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

### NOTIFICATION OF AN APPEAL BY VIET NAM UNDER ARTICLE 16.4 AND ARTICLE 17 OF THE UNDERSTANDING ON RULES AND PROCEDURES GOVERNING THE SETTLEMENT OF DISPUTES (DSU), AND UNDER RULE 20(1) OF THE WORKING PROCEDURES FOR APPELLATE REVIEW

The following notification, dated 6 January 2015, from the Delegation of Viet Nam, is being circulated to Members.

At the instruction of my authorities, the Government of the Socialist Republic of Viet Nam hereby notifies the Dispute Settlement Body of its appeal of certain conclusions and recommendations of the panel in *United States – Anti-Dumping Measures on Certain Shrimp from Vietnam* (DS429). This notification of appeal is also being filed with the Appellate Body Secretariat, with the United States, and with third party participants in the panel proceeding. The specifics of the appeal are as follows:

1. Pursuant to Article 16.4 and Article 17 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU") and Rule 20 of the *Working Procedures for Appellate Review*, the Socialist Republic of Viet Nam ("Viet Nam") hereby notifies the Dispute Settlement Body ("DSB") of its decision to appeal to the Appellate Body certain issues of law and legal interpretation covered in the Panel Report in *United States – Anti-Dumping Measures on Certain Shrimp from Viet Nam* (WT/DS429) ("Panel Report"). Pursuant to Rule 20(1) of the Working Procedures for Appellate Review, Viet Nam is simultaneously filing this Notice of Appeal with the Appellate Body Secretariat.
2. Pursuant to rules 20(1) and 21(1) of the Working Procedures, Viet Nam files this Notice of Appeal together with its Appellant's Submission with the Appellate Body Secretariat.
3. Viet Nam seeks review of the failure of the Panel to find that section 129(c)(1) of the Uruguay Round Agreements Act ("URAA") constitutes an "as such" inconsistency with Articles 1, 9.2, 9.3, 11.1, and 18.1 of the Agreement on Implementation of Article VI of GATT 1994 ("Anti-Dumping Agreement") by limiting administrative redeterminations made to implement adverse DSB recommendations and rulings, as provided for under Section 129 of the URAA, to "entries" (imports) of subject merchandise made on or after the effective date of the determination to implement the adverse WTO ruling.
4. The conclusion and recommendation regarding section 129(c)(1) is in paragraph 8.1.h of the Panel Report. The discussion of Vietnam's claims, the defenses presented by the United States, and the evaluation of the Panel are in section 7.5 of the Panel Report.
5. The conclusion and recommendation regarding Section 129(c)(1) constitutes egregious error by the Panel in its examination, understanding, and application of the evidence before it and in its interpretation of this provision of U.S. law. As such, Viet Nam was denied an objective examination as required by Article 11 of the DSU of the meaning of Section 129(c)(1). The examination by the Panel was neither rigorous nor comprehensive as required by WTO jurisprudence. In particular, the Panel erred because:

- its analytical framework for determining whether it would consider the consistency of Section 129(c)(1) with U.S. WTO obligations applied an erroneous burden of proof that flowed from a gross misunderstanding of the U.S. retrospective duty assessment system and the operation of Section 129 relative to other mechanisms that might address certain entries made before a Section 129 redetermination's effective date; and
  - it failed to apply objective principles of statutory interpretation in its consideration (or lack thereof) of the statutory text of Section 129(c)(1), the broader context surrounding the operation of Section 129, authoritative guidance on Section 129(c)(1), judicial interpretation of the provision, and its application.
6. Viet Nam seeks to have the Appellate Body reverse the Panel's conclusion with respect to section 129(c)(1). In reversing the Panel's conclusion, Vietnam also requests the Appellate Body to complete the analysis and find Section 129(c)(1) "as such" inconsistent with U.S. WTO obligations under Articles 1, 9.2, 9.3, 11.1, and 18.1 of the Agreement on Implementation of Article VI of GATT 1994 ("Anti-Dumping Agreement"), and recommend that this provision be brought into conformity with those obligations.
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