

**UNITED STATES – PROVISIONAL ANTI-DUMPING MEASURES
ON SHRIMP FROM THAILAND**

Request for Consultations by Thailand

The following communication, dated 9 December 2004, from the delegation of Thailand 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.

My authorities have instructed me to request consultations with 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") and Articles 17.3 and 17.4 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("AD Agreement") with respect to the provisional anti-dumping measures imposed by the United States on certain frozen and canned warmwater shrimp from Thailand.

On 27 January 2004, pursuant to section 732 of the Tariff Act of 1930, as amended (the "Act"), the United States initiated an anti-dumping investigation in respect of certain frozen and canned warmwater shrimp imported from Thailand and several other countries.¹ On 28 July 2004, pursuant to section 733 of the Act, the United States preliminarily determined that certain frozen and canned warmwater shrimp from Thailand are being sold, or are likely to be sold, in the United States at less than fair value (the "Preliminary Determination").² The estimated margins of dumping ranged from 5.56 per cent to 10.25 per cent. Pursuant to the Preliminary Determination and section 733(d) of the Act, the United States suspended the liquidation of all entries of certain frozen and canned warmwater shrimp from Thailand and required cash deposits or the posting of bonds equal to the estimated margins of dumping established in the Preliminary Determination.

Thailand requests consultations on the following aspects of the Preliminary Determination and consequent imposition of provisional anti-dumping measures on imports of certain frozen and canned warmwater shrimp from Thailand:

¹ *Initiation of Antidumping Duty Investigations: Certain Frozen and Canned Warmwater Shrimp from Brazil, Ecuador, India, Thailand, the People's Republic of China and the Socialist Republic of Vietnam*, 69 Fed. Reg. 3876 (27 January 2004).

² *Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Negative Critical Circumstances Determination: Certain Frozen and Canned Warmwater Shrimp from Thailand*, 69 Fed. Reg. 47100 (4 August 2004).

- (a) The United States' application in the Preliminary Determination of the practice known as "zeroing" negative dumping margins, the effect of which was to create margins of dumping where none would otherwise have been found or, at a minimum, to inflate margins of dumping. The United States' practice of "zeroing" has, in the rulings of the Dispute Settlement Body in *United States – Final Dumping Determination of Softwood Lumber from Canada*³, previously been found to be inconsistent with the AD Agreement. Through its use of "zeroing", the United States failed to make a fair comparison between the export price and the normal value and calculated distorted margins of dumping, and therefore violated Articles 2.4 and 2.4.2 of the AD Agreement.
- (b) The United States' resort in the Preliminary Determination to the use of so-called "adverse facts available" to determine normal values for one Thai exporter, the effect of which was to inflate the margins of dumping for this exporter. The United States' resort to so-called "adverse facts available" was inconsistent with Article 6.8; paragraphs 3, 5, 6 and 7 of Annex II; and Article 6.13 of the AD Agreement.
- (c) The United States' failure to make due allowances in the Preliminary Determination for differences that affected price comparability between export prices and normal values for the Thai exporters, including differences relating to levels of trade and duty drawback payments. The United States' failure to make due allowances for these factors is inconsistent with Article 2.4 of the AD Agreement and resulted in an unfair comparison between export price and normal value, also contrary to Article 2.4.

Thailand considers that the foregoing methodologies, calculations, comparisons and determinations made by the United States cannot be reconciled with Article VI of the GATT, Articles 1 and 7.1 of the AD Agreement, and the specific provisions of the AD Agreement cited above. Thailand reserves the right to raise issues relating to other aspects of the Preliminary Determination during the course of the consultations.

Thailand looks forward to receiving your reply to this request at your earliest convenience. I propose that the date and venue of these consultations be agreed between our two missions.

³ Appellate Body Report, *United States – Final Dumping Determination of Softwood Lumber from Canada*, WT/DS264/AB/R (adopted 31 August 2004).