

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS-267]

WTO Dispute Settlement Proceeding Regarding United States Subsidies to Upland Cotton

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice that Brazil has requested the establishment of a dispute settlement panel under the *Marrakesh Agreement Establishing the World Trade Organization* ("WTO Agreement"). That request may be found at <http://www.wto.org> contained in a document designated as WT/DS267/30. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although the USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before November 1, 2006, to be assured of timely consideration by USTR.

ADDRESSES: Comments should be submitted (i) Electronically, to FR0630@ustr.gov, Attn: "United States—Subsidies on Upland Cotton" in the subject line, or (ii) by fax, to Sandy McKinzy (Attn: United States—Subsidies on Upland Cotton) at 202-395-3640, with a confirmation copy sent electronically to the e-mail address above.

FOR FURTHER INFORMATION CONTACT: Behnaz L. Kibria, Assistant General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC, (202) 395-9589.

SUPPLEMENTARY INFORMATION: If a dispute settlement panel is established, such panel, which would hold its meetings in Geneva, Switzerland, may issue a report on its findings and recommendations within 90 days after referral of the matter to it.

Major Issues Raised by Brazil

In its panel request, Brazil alleges that the United States has not fully complied with the recommendations and rulings of the Dispute Settlement Body from the original dispute. The recommendations and rulings stem from the panel and Appellate Body reports which may be found at <http://www.wto.org> designated as WT/DS267/R and WT/DS267/AB/R, respectively.

Specifically, Brazil alleges that "the United States has failed to take

appropriate steps to remove the adverse effects or withdraw the subsidies found to cause adverse effects." According to Brazil, "[t]he United States" failure to take these steps results in U.S. subsidies for upland cotton causing serious prejudice to the interests of Brazil, within the meaning of Articles 5(c) and 6.3 of the *Agreement on Subsidies and Countervailing Measures* ("SCM Agreement"). Brazil contends that the U.S. subsidies at issue are "the U.S. marketing loan, counter-cyclical and Step 2 payment programs under the [Farm Security and Rural Investment Act ('FSRI Act')] of 2002, as amended, taken alone and/or considered together, as well as payments made under these programs. * * *" Noting the repeal of the Step 2 program effective August 1, 2006, Brazil contends, in the alternative, that the U.S. subsidies at issue are "the U.S. marketing loan and counter-cyclical payment programs under the FSRI Act of 2002, as amended, as well as payments made under these programs. * * *"

Brazil also claims that "the United States threatens to cause serious prejudice to the interests of Brazil, within the meaning of Articles 5(c) and 6.3 of the SCM Agreement, and footnote 13 thereto," in the sense of threat of significant price suppression "in the world market for upland cotton in marketing years 2006 and until the expiry of [the marketing loan and counter-cyclical payment] programs."

In addition, Brazil presents claims relating to the "prohibited [export credit guarantee program ('ECG')] related export subsidies." Brazil alleges that the United States has taken "no action" with respect to guarantees provided prior to July 1, 2005, the deadline for implementation, under the three programs at issue in the original dispute—GSM-102, GSM-103, and the Supplier Credit Guarantee Program ("SCGP"). Brazil also alleges that, with respect to GSM-102, the SCGP, and guarantees provided thereunder after the date for implementation, the U.S. measures taken to comply are inconsistent with Articles 10.1 and 8 of the *Agreement on Agriculture*, Articles 1, 3.1(a), and 3.2 of the *SCM Agreement*, and item (j) to the Illustrative List of Export subsidies in Annex I to the *SCM Agreement*.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Persons submitting comments may either send one copy by fax to Sandy McKinzy at (202) 395-3640, or transmit a copy

electronically to FR0630@ustr.gov, with "United States—Subsidies on Upland Cotton" in the subject line. For documents sent by fax, USTR requests that the submitter provide a confirmation copy to the electronic mail address listed above.

USTR encourages the submission of documents in Adobe PDF format, as attachments to an electronic mail. Interested persons who make submissions by electronic mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such and the submission must be marked "BUSINESS CONFIDENTIAL" at the top and bottom of the cover page and each succeeding page of the submission.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitting person believes that information or advice may qualify as such, the submitting person—

- (1) Must clearly so designate the information or advice;
- (2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE" at the top and bottom of each page of the cover page and each succeeding page; and
- (3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room, which is located at 1724 F Street, NW., Washington, DC 20508. The public file will include non-confidential comments received by USTR from the public with respect to the dispute; if a dispute settlement panel is convened or in the event of an appeal from such a panel, the U.S. submissions, the submissions, or non-confidential summaries of submissions, received from other participants in the dispute; the report of the panel and; if applicable, the report

of the Appellate Body. An appointment to review the public file may be made by calling the USTR Reading Room at (202) 395-6186. The USTR Reading Room is open to the public from 9:30 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday.

Daniel E. Brinza,

*Assistant United States Trade Representative,
for Monitoring and Enforcement.*

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OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS-343]

WTO Dispute Settlement Proceeding Regarding United States— Antidumping Measures on Shrimp From Thailand

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative ("USTR") is providing notice that on September 15, 2006, Thailand requested the establishment of a panel under the Marrakesh Agreement Establishing the World Trade Organization ("WTO Agreement"). That request may be found at <http://www.wto.org> contained in a document designated as WT/DS343/7. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before November 30, 2006 to be assured of timely consideration by USTR.

ADDRESSES: Comments should be submitted (i) Electronically, to FR0619@ustr.eop.gov, Attn: "Thailand Shrimp Zeroing/Bond Dispute (DS343)" in the subject line, or (ii) by fax, to Sandy McKinzy at (202) 395-3640. For documents sent by fax, USTR requests that the submitter provide a confirmation copy to the electronic mail address listed above.

FOR FURTHER INFORMATION CONTACT: Elissa Alben, Assistant General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508, (202) 395-9622.

SUPPLEMENTARY INFORMATION: Section 127(b) of the Uruguay Round Agreements Act ("URAA") (19 U.S.C. 3537(b)(1)) requires that notice and opportunity for comment be provided after the United States submits or

receives a request for the establishment of a WTO dispute settlement panel. Consistent with this obligation, USTR is providing notice that a dispute settlement panel has been requested pursuant to the WTO *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"). The panel will hold its meetings in Geneva, Switzerland.

Major Issues Raised by Thailand

On August 4, 2004, the Department of Commerce published in the **Federal Register** notice of its affirmative preliminary less-than-fair-value ("LTFV") determination in an investigation concerning certain frozen and canned warm water shrimp from Thailand (69 FR 47,100). On December 23, 2004, the Department of Commerce published notice of its affirmative final LTFV determination (69 FR 76,918), and on February 1, 2005, the Department of Commerce published an amended final LTFV determination, along with an antidumping duty order, covering only certain frozen warm water shrimp from Thailand (70 FR 5145). The latter notice contains the final margins of LTFV sales, as provided in section 733 of the Tariff Act of 1930, as amended.

In its request for the establishment of a panel, Thailand alleges that the United States used "the practice known as 'zeroing' to calculate dumping margins for each investigated Thai exporter" and that "[t]he effect of the use of this practice was 'artificially' to create margins of dumping where none would otherwise have been found or, at a minimum, to inflate margins of dumping and hence to impose inaccurate definitive antidumping measures on imports of shrimp from Thailand," in violation of Articles 2.4.2, 2.1, 2.4, and 9.3 of the AD Agreement. In addition, Thailand alleges that the United States has imposed on importers of shrimp from Thailand a requirement to maintain a continuous entry bond in the amount of the applicable antidumping duty margin multiplied by the value of imports of shrimp imported by the importer in the preceding year, and that the imposition of the continuous bond requirement on importers of shrimp from Thailand "constitutes specific action against dumping" not in accordance with Article 18.1 of the AD Agreement. Thailand also states that the imposition of the continuous bond requirement on importers of shrimp from Thailand is inconsistent with GATT Article IV:2 and Note 1, paragraphs 2 and 3 to *Ad Article VI* of the GATT, as well as Articles 7.2, 7.4, 7.5, 9.1, 9.2, and 9.3 of the AD Agreement, that it "constitutes a

restriction on importation prohibited under Article XI:1" or alternately is inconsistent with Article I:1 or Article II:1(a) and (b) of the GATT, and that by applying the continuous bond requirement to shrimp from Thailand and five other countries, the United States fails to administer its customs laws, regulations, and administrative rulings in a uniform, impartial, or reasonable manner, in violation of GATT Article X:3(a). Thailand also states that the continuous bond requirement is not justified under Article XX(d) of the GATT, in particular because it is not necessary to secure compliance with U.S. laws and regulations and has been applied in a manner constituting arbitrary and unjustifiable discrimination and a disguised restriction on international trade.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Persons may submit their comments either (i) Electronically, to FR0619@ustr.eop.gov, Attn: "Thailand Shrimp Zeroing/Bond Dispute (DS343)" in the subject line, or (ii) by fax to Sandy McKinzy at (202) 395-3640. For documents sent by fax, USTR requests that the submitter provide a confirmation copy to the electronic mail address listed above.

USTR encourages the submission of documents in Adobe PDF format, as attachments to an electronic mail. Interested persons who make submissions by electronic mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

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Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C.