

UNITED STATES – ANTI-DUMPING MEASURE ON SHRIMP FROM ECUADOR

Agreement on Procedures between Ecuador and the United States

The following communication, dated 20 October 2006, from the delegation of Ecuador and the delegation of the United States to the Chairman of the Dispute Settlement Body, is circulated at the request of those delegations.

On 27 November 2005, the Government of Ecuador requested consultations with the United States (hereinafter "the Parties") under Article 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"), Article XXII of the *General Agreement on Tariffs and Trade 1994* ("GATT 1994"), and Article 17 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* ("Anti-Dumping Agreement"), with respect to anti-dumping measures on shrimp from Ecuador. WT/DS335/1 (21 November 2005). Consultations were held on 31 January 2006 and on several occasions thereafter. These consultations have enabled the Parties to agree on the following procedures for purposes of this dispute:

1. Ecuador requested the establishment of a panel in this dispute by filing its request for the establishment of a panel on 8 June 2006 (WT/DS335/6). A copy of Ecuador's panel request is attached to this agreement. The DSB established a panel on 19 July 2006.
2. The Parties will cooperate to enable the panel to circulate its report as quickly as possible in light of the requirements of the DSU. To that end, the Parties will work expeditiously to reach agreement on expedited working procedures that they will jointly ask the panel to adopt, and that will allow for the adoption of the panel report by the DSB no later than 31 October 2006. That agreement will include a request that the Parties file only one written submission each, and that the panel forego meetings with the Parties or, at most, have only one such meeting. The Parties also agree to share with each other drafts of their respective written submissions prior to submitting them to the panel and to take all reasonably available steps to expedite the proceeding.
3. The United States will not contest Ecuador's claim that the measures identified in the attached request for the establishment of a panel are inconsistent with Article 2.4.2, first sentence, on the grounds stated in *United States – Final Dumping Determination on Softwood Lumber from Canada*, WT/DS264/AB/R, Report of the Appellate Body adopted 31 August 2004.
4. Ecuador will not request that the panel suggest, pursuant to Article 19.1, second sentence, of the DSU, ways in which the United States could implement the panel's recommendations.
5. Provided that the panel's finding is limited to a finding that one or more of the challenged measures is inconsistent with Article 2.4.2, first sentence, of the Anti-Dumping Agreement, the Parties agree that, pursuant to Article 21.3(b) of the DSU, the reasonable period of time for bringing

each such measure into conformity with the Anti-Dumping Agreement will be six months, beginning on the date on which the DSB adopts the panel report.

6. Subject to the consultation requirements of section 129(b) of the Uruguay Round Agreements Act ("URAA"), 19 U.S.C. § 3538(b), the United States will use section 129(b) to recalculate margins of dumping (subject to the exclusion of Exportadora de Alimentos S.A. in paragraph 8, below) and to issue a new determination in order to render the anti-dumping measures on shrimp from Ecuador not inconsistent with the findings of the panel. If any such recalculation that is performed under section 129(b) results in a change in a cash deposit rate for the anti-dumping measures on shrimp from Ecuador, the new cash deposit rate will have prospective effect only, taking effect no sooner than the date on which the United States Trade Representative directs the United States Secretary of Commerce to implement its recalculation of the margins and new determination, as set forth in section 129(c)(1) of the URAA, 19 U.S.C. § 3538(c)(1).

7. The Parties also mutually understand that the scope of Ecuador's request for the establishment of a panel does not include any claim regarding the margin of dumping calculated for Exportadora de Alimentos S.A. The Parties agree that they will inform the panel in their written submissions, whether made jointly or separately, that they are seeking findings consistent with this understanding. Accordingly, implementation would not involve a recalculation of the margin of dumping for Exportadora de Alimentos S.A., to the extent that the findings of the panel are consistent with the Parties' understanding.

For Ecuador

For the United States

(signed)
Eva Garcia Fabre
Ambassador

(signed)
Peter F. Allgeier
Ambassador

ANNEX

**WORLD TRADE
ORGANIZATION**

WT/DS335/6

9 June 2006

(06-2790)

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UNITED STATES – ANTI-DUMPING MEASURE ON SHRIMP FROM ECUADOR

Request for the Establishment of a Panel by Ecuador

The following communication, dated 8 June 2006, from the delegation of Ecuador to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

Upon the instruction of my authorities, I hereby convey the request of the Government of Ecuador for the establishment of a panel under Article XXIII of the General Agreement on Tariffs and Trade 1994 ("GATT 1994"), Articles 4 and 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU"), and Article 17 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("Anti-Dumping Agreement") regarding certain measures imposed by the United States, as further described below.

A. Consultations

On 17 November 2005, the Government of Ecuador requested consultations with the Government of the United States under Article 4 of the DSU, Article XXII of the GATT 1994, and Article 17 of the Anti-Dumping Agreement concerning anti-dumping measures involving Certain Frozen Warmwater Shrimp from Ecuador, Inv. no. A-331-802. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Ecuador, 69 Fed. Reg. 76913, 23 December 2004, and Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from Ecuador, 70 Fed. Reg. 5156, 1 February 2005.

Consultations were held on 31 January 2006 and on several occasions thereafter. These consultations provided helpful clarifications, but have not completely resolved the dispute.

B. Summary of the Facts

The United States initiated its anti-dumping investigation against certain frozen warmwater shrimp from Ecuador on 27 January 2004. See 69 Fed. Reg. 3876. The DOC conducted its investigation of the extent of dumping under the statutory authority provided by the Tariff Act of 1930, as amended, 19 U.S.C. § 1673, et seq., and under the regulatory authority provided in 19 C.F.R. Part 351. As noted above, the DOC published its final margin determination on 23 December 2004. Following a final affirmative determination of material injury by the US International Trade Commission (70 Fed. Reg. 3943, 27 January 2005), the DOC published its amended final margin determination and anti-dumping duty order on 1 February 2005. The DOC's final margin

determination and amended final margin determination, as well as its anti-dumping duty order, reflected and contained anti-dumping margins that were calculated by using "zeroing."

The DOC's "zeroing" of negative anti-dumping margins in anti-dumping investigations more specifically means the following: (1) different "models," i.e., types, of products are identified using "control numbers" that specify the most relevant product characteristics; (2) weighted average prices in the U.S. and weighted average normal values in the comparison market are calculated on a model-specific basis for the entire period of investigation; (3) the weighted average normal value of each model is compared to the weighted average U.S. price for that same model; (4) to calculate the dumping margin for an exporter, the amount of dumping for each model is summed and then divided by the aggregated U.S. price for all models; (5) before summing the total amount of dumping for all models, all negative margins on individual models are set to zero. Through this method, the DOC calculates margins of dumping and collects anti-dumping duties in amounts that exceed the actual extent of dumping by the investigated companies.

The DOC used zeroing in determining the final anti-dumping margins for the two Ecuadorian exporters for which anti-dumping margins above the 2 per cent *de minimis* level were calculated in both the final and the amended final affirmative determination of sales at less than fair value in the investigation of Certain Frozen Warmwater Shrimp from Ecuador cited above, as well as for "all other" Ecuadorian exporters that were not separately investigated. The DOC's unpublished Issues and Decision Memorandum, dated 23 December 2004, as well as other documents contained in the administrative record of the investigation, including computer programs, describe in more detail the DOC's use of zeroing in the Ecuadorian shrimp investigation.

The DOC's use of zeroing in the Ecuadorian shrimp investigation appears to be similar or identical to the investigation method that was held to be inconsistent with the Anti-Dumping Agreement in *United States – Final Dumping Determination on Softwood Lumber from Canada* (Panel Report, WT/DS264/R, and Appellate Body Report, WT/DS264/AB/R, adopted 31 August 2004), and in *United States – Laws, Regulations and Methodology for Calculating Dumping Margins ("Zeroing")* (Panel Report, WT/DS294/R, and Appellate Body Report, WT/DS294/AB/R, adopted 9 May 2006).

C. Measures and Claims

The DOC's Final Determination, the DOC's Amended Final Determination, and the DOC's anti-dumping duty order applied zeroing in its investigation of Certain Frozen Warmwater Shrimp from Ecuador (referred to collectively below as the "measures"). The use of zeroing in each of these measures to calculate the margins of dumping for the two exporters with margins above *de minimis* and "all other" exporters is inconsistent with the obligations of the United States under the Anti-Dumping Agreement. Specifically, Ecuador considers that the measures are inconsistent with the first sentence of Article 2.4.2 of the Anti-Dumping Agreement.

The foregoing paragraph is provided without prejudice to any arguments that the Government of Ecuador may develop and present to the panel regarding the WTO-inconsistency of the measures at issue.

D. Request

Ecuador requests, pursuant to Article 6 of the DSU and Article 17.4 of the Anti-Dumping Agreement, that the Dispute Settlement Body establish a panel to examine this matter, with the standard terms of reference set out in Article 7.1 of the DSU. Ecuador asks that its request be placed on the agenda for the next meeting of the Dispute Settlement Body to be held on 19 June 2006.
