UNITED STATES – MEASURES RELATING TO SHRIMP FROM THAILAND

(WT/DS343)

COMMENTS OF THE UNITED STATES ON THAILAND'S ANSWERS TO THE PANEL'S QUESTIONS TO THE PARTIES IN CONNECTION WITH THE SECOND SUBSTANTIVE MEETING

August 21, 2007

Table of Reports Cited

EC – Customs Matters (AB)	Appellate Body Report, *European Communities – Selected Customs Matters*, WT/DS315/AB/R, adopted 11 December 2006
EC – Chicken Cuts (Panel)	Panel Report, *European Communities – Customs Classification of Frozen Boneless Chicken Cuts*, WT/DS269/R, WT/DS286/R, adopted 27 September 2005, as modified by the Appellate Body Report, WT/DS269/AB/R, WT/DS286/AB/R
EEC – Parts and Components	GATT Panel Report, *EEC – Regulations on Imports of Parts and Components,* BISD 37S/132, adopted 16 May 1990
US – Section 301	Panel Report, *United States – Sections 301-310 of the Trade Act of 1974*, WT/DS152/R, adopted 27 January 2000
US – Offset Act (Byrd Amendment) (AB)	Appellate Body Report, *United States – Continued Dumping and Subsidy Offset Act of 2000*, WT/DS217/AB/R, WT/DS234/AB/R, adopted 27 January 2003
US – Lumber CVD II (AB)	Appellate Body Report, *United States - Final Countervailing Duty Determination With Respect To Certain Softwood Lumber From Canada*, WT/DS257/AB/R, adopted 17 February 2004
US – Corrosion-Resistant Steel Sunset Review (AB)	Appellate Body Report, *United States – Sunset Review of Anti-Dumping Duties on Corrosion Resistant Carbon Steel Flat Products from Japan*, WT/DS244/AB/R, adopted 9 January 2004
US – Wool Shirts (AB)	Appellate Body Report, *United States – Measure Affecting Imports of Woven Wool Shirts and Blouses from India*, WT/DS33/AB/R and Corr.1, adopted 23 May 1997
US – 1916 Act (AB)	Appellate Body Report, *United States – Anti-Dumping Act of 1916*, WT/DS136/AB/R, WT/DS162/AB/R, adopted 26 September 2000

Comment on Thailand's Response to Questions 1-2.

1. Thailand again claims, incorrectly, that the costs associated with the enhanced bond directive are selling expenses. As the United States has explained in previous submissions, they are not.[1] Thailand now cites to the provision of U.S. law relating to selling expenses (rather than relying on the provision of U.S. law dealing with transportation expenses, as it did previously), yet its argument continues to consist of nothing more than the simple assertion that the provision covers bond costs. Quite simply, Thailand is incorrect, for reasons explained previously – selling expenses pertain to costs incurred in *selling* merchandise in the United States (salesmen's salaries, inventory costs, etc.), and the bond expenses are not such a cost. Were a respondent to report bond costs with other selling expenses in the field INDIRSU, such reporting would be in error. Thailand has not identified a single case in which USDOC has required importers to treat costs associated with the enhanced bond as selling expenses, and the United States is not aware of a case in which a petitioner or respondent has requested that it do so or been required to do so. Furthermore, Thailand now introduces a new theory that costs associated with the bond are transportation costs and are reported as brokerage expenses in the field USBROKU. Thailand has not identified a single case in which USDOC has required importers to treat costs associated with the enhanced bond as brokerage expenses, and the United States is not aware of a case in which a petitioner or respondent has requested that USDOC do so or been required to do so. As explained previously, expenses associated with the bonds required pursuant to the additional bond directive are not considered transportation expenses.[2]

2. With regard to Thailand's theory regarding the impact of financing costs that might have been incurred by some companies required by sureties to post collateral, Thailand's argument is entirely speculative. Thailand has not identified a single case in which USDOC has adjusted for expenses associated with the enhanced bond in the antidumping calculation, and the United States is not aware of a case in which a petitioner or respondent has requested that USDOC do so or been required to do so.

3. The United States agrees with Thailand that there are costs associated with a bond, but, contrary to Thailand's suggestion, this does not mean that those costs are necessarily reflected in the dumping calculation.[3] U.S. law specifies particular costs that are included in the calculation,

---

[1] *E.g., Comments of the United States on Certain Additional Factual Information Submitted by Thailand in Connection with Its Oral Statement During the Second Panel Meeting* (August 1, 2007), paras. 2-3 ("U.S. Comments on Certain Additional Factual Information"); *Responses of the United States to the Panel's Questions Following the Second Substantive Meeting of the Panel with the Parties*, August 14, 2007, para. 3 ("U.S. Second Answers").

[2] U.S. Comments on Certain Additional Factual Information, para. 2.

[3] *Thailand's Responses to the Panel's Questions Following the Second Substantive Meeting of the Panel with the Parties*, August 14, 2007, para. 4 ("Thailand Second Answers").

but does not purport to include *all* costs incurred by a company in conducting its business.[4] Fundamentally, in the U.S. antidumping calculation, the United States is not aware of *any* scenario in which costs associated with the enhanced bond would properly be deducted from export price. While the Panel is not bound by the U.S. interpretation, the United States can reasonably expect that considerable deference be given to its views on the meaning of its own law.[5]

Comment on Thailand's Response to Question 3.

4. Thailand's response to this question reflects the two fundamental flaws in its interpretation of Article 9 of the AD Agreement: first, that "duty" means "security" (and that cash deposits are duties), and, second, that "margin of dumping" refers to the margin of dumping in the antidumping order issued following the investigation, but not the margin of dumping established for purposes of assessment through the administrative review process. As the United States has explained, neither of these assertions are supported by the text, and Thailand fails to respond to the U.S. arguments on this issue.[6]

5. More fundamentally, setting aside Thailand's incorrect theory that "cash deposits" are "duties", Thailand does not explain how a *bond* requirement would be prohibited by an obligation pertaining to "duties" when it elsewhere acknowledges that bonds are not the same as duties.[7] Thailand has not explained how the obligation to "collect duties in an amount equal to

---

[4]Costs that would not be included are not limited, as Thailand claims, to legal fees and other expenses associated with participating in the anti-dumping process. Thailand Second Answers, para. 12. For example, expenses which are not directly related to economic activity in the United States (*e.g.,* inventory costs unrelated to subject merchandise) are not considered costs and/or expenses for purposes of the antidumping calculation and are not deducted from export price.

[5]*See e.g.*, *EC – Chicken Cuts (Panel),* para. 7.45 n.75 ("The Panel notes that, pursuant to Article 11 of the DSU... we are required to undertake an 'objective' assessment of the matter before us. In our view, since the European Communities is in the best position to interpret the meaning and effect of its own laws, we accept its argument that the recitals in an EC Commission Decision, including EC Decision 2003/97/EC, have no legal effect: EC's reply to Panel question No. 19(c))."); *US – Section 301*, para. 7.18 ('... any Member can reasonably expect that considerable deference be given to its views on the meaning of its own law').

[6]*Second Written Submission of the United States,* June 29, 2007, paras. 13-19 ("U.S. Second Submission").

[7]*First Written Submission of Thailand*, March 20, 2007, para. 205 ("Thailand First Submission").

the margin of dumping" is breached by a bond requirement. Bonds are not duties, and the United States does not "collect" bonds (bonds are held by the bondholder), nor any fees associated with the bonds (fees are determined by private sureties, and remitted to them, not the United States). The amount reflected on the face of the bond is not what is remitted by the company to the surety, nor "collected" by the United States unless, following the assessment review, it is determined that the final liability equals that amount. Likewise, Thailand has not explained how a bond requirement results in the "the amount of the anti-dumping duty ... exceed[ing] the margin of dumping as established under Article 2," within the meaning of Article 9.3. As the United States explained, the "margin of dumping" established following the assessment review is a margin of dumping "as established under Article 2" and the bond does not result in an amount of duty that exceeds the margin of dumping. Thailand again has not even responded to the U.S. argument regarding the meaning of this provision.[8] With regard to Thailand's theory regarding Article 9.5, the fact that Article 9.5 refers to guarantees does not support its argument – rather, it again confirms that, as elsewhere, the AD Agreement does not consider "duties" to be the same as security, whether cash deposits or bonds. Indeed, Thailand's argument suggests not simply that, pending completion of a new shipper review, requiring bonds in addition to cash deposits (or, as it calls them, "duties") would be impermissible, but that requiring cash deposits *instead of* bonds would also be impermissible, since, if "cash deposits" are "duties," then Article 9.5 would preclude their collection entirely.[9] Nothing in the text supports that position.

Comment on Thailand's Response to Question 6.

6. With regard to Thailand's argument that the Ad Note "must be read to refer to provisional measures," as the United States has explained, this interpretation is unsupported by the text of both the Ad Note and Article 7 of the AD Agreement.[10] Beyond this, Thailand's answer is premised on two incorrect presumptions – first, that any action "referred to" in Article VI of the GATT 1994 and the AD Agreement must itself be a "specific action against dumping"[11] and that no actions can be taken "in situations of dumping" that are not one of the

[8]U.S. Second Submission, paras. 7, 18-19.

[9]Thailand Second Answers, para. 16; *see* AD Agreement, Article 9.5 ("No anti-dumping duties shall be levied on imports from such exporters or producers while the review is being carried out. The authorities may, however, withhold appraisement and/or request guarantees to ensure that, should such a review result in a determination of dumping in respect of such producers or exporters, anti-dumping duties can be levied retroactively to the date of the initiation of the review.").

[10]*E.g.*, U.S. Second Submission, para. 20.

[11]Thailand Second Answers, para. 22.

three specified "permissible responses to dumping,"[12] and second, that security for antidumping duties is prohibited unless permitted by Article 7 of the AD Agreement or Article XX(d) of the GATT 1994.[13]

7. With respect to the first proposition, consistent with the Appellate Body's reasoning in *US – Offset Act*, the mere fact that an action is "referred to" in Article VI or the AD Agreement does not mean that it is a "specific action against dumping," and likewise the mere fact that an AD-related action is not specifically addressed in the AD Agreement does not mean that it is a "specific action against dumping." The AD Agreement and Article VI address a range of actions – from procedures for initiating investigations to notification obligations. The Appellate Body has cited just three that in its view constitute responses to dumping – definitive duties, provisional measures, and price undertakings.[14] In effect, Thailand's argument would suggest that whenever Article VI or a provision of the AD Agreement is breached, Article 18.1 must necessarily be breached, since, in its view, any action addressed in the AD Agreement or Article VI is a "specific action against dumping." Furthermore, Thailand's argument suggests any action *not* addressed by the AD Agreement is necessarily prohibited by Article 18.1. Nothing in the Appellate Body's analysis suggests either proposition is the case. Indeed, as the Appellate Body has indicated, a range of antidumping-related actions, including security, may not be "specific actions against dumping", since "a measure cannot be against dumping or subsidy simply because it facilitates or induces the exercise of rights that are WTO-consistent,"[15] and measures "related" to dumping are not necessarily "specific" to it.[16]

8. With respect to Thailand's second proposition, this assertion is simply inconsistent with the ordinary meaning of the Ad Note. If, as Thailand asserts, Article XX(d) is the only provision that provides "authority for instruments that guarantee the payment of anti-dumping measures",[17] it is unclear why the Ad Note (or any provision dealing with security) would have been included in the GATT 1994. The U.S. argument in *EEC – Parts and Components* provides no support for Thailand's argument and is fully consistent with the position of the United States in this proceeding. There, as here, the United States took the view that Article XX(d) "authorized a

[12]Thailand Second Answers, para. 27.

[13]Thailand Second Answers, para. 23.

[14]*US – Offset Act (AB)*, para. 265.

[15]*US – Offset Act (AB)*, para. 248.

[16]*US – Offset Act (AB)*, para. 262.

[17]Thailand Second Answers, para. 23.

contracting part to take actions necessary to enforce a customs duty."[18] The United States did not argue, as Thailand seems to suggest, that Article XX(d) was the *only* provision in the GATT 1994 addressing actions facilitating the collection of duties,[19] and the particular action that was the subject of the U.S. argument in that case was not security, but rather anticircumvention measures not governed by the Ad Note.[20] Furthermore, as the United States has explained, Article XX(d) and the Ad Note do not contain the same standard for evaluating the WTO-consistency of a security requirement – thus, the United States is not, as Thailand argues, asserting that the "reference to a 'reasonable security' in the Ad Note" should be interpreted "to refer only to measures already permitted under Article XX(d)."[21] The ordinary meaning of the Ad Note is that it limits security for payment of antidumping duties to "reasonable security", pending final determination of the facts – an event that does not occur until after assessment is complete. If a security requirement is not inconsistent with the GATT 1994, including the Ad Note, Article XX(d) is irrelevant to an analysis of its WTO-consistency. If the security requirement is inconsistent with the GATT 1994, for reasons explained, it may nonetheless be permitted under Article XX(d).

Comment on Thailand's Response to Question 8.

9. With respect to Thailand's argument that cash deposits would be governed by Article 9, see the U.S. comment on Thailand's response to Question 3. With respect to Thailand's argument regarding ostensible differences between cash deposits required during the

---

[18]*EEC – Parts and Components*, para. 4.37.

[19]Thailand Second Answers, para. 25 (claiming that the United States considered that "authority necessary to enforce the payment of anti-dumping duties was derived from Article XX(d) *rather than* Article VI or the Ad Note" (emphasis added).

[20]*EEC – Parts and Components*, para. 4.37 (discussing anticircumvention and customs fraud measures). Thailand's assertion that "security for the payment of anti-dumping duties is required under the U.S. general customs regulations, *rather than* under U.S. antidumping laws and regulations" is simply incorrect. U.S. antidumping laws and regulations contain a range of provisions addressing security (both cash deposits and bonds). *E.g.*, 19 U.S.C. 1673e (addressing cash deposits, bonds or other security required after imposition of an antidumping order); 19 U.S.C. 1673b(d) (addressing cash deposits, bonds, or other security required after issuance of an affirmative preliminary antidumping determination).

[21]*Compare* Thailand Second Answers, para. 26, *with* U.S. Second Answers, paras. 28-30. Furthermore, as noted with respect to a similar assertion in Thailand's Second Submission, Thailand's theory would effectively reverse the burden of proof in all cases involving security requirements. *Second Oral Statement of the United States*, July 24, 2007, para. 20 ("U.S. Second Oral Statement").

investigation, cash deposits required afterward, and bonds, the only true "differences" Thailand identifies relate to the *amount* of the security – all are security for the payment of duties.[22]

Comment on Thailand's Response to Question 9.

10. Thailand's emphasis on "automatic assessment" in its response is misleading. Only when no interested party requests an assessment review are instructions issued to liquidate entries at the cash deposit rate in effect at the time of entry. In the United States, entries subject to antidumping orders are typically subject to an assessment review.[23] Moreover, in *no* case is assessment – whether at the cash deposit rate or otherwise – conducted at the time of entry. "Automatic assessment" occurs after the period for requesting an assessment review is complete, typically 13 months after the order has been imposed. Thus, contrary to Thailand's assertion,[24] *in all cases*, the cash deposit collected at the time of entry is a baseline proxy of the amount that may ultimately be assessed, and is never itself the final liability. In some cases, the *amount* of the cash deposit happens to equal the *amount* of the final liability, though as noted 33% of the time it is higher, and 56% of the time it is lower. Moreover, it cannot be known at the time of entry whether the cash deposit amount will equal the final liability (since it cannot be known whether an interested party intends to request a review).

Comment on Thailand's Response to Question 10.

11. Thailand's response demonstrates that its theory that "cash deposits" are "duties" cannot be reconciled with the manner in which the two terms are used in Article 7.2. Its assertion that "[i]n practice, there may not be much difference between paying" cash deposits versus a duty is belied by the preference expressed in Article 7.2 for security (including cash deposits) over provisional duties.[25] Likewise, its suggestion that the use of the terms may be explained by the fact that the EC uses provisional duties and the United States uses security is a *non sequitur*[26] – the fact that different Members may use different measures does not explain why the Agreement expresses a preference for one instrument over another. Finally, the reference in the 1959 Experts Report to the forms of security described in the Ad Note does not mean that Article 7

[22]Thailand Second Answers, para. 33.

[23]Indeed, the analysis of agriculture/aquaculture cases prepared by CBP at the time indicated that the assessment rate equals the cash deposit rate only 11% of the time – suggesting that, at least nearly 90% of the time, entries were not subject to "automatic assessment".

[24]Thailand Second Answers, para. 38.

[25]Thailand Second Answers, para. 40.

[26]Thailand Second Answers, para. 41.

was intended to govern *all* security requirements or otherwise "implement the Ad Note."[27] Furthermore, if it is indeed the case that there is no reference to security in the negotiating history of Article 9, this may simply indicate, not that "cash deposits" are "duties" as Thailand appears to believe, but that Members did not view Article 9 as addressing security requirements, including cash deposits.[28]

Comment on Thailand's Response to Question 11.

12. With regard to the term "levy", the United States has explained in its submissions that its reading of the Ad Note is supported by paragraphs 2 and 3 of Article VI, which pertain to "levy[ing]" antidumping and countervailing duties.[29] The definition of "levy" supports the U.S. reading because "the definitive or final legal assessment or collection of a duty or tax" encompasses the assessment review process (the "definitive or final legal assessment"). This further supports the interpretation of the Ad Note as addressing security for payment required prior to final legal assessment. The United States notes that Thailand's suggestion – that the Ad Note *only* addresses security required pending a final determination in an investigation[30] – would imply a reading of the term "levy" as addressing the investigation phase of a proceeding, but *not* the assessment review. However, this would also mean that under Article 4.2 of the AD Agreement, Members would only be required to limit the duty to a particular area in its territory during the investigation. With regard to Thailand's argument relating to Article 9.5, as noted previously, it is premised on the theory that "cash deposits" are duties, and would mean that no cash deposits could be collected pending a new shipper review, a position that does not accord

[27]Thailand Second Answers, para. 42. If anything, the 1959 Report of the Group of Experts suggests the opposite, in noting that "Article VI made no mention of" provisional measures. L/978, para. 19 ("The Group discussed the question of provisional anti-dumping measures. It was recognized that in certain circumstances the use of such measures might be justified in order to limit the material injury to a domestic industry, even though it was noted that Article VI made no mention of them...").

[28]Thailand Second Answers, para. 42.

[29]*Answers of the United States to the Panel's Questions to the Parties in Connection with the First Substantive Meeting*, June 22, 2007, para. 32 ("U.S. First Answers to Panel Questions") ("In the AD Agreement, the term 'levy' refers to 'the definitive or final legal assessment or collection of a duty or tax.' This context supports the conclusion that the Ad Note governs security pending final assessment of duties, and that the term 'suspected' dumping in the Ad Note refers to the fact that the amount of duties to be finally assessed, if any is not known until assessment is complete."); U.S. Second Oral Statement, para. 5.

[30]*E.g.*, *Rebuttal Submission of Thailand,* June 29, 2007, para. 24 ("Thailand Second Submission").

with the text or even Thailand's own argument regarding the meaning of that provision.[31]

Comment on Thailand's Response to Question 12.

13. Thailand's response illustrates the inherent difficulty in reconciling its argument regarding "cash deposits" with the text of the AD Agreement. In essence, it now asserts that some cash deposits are in fact "cash deposits", whereas others are "duties", yet it fails to identify any actual substantive differences between the alleged types of cash deposits it identifies,[32] and, moreover, ignores genuine substantive differences – evident in the measures themselves and the text of the Agreement – between cash deposits and duties.[33]

Comment on Thailand's Response to Questions 13-15.

14. Regarding paragraph 51 of Thailand's response, the United States refers the Panel to its response to Question 15. With regard to Thailand's assertions in paragraph 52, Thailand fails to explain why a difference in the methodology for calculating the antidumping duty has any bearing on the interpretation of an obligation related to security requirements. As the United States has explained, while it has used various methodologies for assessing duties over time, for purposes of security requirements, the essential feature of duty assessment in the United States from the time of adoption of the Antidumping Act, 1921, is that assessment does not occur at the time of entry.[34]

Comment on Thailand's Response to Question 16.

15. Cash deposits are not as Thailand argues "definitive duties designed to protect the domestic industry."[35] Cash deposits are simply security for the final liability – thus, for example, if that final liability is less than the cash deposit amount, refunds are provided with interest, in accordance with AD Agreement Article 9.3.1.

Comment on Thailand's Response to Question 17.

16. The United States agrees with Thailand's position that what is "reasonable" under the Ad

[31]See paragraph 5, supra.

[32]See paragraph 4-5, 11, supra.

[33]See paragraph 11, supra.

[34]U.S. Second Submission, para. 8 n.5.

[35]Thailand Second Answers, para. 55.

Note must be evaluated based on the ordinary meaning of the term and its context,[36] though as explained, the United States has demonstrated that this evaluation properly leads to the conclusion that the bond amounts required pursuant to the directive were reasonable in this case. However, the United States notes that, insofar as Thailand suggests that the burden for demonstrating "reasonableness" lies with the United States, it misstates the burden of proof. Thailand has alleged a breach of the Ad Note,[37] and therefore the burden rests with Thailand to prove its case. The Ad Note is not an affirmative defense, and thus Thailand is incorrect in asserting, for example, that, where there is "differential treatment," it is "incumbent on the WTO Member imposing the differential treatment to explain exactly why it is reasonable to treat the targeted importers and entries differently from all other importers and entries and why these differences justify the imposition of enhanced security requirements."[38] Thailand offers no support for this assertion, and it does not accord with the text of the Agreement or the reasoning of the Appellate Body in previous disputes.[39]

Comment on Thailand's Response to Question 18.

17. Contrary to Thailand's assertion, the evidence does not support the conclusion that increases in dumping margins are "not likely" or a "mere possibility."[40] Rather, the evidence indicates that rates increase 33% of the time,[41] and there is no basis to conclude that historical evidence of increases is irrelevant to assessing what is "reasonable" security. Even were the likelihood of increases small, the likelihood of an increase must be weighed against the amount of potential liability at issue and the risk of default, as Thailand appears to recognize elsewhere in its responses.[42] For example, where default is likely, and the amount of potential liability is high, it may be reasonable to require additional security even if the likelihood of an increase is

[36]Thailand Second Answers, para. 57-58.

[37]*E.g.*, Thailand First Submission, para. 288(a)(ii) (requesting that the Panel find that the United States acted inconsistently with Note 1 to paragraphs 2 and 3, Ad Article VI of GATT 1994); Thailand Second Submission, para. 63-81 (arguing that "the Enhanced Bond Requirement is not a reasonable security within the meaning of the Ad Note).

[38]Thailand Second Answers, para. 60.

[39]*US – Wool Shirts (AB)*, p. 14 (noting that "it is a generally accepted canon of evidence in civil law, common law and, in fact, most jurisdictions, that the burden of proof rests upon the party, whether complaining or defending, who asserts the affirmative of a particular claim or defence.").

[40]Thailand Second Answers, para. 62.

[41]See U.S. First Submission, para. 28; Exh. US-19.

[42]See Thailand Second Answers, para. 58.

not significant. Furthermore, contrary to Thailand's suggestion, there is no basis to interpret the Ad Note as limiting the amount of security to the "most recently established margin of dumping", and indeed doing so would not accord with Thailand's own reading of "reasonable" as requiring analysis of multiple factors.

Comment on Thailand's Response to Question 19.

18. Regarding the impact of the directive on shrimp imports, the United States refers the Panel to its response to Panel Question 19. It should also be noted that Thailand's analysis of the first assessment review is not directly relevant to an assessment of whether the security required was "reasonable." While it may be the case that the face value of the bonds requested will exceed the final liability in the first administrative review, this cannot be known at the time of entry. The relevant question for purposes of the Ad Note is whether, based on the information available to it at the time CBP required the additional security, it was "reasonable." Furthermore, Thailand's analysis appears to understate the amount of bills issued to importers subject to the shrimp orders, if the final results of the assessment review are the same as the preliminary results. Rather than $862,000, CBP data indicates it will be required to issue almost $5,600,000 in bills to importers.

Comment on Thailand's Response to Question 20.

19. Beyond the points made in the U.S. Second Answers, the United States notes that Thailand's response mischaracterizes the relevance of the Ad Note to this dispute in suggesting that it is only relevant to determining whether the United States breached Article 18.1 of the AD Agreement .[43] Thailand has claimed a breach of the Ad Note itself, which is a provision of the GATT 1994.[44] Article XX(d) operates as an exception to this provision, and therefore is an affirmative defense to Thailand's claim with respect to the Ad Note. Furthermore, there is no support for Thailand's assertion that in order to require security, the standard of "reasonableness" requires a showing that margins are "likely to increase" by 100% "for all entries" – rather, "reasonableness" requires an assessment of the likelihood of an increase against the other factors used to establish security requirements, including the likelihood that the amount of unsecured liability in the event of an increase is significant. In this case, given the value of entries, an increase with respect to even some entries would result in significant unsecured

[43]Thailand Second Answers, para. 67.

[44]E.g., Thailand First Submission, para. 288(a)(ii) (requesting that the Panel find that the United States acted inconsistently with Note 1 to paragraphs 2 and 3, Ad Article VI of GATT 1994); Thailand Second Submission, paras. 63-81 (arguing that "the Enhanced Bond Requirement is not a reasonable security within the meaning of the Ad Note).

liability absent an additional bond requirement.[45]

Comment on Thailand's Response to Question 22.

20. The United States has provided information on the underlying data and analysis that was used as the basis for its conclusion that shrimp shares similar characteristics to agriculture/aquaculture merchandise, and otherwise has addressed the majority of Thailand's points in previous submissions, arguments which it will not repeat here.[46] Significantly, however, it should be noted that Thailand does not appear in its response to argue that Thai importers were not in fact undercapitalized, but rather seems to limit its argument to contesting the sufficiency of the record. In addition, much of Thailand's argument is either a *non sequitur* or rests on a misstatement of how the directive operates. For example, contrary to Thailand's assertion,[47] the fact that the directive does not apply to importers of other agriculture/aquaculture products not subject to antidumping duties is irrelevant – those importers would not be subject to the antidumping liability being secured and therefore security would not be necessary (though as noted previously, if the United States identified a noncollection problem with respect to other duties, it would take action to address the problem). Furthermore, Thailand makes a number of assertions premised on the incorrect claim that a Thai importer would be required to provide an additional bond amount regardless of its capitalization and ability to pay[48] – in fact, the directive contains a process for obtaining individual bond amounts based on ability to pay, and importers have requested and received individual amounts through that process.[49]

Comment on Thailand's Response to Question 26.

21. With regard to Thailand's response, beyond what it has argued previously, the United States would only note that there is no basis to conclude that the process for obtaining individualized amounts is "burdensome" or "obscure," as Thailand claims. The process is set out in a *Federal Register* notice, and there is no basis to conclude that extensive data must be

[45]With respect to Thailand's argument under Article X:3(a), the United States notes that as it stated in its Second Oral Statement, to demonstrate that the "substantive content" of the directive breaches Article X:3(a), it must demonstrate that the directive "necessarily leads to a lack of uniform, impartial or reasonable administration." *EC – Customs Matters (AB)*, para. 201. As the United States has explained, Thailand has failed to meet this burden. U.S. Second Oral Statement, para. 16.

[46]U.S. Second Answers, paras. 34-39; Exhibit US-16, US-17, and US-19.

[47]Thailand Second Answers, para. 72.

[48]Thailand Second Answers, para. 73.

[49]U.S. First Submission, paras. 17-18; Exh. US-12.

submitted in support of a request.

Comment on Thailand's Response to Question 27.

22. Thailand's arguments regarding the "official agency record" provided to the Court of International Trade (CIT) are irrelevant.[50] Under U.S. law, the "official agency record" does not include every document or piece of underlying data prepared in connection with a decision.[51] In this proceeding, the United States has provided data requested by the Panel, data that was not included in the "official agency record" submitted to the CIT. With regard to the Court's findings, as the United States has noted previously, the CIT litigation is ongoing, and involves questions of U.S. law rather than questions of WTO law, and a different factual record.[52]

Comment on Thailand's Response to Question 34.

23. The United States refers the Panel to its response to this question, but would also note that, contrary to Thailand's suggestion, "gross receivables" are not relevant to uncollected duties. Gross receivables refer to bills issued, not what is unpaid. While "uncollectible duties" are defined slightly differently in CBP annual reports, they are much more closely correlated to uncollected duties as the United States has used that term in this proceeding.

Comment on Thailand's Response to Question 36.

24. It should be noted that, contrary to Thailand's suggestion, an evaluation of whether a measure is necessary should consider the evidence of the likelihood of increases that is available at the only time security requirements are capable of being imposed (*i.e.*, at the time of entry), not whether liability in fact increased at some later date. Even if the final results of the assessment review reflect the preliminary results, CBP will have to issue almost $5,600,000 in bills to importers.[53] Whether importers will indeed pay those bills, as Thailand claims, is unknown, though again the likelihood that they will do so must be evaluated in relation to the evidence available to CBP at the time of entry. That evidence indicates that Thai importers of

---

[50]Thailand Second Answers, para. 82.

[51]*Ammex, Inc. v. United States*, 62 F.Supp. 2d 1148, 1156 (CIT 1999) (noting that a document does not necessarily "belong[] in the administrative record simply because it is 'relevant' to the issue that was before the agency...").

[52]U.S. First Submission, para. 33, n.43. Also, as noted, since the October 2006 Notice was issued just prior to the release of the decision, the Court did not squarely address the Notice in its findings.

[53]The United States additionally notes that Exh. IND-28 is not on the record in this proceeding, and therefore Thailand's arguments relating to it should be disregarded.

shrimp are at significant risk of default.[54] With regard to the alleged impact on trade, the claimed other reasons for defaults identified by Thailand, and the supposed alternative measures available, the United States refers the Panel to its comments in paragraph 18 and its response to Panel Question 23.

Comment on Thailand's Response to Question 38.

25. As the United States has explained, the obligation to require payment of antidumping duties is contained in 19 U.S.C. 1677e(a)(1). Thailand also refers to the regulations associated with this provision of U.S. law (19 C.F.R. 351.212). The other measures cited by Thailand either relate to the imposition of an antidumping duty order (19 U.S.C. 1673) or deal with the separate issue of cash deposits (19 U.S.C. 1673e(a)(3), 19 C.F.R. 211).

[54]See U.S. Second Submission, paras. 24-26; U.S. Second Answers, paras. 34-39.