

Bureau of Trade Interests  
and Remedies  
Department of Foreign  
Trade  
44/100 Nonthaburi 1 Rd.  
Nonthaburi 11000, Thailand  
Tel. (662) 547-4739  
Fax. (662) 547-4741

20 February 2009

Dear Director, Policy,

**Subject : Submission to the Australian Subsidy Manual (January 2009)**

The Australian Customs Service has invited all stakeholders to provide comment on a draft subsidy manual (exposure draft) dealing with key aspects of countervailing investigations such as:

- Identification of a subsidy;
- Specificity;
- Upstream subsidies, and
- Concurrent imposition of countervailing and dumping duties.

The draft subsidy manual outlines the legislative framework and proposed disciplines and practices to be followed by Customs in conducting countervailing investigations.

Bureau of Trade Interests and Remedies, Department of Foreign Trade, Ministry of Commerce welcomes the opportunity to make a comment on the draft subsidy manual and has the following comments;

1) With respect to the selection of the investigation period (IP) (line 171-173 of the exposure draft), it is proposed to use the most recent financial year of the beneficiary companies. Since anti-subsidy measures will be imposed prospectively (and already based on a period before the start of the investigation), we think an investigation period as recent as possible rather than the latest financial year would result in more accurate (or up to date) findings.

For example, if the financial year is 1 January 2008 to 31 December 2008 and the investigation is initiated on 30 December 2009, this would mean that the investigation period would be 2008. Since the anti-subsidy duty will typically only enter into force from the middle of 2011 onwards (typically an investigation takes around 15-18 months), this means that the duty for the 2011 to 2016 period would be based on data from 2008. Even though employing the financial year would make it easier for respondents to collect all necessary information, for the sake of the accuracy and fairness of findings, employing data covering at least part of 2009 may therefore be better.

2) With respect to addition of interest when calculating the real value of the benefit (line 236-251), Although the Australian approach does make sense, considering the rationale behind the addition of interest as described in the exposure draft, but in that case we think it would be more appropriate to only use half of the interest rate to reflect the fact that for amounts received (or exempted) at the start of the investigation period interest needs to be added for 365 days whereas for amounts received on the last day of the investigation period, only interest for one day needs to be added. Taking half of the interest rate would take this into account.

3) With respect to examining of “De Facto Specificity” (particularly line 903-909), as explicitly described in the exposure draft, for example, once Customs finds that there are a limited number of users of the program, as the starting point, when examining de facto specificity, it will cease conducting further de facto analysis and the finding of specificity may be made on that single observation. Although, it is recognizes that there is currently no clear guidance in the ASCM on the application of any of the four factors set out in Article 2.1 (c), WTO Members shall not limit their examinations on just one factor. We however think that the existence of a single factor does not automatically establish specificity, i.e. that a specificity finding that ignores the totality of the facts of a given case would not be appropriate. For this reason, when conducting a de facto specificity, all relevant factors should be evaluated based on the totality of the facts of the given case, and no one or several of them can necessary give decisive guidance.

Yours sincerely,

Mrs. Pranee Siriphand  
Director of Bureau of Trade Interests and Remedies

Director, Policy  
Trade Measure Branch  
Customs House  
5 Constitution Ave  
CANBERRA ACT 2601  
Email: tmpolicy@customs.gov.au