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UNITED STATES – ANTI-DUMPING MEASURES ON CERTAIN SHRIMP FROM VIET NAM

Request for Consultations by Viet Nam

The following communication, dated 1 February 2010, from the delegation of Viet Nam 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.

Upon instructions from my authorities, I hereby request consultations with the Government of the United States pursuant to Article 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"), Article XXII:1 of the *General Agreement on Tariffs and Trade 1994* ("GATT 1994"), and Articles 17.2 and 17.3 of the *Agreement on Implementation of Article VI of GATT 1994* ("Anti-Dumping Agreement"), with regard to the matters listed hereunder:

(1) The following determinations of the United States Department of Commerce (USDOC) concerning *Certain Frozen and Canned Warmwater Shrimp from Vietnam*, Case No. A-552-801:

- (a) Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of the First Antidumping Duty Administrative, 72 FR 52052 (12 September 2007) as well as any assessment instructions and cash deposit requirements issued pursuant to this determination, the "Decision Memorandum" in this review which discusses issues raised in this review and confirms that "zeroing" was applied by the USDOC in this review and specifically rejects the relevance of WTO Appellate Body precedents for administrative reviews conducted by the USDOC, and any records demonstrating the calculation of the margins of dumping applied zeroing;
- (b) *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 52273 (9 September 2008) as well as any assessment instructions and cash deposit requirements issued pursuant to this determination, the "Decision Memorandum" in this review and any records demonstrating the calculation of the margins of dumping applied zeroing;
- (c) *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of the Second New Shipper Review*, 74 FR 24796 (26 May 2009) as well as any assessment instructions and cash deposit requirements issued pursuant to this determination, the "Decision Memorandum" in this review and any records demonstrating the calculation of the margins of dumping applied zeroing;

- (d) *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 47191 (15 September 2009) as well as any assessment instructions and cash deposit requirements issued pursuant to this determination, the "Decision Memorandum" in this review and any records demonstrating the calculation of the margins of dumping applied zeroing;
 - (e) Preliminary and Final Results of any administrative reviews or other reviews of *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam* published in the Federal Register after the date of this request for consultations, including reviews under Section 751(c) of the Tariff Act of 1930, as well as any assessment instructions and cash deposit requirements issued pursuant to this determination, the "Decision Memorandum" in this review and any records demonstrating the calculation of the margins of dumping applied zeroing; and
 - (f) Any changes in the final results of any administrative review of *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam* issued pursuant to a remand from the US Court of International Trade, as well as any opinion of the Court related to the remand results, any assessment instructions and cash deposit requirements issued pursuant to this remand determination, the "Decision Memorandum" in this remand determination, any arguments subsequently presented to the Court regarding the remand determination and any records related to the remand determination demonstrating the calculation of the margins of dumping applied zeroing.
- (2) Any actions taken by United States Customs and Border Protection (USCBP) to collect definitive anti-dumping duties at duty assessment rates established in periodic reviews covered by the preceding paragraph, including through the issuance of USCBP liquidations instructions and notices.
- (3) The following US laws, regulations, administrative procedures, practices and methodologies:
- the Tariff Act of 1930, as amended, (the "Act"), in particular sections 736, 751, 771(35)(A) and (B), and 777A(c) and (d);
 - the US Statement of Administrative Action that accompanied the Uruguay Round Agreements Act, H.R. Doc. No.1 03-316, vol. I;
 - the implementing regulations of USDOC, codified at Title 19 of the United States Code of Federal Regulations, 19 CFR Section 351, in particular sections 351.212(b), 351.414(c), and (e);
 - the Import Administration Antidumping Manual (1997 edition), including the computer program(s) to which it refers;
 - the general procedures and methodology employed by the United States to determine dumping margins in administrative reviews, whereby USDOC, in comparing weighted average normal value with transaction price of individual export transactions, treats as zero negative intermediate comparison results (i.e. situations in which the individual export price is greater than the weighted average normal value).

Such methodology is commonly referred to as "simple zeroing" and/or the US "zeroing procedures".

2. Vietnam believes that the laws, regulations, administrative procedures, practices and methodologies described above are as such, and as applied in the determinations listed above, inconsistent with the obligations of the United States under the Marrakesh Agreement Establishing the World Trade Organization (the "WTO Agreement") and the Agreements annexed thereto. The provisions with which these measures appear to be inconsistent include, but are not limited to, the following:

- Articles I, II, VI: 1 and VI:2 of the GATT 1994;
- Articles 1,2.1,2.4,2.4.2,6.8,6.10,9.1,9.3,9.4,11.2, 11.3, 18.1 and 18.4 and Annex II of the Anti-Dumping Agreement;
- Article XVI:4 of the WTO Agreement.
- And Vietnam's Protocol of Accession to the WTO.

3. Vietnam believes that the United States has acted inconsistent with its WTO obligations specified in paragraph 2 above by applying so-called "zeroing" in the determination of the margins of dumping in the reviews cited in paragraph 1 above, by repeatedly and consistently, failing to provide most Vietnamese respondents seeking a review an opportunity to demonstrate the absence of dumping by being permitted to participate in a review, and by requiring companies to demonstrate their independence from government control and applying an adverse facts available rate to companies failing to do so in all reviews. Vietnam further believes that the US has an established practice with respect to each of these issues and will, therefore, continue to act inconsistent with its WTO obligations relating to these issues in ongoing and future reviews, including the five year review provided under Article 18.1 of the Antidumping Agreement.

4. Vietnam reserves the right to raise additional claims and legal matters during the course of the consultations. It looks forward to receiving the United States Government's response and to setting a mutually convenient date for consultations.

I look forward to receiving your reply to this request and, in accordance with Article 4.3 of the DSU, to selecting a mutually acceptable date for holding consultations. Vietnam welcomes suggestions that the United States may have concern the date and venue for the consultations.
