกไม่ว่าโดยนิตินัยหรือโดยพฤตินัย และให้รวมถึงการอุดหนุนตามลักษณะที่กำหนดในกฎกระทรวง ทั้งนี้ การอุดหนุนที่มีเงื่อนไขเพื่อการส่งออกโดยพฤตินัย ได้แก่ การอุดหนุนที่มีเงื่อนไขขึ้นอยู่กับการส่งออกหรือรายได้จากการส่งออก ทั้งที่เกิดขึ้นจริงหรือที่คาดการณ์ไว้

(๒) การอุดหนุนที่มีเงื่อนไขเพื่อให้มีการใช้สินค้าที่ผลิตในประเทศแหล่งกำเนิดมากกว่าสินค้านำเข้า

การพิจารณาว่ามีการอุดหนุนที่มีลักษณะเจาะจงตามมาตรฐานต้องมีพยานหลักฐานโดยตรงสนับสนุน

มาตรา ๖๕^{๒๕} (ยกเลิก)

มาตรา ๖๖^{๒๖} (ยกเลิก)

มาตรา ๖๗^{๒๗} (ยกเลิก)

มาตรา ๖๘ อากรตอบโต้การอุดหนุนให้คำนวณจากประโยชน์ที่ได้รับในช่วงระยะเวลาที่นำข้อมูลมาใช้เพื่อการไต่สวนการอุดหนุน โดยกำหนดเป็นอัตราต่อหน่วยของสินค้าของผู้ที่ได้รับการอุดหนุนแต่ละราย^{๒๘}

ถ้าผู้รับการอุดหนุนมีภาระหรือต้องเสียค่าใช้จ่ายส่วนใดให้แก่รัฐบาลที่ให้การอุดหนุน ผู้รับการอุดหนุนจะขอให้หักค่าใช้จ่ายดังกล่าวออกก็ได้ แต่ภาระการพิสูจน์ข้อเท็จจริงดังกล่าวเป็นของผู้รับการอุดหนุน

อากรตอบโต้การอุดหนุนนั้นให้กำหนดเพียงเพื่อขจัดความเสียหาย และจะเกินกว่าประโยชน์ที่ผู้รับการอุดหนุนได้รับมิได้

มาตรา ๖๙ การคำนวณหาประโยชน์ที่ได้รับตามมาตรา ๖๓ ให้พิจารณาตามหลักเกณฑ์ดังนี้

(๑) การที่รัฐบาลเข้าร่วมทุนไม่ถึงเป็นการให้ประโยชน์ เว้นแต่การลงทุนนั้นไม่สอดคล้องกับการปฏิบัติตามปกติของภาคเอกชนในประเทศแหล่งกำเนิดหรือประเทศผู้ส่งออก

(๒) การที่รัฐบาลให้กู้ยืมเงินไม่ถึงเป็นการให้ประโยชน์ เว้นแต่มีส่วนต่างระหว่างจำนวนเงินที่ผู้กู้ต้องชำระและประโยชน์อื่นใดที่คำนวณเป็นตัวเงินได้อันเนื่องมาจากการกู้ยืมจาก

^{๒๕} มาตรา ๖๕ ยกเลิกโดยพระราชบัญญัติการตอบโต้การทุ่มตลาดและการอุดหนุนซึ่งสินค้าจากต่างประเทศ (ฉบับที่ ๒) พ.ศ. ๒๕๖๒

^{๒๖} มาตรา ๖๖ ยกเลิกโดยพระราชบัญญัติการตอบโต้การทุ่มตลาดและการอุดหนุนซึ่งสินค้าจากต่างประเทศ (ฉบับที่ ๒) พ.ศ. ๒๕๖๒

^{๒๗} มาตรา ๖๗ ยกเลิกโดยพระราชบัญญัติการตอบโต้การทุ่มตลาดและการอุดหนุนซึ่งสินค้าจากต่างประเทศ (ฉบับที่ ๒) พ.ศ. ๒๕๖๒

^{๒๘} มาตรา ๖๘ วรรคหนึ่ง แก้ไขเพิ่มเติมโดยพระราชบัญญัติการตอบโต้การทุ่มตลาดและการอุดหนุนซึ่งสินค้าจากต่างประเทศ (ฉบับที่ ๒) พ.ศ. ๒๕๖๒

รัฐบาลกับการกัวยืมทางพาณิชย์ที่เปรียบเทียบกันได้ในตลาด ในกรณีนี้ประโยชน์ที่ได้รับคือส่วนต่างของจำนวนดังกล่าว

(๓) การที่รัฐบาลค้ำประกันเงินกู้ไม่ถือเป็นการให้ประโยชน์ เว้นแต่มีส่วนต่างระหว่างจำนวนเงินที่ผู้ได้รับการค้ำประกันต้องชำระและประโยชน์อื่นใดที่คำนวณเป็นตัวเงินได้ระหว่างการค้ำประกันโดยรัฐบาลกับการค้ำประกันโดยเอกชนในทางพาณิชย์และให้นำความใน (๒) มาใช้บังคับโดยอนุโลม

(๔) การที่รัฐบาลให้สินค้าหรือบริการหรือการซื้อสินค้าไม่ถือเป็นการให้ประโยชน์ เว้นแต่เป็นการให้โดยได้รับค่าตอบแทนที่น้อยกว่าอัตราที่สมควรหรือการซื้อสินค้าที่ให้ค่าตอบแทนสูงกว่าอัตราที่สมควร ซึ่งอัตราที่สมควรให้พิจารณาจากสภาพทางการตลาดที่เป็นอยู่ในประเทศที่รัฐบาลให้สินค้าหรือบริการหรือที่ซื้อสินค้านั้น^{๒๙}

การคำนวณประโยชน์ที่ได้รับ ให้เป็นไปตามหลักเกณฑ์และวิธีการที่กำหนดในกฎกระทรวง กฎกระทรวงดังกล่าวจะกำหนดให้กรณีหนึ่งกรณีใดเป็นไปตามที่กระทรวงพาณิชย์ประกาศกำหนดก็ได้

มาตรา ๗๐ การพิจารณากำหนดอากรตอบโต้การอุดหนุนให้นำบทบัญญัติหมวด ๒ หมวด ๓ หมวด ๔ หมวด ๕ หมวด ๖ หมวด ๗ หมวด ๘ และหมวด ๙ มาใช้บังคับโดยอนุโลม เว้นแต่ในกรณีดังต่อไปนี้

- (๑) บทบัญญัติแห่งมาตรา ๔๒ (๒) และ (๓) มิให้ใช้บังคับในการใช้มาตรการชั่วคราว
- (๒) ความตกลงเพื่อระงับการอุดหนุนระหว่างผู้ส่งออกกับกรมการค้าต่างประเทศ

จะต้องได้รับความเห็นชอบจากประเทศผู้ส่งออกด้วย

มาตรา ๗๐/๑^{๓๐} ในกรณีที่ผู้นำเข้าไม่ชำระอากรหรือชำระอากรตอบโต้การอุดหนุนไม่ครบถ้วนหรือค้างชำระค่าอากรดังกล่าว ให้เป็นอำนาจของกรมศุลกากรในการเรียกเก็บอากรเงินเพิ่มและเบี้ยปรับ การกักของ การยึดหรืออายัดทรัพย์สิน การขายทอดตลาด และการดำเนินการเกี่ยวกับของตกค้าง รวมทั้งการลดเงินเพิ่ม งดหรือลดเบี้ยปรับ ทุเลาการชำระอากรตอบโต้การอุดหนุนเงินเพิ่มและเบี้ยปรับ

ในกรณีที่ผู้นำเข้าไม่เห็นด้วยกับการประเมินอากร เงินเพิ่มและเบี้ยปรับ การลดเงินเพิ่มและงดหรือลดเบี้ยปรับ ของกรมศุลกากรตามวรรคหนึ่ง ให้อุทธรณ์ต่อคณะกรรมการพิจารณาอุทธรณ์ตามกฎหมายว่าด้วยศุลกากร

ให้นำบทบัญญัติกฎหมายว่าด้วยศุลกากรและกฎหมายว่าด้วยพิกัดอัตราศุลกากรมาใช้บังคับแก่การดำเนินการตามวรรคหนึ่งและวรรคสองโดยอนุโลม

บทบัญญัติในส่วนที่เกี่ยวกับการจ่ายเงินสินบนหรือเงินรางวัลตามกฎหมายว่าด้วยศุลกากรไม่นำมาใช้กับการเก็บอากร เงินเพิ่ม และเบี้ยปรับที่จัดเก็บได้จากอากรตอบโต้การอุดหนุนตามมาตรานี้

^{๒๙} มาตรา ๖๙ วรรคหนึ่ง แก้ไขเพิ่มเติมโดยพระราชบัญญัติการตอบโต้การทุ่มตลาดและการอุดหนุนซึ่งสินค้าจากต่างประเทศ (ฉบับที่ ๒) พ.ศ. ๒๕๖๒

^{๓๐} มาตรา ๗๐/๑ เพิ่มโดยพระราชบัญญัติการตอบโต้การทุ่มตลาดและการอุดหนุนซึ่งสินค้าจากต่างประเทศ (ฉบับที่ ๒) พ.ศ. ๒๕๖๒

มาตรา ๗๐/๒^{๓๑} ผู้นำเข้าอาจยื่นคำขอคืนอากรตอบโต้การอุดหนุนต่อกรมศุลกากรได้ หากภายหลังปรากฏว่ามี การส่งสินค้าที่ได้ชำระอากรตอบโต้การอุดหนุนกลับออกไปนอกราชอาณาจักร และให้เป็นอำนาจของกรมศุลกากรในการพิจารณาคืนอากรตอบโต้การอุดหนุน ทั้งนี้ ให้นำมาตรา ๒๘ แห่งพระราชบัญญัติศุลกากร พ.ศ. ๒๕๖๐ บทกำหนดโทษที่เกี่ยวข้อง และบทบัญญัติในส่วนที่เกี่ยวข้องกับการเปรียบเทียบ มาใช้บังคับโดยอนุโลม

มาตรา ๗๑^{๓๒} เมื่อคณะกรรมการได้รับคำขอจากผู้ยื่นคำขอในนามของอุตสาหกรรม ภายในหรือกรมการค้าต่างประเทศให้พิจารณาตอบโต้การอุดหนุน ก่อนที่จะเปิดการไต่สวน ให้กรมการค้า ต่างประเทศแจ้งให้รัฐบาลของประเทศซึ่งสินค้าดังกล่าวถูกพิจารณาว่า ได้มีการอุดหนุนทราบและ ขอให้รัฐบาลของประเทศนั้นมาปรึกษาหารือเกี่ยวกับการอุดหนุนและความเสียหายของอุตสาหกรรม ภายในตามคำขอ

การปรึกษาหารือจะดำเนินการในขั้นตอนใดระหว่างการพิจารณาตอบโต้การอุดหนุน ก็ได้ และกรมการค้าต่างประเทศต้องให้โอกาสตามควรในการปรึกษาหารือ นั้น แต่การปรึกษาหารือ ไม่เป็นเหตุระงับการดำเนินการในขั้นตอนการพิจารณาตอบโต้การอุดหนุน

ในการปรึกษาหารือกรมการค้าต่างประเทศต้องให้โอกาสประเทศซึ่งสินค้าที่ถูกพิจารณา ได้รับข้อมูลข่าวสารที่เกี่ยวกับการพิจารณา เว้นแต่เป็นข้อมูลข่าวสารที่ต้องปกปิดโดยสาระและเนื้อหา หรือผู้ให้ข้อมูลข่าวสารนั้นขอให้ปกปิด

สำนักงานคณะกรรมการกฤษฎีกา สำนัก **หมวด ๑๐/๑** สำนักงานคณะกรรมการกฤษฎีกา

การหลบเลี่ยงมาตรการตอบโต้การทุ่มตลาดและการอุดหนุน^{๓๓}

มาตรา ๗๑/๑^{๓๔} ในหมวดนี้

“มาตรการตอบโต้” หมายความว่า มาตรการตอบโต้การทุ่มตลาดหรือการอุดหนุน

“ผู้ประกอบการสินค้า” หมายความว่า

(๑) ผู้นำสินค้าที่ถูกใช้มาตรการตอบโต้ซึ่งยังไม่สำเร็จที่ผลิตจากประเทศที่ถูกใช้ มาตรการตอบโต้มาทำให้สำเร็จในประเทศไทยหรือในประเทศอื่น หรือ

^{๓๑} มาตรา ๗๐/๒ เพิ่มโดยพระราชบัญญัติการตอบโต้การทุ่มตลาดและการอุดหนุนซึ่งสินค้าจาก ต่างประเทศ (ฉบับที่ ๒) พ.ศ. ๒๕๖๒

^{๓๒} มาตรา ๗๑ แก้ไขเพิ่มเติมโดยพระราชบัญญัติการตอบโต้การทุ่มตลาดและการอุดหนุนซึ่ง สินค้าจากต่างประเทศ (ฉบับที่ ๒) พ.ศ. ๒๕๖๒

^{๓๓} หมวด ๑๐/๑ การหลบเลี่ยงมาตรการตอบโต้การทุ่มตลาดและการอุดหนุน มาตรา ๗๑/๑ ถึง มาตรา ๗๑/๒๐ เพิ่มโดยพระราชบัญญัติการตอบโต้การทุ่มตลาดและการอุดหนุนซึ่งสินค้าจากต่างประเทศ (ฉบับที่ ๒) พ.ศ. ๒๕๖๒

^{๓๔} มาตรา ๗๑/๑ เพิ่มโดยพระราชบัญญัติการตอบโต้การทุ่มตลาดและการอุดหนุนซึ่งสินค้าจาก ต่างประเทศ (ฉบับที่ ๒) พ.ศ. ๒๕๖๒

(๒) ผู้ที่นำส่วนประกอบหรือชิ้นส่วนของสินค้าที่ถูกใช้มาตรการตอบโต้ที่ผลิตจากประเทศที่ถูกใช้มาตรการตอบโต้มาประกอบเป็นสินค้าที่เหมือนกับสินค้าที่ถูกใช้มาตรการตอบโต้ในประเทศไทยหรือในประเทศอื่น

มาตรา ๗๑/๒^๕ การขยายการเรียกเก็บอากรตอบโต้การทุ่มตลาดและการอุดหนุนตามหมวดนี้ ให้ใช้กับการนำเข้าสินค้าที่มีการไต่สวนแล้วปรากฏว่ามีการหลบเลี่ยงมาตรการตอบโต้

มาตรา ๗๑/๓^๖ การหลบเลี่ยงมาตรการตอบโต้ตามมาตรา ๗๑/๒ ต้องมีองค์ประกอบดังต่อไปนี้

(๑) การเปลี่ยนแปลงรูปแบบทางการค้าอันเกิดจากการดำเนินการที่เกี่ยวข้องกับการผลิตหรือการดำเนินธุรกิจโดยไม่มีเหตุอันควรหรือเหตุผลทางเศรษฐกิจสนับสนุนอย่างเพียงพอ แต่เป็นไปเพื่อให้อยู่ภายใต้บังคับการเรียกเก็บอากรตอบโต้การทุ่มตลาดหรือการอุดหนุนหรือเพื่อให้อยู่ภายใต้บังคับอัตราอากรตามที่คณะกรรมการประกาศกำหนด

(๒) การเปลี่ยนแปลงรูปแบบทางการค้าตาม (๑) มีผลเป็นการบั่นทอนผลการใช้บังคับมาตรการตอบโต้ในด้านของราคาหรือปริมาณ และ

(๓) หลักฐานการทุ่มตลาดโดยเปรียบเทียบระหว่างมูลค่าปกติของสินค้าที่ถูกใช้มาตรการตอบโต้การทุ่มตลาดที่คำนวณขึ้นก่อนหน้ากับราคาส่งออกของสินค้าที่ถูกพิจารณาหรือราคาขายของสินค้าที่เหมือนกับสินค้าที่ถูกใช้มาตรการตอบโต้การทุ่มตลาดของผู้ผลิตในต่างประเทศ ผู้ส่งออกจากต่างประเทศ หรือผู้ประกอบสินค้า ซึ่งถูกกล่าวหาว่ามีการหลบเลี่ยงมาตรการตอบโต้ ทั้งนี้ โดยคำนึงถึงปัจจัยที่อาจมีผลกระทบต่อเปรียบเทียบราคาด้วย หรือหลักฐานการได้รับการอุดหนุน

หลักเกณฑ์ วิธีการ และเงื่อนไขการพิจารณาเหตุอันควรหรือเหตุผลทางเศรษฐกิจการบั่นทอนผลการใช้บังคับมาตรการตอบโต้ในด้านของราคาหรือปริมาณ และหลักฐานการทุ่มตลาดหรือการได้รับการอุดหนุน ตามวรรคหนึ่ง ให้เป็นไปตามที่กำหนดในกฎกระทรวง

มาตรา ๗๑/๔^๗ การดำเนินการที่เกี่ยวข้องกับการผลิตหรือการดำเนินธุรกิจตามมาตรา ๗๑/๓ (๑) ได้แก่

(๑) การแก้ไขตัดแปลงสินค้าที่ถูกใช้มาตรการตอบโต้เพียงเล็กน้อยโดยไม่มีผลต่อลักษณะหรือคุณสมบัติที่สำคัญของสินค้านั้น ไม่ว่าจะแก้ไขตัดแปลงสินค้านั้นจะทำในประเทศที่ถูกใช้มาตรการตอบโต้หรือในประเทศอื่น

(๒) การส่งออกสินค้าที่ถูกใช้มาตรการตอบโต้จากประเทศที่ถูกใช้มาตรการดังกล่าวมาประเทศไทยโดยผ่านประเทศอื่น

^๕ มาตรา ๗๑/๒ เพิ่มโดยพระราชบัญญัติการตอบโต้การทุ่มตลาดและการอุดหนุนซึ่งสินค้าจากต่างประเทศ (ฉบับที่ ๒) พ.ศ. ๒๕๖๒

^๖ มาตรา ๗๑/๓ เพิ่มโดยพระราชบัญญัติการตอบโต้การทุ่มตลาดและการอุดหนุนซึ่งสินค้าจากต่างประเทศ (ฉบับที่ ๒) พ.ศ. ๒๕๖๒

^๗ มาตรา ๗๑/๔ เพิ่มโดยพระราชบัญญัติการตอบโต้การทุ่มตลาดและการอุดหนุนซึ่งสินค้าจากต่างประเทศ (ฉบับที่ ๒) พ.ศ. ๒๕๖๒

(ก) การส่งออกสินค้าที่ถูกใช้มาตรการตอบโต้จากประเทศที่ถูกใช้มาตรการดังกล่าว มาประเทศไทยโดยผ่านผู้ผลิตหรือผู้ส่งออกรายที่ไม่ถูกเรียกเก็บหรือรายที่ถูกเรียกเก็บอากรตอบโต้ การทุ่มตลาดหรือการอุดหนุนในอัตราที่ต่ำกว่าอัตราที่สินค้านั้นถูกเรียกเก็บ

(ข) การนำสินค้าที่ถูกใช้มาตรการตอบโต้ซึ่งยังไม่สำเร็จที่ผลิตจากประเทศที่ถูกใช้ มาตรการตอบโต้มาทำให้สำเร็จ หรือนำส่วนประกอบหรือชิ้นส่วนของสินค้าที่ถูกใช้มาตรการตอบโต้ ที่ผลิตจากประเทศที่ถูกใช้มาตรการตอบโต้มาประกอบเป็นสินค้าที่เหมือนกับสินค้าที่ถูกใช้มาตรการ ตอบโต้ในประเทศไทยหรือในประเทศอื่น โดยให้พิจารณาดังต่อไปนี้

(ก) การทำให้สำเร็จหรือการประกอบเป็นสินค้าที่เหมือนกับสินค้าที่ถูกใช้ มาตรการตอบโต้ได้เริ่มดำเนินการหรือมีการดำเนินการที่เพิ่มขึ้นตั้งแต่วันประกาศได้ส่วนการทุ่มตลาด หรือการอุดหนุน และ

(ข) สินค้าที่ถูกทำให้สำเร็จหรือประกอบเป็นสินค้าที่เหมือนกับสินค้าที่ถูกใช้ มาตรการตอบโต้มีสัดส่วนมูลค่าเพิ่มหรือมูลค่าส่วนประกอบหรือชิ้นส่วนดังนี้

๑) ในกรณีสินค้าที่ถูกทำให้สำเร็จมีมูลค่าเพิ่มของสินค้านั้นน้อยกว่าร้อยละ ยี่สิบห้าของต้นทุนการผลิต หรือ

๒) ในกรณีส่วนประกอบหรือชิ้นส่วนของสินค้าที่ผลิตจากประเทศที่ถูกใช้ มาตรการตอบโต้มีมูลค่าเท่ากับหรือมากกว่าร้อยละหกสิบของมูลค่าส่วนประกอบหรือชิ้นส่วนทั้งหมด ของสินค้าที่เหมือนกับสินค้าที่ถูกใช้มาตรการตอบโต้ เว้นแต่สินค้าที่ประกอบขึ้นจากส่วนประกอบ หรือชิ้นส่วนดังกล่าวมีมูลค่าเพิ่มไม่น้อยกว่าร้อยละยี่สิบห้าของต้นทุนการผลิต

๓) การคำนวณมูลค่าเพิ่มตาม ๑) และ ๒) ให้เป็นไปตามหลักเกณฑ์ที่ กระทรวงพาณิชย์ประกาศกำหนด

(๕) การดำเนินการที่เกี่ยวข้องกับการผลิตหรือการดำเนินธุรกิจอื่นใด ตามที่กำหนด ในกฎกระทรวง

มาตรา ๗๑/๕^{๓๘} ให้เริ่มดำเนินการกระบวนการพิจารณาตอบโต้การหลบเลี่ยงมาตรการ ตอบโต้เมื่อมีคำขอของกรมการค้าต่างประเทศหรือของบุคคลหรือคณะบุคคลตามมาตรา ๗๑/๖ การยื่นคำขอตามวรรคหนึ่งจะกระทำได้หลังจากคณะกรรมการมีคำวินิจฉัยขั้นที่สุด ให้มีการเรียกเก็บอากรตอบโต้การทุ่มตลาดหรือการอุดหนุน

มาตรา ๗๑/๖^{๓๙} บุคคลหรือคณะบุคคลอาจยื่นคำขอต่อกรมการค้าต่างประเทศ ในนามของผู้ผลิตในประเทศซึ่งผลิตสินค้าชนิดเดียวกันกับสินค้าที่ถูกใช้มาตรการตอบโต้เพื่อให้ คณะกรรมการดำเนินการพิจารณาตอบโต้การหลบเลี่ยงมาตรการตอบโต้

คำขอตามวรรคหนึ่งต้องได้รับการสนับสนุนจากผู้ผลิตในประเทศซึ่งผลิตสินค้า ชนิดเดียวกันกับสินค้าที่ถูกใช้มาตรการตอบโต้ ในปริมาณไม่น้อยกว่าหนึ่งในสี่ของปริมาณการผลิต สินค้าชนิดเดียวกันกับสินค้าที่ถูกใช้มาตรการตอบโต้ทั้งหมดในประเทศ

^{๓๘} มาตรา ๗๑/๕ เพิ่มโดยพระราชบัญญัติการตอบโต้การทุ่มตลาดและการอุดหนุนซึ่งสินค้าจาก ต่างประเทศ (ฉบับที่ ๒) พ.ศ. ๒๕๖๒

^{๓๙} มาตรา ๗๑/๖ เพิ่มโดยพระราชบัญญัติการตอบโต้การทุ่มตลาดและการอุดหนุนซึ่งสินค้าจาก ต่างประเทศ (ฉบับที่ ๒) พ.ศ. ๒๕๖๒

การยื่นคำขอให้เป็นไปตามหลักเกณฑ์ วิธีการ ระยะเวลา และเงื่อนไขที่กระทรวงพาณิชย์ประกาศกำหนด

มาตรา ๗๑/๗^{๕๐} ถ้าคำขอตามมาตรา ๗๑/๖ มีรายละเอียดหรือหลักฐานไม่ครบถ้วนหรือไม่ถูกต้อง ให้กรมการค้าต่างประเทศแจ้งให้ผู้นำคำขอดำเนินการให้ครบถ้วนหรือถูกต้องภายในเวลาที่กำหนด

เมื่อคำขอมีรายละเอียดและพยานหลักฐานครบถ้วนและถูกต้องแล้ว ให้กรมการค้าต่างประเทศเสนอคำขอต่อคณะกรรมการเพื่อพิจารณา

มาตรา ๗๑/๘^{๕๑} ผู้นำคำขอตามมาตรา ๗๑/๖ อาจถอนคำขอได้ แต่ถ้าได้มีการประกาศไต่สวนการหลบเลี่ยงมาตรการตอบโต้ตามมาตรา ๗๑/๑๐ แล้ว คณะกรรมการจะยุติการพิจารณาตอบโต้การหลบเลี่ยงมาตรการตอบโต้หรือดำเนินการพิจารณาต่อไปก็ได้

มาตรา ๗๑/๙^{๕๒} ในกรณีที่คณะกรรมการมีคำวินิจฉัยว่าคำขอมีมูลเกี่ยวกับการหลบเลี่ยงมาตรการตอบโต้ ให้กรมการค้าต่างประเทศดำเนินการไต่สวนต่อไปโดยไม่ชักช้า

ในกรณีที่คณะกรรมการมีคำวินิจฉัยว่าคำขอนั้นไม่มีมูลเกี่ยวกับการหลบเลี่ยงมาตรการตอบโต้ ให้กรมการค้าต่างประเทศแจ้งคำวินิจฉัยดังกล่าวให้ผู้นำคำขอทราบโดยไม่ชักช้า

มาตรา ๗๑/๑๐^{๕๓} ในการพิจารณาตอบโต้การหลบเลี่ยงมาตรการตอบโต้ ให้กรมการค้าต่างประเทศเป็นผู้มีอำนาจหน้าที่ไต่สวนการหลบเลี่ยงมาตรการตอบโต้ เริ่มต้นโดยการออกประกาศไต่สวนการหลบเลี่ยงมาตรการตอบโต้ในราชกิจจานุเบกษา และลงโฆษณาในหนังสือพิมพ์รายวันหรือเผยแพร่โดยวิธีการอื่นใดทั้งภาษาไทยและภาษาอังกฤษเพื่อให้สาธารณชนรับรู้ ตามที่เห็นสมควร

ประกาศไต่สวนการหลบเลี่ยงมาตรการตอบโต้ต้องมีรายการตามที่กระทรวงพาณิชย์ประกาศกำหนด

ให้กรมการค้าต่างประเทศแจ้งประกาศไต่สวนการหลบเลี่ยงมาตรการตอบโต้ให้ผู้นำคำขอ ผู้ผลิตในต่างประเทศ ผู้ส่งออกจากต่างประเทศ หรือผู้ประกอบการสินค้า ซึ่งถูกกล่าวหาว่ามีการหลบเลี่ยงมาตรการตอบโต้ และรัฐบาลของประเทศแหล่งกำเนิดหรือประเทศผู้ส่งออกที่เกี่ยวข้องทราบ และในกรณีที่ทราบที่อยู่ของผู้นำเข้าที่เกี่ยวข้องหรือตัวแทนของบุคคลดังกล่าว ให้กรมการค้าต่างประเทศแจ้งเป็นหนังสือให้บุคคลเหล่านั้นทราบประกาศนั้นด้วย

^{๕๐} มาตรา ๗๑/๗ เพิ่มโดยพระราชบัญญัติการตอบโต้การทุ่มตลาดและการอุดหนุนซึ่งสินค้าจากต่างประเทศ (ฉบับที่ ๒) พ.ศ. ๒๕๖๒

^{๕๑} มาตรา ๗๑/๘ เพิ่มโดยพระราชบัญญัติการตอบโต้การทุ่มตลาดและการอุดหนุนซึ่งสินค้าจากต่างประเทศ (ฉบับที่ ๒) พ.ศ. ๒๕๖๒

^{๕๒} มาตรา ๗๑/๙ เพิ่มโดยพระราชบัญญัติการตอบโต้การทุ่มตลาดและการอุดหนุนซึ่งสินค้าจากต่างประเทศ (ฉบับที่ ๒) พ.ศ. ๒๕๖๒

^{๕๓} มาตรา ๗๑/๑๐ เพิ่มโดยพระราชบัญญัติการตอบโต้การทุ่มตลาดและการอุดหนุนซึ่งสินค้าจากต่างประเทศ (ฉบับที่ ๒) พ.ศ. ๒๕๖๒

มาตรา ๗๑/๑๑^{๔๔} การเสนอข้อเท็จจริงและความเห็นรวมทั้งสิทธิการดำเนินการ เพื่อปกป้องผลประโยชน์ของผู้มีส่วนได้เสียและผู้ที่เกี่ยวข้องในกระบวนการไต่สวนการหลบเลี่ยง มาตรการตอบโต้ให้เป็นไปตามที่กำหนดในกฎกระทรวง

มาตรา ๗๑/๑๒^{๔๕}ให้นำมาตรา ๒๖ มาตรา ๒๗ มาตรา ๒๙ มาตรา ๓๐ และ มาตรา ๔๐ มาใช้บังคับแก่การไต่สวนการหลบเลี่ยงมาตรการตอบโต้โดยอนุโลม

มาตรา ๗๑/๑๓^{๔๖} ในกรณีที่คณะกรรมการมีคำวินิจฉัยว่ามีการหลบเลี่ยงมาตรการ ตอบโต้ ให้ขยายการเรียกเก็บอากรตอบโต้การทุ่มตลาดหรือการอุดหนุนกับการนำเข้าสินค้าที่หลบเลี่ยง มาตรการตอบโต้ในอัตราไม่เกินอัตราสูงสุดที่เรียกเก็บกับสินค้าที่ถูกใช้มาตรการตอบโต้จากประเทศ ผู้ส่งออกนั้น

ในการขยายการเรียกเก็บอากรตอบโต้การทุ่มตลาดหรือการอุดหนุนตามวรรคหนึ่ง ให้เริ่มตั้งแต่วันที่ที่มีการจัดทำทะเบียนการนำเข้าสินค้า ในการนี้ ให้กรมศุลกากรมีอำนาจเรียกเก็บ อากรดังกล่าวตามที่คณะกรรมการมีคำวินิจฉัย

การขยายการเรียกเก็บอากรตอบโต้การทุ่มตลาดหรือการอุดหนุนตามวรรคหนึ่ง ให้เปลี่ยนแปลงหรือยุติตามการเรียกเก็บอากรของสินค้าที่ถูกใช้มาตรการตอบโต้

มาตรา ๗๑/๑๔^{๔๗} ในกรณีที่มีการขยายการเรียกเก็บอากรตอบโต้การทุ่มตลาดหรือ การอุดหนุน หากผู้นำเข้าไม่ชำระอากรหรือชำระอากรตอบโต้การทุ่มตลาดหรือการอุดหนุนไม่ครบถ้วน หรือค้างชำระค่าอากรดังกล่าวให้นำมาตรา ๔๙/๑ หรือมาตรา ๗๐/๑ แล้วแต่กรณี มาใช้บังคับ โดยอนุโลม

มาตรา ๗๑/๑๕^{๔๘} ในกรณีที่มีการขยายการเรียกเก็บอากรตอบโต้การทุ่มตลาดหรือ การอุดหนุนผู้นำเข้าอาจยื่นคำขอคืนอากรตอบโต้การทุ่มตลาดหรือการอุดหนุนต่อกรมศุลกากรได้ หากภายหลังปรากฏว่ามีการส่งสินค้าที่ได้ชำระอากรตอบโต้การทุ่มตลาดหรือการอุดหนุนกลับออกไป นอกราชอาณาจักรให้นำมาตรา ๔๙/๒ หรือมาตรา ๗๐/๒ แล้วแต่กรณี มาใช้บังคับโดยอนุโลม

^{๔๔} มาตรา ๗๑/๑๑ เพิ่มโดยพระราชบัญญัติการตอบโต้การทุ่มตลาดและการอุดหนุนซึ่งสินค้า จากต่างประเทศ (ฉบับที่ ๒) พ.ศ. ๒๕๖๒

^{๔๕} มาตรา ๗๑/๑๒ เพิ่มโดยพระราชบัญญัติการตอบโต้การทุ่มตลาดและการอุดหนุนซึ่งสินค้า จากต่างประเทศ (ฉบับที่ ๒) พ.ศ. ๒๕๖๒

^{๔๖} มาตรา ๗๑/๑๓ เพิ่มโดยพระราชบัญญัติการตอบโต้การทุ่มตลาดและการอุดหนุนซึ่งสินค้า จากต่างประเทศ (ฉบับที่ ๒) พ.ศ. ๒๕๖๒

^{๔๗} มาตรา ๗๑/๑๔ เพิ่มโดยพระราชบัญญัติการตอบโต้การทุ่มตลาดและการอุดหนุนซึ่งสินค้า จากต่างประเทศ (ฉบับที่ ๒) พ.ศ. ๒๕๖๒

^{๔๘} มาตรา ๗๑/๑๕ เพิ่มโดยพระราชบัญญัติการตอบโต้การทุ่มตลาดและการอุดหนุนซึ่งสินค้า จากต่างประเทศ (ฉบับที่ ๒) พ.ศ. ๒๕๖๒

มาตรา ๗๑/๑๖^{๕๔} การเริ่มต้นกระบวนการพิจารณาตอบโต้การหลบเลี่ยงมาตรการตอบโต้จนถึงการดำเนินการให้มีคำวินิจฉัยว่าให้ขยายการเรียกเก็บอากรตอบโต้การทุ่มตลาดหรือการอุดหนุน หรือมีคำวินิจฉัยว่าไม่มีการหลบเลี่ยงมาตรการตอบโต้ต้องดำเนินการให้แล้วเสร็จภายในเก้าเดือนนับแต่วันประกาศไตสวน เว้นแต่ในกรณีที่มีเหตุจำเป็นให้ขยายได้อีกไม่เกินสามเดือน

มาตรา ๗๑/๑๗^{๕๕} เมื่อคณะกรรมการเห็นสมควร หรือเมื่อมีคำขอจากผู้มีส่วนได้เสีย หลังจากที่ได้มีการขยายการเรียกเก็บอากรตอบโต้การทุ่มตลาดหรือการอุดหนุนมาแล้วไม่น้อยกว่าหนึ่งปี คณะกรรมการอาจพิจารณาทบทวนเพื่อยุติการขยายการเรียกเก็บอากรตอบโต้การทุ่มตลาดหรือการอุดหนุนได้

การพิจารณาทบทวนจะต้องดำเนินการให้แล้วเสร็จภายในหนึ่งปีนับแต่วันประกาศให้มีการทบทวน

การพิจารณาทบทวนไม่กระทบถึงการขยายการเรียกเก็บอากรตอบโต้การทุ่มตลาดหรือการอุดหนุนในระหว่างนั้น

มาตรา ๗๑/๑๘^{๕๖} ผู้นำเข้าอาจขอคืนอากรตอบโต้การทุ่มตลาดหรืออากรตอบโต้การอุดหนุนที่ถูกเรียกเก็บจากการขยายการเรียกเก็บอากรตอบโต้การทุ่มตลาดหรือการอุดหนุน ในขณะหนึ่งขณะใดได้ถ้าผู้นั้นพิสูจน์ได้ว่าไม่มีการหลบเลี่ยงมาตรการตอบโต้ตามมาตรา ๗๑/๓

การขอคืนอากรตามวรรคหนึ่งต้องยื่นคำขอต่อกรมการค้าต่างประเทศภายในหกเดือน นับแต่วันชำระอากรดังกล่าว

การพิจารณาคืนอากรจะต้องดำเนินการให้แล้วเสร็จภายในหนึ่งปีนับแต่วันที่คณะกรรมการรับคำขอดังกล่าว เว้นแต่ในกรณีที่มีเหตุจำเป็นให้ขยายเวลาได้อีกไม่เกินหกเดือน

มาตรา ๗๑/๑๙^{๕๗} ให้นำมาตรา ๗๑/๓ มาตรา ๗๑/๔ มาตรา ๗๑/๖ วรรคสาม มาตรา ๗๑/๗ มาตรา ๗๑/๘ มาตรา ๗๑/๙ มาตรา ๗๑/๑๐ มาตรา ๗๑/๑๑ และมาตรา ๗๑/๑๒ มาใช้บังคับแก่การทบทวนและการขอคืนอากร ตามมาตรา ๗๑/๑๗ และมาตรา ๗๑/๑๘ โดยอนุโลม

มาตรา ๗๑/๒๐^{๕๘} ผู้ใดไม่พอใจคำวินิจฉัยของคณะกรรมการตามมาตรา ๗๑/๑๓ หรือคำวินิจฉัยของคณะกรรมการในการขอให้ทบทวนตามมาตรา ๗๑/๑๗ และมาตรา ๗๑/๑๘

^{๕๔} มาตรา ๗๑/๑๖ เพิ่มโดยพระราชบัญญัติการตอบโต้การทุ่มตลาดและการอุดหนุนซึ่งสินค้าจากต่างประเทศ (ฉบับที่ ๒) พ.ศ. ๒๕๖๒

^{๕๕} มาตรา ๗๑/๑๗ เพิ่มโดยพระราชบัญญัติการตอบโต้การทุ่มตลาดและการอุดหนุนซึ่งสินค้าจากต่างประเทศ (ฉบับที่ ๒) พ.ศ. ๒๕๖๒

^{๕๖} มาตรา ๗๑/๑๘ เพิ่มโดยพระราชบัญญัติการตอบโต้การทุ่มตลาดและการอุดหนุนซึ่งสินค้าจากต่างประเทศ (ฉบับที่ ๒) พ.ศ. ๒๕๖๒

^{๕๗} มาตรา ๗๑/๑๙ เพิ่มโดยพระราชบัญญัติการตอบโต้การทุ่มตลาดและการอุดหนุนซึ่งสินค้าจากต่างประเทศ (ฉบับที่ ๒) พ.ศ. ๒๕๖๒

^{๕๘} มาตรา ๗๑/๒๐ เพิ่มโดยพระราชบัญญัติการตอบโต้การทุ่มตลาดและการอุดหนุนซึ่งสินค้าจากต่างประเทศ (ฉบับที่ ๒) พ.ศ. ๒๕๖๒

ให้อุทธรณ์คำวินิจฉัยดังกล่าวต่อศาลทรัพย์สินทางปัญญาและการค้าระหว่างประเทศได้ภายในสามสิบวันนับแต่วันได้รับแจ้งคำวินิจฉัยนั้น และให้นำมาตรา ๖๑ วรรคสอง มาใช้บังคับโดยอนุโลม

หมวด ๑๑

คณะกรรมการ

มาตรา ๗๒ ให้มีคณะกรรมการคณะหนึ่งเรียกว่า “คณะกรรมการพิจารณาการทุ่มตลาดและการอุดหนุน” ประกอบด้วย รัฐมนตรีว่าการกระทรวงพาณิชย์ เป็นประธานกรรมการ ปลัดกระทรวงพาณิชย์ ปลัดกระทรวงการคลัง ปลัดกระทรวงการต่างประเทศ ปลัดกระทรวงเกษตรและสหกรณ์ ปลัดกระทรวงอุตสาหกรรม เลขาธิการคณะกรรมการส่งเสริมการลงทุน อธิบดีกรมการค้าต่างประเทศ อธิบดีกรมการค้าภายใน อธิบดีกรมเจรจาการค้าระหว่างประเทศ* ผู้ซึ่งคณะกรรมการคุ้มครองผู้บริโภคมอบหมายหนึ่งคน และผู้ทรงคุณวุฒิจำนวนหกคนซึ่งคณะรัฐมนตรีแต่งตั้งเป็นกรรมการ

ให้อธิบดีกรมการค้าต่างประเทศเป็นเลขานุการและแต่งตั้งข้าราชการของกรมการค้าต่างประเทศเป็นผู้ช่วยเลขานุการของคณะกรรมการ การแต่งตั้งกรรมการผู้ทรงคุณวุฒิตามวรรคหนึ่ง ให้แต่งตั้งจากบุคคลซึ่งมีความรู้ ความเชี่ยวชาญเกี่ยวกับการค้าระหว่างประเทศ เศรษฐศาสตร์ การบัญชี นิติศาสตร์ การเกษตร และการอุตสาหกรรม สาขาละหนึ่งคน

มาตรา ๗๓ คณะกรรมการมีอำนาจหน้าที่ดังต่อไปนี้

- (๑)^{๕๔} พิจารณาตอบโต้การทุ่มตลาดและการอุดหนุน และพิจารณาตอบโต้การหลบเลี่ยงมาตรการตอบโต้การทุ่มตลาดและการอุดหนุนตามพระราชบัญญัตินี้
- (๒) ให้ความเห็นชอบในการทำความตกลงเพื่อระงับการทุ่มตลาดหรือการอุดหนุน
- (๓) ให้คำแนะนำในการออกกฎกระทรวงและประกาศเพื่อดำเนินการตามพระราชบัญญัตินี้
- (๔) ปฏิบัติการอื่นตามที่บัญญัติไว้ในพระราชบัญญัตินี้ หรือตามที่คณะรัฐมนตรีมอบหมาย

มาตรา ๗๔ กรรมการผู้ทรงคุณวุฒิมีวาระการดำรงตำแหน่งคราวละสี่ปี

ในวาระเริ่มแรกเมื่อครบสองปีให้กรรมการผู้ทรงคุณวุฒิออกจากตำแหน่งเป็นจำนวนกึ่งหนึ่งของจำนวนกรรมการผู้ทรงคุณวุฒิทั้งหมดโดยวิธีจับสลาก และให้ถือว่าการออกจากตำแหน่งของกรรมการผู้ทรงคุณวุฒิโดยวิธีจับสลากเป็นการพ้นจากตำแหน่งตามวาระ

เมื่อครบกำหนดตามวาระในวาระหนึ่ง หากยังมีได้มีการแต่งตั้งกรรมการผู้ทรงคุณวุฒิขึ้นใหม่ ให้กรรมการผู้ทรงคุณวุฒิซึ่งพ้นจากตำแหน่งตามวาระปฏิบัติหน้าที่ต่อไปจนกว่ากรรมการผู้ทรงคุณวุฒิซึ่งได้รับแต่งตั้งใหม่เข้ารับหน้าที่^{๕๕}

^{๕๔} มาตรา ๗๓ (๑) แก้ไขเพิ่มเติมโดยพระราชบัญญัติการตอบโต้การทุ่มตลาดและการอุดหนุน ซึ่งสินค้าจากต่างประเทศ (ฉบับที่ ๒) พ.ศ. ๒๕๖๒

กรรมการผู้ทรงคุณวุฒิซึ่งพ้นจากตำแหน่งตามวาระอาจได้รับแต่งตั้งอีกได้แต่จะ
แต่งตั้งให้ดำรงตำแหน่งติดต่อกันเกินสองวาระไม่ได้^{๕๕}

มาตรา ๗๕ นอกจากการพ้นจากตำแหน่งตามวาระ กรรมการผู้ทรงคุณวุฒิพ้นจาก
ตำแหน่งเมื่อ

- (๑) ตาย
- (๒) ลาออก
- (๓) คณะรัฐมนตรีให้ออก เพราะมีความประพฤติเสื่อมเสีย บกพร่องหรือไม่สุจริตต่อ
หน้าที่ หรือหย่อนความสามารถ
- (๔) ต้องโทษจำคุกตามคำพิพากษาถึงที่สุดให้จำคุก เว้นแต่ในความผิดที่กระทำโดย
ประมาทหรือความผิดลหุโทษ
- (๕) เป็นคนไร้ความสามารถ หรือคนเสมือนไร้ความสามารถ
- (๖) เป็นบุคคลล้มละลาย

มาตรา ๗๖^{๕๖} ในกรณีที่กรรมการผู้ทรงคุณวุฒิพ้นจากตำแหน่งก่อนวาระ ให้แต่งตั้ง
กรรมการผู้ทรงคุณวุฒิแทนโดยเร็ว และให้กรรมการผู้ทรงคุณวุฒิที่ได้รับแต่งตั้งแทนดังกล่าวอยู่ใน
ตำแหน่งเท่าวาระที่เหลืออยู่ของกรรมการผู้ทรงคุณวุฒิที่ตนแทน เว้นแต่วาระการอยู่ในตำแหน่งของ
กรรมการผู้ทรงคุณวุฒิที่พ้นจากตำแหน่งก่อนวาระนั้นเหลือไม่ถึงเก้าสิบวัน จะไม่ดำเนินการแต่งตั้งก็ได้
ในระหว่างที่ยังไม่มีการแต่งตั้งกรรมการผู้ทรงคุณวุฒิแทนตามวรรคหนึ่ง ให้กรรมการ
เท่าที่เหลืออยู่ปฏิบัติหน้าที่ต่อไปได้ และให้ถือว่าคณะกรรมการประกอบด้วยกรรมการเท่าที่เหลืออยู่
ทั้งนี้ ต้องมีกรรมการผู้ทรงคุณวุฒิเหลืออยู่ไม่น้อยกว่าสามคน

มาตรา ๗๗ การประชุมของคณะกรรมการต้องมีกรรมการมาประชุมไม่น้อยกว่ากึ่ง
หนึ่งของจำนวนกรรมการทั้งหมดจึงจะเป็นองค์ประชุม ถ้าประธานกรรมการไม่อยู่ในที่ประชุมหรือไม่
อาจปฏิบัติหน้าที่ได้ ให้กรรมการที่มาประชุมเลือกกรรมการคนหนึ่งขึ้นเป็นประธานในที่ประชุม
การวินิจฉัยชี้ขาดของที่ประชุมให้ถือเสียงข้างมาก กรรมการคนหนึ่งให้มีเสียงหนึ่งในการ
ลงคะแนน ถ้าคะแนนเสียงเท่ากันให้ประธานในที่ประชุมออกเสียงเพิ่มขึ้นอีกเสียงหนึ่งเป็นเสียงชี้ขาด
ในการประชุม ถ้ามีความเห็นแย้งให้บันทึกความเห็นแย้งพร้อมทั้งเหตุผลไว้ใน
รายงานการประชุมด้วย แต่กรรมการคนใดจะขอให้รวมความเห็นแย้งของตนไว้ในคำวินิจฉัยก็ได้

^{๕๕} มาตรา ๗๔ วรรคสาม เพิ่มโดยพระราชบัญญัติการตอบโต้การทุ่มตลาดและการอุดหนุน
ซึ่งสินค้าจากต่างประเทศ (ฉบับที่ ๒) พ.ศ. ๒๕๖๒

^{๕๖} มาตรา ๗๔ วรรคสี่ เพิ่มโดยพระราชบัญญัติการตอบโต้การทุ่มตลาดและการอุดหนุนซึ่งสินค้า
จากต่างประเทศ (ฉบับที่ ๒) พ.ศ. ๒๕๖๒

^{๕๗} มาตรา ๗๖ แก้ไขเพิ่มเติมโดยพระราชบัญญัติการตอบโต้การทุ่มตลาดและการอุดหนุนซึ่ง
สินค้าจากต่างประเทศ (ฉบับที่ ๒) พ.ศ. ๒๕๖๒

กรรมการผู้ใดมีส่วนได้เสียในเรื่องที่ต้องวินิจฉัยชี้ขาด ห้ามมิให้กรรมการผู้นั้นเข้าร่วมการประชุมในเรื่องนั้น^{๕๕}

มาตรา ๗๘ เพื่อประโยชน์ในการปฏิบัติหน้าที่ ให้คณะกรรมการมีอำนาจแต่งตั้งคณะอนุกรรมการเพื่อดำเนินการอย่างหนึ่งอย่างใดได้

หมวด ๑๒
บทเฉพาะกาล

สำนักงานคณะกรรมการกฤษฎีกา

มาตรา ๗๙ บรรดาการพิจารณาตอบโต้การทุ่มตลาดและการอุดหนุนที่ค้างพิจารณาอยู่ก่อนวันที่พระราชบัญญัตินี้ใช้บังคับให้ดำเนินการต่อไปตามประกาศกระทรวงพาณิชย์ว่าด้วยการเรียกเก็บค่าธรรมเนียมพิเศษซึ่งสินค้านำเข้าเพื่อตอบโต้การทุ่มตลาดและการอุดหนุน พ.ศ. ๒๕๓๙ และพระราชบัญญัติการส่งออกไปนอกและการนำเข้ามาในราชอาณาจักรซึ่งสินค้า พ.ศ. ๒๕๒๒ จนกว่าจะเสร็จสิ้น

สำนักงานคณะกรรมการกฤษฎีกา

ผู้รับสนองพระบรมราชโองการ
ชวน หลีกภัย

นายกรัฐมนตรี

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา

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สำนักงานคณะกรรมการกฤษฎีกา

^{๕๕} มาตรา ๗๗ วรรคสี่ เพิ่มโดยพระราชบัญญัติการตอบโต้การทุ่มตลาดและการอุดหนุนซึ่งสินค้าจากต่างประเทศ (ฉบับที่ ๒) พ.ศ. ๒๕๖๒

หมายเหตุ :- เหตุผลในการประกาศใช้พระราชบัญญัติฉบับนี้ คือ โดยที่พระราชบัญญัติป้องกันการทุ่มตลาด พ.ศ. ๒๕๐๗ ได้ใช้บังคับมาเป็นเวลานานแล้ว บทบัญญัติของพระราชบัญญัติดังกล่าวบางประการไม่เหมาะสมกับการขยายตัวและการเปลี่ยนแปลงโครงสร้างทางเศรษฐกิจและการค้าของประเทศ ไม่มีหลักการเรื่องการตอบโต้การอุดหนุนซึ่งสินค้าจากต่างประเทศที่นำเข้ามาในประเทศไทย และไม่สอดคล้องกับข้อตกลงระหว่างประเทศที่บังคับใช้อยู่ในปัจจุบัน สมควรบัญญัติกฎหมายขึ้นใหม่ให้มีมาตรการตอบโต้การทุ่มตลาดและการอุดหนุนซึ่งสินค้าจากต่างประเทศที่นำเข้ามาในประเทศไทยเพื่อคุ้มครองอุตสาหกรรมภายในประเทศและให้สอดคล้องกับข้อตกลงระหว่างประเทศด้วย จึงจำเป็นต้องตราพระราชบัญญัตินี้

*พระราชกฤษฎีกาแก้ไขบทบัญญัติให้สอดคล้องกับการโอนอำนาจหน้าที่ของส่วนราชการให้เป็นไปตามพระราชบัญญัติปรับปรุงกระทรวง ทบวง กรม พ.ศ. ๒๕๔๕ พ.ศ. ๒๕๔๕

มาตรา ๑๗ ในพระราชบัญญัติการตอบโต้การทุ่มตลาดและการอุดหนุนซึ่งสินค้าจากต่างประเทศ พ.ศ. ๒๕๔๒ ให้แก้ไขคำว่า “อธิบดีกรมเศรษฐกิจการพาณิชย์” เป็น “อธิบดีกรมเจรจาการค้าระหว่างประเทศ”

หมายเหตุ :- เหตุผลในการประกาศใช้พระราชกฤษฎีกาฉบับนี้ คือ โดยที่พระราชบัญญัติปรับปรุงกระทรวง ทบวง กรม พ.ศ. ๒๕๔๕ ได้บัญญัติให้จัดตั้งส่วนราชการขึ้นใหม่โดยมีภารกิจใหม่ ซึ่งได้มีการตราพระราชกฤษฎีกาโอนกิจการบริหารและอำนาจหน้าที่ของส่วนราชการให้เป็นไปตามพระราชบัญญัติปรับปรุงกระทรวง ทบวง กรม นั้นแล้ว และเนื่องจากพระราชบัญญัติดังกล่าวได้บัญญัติให้โอนอำนาจหน้าที่ของส่วนราชการ รัฐมนตรีผู้ดำรงตำแหน่งหรือผู้ซึ่งปฏิบัติหน้าที่ในส่วนราชการเดิมมาเป็นของส่วนราชการใหม่ โดยให้มีการแก้ไขบทบัญญัติต่าง ๆ ให้สอดคล้องกับอำนาจหน้าที่ที่โอนไปด้วย ฉะนั้น เพื่ออนุวัติให้เป็นไปตามหลักการที่ปรากฏในพระราชบัญญัติและพระราชกฤษฎีกาดังกล่าว จึงสมควรแก้ไขบทบัญญัติของกฎหมายให้สอดคล้องกับการโอนส่วนราชการ เพื่อให้ผู้เกี่ยวข้องมีความชัดเจนในการใช้กฎหมายโดยไม่ต้องไปค้นหาในกฎหมายโอนอำนาจหน้าที่ว่าตามกฎหมายใดได้มีการโอนภารกิจของส่วนราชการหรือผู้รับผิดชอบตามกฎหมายนั้นไปเป็นของหน่วยงานใดหรือผู้ใดแล้ว โดยแก้ไขบทบัญญัติของกฎหมายให้มีการเปลี่ยนชื่อส่วนราชการ รัฐมนตรีผู้ดำรงตำแหน่งหรือผู้ซึ่งปฏิบัติหน้าที่ของส่วนราชการให้ตรงกับภารกิจที่โอนอำนาจหน้าที่ และเพิ่มผู้แทนส่วนราชการในคณะกรรมการให้ตรงตามภารกิจที่มีการตัดโอนจากส่วนราชการเดิมมาเป็นของส่วนราชการใหม่ รวมทั้งตัดส่วนราชการเดิมที่มีการยุบเลิกแล้ว ซึ่งเป็นการแก้ไขให้ตรงตามพระราชบัญญัติและพระราชกฤษฎีกาดังกล่าว จึงจำเป็นต้องตราพระราชกฤษฎีกานี้

พระราชบัญญัติการตอบโต้การทุ่มตลาดและการอุดหนุนซึ่งสินค้าจากต่างประเทศ (ฉบับที่ ๒) พ.ศ. ๒๕๖๒^{๖๐}

^{๕๙} ราชกิจจานุเบกษา เล่ม ๑๑๙/ตอนที่ ๑๐๒ ก/หน้า ๖๖/๘ ตุลาคม ๒๕๔๕

^{๖๐} ราชกิจจานุเบกษา เล่ม ๑๓๖/ตอนที่ ๖๗ ก/หน้า ๑๐๘/๒๒ พฤษภาคม ๒๕๖๒

มาตรา ๒ พระราชบัญญัตินี้ให้ใช้บังคับเมื่อพ้นกำหนดหนึ่งร้อยแปดสิบวันนับแต่วันประกาศในราชกิจจานุเบกษาเป็นต้นไป

มาตรา ๒๗ เมื่อมีการแต่งตั้งกรรมการผู้ทรงคุณวุฒิเป็นครั้งแรกหลังจากที่พระราชบัญญัติการตอบโต้การทุ่มตลาดและการอุดหนุนซึ่งสินค้าจากต่างประเทศ พ.ศ. ๒๕๔๒ ซึ่งแก้ไขเพิ่มเติมโดยพระราชบัญญัตินี้ใช้บังคับ และกรรมการดังกล่าวดำรงตำแหน่งครบสองปี ให้กรรมการผู้ทรงคุณวุฒิออกจากตำแหน่งเป็นจำนวนกึ่งหนึ่งของจำนวนกรรมการผู้ทรงคุณวุฒิทั้งหมดโดยวิธีจับสลาก และให้ถือว่าการออกจากตำแหน่งของกรรมการผู้ทรงคุณวุฒิโดยวิธีการจับสลากเป็นการพ้นจากตำแหน่งตามวาระ

มาตรา ๒๘ มิให้นำมาตรา ๔๙/๑ วรรคหนึ่ง และมาตรา ๗๐/๑ วรรคหนึ่ง ในส่วนที่เกี่ยวกับเงินเพิ่มและเบี้ยปรับ และมาตรา ๔๙/๒ และมาตรา ๗๐/๒ แห่งพระราชบัญญัติการตอบโต้การทุ่มตลาดและการอุดหนุนซึ่งสินค้าจากต่างประเทศ พ.ศ. ๒๕๔๒ ซึ่งแก้ไขเพิ่มเติมโดยพระราชบัญญัตินี้มาใช้บังคับแก่การนำเข้าที่ได้นำเข้ามาก่อนวันที่พระราชบัญญัตินี้ใช้บังคับ

มาตรา ๒๙ บรรดาคำขอที่ได้ยื่นไว้ตามพระราชบัญญัติการตอบโต้การทุ่มตลาดและการอุดหนุนซึ่งสินค้าจากต่างประเทศ พ.ศ. ๒๕๔๒ ก่อนวันที่พระราชบัญญัตินี้ใช้บังคับ ให้ถือเป็นคำขอตามพระราชบัญญัติการตอบโต้การทุ่มตลาดและการอุดหนุนซึ่งสินค้าจากต่างประเทศ พ.ศ. ๒๕๔๒ ซึ่งแก้ไขเพิ่มเติมโดยพระราชบัญญัตินี้ และให้การดำเนินการเกี่ยวกับคำขอนั้น ๆ อยู่ในบังคับของบทบัญญัติแห่งพระราชบัญญัติการตอบโต้การทุ่มตลาดและการอุดหนุนซึ่งสินค้าจากต่างประเทศ พ.ศ. ๒๕๔๒ ซึ่งแก้ไขเพิ่มเติมโดยพระราชบัญญัตินี้ เว้นแต่คำขอตามมาตรา ๓๓ มาตรา ๕๖ มาตรา ๕๘ และมาตรา ๕๙ ที่ได้ยื่นไว้ก่อนวันที่พระราชบัญญัตินี้ใช้บังคับ และผู้ยื่นคำขอ ยังไม่ได้ดำเนินการจัดทำรายละเอียดและพยานหลักฐานเกี่ยวกับคำขอให้ครบถ้วนและถูกต้องตามพระราชบัญญัติการตอบโต้การทุ่มตลาดและการอุดหนุนซึ่งสินค้าจากต่างประเทศ พ.ศ. ๒๕๔๒ ที่ใช้บังคับอยู่ในวันก่อนวันที่พระราชบัญญัตินี้ใช้บังคับ ให้ผู้ยื่นคำขอดำเนินการให้ครบถ้วนและถูกต้องภายในหนึ่งร้อยห้าสิบวันนับแต่วันที่พระราชบัญญัตินี้ใช้บังคับ

มาตรา ๓๐ บรรดากฎกระทรวงและประกาศที่ออกตามพระราชบัญญัติการตอบโต้การทุ่มตลาดและการอุดหนุนซึ่งสินค้าจากต่างประเทศ พ.ศ. ๒๕๔๒ ที่ใช้บังคับอยู่ในวันก่อนวันที่พระราชบัญญัตินี้ใช้บังคับ ให้ยังคงใช้บังคับได้ต่อไปเพียงเท่าที่ไม่ขัดหรือแย้งกับพระราชบัญญัติการตอบโต้การทุ่มตลาดและการอุดหนุนซึ่งสินค้าจากต่างประเทศ พ.ศ. ๒๕๔๒ ซึ่งแก้ไขเพิ่มเติมโดยพระราชบัญญัตินี้ จนกว่าจะมีกฎกระทรวงและประกาศที่ออกตามพระราชบัญญัติการตอบโต้การทุ่มตลาดและการอุดหนุนซึ่งสินค้าจากต่างประเทศ พ.ศ. ๒๕๔๒ ซึ่งแก้ไขเพิ่มเติมโดยพระราชบัญญัตินี้ใช้บังคับ

มาตรา ๓๑ ให้รัฐมนตรีว่าการกระทรวงการคลังและรัฐมนตรีว่าการกระทรวงพาณิชย์ รักษาการตามพระราชบัญญัตินี้

หมายเหตุ :- เหตุผลในการประกาศใช้พระราชบัญญัติฉบับนี้ คือ โดยที่ปัจจุบันการหลบเลี่ยงมาตรการตอบโต้การทุ่มตลาดและการอุดหนุนเป็นวิธีการที่ถูกนำมาใช้ในการดำเนินการค้าระหว่างประเทศมากขึ้น แต่พระราชบัญญัติการตอบโต้การทุ่มตลาดและการอุดหนุนซึ่งสินค้าจากต่างประเทศ พ.ศ. ๒๕๔๒ ยังไม่มีการบัญญัติเรื่องดังกล่าวไว้ จึงไม่มีมาตรการทางกฎหมายที่จะคุ้มครองอุตสาหกรรมภายในที่ได้รับความเสียหายจากการหลบเลี่ยงมาตรการตอบโต้การทุ่มตลาดและการอุดหนุนได้ ประกอบกับพระราชบัญญัติการตอบโต้การทุ่มตลาดและการอุดหนุนซึ่งสินค้าจากต่างประเทศ พ.ศ. ๒๕๔๒ ยังมีบทบัญญัติในส่วนที่เกี่ยวกับการทุ่มตลาดและการอุดหนุนบางประการที่ยังไม่ครอบคลุมขั้นตอนในทางปฏิบัติทางการค้าระหว่างประเทศ ดังนั้น เพื่อให้การใช้บังคับมาตรการตอบโต้การทุ่มตลาดและการอุดหนุนมีประสิทธิภาพมากยิ่งขึ้น อันจะเป็นประโยชน์แก่การคุ้มครองอุตสาหกรรมภายในประเทศ จึงจำเป็นต้องตราพระราชบัญญัตินี้

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา

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สำนักงานคณะกรรมการกฤษฎีกา

Appendix III

TRADE COMPETITION ACT B.E. 2560 (2017)

TRADE COMPETITION ACT
B.E. 2560*

His Majesty King Maha Vajiralongkorn Bodindradebayavarangkun
Endorsed by Royal Prerogative on 2 July B.E. 2560
in the Second Year of the Current Reign.

His Majesty King Maha Vajiralongkorn Bodindradebayavarangkun decrees that:
as it is appropriate to improve the law on trade competition,

His Majesty King has therefore gracefully endorsed this Act, on the advice and approval of the National Legislative Assembly performing its parliamentary duty, as follows:

Section 1: This Act is entitled the “Trade Competition Act B.E. 2560”.

Section 2: This Act shall be effective 90 days from the date of its publication in the Government Gazette.

Section 3: The Trade Competition Act B.E. 2542 shall be repealed.

Section 4: This Act shall not apply to the operation of the followings:

- (1) central, regional, or local administrations;
- (2) state-owned enterprises, public organizations, or other government agencies, provided that they conduct their undertakings according to the law or resolutions of the Cabinet which are necessary for the benefit of maintaining national security, public interest, the interests of society, or the provision of public utilities;
- (3) groups of farmers, cooperatives, or cooperative groups recognized under the law and having the aim in their business operations to benefit the vocation of farming;
- (4) businesses that are specifically regulated under other sectoral laws having jurisdiction over competition matters.

Section 5: Under this Act:

“business” means an operation carried out for benefit of trade in agriculture, industry, commerce, finance, insurance, and services, and shall include other operations as prescribed in any ministerial regulation(s);

* This unofficial English translation of the Trade Competition Act B.E. 2560 has been prepared by the Office of Trade Competition Commission and does not have any legal effect. The OTCC publishes it only for the purpose of reaching to the wider public. Any interpretation and implementation of the Trade Competition Act shall be based on the Thai-language version.

“business operator” means a vendor, producer for sale, person who places an order or imports products into the Kingdom for sale, buyer for production or resale of goods, or service provider in the business;

“good” means an object used for commodity or consumption, including a document demonstrating rights in such object;

“service” means a procurement of work by way of commission, grant of any right or permission to use or take benefits of any property or any operation in return for monetary remuneration or other benefit, but shall not include labor employment;

“price” means a price of a good and shall include a remuneration for service provision;

“market” means a relevant market of goods or services which are of the same type or substitutable when considering qualifications, prices, or purposes of use of the goods or services and the area where such goods are sold or such services are provided;

“business operator with a dominant position of market power” means one or more business operators in a market who have a market share and sales revenue in excess of the thresholds prescribed in the Commission’s notification and one or more factors on competition conditions, as the case may be, shall be taken into consideration. The Commission shall review the market shares and sales revenue thresholds at least once every three years from the date of issuance of the notification.

In determining the market share and sales revenue of a business operator with a dominant position of market power, the market shares and sales revenue of all the business operators related to each other due to a policy or commanding power as prescribed in the Commission’s notification shall be taken into consideration. Such business operators having market shares and sales revenues, as per above, shall be considered business operators with a dominant position of market power;

“Factors on competition conditions” means the number of business operators in the market, an amount of investment money, accessibility to important production factors, distribution channels, business operation networks, necessary infrastructure for the business operation, governmental rules and regulations, and other factors prescribed in the Commission’s notification;

“Commission” means the Trade Competition Commission;

“Commissioner” means a Trade Competition Commissioner;

“Office” means the Office of the Trade Competition Commission;

“Secretary-General” means the Secretary-General of the Trade Competition Commission;

“Officer” means the Secretary-General, and official of the Office holding a position not lower than a civil servant at the practitioner level and appointed by the Commission in order to perform duties under this Act;

“Minister” means the Minister in charge of this Act.

Section 6: The Minister of Commerce shall be the Minister in charge of this Act and shall have the power to issue ministerial regulations to fix fees not exceeding the amounts indicated in the Annex to this Act. The Minister shall also have the power to reduce or exempt fees and determine any other operational requirements in order to implement this Act.

Such ministerial regulations shall be effective on publication in the Government Gazette.

CHAPTER 1 TRADE COMPETITION COMMISSION

Section 7: There shall be a Commission called the “Trade Competition Commission” consisting of a Chairperson, a Deputy Chairperson, and other five Commissioners, appointed by the Prime Minister from persons chosen in a selection process and approved by the Cabinet.

The Secretary-General shall be the secretary to the Commission.

Section 8: Each Commissioner shall be a person who has achievements or has performed duties that demonstrate that he or she has requisite knowledge and has expertise and/or experience of not less than ten years in one or more of the following fields including, law, economics, finance, accounting, industry, business administration, consumer protection, or other fields which benefit competition regulation. The period of experience in these fields may be considered cumulatively.

Section 9: Each Commissioner shall possess the following qualifications:

- (1) possess Thai nationality;
- (2) be forty years of age or more, but not exceeding seventy years of age;
- (3) not hold any political position;
- (4) not hold any position in a political party;
- (5) be of sound mind;
- (6) be free of drug addiction;
- (7) not be bankrupt or not have any prior bankruptcy due to corruption;
- (8) not be incapacitated or person under disability;
- (9) not be under any sentence of imprisonment, or in custody based on a court order;
- (10) not have been sentenced to imprisonment, or have been acquitted less than five years prior to the date his or her name is submitted to the Cabinet for an approval under Section 12(3), except for an offense committed with recklessness or a petty offence;

(11) not have been sentenced or deemed by a court order to have his or her properties vested in the State due to irregular wealth or an abnormal increase of properties;

(12) not have been fired, discharged or dismissed from duty in the civil service, a government agency, a state-owned enterprise, or a private agency due to corruption in performing duties, or severely atrocious conduct, or for reasons related to a corrupt action or unlawful conduct in government service;

(13) not be a Justice in the Constitutional Court, an Election Commissioner, an Ombudsman, a National Anti-Corruption Commissioner, an Auditor General Commissioner, or a National Human Rights Commissioner;

(14) not have been removed from a position under any organic law created under the Constitution for the prevention and suppression of corruption.

Section 10: In addition to the qualifications under Section 9, each Commissioner shall:

(1) not hold any position in a business entity, nor be a partner with management power in a partnership, nor hold more than five-percent share in the total capital of any company;

(2) not hold a position as a civil servant with a title or a regular salary;

(3) not hold a position as an official or employee of a government agency or local administration, or be a committee member or advisor to a government agency which operates a business;

(4) not hold any position in an institution or association as a group of business operators with common objectives or joint benefits in trade.

In case that a person chosen under Section 12 is a person holding any position under paragraph 1, the Prime Minister shall appoint that person only when he or she resigns from such position, which shall be done within 30 days from the date of selection. If that person does not resign within the time period required, it shall be deemed that such person has never been selected as a Commissioner. The selection of a Commissioner to replace such person under Section 12 shall then be undertaken.

Section 11: In the process of appointing Commissioners, there shall be a Selection Committee comprising the following nine members whose duty is to choose suitable persons among candidates to be proposed as Commissioners:

(1) Permanent Secretary of the Ministry of Finance;

(2) Permanent Secretary of the Ministry of Agriculture and Cooperatives;

(3) Permanent Secretary of the Ministry of Commerce;

(4) Permanent Secretary of the Ministry of Justice;

(5) Permanent Secretary of the Ministry of Industry;

(6) Secretary-General of the National Economic and Social Development Board;

(7) Secretary-General of the Consumer Protection Board;

(8) Chairperson of the Thai Chamber of Commerce; and

(9) Chairperson of the Federation of Thai Industries.

The Selection Committee shall select one Selection Committee member to be Chairperson of the Selection Committee.

The Chairperson of the Selection Committee and Selection Committee members shall have no right to apply for a Commissioner position.

The Office shall act as an administrative unit for any operational support required in the Commissioner selection process.

The Chairperson and other Selection Committee members shall be entitled to a remuneration and other expenses in their performance of duties as prescribed by the Cabinet.

Section 12: The selection and appointment of Commissioners shall be performed as follows:

(1) The Selection Committee shall call for applications from persons who have achievements or performed any duties that demonstrate that he or she possesses the requisite knowledge and has the required expertise or experience in accordance with Section 8, including having the qualifications specified under Sections 9 and 10. The call for applications shall be announced to the general public for no less than 30 days continuously.

(2) After the time period under (1) has passed, the Selection Committee shall consider choosing applicants with the required qualifications to become Commissioners to fill the number of available Commissioner positions in accordance with Section 7 and shall propose a list of selected persons to the Minister with the details concerning such persons indicating clearly or containing grounds to demonstrate that those persons are suitable in one of the areas listed under Section 8, as well as qualifying under Sections 9 and 10.

(3) The Minister shall submit the names of selected persons with details as specified in (2) to the Cabinet within 15 days from the date on which he receives the candidates' names from the Selection Committee for approval.

(4) When the Cabinet approves persons to fill the positions of Commissioners, it shall submit names to the Prime Minister for an appointment order for the Commissioners.

In the case where the Cabinet approves Commissioners but does not meet the required number of Commissioners to be appointed, the Selection Committee shall consider selecting persons to fill in such open positions by proceeding under (1), (2), (3), and (4) until all the positions are filled.

On appointing Commissioners for the first Commission, after the Cabinet has approved the names of persons to fill all the available positions, it shall be required that those persons then convene and choose among themselves a Chairperson and a Deputy

Chairperson for the Commission before a submission to the Prime Minister for an appointment order is made!

The time period, rules, procedure, and conditions for selecting Commissioners shall be prescribed in a ministerial regulation.

Section 13: Each Commissioner shall hold office for a four-year term and shall only hold office for two terms.

After two years, three Commissioners shall resign their positions in the first Commission by means of a draw. Such resignations by means of a draw shall be deemed resignations and end the terms of the positions.

The Commissioners who are resigned at the end of term of their office shall hold their positions in order to perform their duties until the appointment of new Commissioners is made.

Not less than 90 days before end of term of the office of a Commissioner, the Selection Committee shall rapidly proceed to select a person appropriate to be appointed as a new Commissioner.

Section 14: Other than resignation at the end of term of an office, a Commissioner shall be removed from the position due to one of the following reasons:

- (1) death;
- (2) resignation during a term;
- (3) the Cabinet's resolution to remove a Commissioner due to failure to fulfill his or her duty, atrocious behavior, or lack of capacity to perform duties;
- (4) deemed unqualified under Section 9;
- (5) violating Section 10.

When a Chairperson, a Deputy Chairperson, or a Commissioner is removed from their position due to any one of the situations as stipulated under paragraph one, the process of selection and appointment of a Chairperson, a Deputy Chairperson, or a Commissioner, in accordance with Section 12, shall be undertaken in order to fill that vacant position. The person appointed to fill that position shall serve in the office for the remaining term of the Commissioner being replaced. If the remaining office term is fewer than 90 days, the appointment process of a replacement commissioner for the remaining period of the office may be disregarded.

During the period wherein a Chairperson, a Deputy Chairperson, or a Commissioner under paragraph two has not been replaced, the other serving Commissioners shall perform their duties, and it shall be deemed that the Commission consists of a Chairperson, a Deputy Chairperson, or Commissioner as remained unless the remaining in the Commission is less than four persons.

Section 15: In case a Chairperson or a Deputy Chairperson resigns from his or her position under Section 13 and there is a new Commissioner appointed, or in case a

Chairperson or a Deputy Chairperson resigns from his or her position under Section 14, the Commission shall select one Commissioner to be Chairperson or Deputy Chairperson and shall submit this recommendation to the Prime Minister to request the issuance of an order to appoint such recommended person as Chairperson or Deputy Chairperson, as the case may be.

Section 16: The person resigning from the position of Chairperson, Deputy Chairperson, or Commissioner shall not take any position in any limited company, public limited company, or any other business which is a party under the consideration of the Commission for any matter, unless he or she has resigned from the position for not less than two years.

Section 17: The Commission shall have the following powers and duties:

- (1) to make recommendations to the Minister in issuing ministerial regulations pursuant to this Act;
- (2) to issue regulations or notifications for the performance of duties under this Act;
- (3) to regulate business operations and impose guidelines to maintain free and fair competition;
- (4) to consider complaints and make inquiries regarding offences under this Act;
- (5) to consider and make decisions on requests under Section 59;
- (6) to impose regulations on investigation and inquiry undertaken by sub-committees of inquiry;
- (7) to notify the appointment of officers to perform duties under this Act;
- (8) proceed with criminal cases according to a complaint of injured persons under Section 78;
- (9) to consider and impose administrative fines under Section 80, Section 81, Section 82, and Section 83, as well as to file lawsuits in administrative courts;
- (10) to invite any person to provide factual information, explanation, recommendations, or opinions;
- (11) to propose opinions and recommendations to the Minister and the Cabinet with regard to the government's policies on competition;
- (12) to give recommendations to government agencies on rules, regulations, or orders which are obstacles to competition and causing obstruction, restriction, or reduction of competition, and that may result in unfairness between business operators;
- (13) to determine plans, strategies, and guidelines on management of the Office;
- (14) to issue regulations or rules regarding organizational structure, personnel management, budgeting, finance, and property and other operations of the Office;
- (15) to perform other duties as the law prescribes as powers and duties of the Commissioners.

Generally applicable regulations or notifications shall take effect when they are published in the Government Gazette.

Section 18: The Commission shall provide for a procedure for receiving opinions from interested persons and the general public. These opinions shall be considered before the issuing of regulations or notifications on competition that are to be generally applicable. Information on matters and issues open for public opinion shall be provided. The period for receiving opinions shall not be less than 30 days, unless there is an emergency or an urgent necessity, for which the Commission may impose a time period of less than 30 days.

The Office shall provide a record summarizing the opinions received, consisting of information on opinions received, and a resolution or outcome of the Commission's considerations that responds to the received opinions as well as reasoning and further guidelines on the matter. Such a record shall be made available through the information network of the Office.

Section 19: Meetings of the Commission shall be attended by no less than half of the entire number of Commissioners, to establish a quorum.

In meetings of the Commission, if the Chairperson does not attend a meeting or is unable to perform his or her duties, the Deputy Chairperson shall chair the meeting. If the Deputy Chairperson does not attend the meeting or is unable to perform his or her duties, the meeting shall select one Commissioner to chair the meeting.

The decisions of meetings shall be based on a majority vote and each Commissioner shall have one vote. If the voting ends in an equal number of votes for and against a matter under consideration, the Chair of the meeting shall have a deciding vote to make a final decision.

Section 20: The Commission shall have the power to appoint a sub-committee to consider or implement any task assigned by the Commission.

Section 21: The Commission shall appoint one or more sub-committees of inquiry. Each sub-committee shall consist of persons with knowledge and experience related to criminal cases to be appointed, including a person who is or was a district attorney, a person who is or was a policeman, a person who is or was a government officer with knowledge and experience in economics, law, commerce, accounting, or other fields deemed necessary to be members of the sub-committee of inquiry being created. An officer shall be assigned as a member of and secretary to any sub-committee of inquiry. Any sub-committee of inquiry created shall have an initial meeting to select one member to be its Chairperson.

Sub-committees of inquiry shall have powers and duties to investigate and inquire about matters regarding an offence under this Act. When a sub-committee of inquiry considers that the inquiry process has been completed, it shall provide for an opinion along with a report to be submitted to the Commission within twelve months from the date the

Commission appoints that sub-committee. In any case of justified necessity, an extension shall be given for no more than six months by the Commission. The reasons underlying the necessity for such an extension shall be recorded.

Section 22: Section 19 shall apply, *mutatis mutandis*, to meetings of sub-committees and sub-committees of inquiry.

Section 23: The Chairperson, Deputy Chairperson, and Commissioners shall work full-time with remuneration, expenses for performing duties, and other benefits, as prescribed by the Cabinet. In determining remuneration, the prohibition on holding particular positions after a term of office under Section 20 and Section 21 shall be taken into account.

Remuneration and other expenses incurred in the performance of duties of the chairpersons of sub-committees and members of sub-committees under Section 20 and Section 21 shall be prescribed by the Cabinet.

Section 24: In performing duties under this Act, the Chairperson, Deputy Chairperson, Commissioners, and members of any sub-committees of inquiry shall be officers under the Criminal Code and shall have the powers and duties of inquiry held by officers under the Criminal Procedure Code.

Section 25: In a case where the Commission has reached an opinion that it should file a criminal suit and has submitted its opinion with its inquiry report to a district attorney, but the district attorney issues a non-prosecution order, the Commission may oppose the district attorney's non-prosecution order pursuant to the Criminal Procedure Code, and the Chairperson shall utilize the powers of the Commissioner General or a governor of a province, as the case may be.

In a case where the Chairperson opposes the district attorney's order, the inquiry report along with its opinion shall be submitted to the Attorney-General to consider. If the Attorney-General considers that the inquiry report along with the opinion that the Chairperson submits is not sufficiently complete to proceed with the case, the Attorney-General shall notify the Commission for its further consideration by indicating the areas where the details are incomplete at one time. In this case, the Chairperson and the Attorney-General shall jointly establish a working group, consisting of an equal number of representatives from each side with powers and duties to consider any incomplete evidence and gather additional evidence in order to make it complete to proceed with its submission to the Attorney-General to order a prosecution.

The Office shall operate as the secretariat of the working group under paragraph two.

Section 26: Criminal lawsuits and civil lawsuits for damages under this Act shall be under the jurisdiction of the intellectual property and international courts.

CHAPTER 2

OFFICE OF TRADE COMPETITION COMMISSION

Section 27: The Office of Trade Competition Commission shall be established as a government agency, which is not part of the civil service, nor a state-owned enterprise, but shall have the status of a legal person.

The operation of the Office shall not be subject to labor protection law, labor relations law, social welfare law, or workmen's compensation law. However, officials and employees of the Office shall receive benefits no less than those prescribed in the labor protection law, social welfare law, and compensation money law.

Section 28: The Office shall have its headquarter in Bangkok or other nearby provinces, and may establish branch offices in any other places.

Section 29: The Office shall have the following powers and duties:

(1) be responsible for the administrative work of the Commission and its sub-committees;

(2) to monitor business operators for violations of this Act and report the same to the Commission;

(3) to study, research, analyze, and research goods, services and working conducts in business operations, as well as to make recommendations on trends and provide opinions to promote, develop, and assist to regulate business operations;

(4) to establish a database on the size of goods or service markets that have a tendency to create market monopolies, as prescribed by the Commission, and make such database available to the general public;

(5) to receive complaints in which a person alleges that there is a violation of this Act. Then, it shall seek all factual information and gather evidence on such complaint to a sufficient degree in order to submit that matter to the Commission. This shall be conducted in accordance with a regulation prescribed by the Commission;

(6) to hold a title, possessory right, or other rights in properties;

(7) to establish a right or enter into any legal act with regard to property;

(8) to exchange information, participate in negotiations, make an agreement and cooperate with other entities or agencies both in and outside the country with regard to matters related to the Office's operation;

(9) to provide for or cooperate with other entities on training and knowledge development with regard to competition matters;

(10) to coordinate and cooperate with other civil service offices and government agencies relevant to the performance of duties under this Act;

(11) to receive fees, as prescribed by the law, as well as remunerations, service charges, or income from its operation;

(12) to disseminate the outcome of matters considered by the Commission to the general public;

(13) to produce an annual report demonstrating the results achieved and challenges met by the Commission and the Office, which shall be provided to the Cabinet and disseminated to the general public;

(14) to perform duties pursuant to notifications, regulations, the Commission's resolutions, and duties assigned by the Commission or its sub-committees;

(15) to perform any other function that the law prescribes as powers and duties of the Office.

Section 30: The Office shall have a Secretary-General who is responsible for the operation of the Office, and he or she shall report directly to the Chairperson, and shall be a supervisor of all officials and employees of the Office.

The Secretary-General shall be the representative of the Office in external matters related to the Office's operation. The Secretary-General may assign his or her power to any person to act on his or her behalf. This shall be pursuant to a regulation prescribed by the Commission.

Section 31: The Chairperson, by the Commission's approval, shall be the person with the power to appoint and/or remove the Secretary-General from the Office.

The criteria and method for opening applications, selection, and appointment of the Secretary-General shall be in accordance with a notification prescribed by the Commission.

Section 32: A person to be appointed as the Secretary-General shall possess the following qualifications:

- (1) possess Thai nationality;
- (2) be no more than sixty-five years of age;
- (3) be able to work full-time for the Office;
- (4) have knowledge and expertise in the field of law, economics, finance, accounting, industry, business administration, consumer protection, or other related fields as prescribed in the Commission's notification;
- (5) other qualifications as prescribed in the Commission's notification.

Section 33: A person falling into one of the following categories shall be prohibited to from appointment as Secretary-General:

- (1) be bankrupt or have any prior bankruptcy due to corruption;
- (2) be incapacitated or person under disability;
- (3) be under any sentence of imprisonment, or in custody based on a court's order;
- (4) have been sentenced to imprisonment except for an offense committed with recklessness or a petty offence;

(5) be a member of a board of directors, manager, or authorized person in an administrative or management role of a limited company or public limited company or other business governed by this Act;

(6) be a government officer, official, or employee in the civil service, a state-owned enterprise, or other government agency, or local administration;

(7) be or have been a person holding a political position, except if he or she resigned from such a position no less than one year;

(8) be or have been a committee member or holding other positions in a political party or be an official of a political party, unless he or she resigned from such position or positions no less than one year;

(9) have been fired, discharged or dismissed from duty in the civil service, a government agency, a state-owned enterprise, or a private agency due to corruption in performing duties, or severely atrocious conduct, or for reasons related to a corrupt action or unlawful conduct in government service;

(10) have been sentenced or deemed by a court order to have his or her properties vested in the State due to irregular wealth or abnormal increase of properties;

(11) be a person holding any position in an institution or association which is a group of business operators with common objectives or joint benefits in trade.

Section 34: The Secretary-General shall receive a salary and other remunerations as prescribed by the Commission. In determining the salary, the prohibition on holding particular positions after resigning from the Secretary-General's position under Section 43 shall be taken into account.

Section 35: The Secretary-General shall hold a term of four years.

A Secretary-General that resigns from the position in accordance with the end of the term, may be reappointed; however, he or she shall not hold the position for more than two terms.

Section 36: Other than resigning from the position in accordance with the end of the term, the Secretary-General may be removed from the position due to the following situations:

(1) death;

(2) voluntary resignation;

(3) lack of qualifications under Section 32, or falling into a prohibited category under Section 33;

(4) have a conflict of interest as set out in Section 41;

(5) be subject of a Commission's resolution to remove the Secretary-General due to failing to perform his or her duties, unfit conduct, or lack of capacity.

Section 37: There shall be deputy secretary generals according to the number the Commission prescribes in order to assist the Secretary-General's performance of duties, as assigned by the Secretary-General.

Section 38: The Secretary-General shall have the following powers and duties:

(1) to assign, appoint, remove, promote, demote, reduce a salary or wage of, punish officials and employees under disciplinary rules as well as discharge them from their positions as officials or employees. This shall be in accordance with rules prescribed by the Commission. If the matter involves an official at the level of Deputy Secretary-General, or high-level executives, or an internal auditor, an approval from the Commission shall be required;

(2) to set regulations on the operation of the Office that are not in conflict or in contradiction with rules or resolutions prescribed by the Commission;

(3) to perform any other function that the law prescribes as a power and/or duty of the Office.

Section 39: In performing his or her duties, the Secretary-General may assign powers to an official to act on his or her behalf pursuant to a rule prescribed by the Commission.

The person assigned under paragraph one shall have the same powers and duties as those of the Secretary-General in the matter assigned to him or her.

Section 40: In case there is no person holding the position of Secretary-General or such person cannot perform his or her duties, the Commission shall appoint a Deputy Secretary-General to be the acting Secretary-General. In case there is no Deputy Secretary-General or such person cannot perform his or her duties, the Commission shall appoint an official of the Office to be the acting Secretary-General.

An acting Secretary-General under paragraph one shall have the same powers and duties as those of the Secretary-General.

Section 41: The Secretary-General shall not have a conflict of interest in legal acts carried out by the Office or in a business operation carried out for the Office, whether directly or indirectly, except for the case where he or she is a shareholder for benefits of a good faith investment in limited companies or public limited companies that have undertaken such acts with a conflict of interest. Such shareholding shall not exceed the rates imposed in the Commission's rules.

In any case where the Secretary-General's parents, spouse, children, or spouse's parents undertakes such shareholdings under paragraph one, the Secretary-General shall be deemed to have a conflict of interest under paragraph one.

Section 42: Any legal act or business operation not conducted in accordance with Section 41 shall not be binding for the Office.

Section 43: A person resigning from his or her position as Secretary-General shall not take any position in any limited company, public limited company, or any other businesses which is a party in a matter being considered by the Commission, unless he or she has resigned from the position for not less than two years.

Section 44: Money and properties for the operation of the Office shall be comprised of the followings:

- (1) money and assets transferred to the Office under Section 91;
- (2) money the Government allocates as initial capital;
- (3) general subsidized money allocated by the Government;
- (4) fees, compensation, service charges, or other income from the operation;
- (5) donated money and assets or subsidized money from a foreign country as well as international organizations. There shall not be any condition or commitment agreed that may affect the operation of the Commission or the Office;
- (6) interest or other benefits accruing from the Office's money or assets.

Section 45: All the income that the Office receives from its operation each year shall be vested in the Office for its operating expenses and other appropriate charges, such as maintenance and other charges to offset depreciation, benefits to the Commission and its sub-committees, and money to be held in reserve for the operation or for use for other matters relevant to the functioning of the Office.

Income under paragraph one shall not be transferred to the Ministry of Finance as the State's income.

In the case that Office's income is insufficient to cover its expenses and ensure the efficient operation of the Office and cover other appropriate charges, and funds from other sources are unavailable, the Government shall allocate government budget to the Office in the necessary amount, as general subsidized money under Section 44(3).

Section 46: The Office shall transfer administrative fines collected under this Act to the Ministry of Finance as the State's income immediately after the statute of limitation ends for filing a lawsuit or after the court has issued a final judgment, whichever the case may be.

Section 47: For the benefit of allocating the government's budget to the Office under Section 44(3), the Office shall propose a budget for the fiscal year for which the Office seeks support to the Cabinet in order to seek an allocation of general subsidized money for the Office in the draft Annual Expense Budget or the draft Additional Expense Budget, as the case may be.

Section 48: Properties of the Office shall not be subject to any liability under compulsory executions, and no person may raise a statute of limitation against the Office on matters relating to properties of the Office.

Section 49: The Office shall establish a financial statement and accounts for the operation of the Office to be submitted to an account auditor within 120 days from the end date of the fiscal year.

In every fiscal year, the Office of the Auditor-General of Thailand shall be an account auditor and assessor of expenses of money and properties of the Office with an analysis of effectiveness of the expenses and an opinion as to whether such expenses are in accordance with as well as are used to achieve the purposes and objectives of the Office. A report shall be made and submitted to the Commission, the Cabinet, and the Parliament.

The Office shall be an audited unit under the organic law to the Constitution on the auditing and control of public finance.

CHAPTER 3

PREVENTION OF MONOPOLY AND UNFAIR TRADE

Section 50: A business operator shall not apply its dominant position in a market in any of following ways:

(1) by unfairly fixing or maintaining the level of purchasing or selling price of a good or service;

(2) by imposing an unfair condition for another business operator which is its trading partner in order to limit services, production, purchase, or sale of goods, or to limit an opportunity in purchasing or selling goods, receiving or providing services, or seeking credits from other business operators;

(3) by suspending, reducing, or limiting service provision, production, sale, delivery, importation into the Kingdom without any appropriate reason, or destroying or damaging goods for the purpose of reducing the quantity to be lower than demand of the market;

(4) by intervening in the business operation of others without any appropriate reason.

Section 51: Any business operator conducting a merger which may substantially reduce competition in a market under the criteria prescribed in the Commission's notification shall notify the outcome of such merger to the Commission within 7 days from the date of merging.

Any business operator planning to conduct a merger which may cause a monopoly or result in a dominant position in a market, shall seek permission from the Commission.

The notification under paragraph one shall indicate the minimum amount of market share, sales revenue, capital amount, number of stocks, or assets to which business operators shall be subject.

Mergers shall include:

(1) Mergers among producers, sellers, producers and sellers, or service providers, resulting in one business remaining and the others' business terminating, or a new business coming into existence;

(2) Acquisition of all or part of the assets of other business in order to control its policy, business administration, direction, or management in accordance with the criteria prescribed in the Commission's notification.

(3) Acquisition of all or part of the stocks of the other business, whether directly or indirectly, in order to control policy, business administration, direction, or management in accordance with the criteria prescribed in the Commission's notification.

Notification of outcome of a merger under paragraph one, and a request for permission, and the permission for a merger under paragraph two, shall be in accordance with the criteria, procedure, and conditions prescribed in the Commission's notification.

The provisions under paragraph one and paragraph two shall not apply to a merger conducted in order to adjust the internal structure of a business operator related to each other due to a policy or commanding power as prescribed in the Commission's notification.

Section 52: In consideration of granting a permission under Section 51 paragraph two, the Commission shall complete the procedure within 90 days from the request's receipt date. In case by necessity, such consideration is not completed within the period, an extension of not more than 15 days shall be given and the reasons and necessity for an extension of the consideration shall be recorded.

The Commission shall consider granting a permission in recognition of valid business-related necessity, benefit in supporting a business operator, not causing severe damage to the economy, and no impact on the essential benefits consumers are entitled to as a whole.

In a case where a permission order is granted, the Commission may set a time period or any other condition for the business operator which is granted the permission to follow.

The Commission shall indicate reasons for granting or not granting a permission to merge covering both factual and legal aspects of the case. The Commissioners shall sign the order and Article 61 paragraph two shall apply *mutatis mutandis*.

The business operator receiving a notification of such order, if in disagreement with it, may file a lawsuit in an administrative court within 60 days from the date the order is notified.

Section 53: A business operator granted permission to merge shall undertake it in accordance with the time period and conditions set out in the permission, as prescribed by the Commission.

In case there is a violation or conduct not in accordance with paragraph one, the Commission shall have the power to withdraw the permission order in whole or in part and may impose a time period for the business operator to take action accordingly.

Section 54: Any business operators competing with each other in the same market shall not jointly undertake any conduct which monopolizes, reduces, or restricts competition in that market in one of the following ways:

(1) to fix, whether direct or indirectly, purchasing or selling price, or any trading conditions that affect the price of goods or services;

(2) to limit the quantity of goods or services that each business operator will produce, purchase, sell, or provide, as agreed;

(3) to knowingly establish an agreement or conditions in order for one side to win an auction or to win in a bid of goods or services or in order for another side not to enter an auction or a bid of goods or services;

(4) to allocate areas in which each business operator will sell, or reduce a sale or purchase goods or services, or allocate purchasers or sellers to or from which each business operator will sell or purchase goods or services under the condition that other business operators shall not purchase or sell those goods or services.

The provisions under paragraph one shall not apply to the conduct of business operators related to each other due to a policy or commanding power as prescribed in the Commission's notification.

Section 55: Business operators shall not jointly undertake conduct which monopolizes, reduces or restricts competition in a market in one of the following ways:

(1) to establish conditions referred to under Section 54 (1), (2), or (4) among business operators which are not competitors in the same market;

(2) to reduce the quality of goods or services to a condition lower than that previously produced, sold, or provided;

(3) to appoint or assign any one person to exclusively sell the same goods or provide the same services, or of the same type;

(4) to set conditions or practices for purchasing or producing goods or services so that the practice follows what is agreed;

(5) to enter joint agreements in other manners as prescribed in the Commission's notification.

Section 56: The provisions under Section 55 shall not apply to one of the following situations, where:

(1) the conduct of business operators is related to each other due to a policy or commanding power as prescribed in the Commission's notification;

(2) the joint business agreement is for the purpose of developing production, distribution of goods, and promotion of technical or economic progress;

(3) the joint agreement is in the pattern of contracts between business operators of different levels, in which one side grants the right in goods or services, trademarks, business operational methods, or business operation support, and the other side is granted rights, with a duty to pay charges, fees, or other remunerations for the rights granted;

(4) the agreement type or business format is prescribed in a ministerial regulation on the Commissions' advice.

A joint agreement under paragraphs (2) and (3) shall not result in any limitation exceeding what is the necessary in order to achieve the benefits mentioned above, shall not cause a monopoly power or substantially restrict competition in a market, and impact on consumers shall be considered.

Section 57: No business operator shall undertake any conduct resulting in damage on other business operators in one of the following ways:

- (1) by unfairly obstructing the business operation of other business operators;
- (2) by unfairly utilizing superior market power or superior bargaining power;
- (3) by unfairly setting trading conditions that restrict or prevent the business operation of others;
- (4) by conduct in other ways prescribed in the Commission's notification.

Section 58: No business operator shall carry out a legal act or enter a contract with a business operator in a foreign country without appropriate justification, where that action will result in a monopoly conduct or unfairly restrict trade, as well as cause serious harm to the economy and consumers' benefits as a whole.

Section 59: In order to facilitate business operations, a business operator may submit a request to the Commission to consider the following matters:

- (1) the conduct of a business operator that has a dominant power in a market under Section 50;
- (2) the business operation having a nature pursuant to Section 54, Section 55, Section 57 or Section 58;

Submission of a request under paragraph one shall be in accordance with criteria and methods prescribed in the Commission's notification.

In consideration of a request under paragraph one, the Commission may impose any condition which the business operator must follow in order to comply with this Act.

The Commission's decision shall be binding only on the requester and in the scope and time period as prescribed by the Commission. If, afterwards, it appears to the Commission that the information received from the requester which is used in the Commission's consideration, is not substantially accurate nor complete, or the requesting business operator does not comply with the conditions prescribed by the Commission under paragraph three, the Commission shall withdraw its decision and notify the business operator.

Section 60: In a case where the Commission has sufficient evidence to believe that a business operator has violated or will violate Section 50, Section 51 paragraph two, Section 54, Section 55, Section 57 or Section 58, the Commission shall have the power to make an order in writing to instruct that business operator to suspend, stop, or correct or change such conduct. This shall be in accordance with criteria, methods, conditions, and the time period prescribed by the Commission.

In issuing an order under paragraph one, the Commission may impose any necessary conditions required in order to achieve the purposes of this Act.

The business operator receiving the notification of such order under paragraph one, who disagrees with such order, shall have a right to file a lawsuit in an administrative court within 60 days from the date of order's receipt.

Section 61: In issuing an order under Section 60, the Commission shall indicate the reasons for such order covering both factual information and legal issues along with the endorsement of the Commissioners who considered such matters.

Notification of the order under paragraph one shall be carried out within 7 days from the date of the Commission's having issued the order. The provisions under Section 66 shall apply *mutatis mutandis*.

Section 62: Any person receiving an order under Section 60 shall act according to such order, unless the administrative court issues a judgment or an order of stay of execution or order to withdraw the Commission's order.

CHAPTER 4 OFFICERS

Section 63: In performing their duties under this Act, officers shall have the following powers:

(1) to issue a subpoena for any person to give an oral presentation and provide factual information or provide an explanation in writing or to send accounts, registrations, documents or any evidence for examination or consideration;

(2) to enter places and venues of operation, production, sale, purchase, storage of goods, service provision of a business operator or any person, or other places where it is reasonably believed that there is a violation of provisions under this Act in order to conduct an examination under this Act to search and seize, or gather documents, accounts, registrations, or other evidence for the benefit of examination and proceeding with a case under this Act;

In this case, officers shall have the power to inquire into factual information or call for accounts, registrations, documents or other evidence from business operators or relevant persons, as well as instruct any person on the premises to act as necessary.

(3) to collect or bring a good in the required quantity as a sample for examination or analysis without paying for the good. This shall be carried out in accordance with the criteria prescribed in the Commission's notification.

In case of (2), if it is a search pursuant to the Criminal Procedure Code, there shall be a search warrant unless there is another cause to believe that the process of getting a search warrant may be too slow and documents or such evidence may be removed, hid, destroyed or transformed, in which case the officers shall proceed to search, seize, or gather documents or evidence related to an offence without a prior search warrant. However, the Criminal Procedure Code shall be followed. Beginning a search at night shall be prohibited unless it is an operational time relevant to the place being searched.

Section 64: In performing the duties of officers, relevant persons shall facilitate those officers as appropriate.

Section 65: In performing their duties, an officer shall present his or her identification card to relevant persons.

The identification card shall conform to the format prescribed in the Commission's notification.

Section 66: In sending a letter pursuant to Section 63(1), the provisions regarding notifications under the Administrative Procedural Law shall apply *mutatis mutandis*.

Section 67: In performing duties under this Act, officers shall be officers under the Criminal Code.

Section 68: In performing duties under this Act, officers shall have the same powers as those of administrative officers or police officers under the Criminal Procedure Code.

CHAPTER 5

FILING OF LAWSUITS FOR DAMAGE

Section 69: A person receiving damages due to a violation of Section 50, Section 51 paragraph two, Section 54, Section 55, Section 57, or Section 58, shall have a right to file a lawsuit for damage from a violator of the law.

In filing a lawsuit for damage under paragraph one, the Consumer Protection Commission, or associations or foundations that the Consumer Protection Commission recognizes under the law on consumer protection, shall have a right to file a lawsuit for damage on behalf of consumers or members of the associations or foundations, as the case may be.

Section 70: In filing a lawsuit for damage under Section 69, if the lawsuit has not been filed within the time period of one year from the date the person suffering damage

knows or should have known the cause of such damage, the right to bring the case to the court shall lapse.

CHAPTER 6
PUNISHMENTS
PART 1
CRIMINAL PUNISHMENTS

Section 71: Any person violating Section 16 or Section 43 shall be subject to a term of imprisonment of not more than one year or a fine of not more than 100,000 Baht or both.

Section 72: Any person violating Section 50 or Section 54 shall be subject to a term of imprisonment of not more than two years or a fine of not more than ten percent of the turnover in the year of the offence, or both.

In a case where it is an offence committed in the first year of the business operation, the person shall be subject to a term of imprisonment of not more than two years and a fine of not more than 1 million Baht, or both.

Section 73: Any person not complying with a summons document from officers under Section 63(10) shall be subject to a term of imprisonment of not more than three months or a fine of not more than 5,000 Baht, or both.

Section 74: Any person obstructing officers in the performance of their duties under Section 63(2) or (3) shall be subject to a term of imprisonment of not more than one year or a fine of not more than 20,000 Baht, or both.

Section 75: Any person not facilitating officers under Section 64 shall be subject to a term of imprisonment of not more than one month or a fine of not more than 2,000 Baht, or both.

Section 76: Any person revealing factual information regarding the business or operation of a business operator that is factual information normally reserved and not revealed by a business operator and was received or known due to performance of duties under this Act, shall be subject to an imprisonment of not more than one year or a fine of not more than 100,000 Baht, or both. There is an exception to this case when the disclosure is in accordance with the performance of government duty or for the benefit of investigations, inquiries, case proceedings, or the operation of the Office.

Any person receiving or knowing any factual information from the person under paragraph one and revealing that information in a manner that will likely damage any person, shall be subject to the same penalties.

Section 77: In the case where an offender is a legal person and if such offence of that legal person is committed under instruction or through the conduct of a director,

manager, or any person responsible for the operation of such legal person, or in a case where that person has the duty to instruct or perform some conduct but fails to instruct or perform the conduct causing that legal person to commit an offence, such person shall also be subject to a punishment as prescribed for that particular offence.

Section 78: Any person suffering damage has the right to file a complaint of an offence under Section 72 to the Commission for its consideration of the matter under this Act, however, no right is provided to the person suffering damage to file a criminal lawsuit directly by himself or herself.

Section 79: For all offences under this Act, the Commission shall have the power to settle cases. In executing such power, the Commission may assign the Secretary-General to act on the Commission's behalf.

When the alleged person pays the fine for the amount of settlement within the required period, it shall be deemed that the case is terminated under the provisions of the Criminal Procedure Code.

The amount of fine to settle cases shall be determined according to criteria, methods, and conditions prescribed in the Commission's notification.

PART 2

ADMINISTRATIVE PUNISHMENTS

Section 80: Any person violating Section 51 paragraph one, shall be subject to an administrative fine of not more than 200,000 Baht and a further fine of not more than 10,000 Baht per day for the duration or the period the violation occurred.

Section 81: Any person violating Section 51 paragraph two or not complying with Section 53 shall be subject to an administrative fine of not more than 0.5 percent of transaction value of the merger.

Section 82: Any person violating Section 55, Section 57, or Section 58, shall be subject to an administrative fine of not more than 10 percent of the turnover in the year of offence.

In a case where it is an offence committed in the first year of the business operation, the person committing the offence shall be subject to an administrative fine of not more than 1 million Baht.

Section 83: Any person violating Section 60 shall be subject to an administrative fine of not more than 6 million Baht and a further fine of not more than 300,000 Baht per day when the violation continues.

Section 84: In cases where an offender subject to an administrative fine is a legal person, if such offence of that legal person is committed under instruction or through the conduct of a director, manager, or any person responsible for the operation of such legal

person, or in a case where that person has the duty to instruct or perform some conduct but fails to instruct or perform the conduct causing that legal person to commit an offence, such person shall also be subject to a punishment as prescribed for that particular offence.

Section 85: In considering the issuance of an order to impose an administrative fine the Commission shall consider the seriousness of the offense first.

In a case where the person subject to an administrative fine does not pay that fine, the provisions related to an administrative order's execution under the Law on Administrative Procedure shall apply *mutatis mutandis*. In a case where there is no officer to execute such an order, or there is a person but he or she is unable to proceed with the execution of the order, the Commission shall have the power to file a lawsuit in an administrative court in order to enforce the payment of the fine. In this case, if the administrative court views that such an order for the payment of the fine is lawful, the administrative court shall have the power to consider and make a judgment and enforce seizure or take hold of properties to sell by auction to pay for the fine imposed.

TRANSITIONAL CHAPTER

Section 86: The Trade Competition Commission under the Trade Competition Act B.E. 2542 which holds its position on the day before the date this Act is effective, shall perform its duties under this Act until the appointment of the Trade Competition Commission under this Act. The process of application and selection of the Trade Competition Commission under this Act shall be completed within 270 days from the date this Act is effective.

Section 87: The Director-General of the Department of Internal Trade shall perform the duties of the Secretary-General until the appointment of the Secretary-General under this Act. The process of appointing the Secretary-General shall be completed within 180 days from the date of the first appointment of the Trade Competition Commission.

Section 88: For the work of the Office to proceed efficiently, the Minister may approve for government officers in the Ministry of Commerce to assist with the work of the Office temporarily for not more than two terms, and each term for not more than two years. All government officers shall receive salaries from their original office.

Section 89: Subject to Section 90, government officers performing their duties in the Office of the Trade Competition Commission under the Trade Competition Act B.E. 2542 holding their positions on the date after the period determined under Section 90, shall be government officers of the Department of Internal Trade, Ministry of Commerce, and shall perform duties in the Office. Such performance of duties shall be considered the performance of civil service duties for the Department of Internal Trade, Ministry of Commerce.

Government officers performing duties in the Office under paragraph one shall receive a salary or wage, as well as others rights and benefits previously received, until he or she is assigned and appointed for a position in the Office. Such government officer shall not be appointed and receive a salary or wage lower than the amount previously received.

Section 90: Government officers under Section 89 who are willing to transfer to become an official of the Office shall exercise the right by informing of their intention in writing to their supervisor within 60 days from the date this Act take effects. Those who do not inform of their intention within such period shall return to perform their duties in the Department of Internal Trade, Ministry of Commerce.

Assignments and appointments of government officers who are willing to transfer to become an official in any position in the Office under paragraph one, shall be in accordance with the capacity, qualification, and salary or wage rates, prescribed by the Commission.

The budget for salaries and wages of government officers of the Department of Internal Trade, Ministry of Commerce, who are assigned and appointed as officials of the Office under paragraph two, shall be transferred to the Office from the date of assignment and appointment.

Government officers who are willing to transfer to become an official under paragraph one shall be deemed resigned from the civil service due to termination or dissolution of such position under the law on government pensions or the law on the government pension fund, as the case may be.

Section 91: Operations, properties, rights, duties, debts, and the budget of the Department of Internal Trade, Ministry of Commerce that are related to the work of the Office of Trade Competition Commission, Department of Internal Trade, Ministry of Commerce, shall be transferred to the Office.

Section 92: All the ministerial regulations, notifications, criteria, or regulations issued under the Trade Competition Act B.E. 2542 that are effective on the date before this Act takes effect, shall still remain effective as long as they do not conflict or contradict this Act and until ministerial regulations, notifications, or regulations issued under this Act are effective.

The process of issuing ministerial regulations, notifications, or regulations under paragraph one shall be completed within 365 days from the date this Act becomes effective. If this process is not completed within the specified time, the Minister shall report reasons of non-completion to the Cabinet.

Countersigning the Royal Command
General Prayut Chan-o-cha
Prime Minister

Rates of Fees

- | | | |
|--|--------------|---------------|
| (1) Request for a permission to conduct a merger under Section 51 paragraph two | 250,000 Baht | per a request |
| (2) Request for a consideration under Section 59 | 50,000 Baht | per a request |
| (3) Fee for copying or certifying a copy of orders under Section 52, considerations under Section 59, or orders under Section 60 | 100 Baht | per page |

Unofficial Translation

Notes:- The reasons to pass this Act are: the Trade Competition Act B.E. 2542, is due to its having been in force for a long time resulting in some provisions being inconsistent with the pattern and conduct of business which has changed over time. In addition, regulation regarding competition at present is under the power of the Office of Trade Competition Commission, an office established inside the Department of Internal Trade, Ministry of Commerce, making the work process inflexible and lacking independence, rendering the regulations on business operation to have free and fair competition are not as efficient as it should be. Therefore, it is appropriate to improve measures in regulating competition to become more efficient under an authority that is flexible and independent, consistent with development of patterns and behaviors in business operations which have been changing over time. It is thus necessary to pass this Act.

Unofficial Translation