

# WORLD TRADE ORGANIZATION

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## UNITED STATES – ANTI-DUMPING MEASURES ON SHRIMP FROM THAILAND

### Request for Consultations by Thailand

The following communication, dated 24 April 2006, from the delegation of Thailand to the delegation of the United States and to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

My authorities have instructed me to request consultations with the United States pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (the "DSU"), Article XXII:1 of the General Agreement on Tariffs and Trade 1994 (the "GATT") and Articles 17.2, 17.3 and 17.4 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the "AD Agreement") with respect to certain issues relating to the final anti-dumping measures imposed by the United States on imports of certain frozen warmwater shrimp from Thailand.

On 27 January 2004, pursuant to section 732 of the Tariff Act of 1930, as amended (the "Act"), the United States initiated an anti-dumping investigation in respect of certain frozen and canned warmwater shrimp imported from Thailand and several other countries.<sup>1</sup> On 28 July 2004, pursuant to section 733 of the Act, the United States preliminarily determined that certain frozen and canned warmwater shrimp from Thailand were being dumped in the United States (the "Preliminary Determination").<sup>2</sup> On 23 December 2004, the United States published a final determination that frozen and canned warmwater shrimp from Thailand were being dumped in the United States (the "Final Determination").<sup>3</sup> Following a determination by the US International Trade Commission that the US domestic industry was materially injured by imports of frozen warmwater shrimp from Thailand but that there was no injury or threat thereof to the US domestic industry regarding imports of canned warmwater shrimp from Thailand, the United States published an amended final determination of dumping and an anti-dumping duty order imposing definitive anti-dumping duties

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<sup>1</sup> *Initiation of Antidumping Duty Investigations: Certain Frozen and Canned Warmwater Shrimp from Brazil, Ecuador, India, Thailand, the People's Republic of China and the Socialist Republic of Vietnam*, 69 Fed. Reg. 3876 (27 January 2004).

<sup>2</sup> *Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Negative Critical Circumstances Determination: Certain Frozen and Canned Warmwater Shrimp from Thailand*, 69 Fed. Reg. 47100 (4 August 2004).

<sup>3</sup> *Notice of Final Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from Thailand*, 69 Fed. Reg. 76918 (23 December 2004).

only on imports of certain frozen warmwater shrimp from Thailand (the "Amended Final Determination").<sup>4</sup>

Thailand requests consultations on the United States' application in the Preliminary, Final and Amended Final Determinations of the practice known as "zeroing" negative dumping margins, the effect of which was artificially to create margins of dumping where none would otherwise have been found or, at a minimum, to inflate margins of dumping and the consequent imposition of definitive anti-dumping measures on imports of certain frozen warmwater shrimp from Thailand. The United States' practice of "zeroing" has, in the rulings of the Appellate Body in *United States – Final Dumping Determination of Softwood Lumber from Canada*<sup>5</sup> and *United States – Laws, Regulations and Methodology for Calculating Dumping Margins ("Zeroing")*,<sup>6</sup> previously been found to be inconsistent with the AD Agreement. Thailand considers that through its use of "zeroing", the United States failed to make a fair comparison between the export price and the normal value, and calculated distorted margins of dumping, therefore violating Articles 1, 2.1, 2.4, 2.4.2, 3.1, 3.2, 3.3, 3.4, 3.5, 5.8, 9.2 and 9.3 of the AD Agreement, as well as GATT Articles II, III, VI:1 and VI:2.

In addition, the United States has imposed on importers of frozen warmwater shrimp from Thailand a requirement to maintain a continuous bond in the amount of the anti-dumping duty margin multiplied by the value of imports of frozen warmwater shrimp imported by the importer in the preceding year. This bond requirement was imposed pursuant to the U.S. Customs and Border Protection ("CBP") agency's Amendment to Bond Directive 99-3510-004 for Certain Merchandise Subject to Antidumping/Countervailing Cases, dated 9 July 2004 (the "Amendment"). Prior to the adoption of this Amendment, importers of goods subject to US anti-dumping or countervailing duties were required to maintain a minimum bond only in the amount of 10 per cent of the duties, taxes and fees paid by the importer on the subject merchandise in the previous year. In addition, the Amendment appears to selectively apply the new bond requirement solely to certain agriculture/aquaculture goods.

The new continuous bond requirement set forth in the Amendment is being applied to all US imports of frozen warmwater shrimp from Thailand that are subject to anti-dumping duties. As a result, importers of these goods must pay not only a cash deposit of estimated anti-dumping duties equal to the margin of dumping determined by the United States, but must also incur significant additional costs to obtain and maintain a continuous bond in the amount described above for each year's imports until the final assessment of anti-dumping duties on that year's imports. Because the amount of final anti-dumping duty liability may not be established until after the completion of an annual administrative review of the margins of dumping – the first of which, including any judicial appeals, may not be completed until up to five years after the imposition of the anti-dumping duties – the bond for each year's imports may have to be maintained for as long as five years. Thailand is of the view that these measures raise the cost of importing frozen warmwater shrimp from Thailand into the United States to prohibitive levels and that they are not necessary to secure compliance with the United States' anti-dumping laws.

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<sup>4</sup> Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: *Certain Frozen Warmwater Shrimp from Thailand*, 70 Fed. Reg. 5145 (1 February 2005).

<sup>5</sup> Appellate Body Report, *United States – Final Dumping Determination of Softwood Lumber from Canada*, WT/DS264/AB/R (adopted 31 August 2004).

<sup>6</sup> Appellate Body Report, *United States – Laws, Regulations and Methodology for Calculating Dumping Margins ("Zeroing")*, WT/DS294/AB/R (18 April 2006) (not yet adopted).

Thailand therefore also requests consultations on this continuous bond requirement as such and on its application to imports of frozen warmwater shrimp from Thailand. Thailand considers that the continuous bond requirement and its application to imports of frozen warmwater shrimp from Thailand may be inconsistent with Article 18.1 of the AD Agreement, in that they constitute specific action against dumping not in accordance with the provisions of the GATT as interpreted by the AD Agreement, including Article VI:2 and the Ad Article thereto. In addition, Thailand considers that the continuous bond requirement as such and its application to imports of frozen warmwater shrimp from Thailand may be inconsistent with the provisions of Articles 7.1, 7.2 and 7.5 of the AD Agreement regarding the imposition of provisional measures and with Articles 2, 9.2, and 9.3 of the AD Agreement regarding the imposition and collection of anti-dumping duties.

Thailand also considers that the continuous bond requirement as such and its application to imports of frozen warmwater shrimp from Thailand may be inconsistent with Articles I:1, II, III, XI:1, and XIII:1 of the GATT and may not be justified under Article XX(d) of the GATT.

Thailand considers that the foregoing actions, methodologies, calculations, comparisons and determinations made by the United States cannot be reconciled with Articles I, II, III, VI, XI and XIII of the GATT, and Article 1 and the other specific provisions of the AD Agreement cited above. Thailand reserves the right to raise issues relating to other aspects of the Preliminary, Final and Amended Final Determinations and the continuous bond requirement during the course of the consultations.

Thailand looks forward to receiving your reply to this request at your earliest convenience. I propose that the date and venue of these consultations be agreed between our two missions.

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