

[BILLING CODE 3190-W0-P]

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS404]

WTO Dispute Settlement Proceeding Regarding United States – Anti-Dumping Measures on Certain Shrimp from Viet Nam

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (“USTR”) is providing notice that on April 7, 2010, the Socialist Republic of Vietnam (“Vietnam”) requested the establishment of a dispute settlement panel under the *Marrakesh Agreement Establishing the World Trade Organization* (“WTO Agreement”) concerning a number of antidumping administrative reviews and new shipper reviews conducted by the Department of Commerce on imports of certain frozen warmwater shrimp from Vietnam (Investigation A-552-801), and various U.S. laws, regulations, administrative procedures, practices, and methodologies. That request may be found at www.wto.org contained in a document designated as WT/DS404/5. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before **[insert date that is 30 days after publication]** to be assured of timely consideration by USTR.

ADDRESSES: Public comments should be submitted electronically to www.regulations.gov, docket number USTR–2010–0008. If you are unable to submit comments using www.regulations.gov, please contact Sandy McKinzy at (202) 395–9483 to arrange for an

alternative method of transmission. If (as explained below) the comments contain confidential information, then the comments should be submitted by fax only to Sandy McKinzy at (202) 395-3640.

FOR FURTHER INFORMATION CONTACT: J. Daniel Stirk, Associate General Counsel, Office of the United States Trade Representative, 600 17th Street, N.W., Washington, D.C. 20508, (202) 395-9617.

SUPPLEMENTARY INFORMATION: Section 127(b) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)) requires that notice and opportunity for comment be provided after the United States submits or receives a request for the establishment of a WTO dispute settlement panel. Consistent with this obligation, USTR is providing notice that the establishment of a dispute settlement panel was requested pursuant to the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes in this dispute. The panel was established on May 18, 2010. The panel would be expected to hold its meetings in Geneva, Switzerland, and would be expected to issue a report on its findings and recommendations within nine months.

Major Issues Raised by Vietnam

In its April 7, 2010 panel request, Vietnam makes a number of allegations concerning the antidumping investigation, administrative reviews, and sunset review conducted by the Department of Commerce on certain frozen warmwater shrimp from Vietnam, referring in

particular to the use of what it describes as “zeroing” in those proceedings. Vietnam challenges the determinations by the Department of Commerce in (1) *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam*, 69 FR 71,005 (December 5, 2004); (2) *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of the First Antidumping Duty Administrative Review*, 72 FR 52,052 (September 12, 2007); (3) *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 52,273 (September 9, 2008); (4) *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 47,191 (September 15, 2009); (5) *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Preliminary Results, Partial Rescission, and Request for Revocation, in Part, of the Fourth Administrative Review*, 75 FR 12,206 (March 15, 2010), including denial of all requests for revocation; and (6) *Initiation of Five-Year (“Sunset”) Review*, 75 FR 103 (January 4, 2010). Vietnam also challenges certain U.S. laws and regulations, including (1) the Tariff Act of 1930, as amended, sections 771(18)(C)(i), 771(35)(A), 776(a)(2), 776(b), and 777A(c)(2)(B); (2) implementing regulations of the Department of Commerce, 19 C.F.R. § 351.204, 351.408, and 351.414; and Import Administration Antidumping Manual, Chapter 10, “Non-Market Economies.”

Vietnam alleges that these laws and procedures are, as such and as applied in the determinations by the Department of Commerce, inconsistent with Articles I, II, VI:1, and VI:2 of the General Agreement on Tariffs and Trade 1994; Articles 1, 2.1, 2.4, 2.4.2, 5.8, 6.8, 6.10, 9.1, 9.3, 9.4, 11.1, 11.2, 11.3, 11.4, 18.1, 18.3, and 18.4, and Annex II of the Agreement on Implementation of

Article VI of the General Agreement on Tariffs and Trade 1994 (the Anti-Dumping Agreement); Article XVI:4 of the WTO Agreement; part I.2 of Vietnam's Protocol of Accession to the WTO; and Article 31 of the Vienna Convention on the Law of Treaties.

Vietnam alleges that the United States acted inconsistently with the provisions identified above by applying so-called "zeroing" in the determination of the margins of dumping in the proceedings identified above, by repeatedly and consistently failing to provide most Vietnamese respondents seeking a review an opportunity to demonstrate the absence of dumping by being permitted to participate in a review, and by requiring companies to demonstrate their independence from government control and applying an adverse facts available rate to companies failing to do so in all reviews.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Persons may submit public comments electronically to www.regulations.gov docket number USTR-2010-0008. If you are unable to submit comments using www.regulations.gov, please contact Sandy McKinzy at (202) 395-9483 to arrange for an alternative method of transmission.

To submit comments via www.regulations.gov, enter docket number USTR-2010-0008 on the home page and click "search." The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting "Notice" under

“Document Type” on the left side of the search results page, and click on the link entitled “Submit a Comment.” (For further information on using the www.regulations.gov web site, please consult the resources provided on the web site by clicking on the “Help” link at the top of the home page.)

The www.regulations.gov web site provides the option of providing comments by filling in a “Type Comment and Upload File” field, or by attaching a document. It is expected that most comments will be provided in an attached document. If a document is attached, it is necessary and sufficient to type “See attached” in the “Type Comment and Upload File” field.

A person requesting that information contained in a comment submitted by that person be treated as business confidential information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Business confidential information must be clearly designated as such and the submission must be marked “BUSINESS CONFIDENTIAL” at the top and bottom of the cover page and each succeeding page. Any comment containing business confidential information must be submitted by fax to Sandy McKinzy at (202) 395-3640. A non-confidential summary of the confidential information must be submitted to www.regulations.gov. The non-confidential summary will be placed in the docket and open to public inspection.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section

135(g)(2) of the Trade Act of 1974 (19 U.S.C. § 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter –

- (1) Must clearly so designate the information or advice;
- (2) Must clearly mark the material as “SUBMITTED IN CONFIDENCE” at the top and bottom of the cover page and each succeeding page; and
- (3) Must provide a non-confidential summary of the information or advice.

Any comment containing confidential information must be submitted by fax to Sandy McKinzy at (202) 395-3640. A non-confidential summary of the confidential information must be submitted to www.regulations.gov. The non-confidential summary will be placed in the docket and open to public inspection.

USTR will maintain a docket on this dispute settlement proceeding accessible to the public. The public file will include non-confidential comments received by USTR from the public with respect to the dispute. If a dispute settlement panel is convened or in the event of an appeal from such a panel, the U.S. submissions, any non-confidential submissions, or non-confidential summaries of submissions, received from other participants in the dispute, will be made available to the public on USTR’s web site at www.ustr.gov, and the report of the panel, and, if applicable, the report of the Appellate Body, will be available on the web site of the World Trade Organization, www.wto.org.

Comments will be placed in the docket and open to public inspection pursuant to 15 C.F.R. § 2006.13, except confidential business information exempt from public inspection in accordance with 15 C.F.R. § 2006.15 or information determined by USTR to be confidential in accordance

with 19 U.S.C. § 2155(g)(2). Comments open to public inspection may be viewed on the www.regulations.gov web site.

Steven F. Fabry,

Assistant United States Trade Representative

for Monitoring and Enforcement

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