

**UNITED STATES – MEASURES RELATING TO SHRIMP FROM THAILAND**

Notification of an Appeal by Thailand  
under Article 16.4 and Article 17 of the Understanding on Rules  
and Procedures Governing the Settlement of Disputes (DSU),  
and under Rule 20(1) of the Working Procedures for Appellate Review

The following notification, dated 17 April 2008, from the Delegation of Thailand, is being circulated to Members.

1. Pursuant to Article 16.4 and Article 17 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (the "DSU") and Rule 20 of the Appellate Body's *Working Procedures for Appellate Review*, Thailand hereby notifies its decision to request the Appellate Body to review certain issues of law covered in the report of the Panel in *United States – Measures Relating to Shrimp from Thailand* (WT/DS343/R) (the "Panel Report") and certain legal interpretations developed by the Panel therein.

2. Thailand seeks review by the Appellate Body of the following issues of law and legal interpretations of the provisions of the *General Agreement on Tariffs and Trade 1994* (the "GATT 1994") and the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* (the "Anti-Dumping Agreement"):

- (a) The Panel's interpretations of the phrase "pending final determination of the facts in any case of suspected dumping" in paragraph 1 of the Ad Note to Articles VI:2 and 3 of the GATT 1994 to mean that (i) a case of "suspected dumping" may continue to exist even after the imposition of definitive anti-dumping measures, (ii) the "final determination" in a case of suspected dumping refers not to the decision to impose definitive anti-dumping measures following an investigation conducted in accordance with Article 5 of the *Anti-Dumping Agreement* but instead only to the review of the final amount of liability for duties in a subsequent review proceeding conducted under Articles 9.3.1 or 9.3.2 of the *Anti-Dumping Agreement*, and (iii) the Ad Note therefore authorises Members to require security following the imposition of definitive anti-dumping measures (see paragraphs 7.88-7.130 of the Panel Report). These interpretations are in error and are based on erroneous findings on issues of law and related legal interpretations. Properly interpreted, the Ad Note applies only to measures imposed prior to a finding of dumping and injury that leads to the imposition of definitive anti-dumping measures (e.g., a U.S. anti-dumping order) and, as such, is governed by the provisions of Article 7 of the *Anti-Dumping Agreement* regarding provisional measures.

- (b) As a consequence of its interpretation that the Ad Note to Article VI is not temporally limited in scope (see issue (a) above), the Panel's conclusion that Article 18.1 of the *Anti-Dumping Agreement* permits, in addition to the actions previously identified by the Appellate Body (provisional measures, price undertakings or definitive duties), specific action against dumping in the form of security (cash deposits or bonds) based on a determination of likely future dumping margins (see, in particular, paragraphs 7.97-98 and paragraphs 7.138-141 of the Panel Report). This conclusion is in error and is based on erroneous findings on issues of law and related legal interpretations. Properly interpreted, Article VI and Article 18.1 of the *Anti-Dumping Agreement* permit only action against dumping in the form of provisional measures, definitive duties, and price undertakings, and nothing in Article 18.1 or Article VI, including the Ad Note, authorises additional specific action against dumping on the basis of likely future dumping margins.
- (c) The Panel's interpretations that (i) monies collected by the United States as cash deposits of estimated anti-dumping duties on importation of goods subject to definitive anti-dumping measures within the meaning of Article 9.1 of the *Anti-Dumping Agreement* in the form of a U.S. anti-dumping order are not anti-dumping "duties" within the meaning of the *Anti-Dumping Agreement* and that (ii) these cash deposits of estimated anti-dumping duties collected at the time of importation are not subject to the requirement set out in Article 9.1 and the *chapeau* of Article 9.3 of the *Anti-Dumping Agreement* that the amount of such duties may not exceed the margin of dumping established in accordance with Article 2 of the *Anti-Dumping Agreement* (see paragraphs 7.111-7.122 of the Panel Report). These interpretations are in error and are based on erroneous findings on issues of law and related legal interpretations. Cash deposits of estimated anti-dumping duties collected at importation pursuant to a definitive anti-dumping measure imposed under Article 9 of the *Anti-Dumping Agreement* are anti-dumping duties within the meaning of Article 9 of the *Anti-Dumping Agreement* and may not, therefore, exceed the most recently-determined actual margin of dumping.
- (d) Conditionally, in the event that the Appellate Body upholds the Panel's legal interpretations on issue (a) above, Thailand also seeks review of the Panel's interpretation of the Ad Note to Article VI to mean that an assessment of the reasonableness of security required pursuant to the Ad Note does not involve or require any consideration of the risk of default or non-payment of anti-dumping duties by individual importers of goods subject to anti-dumping measures (see footnote 184 to paragraph 7.142 of the Panel Report). This interpretation is in error and is based on erroneous findings on issues of law and related legal interpretations.
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