

**ANNEX B**

**EXECUTIVE SUMMARIES OF THE SECOND WRITTEN SUBMISSION  
OF THE PARTIES**

<b>CONTENTS</b>		<b>PAGE</b>
Annex B-1	Executive Summary of the Second Written Submission of the United States	B-2
Annex B-2	Executive Summary of the Second Written Submission of Thailand	B-10

**ANNEX B - 1**

**EXECUTIVE SUMMARY OF THE SECOND WRITTEN SUBMISSION OF  
THE UNITED STATES**

(9 July 2007)

**1. The Additional Bond Amount Constitutes "Reasonable Security" Within the Meaning of the Ad Note to GATT 1994 Articles VI:2 and VI:3.**

1. A central question before this Panel is whether any provisions of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("AD Agreement") or the GATT 1994 govern a security requirement for the payment of an anti-dumping duty assessed after an order has been imposed, such as that contemplated by the enhanced bond directive. As the United States has demonstrated in its previous submissions, the Ad Note to Article VI is the sole provision that specifically limits security requirements of this type.

2. As the United States has explained in previous submissions, the "final determination of the facts" in the Ad Note refers to the determination of the facts with respect to the "*payment* of anti-dumping or countervailing duty." In the context of a retrospective duty assessment system, the "determination of the final liability for payment of anti-dumping duties", referenced in Article 9.3.1, must be made in order for the facts with respect to payment to be determined. Thus, the "final determination of the facts" in the Ad Note follows an assessment review as described in Article 9.3.1.

3. This interpretation is consistent with the immediate context in which the phrase appears. The Ad Note refers to "security for payment" and "other cases in customs administration" – in other cases in customs administration, security for payment of duties is required upon entry when the actual amount of liability is not known, and this security is required until the duties are finally assessed and paid. It is also consistent with GATT 1994 Article VI:2 and 3, the provisions to which the Ad Note is appended, and the AD Agreement. GATT 1994 Article VI:2 and 3 address "levy[ing]" anti-dumping and countervailing duties. In the AD Agreement, the term "levy" refers to "the definitive or final legal assessment or collection of a duty or tax." The "final determination" referenced in the Ad Note thus pertains to security pending final legal assessment of duties – an event that in a retrospective duty assessment system does not normally occur until after the completion of the assessment review.

4. The context provided by the AD Agreement also supports this interpretation of the Ad Note. AD Agreement Article 9.2 allows Members to collect anti-dumping duties "in the appropriate amounts in each case." Article 9.3 states that "[t]he amount of the anti-dumping duty shall not exceed the margin of dumping as established under Article 2." The "margin of dumping" established following the assessment review described in Article 9.3.1 is a margin of dumping "as established under Article 2" – meaning, a margin of dumping calculated in accordance with the general requirements of Article 2. Thailand is thus incorrect in asserting that this means a "margin of dumping" from the investigation proceeding. The cash deposit and bond secure payment of this amount of duty and ensure that the United States is able to collect duties in that amount, in accordance with Article 9.2. Article 9.3.1 additionally makes clear that "final" liability for payment of anti-dumping duties occurs at the end of an assessment period – the terminology used therein coincides with the reference to the "final" determination of the facts with respect to "payment" in the Ad Note, further supporting the view that the Ad Note addresses security pending completion of assessment.

5. Finally, it should be noted that, as the United States explained in its Responses to Panel Questions, this interpretation is consistent with the manner in which the United States administered its anti-dumping law at the time the Ad Note was negotiated. The Anti-Dumping Act, 1921, established a retrospective duty assessment system, whereby assessment or appraisal of anti-dumping duties

was withheld pending the determination of whether and to what extent dumping had occurred on individual transactions subject to an anti-dumping "finding." The Anti-Dumping Act, 1921, also included provisions for security pending final assessment, which prior to enactment of the Trade Agreements Act of 1979 was usually required in the form of "a bond equal to the estimated value of the merchandise."

6. In an effort to demonstrate that a provision other than the Ad Note, and a standard other than "reasonable security", applies for purposes of determining whether the additional bond amounts required pursuant to the enhanced bond directive are inconsistent with US WTO obligations, Thailand offers a reading of both the Ad Note and the AD Agreement that is at odds with their plain language and irreconcilable with the context in which the relevant language appears.

7. First, with respect to the Ad Note, Thailand argues that dumping cannot be "suspected" after an anti-dumping duty order is imposed following the completion of the investigation, and thus no case of suspected dumping can exist at that time. This interpretation does not, however, conform to the ordinary meaning of the term "suspected" or the context in which the term appears. In the Ad Note, "suspected" dumping refers to dumping that is "imagined to be possible or likely." The immediate context provides that security in such a case may be required for "payment" "pending final determination of the facts." In a retrospective system of duty assessment, whether and in what amount duties are owed on a given entry is not known until completion of assessment, and thus dumping – in the context of payment – is "suspected" during the intervening time. As Thailand acknowledges, "in a situation where the exporter's overall assessment rate is zero, no anti-dumping duties may be assessed on individual shipments ... ." Dumping (if any) with respect to a given set of entries is not "known" until assessment of those entries is completed.

8. Thailand attempts to rely on the phrase "existence of dumping," which is nowhere used in the Ad Note, to support its assertion that the Ad Note does not govern security after issuance of an anti-dumping duty order in an investigation. Thailand, for example, incorrectly reads US anti-dumping laws at the time the Ad Note was negotiated, and asserts that the "'final determination of the facts' refers to the question of whether dumping and injury exist." However, as the United States has explained, while the "existence of dumping" is confirmed at the conclusion of the investigation, whether a given entry has been dumped, and thus whether duties are owed, is not determined until completion of the assessment review. The "final determination of the facts" is used in the Ad Note in connection with the "payment of anti-dumping or countervailing duty," which in a retrospective system is not established at the conclusion of the investigation.

9. To read the Ad Note and the AD Agreement as Thailand suggests would lead to an absurd result: it would mean that "security for payment of anti-dumping and countervailing duty" must be released after completion of an investigation (the moment when it has been established that it is likely that some duties will be owed) – and before the amount of duties owed is finally established and those duties have in fact been paid. The United States is not aware of any customs authority that administers security requirements in this manner.

10. Furthermore, Thailand offers an interpretation of the Ad Note in relation to the AD Agreement that is inconsistent with the terms of the AD Agreement and fails to give the Ad Note any meaning or legal effect, contrary to the relationship between the GATT 1994 and other WTO agreements contemplated by the Marrakesh Agreement Establishing the World Trade Organization ("WTO Agreement"). As a threshold matter, the GATT 1994, including the Ad Note to Article VI, is an "integral part" of the WTO Agreement. As past panels and the Appellate Body have noted, Article VI is "part of the same treaty" as the AD Agreement, and "should not be interpreted in a way that would deprive it or the Anti-Dumping Agreement of meaning." A panel "should give meaning and legal effect to all the relevant provisions," including the Ad Note to Article VI. Instead of "reading Article VI in conjunction with the Anti-Dumping Agreement," as the Appellate Body in *US – 1916*

*Act* suggested, Thailand, through a misreading of Articles 7 and 9 of the AD Agreement, attempts to read Article VI and the Ad Note out of the covered agreements entirely, depriving both provisions of any meaning.

11. Thailand's analysis of AD Agreement Article 9 in connection with the US cash deposit requirement illustrates the basic flaws in its approach. First, to argue that Article 9, and not the Ad Note, is the relevant provision applicable to cash deposit requirements, it asserts that the term "cash deposit" is the same as the term "duty" – a position that cannot be reconciled with the text of the AD Agreement or the Ad Note, or the ordinary meaning of either of the terms in question.

12. A "cash deposit" is security for a duty owed, but is not itself a duty. In both the GATT 1994 and the AD Agreement, the term "cash deposit" is used throughout to refer to a form of "security", not a "duty". The Ad Note, for example, provides for "reasonable security (cash deposit or bond)" – it does not characterize cash deposits as "duties". Article 7.2 of the AD Agreement likewise distinguishes a "cash deposit" as a form of "security" from "duties" in stating that "provisional measures may take the form of a provisional duty *or, preferably, a security – by cash deposit or bond ...* ." Indeed, insofar as it indicates a preference for requiring payment of cash deposits rather than duties, Article 7.2 suggests that there is in fact a substantive difference between a cash deposit requirement and a duty.

13. The sole support Thailand offers for its reading of the GATT 1994 and the AD Agreement in this regard is a single reference by the Appellate Body in *US – Zeroing (Japan)* to cash deposits in its description of an administering authority's right to "collect duties, in the form of a cash deposit." This statement was not made in the context of any finding with respect to cash deposit requirements – and indeed, the Appellate Body report contains no analysis of the question of whether cash deposits are in fact duties. A single clause in one sentence in an Appellate Body report, in a different context and unsupported by any relevant analysis, cannot justify a conclusion that plainly contradicts the text of the GATT 1994 and the AD Agreement.

14. Moreover, in an attempt to support its assertion that, rather than permitting "reasonable" security, the GATT 1994 and AD Agreement prohibit any security in excess of the margin of dumping determined in the investigation or most recent administrative review, Thailand misinterprets the term "margin of dumping" in Article 9.3 to refer, alternately, to the margin of dumping established in the investigation or to the margin established for a previous set of entries in a prior administrative review. This reading of Article 9.3, however, is both illogical and inconsistent with the text of that provision and previous reports of the Appellate Body examining that text. Inexplicably, Thailand ignores the one margin of dumping that is based on actual analysis of the particular entries in question and which is used to establish the "final liability" for payment of anti-dumping duties, referenced in Article 9.3.1: the margin of dumping established in the assessment review. It is this margin (which, contrary to what Thailand asserts, is a margin "as established under Article 2") that is the "margin of dumping" referenced in Article 9.3, and it is payment of duties resulting from this margin that the cash deposit and bond are intended to secure.

15. The Appellate Body's findings in *US – Zeroing (EC)* are fully consistent with this reading of AD Agreement Article 9. The "margin of dumping established for an exporter or producer" referenced in that section of the Appellate Body's report is the margin of dumping established in an *assessment* proceeding, not the margin of dumping established in an investigation. Article 9.3 specifies the amount of "assessed" anti-dumping duties – an amount determined through the administrative review. The margin of dumping it describes is thus the margin of dumping established in that review. Article 9.3 does not prescribe the specific methodology by which duties should be assessed, nor the amount of security that a Member may require pending final assessment.

16. Finally, Thailand attempts to rely on Article 7 of the AD Agreement as a basis to read the Ad Note out of the GATT 1994 entirely, asserting that the Ad Note is confined to "provisional measures" and superseded by Article 7. However, nothing in the text of the Ad Note suggests that it is limited to "provisional measures" and nothing in the text of Article 7 supports the conclusion that it is intended to address security requirements after the imposition of an order. Neither Article 7 nor the concept of "provisional measures" existed at the time the Ad Note was negotiated. Article 7 contains rules with respect to provisional measures – measures (including security) taken prior to a final determination in an investigation. Article 7 does not, however, address security requirements imposed after a final determination has been made, and there is no basis to conclude that it places limitations on those requirements beyond the limitations established in the Ad Note. Indeed, Thailand's assertion that the Ad Note "authorizes cash deposits only as a 'provisional measure'," when read in conjunction with the AD Agreement, contradicts Thailand's own argument that cash deposits are permitted by Article 9 of the AD Agreement as a "duty". Moreover, Thailand's interpretation cannot be reconciled with the term "payment" used in the Ad Note, as payment does not occur until completion of the assessment review.

17. If Thailand's arguments were accepted, Members would not be permitted to maintain security requirements pending final determination of liability. To preclude a Member with a retrospective system from requiring the posting of security prior to the determination of final liability would create a disparity between retrospective and prospective systems. The nature of prospective systems is that the duties billed at importation are treated as final. Thus, no security need be required. If an importer refuses to pay the anti-dumping duties owed, the Member maintaining a prospective system may deny entry to the merchandise in question. Members with prospective systems therefore are not required to bear the risk of unsecured liability in the way that Members with retrospective systems would if Thailand's interpretation were accepted. Nothing in the GATT 1994 or AD Agreement suggests that one system is favored over another, and the Appellate Body has confirmed that this is the case. Members with retrospective systems should not be penalized for deferring determination of final liability to the end of the review period.

18. Finally, the evidence demonstrates that the additional bond amount satisfies the requirements of the Ad Note: it constitutes "reasonable security" for the payment of anti-dumping or countervailing duty. As a threshold matter, it is important to recall that the United States imposed the additional bond requirement after it identified a serious and growing problem: when the assessment rate resulting from the administrative review exceeded the cash deposit rate at the time of entry, many importers were not paying the duties lawfully owed. This liability was unsecured by cash deposit, bond, or other security. As a result, the United States has been unable to collect over \$600 million in anti-dumping duties lawfully owed to it.

19. The additional security required by the United States pursuant to the directive is "reasonable": it reflects an assessment of the multiple factors typically considered in establishing security requirements, including the amount of potential liability in the event of default and the likelihood of default. For shrimp, the amount of potential additional liability was significant, as was the risk of default. In excess of \$2.5 billion worth of shrimp imports had entered the United States from countries subject to anti-dumping duty orders during calendar year 2003. This quantity of shrimp far exceeded that of imports subject to previous anti-dumping duty orders that had resulted in significant unpaid duties. Because anti-dumping duties are assessed on an *ad valorem* basis, the sheer quantity of shrimp imports alone increased the likelihood that, all other things being equal, the potential unsecured liability for shrimp would be substantial. With respect to the likelihood that rates would increase, no party to this proceeding disputes the fact that rates do increase. The historical data analyzed by CBP suggests that they often do, and significantly. Even if the likelihood that rates for shrimp would increase was no greater than the historical norm, the fact that shrimp imports were so substantial in value supported CBP's decision to require greater security for shrimp, as it suggested significantly greater unsecured liability in the event of an increase.

20. As for the risk of default, CBP determined that importers of agriculture/aquaculture merchandise subject to anti-dumping or countervailing duty liability faced an elevated risk of default, due in part to low capitalization and high turnover rates in the industry as a whole. CBP provides importers subject to the enhanced bond directive with individualized risk assessments, if they so request. In that event, the bond amount reflects an individualized assessment of risk of default. Only if the importer has a history of noncompliance or does not request an individual bond determination will CBP use a bond amount prescribed by the formulas. Importers have requested and received individual bond amounts – often substantially lower than those prescribed by the formula – through this process. All of these factors support the conclusion that the bond amounts required of importers under CBP's additional bond directive constitute "reasonable" security.

21. Finally, as the United States explained in its Responses to Panel Questions, the Ad Note contains a limit on the amount of security that may be required ("reasonable security"), but does not limit a Member to one form of security. The text and context support the conclusion that, consistent with how the Appellate Body has construed the term "or" elsewhere in the Agreements, the "or" in "cash deposit or bond" is not, as Thailand asserts, exclusive. In response to the Panel's question, Thailand simply refers to another "or" in Article 7 of the AD Agreement, yet fails to explain both the basis for its conclusion that this "or" should be read in the exclusive sense or, were that the case, why that necessarily means the "or" in the Ad Note should be read in such a manner. Furthermore, Thailand elsewhere concedes that it is permissible to require an importer to obtain a bond in addition to providing cash deposits – its assertion that the drafters intended to prohibit this arrangement as "unduly complicated" is unsupported by the text and the logic of Thailand's own argument. Thailand's interpretation thus should be rejected.

## **2. The Additional Bond Directive Is Not Inconsistent with AD Agreement Article 18.1.**

22. Thailand has failed to demonstrate that the additional bond directive is "specific action against dumping" – it is neither "specific" to dumping nor "against" dumping. Rather, as the United States explained in its submissions, the directive is a reasonable means of ensuring payment of duties ultimately assessed. Having identified a serious collection problem, CBP took action to secure unsecured liability, as it would in any case in which such liability exists that presents a risk to the revenue, whether or not the "constituent elements of dumping are present." Only because the vast majority of unpaid duty bills related to anti-dumping duties did the directive address those duties in particular. The design of the directive, including the criteria for applying it to particular orders and establishing a bond amount based on individual risk, all pertain to securing against risk of uncollected duties, not the "constituent elements of dumping". Thus, while the directive may be "related to" dumping – as the Appellate Body in *US – Offset Act (Byrd Amendment)* described various measures not inconsistent with Article 18.1 – it is not "specific" to it.

23. With regard to Thailand's claim that the directive is action "against" dumping, neither previous Appellate Body reports examining that term nor the evidence in this proceeding supports this conclusion. The bond is security for the final assessed duty, which itself may be an action against dumping, but the security as such simply allows the United States to obtain payment of duties lawfully owed to it. As the Appellate Body noted in *US – Offset Act (Byrd Amendment)*, "a measure cannot be against dumping or a subsidy simply because it facilitates or induces the exercise of rights that are WTO-consistent." The GATT 1994 and the AD Agreement do not prohibit the United States from obtaining payment for the anti-dumping duties in question, and the bond requirement facilitates its ability to do so.

24. As for Thailand's claim that the directive was "against" dumping because it adversely affected imports from countries subject to the anti-dumping order, the evidence demonstrates otherwise. Data on imports from the top fifteen countries that export shrimp to the United States reveals no appreciable difference in import trends for importers subject to the directive and other importers in the

periods before and after the directive was issued. Aside from seasonal fluctuations, imports from most countries subject to the AD order appear to have remained steady or increased.

25. With regard to costs to importers and alleged "significant shifts in trading patterns", the mere fact that additional security is required and results in additional costs does not support the conclusion that the security requirement itself is designed to "counteract" dumping. Likewise, shifting from "cost, insurance, freight" (CIF) to "duty delivery paid" (DDP) does not alter the cost of importing or otherwise "counteract dumping" – regardless of whether a shipment is CIF or DDP, the costs of importing are the same for the importer of record. Furthermore, use of CIF or DDP is determined by the contract between the purchaser and the seller, not by CBP.

26. All security requirements, including cash deposits and other reasonable security for the payment of anti-dumping and countervailing duties, may result in some added cost. If accepted, Thailand's argument would mean that any measure that increases the cost of importing for importers subject to anti-dumping and countervailing duties is an action "against" dumping. This interpretation is not supported by the analysis of the Appellate Body in *US – Offset Act*. Increasing the cost of importing alone does not necessarily create, as the Appellate Body put it in *US – Offset Act*, an "incentive not to engage in the practice of exporting dumped or subsidized products or to terminate such practices" – indeed, import data for shrimp suggest that no such incentive exists.

27. Even if considered "specific" action "against" dumping, the security requirements in question are permitted by the Ad Note and thus are "in accordance with the provisions of GATT 1994, as interpreted by the Anti-dumping Agreement." Again without any textual support or analysis, Thailand refers to a single sentence in the Appellate Body report in *US – 1916 Act* to assert that security requirements contemplated by the Ad Note are "not permitted" responses to dumping. The statement quoted by Thailand does not, however, support the proposition for which it is cited. The Appellate Body report in question contains no analysis of the Ad Note, or security requirements generally, and to the extent it discusses Article VI and the AD Agreement, it is fully consistent with the US reading of Article 18.1. For example, the Appellate Body stated that "'the provisions of GATT 1994' referred to in Article 18.1 are in fact the provisions of Article VI of the GATT 1994 concerning dumping," and then proceeded to analyze whether the measure in question "falls within the scope of application of Article VI of the GATT 1994." The Ad Note to Article VI is a provision of Article VI "concerning dumping," and the security requirements at issue fall within its scope. As explained above, the AD Agreement does not contain additional limits on security requirements such as those contemplated by the Ad Note. Thus, if a security requirement is consistent with the Ad Note, it is "in accordance with the provisions of GATT 1994, as interpreted by" the AD Agreement.

28. To suggest, as Thailand does, that Article 18.1 means that measures permitted by Article VI are no longer permitted unless specifically provided for in the AD Agreement, is at odds with the text of Article 18.1 and, as noted previously, the relationship between the covered agreements set forth in the WTO Agreement. Were Thailand's reading correct, there would be no need for Article 18.1 to refer to the GATT 1994 at all – yet Article 18.1 does refer to the GATT 1994. This reading of the text is not consistent with its terms, and contradicts the principle contained in the WTO Agreement that each of the texts, including the GATT 1994, shall be integral to it. Moreover, Thailand's interpretation incorrectly presumes that, unless a measure is specifically permitted by the AD Agreement, it is prohibited. The AD Agreement, however, contains rules regarding certain aspects of anti-dumping and countervailing duty measures. As the Appellate Body has observed, the covered agreements are not exhaustive, and if an action is not expressly prohibited, taking that action does not breach the WTO agreement in question. To read Article 18.1 as broadly as Thailand suggests would impermissibly extend the disciplines of the AD Agreement beyond their terms.

**3. The Additional Bond Directive Does not Breach GATT Article I, GATT Article II, or GATT Article XI.**

29. GATT Article I. Contrary to Thailand's assertions, the additional bond directive does not improperly discriminate between products originating in Thailand and products originating in other countries. The directive has been applied to all importers of shrimp subject to the AD orders, and the US action of increasing bond amounts merely addressed the particular risks associated with these imports.

30. GATT Article II. As explained above, the additional bond directive does not constitute a "duty" (anti-dumping or otherwise) or an "other charge." CBP does not charge for the bonds, nor does it even require that security take the form of the additional bond. The implication of Thailand's argument that such bonds are "other charges" is that Members may not require bonds as a means to secure importers' obligations unless the bonds are specifically included in a Member's Schedule. Yet many Members do maintain such requirements, and several provisions of the WTO agreements contemplate the use of bonds, suggesting that they are intended to be a device generally available to Members to secure their obligations.

31. GATT Article XI. As was the case with the bond measure at issue in *Dominican Republic – Cigarettes*, the bond directive does not prevent importers from importing shrimp into the United States. Indeed, import data demonstrates that significant quantities of shrimp subject to the AD orders continue to be imported into the United States, and there is no evidence that the bond directive has had any appreciable impact on imports. Thailand's argument that any "restriction" results in a breach of Article XI proves too much: it would render any bond requirement inconsistent with Article XI, indeed any requirement that imposes additional "costs or burdens" on importers. The directive does not mandate an increased bond amount – as noted previously, importers can obtain individual bond determinations and, depending on their ability to pay and history of compliance with US customs laws and regulations, may not be required to obtain a higher bond. Virtually all importers that have made a request have received individualized bond amounts pursuant to this process that are lower than those contemplated by the formula. Furthermore, even importers that have not demonstrated an ability to pay or have not complied with US customs laws in the past are allowed to import even without participating in the process outlined in the directive or providing additional bond amounts. Importers have a range of mechanisms available to them to import into the United States without being subject to the additional bond directive, including single entry bonds, cash deposits or security other than a continuous entry bond.

**4. The Additional Bond Directive Is Not Inconsistent with GATT 1994 Article X:3(a).**

32. With regard to GATT 1994 Article X, Thailand has failed to establish a breach. As the United States explained in its previous submissions, Article X does not govern the substance of a measure, but instead is concerned with the "publication and administration" of the measure. Thailand continues to cite aspects of the measure's substance – including the formula used to establish bond amounts absent an individual risk analysis – in support of its claim that Article X was breached.

33. With respect to the application of the directive, CBP did not apply the directive in a nonuniform, partial, or unreasonable fashion. It required the bond of shrimp importers because, using the criteria in the directive, CBP determined that the risk of substantial unsecured liability was high in the case of shrimp. The fact that CBP opted to apply the directive to importers of covered merchandise subject to new orders, rather than pre-existing orders, does not render its application "nonuniform, partial or unreasonable," as Thailand claims. CBP considered that applying the new directive to a new order would facilitate its ability to monitor and administer the new bond requirement at its inception. Article X does not prohibit a Member from implementing a new measure in this fashion.



34. Even under Thailand's theory that Article X applies, the evidence demonstrates that CBP administers the bond directive in a "uniform, impartial and reasonable" manner. The directive contains various criteria for identifying importers of merchandise with elevated default risk, and CBP applies these criteria uniformly. CBP faced in excess of \$2 billion in imports of shrimp newly subject to an anti-dumping order. It had experienced \$225 million in defaults on importers in industries that, like shrimp, were characterized by low capitalization rates and relatively low barriers to entry and exit, had very little history of paying customs duties prior to imposition of the order, and were highly leveraged. All of these factors suggested that, as with other agriculture/aquaculture merchandise, there was a significant risk of default associated with importers of shrimp. As for Thailand's assertion that the directive does not contain consistent criteria for identifying merchandise subject to increased default risk, the facts simply do not support this claim. The sole applicable criteria are those identified in the October 2006 Notice. Finally, contrary to Thailand's suggestion, the October 2006 Notice makes the procedures for requesting an individual bond amount clear, and does not impose significant costs on importers to do so. The procedures for requesting an individual bond amount are set forth in the Notice, which itself was published in the *Federal Register*. The Notice simply requires that an importer respond to CBP's notice by requesting an individual bond amount.

**5. The Additional Bond Directive Would Be Justified by GATT Article XX(d).**

35. As the United States explained in its First Submission, the directive is "necessary to secure compliance" with US anti-dumping and countervailing duty assessment laws, in particular 19 U.S.C. 1673e(a)(1) governing the assessment of anti-dumping duties, and general customs laws and regulations requiring the payment of duties owed to the US Treasury. As evidenced by, among other things, the criteria the directive uses to determine bond amounts, the directive and its application to shrimp secures compliance with this obligation and general customs laws and regulations requiring payment of duties owed to the US Treasury. The directive secures an otherwise unsecured liability in the form of additional anti-dumping duties owed upon assessment that exceed cash deposits, and thus permits collection of revenue that in the past has been subject to unprecedented default.

36. Existing cash deposit requirements, civil recovery proceedings, and the basic bond amount do not secure the unsecured liability in question. Cash deposits do not secure liability resulting from an increase in duties upon assessment above the cash deposit rate, because they are limited to the cash deposit rate. Civil recovery proceedings are not a reasonable alternative to address the problem faced by CBP: like cash deposits, CBP has used civil recovery to try to recover duties when an importer defaults, yet notwithstanding these efforts, uncollected duties have continued to accrue. Civil recovery produces no remedy if the importer cannot be reached or has no attachable assets by the time the proceeding has concluded. Furthermore, with respect to the basic bond, it was because the basic bond requirement was not sufficient to secure the unsecured liability in question, and did not prevent hundreds of millions of dollars in unpaid duties from accruing, that CBP required the additional bond. Thus, these measures do not constitute reasonably available alternatives that "would preserve for" the United States "its right to achieve ... the objective pursued."

37. The additional bond directive meets the requirements of the chapeau to Article XX. It has not been applied in a manner that would constitute a "disguised restriction on international trade" or "a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail." It has been administered uniformly, and does not discriminate.

## ANNEX B-2

### EXECUTIVE SUMMARY OF THE SECOND WRITTEN SUBMISSION OF THAILAND

(29 June 2007)

**1. The Enhanced Bond Requirement constitutes specific action against dumping that is inconsistent with Article 18.1 of the Anti-Dumping Agreement**

1. As Thailand has explained, the Enhanced Bond Requirement constitutes specific action against dumping not otherwise in accordance with Article VI of the GATT 1994 read in conjunction with the Anti-Dumping Agreement and is, therefore, inconsistent with Article 18.1 of the Anti-Dumping Agreement.

(a) The Ad Note cannot be applied independently of the Anti-Dumping Agreement

2. As Thailand explained in its response to the Panel's question 16, however, Article VI of the GATT 1994, which includes as an "integral part" the Ad Note to Articles VI:2 and 3, cannot be read independently of the Anti-Dumping Agreement. The Appellate Body stated in *US – 1916 Act* that "Article 1 [of the Anti-Dumping Agreement] states that 'an anti-dumping measure' must be consistent with Article VI of the GATT 1994 and the provisions of the Anti-Dumping Agreement." Similarly, in *Brazil – Desiccated Coconut*, the Appellate Body emphasised that "Article VI of the GATT 1994" cannot "be applied independently of the SCM Agreement in the context of the WTO".

3. As the United States has argued in a previous dispute, and as WTO panels and the Appellate Body have consistently found, the Anti-Dumping Agreement provides for only three permissible responses to dumping. These are provisional measures, price undertakings, and definitive duties, as provided in Articles 7, 8, and 9 respectively. As Thailand has explained, the Enhanced Bond Requirement does not fall within any of these three permissible responses to dumping. To permit the Enhanced Bond Requirement as a *fourth* permissible response to dumping would undermine the relationship between the Anti-Dumping Agreement and the provisions of Article VI of the GATT 1994.

(b) In any event, the Ad Note covers only measures applied before a final determination of dumping

4. Even assuming, *arguendo*, that the Ad Note provided for a fourth independent permissible response to dumping, the Ad Note could not be invoked to justify the Enhanced Bond Requirement as it addresses only provisional measures applied before a final determination of dumping is made.

5. The Ad Note provides that a reasonable security can only be applied "pending final determination of the facts in any case of suspected dumping or subsidization". The United States argues that the "final determination of the facts" in the Ad Note is, in the context of a retrospective duty assessment system, the same as the "determination of the final liability for payment of anti-dumping duties" referred to in Article 9.3.1 of the Anti-Dumping Agreement.

6. The United States ignores the qualification in the Ad Note that it applies pending "final determination of the facts *in any case of suspected dumping*". The reference to "suspected" dumping places a strict temporal limitation on the scope of the Ad Note. Under the Anti-Dumping Agreement, "dumping" is determined and no longer suspected at the point of final determination of dumping in an investigation conducted Article 5.1 "to determine the *existence*, degree and effect of any alleged dumping".

7. Thailand notes that the United States, in its response to questions from the Panel, conceded that "the existence of dumping is finally established when USDOC issues a final determination in an investigation". It is hard to see how, following a final determination of the existence of dumping and the imposition of definitive duties, dumping continues to be "suspected". Thailand notes that the US anti-dumping law uses the word "suspect" in precisely the same manner to refer to the period between a preliminary and final determination of dumping. Under US law, dumping is only "suspected" during the period between the preliminary and final determinations of dumping. In these circumstances, the reference in the Ad Note to cases of "suspected" dumping must be read to refer to cases where no final determination of dumping has yet been made.

8. The United States argues that its interpretation that "dumping ... is 'suspected' until final liability for payment of anti-dumping duties is determined" is "supported by" the use of the term "levy" in Article VI:2 of the GATT 1994 as well as footnote 12 of the Anti-Dumping Agreement. The United States reads the footnote to define "levying" of duties to refer only to the final assessment of liability. However, because the footnote also defines "levy" to include the "collection" of a duty, the collection of estimated anti-dumping duties following the imposition of an order (as cash deposits) can also be said to be "levied". The United States' limited interpretation of the term "levy" is problematic when read in conjunction with Article 17.4 of the Anti-Dumping Agreement, which provides that a Member may refer a matter to the Dispute Settlement Body only "if final action has been taken by the administering authorities of the importing Member to levy definitive anti-dumping duties or to accept price undertakings ...". Under the United States' interpretation of "levy", a US anti-dumping order could not be challenged in WTO dispute settlement proceedings until after a final assessment of duties in an administrative review. This would limit considerably the ability of Members to challenge measures under the Anti-Dumping Agreement in dispute settlement proceedings. In practice, this interpretation has not been followed, as Members have successfully challenged anti-dumping measures following the final determination of dumping, but prior to the completion of assessment reviews, under the Anti-Dumping Agreement.

9. Moreover, as Thailand explained in its answers to the Panel's questions 9 and 11, the existence of dumping is not called into question simply because the amount of final liability on particular shipments – or even all of an exporter's shipments in a given year – is zero. Thus, footnote 22 to the Anti-Dumping Agreement provides, with specific reference to retrospective systems, that "a finding in the most recent assessment proceeding under subparagraph 3.1 of Article 9 that no duty is to be levied shall not by itself require the authorities to terminate the definitive duty". In the same vein, the United States argued in *US – DRAMS*, in response to a question from the panel, that "a definitive anti-dumping duty (or 'order' in US parlance) is 'imposed' within the meaning of Art. 11 *even when no duties are actually being 'assessed' (or collected).*"

10. This difference between a finding that dumping exists and is not merely suspected and the much later determination of the final amount of duties to be paid is reflected in the text of Article VI and the Anti-Dumping Agreement. Thus, while the Ad Note refers to the "final determination of the facts in any case of suspected dumping", Article 9.3.1 refers only to the "determination of the final liability for payment of anti-dumping duties" in subsequent reviews. In its responses to the Panel's questions, the United States acknowledges that the determination under Article 9.3.1 addresses only to "the *amount* an importer must pay in duties for entries made in a particular year". In addition, the United States accepts that "[l]iability for the payment of antidumping duties is triggered upon importation of merchandise" and not at the time of the assessment review.

- (c) The Anti-Dumping Agreement and Article VI do not permit bonds or cash deposits greater than the margin of dumping
- (i) *Cash deposits after a final determination of dumping are "duties" and permitted under Article 9*

11. Contrary to the United States' arguments, cash deposits of estimated anti-dumping duties collected by the United States after the imposition of an anti-dumping order are *duties*. Thus, the Appellate Body has characterised the collection of cash deposits of estimated anti-dumping duties following a final determination of dumping as the payment of anti-dumping *duties*. The Appellate Body in *US – Zeroing (Japan)* confirmed that "[a]t the time of importation, an administering authority may collect *duties, in the form of a cash deposit*, on all export sales...".

12. The United States' anti-dumping regulations also expressly recognise that cash deposits are estimated duties and differ from a security in that "upon the issuance of an order [i.e. following a final determination of dumping], importers no longer may post bonds as security for antidumping or countervailing duties, but instead must make a *cash deposit of estimated duties*". The US Tariff Act provides that following final determinations of dumping and injury, the USDOC must publish an anti-dumping order that "requires the *deposit of estimated anti-dumping duties* pending liquidation of entries of merchandise at the same time as estimated normal customs duties on that merchandise are deposited".

- (ii) *Article 9 of the Anti-Dumping Agreement does not permit cash deposits in excess of the margin of dumping*

13. The United States contemplates the possibility of "cash deposits in excess of the margin of dumping established in the order". However, the United States' argument runs counter to the carefully-defined limits on amounts of cash deposits in Article VI:2 of the GATT and Article 9 of the Anti-Dumping Agreement that provide that they shall not "shall not exceed the margin of dumping established under Article 2".

14. Contrary to the interpretation put forward by the United States in these proceedings, US law does *not* permit cash deposits of estimated duties to exceed the margin of dumping currently in effect. As set out in 19 CFR § 351.209(b)(3) "for all entries subject to suspension of liquidation" the Secretary will "instruct the Customs Service to require for each entry of the merchandise suspended... a cash deposit *at the rates determined in the affirmative final determination*". Similarly, the "deposit of estimated anti-dumping duties pending liquidation of entries of merchandise" must take the form of a "cash deposit" based on the USDOC's determination of normal value and export price (i.e., the dumping margin).

- (iii) *To read the Ad Note to permit cash deposits or security greater than the margin of dumping after a final determination would undermine Article 9*

15. By arguing that it may impose bonding requirements or even cash deposits of estimated duties in excess of the margin of dumping following a final determination, the United States is, in effect, arguing that the disciplines of the Anti-Dumping Agreement do not apply to the measures it may take after it has imposed an anti-dumping order and before it completes the final assessment of liability for anti-dumping duties. In the meantime, the United States contends, it may impose any measures it chooses, even in excess of the margin of dumping, so long as it considers those measures to be "reasonable" in accordance with the Ad Note.

16. To accept this argument, the Panel would have to conclude that the negotiators of the Anti-Dumping Agreement negotiated detailed rules governing every aspect of permissible specific action

against dumping *except* the measures that may be taken between the final determination of dumping and imposition of definitive anti-dumping duties and the subsequent payment of the amount of duties finally assessed. This cannot possibly be correct. To permit the imposition of additional action against dumping in this manner under the Ad Note would wholly undermine the carefully-negotiated disciplines of the Anti-Dumping Agreement and particularly Article 9. Members would be free to burden dumped imports with duties or bonding requirements greater than the margin of dumping. This is completely contrary to the purpose of Article 9 of the Anti-Dumping Agreement, which is to limit the *amount* of any measures taken to counteract dumping. It is also contrary to the purpose of Article 18.1, which is to limit the *type and range* of measures that may be taken to counteract dumping.

- (d) Thailand's interpretation does not undermine the ability of Members to take ordinary enforcement measures to secure the payment of anti-dumping duties

17. The United States has attempted to distract the Panel by arguing that Thailand's claims, if accepted, would prevent the United States from collecting cash deposits of estimated anti-dumping duties under its retrospective duty assessment system and would prevent its "customs authorities from using ordinary principles of customs administration to establish security amounts for antidumping and countervailing duties."

18. This is inaccurate. First, the United States is authorised under Article 9 of the Anti-Dumping Agreement to maintain its current practice of collecting cash deposits of estimated anti-dumping duties following the imposition of definitive anti-dumping duties. Thailand has not challenged this aspect of the United States' anti-dumping regime. Nothing in Thailand's arguments would in any way affect this practice.

19. Second, Thailand has not challenged the right of the United States to use "ordinary principles of customs administration" to establish security amounts for *any* duty liability, including liability for anti-dumping duties. The United States may act under Article XX(d) of the GATT 1994 to impose security measures "necessary to secure compliance with its [customs] laws and regulations." This right is protected by footnote 24 of the Anti-Dumping Agreement, which reiterates that the prohibition in Article 18.1 of that Agreement on non-permissible specific action against dumping does not preclude other action under GATT Article XX(d) necessary to secure compliance with customs laws and regulations.

20. In summary, Thailand's claim is not that the United States cannot use "ordinary principles of customs administration" to establish security amounts for importers of subject shrimp. Instead, Thailand's claim is that in this case, the United States has abandoned those ordinary principles in favour of taking specific action against dumping not "in accordance with the provisions of GATT 1994, as interpreted by this Agreement" within the meaning of Article 18.1 of the Anti-Dumping Agreement.

- (e) The possibility of importer-specific bond determinations pursuant to the October 2006 Notice does not make the Enhanced Bond Requirement consistent with WTO law

21. As Thailand has previously explained, "importer-specific bond sufficiency determinations" under the October 2006 Notice do not cure the WTO-inconsistencies of the Enhanced Bond Requirement, but rather exacerbates them.

22. The Enhanced Bond Requirement remains an impermissible "specific action against dumping". It was applied (and still applies) *ab initio* to *all* importers of subject shrimp, simply because they import that merchandise. The October 2006 Notice provides that "in the absence of a submission by the importer" the "CBP would calculate the bond amounts using the [default]

formulas". Furthermore, Exhibit US-12 indicates that, to date, not a single importer of subject shrimp has been granted a 100 per cent reduction. Thus, *all* importers of subject shrimp are still required to post enhanced bonds in excess of the bonds required under the Basic Bond Requirement. And, as Thailand has previously noted, the importers that obtained individual bond amounts were required to participate in a new and burdensome administrative proceeding simply in order to obtain partial mitigation of their bond amounts.

23. Moreover, Exhibit US-12 indicates that only 21 out of an estimated 1'346 importers of subject shrimp have been granted reductions pursuant to the October 2006 Notice. Thailand notes that during the First Substantive Meeting, the United States explained that seven importers had Thai addresses. Of these importers, apparently six received a reduction in the enhanced bond of 25 per cent and one received a reduction of 45 per cent. In these circumstances, the October 2006 notice cannot be said to remedy the WTO-inconsistencies of the Enhanced Bond Requirement.

**2. The Enhanced Bond Requirement is not a reasonable Security within the meaning of the Ad Note**

(a) The amount of the security is not based on a reasonable estimate of anti-dumping duty liability

24. The term "reasonable" security in the Ad Note must be read in the context of the other provisions of Article VI and the Anti-Dumping Agreement that address the amount of security or duties that may be collected. If WTO Members are free to collect *double* the amount of the effective dumping margin in duties and securities simply because "increases in rates ... occur with *some frequency*", the constraint of reasonableness in the Ad Note is undermined and WTO Members would have *carte blanche* to set security amounts based on mere possibilities that dumping margins may increase. WTO Members would effectively be able to impose duties that go beyond the prevailing margin of dumping in the guise of "securities in the form of cash deposits" for the duration of an anti-dumping order.

25. Even assuming *arguendo* that the Ad Note permits an additional security above the amount of the margin of dumping, to be reasonable within the meaning of the Ad Note, the amount of any such security must be based on a clearly-identifiable and reasonable need to exceed the amount of the margin of dumping. Thus, one test of the reasonableness of the amount of security required from importers of subject shrimp is whether the CBP's estimate that dumping margins for all exporters of subject shrimp are likely to increase by 100 per cent in every successive review period is valid. Thailand submits that the CBP's estimate is arbitrary and wholly speculative. The assumption that dumping margins are likely to increase is unequivocally contradicted by (1) the evidence regarding changes in dumping margins for exporters of shrimp from Thailand (2) evidence regarding changes in dumping margins for shrimp exporters from other countries such as India and (3) the earlier CBP analysis of changes in dumping margins for agriculture/aquaculture merchandise, on which the United States relies. Thailand notes that there are several other methodological problems with the CBP analysis, which was submitted by the United States as Exhibit US-10. In these circumstances, as the USCIT has found, neither the CBP's assumption that dumping margins are likely to increase in every instance nor its choice of 100 per cent as an estimate of any increase can possibly be described as "reasonable."

(b) The Amount of Security is not based on a reasonable assessment of the Risk to Revenue

(i) *Importers of subject shrimp are not characterised by an elevated risk of default*

26. The assertion that importers of subject shrimp have a significant and elevated risk of default cannot be sustained. *First*, it is contradicted by the positive compliance history of importers of

subject shrimp. *Second*, the United States' argument that importers of subject shrimp prevent an elevated risk of default is based on allegations regarding capitalisation and frequent entry/exit that are not supported by any evidence. *Third*, the US assertion that importers of "agriculture/aquaculture" merchandise are homogenous entities that share similar characteristics and consequently have similar elevated default risk is baseless. The United States itself concedes that certain importers of "agriculture/aquaculture" merchandise "do not have the same capital structure" as other importers. It appears that the United States also accepts that, even within the far narrower category of importers of subject shrimp, different companies can have differing default risks. Moreover, the evidence cited by the United States in its submissions does not support any generalisations about all importers of agriculture/aquaculture merchandise. As Thailand has explained, the CBP has said that historically, there is minimal experience of default on anti-dumping duties. The vast majority of defaults that have occurred refer to the particular situation of crawfish. There is simply no evidence that simply because there have been defaults on crawfish, the large and disparate group of importers of agriculture/aquaculture merchandise all share an elevated risk of default. *Fourth*, the United States has previously argued that the existence of the process for obtaining individual bond determinations under the 20 October 2006 Notice somehow supports the assertion that importers of subject shrimp have an elevated risk of default. The fact that the United States made a presumption that importers of subject shrimp have an elevated default risk and put in place a process to mitigate the impact of this presumption for certain importers does not constitute evidence to support the presumption.

(ii) *The value of imports covered by specific anti-dumping duty orders is irrelevant*

27. It is undisputed that the total value of imports covered by the six antidumping duty orders on shrimp provides no indication about the *likelihood or probability* that antidumping duties on shrimp will not be collected by US authorities. Thailand has explained elsewhere why this factor provides no reliable indication about the magnitude or extent of future write-offs of antidumping duties. Thailand further notes that in the absence of an elevated risk of default or an elevated risk that assessment rates will increase relative to cash deposit rates, this factor cannot, by itself, justify selective resort to the Enhanced Bonding Requirement. There are numerous combinations of United States anti-dumping orders that would cover a larger value of trade than the \$2.2 billion covered by the six orders on shrimp.

28. For these reasons, the Enhanced Bond Requirement cannot be considered to be "reasonable" within the meaning of the Ad Note to Article VI of the GATT 1994.

### **3. The Enhanced Bond Requirement is inconsistent with Article XI:1 of the GATT 1994**

29. Thailand has submitted extensive evidence about the costs associated with the Enhanced Bond Requirement. This undisputed evidence of increased costs suffices to establish that the Enhanced Bond Requirement has made the importation of subject shrimp "more burdensome" and therefore operates as a "restriction" within the meaning of Article XI:1. Contrary to the contentions of the United States, consistent GATT/WTO jurisprudence indicates that Thailand is not required to additionally establish that the Enhanced Bond Requirement has adversely affected the trade volumes of Thai shrimp.

30. Furthermore, the Enhanced Bond Requirement is not comparable to the measures in the *Dominican Republic – Import and Sale of Cigarettes* case because the importation of subject shrimp is contingent on compliance with the Enhanced Bond Requirement and this requirement is enforced in connection with importation and is applied solely to importers of those products.

**4. Alternatively, the Enhanced Bond Requirement is inconsistent with Articles II:1(a) and II:(b) of the GATT 1994**

31. The United States argues that if Thailand's claim is upheld then WTO Members "may not maintain bonds as a means to secure importers' obligations unless the bonds are specifically included in a Member's schedule". To the contrary, even if Thailand prevails on its alternative claim, WTO Members will be permitted under Article XX(d) of the GATT 1994 to require bonds from importers that are necessary to secure compliance with US customs laws and regulations. The United States also argues that because the CBP "does not charge for bonds" there is no violation of the second sentence of Article II:1(b) of the GATT 1994. Thailand notes that the United States made the same argument to the panel in the *US – Certain EC Products*, which rejected it. The present Panel should do likewise, and for the same reasons.

**5. The selective application of the Enhanced Bond Requirement is inconsistent with Article X:3(A) of the GATT 1994**

32. In response to Thailand's claims under Article X:3(a) of the GATT 1994, the United States argues that Article X:3(a) does not apply to the present case because Thailand's claims relate to "the substantive content of the additional bond directive". However, recent Appellate Body jurisprudence has clarified that the "substantive content" of the instruments establishing the Enhanced Bond Requirement (which are instruments that apply and implement Sections 113.11 and 113.13 of the Customs Regulation) can be examined under Article X:3(a) of the GATT 1994. In any case, Thailand's claims also arise from the administration of the Enhanced Bond Requirement. Therefore, even if the substantive content of the instruments establishing the Enhanced Bond Requirement could not be reviewed under Article X:3(a), this would not provide a basis not to resolve Thailand's claims.

33. Thailand has submitted that, in its administration of the legal requirement that importers must provide a bond in a sufficient amount, the United States differentiates between importers of subject shrimp and all other importers. The United States has not disputed any of Thailand's factual assertions. Thailand also notes that the evidence supplied by the United States establishes that the differentiation between importers of subject shrimp and other importers consistently results in higher continuous bond amounts for importers of subject shrimp. The United States' substantive defence to Thailand's claims is entirely dependent on the assertion that importers of subject shrimp have a unique and elevated risk of default. The evidence before the Panel establishes that importers of subject shrimp present no different risk of default than any of the numerous other importers with which the CBP deals and accordingly the United States' defence must be rejected.

**6. The Enhanced Bond Requirement is inconsistent with Article I:1 of the GATT 1994**

34. In response to Thailand's claim under Article I:1 of the GATT the United States asserts that it "did no more than respond to the special risks associated with [entries of subject shrimp]". The United States fails to explain how the existence of "special risks associated with entries of subject shrimp" in any way detracts from Thailand's contentions that (1) shrimp from the preferred countries and shrimp from Thailand are "like products" and (2) shrimp from preferred countries are provided with an "advantage" that is not extended to "immediately and unconditionally" to shrimp from Thailand.

**7. The Enhanced Bond Requirement is not "necessary to secure compliance" within the meaning of Article XX(d) of the GATT 1994**

35. In its discussion under Article XX(d), the United States has completely failed to conduct the requisite *comparative* analysis to explain (1) precisely how the anti-dumping duty orders imposed on



shrimp differ from all other anti-dumping orders currently in place and (2) how any such differences necessitate resort to the Enhanced Bond Requirement rather than the Basic Bond Requirement.

36. Thailand submits that the anti-dumping orders imposed on shrimp do not differ in any material respect from all the other anti-dumping duty orders currently in place. First, there is no reason to indicate that substantial increases over cash deposit rates are more likely to occur in administrative reviews involving shrimp products as opposed to all other products. Second, there is no reason to believe that when faced with supplemental bills for increased liability, importers of shrimp products have any higher default risk than importers of other products subject to anti-dumping duty orders. Third, there is no reason to believe that the value of trade covered by these six orders is unique because there are many other antidumping duty orders currently in place or combinations of antidumping duty orders that account for a comparable value of trade. In any case, Thailand maintains and the United States appears to concede that any differences in the total value of trade covered by an order or a combination of orders cannot *independently* justify resort to the Enhanced Bond Requirement.

37. In addition, the United States has not responded at all to Thailand's arguments that the "growing and serious non-collection problem associated with antidumping duties" on which the United States relies to justify its use of the Enhanced Bond Requirement can be attributed entirely to factors that are not present in the case of subject shrimp from Thailand. Thus, the United States has completely failed to respond to Thailand's contentions that these non-collection problems are attributable to the manner in which dumping margins are calculated in non-market economy cases, significant surety bankruptcies, and exemptions (now removed) from cash deposit requirements for new shippers of products subject to antidumping duties. Given that Thailand is not treated as a non-market economy and the new shipper bonding privilege has been removed, there is no reason to assume that the non-collection problems that occurred with crawfish will recur in respect of antidumping duties imposed on subject shrimp from Thailand.

38. Thailand also maintains that the United States has failed to discharge its burden of establishing that the Enhanced Bond Requirement meets the conditions set out in the *chapeau* to Article XX(d) of the GATT 1994.

## **8. The use of zeroing was inconsistent with article 2.4.2 of the Anti-Dumping Agreement**

39. In light of the United States' answers to the Panel's questions 1 and 3, it is clear that there is no dispute that the United States' use of zeroing in the anti-dumping investigation at issue in this case is inconsistent with Article 2.4.2 of the Anti-Dumping Agreement in several previous disputes.

## **9. Conclusion**

40. For these reasons, the Panel should reject the United States' arguments and find that both the use of zeroing and the Enhanced Bond Requirement are inconsistent with the relevant provisions of the Anti-Dumping Agreement and the GATT 1994. Had the United States not used zeroing to inflate artificially the margin of dumping, it may not have been able to impose dumping duties on Thai shrimp. Then, in turn, the United States would not have imposed the Enhanced Bond Requirement on Thai shrimp exports. In these circumstances, the concurrent application of these two inconsistent measures on imports of subject shrimp from Thailand doubly burdens exports of an industry that plays an important role in Thailand's rural development.

