

**UNITED STATES – ANTI-DUMPING MEASURES ON CERTAIN FROZEN  
WARMWATER SHRIMP FROM CHINA**

Request for Consultations by China

The following communication, dated 28 February 2011, from the delegation of China to the delegation of the United States and to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

My authorities have instructed me to request consultations with the 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 Article 17 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* ("Anti-Dumping Agreement") with regard to the "zeroing" practice by the United States Department of Commerce ("USDOC") in its anti-dumping measures on certain frozen warmwater shrimp from the People's Republic of China (Case No. A-570-893).

The matters that China would like to raise in the course of consultations concern, *inter alia*, the following anti-dumping measures imposed by the United States:

**1. The Original Investigation**

- (a) *Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the People's Republic of China*, 69 Federal Register 70997 (December 8, 2004), as amended by:
- *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp From the People's Republic of China*, 70 Federal Register 5149 (February 1, 2005);
  - *Certain Frozen Warmwater Shrimp from the People's Republic of China: Notice of Second Amended Final Determination of Sales at Less Than Fair Value*, 71 Federal Register 47484 (August 17, 2006);
  - *Final Results of Redetermination Pursuant to Court Remand*, Court No. 05-00056 (May 21, 2009),<sup>1</sup> issued by the USDOC pursuant to a remand order of

<sup>1</sup> Accessed at <http://ia.ita.doc.gov/remands/08-138.pdf>.

the United States Court of International Trade ("USCIT") and sustained by the USCIT on July 29, 2010;<sup>2</sup>

- *Certain Frozen Warmwater Shrimp From Brazil, India, the People's Republic of China, Thailand, and the Socialist Republic of Vietnam: Notice of Amended Final Determinations of Sales at Less Than Fair Value Pursuant to Court Decision*, 75 Federal Register 53947 (September 2, 2010);
- (b) Issues and Decision Memorandum for the Antidumping Duty Investigation of Certain Frozen and Canned Warmwater Shrimp from the People's Republic of China (November 29, 2004);
- (c) as well as any amendments, replacements and/or implementing measures for the measures identified above under subparagraphs (a) to (b).

In these measures, for respondents subject to individual examination, the USDOC engaged in the zeroing practice in calculating the dumping margin. Specifically, the USDOC identified sub-groups of products within the product under investigation ("averaging groups") on a per model basis and calculated margins within each of the averaging groups by comparing the weighted average export price and the corresponding weighted average normal value. The results of these comparisons on an "averaging group" basis were added up to establish the dumping margin of the product under investigation as a whole; however, in this process, any negative margins or amounts of "dumping" resulting from the "averaging group" comparisons were put at zero. The USDOC's zeroing practice has artificially created or, at a minimum, inflated dumping margins for the individually investigated respondents. In addition, on the basis of these individual dumping margins, the USDOC further calculated a weighted-average margin (known as the "separate rate") that applied to the cooperating non-mandatory respondents<sup>3</sup>. China considers that the zeroing practice in these measures is inconsistent with the obligations of the United States under Articles VI:1 and VI:2 of the GATT 1994 and Articles 1, 2.1, 2.4, 2.4.2, 5.8, 9.2, 9.3 and 9.4 of the Anti-Dumping Agreement.

## 2. Administrative Reviews

- (a) *Certain Frozen Warmwater Shrimp From the People's Republic of China: Notice of Final Results and Rescission, in Part, of 2004/2006 Antidumping Duty Administrative and New Shipper Reviews*, 72 Federal Register 52049 (September 12, 2007);
- (b) Issues and Decision Memorandum for the Final Results of 2004/2006 Antidumping Duty Administrative and New Shipper Reviews of Certain Frozen Warmwater Shrimp from the People's Republic of China (September 5, 2007);
- (c) *Third Administrative Review of Frozen Warmwater Shrimp From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 74 Federal Register 46565 (September 10, 2009);

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<sup>2</sup> See *Allied Pacific Food, et. al v. United States Court No. 05-00056 USCIT Slip Op.10-83*, accessed at [http://www.cit.uscourts.gov/slip\\_op/Slip\\_op10/10-83.pdf](http://www.cit.uscourts.gov/slip_op/Slip_op10/10-83.pdf).

<sup>3</sup> Such non-selected respondents were also required to pass the so-called "separate-rate test" in order to receive the separate rate.

- (d) Third Administrative Review of Frozen Warmwater Shrimp from the People's Republic of China: Issues and Decision Memorandum for the Final Results (August 28, 2009);
- (e) *Administrative Review of Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 75 Federal Register 49460 (August 13, 2010);
- (f) Fourth Administrative Review of Frozen Warmwater Shrimp from the People's Republic of China: Issues and Decision Memorandum for the Final Results (August 9, 2010);
- (g) *Certain Frozen Warmwater Shrimp From the People's Republic of China: Preliminary Results and Preliminary Partial Rescission of Fifth Antidumping Duty Administrative Review*, 76 Federal Register 8338 (February 14, 2011), and the final results and related issues and decision memorandum for the fifth antidumping duty administrative review to be issued after the date of this request for consultations;
- (h) as well as any amendments, replacements, and/or implementing measures, including, *inter alia*, any assessment instructions and cash deposit requirements issued pursuant to the reviews identified above.

In each of the administrative reviews, to the extent that the USDOC has applied zeroing to calculate dumping margins for cooperative respondents subject to individual reviews, and/or has determined the separate rate based on rates calculated by the application of zeroing, China considers that these measures are inconsistent with the obligations of the United States under Articles VI:1 and VI:2 of the GATT 1994 and Articles 2.4 , 9.3 and 9.4 of the Anti-Dumping Agreement.

### 3. Sunset Reviews

- (a) *Certain Frozen Warmwater Shrimp from Brazil, India, the People's Republic of China and Thailand: Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders*, 75 Federal Register 27299 (May 14, 2010);
- (b) Issues and Decision Memorandum for the Expedited Sunset Reviews of the Antidumping Duty Orders on Certain Frozen Warmwater Shrimp from Brazil, India, the People's Republic of China, and Thailand;
- (c) Any affirmative determination issued by the United States International Trade Commission ("USITC") after the date of this request for consultations for its five-year reviews concerning the anti-dumping duty orders on frozen warmwater shrimp,<sup>4</sup> where dumping margins calculated by the application of zeroing may have been considered and/or relied upon by the USITC, resulting in the determination that the revocation of the anti-dumping order on frozen warmwater shrimp from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time;

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<sup>4</sup> See the *Notice of Institution of Five-year Reviews concerning the Anti-dumping Duties on Frozen Warmwater Shrimp From Brazil, China, India, Thailand, and Vietnam*, Investigation No.731-TA-1063, 1064, 1066-1068(Review), 75 Federal Register 1078 (January 8, 2010).

- (d) as well as any amendments, replacements, and/or implementing measures for the measures identified above under subparagraphs (a) through (c).

In the sunset review, the USDOC relied on the margins calculated in the original anti-dumping investigation and/or administrative reviews, where negative dumping margins had been zeroed, resulting in the determination that revocation of the anti-dumping orders would be likely to lead to continuation or recurrence of dumping. In addition, in case that the USITC makes an affirmative determination in its five-year reviews concerning the anti-dumping duty orders on frozen warmwater shrimp, it might also have considered or relied on margins of dumping found by the application of zeroing in determining that the revocation of the anti-dumping order on frozen warmwater shrimp from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

China therefore considers that these measures are inconsistent with the obligations of the United States under Article 11.3 of the Anti-Dumping Agreement, because they relied on margins of dumping calculated by the application of zeroing inconsistent with Articles VI:1 and VI:2 of the GATT 1994 and Articles 2.1, 2.4, 2.4.2 and 9.4 of the Anti-Dumping Agreement.

China reserves its right to raise further factual and legal issues during the course of the consultations.

China looks forward to receiving the reply of the United States to this request and to setting a mutually convenient date for consultations.

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