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**UNITED STATES – CERTAIN MEASURES CONCERNING PANGASIOUS
SEAFOOD PRODUCTS FROM VIET NAM**

REQUEST FOR CONSULTATIONS BY VIET NAM

The following communication, dated 22 February 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 the request of my authorities, I hereby request consultations with the Government of the United States of America (the "United States") pursuant to Articles 1 and 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (the "DSU"), Article 11 of the *Agreement on the Application of Sanitary and Phytosanitary Measures* (the "SPS Agreement"), and Article XXII of the *General Agreement on Tariffs and Trade 1994* (the "GATT 1994"), concerning certain measures enacted, adopted, implemented, and otherwise taken by the United States affecting the importation into the United States of the *Pangasius* seafood product from Viet Nam, purportedly because of sanitary and phytosanitary concerns.

Pangasius is fish of the order *Siluriformes*, which includes two families of fish. One is the fish of the family *Ictaluridae*, which is found in North America, where it is produced by aquaculture and sold as "catfish." The other is fish of the family *Panagasiidae*, which is found mainly in Viet Nam and elsewhere in Southeast Asia. The *Pangasius* fish of this second family in the order is sold as "basa" or as "tra" or "swai" and is the product at issue in this consultations request.

Shipments of *Pangasius* from Viet Nam to the United States have long been unfairly targeted for trade restrictions by United States producers of like products. These exports by Vietnamese producers are now subject to laws, rules, administrative practices, and related actions of the United States that, without a sufficient scientific basis, are restricting the trade in this product, which is of substantial significance to the Vietnamese economy, and which also provides a substantial benefit to United States consumers as a healthy and affordable source of food and of protein.

This request is made with respect to certain measures affecting the import, distribution, and sale of Vietnamese *Pangasius* products in the United States, including but not limited to the following:

Section 10016(b) of the Food, Conservation and Energy Act of 2008, Pub. L. 110-246 (the "2008 Farm Bill"), amending the Federal Meat Inspection Act, 21 USC 601 *et seq* (the "FMIA") to provide that "catfish, as defined by the Secretary" (of Agriculture) is an "amenable species" that is subject to the jurisdiction of, and thus to inspection by, the Food Safety Inspection Service ("FSIS") in the United States Department of Agriculture ("USDA"). 21 USC 601(w)(2).

Section 12106 of the Agriculture Act of 2014, Public L. 113-79 (the "2014 Farm Bill"), amending Section 1(w) of the FMIA to remove the phrase "catfish, as defined by the Secretary," and replace it with "all fish of the order *Siluriformes*," thus including these fish among the amenable species under FSIS jurisdiction and inspection. 21 USC 606 (a) and (b).

9 Code of Federal Regulations, Subchapter F, Chapter III, Parts 530-551, "Mandatory Inspection of the Order *Siluriformes* and Products Derived from Such Fish" (80 Federal Register 75589) (December 2, 2015) (the "Final Rule").

The administrative applications of Section 10016(b) of the 2008 Farm Bill and Section 12106 of the 2014 Farm Bill as implemented by the Final Rule.

9 Code of Federal Regulations 541, "Marks, Marketing and Labeling of Products and Containers" (respecting fish and fish products), incorporating requirements in 9 Code of Federal Regulations 317, "Labeling, Marking Devices, and Containers."

The administrative applications of 9 Code of Federal Regulations 541, including but not limited to those requirements incorporated from 9 Code of Federal Regulations 317.

These measures appear to be inconsistent with the obligations of the United States under the GATT 1994 and the SPS Agreement, including but not limited to the following provisions:

(i) Article 2.2 of the SPS Agreement.

The United States appears to have acted inconsistently with its obligations in Article 2.2 of the SPS Agreement to apply these measures "only to the extent necessary" for health protection and to ensure that its measures are "based on scientific principles" and are "not maintained without sufficient scientific evidence." There appear to be violations of Article 2.2 of the SPS Agreement as such and as applied.

(ii) Article 2.3, first sentence, of the SPS Agreement.

The United States appears to have acted inconsistently with its obligation in Article 2.3, first sentence, of the SPS Agreement to ensure that these measures do not result in "arbitrary" or "unjustifiable" discrimination. There appear to be violations of Article 2.3, first sentence, of the SPS Agreement as such and as applied.

(iii) Article 2.3, second sentence, of the SPS Agreement.

The United States appears to have acted inconsistently with its obligation in Article 2.3, second sentence, of the SPS Agreement by applying these measures in a way that constitutes a "disguised restriction on international trade." There appear to be violations of Article 2.3, second sentence, of the SPS Agreement as such and as applied.

(iv) Article 4.1 of the SPS Agreement.

In the application of these measures, the United States appears to have acted inconsistently with its obligation in Article 4.1 of the SPS Agreement by not accepting the SPS measures of Viet Nam as equivalent even though Viet Nam has "objectively demonstrated" that its measures achieve the appropriate level of SPS protection established by the United States.

(v) Article 5.1 of the SPS Agreement.

The United States appears to have acted inconsistently with its obligation under Article 5.1 of the SPS Agreement to base these measures on a risk assessment. There appear to be violations of Article 5.1 of the SPS Agreement as such and as applied.

(vi) Article 5.3 of the SPS Agreement.

In these measures, the United States appears to have acted inconsistently with its obligation under Article 5.3 of the SPS Agreement to "take into account" as a relevant economic factor "the relative cost-effectiveness of alternative approaches to limiting risks."

(vii) Article 5.6 and footnote 3 of the SPS Agreement.

The United States appears to have acted inconsistently with its obligation under Article 5.6 and footnote 3 of the SPS Agreement because these measures are more trade-restrictive than required

to achieve its appropriate level of protection, taking into account technical and economic feasibility. There appear to be violations of Article 5.6 and footnote 3 of the SPS Agreement as such and as applied.

(viii) Article 8 and Annex (C)(1)(a) of the SPS Agreement.

In its application of these measures, the United States appears to have acted inconsistently with its obligations in Article 8 and Annex C(1)(a) of the SPS Agreement because it has not completed its control, inspection, and approval procedures without "undue delay."

(ix) Article I:1 of the GATT 1994.

In its application of these measures, the United States appears to have acted inconsistently with its obligation in Article I:1 of the GATT 1994 because the rules and formalities of those measures grant an advantage to the products of other WTO Members immediately and unconditionally that is not granted to like products of Viet Nam.

(x) Article XI:1 of the GATT 1994.

The United States appears to have acted inconsistently with its obligation under Article XI:1 of the GATT 1994 because these measures have imposed a "restriction" on imports. There appear to be violations of Article XI:1 of the GATT 1994 as such and as applied.

This request for consultations relates to the United States measures as described in this request and to any amendments, supplements, extensions, replacements, renewals, implementations, and other changes of any kind in these measures, as well as to any and all actions taken pursuant or relating to these measures, including but not limited to any such measures referred to by either party during the consultations resulting from this request.

Viet Nam reserves the right to raise additional facts and legal claims under other provisions of the covered agreements relating to this matter during the course of the consultations.

Viet Nam looks forward to receiving the reply of the United States to this request and to fixing a mutually convenient date for consultations. Viet Nam welcomes the suggestions of the United States as to the time and place of these consultations.
