

# US – SHRIMP (VIET NAM)<sup>1</sup>

## (DS404)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	Viet Nam	ADA Arts. 2.1, 2.4, 2.4.2, 6.10, 6.10.2, 9.3, 9.4, 11.1, 11.3, 17.6(i) GATT Art. VI:2	Establishment of Panel	18 May 2010
			Circulation of Panel Report	11 July 2011
Respondent	United States		Circulation of AB Report	NA
			Adoption	2 September 2011

### 1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Second and third administrative review determinations in anti-dumping proceedings against imports from Viet Nam; “continued use”, by the United States Department of Commerce (USDOC), of certain practices in the same anti-dumping proceedings.
- **Product at issue:** Certain frozen warmwater shrimp from, *inter alia*, Viet Nam.

### 2. SUMMARY OF KEY PANEL FINDINGS

- **ADA Art. 2.4 (dumping determination – zeroing, as applied):** The Panel found that the USDOC’s use of zeroing in the calculation of dumping margins was inconsistent with Art. 2.4.
- **ADA Art. 9.3 and GATT Art. VI:2 (imposition of anti-dumping duties – zeroing, as such):** The Panel found that Viet Nam had established the existence of the “zeroing methodology” as a rule or norm of general and prospective application maintained by the USDOC. Relying on prior Appellate Body rulings, the Panel concluded that simple zeroing in administrative reviews is, as such, inconsistent with Art. 9.3 and Art. VI:2.
- **ADA Arts. 6.10, 6.10.2, 9.3, 11.1 and 11.3 (limitation of the number of selected respondents):** The Panel rejected Viet Nam’s claims that the USDOC had limited the number of respondents for which it calculated an individual margin of dumping in a manner that deprived Vietnamese respondents of rights under Arts. 6.10, first sentence, and 9.3, 11.1 and 11.3. In addition, the Panel rejected a claim by Viet Nam that the USDOC violated Art. 6.10.2, first sentence, by not determining individual margins of dumping for non-selected respondents that submitted a voluntary response. The Panel rejected a claim by Viet Nam that the USDOC had acted inconsistently with Art. 6.10.2, second sentence, by discouraging voluntary responses.
- **ADA Art. 9.4 (imposition of anti-dumping duties – “all others” rate):** The Panel found that the “all others” rate applied in the administrative reviews at issue was inconsistent with Art. 9.4 as it was based on dumping margins calculated with zeroing.
- **ADA Arts. 9.4, 6.8 (imposition of anti-dumping duties – rate assigned to the Viet Nam-wide entity):** The Panel upheld a claim by Viet Nam that the USDOC acted inconsistently with Art. 9.4 by failing to apply the “all others” rate to the Viet Nam-wide entity composed of respondents who could not establish independence from the government. The Panel reasoned that the USDOC could not make the application of the “all others” rate conditional on the fulfilment of additional requirements not provided for under Art. 9.4. The Panel also found that the application of a “facts available” rate to the Viet Nam-wide entity in the second administrative review and of a rate that was in substance a “facts available” rate in the third administrative review was inconsistent with Art. 6.8.

### 3. OTHER ISSUES

- **Requirements of panel request (DSU Art. 6.2):** The Panel found that Viet Nam’s panel request did not identify the “continued use of challenged practices” measure as a measure at issue in the dispute; that Viet Nam had failed to include claims under ADA Art. 17.6(i) in its panel request; and that certain other claims by Viet Nam’s claims were outside the Panel’s terms of reference.

<sup>1</sup> United States – Anti-Dumping Measures on Certain Shrimp from Viet Nam