

Original: English

UNITED STATES – ANTI-DUMPING MEASURE ON SHRIMP FROM ECUADOR

Request for Consultations by Ecuador

The following communication, dated 17 November 2005, from the delegation of Ecuador to the delegation of the United States and to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

My authorities have asked me to request consultations with the Government of the United States under Article 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (DSU), Article XXII of the *General Agreement on Tariffs and Trade 1994* (GATT 1994) and Article 17 of the *Agreement on Implementation of Article VI of GATT 1994* (Anti-Dumping Agreement) concerning the final affirmative determination of sales at less than fair value with respect to certain frozen warmwater shrimp from Ecuador (Inv. No. A-331-802) published by the United States Department of Commerce (DOC) on 23 December 2004 (69 Fed. Reg. 76913). This request for consultations includes two additional measures: the amended final determination of sales at less than fair value that the DOC published on 1 February 2005 and the accompanying anti-dumping duty order (70 Fed. Reg. 5156).

Specifically, the Government of Ecuador requests consultations on the DOC's practice of "zeroing" negative anti-dumping margins. Through this practice, the DOC treats transactions with negative dumping margins as having margins equal to zero in determining weighted average anti-dumping margins in an anti-dumping investigation. The DOC applied its practice of zeroing in its investigation of certain frozen warmwater shrimp from Ecuador. Had the DOC not applied this practice, the two named Ecuadorian respondents and the "all others" for which it determined anti-dumping margins above the *de minimis* level would have been found not to have been dumping and, as a result, the DOC would not have issued an affirmative final determination, an amended affirmative final determination, or an anti-dumping duty order. Instead, the DOC would have calculated *de minimis* margins for the two named respondents and for "all others" in Ecuador.

The Government of Ecuador considers the DOC's use of its practice of zeroing in its final determination, amended final determination and anti-dumping duty order to violate Article VI of the GATT 1994 and Articles 1, 2.1, 2.2, 2.4, 2.4.2, 5.8, 6.10, 9.2, 9.3, 9.4, and 18.1 of the Anti-Dumping Agreement. Zeroing resulted in unfair and improper comparisons between the export price and the normal value, resulting in artificial and inflated margins of dumping where none existed.

The zeroing methodology that the DOC used in its anti-dumping investigation of certain frozen warmwater shrimp from Ecuador is virtually identical to the methodology that was held to be inconsistent with the Anti-Dumping Agreement in *European Communities – Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India* (Panel Report, WT/DS141/R, and Appellate Body

Report, WT/DS141/AB/R, adopted 12 March 2001, and also in *United States – Final Dumping Determination on Softwood Lumber from Canada* (Panel Report, WT/DS264/R, and Appellate Body Report, WT/DS264/AB/R, adopted 31 August 2004).

Ecuador reserves the right to raise additional claims and legal matters concerning the DOC's zeroing practice during the course of consultations.

I 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. Ecuador welcomes any suggestions that the United States may have concerning the date and venue for these consultations.
