

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

Request for Consultations by Viet Nam

The following communication, received on 22 February 2012, 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") fourth administrative review for the period from 1 February 2008 to 31 January 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 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 1 February 2009 through 31 January 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) Any other ongoing or future anti-dumping administrative reviews, and the preliminary and final results thereof, related to the imports of certain frozen warmwater 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;

- (6) 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
- (7) 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.

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. 103-316, 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 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);
- (7) the methodology of the United States for determining margins of dumping in administrative reviews;
- (8) 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;
- (9) the practice of limiting the number of respondents selected for individual examination to only a small fraction of the total number of companies seeking individual review and the accompanying failure by the United States to provide alternative methods for non-investigated respondents to demonstrate that they are no longer dumping;
- (10) the application of a so-called Vietnam-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;

- (11) the practice of denying individually examined and non-individually examined respondents of the opportunity to demonstrate the absence of dumping, which would allow for the dumping order to be revoked as to individual respondents that cease dumping behaviour;
- (12) the practice and methodology of the United States in five-year ("sunset") reviews for determining whether revocation of anti-dumping orders would be likely to lead to continuation or recurrence of dumping; and
- (13) the practice of implementing adverse Dispute Settlement Body rulings, pursuant to Section 129 of the DRAA, 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.

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 administrative reviews and sunset reviews, (2) improper application of an assessment rate to a country-wide entity in 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.

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) In the fourth and fifth administrative reviews, the zeroing of dumping margins when comparing export prices and normal value;
- (2) in the fourth and fifth administrative reviews, the determination of dumping margins, both for investigated respondents and so-called separate rate respondents, above de minimis levels as a result of zeroing negative dumping margins for investigated respondents, and the consequent imposition, continuation, or collection of anti-dumping duties;
- (3) in the fourth and fifth administrative reviews, the limited selection of respondents individually investigated, such that non-investigated companies are denied the opportunity to demonstrate the absence of dumping necessary to qualify for revocation of the anti-dumping duty order;
- (4) in the fourth and fifth administrative reviews, the treatment of the so-called Vietnam-wide entity, including the designation of the entity as a "single" entity and the anti-dumping duty assigned to the entity, which was based on application of total adverse facts available;
- (5) the continued use of the practices described in paragraphs (1)-(4) above in subsequent reviews;

- (6) in the fourth and fifth administrative reviews, the USDOC's determination to not revoke the anti-dumping duty order with respect to three respondents: Minh Phu Group, CAMIMEX, and Grobest, despite evidence demonstrating the absence of dumping in the fourth administrative review and the absence of any evidence of dumping by these respondents in any of the prior reviews conducted by the USDOC;
- (7) the use of zeroing to calculate dumping margins and determine duty assessment in the final results of the original investigation and first, second, third, fourth, and fifth administrative reviews, to the extent that the USDOC's use of the zeroing methodology in those determinations impermissibly inflated assessed anti-dumping duties and consequentially impacted the USDOC's revocation and five-year "sunset" review determinations in the measures at issue;
- (8) the use of zeroing to calculate dumping margins and determine duty assessment in the final results of the original investigation and first, second, third, fourth, and fifth administrative reviews, to the extent that the USDOC's consistent use of the zeroing methodology in those determinations demonstrates the USDOC's continued and ongoing use of the methodology throughout the full course of the shrimp anti-dumping proceeding;
- (9) the use of limited respondent selection in the original investigation and first, second, third, fourth, and fifth administrative reviews, to the extent that this practice denied respondents not selected for individual review the opportunity to obtain revocation of the anti-dumping duty order in the measures at issue and impacted the USDOC's five-year "sunset" review determination;
- (10) the use of limited respondent selection in the original investigation and first, second, third, fourth, and fifth administrative reviews, to the extent that these determinations demonstrate the USDOC's continued and ongoing use of this practice throughout the full course of the shrimp anti-dumping proceeding;
- (11) the treatment of the so-called Vietnam-wide entity in the original investigation and the first, second, third, fourth, and fifth administrative reviews, to the extent that this practice impacted the USDOC's revocation and five-year "sunset" review determinations in the measures at issue;
- (12) the treatment of the so-called Vietnam-wide entity in the original investigation and the first, second, third, fourth, and fifth administrative reviews, to the extent that these determinations demonstrate the USDOC's continued and ongoing use of this practice throughout the full course of the shrimp anti-dumping proceeding;
- (13) in all of the anti-dumping proceedings of *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam*, the absence of any mechanism to provide individually investigated or non-individually investigated respondents the opportunity to establish the absence of dumping that is required for revocation of the anti-dumping duty order;
- (14) in the final sunset review determination, the use of dumping margins calculated in the original anti-dumping investigation and/or subsequent administrative reviews, in which 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;

- (15) in the final sunset review determination, the failure to otherwise evaluate the facts in an unbiased and objective manner in determining the likelihood of the continuation or recurrence of dumping; and
- (16) the use of WTO-inconsistent anti-dumping duty assessment rates applied to unliquidated entries that are assessed following a Section 129 determination that implements an adverse Dispute Settlement Body ruling.

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.

To avoid the apparent confusion that our inclusion of the original investigation caused the US in Vietnam's previous request for consultations and a panel involving *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam*, we would like to clarify that while practices and determinations in the original investigation and the first, second, and third administrative reviews are referenced because they have had an effect on the fourth administrative review, the fifth administrative review, the five year "sunset review", and ongoing or future reviews, the practices and determinations are included in this request for consultations only to the extent that they have had or will have an effect on the fourth administrative review, the fifth administrative review, the five year sunset review, and subsequent reviews. The underlying determinations, decision memoranda, and other memoranda and record evidence in the original investigation and the three reviews are thus necessary and relevant to the proceeding for which these consultations are requested.

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.
