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

Request for the Establishment of a Panel by Viet Nam

The following communication, dated 20 December 2012, from the delegation of Viet Nam to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

Upon instruction from my authorities, I wish to convey the request of the Government of Viet Nam ("Viet Nam") to the Dispute Settlement Body (the "DSB") for the establishment of a panel pursuant to Article XXIII: I of the General Agreement on Tariffs and Trade 1994 (the "GATT 1994"), Articles 4 and 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (the "DSU"), and Article 17.4 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the "Anti-Dumping Agreement") with respect to certain anti-dumping measures imposed by the United States on imports of certain shrimp from Viet Nam.

At the outset, Viet Nam observes that this is the second dispute settlement proceeding concerning imports of certain shrimp from Viet Nam. Many of the issues raised in the present request for the establishment of a panel were addressed by the panel in *US – Anti-Dumping Measures on Certain Shrimp from Viet Nam* (DS404). The DSB adopted that panel report on 2 September 2011. Despite the United States' statement that it would implement the DSB's recommendations and ruling in a reasonable period of time set to expire on 2 July 2012, the recommendations and rulings have yet to be implemented as of the date of this request. Notwithstanding this failure to implement, Viet Nam respectfully requests that the Panel in this dispute consider the effect of the implemented recommendations and rulings, as it impacts the issues in this dispute, including challenges concerning the United States Department of Commerce's final sunset review determinations.

1. Consultations

Pursuant to Article 4 of the *Understanding on the Rules and Procedures Governing* the Settlements of Disputes (DSU) and Article XXII: 1 of the General Agreement on Tariffs and Trade 1994 (GATT 1994), Viet Nam requested consultations with the United States (US) regarding certain anti-dumping measures imposed by the United States on imports of certain shrimp from Viet Nam. Viet Nam requested consultations with the United States on 20 February 2012, and the request was circulated on 27 February 2012 as document WT/DS429/1, G/L/980, G/ADP/D91/1.

Viet Nam and the United States held consultations on March 28, 2012 in Geneva. Those consultations were held with the hope of reaching a mutually satisfactory solution. The parties at consultations gained a better understanding of the issues under consideration, but did not reach a resolution of the matter. Therefore, Viet Nam hereby requests that a panel be established pursuant to Article 6 of the DSU and Article XXIII of the GATT 1994.

2. Summary of Facts and Legal Basis of Complaint

This request is, in particular but not exclusively, made with respect to:

(1) The imposition of antidumping duties and cash deposit requirements pursuant to the final results of the United States Department of Commerce's (hereafter, "USDOC") fourth administrative review for the period from February 1, 2008 to January 31, 2009, in *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 75 Fed. Reg. 4771 (August 9, 2010);

(2) The fourth administrative review of *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam* insofar as it did not revoke the anti-dumping duty order with respect to certain respondents requesting or eligible for such revocation.

(3) The imposition of anti-dumping duties and cash deposit requirements pursuant to the final results of the USDOC's fifth administrative review for the period from February 1, 2009 through January 31, 2010, in *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review,* 76 Fed. Reg. 56158 (September 12, 2011);

(4) The fifth administrative review of *Certain Frozen Warmwater Shrimp from the Socialist Republic of* Vietnam insofar as it did not revoke the anti-dumping duty order with respect to certain respondents eligible for such revocation;

(5) The imposition of anti-dumping duties and cash deposit requirements pursuant to the final results of the USDOC's sixth administrative review for the period from February 1, 2010 through January 31, 2011, in *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review,* 77 Fed. Reg. 55800 (September 11, 2012);

(6) The sixth administrative review of *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam* insofar as it did not revoke the anti-dumping duty order with respect to certain respondents eligible for such revocation;

(7) The continued application of the practices and conduct described below, in any other ongoing or future anti-dumping administrative reviews, and the preliminary and final results thereof, related to the imports of certain frozen warm water shrimp from Viet Nam (DOC Case A-552-802), as well as any assessment instructions, cash deposit requirements, and revocation determinations issued pursuant to such reviews;

(8) The final results *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of the First Five-year "Sunset" Review of the Antidumping Duty Order,* 75 Fed. Reg. 75965 (Dec. 7, 2010), in which the USDOC determined that revocation of the anti-dumping duty order would be likely to lead to the continuation or recurrence of dumping; and

(9) Section 129 of the Uruguay Round Agreements Act ("URAA"), 19 U.S.C. §3538, as elaborated upon in the Statement of Administrative Action accompanying the URAA and as implemented by the relevant United States authorities.

(a) Zeroing

(i) Summary of Facts

In each of the administrative reviews at issue, the USDOC has made use of the zeroing methodology that has been repeatedly and consistently held by the Appellate Body to be in violation of US international obligations. Specifically, in making an average-to-average comparison of export price and normal value, the USDOC does not allow non-dumped sales to offset the amount of dumping found with respect to other sales. The USDOC has acknowledged in each review use of this zeroing methodology in the administrative determinations. Therefore, the dumping rate is in excess of the actual dumping engaged in by the respondents.

These calculations and methodologies are applied pursuant, in particular, to the following United States laws and regulations:

1. Tariff Act of 1930, as amended, Section 771(35)(A)

2. Implementing regulations of the USDOC, 19 C.F.R. § 351.408 and 351.414.

The USDOC issued a "final modification" of its practice of zeroing in administrative reviews on February 14, 2012 (77 FR 8101), but this modification specifically excluded application of the new practice to any of the completed annual reviews of the antidumping duty order on *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam* including reviews completed after that date, and the sunset review. Thus, the margins of dumping calculated in the fourth, fifth, and sixth administrative reviews, and used as the basis for the sunset review and other determinations related to revocation, were all based on a WTO inconsistent methodology, as were the margins of dumping determined in the second and third reviews. As was the case in the second and third administrative reviews, the margins of dumping properly calculated are zero or de minimis.

(ii) Legal Basis of Complaint

Viet Nam considers the above-mentioned laws and procedures by the USDOC to be, as such and as applied in a continued and ongoing basis, inconsistent with several provisions of the Anti-Dumping Agreement, GATT 1994, and the Marrakesh Agreement. In original investigations, periodic reviews, new shipper reviews, sunset reviews, and certain changed circumstances reviews, USDOC's use of zeroing is inconsistent with:

1. Article 2 of the Anti-Dumping Agreement, including paragraphs 2.1, 2.4, and 2.4.2, because the comparison made by the USDOC is inconsistent with the requirements of Article 2 and those paragraphs of Article 2;

2. Article 9 of the Anti-Dumping Agreement, including paragraphs 9.1 and 9.3, because the USDOC's use of the zeroing methodology results in the imposition of duties in excess of the amount of dumping as determined pursuant to Article 2;

3. Paragraph 9.4 of Article 9 of the Anti-Dumping Agreement because the USDOC's use of the zeroing methodology results in the imposition of duties for the all-other rate in excess of the amount of dumping as determined pursuant to Article 2;

4. Article 1 of the Anti-Dumping Agreement and Articles VI:1 and VI:2 of the GATT 1994 to the extent that the imposition and collection of the duties is inconsistent with the Anti-Dumping Agreement;

5. For sunset reviews only, Article 11 of the Anti-Dumping Agreement, including paragraphs 11.1, 11.2, 11.3 and 11.4 of the Anti-Dumping Agreement where likelihood of continued dumping determinations are made using the zeroing methodology inconsistent with Articles 2.4 and 2.4.2 of the Anti-Dumping Agreement; and

6. Part 1:2 of the *Protocol of Accession of the Socialist Republic of Vietnam, WT/L/662,* 15 November 2006 and Paragraphs 254 and 255 of the *Report of the Working Party on Accession of Vietnam*, WT/ACC/VNM/48, 26 October, 2006.

Viet Nam also considers that USDOC's application of the above-mentioned laws and procedures in the periodic and sunset reviews here at issue to be inconsistent with the following provisions of the Anti-Dumping Agreement, GATT 1994, and the Marrakesh Agreement for the same reasons set out above:

7. Articles 1, 2.1, 2.4, 2.4.2, 9.1, 9.3, 11.1, and 11.3 of the Anti-Dumping Agreement.

8. Article 18.4 of the Anti-Dumping Agreement and Article XVI:4 of the Marrakesh Agreement.

9. Articles 1 and 2 of the GATT 1994.

Moreover, Viet Nam challenges the USDOC's use of the zeroing methodology in the original investigation and the first, second, third, fourth, fifth, and sixth administrative reviews, (1) to the extent that this practice impacted the USDOC's revocation and five-year "sunset" review determinations in the measures at issue and (2) to the extent that these determinations demonstrate the USDOC's continued and ongoing use of this practice throughout the full course of the shrimp antidumping proceeding.

(b) Vietnam-Wide Entity Rate Based on Adverse Facts Available

(i) Summary of Facts

The USDOC has applied a Vietnam-wide entity rate based on adverse facts available throughout the anti-dumping proceedings identified above. For countries identified as non-market economy countries, the USDOC requires that companies not selected as mandatory respondents apply for separate rates; those that fail to do so or do not meet the separate rate criteria are given the "Vietnam-wide entity rate" as established by USDOC. Even a company that timely and fully responds to the questions posed by USDOC will be assigned this Vietnam-wide entity rate if it does not rebut the presumption established by USDOC: specifically, the company must establish that it does not operate under the control of the government. If the company is successful, it will receive a "separate rate," which is generally the weighted average of the rates calculated for the individually investigated respondents.

Companies that do not receive a separate rate are assigned the Vietnam-wide entity rate. In the proceedings at issue, the USDOC assigned a Vietnam-wide entity rate based entirely on adverse facts available, even where companies responded timely and fully to the questionnaires issued by USDOC. The USDOC did so on the basis that certain separate rate applicants did not submit complete information and because the Vietnamese government did not submit a response on their behalf. The effect of this action is to assign highly prejudicial and unjustifiable rates to companies that do everything in their control to comply with USDOC requests.

These calculations and methodologies are applied pursuant, in particular, to the following United States laws and measures:

1. Tariff Act of 1930, as amended, Sections 771(18)(C)(i), 776(a)(2), and 776(b);

2. Import Administration Antidumping Manual, Chapter 10, "Non-Market Economies."

(ii) Legal Basis of Complaint

In the antidumping proceedings at-issue, the United States applied the laws and methodologies described above with regard to calculation of a Vietnam-wide entity rate, which Viet Nam considers to be inconsistent, as such and as applied on a continued and ongoing basis, with the obligations of the United States under the Anti-Dumping Agreement. Specifically, Viet Nam considers these measures to be inconsistent with the following provisions of the Anti-Dumping Agreement.

l. Articles 2 and 9 of the Anti-Dumping Agreement because these Articles determine the basis for calculation of antidumping margins and the collection of antidumping duties and do not refer to the circumstances contemplated by the application of a Vietnam-wide entity rate based on adverse facts available.

2. Article 6.8 and Appendix II of the Anti-Dumping Agreement because USDOC relied on adverse facts available for the calculation of the Vietnam-wide entity rate for entities not granted a "separate rate." In so doing, the USDOC failed to adhere to the provisions of the Agreement governing the use of adverse facts available, as the presence of "state control" is not a relevant criterion for determining margins of dumping or the application of adverse facts available.

3. Article 6.10 because the USDOC, in applying the Vietnam-wide entity rate to multiple entities, failed in its obligation to determine individual margins of dumping. The only exception to this requirement is where the USDOC relies on sampling, per the second sentence of Article 6.10.

4. Article 9, including paragraph 9.4, of the Anti-Dumping Agreement because the USDOC has created a category of producers not contemplated in the Agreement. The Agreement permits an authority to calculate a rate for individually investigated producers, a rate based on facts available for individually investigated producers that do not cooperate, and a separate, "all others" rate calculated based on the weighted average margin of the individually investigated producers. The "country-wide" rate applied by USDOC does not adhere to these limitations.

5. Articles 6. 10 and 9.2 which, in tandem, require calculation of individual dumping margins except where the USDOC relies on its sampling methodology or to do so would be impracticable. These provisions demonstrate that the USDOC has no basis for its presumption that multiple entities constitute a single, Vietnam-wide entity.

6. Part 1.2 of the Protocol of Accession of the Socialist Republic of Vietnam, WT/L/662, 15 November 2006 and Paragraphs 527, 254 and 255 of the Report of the Working Party on Accession of Vietnam, WT/ACC/VNM/48, 27 October 2006 because the terms of Vietnam's accession to the WTO do not permit the application of such a Vietnam-wide entity rate unless otherwise provided for under the Anti-Dumping Agreement.

Viet Nam also considers that USDOC's application of the above-mentioned laws and procedures in the periodic reviews here at issue to be inconsistent with the following provisions of the Anti-Dumping Agreement, GATT 1994, and the Marrakesh Agreement for the same reasons set out above:

7. Article 18, including paragraphs 18.1, 18.3 and 18.4, of the Anti-Dumping Agreement and Article XVI:4 of the Marrakesh Agreement.

8. Articles 1 and 2 of the GATT 1994.

Moreover, Viet Nam challenges the treatment of the Vietnam-wide entity in the original investigation and the first, second, third, fourth, fifth, and sixth administrative reviews, (1) to the extent that this practice impacted the USDOC's revocation and five-year "sunset" review determinations in the measures at issue and (2) to the extent that these determinations demonstrate the USDOC's continued and ongoing use of this practice throughout the full course of the shrimp antidumping proceeding.

(c) Limiting the Number of Respondents Selected for Full Investigation or Review

(i) Summary of Facts

The United States antidumping law requires as a general rule examination of each known producer or exporter of subject merchandise. Beyond this general rule, the USDOC has the authority to limit the investigation to a selected number of producers where investigation of all known producers or exporters is not practicable.

The USDOC has only investigated or reviewed the few largest exporters, with the exception of new shipper reviews, throughout the proceeding at-issue, limiting to a substantial degree the number of producers individually investigated or reviewed. The USDOC has limited the respondents reviewed to the largest exporters in each of the administrative reviews that are measures at issue, selecting for individual investigation in each instance a fraction of the companies seeking individual review.

Companies not selected for individual investigation or review because of the US authorities' methodology have not been assigned their own antidumping rate, but instead receive either the "separate rate" or the Vietnam-wide entity rate. The USDOC in the proceedings at issue have declined to calculate an individual rate even where companies not individually investigated have voluntarily submitted information so that USDOC may do so. The result is that companies not presently engaging in dumping have not had and do not have the opportunity to receive a dumping rate of zero or de minimis, because they never have the opportunity to be individually investigated. Thus, companies not individually investigated, caused by USDOC's review of only the largest exporters, are not eligible for revocation of the dumping order on an individual basis. The USDOC will revoke an antidumping order where the exporter or producer has not engaged in dumping for three consecutive years and there is a likelihood that they will not do so in the future. Companies not individually investigated in these proceedings have no opportunity to establish three consecutive years of de minimis dumping rates and will be forced to continue to pay dumping rates even if they have not engaged in sales at less than fair value for more than three consecutive years. In addition, any final duties related to imports from these companies are, have been, or will be assessed duties in excess of the margin of dumping.

These methodologies are applied pursuant, in particular, to the following United States laws and measures:

1. Tariff Act of 1930, as amended, Section 777A(c)(2)(B);

2. Implementing regulation of the USDOC, 19 C.F.R. § 351.204.

(ii) Legal Basis of Complaint

Because the United States has acted in the manner just described, Viet Nam considers the proceedings to be inconsistent, as such and as applied on a continued and ongoing basis, with certain WTO obligations. Viet Nam considers these actions to be inconsistent with the following provisions of the Anti-Dumping Agreement and the *Vienna Convention on the Law of Treaties:*

1. Article 6, including paragraph 6.10, of the Anti-Dumping Agreement because the USDOC has failed to determine an individual margin of dumping for each known exporter or producer, without proper justification, at each stage of the proceedings.

2. Article 6, including paragraph 6.10.2 of the Anti-Dumping Agreement because the USDOC has, without proper justification, refused to investigate respondents on the basis of information voluntarily submitted and has refused voluntary responses.

3. Article 9, including paragraph 9.4, of the Anti-Dumping Agreement because the USDOC has refused to apply individual duties or normal values to respondents that provided the necessary information during the course of the investigation and has applied duties to non-investigated respondents without any evidence of dumping by those non-investigated respondents.

4. Article 11.1 of the Anti-Dumping Agreement because the USDOC's method of selecting respondents requires anti-dumping duties to be imposed even in instances where the producer or exporter is not dumping, where that producer has not been individually selected for investigation.

5. Part 1.2 of the Protocol of Accession of the Socialist Republic of Vietnam, WT/L/662, 15 November 2006 and Paragraphs 527, 254 and 255 of the Report of the Working Party on Accession of Vietnam, WT/ACC/VNM/48, 27 October 2006 because the terms of Vietnam's accession to the WTO do not permit the application of such a country-wide rate unless otherwise provided for under the Anti-Dumping Agreement.

6. Article 31 of the Vienna Convention on the Law of Treaties because the USDOC's practice does not comport with the overall purpose and intent of the Anti-Dumping Agreement, namely, the fair and effective imposition of anti-dumping duties so as to prevent the sale of goods for less than fair value.

Viet Nam also considers that USDOC's application of the above-mentioned laws and procedures in the original investigation and periodic reviews here at issue to be inconsistent with the following provisions of the Anti-Dumping Agreement, GATT 1994, and the Marrakesh Agreement for the same reasons set out above:

7. Article 18, including paragraphs 18.1, 18.3 and 18.4, of the Anti-Dumping Agreement and Article XVI:4 of the Marrakesh Agreement.

8. Articles 1 and 2 of the GATT 1994.

Moreover, Viet Nam challenges the use of limited respondent selection in the original investigation and the first, second, third, fourth, fifth, and sixth administrative reviews, (1) to the

extent that this practice impacted the USDOC's revocation and five-year "sunset" review determinations in the measures at issue and (2) to the extent that these determinations demonstrate the USDOC's continued and ongoing use of this practice throughout the full course of the shrimp antidumping proceeding.

(d) The United States Department of Commerce's Sunset Review Determinations

(i) Summary of Facts

In sunset reviews, the United States Department of Commerce bases its determinations on dumping margins calculated in a manner inconsistent with international obligations. A sunset review determination focuses on whether the expiry of an anti-dumping duty order would be likely to lead to continuation or recurrence of dumping. The USDOC makes this determination based primarily on two factors. First, by using dumping margins previously calculated with the zeroing methodology. In other words, the USDOC depends on dumping margins calculated in the original anti-dumping investigation and/or subsequent administrative reviews, in which negative dumping margins had been zeroed, producing an artificially high dumping margin. Second, the USDOC reviews the volume of imports of the product for the period before and the period after issuance of the anti-dumping duty order. The USDOC will find that revocation is likely to lead to the continuation of dumping where (1) dumping continued at a level above de minimis after issuance of the order, (2) imports of the product ceased after issuance of the order, or (3) dumping was eliminated and import volumes declined significantly. In reviewing import levels, the USDOC considers the full year prior to initiation of the investigation.

These methodologies are applied pursuant, in particular, to the following United States laws and measures:

1. Tariff Act of 1930, as amended, Sections 751 and 752;

2. the USDOC's Policy Bulletin 98.3, "Policies Governing the Conduct of Five-Year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders" (April 16, 1998), 63 Fed. Reg. 18871 (April 16, 1998).

(ii) Legal Basis of Complaint

Because the United States has acted in the manner just described, Viet Nam considers the proceedings to be inconsistent with certain WTO obligations. Viet Nam considers these actions to be inconsistent, as such and applied, with the following provisions of the *Anti-Dumping Agreement* and GATT 1994:

1. Articles 11.1 and 11.3, to the extent that the sunset review determinations are based on dumping margins that were calculated in a manner inconsistent with Articles 2.4.2 and 2.4 of the Anti-Dumping Agreement.

2. Articles 11.1 and 11.3, to the extent that the USDOC's sunset determination did not represent an objective or unbiased assessment of the facts before the authority and was not supported by those facts.

3. Articles 1 and 11.1 of the Anti-Dumping Agreement and Articles VI:I and VI:2 of the GATT 1994, to the extent that the USDOC's sunset review determination resulted in the continued imposition of antidumping duties beyond the period in which dumping occurred.

(e) Revocation in the absence of any evidence of dumping

(i) Summary of Facts

Beginning with the first review of the USDOC's antidumping duty order on *Certain Frozen Warmwater Shrimp from Vietnam*, there has been no evidence that any Vietnamese manufacturer or exporter of subject merchandise has sold that merchandise to the United States below normal value. All of the margins of dumping determined by the USDOC resulted from WTO inconsistent practices, including zeroing in administrative reviews, imposing a WTO inconsistent practice of requiring non-investigated companies to establish entitlement to the all others rate, and the application of an adverse facts available rate to the so-called Vietnam-wide entity.

Section 351.222 of the Department of Commerce regulations, as in effect through the conclusion of the sixth administrative review, provides for the Department to revoke antidumping orders in whole or in part based on the absence of dumping. Historically, antidumping duty orders have been revoked as to individual respondents based on the absence of dumping demonstrated in consecutive annual reviews. All individually investigated respondents have demonstrated the absence of dumping over a sustained period of time when the margins of dumping are calculated in a WTO consistent manner. At least one individually investigated company has demonstrated the absence of dumping in 3 or more consecutive reviews, while all individually investigated respondents have demonstrated the absence of dumping in every review in which they have been individually investigated. Thus, irrespective of the results of a WTO consistent sunset review, the antidumping duty order should be revoked in part with respect to individually investigated respondents having zero or de minimis margins of dumping in reviews two through five and two through six, when the sixth review is completed.

The GOV notes that section 351.222 of the Department's of Commerce's regulations as in effect through the conclusion of the sixth administrative review was amended on May 21, 2012. See 77 Fed. Reg. 29875. Under the new rule, applicable to any administrative review initiated on or after June 20, 2012, individual exporters or producers are not eligible for revocation of an antidumping duty order even if they have received antidumping rates of zero for three consecutive years. There is therefore no means by which individual exporters or producers can achieve revocation of an antidumping duty order.

(ii) Legal Basis of Complaint

Viet Nam considers the above mentioned actions to be, as applied, inconsistent with several provisions of the Anti-Dumping Agreement. Article 11.1 of the Anti-Dumping Agreement provides: An anti-dumping duty shall remain in force only as long as and to the extent necessary to counteract dumping which is causing injury. In order to ensure that the obligations of Article 11.1 can be realized, Article 11.2 provides:

> The authorities shall review the need for the continued imposition of the duty, where warranted, on their own initiative or, provided that a reasonable period of time has elapsed since the imposition of the definitive anti-dumping duty, upon request by any interested party which submits positive information substantiating the need for a review. Interested parties shall have the right to request the authorities to examine whether the continued imposition of the duty is necessary to offset dumping, whether the injury would be likely to continue or recur if the duty were removed or varied, or both. If, as a result of the review under this paragraph, the authorities determine that the anti-dumping duty is no longer warranted, it shall be terminated immediately.

The obligations under Article 11.2 are in addition to the obligations to undertake a sunset review set forth in Article 11.3. The continued application of antidumping measures to respondents that have demonstrated the sustained absence of dumping is inconsistent with US obligations under Articles 11.1 and 11.2.

(f) Section 129 of the Uruguay Round Agreements Act ("URAA")

(i) Summary of Facts

Section 129 of the URAA is the mechanism by which the United States implements adverse findings by the DSB. The law assigns responsibility to the United States Trade Representative, the USDOC and the ITC for implementing adverse decisions in a manner consistent with US international obligations.

The law contains unambiguous language on the *effect* of a Section 129 determination. The statute requires that "Determinations ... shall apply with respect to unliquidated entries of the subject merchandise that are entered or withdrawn from warehouse, for consumption on or after ... the date on which the Trade Representative directs the administering authority ... to implement that determination." This understanding is confirmed by the Statement of Administrative Action ("SAA"), which has been properly recognized as a definitive statement on operation of the URAA. Indeed, the URAA itself states that "[t]he statement of administrative action approved by the Congress under section 101(a) shall be regarded as an authoritative expression by the United States concerning the interpretation and application of the {URAA} and this Act in any judicial proceeding in which a question arises concerning such interpretation or application." The SAA is the most probative authority available for purposes of interpreting the language of the URAA. The statute, on its own, is quite clear on the limited effect of Section 129 determinations for entries made pursuant to a measure at issue. The SAA reinforces this limitation. The statute does not provide the Trade Representative, the USDOC or the CBP officials responsible for assessment, with the discretion to adjust the final duty liability of unliquidated entries.

This practice is applied pursuant, in particular, to the following United States laws and measures:

1. Section 129 of the URAA, codified as 19 U.S.C. § 3538;

2. the United States Statement of Administrative Action that accompanied the Uruguay Round Agreements Act, H.R. Doc. No.1 03-316, vol. 1.

(ii) Legal Basis of Complaint

Because the United States has acted in the manner just described, Viet Nam considers these provisions to be inconsistent, as such, with certain WTO obligations. Viet Nam considers these actions to be inconsistent with the following provisions of the *Anti-Dumping Agreement* and the GATT 1994:

1. Article 1 of the Anti-Dumping Agreement, to the extent that an anti-dumping measure is applied despite imposition of the duty pursuant to an investigation conducted in violation of the GATT 1994 and the Anti-Dumping Agreement.

2. Article 9.2 of the Anti-Dumping Agreement, to the extent that the USDOC and other relevant United States agencies continue to collect anti-dumping duties at a level known to be in excess of the appropriate amount.

3. Article 9.3 of the Anti-Dumping Agreement, to the extent that the USDOC and other relevant United States agencies continue to collect anti-dumping duties at a level that exceeds the margin of dumping as established under Article 2.

4. Article 11.1 of the Anti-Dumping Agreement, to the extent that the anti-dumping duty order remains in effect, and anti-dumping duties continue to be collected, beyond the period necessary to counteract dumping.

5. Article 18.1 of the Anti-Dumping Agreement, to the extent that the continued collection of duties amounts to an action that is performed without the authority provided in the GATT 1994.

3. Request

Viet Nam hereby respectfully requests that a panel be established, with the standard terms of reference, by the Dispute Settlement Body pursuant to Articles 4.7 and 6 of the DSU, Article XXIII of the GATT 1994, and Article 17.4 of the Anti-Dumping Agreement.