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UNITED STATES – ANTI-DUMPING MEASURES ON FISH FILLETS FROM VIET NAM

REQUEST FOR CONSULTATIONS BY VIET NAM

The following communication, dated 8 January 2018, from the delegation of Viet Nam to the delegation of the United States and to the Chairperson 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"). This request is made with respect to:

- (1) The imposition of anti-dumping duties and cash deposit requirements pursuant to the final results of the United States Department of Commerce's (hereafter, "USDOC") fifth administrative review for the period from August 1, 2007 to July 31, 2008 in Certain Frozen Fish Fillets From the Socialist Republic of Viet Nam: Final Results of the Antidumping Duty Administrative Review and New Shipper Review, 75 Fed. Reg. 12726 (March 17, 2010);
- (2) 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 August 1, 2008 to July 31, 2009, in Certain Frozen Fish Fillets from the Socialist Republic of Viet Nam: Final Results of the Sixth Administrative Review and Sixth New Shipper Review, 76 Fed.Reg. 15941 (March 22, 2011);
- (3) The imposition of anti-dumping duties and cash deposit requirements pursuant to the final results of the USDOC's seventh administrative review for the period from August 1, 2009 to July 31, 2010, in Certain Frozen Fish Fillets from the Socialist Republic of Viet Nam: Final and Partial Rescission of the Seventh Antidumping Administrative Review, 77 Fed.Reg. 15039 (March 14, 2012);
- (4) The seventh administrative review of Certain Frozen Fish Fillets from the Socialist Republic of Viet Nam as referenced above insofar as it did not revoke the anti-dumping duty order with respect to certain respondents eligible for and requesting such revocation;
- (5) Any other ongoing or future anti-dumping administrative reviews, and the preliminary and final results thereof, related to the imports of Certain Frozen Fish Fillets from the Socialist Republic of Viet Nam (DOC Case A-552-801), as well as any assessment instructions, cash deposit requirements, and revocation determinations issued pursuant to such reviews;
- (6) 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;

- (7) Any other legal authority claimed by the United States authorities to allow compliance with the treatment required by the WTO with respect to unliquidated entries which entered the US prior to the implementation of any Section 129 proceeding.

With regard to these measures, Viet Nam would like to consult with the United States regarding application of certain laws, regulations and practices, including the following:

- (1) the Tariff Act of 1930, as amended, in particular Sections 731, 751, 752, 771(7), 771(35)(A), 771(35)(B), and 777A(d);
- (2) Section 129 of the URAA, codified as 19 U.S.C. §3538;
- (3) the United States Statement of Administrative Action that accompanied the Uruguay Round Agreements Act, H.R. Doc. No.1 03-316, vol. I;
- (4) the implementing regulations of the United States Department of Commerce ("USDOC"), 19 C.F.R. Section 351, in particular 19 C.F.R. § 351.218 and 19 C.F.R. § 351.414;
- (5) the Import Administration Antidumping Manual (2009 edition), including the computer programs to which it refers;
- (6) the methodology of the United States for determining margins of dumping in administrative reviews;
- (7) the practice of requiring submission of a separate rate application or certification in original investigations and periodic reviews concerning Vietnamese producers in order to qualify for the all others - or "separate" - rate;
- (8) the application of a so-called Viet Nam-wide entity rate based on adverse facts available to respondents not individually investigated who fail to provide a separate rate application or certification to demonstrate the absence of government control;
- (9) the practice of implementing adverse Dispute Settlement Body rulings, pursuant to Section 129 of the URAA, or other legal authority, such that unliquidated entries entered or withdrawn from the warehouse for consumption prior to the date of a Section 129 determination remain subject to assessment of duties pursuant to the original anti-dumping duty determination or a rate higher than a WTO consistent rate.

Viet Nam would like to consult with the United States not only with regard to actions taken by the USDOC in the determinations listed at (1)-(4) above on an "as applied" basis, but would also like to consult with the United States' regarding its practice, as such, of (1) improper use of the zeroing methodology in original investigations and reviews pursuant to its so-called differential pricing methodology, (2) improper application of an assessment rate to a country-wide entity in investigations and periodic reviews that is distinct from the all others rate, by way of USDOC's "separate rate" practice, (3) requiring non-individually investigated respondents to respond to a questionnaire regarding independence from government control to qualify for the all others rate; and (4) improper implementation of adverse Dispute Settlement Body rulings relating to US anti-dumping practices, actions, and measures, pursuant to Section 129 of the URAA or other authority under US law.

The matters that the Government of Viet Nam would like to raise in the course of consultations include, but are not limited to, the following:

- (1) The rejection of the request for revocation by Vinh Hoan in the 7th administrative review when the final determination in that review would not occur until 330 days after the request for revocation;
- (2) The rejection of the request for revocation by Vinh Hoan in the 7th administrative review when the date specified by USDOC for such a request was before the date of the final determination in the prior review;

- (3) The continued reliance by the US, including in the reviews affecting Vinh Hoan's eligibility for a revocation, on a WTO inconsistent zeroing practice;
- (4) The continued reliance by the US on its separate rate practice in cases involving Viet Nam despite this practice having been found to be WTO inconsistent; and
- (5) The continued failure by the US to provide authority for WTO consistent implementation of adverse rulings to the extent such rulings require the refund of unliquidated duties on entries entering the United States prior to the date of implementation.

Viet Nam believes that the laws, regulations, administrative procedures, practices and methodologies described above are as such and/or as applied in the determinations listed above, and on the basis of continued use with respect to select practices, 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:

- (1) Articles 1:1, VI: 1, VI:2, and X:3(a) of the GATT 1994;
- (2) Articles 1,2.1,2.4,2.4.2,6,9, 11, 17.6(i), and Annex II of the Anti-Dumping Agreement;
- (3) Article XVI:4 of the WTO Agreement;
- (4) Articles 3.7, 19.1,21.1,21.3, and 21.5 of the DSU; and
- (5) Viet Nam's Protocol of Accession to the WTO.

Viet Nam reserves the right to raise additional claims and legal matters during the course of the consultations.

We 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. Viet Nam welcomes suggestions that the United States may have concerning the date and venue for the consultations.
