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UNITED STATES – ANTI-DUMPING MEASURES ON CERTAIN SHRIMP AND DIAMOND SAWBLADES FROM CHINA

Report of the Panel

Addendum

This *addendum* contains Annexes A to D to the Report of the Panel to be found in document WT/DS422/R.

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FIRST WRITTEN SUBMISSIONS OF THE PARTIES
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ANNEX A-1

EXECUTIVE SUMMARY OF THE FIRST
WRITTEN SUBMISSION OF CHINA

I. Introduction

1. In this dispute, the People's Republic of China ("China") contends that the anti-dumping duty orders imposed by the United States of America ("United States") on Shrimp and Diamond Sawblades from China, as amended, and the final determinations made by the United States Department of China ("USDOC"), as amended, leading to these orders, with the application of the "zeroing" methodology, are inconsistent with the first sentence of Article 2.4.2 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("Anti-Dumping Agreement").

2. On 28 February 2011 and 22 July 2011, China requested consultations with the United States. Consultations were held on 11 May 2011 and 8 September 2011. While these consultations failed to resolve the dispute, they assisted in clarifying the issues before the parties, and enabled the parties to reach a Procedures Agreement on 13 October 2011. According to the agreement, China has agreed that it would provide the necessary evidence and arguments to support its allegations, while the United States has agreed not to contest China's claim that the measures at issue are inconsistent with Article 2.4.2, first sentence, of the Anti-Dumping Agreement, on the grounds stated in the Appellate Body report in *US – Softwood Lumber V*.

II. Procedural History of the Shrimp and Diamond Sawblades Investigations

A. The Shrimp Investigation

3. On 27 January 2004, the USDOC initiated an anti-dumping investigation on certain frozen and canned warmwater shrimp from China (Investigation No. A–570–893). On 8 December 2004, the USDOC published the Shrimp Final Determination, in which the USDOC calculated dumping margins for four mandatory respondents respectively: (i) Allied Pacific Group ("Allied"): 84.93%; (ii) Yelin Enterprise Co., Hong Kong ("Yelin"): 82.27%; (iii) Shantou Red Garden Foodstuff Co., Ltd. ("Red Garden"): 27.89%; and (iv) Zhanjiang Guolian Aquatic Products Co., Ltd. ("Zhanjiang Guolian"): 0.07%. For 35 cooperating non-mandatory respondents that passed the USDOC's separate-rate test, the USDOC established a Separate Rate of 55.23%, which was a single weighted-average margin based on the dumping margins calculated for the mandatory respondents, excluding any margins that are zero, *de minimis*, or based entirely on adverse facts available.

4. Following a final determination of injury by the United States International Trade Commission ("USITC"), on 1 February 2005, the USDOC issued the Shrimp Amended Final Determination to correct the ministerial errors made in the Shrimp Final Determination and an anti-dumping duty order on Shrimp. In the Shrimp Amended Final Determination, the dumping margin of Allied was amended to 80.19%, while the margins of other mandatory respondents remained unchanged. As a consequence of the change in Allied's dumping margin, the Separate Rate was also recalculated to 53.68%.

5. On 17 August 2006, the USDOC issued the Shrimp Second Amended Final Determination, which granted the Separate Rate to an additional 11 Chinese exporters who were subject to PRC-wide rate previously.

6. On 2 September 2010, the USDOC issued an amended final determination pursuant to a decision made by the United States Court of International Trade ("USCIT"). On 26 April 2011, the USDOC issued an amended anti-dumping duty order that included dusted shrimp within the scope of the orders. This amended determination did not involve any changes to the dumping margins of Allied, Yelin, Red Garden, or the Separate Rate.

7. On 24 May 2011, as a result of a remand order by the USCIT, the USDOC issued the Shrimp Remand Determination, through which it revised the surrogate values for inputs and hours of labour used in margin calculations, and determined the margins of Allied and Yelin to be 5.07% and 8.45% respectively. However, the Separate Rate was not revised in the Shrimp Remand Determination.

8. On April 29, 2011, as a result of the affirmative dumping and injury-likelihood determinations by the USDOC and the USITC, the USDOC published a notice of the continuation of the anti-dumping duty orders on Shrimp. Consequently, the above-mentioned duty orders have been extended and remained in effect as of the date of China's First Written Submission.

9. A table of the dumping margins of the three mandatory respondents and the Separate Rate calculated in each determination at issue is provided as follows:

	Shrimp Final Determination	**Shrimp Amended Final Determination**	**Shrimp Remand Determination**
Allied	84.93%	80.19%	5.07%
Yelin	82.27%	82.27%	8.45%
Red Garden	27.89%	27.89%	N/A
Separate Rate	55.23%	53.68%	N/A

B. The Diamond Sawblades Investigation

10. On 21 June 2005, the USDOC initiated an anti-dumping investigation on diamond sawblades and parts thereof from China (Investigation No. A–570–900). On 22 May 2006, the USDOC published the Diamond Sawblades Final Determination, in which it calculated a dumping margin of 2.50% for AT&M.

11. On 22 June 2006, the USDOC published an amendment to the Diamond Sawblades Final Determination, and revised the dumping margin of AT&M to be 2.82%. On 4 November 2009, the USDOC published an anti-dumping duty order on imports of Diamond Sawblades from China, applying a rate of 2.82% to AT&M.

III. The Measures at Issue

12. The specific measures adopted by the United States that are subject to China's challenge in this dispute are as follow:

A. The Shrimp Investigation

- Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the People's Republic of China, 69 Federal Register 70997 (8 December 2004);

- Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp From the People's Republic of China, 70 Federal Register 5149 (1 February 2005);

- Certain Frozen Warmwater Shrimp from the People's Republic of China: Notice of Second Amended Final Determination of Sales at Less Than Fair Value, 71 Federal Register 47484 (17 August 2006);

- Certain Frozen Warmwater Shrimp From Brazil, India, the People's Republic of China, Thailand, and the Socialist Republic of Vietnam: Notice of Amended Final Determinations of Sales at Less Than Fair Value Pursuant to Court Decision, 75 Federal Register 53947 (2 September 2010);

- Certain Frozen Warmwater Shrimp From Brazil, India, the People's Republic of China, Thailand, and the Socialist Republic of Vietnam: Amended Antidumping Duty Orders in Accordance with Final Court Decision, 76 Federal Register 23277 (26 April 2011);

- Certain Frozen Warmwater Shrimp From the People's Republic of China: Notice of Amended Final Determination of Sales at Less Than Fair Value Pursuant to Court Decision, 76 Federal Register 30100 (24 May 2011).

13. For the purpose of this dispute, China's challenge relates to the following specific aspects of the final determination and the anti-dumping duty order, as amended and extended, by the USDOC, in connection with the Shrimp investigation: (i) the use by the USDOC of the "zeroing" methodology in determining the final dumping margins, as amended, for Allied, Yelin and Red Garden; (ii) the reliance upon the individual dumping margins calculated with the application of "zeroing" in calculating the Separate Rate as amended, applicable to the cooperating non-mandatory respondents that passed the separate-rate test in the investigation.

B. The Diamond Sawblades Investigation

- Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China, 71 Federal Register 29303 (22 May 2006);

- Notice of Amended Final Determination of Sales at Less Than Fair Value: Diamond Sawblades and Parts Thereof from the People's Republic of China, 71 Federal Register 35864 (22 June 2006);

- Diamond Sawblades and Parts Thereof from the People's Republic of China and the Republic of Korea: Antidumping Duty Orders, 74 Federal Register 57145 (4 November 2009).

14. For the purpose of this dispute, China's challenge relates to the following specific aspect of the final determination and the anti-dumping duty order, as amended, by the USDOC, in connection with the Diamond Sawblades investigation - the use by the USDOC of the "zeroing" methodology in determining the final dumping margin, as amended, for AT&M.

IV. The Use of "Zeroing" by the USDOC in the Measures at Issue

A. Overview

15. Throughout the two original investigations at issue, the USDOC has consistently applied the "zeroing" methodology in calculating dumping margins for individually investigated exporters. In applying this methodology, the USDOC: (1) identified different "models" (i.e. types) of products using "control numbers" (i.e. CONNUM) that specify the most relevant product characteristics; (2) calculated weighted average prices in the United States and weighted average normal values on a model-specific basis for the entire period of investigation; (3) compared the weighted average normal value of each model to the weighted average U.S. price for that same model; (4) in order to calculate the dumping margin for an exporter, summed the amount of dumping for each model and then divided it by the aggregate U.S. price for all models; and (5) before summing the total amount of dumping for all models, effectively set all negative margins on individual models to zero ("Five Components").

16. Passages from the relevant published determinations and unpublished decision memoranda of the USDOC show that it has applied the Five Components to calculate dumping margins for the relevant exporters, and that the Separate Rate in the Shrimp investigation was calculated on the basis of the individual dumping margins calculated with the application of "zeroing". China also submits an expert statement from Ms. Valerie Owenby to further substantiate the existence of the Five Components in the logs and outputs generated by the USDOC in each of the two investigations with respect to Allied, Yelin, Red Garden and AT&M, and to quantify the exact impact of "zeroing".

17. As elaborated in the VO Statement, Ms. Owenby carried out a four-step analysis to confirm the existence of the Five Components and to quantify the impact of "zeroing":

- Step 1: Using the programs and the same databases as the USDOC did in the investigations at issue, Ms. Owenby duplicated the USDOC calculations in each case by running the USDOC's computer programs ("SAS programs"). Upon executing the SAS programs, Ms. Owenby generated logs and outputs duplicating the logs and outputs that were generated by the USDOC. The "duplicate" calculations can serve as an accurate and proper basis to confirm each of the Five Components and to quantify the impact "zeroing" has on the overall weighted-rage margins.

- Step 2: Ms. Owenby then identified exactly where each of the Five Components was executed in the USDOC's margin calculations by reference to the logs generated by the USDOC and the logs generated by the duplicate results.

- Step 3: Ms. Owenby turned off "zeroing" from the duplicate versions of the USDOC calculations by removing the specific programming line that executes "zeroing" in the overall margin calculations.

- Step 4: Ms. Owenby compared the overall weighted-average margin generated when zeroing is removed to the USDOC's overall weighted-average margin for each respondent to quantify the exact impact of "zeroing".

18. In short, China proves in its First Written Submission that the USDOC has, as a matter of fact, "zeroed" in calculating dumping margins for Allied, Yelin and Red Garden in the Shrimp investigation and for AT&M in the Diamond Sawblades investigation, and that the use of "zeroing" has led the USDOC to find dumping where none would have otherwise been found or to calculate dumping margins that are inflated.

B. The Shrimp Investigation

1. Mandatory Respondents

19. The USDOC's Shrimp Preliminary Determination included a specific section entitled "CONNUM Comments", under which it stated, *inter alia*, that,

> [o]n January 28, 2004, the Department requested comments from interested parties regarding the appropriate product characteristic criteria for the investigation matching hierarchy for comparing the export price to normal value.

20. Furthermore, the USDOC explained in the Shrimp Preliminary Determination how it made comparison between U.S. price and normal value:

> [t]o determine whether sales of certain frozen and canned warmwater shrimp to the United States of the four mandatory respondents were made at less than fair value, we compared export price ("EP") or constructed export price ("CEP") to NV, as described in the "U.S. Price" and "Normal Value" sections of this notice.

21. In its Issues and Decision Memorandum accompanying the publication of the Shrimp Final Determination, the USDOC stated in explicit terms that it had:

> […] made model-specific comparisons of weighted-average export prices with weighted-average normal values of comparable merchandise…[It] then combined the dumping margins found based upon these comparisons, *without permitting non-dumped comparisons to reduce the dumping margins found on distinct models of subject merchandise*, in order to calculate the weighted-average dumping margin. (emphasis added)

22. The above statements of the USDOC unequivocally demonstrate that it had applied the Five Components in its calculation of dumping margins for mandatory respondents in the Shrimp investigation.

23. In addition, the Five Components in the USDOC's dumping margin calculation are identified in the chart in Exhibit VO-2 to the VO Statement (Exhibit CHN-18), where Ms. Owenby detailed the specific lines and page numbers for each component in the logs generated by the USDOC. In particular, the computer program used by the USDOC to calculate dumping margins contained the following instructions:

```
PROC MEANS NOPRINT DATA = MARGIN;
WHERE EMARGIN GT 0;
VAR EMARGIN  QTY11U VALUE;
OUTPUT OUT = ALLPUDD SUM = TOTPUDD MARGQTY MARGVAL;
```

24. The language "WHERE EMARGIN GT 0" causes the program to include only those sales where the dumping margin (or "EMARGIN") was greater than zero (or "GT 0") in the calculation of the total amount of dumping ("TOTPUDD"). Consequently, the calculation of the total amount of dumping ignores all sales with negative dumping margin. It is thus evident that, the USDOC had applied "zeroing" in calculating dumping margins which led the USDOC to find dumping where none would have otherwise been found or to inflate the dumping margins.

25. As demonstrated by the VO Statement, in contrast to the dumping margins of the relevant exporters calculated by the USDOC with the application of "zeroing" in the Shrimp investigation, the

dumping margins calculated with the same data but without the application of "zeroing" would have been negative or lower. Therefore, the USDOC has applied "zeroing" in calculating the dumping margins of the relevant exporters in the Shrimp investigation which led it to find dumping where none would have otherwise been found, or inflate the dumping margin.

2. Separate Rate

26. As demonstrated in the Separate Rate Memorandum by the USDOC, the Separate Rate in the Shrimp Amended Final Determination was a weighted-average margin based on the rate calculated for Allied in Shrimp Amended Final Determination (80.19%), and the rates calculated for Yelin (82.27%) and Red Garden (27.89%) in the Shrimp Final Determination.

27. As discussed above, since the dumping margins for relevant mandatory respondents were calculated with and impacted by the application of "zeroing", the Separate Rate calculated on that basis was also affected by the application of "zeroing". Had the USDOC not applied "zeroing" in calculating margins of these two mandatory respondents, the Separate Rate in the Shrimp Amended Final Determination would have dropped from 53.68% to 46.40%.

28. Therefore, it is indisputable that the USDOC has, in the Shrimp investigation, applied the "zeroing" methodology in calculating the dumping margins for certain mandatory respondents, which, as a factual matter, affected the results of the dumping margin calculations for Red Garden in the Shrimp Final Determination and for Allied in the Shrimp Amended Final Determination. Due to the reliance on these individually calculated dumping margins, the Separate Rate calculated in the Shrimp investigation is therefore affected by the application of "zeroing" as well.

C. The Diamond Sawblades Investigation

29. The USDOC stated in the Diamond Sawblades Preliminary Determination that,

> [o]n July 14, 2005, the Department requested comments from all interested parties on proposed product characteristics and model match criteria to be used in the designation of control numbers ("CONNUMs") to be assigned to the subject merchandise. … On August 5, 2005, the Department released the product characteristics and model match criteria to be used in the designation of CONNUMs to be assigned the subject merchandise.

30. It then declared that,

> [t]o determine whether sales of diamond sawblades to the United States … were made at less than fair value, we compared export price ("EP") or constructed export price ("CEP") to normal value ("NV"), as described in the "U.S. Price", and "Normal Value" sections of this notice. We compared NV to weighted-average EPs and CEPs in accordance with section 777A(d)(1) of the Act.

31. The USDOC, in its Issues and Decision Memorandum accompanying the publication of the Diamond Sawblades Final Determination, stated in explicit terms that it:

> …interprets this statutory definition to mean that a dumping margin exists only when normal value is greater than export or constructed export price. As no dumping margins exist with respect to sales where normal value is equal to or less than export or constructed export price, the Department will not permit these non-dumped sales to offset the amount of dumping found with respect to other sales.

32. In addition, the Five Components in the USDOC's dumping margin calculation are identified in the chart in Exhibit VO-2 to the VO Statement (CHN-18), where Ms. Owenby detailed the specific lines and page numbers for each component in the logs generated by the USDOC. Particularly, the computer program used by the USDOC to calculate AT&M's dumping margin contained the following instructions:

PROC MEANS NOPRINT DATA = MARGIN;
WHERE EMARGIN GT 0;
VAR EMARGIN QTYU VALUE;
OUTPUT OUT = ALLPUDD (DROP = _FREQ_ _TYPE_)
SUM = TOTPUDD MARGQTY MARGVAL;

33. Again, the language "WHERE EMARGIN GT 0" causes the program to include only those sales where the dumping margin (or "EMARGIN") was greater than zero (or "GT 0") in the calculation of the total amount of dumping ("TOTPUDD"). Thus, the calculation of the total amount of dumping ignores all sales with negative dumping margin.

34. As demonstrated by the VO Statement, in contrast to the 2.82% calculated by the USDOC with the application of "zeroing" in the Diamond Sawblades Amended Final Determination, the dumping margin for AT&M with the same data but without the application of "zeroing" would have been negative, i.e. no dumping would have been found for AT&M. Therefore, the USDOC has applied "zeroing" in calculating the dumping margin for AT&M which led it to find dumping where none would have otherwise been found.

D. Summary

35. The impact of the USDOC's use of "zeroing" is summarized in the table below.

	Final Determination		**Amended Final Determination**		**Remand Determination**	
	Zeroing	No Zeroing	Zeroing	No Zeroing	Zeroing	No Zeroing
Allied	84.93%	N/A	80.19%	79.70%	5.07%	Negative
Yelin	82.27%	82.27%	N/A	N/A	8.45%	Negative
Red Garden	27.89%	14.01%	N/A	N/A	N/A	N/A
Separate Rate	N/A	N/A	53.68%	46.40%	17.32%	14.01%
AT&M	N/A	N/A	2.82%	Negative	N/A	N/A

V. Legal Argument: Violation of Article 2.4.2 of the Anti-Dumping Agreement

36. In *US – Softwood Lumber V*, the Appellate Body interpreted the terms "margins of dumping" and "all comparable export transactions" in Article 2.4.2 in an "integrated manner", leading to its conclusion that, where "an investigating authority has chosen to undertake multiple comparisons, the investigating authority necessarily has to take into account the results of *all* those comparisons in order to establish margins of dumping for the product as a whole under Article 2.4.2."

37. As China demonstrates in its First Written Submission, the Five Components that have been established to exist in the "zeroing" methodology used by the USDOC in the Shrimp and Diamond Sawblades investigations at issue are identical to the "zeroing" methodology described at paragraph 64 of the Appellate Body report in *US – Softwood Lumber V* in all legally relevant respects.

38. Furthermore, the parties have reached the Procedures Agreement applicable to the resolution of this dispute, providing that the United States will not contest that the measures identified in the panel request are inconsistent with Article 2.4.2, first sentence of the Anti-Dumping Agreement on the grounds stated in *US-Softwood Lumber V*.

39. For the same reasons as articulated by the Appellate Body in *US – Softwood Lumber V* and by the panels in *US – Shrimp* (*Ecuador*), *US – Shrimp* (*Thailand*), and *US – Retail Carrier Bags (Thailand)*, the use of the zeroing methodology by the USDOC in calculating the dumping margins of certain exporters in the Shrimp and Diamond Sawblades investigations at issue was inconsistent with Article 2.4.2, first sentence, of the Anti-Dumping Agreement. While the Panel is not bound to follow the Appellate Body's reasoning in previous cases, it has been acknowledged that adopted Appellate Body Reports "create legitimate expectations among WTO Members", and that "following the Appellate Body's conclusions in earlier disputes is not only appropriate, but is what would be expected from panels, especially where the issues are the same."

40. With regard to the issue of Separate Rate in the Shrimp investigation, as a factual matter, China establishes in its First Written Submission that in the Shrimp Amended Final Determination, the calculation of the Separate Rate was based on a weighted average of three company-specific rates, two of which were calculated by the USDOC with the use of "zeroing" (the rate for Red Garden in the Shrimp Final Determination, and the rate for Allied in the Shrimp Amended Final Determination). As a legal matter, China also establishes that the use of "zeroing" in calculating these two company-specific rates is inconsistent with Article 2.4.2, first sentence, of the Anti-Dumping Agreement. Accordingly, the calculation of the Separate Rate in the Shrimp investigation "necessarily incorporates this inconsistent methodology [of zeroing]", and thus violates Article 2.4.2, first sentence, of the Anti-Dumping Agreement.

VI. Request for Finding and Recommendations

41. For the reasons set forth in China's First Written Submission, China respectfully requests that the Panel find that:

(i) in the calculation of the dumping margins for Allied, Yelin and Red Garden in the Shrimp investigation, by the use of "zeroing" methodology, the United States acted inconsistently with Article 2.4.2, first sentence, of the Anti-Dumping Agreement;

(ii) in the calculation of the Separate Rate in the Shrimp investigation, by relying on company-specific dumping margins that were calculated by the use of "zeroing" methodology, the United States acted inconsistently with Article 2.4.2, first sentence, of the Anti-Dumping Agreement; and,

(iii) in the calculation of the dumping margin for AT&M in the Diamond Sawblades investigation, by the use of "zeroing" methodology, the United States acted inconsistently with Article 2.4.2, first sentence, of the Anti-Dumping Agreement.

42. China respectfully requests that the Panel recommend that the United States bring the challenged measures into conformity with its obligations under the Anti-Dumping Agreement.

ANNEX A-2

FIRST WRITTEN SUBMISSION
OF THE UNITED STATES

1. The United States notes that the parties to this dispute have reached an Agreement on Procedures to permit expeditious resolution of this dispute.[1] In its request for a panel, China claims that the United States has breached its obligations under Article 2.4.2, first sentence, of the *Agreement on Implementation of Article VI of the GATT 1994*. The basis of China's claim is the U.S. Department of Commerce's (Commerce) use of "zeroing" when calculating the dumping margins for certain exporters in the investigation of *Certain Frozen Warmwater Shrimp From the People's Republic of China* and the investigation of *Diamond Sawblades and Parts Thereof from the People's Republic of China*.[2]

2. China describes, both in its request for a panel, and in its first written submission, Commerce's use of "zeroing" in the calculation of the dumping margin for certain exporters as follows: Commerce (1) identified different "models," i.e., types, of products based on the most relevant product characteristics; (2) calculated weighted average prices in the U.S. and weighted average normal values in the comparison market on a model-specific basis, for the entire period of investigation; (3) compared the weighted average normal value of each model to the weighted average U.S. price for that same model; (4) calculated the dumping margin for an exporter by summing the amount of dumping for each model and then dividing it by the aggregated U.S. price for all models; and (5) set to zero all negative margins on individual models before summing the total amount of dumping for all models.[3] The United States acknowledges the accuracy of China's description of Commerce's use of "zeroing" in calculating the dumping margins specifically challenged by China in this dispute.

3. China further states that the rate assigned to the cooperating non-mandatory respondents (the Separate Rate) was calculated as a weighted-average margin based on the dumping margins calculated for mandatory respondents, excluding any rates that are zero, *de minimis* or based entirely on adverse facts available.[4] The United States acknowledges the accuracy of China's description of the Separate Rate calculation in the investigation on warmwater shrimp.

4. To substantiate its factual claims, China has provided evidence consisting of Commerce's published determinations, issues and decision memoranda, and computer programs used to calculate the margins of dumping related to the final determinations in the original investigations at issue. The United States reviewed the factual evidence submitted by China and does not contest that certain of the submitted documentation, including the computer programs used to calculate the dumping margins,[5] were generated by Commerce during its conduct of the investigations at issue.

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[1] *See* WT/DS422/4 (October 14, 2011).

[2] WT/DS422/3 (October 14, 2011), pp. 1-3.

[3] *See* WT/DS422/3, p. 3; *First Written Submission of China*, 30 January 2012, para. 24 (hereinafter "China First Written Submission.")

[4] China First Written Submission, para. 47.

[5] The United States confirms that the program output logs, contained in the following exhibits, were generated by Commerce in its calculation of the margins at issue: CHN-18:VO-8, Final Remand Results Analysis Memo_Yelin (2); CHN-18: VO-17, Final Remand Results Analysis memo_Allied; CHN-18: VO-20, Final Results SAS LOG & OUTPUT Red Garden; CHN-18: VO-21, USDOC's Analysis for the Final Remand Redetermination of Certain Frozen and Canned Warmwater Shrimp from the People's Republic of China: Shantou Red Garden Foodstuff Co., Ltd. ("Red Garden"); CHN-18: VO-24, USDOC's Calculation of the Weighted Average Section A Rate; and CHN-18: VO-26, USDOC's ministerial error memorandum ATM

5. For the investigation of *Certain Frozen Warmwater Shrimp From the People's Republic of China*, China clarifies that it is not challenging Commerce's calculation of the dumping margin for Zhanjiang Guolian Aquatic Products Co., Ltd. or the "PRC-wide rate."[6] China states that it challenges the use of "zeroing" to calculate dumping margins for the following entities: Allied Pacific Group, Yelin Enterprise Co., Hong Kong, Shantou Red Garden Foodstuff Co., Ltd., and the reliance on margins that contain "zeroing" when calculating the Separate Rate.[7]

6. Regarding the investigation of *Diamond Sawblades and Parts Thereof from the People's Republic of China*, China states that it is challenging the use of "zeroing" to calculate the dumping margin for Advanced Technology & Materials Co., Ltd. (which includes Beijing Gang Yan Diamond Products Company and Yichang HXF Circular Saw Industrial Co., Ltd.).[8] China further explains that its challenge "does not extend to the dumping margins calculated for other individually investigated respondents, the Separate Rate, or the PRC-wide rate."[9]

7. China states that the "zeroing" methodology applied in Commerce's calculation of the dumping margins in the investigation of *Certain Frozen Warmwater Shrimp From the People's Republic of China* and the investigation of *Diamond Sawblades and Parts Thereof from the People's Republic of China*, is the same as the methodology found by the Appellate Body to be inconsistent with Article 2.4.2, first sentence, in *US – Softwood Lumber Dumping*.[10] China further states that it considers Commerce's use of the "zeroing" methodology in calculating the dumping margins of certain exporters of shrimp and sawblades from China to be inconsistent with Article 2.4.2, first sentence, on the grounds set forth in the *US – Softwood Lumber Dumping* Appellate Body report.[11]

8. The United States recognizes that in *US – Softwood Lumber Dumping* the Appellate Body found that the use of "zeroing" with respect to the average-to-average comparison methodology in investigations was inconsistent with Article 2.4.2, by interpreting the terms "margins of dumping" and "all comparable export transactions" as used in the first sentence of Article 2.4.2, in an integrated manner.[12] The United States acknowledges that this reasoning is equally applicable with respect to China's claims regarding the dumping margins specifically challenged in this dispute.

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amended final results. The United States confirms that the following documentation submitted by China were also generated by Commerce during its conduct of the investigation of *Diamond Sawblades and Parts Thereof from the People's Republic of China*: CHN-12 through CHN-15; CHN-21; CHN-22. The United States further confirms that the following documentation submitted by China were generated by Commerce during its conduct of the investigation of *Certain Frozen Warmwater Shrimp From the People's Republic of China*: CHN-2 through CHN-11; CHN-19; CHN-20.

[6] China First Written Submission, para. 7. In the two anti-dumping investigations at issue, Commerce considered China to be a non-market economy ("NME") country, and applied a rebuttable presumption that all companies within China are operating units of a single government-wide entity and, thus, should receive a single anti-dumping duty rate (known as the "PRC-wide rate"). Exporters wishing to rebut that presumption must file an application and demonstrate the absence of government control, both *de jure* and *de facto*, over their export activities. Respondents who satisfied these criteria either received an individually calculated dumping margin, if selected as mandatory respondents, or a "Separate Rate", if not selected as mandatory respondents.

[7] China First Written Submission, para. 13.

[8] China First Written Submission, para. 22.

[9] China First Written Submission, fn. 36.

[10] China First Written Submission, para. 64; Appellate Body Report, *United States – Final Dumping Determination on Softwood Lumber from Canada*, WT/DS264/AB/R, adopted 31 August 2004 (hereinafter "*US – Softwood Lumber Dumping*").

[11] China First Written Submission, para. 72-73.

[12] *See US – Softwood Lumber Dumping (AB)*, paras. 62-117.

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WRITTEN SUBMISSIONS OF THE THIRD PARTIES

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ANNEX B-1

THIRD-PARTY SUBMISSION OF
THE EUROPEAN UNION

1. The European Union makes this third party written submission because of its systemic interest in the correct and consistent interpretation and application of the covered agreements and other relevant documents, in particular the *General Agreement on Tariffs and Trade 1994* ("*GATT 1994*"), the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* (the "*Anti-Dumping Agreement*"), and the *Dispute Settlement Understanding* ("*DSU*").

2. At the outset, the European Union observes that there are many similarities between the present dispute and the issue confronted by the panels in *US – Shrimp (Ecuador)*, *US – Shrimp (Thailand)* and *US – Retail Carrier Bags (Thailand)*. In those disputes, the complaining party challenged the conformity of an anti-dumping order adopted by the United States on the basis that the methodology used to calculate the dumping margins of the exporters concerned ("model zeroing") infringed Article 2.4.2 of the *Anti-Dumping Agreement* for the reasons contained in the report of the Appellate Body in *US – Softwood Lumber V*. In those disputes, the United States refrained from contesting that legal claim and even agreed with the complaining party on the means and timing of the implementation of the adopted DSB report.

3. In the present dispute, the Agreement on Procedures between China and the United States ("Agreement on Procedures")[1] contains paragraphs by which the Parties agree on the procedures that are to govern certain aspects of the Panel proceedings. It also contains paragraphs by which the Parties agree: that the United States will not contest the claim; that China will not request the Panel to suggest, pursuant to Article 19.1 of the *DSU*, ways in which the United States could implement the Panel's recommendations; and the manner and timing of implementation.[2] Thus, in the EU view, the Agreement on Procedures not only resolves certain procedural issues, it also represents, at least in part, a resolution or solution of the dispute between the Parties. However, neither Party refers in its First Written Submission to Articles 3.6 or 12.7 of the *DSU*.

4. In the particular factual circumstances of the present case, the European Union welcomes the prompt resolution of the dispute and does not object to the manner of proceeding chosen by the Parties. However, the European Union considers that the ability of parties to a dispute to agree on certain matters and to then have such agreement translated into findings and recommendations of a panel which are eventually adopted by the DSB is not unlimited. The manner of proceeding chosen by the Parties cannot affect the rights of WTO Members which are not parties to the Agreement on

[1] Exhibit CHN-1.

[2] The Parties have agreed that any change in the cash deposit rate or revocation of the anti-dumping order as a result of the recalculation of dumping margins pursuant to a Section 129 determination will take effect no sooner than the date on which implementation of the recalculated rate is directed (Agreement on Procedures, para. 6). In this respect, the European Union observes that the US obligations resulting from the Agreement on Procedures would appear to be far more limited than the US obligations resulting from identical violations found in other disputes. Indeed, the Appellate Body has twice rejected the relevance of the "date of entry" for the purpose of assessing compliance with adopted DSB reports (Appellate Body Report, *US – Zeroing (Article 21.5 – EC)* para. 309, and Appellate Body Report, *US – Zeroing (Article 21.5 – Japan)*, para. 169). Thus, in the EU view, as all mutually agreed solutions shall be consistent with the covered agreements and shall not nullify or impair benefits accruing to any Member under those agreements (Article 3.5 of the *DSU*), any agreement between the Parties on implementation cannot alter the consequences of a recommendation pursuant to Article 19.1 of the *DSU*, *i.e.*, to bring the measure into *full* conformity with the covered agreements.

Procedures;[3] nor can the approach chosen by the Parties seek to obtain findings having equal weight in practice *vis-à-vis* other WTO Members as a "conventional" panel report.

5. Under these circumstances, Article 11 of the *DSU* gains special relevance. Notwithstanding the absence of disagreement between the parties, a panel has a basic obligation under Article 11 of the *DSU* to make an objective assessment of the matter before it, including an objective assessment of the facts of the case.[4] Such assessment should include the facts, evidence and legal argument. A panel should therefore exercise particular care in this respect, particularly where, as in this case, the dispute touches on matters that the complaining party does not pursue. The Panel should particularly distinguish between finding that the Parties agree with respect to a particular fact, evidentiary matter or legal issue; and the Panel itself making such finding.

6. Taking into account the above considerations, the European Union would like to make two remarks on the submissions of the Parties.

7. First, the European Union observes that the description made by China[5] of the methodology applied by the United States in the present case contains terminology which is incorrect in view of the interpretation followed by the Appellate Body. In particular, China states that the dumping margin for an exporter was calculated "by summing up the amount of *dumping* for each model" and that the USDOC "set to zero all negative *margins* on individual models" (*emphasis added*). However, the Appellate Body has already clarified that dumping can be found to exist only "for the product under investigation as a whole, and cannot be found to exist for a product type, model, or category of that product" and that "the *results* of model-specific comparisons are <u>not</u> margins of dumping within the meaning of Article 2.4.2, but rather constitute intermediate calculations that need to be taken into consideration in the calculation of the margin of dumping for the product under consideration as a whole" (*emphasis added*).[6] Consequently, the European Union suggests that the Panel use the proper terminology as indicated by the Appellate Body.[7]

8. Second, the European Union observes that panels and the Appellate Body have found the use of zeroing in *original investigations* to be inconsistent with Article 2.4.2 of the *Anti-Dumping Agreement* in many disputes so far.[8] The European Union notes that the Appellate Body Report in *US-Stainless Steel (Mexico)* addresses in general terms the relevance of previous panel and Appellate Body reports.[9] In this respect, the final sentence of paragraph 160 refers to "an adjudicatory body" (in the singular), which seems to indicate that the phrase refers to the situation in which it is the same body in both the previous case and the case to be decided. That is, it refers to the situation in which a panel might be called upon to resolve the same legal issue that it has previously resolved; or the

[3] *DSU*, Article 3.2.

[4] Panel Report, *Colombia – Indicative Prices*, para. 181; and Appellate Body Report, *US – Gambling*, para. 281 ("[W]hen a panel rules on a claim in the absence of evidence and supporting arguments, it acts inconsistently with its obligations under Article 11 of the *DSU*").

[5] China's First Written Submission, para. 24 (confirmed by the US First Written Submission, para. 2).

[6] Appellate Body Report, *United States – Final Dumping Determination on Softwood Lumber from Canada ("US – Softwood Lumber V")*, paras 81 – 90; see also Appellate Body Report, *US – Continued Zeroing*, para. 283, and Appellate Body Report, *US – Stainless Steel (Mexico)*, para. 89.

[7] See, *e.g.*, Appellate Body Report, *US – Zeroing (Japan)*, footnote 13.

[8] *See* Appellate Body Report, *EC – Bed Linen*, para. 66; Appellate Body Report, *US – Softwood Lumber V*, para. 117; Appellate Body Report, *US – Softwood Lumber V (Article 21.5 – Canada)*, para. 124; Appellate Body Report, *US – Zeroing (Japan)*, para. 138; and Appellate Body Report, *US – Zeroing (EC)*, para. 222. In addition, model zeroing in original investigations has been found to be inconsistent with Article 2.4.2 of the *Anti-Dumping Agreement* by all panels that have examined that practice, including the panels in *EC – Bed Linen*, *EC – Tube or Pipe Fittings*, *US – Softwood Lumber V*, *US – Zeroing (EC)*, *US – Zeroing (Japan)*, and *US – Shrimp (Ecuador)*, *US – Shrimp (Thailand)* and *US – Continued Zeroing*.

[9] Appellate Body Report, *US – Stainless Steel (Mexico)*, paras 157 – 162.

situation in which the Appellate Body might be called upon to resolve the same legal issue that it has already resolved. We note that the phrase refers to "cogent reasons" as the basis for a change in view. By contrast, the European Union notes that paragraph 161 of the Appellate Body Report in *US – Stainless Steel (Mexico)* addresses the hierarchical relationship between panels and the Appellate Body. It concludes that the relevance of clarification provided by the Appellate Body on issues of legal interpretation is not limited to the application of a particular provision in a specific case. There is no express reference to "cogent reasons". Finally, in paragraph 162 of the Appellate Body Report in *US – Stainless Steel (Mexico)* the Appellate Body states that it was deeply concerned about the panel's decision to depart from well-established Appellate Body jurisprudence clarifying the interpretation of the same legal issues.

9. In view of this, the European Union requests the Panel to carry out an objective assessment of the matter before it, taking into account the well-established Appellate Body jurisprudence clarifying the interpretation of the same legal issues.

10. Finally, the European Union notes that the Panel's letter dated 27 January 2012 invites the third parties to inform the Panel of their position with respect to the need for an oral hearing in this case, whilst the timetable does not foresee any oral hearing (although it also provides that one could be organised should that prove necessary). The European Union notes that Article 10(2) of the *DSU* affords third parties the right to make written submissions to a panel *and the opportunity to be heard by a panel*. Whilst, pursuant to Article 12(1) of the *DSU*, panels have the authority to vary the working procedures set out in Appendix 3 of the *DSU*, they must do so within the limits set by the *DSU*. In this particular case, the European Union confirms that it waives its right to be heard by the panel, on condition that there is also to be no hearing with the parties, in person or by remote communication.

ANNEX B-2

THIRD-PARTY SUBMISSION OF JAPAN

Table of Reports

Short Form	**Full Citation**
US – AD Measures on PET Bags	Panel Report, *United States – Anti-Dumping Measures on Polyethylene Retail Carrier Bags from Thailand*, WT/DS383/R, adopted 18 February 2010
US – Shrimp (Ecuador)	Panel Report, *United States – Anti-Dumping Measure on Shrimp from Ecuador*, WT/DS335/R, adopted 20 February 2007
US – Softwood Lumber Dumping	Appellate Body Report, *United States - Final Dumping Determination on Softwood Lumber from Canada*, WT/DS264/AB/R, adopted 31 August 2004
US – Zeroing (Korea)	Panel Report, *United States – Use of Zeroing in Anti-Dumping Measures Involving Products from Korea*, WT/DS402/R, adopted 24 February 2011

1. This dispute is one of the numerous disputes brought to the WTO dispute settlement procedure concerning "zeroing" used in the United States' anti-dumping procedures. Japan, as shown by its own recourse to the WTO dispute settlement procedure, has an interest in the issue of the WTO-consistency and implementation by the United States regarding "zeroing".

2. The basis of claim by the People's Republic of China ("China") is that the United States Department of Commerce's use of "zeroing" when calculating the dumping margins for certain investigated exporters in the investigation of Shrimp and Diamond Sawblades from China is inconsistent with the United States' obligations under the first sentence of Article 2.4.2 of the *Agreement of Implementation of Article VI of the GATT 1994* (*Anti-Dumping Agreement*). Japan totally supports the China's claim. Japan shares the same recognition with China that in *US – Softwood Lumber Dumping* the Appellate Body found that the use of "zeroing" in calculating margins of dumping on the basis of a comparison of a weighted average normal value with a weighted average of prices of all comparable export transactions (the "weighted-average-to-weighted-average methodology") in investigations was inconsistent with the first sentence of Article 2.4.2 of the *Anti-Dumping Agreement*.[1]

3. Japan notes that the United States also does not contest that the measures identified in the panel request are inconsistent with Article 2.4.2 of the *Anti-Dumping Agreement* on the grounds stated in *US – Softwood Lumber Dumping*.[2]

4. In this regard, Japan recalls that the reasoning shown in *US – Softwood Lumber Dumping* was equally applicable to *US – Shrimp (Ecuador)*, *US – AD Measures on PET Bags* and *US – Zeroing (Korea)*. In these cases, the panels correctly concluded the use of "zeroing" in calculating margins of dumping in the investigations on the basis of the "weighted-average-to-weighted-average methodology" was inconsistent with the first sentence of Article 2.4.2 of the *Anti-Dumping Agreement*.[3]

[1] Appellate Body Report, *US – Softwood Lumber Dumping*, paras.62-117, First Written Submission of China, paras. 63-67.

[2] First Written Submission of the United States, paras. 7-8.

[3] Panel Report, *US – Shrimp (Ecuador)*, para.8.1, Panel Report, *US – AD Measures on PET Bags*, para.8.1, *US – Zeroing (Korea)*,para. 8.1

5. In light of the foregoing, Japan agrees with the request of China that the Panel should find that the United States acted inconsistently with the requirement of the first sentence of Article 2.4.2 of the *Anti-Dumping Agreement*. Japan expects that the United States would take appropriate actions with respect to measures at issue so that "prompt settlement of situations", as stated in Article 3.3 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes*, will be achieved.

ANNEX B-3

THIRD-PARTY SUBMISSION OF THAILAND

1. Thailand appreciates the opportunity to present to the Panel its views on China's complaint against the United States' use of the practice known as "zeroing" on certain frozen and canned warmwater shrimp and diamond sawblades and parts thereof from China. Thailand notes that the parties have reached a procedural agreement to permit expeditious resolution of this dispute.[1] These procedures appear to be similar to those used by Thailand and the United States in *US – Anti-Dumping Measures on PET Bags*. Thailand welcomes the use of these procedures to facilitate the speedy resolution of this dispute.

2. In Thailand's view, the Appellate Body's rulings to date on the issue of zeroing have coherently and consistently addressed the numerous different arguments put before it in each dispute. Put simply, the Appellate Body has held that whenever an investigating authority uses intermediate comparisons between subgroups of export prices and normal values – whether on a model-by-model, transaction-by-transaction or any other basis – as a step to arrive at the overall dumping margin for that product, the investigating authority may not, in aggregating those intermediate comparisons, "zero" the results of some of those comparisons. Regardless of whether each successive Appellate Body report states this principle in identical terms, addresses all of the different methodologies in which zeroing can be used, or repeats all of the reasoning of previous reports, Thailand considers this principle to have been fully and correctly reasoned by the Appellate Body and to apply equally and fully to the issues that are before the Panel in this case.

3. Given the clarity and consistency of the Appellate Body's rulings on zeroing, as expanded to address the varied arguments presented in each successive case, Thailand need not comment in detail on the legal issue presented in this case. In Thailand's view, the legal issue has been addressed, directly or indirectly, in the Appellate Body's rulings, including in *US – Softwood Lumber V*,[2] and by the panels in the disputes *US – Shrimp (Ecuador)*[3], *US – Shrimp (Thailand)*[4] and *US – Anti-Dumping Measures on PET Bags*[5], where the use of the zeroing methodology by the United States' Department of Commerce ("USDOC") in calculating the dumping margins of relevant exported products were found inconsistent with Article 2.4.2, first sentence, of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the "Anti-Dumping Agreement").

4. Thailand notes that the United States, in its First Written Submission, acknowledges the accuracy of China's description of the USDOC's use of "zeroing" in calculating the dumping margins specifically challenged by China in this dispute and of China's description of the Separate Rate calculation in the investigation on warmwater shrimp. Further, the United States does not contest that certain of the submitted documentation from China, including the computer programs used to calculate the dumping margins were generated by the USDOC during its conduct of the investigation at issue.

5. The United States, in its First Written Submission, also recognizes that in *US – Softwood Lumber V*, the Appellate Body found that the use of "zeroing" with respect to the average-to-average comparison methodology in investigations was inconsistent with Article 2.4.2, by interpreting the terms "margins of dumping" and "all comparable export transactions" as used in the first sentence of

[1] *See* WT/DS422/4 (14 October 2011).
[2] Appellate Body Report, *US – Softwood Lumber V*, paras. 86-103.
[3] Panel Report, *US – Shrimp (Ecuador)*, para. 7.41.
[4] Panel Report, *US – Shrimp (Thailand)*, paras. 7.35-7.36.
[5] Panel Report, *US – Anti-Dumping Measures on PET Bags*, paras. 7.24-7.25.

Article 2.4.2, in an integrated manner.[6] The United States finally acknowledges that this reasoning is equally applicable with respect to China's claims regarding the dumping margins specifically challenged in this dispute.

6. Thailand respectfully requests the Panel to reach the conclusions in this dispute consistently with the jurisprudence on this issue.

[6] *See* Appellate Body Report, *US-Softwood Lumber V*, paras. 62-117.

TABLE OF CASES

Short Title	Full Case Title and Citation
US – Anti-Dumping Measures on PET Bags	Panel Report, *United States – Anti-Dumping Measures on Polyethylene Retail Carrier Bags from Thailand*, WT/DS383/R, adopted 18 February 2010
US – Softwood Lumber V	Appellate Body Report, *United States – Final Dumping Determination on Softwood Lumber from Canada*, WT/DS264/AB/R, adopted 31 August 2004
US – Shrimp (Ecuador)	Panel Report, *United States – Anti Dumping Measure on Shrimp from Ecuador*, *WT/DS335/R*, adopted 20 February 2007
US – Shrimp (Thailand)	Panel Report, *United States – Measures Relating to Shrimp from Thailand*, WT/DS343/R, adopted 1 August 2008, as modified by Appellate Body Report WT/DS343/AB/R, WT/DS345/AB/R

ANNEX C

REQUEST FOR THE ESTABLISHMENT
OF A PANEL

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ANNEX C-1

REQUEST FOR THE ESTABLISHMENT
OF A PANEL BY CHINA

WORLD TRADE ORGANIZATION

WT/DS422/3
14 October 2011

(11-5120)

Original: English

UNITED STATES – ANTI-DUMPING MEASURES ON CERTAIN SHRIMP AND DIAMOND SAWBLADES FROM CHINA

Request for the Establishment of a Panel by China

The following communication, dated 13 October 2011, from the delegation of China to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On February 28, 2011 and July 22, 2011, the People's Republic of China ("China") requested consultations with the United States of America 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 1994") and Article 17 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* ("Anti-Dumping Agreement") with regard to the "zeroing" practice by the United States Department of Commerce ("USDOC") in its anti-dumping measures on certain frozen warmwater shrimp from China[1] and diamond sawblades and parts thereof from China[2] respectively.

Consultations were held on May 11, 2011 and September 8, 2011. While these consultations assisted in clarifying the issues before the parties, they failed to resolve the dispute.

Therefore, China respectfully requests, pursuant to Article XXIII of the GATT 1994, Articles 4 and 6 of the DSU, and Article 17.4 of the Anti-Dumping Agreement, that the Dispute Settlement Body ("DSB") establish a panel to examine this matter.

Specific Measures at Issue

(1) Frozen Warmwater Shrimp

[1] *See* G/ADP/D87/1, G/L/953, WT/DS422/1.
[2] *See* G/ADP/D87/1/Add.1, G/L/953/Add.1, WT/DS422/1/Add.1.

The United States initiated an anti-dumping investigation of certain frozen warmwater shrimp from China on January 27, 2004 (Investigation No. A–570–893). The specific measures at issue in this dispute are the anti-dumping order imposed by the United States on certain frozen warmwater shrimp from China, as amended, and the final determination by the USDOC, as amended, leading to that order. To be specific, these measures include:

- *Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the People's Republic of China*, 69 Federal Register 70997 (December 8, 2004);

- *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp From the People's Republic of China*, 70 Federal Register 5149 (February 1, 2005);

- *Certain Frozen Warmwater Shrimp from the People's Republic of China:* Notice *of Second Amended Final Determination of Sales at Less Than Fair Value*, 71 Federal Register 47484 (August 17, 2006);

- *Certain Frozen Warmwater Shrimp From Brazil, India, the People's Republic of China, Thailand, and the Socialist Republic of Vietnam: Notice of Amended Final Determinations of Sales at Less Than Fair Value Pursuant to Court Decision*, 75 Federal Register 53947 (September 2, 2010);

- *Certain Frozen Warmwater Shrimp From Brazil, India, the People's Republic of China, Thailand, and the Socialist Republic of Vietnam: Amended Antidumping Duty Orders in Accordance with Final Court Decision*, 76 Federal Register 23277 (April 26, 2011);[3]

- *Certain Frozen Warmwater Shrimp From the People's Republic of China: Notice of Amended Final Determination of Sales at Less Than Fair Value Pursuant to Court Decision*, 76 Federal Register 30100 (May 24, 2011);

- as well as any amendments to the measures identified above.

In the final determination, as amended, the USDOC used the "zeroing" methodology in determining the final dumping margins for three individually investigated Chinese exporters[4], for which margins above the 2 per cent *de minimis* level were calculated.

(2) Diamond Sawblades and Parts Thereof

The United States initiated an anti-dumping investigation of diamond sawblades and parts thereof from China on June 21, 2005 (Investigation No. A-570-900). The specific measures at issue in this dispute are the anti-dumping order imposed by the United States on diamond sawblades and

[3] On April 29, 2011, as a result of the determinations by the USDOC and the International Trade Commission ("ITC") that revocation of the antidumping duty orders on certain frozen warmwater shrimp from Brazil, India, China, Thailand, and the Socialist Republic of Vietnam ("Vietnam") would be likely to lead to continuation or recurrence of dumping and of material injury to an industry in the United States within a reasonably foreseeable time, the USDOC published a notice of the continuation of these antidumping duty orders. *See Certain Frozen Warmwater Shrimp From Brazil, India, the People's Republic of China, Thailand, and the Socialist Republic of Vietnam: Continuation of Antidumping Duty Orders*, 76 Federal Register 23972 (April 29, 2011).

[4] The three exporters are Allied Pacific Group ("Allied"), Yelin Enterprise Co Hong Kong ("Yelin") and Shantou Red Garden Foodstuff Co., Ltd. ("Red Garden").

parts thereof from China, as amended, and the final determination by the USDOC, as amended, leading to that order. To be specific, these measures include:

- *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 Federal Register 29303 (22 May 2006);

- *Notice of Amended Final Determination of Sales at Less Than Fair Value: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 Federal Register 35864 (22 June 2006);

- *Diamond Sawblades and Parts Thereof from the People's Republic of China and the Republic of Korea: Antidumping Duty Orders*, 74 Federal Register 57145 (4 November 2009);

- as well as any amendments to the measures identified above.

In the final determination, as amended, the USDOC used the "zeroing" methodology in determining the final dumping margins for three individually investigated Chinese exporters[5], for which margins above the 2 per cent de minimis level were calculated.

In respect of the two investigations identified above, the USDOC's methodology of "zeroing" negative dumping margins may be described more specifically in the following:

a) different "models", *i.e.*, types, of products are identified based on the most relevant product characteristics;

b) weighted average prices in the United States and weighted average normal values in the comparison market are calculated on a model-specific basis for the entire period of investigation;

c) the weighted average normal value of each model is compared to the weighted average United States price for that same model;

d) to calculate the dumping margin for an exporter, the amount of dumping for each model is summed and then divided by the aggregated United States price for all models; and

e) before summing the total amount of dumping for all models, all negative margins on individual models (*i.e.*, where the weighted average normal value is less than the weighted average export price) are set to zero.

Through this method, the USDOC calculates margins of dumping and collects cash deposits in amounts that exceed the actual extent of dumping, if any, by the said individually investigated exporters.

In addition, in respect of the anti-dumping investigation of certain frozen warmwater shrimp, on the basis of the individual dumping margins calculated with the application of zeroing, the

[5] The three exporters are Advanced Technology & Materials Co., Ltd. (including Beijing Gang Yan Diamond Products Company and Yichang HXF Circular Saw Industrial Co., Ltd.) ("AT&M"), Bosun Tools Group Co., Ltd. ("Bosun") and Hebei Jikai Industrial Group Co., Ltd. ("Hebei Jikai").

USDOC further calculated a weighted-average margin (known as the "separate rate") that applies to the cooperating non-mandatory respondents[6].

The USDOC's unpublished Issues and Decision Memorandums as well as other documents contained in the administrative record of the investigations, including the computer programs, describe in more detail the USDOC's use of zeroing in the anti-dumping investigations of frozen warmwarter shrimp and diamond sawblades and parts thereof from China.

China considers that these measures are inconsistent with the obligations of the United States under the provisions of the GATT 1994 and the Anti-Dumping Agreement described below.

The Legal Basis of the Complaint

Through the use of "zeroing," the United States treats transactions with negative dumping margins as having margins equal to zero in determining weighted average dumping margins in an anti-dumping investigation.

The use of "zeroing" led the United States to find dumping where none would have otherwise been found or to calculate dumping margins that are inflated. China considers that, in the specific measures at issue as identified above, the USDOC's use of "zeroing" in calculating the margins of dumping for the individually investigated exporters and the "separate rate" for the cooperating non-mandatory respondents is inconsistent with the obligations of the United States under the Anti-Dumping Agreement. Specifically, China considers that the measures are inconsistent with the first sentence of Article 2.4.2 of the Anti-Dumping Agreement.

The "zeroing" methodology that the USDOC used in its anti-dumping investigations of shrimp and diamond sawblades from China is virtually identical to the methodology that was held to be inconsistent with the obligations of the United States under the Anti-Dumping Agreement in the following disputes: *United States - Final Dumping Determination on Softwood Lumber from Canada*[7]; *United States - Anti-Dumping Measures On Shrimp from Ecuador*[8]; *United States - Anti-Dumping Measures on Polyethylene Retail Carrier Bags from Thailand*[9]; and *United States - Measures Relating to Shrimp from Thailand*[10].

The forgoing paragraphs are provided without prejudice to any arguments that China may develop and present to the panel regarding the WTO-inconsistency of the measures at issue.

Request for the Establishment of a Panel

Accordingly, China requests pursuant to Article XXIII of the GATT 1994, Articles 4 and 6 of the DSU, and Article 17.4 of the Anti-Dumping Agreement, that the DSB establish a panel with the standard terms of reference as set out in Article 7.1 of the DSU. China asks that this request be placed on the agenda of the meeting of the DSB scheduled for October 25, 2011.

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[6] Such non-mandatory respondents were also required to pass the "separate-rate test" in order to receive the separate rate.

[7] Panel Report, WT/DS264/R, and Appellate Body Report, WT/DS264/AB/R, adopted on August 31, 2004.

[8] Panel Report, WT/DS335/R, adopted on February 20, 2007.

[9] Panel Report, WT/DS383/R, adopted on May 20, 2008.

[10] Panel Report, WT/DS343/R, adopted as modified by the Appellate Body on August 1, 2008.

ANNEX D

AGREEMENT ON PROCEDURES BETWEEN THE PARTIES

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ANNEX D-1

AGREEMENT ON PROCEDURES BETWEEN THE PARTIES

WORLD TRADE ORGANIZATION

WT/DS422/4
14 October 2011

(11-5121)

Original: English

UNITED STATES – ANTI-DUMPING MEASURES ON CERTAIN SHRIMP AND DIAMOND SAWBLADES FROM CHINA

Agreement on Procedures between China and the United States

The following communication, dated 13 October 2011, from the delegation of China and the delegation of the United States to the Chairperson of the Dispute Settlement Body, is circulated at the request of those delegations.

The People's Republic of China ("China") and the United States of America would like to inform the Dispute Settlement Body of the attached Agreement on Procedures between China and the United States with respect to the dispute *United States – Anti-Dumping Measures on Certain Shrimp and Diamond Sawblades from China* (DS422).

We request that you please circulate the attached agreement to the Members of the Dispute Settlement Body in the WT/DS422 document series.

United States - Anti-Dumping Measures on Certain Shrimp and Diamond Sawblades from China
(WT/DS422)

Agreement on Procedures between China and the United States

On February 28, 2011, the Government of China ("China") requested consultations with the United States under 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 1994"), and Article 17 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* ("Anti-Dumping Agreement"), with respect to anti-dumping measures on certain frozen warmwater shrimp from China. (WT/DS422/1). On July 22, 2011, China requested additional consultations with respect to anti-dumping measures on diamond sawblades and parts thereof from China. (WT/DS422/1/Add.1). On May 11, 2011 and September 8, 2011, consultations were held by China and the United States (hereinafter the "parties"); together these consultations covered all the measures referenced in the Panel Request pursuant to Article 6.2 of the DSU. These consultations have enabled the parties to agree on the following procedures for purposes of this dispute:

1. Should China request the establishment of a panel in this dispute, China's panel request will be the one attached to this agreement (the "Panel Request"). The United States will not oppose the establishment of a panel at the first Dispute Settlement Body ("DSB") meeting following the filing of the Panel Request by China. The parties agree to make every effort to ensure that they compose the panel without recourse to the Director-General under Article 8.7 of the DSU.

2. The parties will cooperate to enable the panel to circulate its report as quickly as possible in light of the requirements of the DSU. To that end, the parties will work to reach agreement on working procedures that aim to expedite the panel proceedings. The parties will jointly ask the panel to adopt these procedures, which will enable it to complete its work within three months after the composition of the panel. The parties also agree to request the panel to ask that the parties file only one written submission each, and that the panel forego meetings with the parties, or, at most, have only one substantive meeting with the parties. The parties also agree to share drafts of their respective written submissions prior to submitting them to the panel and to take all reasonably available steps to accelerate the proceeding.

3. China will provide the necessary evidence and arguments to support its allegations, including the computer programs and output logs generated by the United States Department of Commerce that were used to calculate the challenged dumping margins. The United States will not contest China's claim that the measures identified in the Panel Request are inconsistent with Article 2.4.2, first sentence, of the Anti-Dumping Agreement, on the grounds stated in *United States - Final Dumping Determination on Softwood Lumber from Canada*, WT/DS264/AB/R, Report of the Appellate Body adopted 31 August 2004.

4. China will not request that the panel suggest, pursuant to Article 19.1, second sentence, of the DSU, ways in which the United States could implement the panel's recommendations.

5. Provided that the panel's finding is limited to a finding that one or more of the challenged measures, as identified in the Panel Request, is inconsistent with Article 2.4.2, first sentence, of the Anti-Dumping Agreement, the parties agree that, pursuant to Article 21.3(b) of the DSU, the reasonable period of time for bringing each such measure into conformity with the Anti-Dumping Agreement will be eight months, beginning on the date on which the DSB adopts the panel report.

6. Subject to the consultation requirements of section 129(b) of the Uruguay Round Agreements Act ("URAA"), 19 U.S.C. §3538(b), the United States will use section 129(b) to recalculate margins of dumping (subject to the exclusion of Zhanjiang Guolian Aquatic Products Co., Ltd, in paragraph 7, below) and to issue a new determination in order to render the anti-dumping measures on certain frozen warmwater shrimp from China and the anti-dumping measures on diamond sawblades and parts thereof from China consistent with the recommendations and rulings of the DSB and the Anti-Dumping Agreement. In particular, the United States will implement such recommendations and rulings in respect of the Final Determination, as amended by any and all amended final determinations which are effective at the time of implementation. If any such recalculation that is performed under section 129(b) results in a change in a cash deposit rate or revocation, in part or in whole, for the anti-dumping measures on certain frozen warmwater shrimp from China or the anti-dumping measures on diamond sawblades and parts thereof from China, the new cash deposit rate or revocation will have prospective effect only, taking effect no sooner than the date on which the United States Trade Representative directs the United States Secretary of Commerce to implement its recalculation of the margins and new determination, as set forth in section 129(c)(1) of the URAA, 19 U.S.C. § 3538(c)(1).

7. The parties also mutually understand that the scope of China's Panel Request does not include any claim regarding the margin of dumping calculated for Zhanjiang Guolian Aquatic Products Co., Ltd. in the anti-dumping duty investigation on certain frozen warmwater shrimp from China or the margin of dumping determined solely on the basis of adverse facts available in either anti-dumping duty investigation. The parties agree that they will inform the panel in their written submissions, whether made jointly or separately, that they are seeking findings consistent with this understanding. Accordingly, to the extent that the findings are consistent with this understanding, implementation would not involve a recalculation of such margins of dumping.

For The People's Republic of China	For the United States of America
Mme. ZHAO Hong Chargé d'Affaires	H.E. Mr. Michael Punke Ambassador

ANNEX

United States – Anti-Dumping Measures on Certain Shrimp and Diamond Sawblades from China (WT/DS422)

Request for the Establishment of a Panel by China

On February 28, 2011 and July 22, 2011, the People's Republic of China ("China") requested consultations with the United States of America 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 1994") and Article 17 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* ("Anti-Dumping Agreement") with regard to the "zeroing" practice by the United States Department of Commerce ("USDOC") in its anti-dumping measures on certain frozen warmwater shrimp from China[1] and diamond sawblades and parts thereof from China[2] respectively.

Consultations were held on May 11, 2011 and September 8, 2011. While these consultations assisted in clarifying the issues before the parties, they failed to resolve the dispute.

Therefore, China respectfully requests, pursuant to Article XXIII of the GATT 1994, Articles 4 and 6 of the DSU, and Article 17.4 of the Anti-Dumping Agreement, that the Dispute Settlement Body ("DSB") establish a panel to examine this matter.

Specific Measures at Issue

(1) Frozen Warmwater Shrimp

The United States initiated an anti-dumping investigation of certain frozen warmwater shrimp from China on January 27, 2004 (Investigation No. A–570–893). The specific measures at issue in this dispute are the anti-dumping order imposed by the United States on certain frozen warmwater shrimp from China, as amended, and the final determination by the USDOC, as amended, leading to that order. To be specific, these measures include:

- *Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the People's Republic of China*, 69 Federal Register 70997 (December 8, 2004);

- *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp From the People's Republic of China*, 70 Federal Register 5149 (February 1, 2005);

- *Certain Frozen Warmwater Shrimp from the People's Republic of China:* Notice *of Second Amended Final Determination of Sales at Less Than Fair Value*, 71 Federal Register 47484 (August 17, 2006);

- *Certain Frozen Warmwater Shrimp From Brazil, India, the People's Republic of China, Thailand, and the Socialist Republic of Vietnam: Notice of Amended Final Determinations of Sales at Less Than Fair Value Pursuant to Court Decision*, 75 Federal Register 53947 (September 2, 2010);

[1] *See* G/ADP/D87/1, G/L/953, WT/DS422/1.
[2] *See* G/ADP/D87/1/Add.1, G/L/953/Add.1, WT/DS422/1/Add.1.

- *Certain Frozen Warmwater Shrimp From Brazil, India, the People's Republic of China, Thailand, and the Socialist Republic of Vietnam: Amended Antidumping Duty Orders in Accordance with Final Court Decision*, 76 Federal Register 23277 (April 26, 2011);[3]

- *Certain Frozen Warmwater Shrimp From the People's Republic of China: Notice of Amended Final Determination of Sales at Less Than Fair Value Pursuant to Court Decision*, 76 Federal Register 30100 (May 24, 2011);

- as well as any amendments to the measures identified above.

In the final determination, as amended, the USDOC used the "zeroing" methodology in determining the final dumping margins for three individually investigated Chinese exporters[4], for which margins above the 2 per cent *de minimis* level were calculated.

(2) Diamond Sawblades and Parts Thereof

The United States initiated an anti-dumping investigation of diamond sawblades and parts thereof from China on June 21, 2005 (Investigation No. A-570-900). The specific measures at issue in this dispute are the anti-dumping order imposed by the United States on diamond sawblades and parts thereof from China, as amended, and the final determination by the USDOC, as amended, leading to that order. To be specific, these measures include:

- *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China,* 71 Federal Register 29303 (22 May 2006);

- *Notice of Amended Final Determination of Sales at Less Than Fair Value: Diamond Sawblades and Parts Thereof from the People's Republic of China,* 71 Federal Register 35864 (22 June 2006);

- *Diamond Sawblades and Parts Thereof from the People's Republic of China and the Republic of Korea: Antidumping Duty Orders*, 74 Federal Register 57145 (4 November 2009);

- as well as any amendments to the measures identified above.

In the final determination, as amended, the USDOC used the "zeroing" methodology in determining the final dumping margins for three individually investigated Chinese exporters[5], for which margins above the 2 per cent de minimis level were calculated.

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[3] On April 29, 2011, as a result of the determinations by the USDOC and the International Trade Commission ("ITC") that revocation of the antidumping duty orders on certain frozen warmwater shrimp from Brazil, India, China, Thailand, and the Socialist Republic of Vietnam ("Vietnam") would be likely to lead to continuation or recurrence of dumping and of material injury to an industry in the United States within a reasonably foreseeable time, the USDOC published a notice of the continuation of these antidumping duty orders. *See Certain Frozen Warmwater Shrimp From Brazil, India, the People's Republic of China, Thailand, and the Socialist Republic of Vietnam: Continuation of Antidumping Duty Orders*, 76 Federal Register 23972 (April 29, 2011).

[4] The three exporters are Allied Pacific Group ("Allied"), Yelin Enterprise Co Hong Kong ("Yelin") and Shantou Red Garden Foodstuff Co., Ltd. ("Red Garden").

[5] The three exporters are Advanced Technology & Materials Co., Ltd. (including Beijing Gang Yan Diamond Products Company and Yichang HXF Circular Saw Industrial Co., Ltd.) ("AT&M"), Bosun Tools Group Co., Ltd. ("Bosun") and Hebei Jikai Industrial Group Co., Ltd. ("Hebei Jikai").

In respect of the two investigations identified above, the USDOC's methodology of "zeroing" negative dumping margins may be described more specifically in the following:

a) different "models", *i.e.*, types, of products are identified based on the most relevant product characteristics;

b) weighted average prices in the United States and weighted average normal values in the comparison market are calculated on a model-specific basis for the entire period of investigation;

c) the weighted average normal value of each model is compared to the weighted average United States price for that same model;

d) to calculate the dumping margin for an exporter, the amount of dumping for each model is summed and then divided by the aggregated United States price for all models; and

e) before summing the total amount of dumping for all models, all negative margins on individual models (*i.e.*, where the weighted average normal value is less than the weighted average export price) are set to zero.

Through this method, the USDOC calculates margins of dumping and collects cash deposits in amounts that exceed the actual extent of dumping, if any, by the said individually investigated exporters.

In addition, in respect of the anti-dumping investigation of certain frozen warmwater shrimp, on the basis of the individual dumping margins calculated with the application of zeroing, the USDOC further calculated a weighted-average margin (known as the "separate rate") that applies to the cooperating non-mandatory respondents[6].

The USDOC's unpublished Issues and Decision Memorandums as well as other documents contained in the administrative record of the investigations, including the computer programs, describe in more detail the USDOC's use of zeroing in the anti-dumping investigations of frozen warmwarter shrimp and diamond sawblades and parts thereof from China.

China considers that these measures are inconsistent with the obligations of the United States under the provisions of the GATT 1994 and the Anti-Dumping Agreement described below.

The Legal Basis of the Complaint

Through the use of "zeroing," the United States treats transactions with negative dumping margins as having margins equal to zero in determining weighted average dumping margins in an anti-dumping investigation.

The use of "zeroing" led the United States to find dumping where none would have otherwise been found or to calculate dumping margins that are inflated. China considers that, in the specific measures at issue as identified above, the USDOC's use of "zeroing" in calculating the margins of dumping for the individually investigated exporters and the "separate rate" for the cooperating non-mandatory respondents is inconsistent with the obligations of the United States under the Anti-

[6] Such non-mandatory respondents were also required to pass the "separate-rate test" in order to receive the separate rate.

Dumping Agreement. Specifically, China considers that the measures are inconsistent with the first sentence of Article 2.4.2 of the Anti-Dumping Agreement.

The "zeroing" methodology that the USDOC used in its anti-dumping investigations of shrimp and diamond sawblades from China is virtually identical to the methodology that was held to be inconsistent with the obligations of the United States under the Anti-Dumping Agreement in the following disputes: *United States - Final Dumping Determination on Softwood Lumber from Canada*[7]; *United States - Anti-Dumping Measures On Shrimp from Ecuador*[8]; *United States - Anti-Dumping Measures on Polyethylene Retail Carrier Bags from Thailand*[9]; and *United States - Measures Relating to Shrimp from Thailand*[10].

The forgoing paragraphs are provided without prejudice to any arguments that China may develop and present to the panel regarding the WTO-inconsistency of the measures at issue.

Request for the Establishment of a Panel

Accordingly, China requests pursuant to Article XXIII of the GATT 1994, Articles 4 and 6 of the DSU, and Article 17.4 of the Anti-Dumping Agreement, that the DSB establish a panel with the standard terms of reference as set out in Article 7.1 of the DSU. China asks that this request be placed on the agenda of the meeting of the DSB scheduled for October 25, 2011.

[7] Panel Report, WT/DS264/R, and Appellate Body Report, WT/DS264/AB/R, adopted on August 31, 2004.

[8] Panel Report, WT/DS335/R, adopted on February 20, 2007.

[9] Panel Report, WT/DS383/R, adopted on May 20, 2008.

[10] Panel Report, WT/DS343/R, adopted as modified by the Appellate Body on August 1, 2008.