



**Seminar on Trade Defense Instruments**  
*co-funded by the European Union and  
Thai Department of Foreign Trade of the Ministry of  
Commerce*

**Countervailing Duty Investigations in the European  
Union**

Bangkok - 24 April 2012

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# What is a Countervailing Duty?



Import duty assessed to offset injurious subsidies

1. Subsidies

2. Material Injury or Threat of Material Injury or  
“Material Retardation”

3. Causal Link

Anti-Subsidy Regulation (EC/597/2009)



# What are Material Injury/ Causal Link?



1. Material Injury, or Threat of Material Injury of  
“Material Retardation”

AND

2. Causal Link



**BOTH ARE SAME AS IN DUMPING**



# What is a Subsidy?



1. Financial Contribution by the Government
2. Financial Benefit to Recipient
3. Financial Benefit is “Specific”

Government loans, tax holidays, tax deductions, duty exemptions for equipment, excessive duty drawback, government supplied goods and services

ALL INVOLVE FINANCIAL CONTRIBUTION BY GOVERNMENT AND BENEFIT TO RECIPIENT



# What is a Financial Contribution?



- a government practice involves a direct transfer of funds (grants, loans, equity infusion, debt forgiveness) or potential direct transfers of funds or liabilities (loan guarantees);
- government revenue which is otherwise due is not collected (tax credits, duty exemptions/refunds excessive duty drawback, accelerated depreciation);
- a government provides goods or services other than general infrastructure, or purchases goods;
- a government makes payments to a funding organization or entrusts or “directs” a private body to carry out one or more of the functions which are normally its responsibility.

Exporter must actually receive a benefit



# What is a “Specific” Subsidy?



Targeted at a particular industry, region or company(ies)

- Export-linked
- Companies that use domestic over imported goods
  - (both prohibited by WTO SCM agreement and per se specific)
- Strategic Industries
- Regions and Municipalities
  - This is both de facto and de jure
    - Manufacturing, mining, etc.
    - Industries whose machinery was imported
    - “Important technology”
    - Non objective criteria



# Subsidy Calculations



## EXAMPLES OF SUBSIDY CALCULATION

For the purpose of these examples, the following assumptions are made:

1. The investigation period is the year 1996
2. The interest rate, with an annual repayment period, is 25%
3. The depreciation period for machinery is five years
4. The import duty on machinery is 50%
5. The like product is called product , measured in MT
6. There are three producers in the exporting country; each exporting 100,000 MT per year. They are referred to as companies A, B and C
7. In all the examples, the amount of money is expressed in Euros.

Table 1

Import duty exemption on machinery — subsidy granted since 1990

Investigation period 1996 — depreciation period five years

Assuming ECU 1 million of machinery imported per year — duty rate 50 %

Amount allocated to each year	1990	1991	1992	1993	1994	1995	1996
Acquired in: 1990	0,2	0,2	0,2	0,2	0,2	—	—
1991		0,2	0,2	0,2	0,2	0,2	—
1992			0,2	0,2	0,2	0,2	0,2
1993				0,2	0,2	0,2	0,2
1994					0,2	0,2	0,2
1995						0,2	0,2
1996							0,2
Total	0,2	0,4	0,6	0,8	1,0	1,0	1,0
Subsidy amount	0,1	0,2	0,3	0,4	0,5	0,5	0,5
Duty rate 50 %							

The subsidy on machinery acquired in 1990 and 1991 has dropped out of the calculation for the investigation period (1996). The subsidy on machinery acquired in 1993 or after can continue to be countervailed until the allocation period expires.



Table 2

Illustrative table of subsidies to be expensed or allocated over time

EXPENSED SUBSIDIES	SUBSIDIES ALLOCATED OVER TIME
GRANTS	
Purpose is for other than purchase of fixed assets Recurring and/or small	→ Purpose is for purchase of fixed assets → Non-recurring and/or large → Recurring but granted in large, concentrated amounts
TAX BENEFITS/INDIRECT TAX REBATES/IMPORT DUTY EXEMPTIONS	
For operating expenses Benefits related to direct taxes	→ For purchase of/related to fixed assets (e.g. import duty/indirect tax exemption on machinery)

<b>EXPENSED SUBSIDIES</b>	<b>SUBSIDIES ALLOCATED OVER TIME</b>
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**PROVISION OF GOODS AND SERVICES**

Provision of services/consumable inputs ←	→ Provision of fixed assets and non-general infrastructure
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**RESEARCH & DEVELOPMENT <sup>(1)</sup>**

Expense only if allocation not appropriate ←	→ Presumption to allocate
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**LOSS COVERAGE**

**OPERATING COSTS**

Recurring and/or small ←	→ Non-recurring and/or large → Benefit goods not yet produced
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**INTEREST RATE SUBSIDIES <sup>(2)</sup>**

Interest subsidy payments made as loan payments become due ←	→ Subsidy is lump sum to offset past, present of future interest due or paid
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<sup>(1)</sup> This presumption is derived from the fact that R&D subsidies frequently benefit future production.

<sup>(2)</sup> In such a case, the subsidy is non-recurring.

EXPENSED SUBSIDIES	SUBSIDIES ALLOCATED OVER TIME
	EQUITY INFUSIONS
	LONG-TERM LOAN BENEFITS (benefits exist over life on loan)
	FORGIVENESS/ASSUMPTION OF LONG-TERM DEBT (including principal and interest)
SHORT-TERM LOAN BENEFITS	
EXPORT REBATES	
SUBSIDIES BELOW MINIMUM THRESHOLD SIZE (1 % of sales for any individual subsidy)	



# Subsidy Calculations



## Example 1 – Subsidies Granted Per Unit of Product

- Exporters of product X receive a rebate from the government on each MT exported.
- This rebate changes according to season. In the first half of the IP, when 200,000 MT were exported, the rebate amounted to 5 Euro/MT; in the second half of the IP, when 100,000 MT were exported, it rose to 20 Euros/MT.
- On a weighted average basis, the rebate was worth 10 Euros/MT during the IP. Since this is equivalent to a grant, the amount of subsidy is calculated by adding 25% interest, which gives a figure of 12.5 Euros/MT. This interest adjustment is adjusted based on the timing of the benefit.



# Subsidy Calculations



## **Example 2** -- Subsidies Expensed in Investigation Period

Company A - Allocation of export subsidies - company obliged to export all production

- Company A receives further benefits if it exports all the product X it produces. This is clearly an export subsidy as benefits are contingent upon export performance. Among other things, it receives an income tax exemption. During the IP, it produced and exported 100,000 MT. Assuming that it makes 4 million Euros profit on product X during the investigation period and the normal tax rate is 25%, the value of the exemption in total would be 1 million Euros which equates 10 Euros/MT. Since for calculation purposes the tax exemption has an equivalent effect to a cash grant, it is appropriate to add the 25% interest, which makes the value of the subsidy 12.5 Euros/MT



# Subsidy Calculations



## **Example 2** -- Subsidies Expensed in Investigation Period

Company A - Allocation of export subsidies - company obliged to export all production

- Company A also receives a government loan of 5 million Euros at 5% interest for the same project, and the normal commercial interest rate is 25%. Since the loan is repayable, the amount of subsidy would be the difference between the interest paid and the normal amount payable at commercial rates (i.e. 5 million Euros at 20%) = 1 million Euros for the IP. The subsidy is 10 Euros/MT. This subsidy will recur in future periods if the repayment period for the loan is more than one year; its exact amount will depend upon how much of the capital amount of the loan has been repaid.



# Subsidy Calculations



## **Example 3** – Allocation of subsidy - incremental increase in exports

- Company B, rather than being obliged to export all its production, benefits from being able to deduct from its taxable income 20% of profits made on its increase in export value. This is clearly an export subsidy, since it is contingent upon export performance, and should be allocated only over the export sales of the company. It is equivalent to a cash grant for the purpose of calculation.
- Company B produced 200,000 MT and increased its export sales from 50,000 to 100,000 MT in the investigation period, and the average export price was 160 Euro/MT. This equates to an increase in export value of  $50,000 * 160 \text{ Euro/MT} = 8 \text{ million Euro}$ , of which 2 million Euro was profit. 20% of 2 million Euro is 400,000 Euros. If the tax rate is 25%, the saving for the manufacturer is 100,000 Euros, or 1 Euro/MT. By adding 25% interest, we arrive at the value of the subsidy of 1.25 Euro/MT.



# Subsidy Calculations



## **Example 4** – Non-export - Allocation over total sales

Instead of receiving export subsidies, company C receives a production subsidy that is specific to the industry concerned and therefore countervailable. The subsidy is allocated over the total sales of the company, not just the exports.

- Company C produced and sold 200,000 MT of product X, 100,000 on the domestic market and 100,000 for export, in the investigation period. In calculating the amount of subsidy in the case of domestic subsidies, only the total sales volume, not the exports, is relevant.
- Therefore, if the company in question obtained an income tax exemption and made 4 million Euros profit in the investigation period, the normal tax rate being 25%, the tax saving of 1 million would be allocated over 200,000 units, giving a subsidy of 5 Euro/MT plus 25% interest = 6.25 Euros/MT.





# Subsidy Calculations



## **Example 6** -- Grant for purchase of machinery (fixed assets)

Company A is given a non-recurring grant of 5 million Euros to purchase machinery used to produce the product for export. The benefit of such a subsidy is spread over the normal depreciation period for such fixed assets. Assuming this to be five years for the industry involved, the annual amount attributed to one year (and thus the investigation period) would be 1 million Euros, which equates to 10 Euros/MT.



# Subsidy Calculations



## **Example 6** -- Grant for purchase of machinery (fixed assets)

- Of course, in reality, a lump sum of 5 million Euros is of far greater value to a company than five annual grants of 1 million Euros each. In order to reflect the full benefit to the recipient, the face amount of 10 Euros/MT has to be increased by the average annual amount of interest that the firm could earn from the non-depreciated amount of the grant over the five-year allocation.
- For example, in year 1, this amount would be 5 million Euros.  $25\% = 1,25$  million Euros; in year 5, it would be 1 million Euros.  $25\% = 0.25$  million. Over the period as a whole, the average annual amount of interest would be 0,75 million Euros, equivalent to 7.5 Euros/MT.
- Therefore the amount of subsidy for each of the five years is:
- 10 Euros (face amount) plus 7.5 Euros(accumulated interest) = 17.5 Euros/MT. This amount can continue to be countervailed for a further four years.



# Subsidy Calculations



## Example 7 - Import duty exemption on machinery (fixed assets)

If the subsidy dates back before the investigation period, the annual value of benefits accruing from previous years within the depreciation period can be added. In the example below, company A has been granted import duty exemption on machinery since 1990. Since machinery is in no way consumed in the production process of the final product, the subsidy is countervailable. For calculation purposes, the amount of duty foregone is equivalent to a grant.

- Assuming that the IP is 1996 and that it imports 1 million Euros of machinery each year, the amount allocated to the investigation period will be 500,000 Euros, equivalent to 5 Euros/MT. The amount of the subsidy, including 25% interest, is 6.25 Euros/MT.



# Subsidy Calculations



## Other Examples –

- Duty Drawback/Exemption on Raw Materials
  - Focus on operation of customs management and whether the import duty exemptions are limited only to inputs used to produce goods for export.
    - If management is found insufficient, full amount of import duties exempted can be deemed a subsidy and treated as a grant. *Fasteners*
    - If management is sufficient, then only amount of excessive duty exempted is deemed to be a subsidy and treated as a grant. *Plastic Bags*
- Accelerated Depreciation – difference between tax paid and tax payable, a grant
- Debt Forgiveness – amount not collected, a grant
- Revenue Foregone – amount not collected, a grant
- Loan Guarantees – difference between amount paid to secure loan and amount that commercial lenders would have required



# Subsidy Calculations



## Other Examples –

- Provision of Goods and Services by Government – difference between amount paid and
  - Amount paid by other customers or
  - Cost + reasonable profit
  - This is a grant
- Purchase of Goods by Government -- difference between amount paid and
  - Amount paid by other customers or
  - Cost + reasonable profit
  - This is a grant
- Government provision of equity capital
  - Market price for equity or
  - All or part of equity (depending on whether the government has met the private investor standard)
  - This is a grant



# Subsidy Calculations



Total amount of subsidy (ecu per tonne)

Example	Company A	Company B	Company C
1	12,5	12,5	12,5
2	22,5	—	—
3	—	1,25	—
4	—	—	6,25
5	25,0	25,0	25,0
6	17,5	—	—
7	6,25	—	—
Total	83,75	38,75	43,75



# Subsidy Calculations



(a) If the amount of subsidy is less than the injury margin, this amount should normally form the basis of the countervailing duty. The countervailing duty is collected at the time of the entry into free circulation of the goods and can be either:

i) a specific duty, i.e. an amount per MT, which in the above case would be:  
Company A: 83.75 Euros, company B: 38.75 Euros and company C: 43.75 Euros;

(ii) an ad valorem duty, expressed as a percentage of the CIF import price before duty.

If, in the above case, the cif unit price was 180 Euro/MT, the ad valorem duty would be:

- Company A: 46.5%, company B: 21.5% and company C: 24.3%.
- The amount is rounded down to one decimal place.

(b) Of course, the duty will be limited by the injury margin, if the latter is lower than the subsidy amount.

(c) Also de minimis levels of 1% and 2%.



# What is a Non Market Economy?



- Country where it is impossible to distinguish between the State and the Private Sector:
  - China 
  - Vietnam 
  - Cuba 
  - North Korea 
  - Laos 
- Market prices and costs are not usable, so must construct a comparison price – ie the entire country is not in “ordinary course of trade”
- Dumping analysis based on hypothetical prices and costs from a country “like” the target country
- Calculated rates can vary wildly





# Can a Non Market Economy Subsidize Its Industry?



- REMEMBER: Non-Market Economy is where State and Private Sector are Commingled.
  - So how can one calculate the benefit received by the company? What is a subsidy in a non-market economy?
  - Export-related vs domestic subsidies
    - Investment incentives?
    - Duty/VAT refunds?
    - “Preferential” loan rates?



# Coated Paper (2011)



- Government direction of loans to industry
  - Reduced income taxes for hi-tech industry
  - Preferential taxes for R&D
  - Dividend exemption
  - VAT/duty exemption on imported equipment
  - VAT rebate on domestic equipment
  - Exemptions on local taxes
  - Special funds
  - Less Than Adequate Remuneration
    - Land use rights
- No discussion of raw materials (big issue in US)



# General Procedure



## Importing Country

- 1st step: Domestic industry will complain that subsidized imports are causing injury.
- 2nd step: Authorities will examine domestic industry's complaint.
- 3rd step: If sufficient *prima facie* evidence in complaint, authorities will initiate investigation.



# General Procedure



Investigation will verify 3 key elements of subsidization, injury and causation before measures imposed.

## Exporting Country now involved

- 4th step: When investigation is initiated, notification made to (i) government of exporting country, (ii) named exporters.
- Opportunity for consultation – real or pro forma?
- 5th step: Detailed information on price, costs etc. requested from the exporter, in order to determine subsidization.

**(All subject to on-site inspection by importing country govt)**



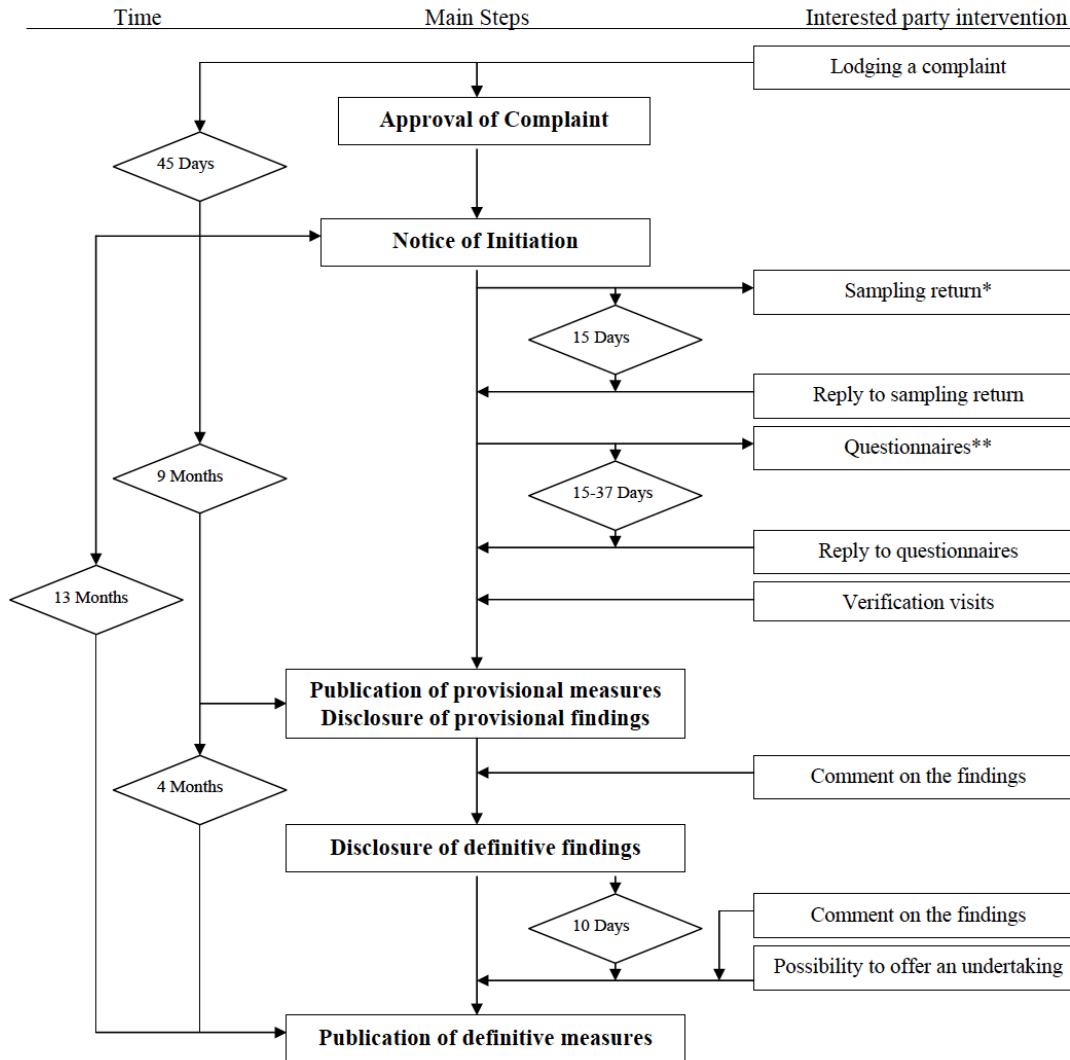
# General Procedure



- 6th step: Assuming dumping/subsidization, injury and causation found, CVD measures imposed. Can be in form of (i) CVD duty; or (ii) price undertaking  
  
(Pts of note:
  - Findings: Preliminary vs Final
  - Opportunity for interested parties to present views)
  - Retroactive duties possible but not yet applied
  - Non-cumulation of AD and CVD measures
- 7th step: Opportunity for independent judicial review of authorities' findings.



# AS Procedural Flow



\* Sampling may be applied where the number of complainants, exporters and importers is large in order to limit the investigation to a reasonable number of parties.

\*\* Questionnaires to exporters, EU producers, importers and EU users. Deadline for reply is minimum 37 days.



# EU AS on Thailand



- **BOI Investment Promotion Zone 3**
  - Exemption from import duty on machinery
  - Exemption from or reduction of corporate income tax
  - Double deduction from taxable income of transportation
  - Electricity and water costs
  - Exemption from import duty on raw materials used in the manufacturing for export
  
- **Industrial Estate Authority of Thailand**
  - Exemption from import duty on raw materials
  - Exemption from import duty on machinery



# EU AS on Thailand



- Purified terephthalic acid (PTA) and its salts (2009)
- Plastic sacks and bags (2005)
- Polyethylene terephthalate (PET) (1999)
- Stainless steel fasteners (1999)
- Synthetic polyester fibers (1999)
- Ball bearings (1993)



**EUROPEAN COMMISSION**

Directorate-General for Trade

Directorate B - Trade defence

Trade defence instruments: Investigations II



- LIMITED VERSION\*
- VERSION OPEN FOR CONSULTATION BY INTERESTED PARTIES  
(tick box as appropriate)

**ANTI-SUBSIDY QUESTIONNAIRE**

**INTENDED FOR:** Producers and/or Exporters to the European Community

**Of:** Certain plastic sacks and bags

**ORIGINATING IN:** Thailand

**INVESTIGATION PERIOD (IP):** 1 April 2004 to 31 March 2005

**STATUTORY REFERENCE:** Council Regulation (EC) No 2026/97

**REGULATORY REFERENCE:** Notice of Initiation OJ C159 of 30 June 2005

**REGISTRATION NUMBER OF PROCEEDING:** AS 498

**DUE DATE OF QUESTIONNAIRE RESPONSE:**

Within 37 days from the date of the notification of the inclusion in the sample

**OFFICIALS IN CHARGE:**

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**PLEASE NOTE THAT THIS QUESTIONNAIRE HAS TO BE COMPLETED TWICE, ONCE AS A LIMITED VERSION AND ONCE AS A VERSION OPEN FOR CONSULTATION BY INTERESTED PARTIES**

\* Please note that confidential information falls under the term 'Secret' according to the internal rules of the European Commission. Hence, only documents labelled 'Secret' are considered confidential documents pursuant to Article 29 of Council Regulation (EC) No 2026/97 (OJ L 288, 31.10.1997). Therefore, any replies which contain confidential information must be labelled 'Limited'.



# Questionnaire Structure (Govt)



- **Section A** General instructions for completing the questionnaire
  - IP 12 calendar months prior to quarter of filing of petition
- **Section B** Product concerned
  - Scope Determined by investigating agency
- **Section C** General questions
  - Identities of all known exporters
  - State ownership or interest in exporters
  - Explanation of tax system
  - Identities of government agencies
  - Government coordinating body



# Questionnaire Structure (Govt)



- **Section D I. Subsidies : General**
  - Overall explanation of investment promotion
  - Documentation
  - Which industries qualify for programmes
  - How does programme operate
    - On BOI, major focus on operation of customs management and whether the import duty exemptions are limited only to inputs used to produce goods for export.
    - If management is found insufficient, full amount of import duties exempted can be deemed a subsidy. *Fasteners*
    - If management is sufficient, then only amount of excessive duty exempted is deemed to be a subsidy. *Plastic Bags*



# Respondent Selection



- Notice in Official Journal
  - Self-identification
  - Sampling questionnaire
    - Identity
    - Nature of company
    - Affiliates
    - Quantity and value
- Selection based on largest quantity
  - But if AD also involved, may also select exporters with domestic sales
  - Consultation with exporters, government and association(?)



# Questionnaire Structure (Exporter)



- INTRODUCTION
- SECTION A - GENERAL INFORMATION
  - A - 1 Identity
  - A - 2 Legal representative
  - A - 3 Corporate information
  - A - 4 General accounting information
- SECTION B - PRODUCT DESCRIPTION
  - B - 1 Scope of the investigation
  - B - 2 Specifications of the product concerned
  - B - 3 Comparison of export and domestic products



# Questionnaire Structure (Exporter)



- SECTION C - OPERATING STATISTICS – 3 YRS
  - C - 1 Turnover
  - C - 2 Income statement
  - C – 3 Total quantity and value of sales
  - C - 4 Production and capacity statistics
  - C - 5 Stocks
  - C - 6 Employment
  - C - 7 Investments
- SECTION D – EXPORT SALES OF THE PRODUCT CONCERNED TO THE EUROPEAN COMMUNITY
  - D – 1 General Information
  - D – 2 Sales to EU customers – 1 year IP



# Questionnaire Structure (Exporter)



- SECTION E –SUBSIDIES
  - I. Subsidies : General
  - II. Specific Subsidy Programmes
    - Imports of machinery over 10 year period
    - Imports of raw materials and consumables over IP
    - Corporate tax computation for year in IP
    - Purchase of electricity in IP
  - Any other programs – EU can investigate programs not alleged by petitioners but pf which it becomes aware



# Questionnaire Structure (Exporter)



- SECTION G – COMPUTERISED INFORMATION REQUIRED
  - G – 1 General instructions for computer files
  - G – 2 Format for product description
  - G – 3 File formats of European Community export sales
- SECTION H – CHECK LIST
- ANNEX I
- QUESTIONNAIRE FOR COMPANIES WHICH ARE RELATED TO THE EXPORTER





# Verification



- **Government entities (3-4 days)**
  - Ministry of Commerce – overview of investment programs
  - Ministry of Finance – income tax and VAT overview
  - Bank of Thailand – interest rates
  - Board of Investment – IPA
  - Customs – import duty exemptions and administration
  - EGAT -- electricity
  - Industrial Estate Authority data)
- Exporters not present during verification



# Verification



- Exporters (1-2 days each)
  - Corporate overview
  - Sales to EU
    - Reconciliation
    - T by T
  - Subsidy Usage (cross-reference with government data)
  - Thai government officials may be present



**THANK YOU!**

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