

Original: English

UNITED STATES - IMPORT PROHIBITION OF CERTAIN SHRIMP  
AND SHRIMP PRODUCTS

Request for the Establishment of a Panel by Malaysia and Thailand

The following communication, dated 9 January 1997, from the Permanent Missions of Malaysia and Thailand to the Permanent Mission of the United States and to the Dispute Settlement Body, is circulated at the request of these delegations.

Through a series of actions, including enactment of Section 609 of Public Law 101-162 amending the Endangered Species Act of 1973, 16 U.S.C. § 1531 *et seq.*, promulgation of regulations and issuance of judicial decisions interpreting the law and regulations, the Government of the United States has implemented a partial embargo on the importation of certain shrimp and shrimp products which is inconsistent with its obligations under the Agreement Establishing the World Trade Organization (WTO Agreement) including the General Agreement on Tariffs and Trade 1994 ("GATT"). Specifically, the embargo is inconsistent with at least the following three GATT obligations: (1) the proviso contained in Article XI:1 that no contracting party will impose prohibitions or restrictions on imports through quotas, licenses or other measures; (2) the most-favoured-nation principle embodied in Article I:1; and (3) the proviso contained in Article XIII:1 that all allowable prohibitions or restrictions on imports must be applied in a non-discriminatory manner.

In an effort to resolve these matters and pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU") and Article XXII:1 of the GATT, on October 8, 1996, the Governments of India, Malaysia, Pakistan and Thailand requested consultations with the United States (WT/DS58/1). Thereafter, consultations were conducted on 19 November 1996, in Geneva, and subsequent letters were exchanged regarding points requiring further clarification. However, the participants failed to reach an understanding during the consultations.

Consequently, pursuant to Article XXIII of the GATT, the Governments of Malaysia and Thailand respectfully request that a panel be established to settle this dispute in accordance with Article 6 of the DSU, with the standard terms of reference referred to in Article 7 of the DSU.

The established panel would then be requested to find, *inter alia*, that:

- (i) through the laws and regulations of the United States referred to above, the Government of the United States has failed to carry out its obligations and commitments under several provisions of the WTO Agreement, including but not limited to Article XI, Article I and Article XIII of the GATT;
- (ii) such failure is not justified by any provision of the said agreements, including the exceptions set forth in Article XX of the GATT; and

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(iii) such failure nullifies and impairs benefits accruing to Malaysia and Thailand under the GATT and WTO Agreement.

Pursuant to Article 6.1 of the DSU, the Governments of Malaysia and Thailand respectfully request that the foregoing request for establishment of a panel be placed on the agenda of the meeting of the Dispute Settlement Body scheduled to be held on 22 January 1997.