

## VIII. CONCLUSIONS AND RECOMMENDATION

### A. CONCLUSIONS

8.1 For the reasons set out in the foregoing sections of this Report, we conclude as follows:

- (a) A measure consisting of the "continued use of challenged practices" is not within our terms of reference.
- (b) The United States acted inconsistently with Article 2.4 of the Anti-Dumping Agreement as a result of the USDOC's application of the zeroing methodology to calculate the dumping margins of selected respondents in the second and third administrative reviews under the *Shrimp* anti-dumping order; we exercise judicial economy in respect of Viet Nam's claims that the United States acted inconsistently with Articles 9.3, 2.1, and 2.4.2 of the Anti-Dumping Agreement and Article VI:2 of the GATT 1994.
- (c) The U.S. zeroing methodology, as such, as it relates to the use of simple zeroing in administrative reviews, is inconsistent with the United States' obligations under Article 9.3 of the Anti-Dumping Agreement and Article VI:2 of the GATT 1994.
- (d) Viet Nam has not established that the USDOC's decisions to limit its examinations in the second and third administrative reviews are inconsistent with Articles 6.10, 9.3, 11.1, and 11.3 of the Anti-Dumping Agreement.
- (e) Viet Nam has not established that the United States acted inconsistently with its obligations under the first sentence of Article 6.10.2 of the Anti-Dumping Agreement in the second and third administrative reviews.
- (f) Viet Nam has not established that the United States acted inconsistently with its obligations under the second sentence of Article 6.10.2 of the Anti-Dumping Agreement in the administrative reviews at issue.
- (g) The United States acted inconsistently with its obligations under Article 9.4 of the Anti-Dumping Agreement as a result of the USDOC's imposition, in the second and third administrative reviews, of an "all others" rate determined on the basis of margins of dumping calculated with zeroing; we exercise judicial economy in respect of Viet Nam's claims under Articles 9.3, 2.4.2, and 2.4 of the Anti-Dumping Agreement.
- (h) Viet Nam's claims of violation under Article 17.6(i) of the Anti-Dumping Agreement in relation to the "all others" rate are not within our terms of reference.
- (i) The USDOC's failure to assign an "all others" rate to the Vietnam-wide entity in the second and third administrative reviews is inconsistent with Article 9.4 of the Anti-Dumping Agreement.

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footnote 46 to para. 52, citing to *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of the Five-Year "Sunset" Review of the Antidumping Duty Order*, 75 Fed. Reg. 75965, 7 December 2010, available at <http://ia.ita.doc.gov/frn/summary/vietnam/2010-30664.txt>). In the same oral statement, Viet Nam argues that the challenged USDOC practices have, therefore, effectively resulted in a sunset review determination which is inconsistent with the United States' obligations under Article 11.3 of the Anti-Dumping Agreement.

- (j) The USDOC's assignment of a facts available rate to the Vietnam-wide entity in the second administrative review and a rate that is in substance a facts available rate in the third administrative review is not consistent with Article 6.8 of the Anti-Dumping Agreement.
- (k) Viet Nam's claims of violation under Article 17.6(i) of the Anti-Dumping Agreement in relation to the rate assigned to the Vietnam-wide entity are not within our terms of reference.
- (l) Viet Nam's "consequential" claims of violation under Articles 9.3, 11.1 and 11.3 of the Anti-Dumping Agreement relate to a measure that is not within our terms of reference and we make no findings in respect of these claims.

B. RECOMMENDATION

8.2 Under Article 3.8 of the DSU, in cases where there is infringement of the obligations assumed under a covered agreement, the action is considered *prima facie* to constitute a case of nullification or impairment of benefits under that agreement. Accordingly, we conclude that to the extent that the United States has acted inconsistently with certain provisions of the Anti-Dumping Agreement and of the GATT 1994, it has nullified or impaired benefits accruing to Viet Nam under these agreements.

8.3 Pursuant to Article 19.1 of the DSU, having found that the United States has acted inconsistently with provisions of the Anti-Dumping Agreement and of the GATT 1994 as set out above, we recommend that the United States bring its measures into conformity with its obligations under those Agreements.

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