EXECUTIVE SUMMARY OF THE OPENING STATEMENT OF THE UNITED STATES OF AMERICA AT THE SECOND SUBSTANTIVE MEETING OF THE PANEL

UNITED STATES – ANTI-DUMPING MEASURES ON CERTAIN SHRIMP FROM VIET NAM
(DS404)

DECEMBER 21, 2010

1. Consistently, throughout this dispute, Vietnam's arguments have failed to meaningfully address the specific rights and obligations as established by the covered agreements. Instead of addressing actual obligations to which Members agreed, Vietnam departs from the accepted rules of treaty interpretation and invents obligations found nowhere in the text of the covered agreements. At the end of its second written submission, Vietnam makes six specific requests for findings. We will clarify what each request would entail and, importantly, why the Panel should not do what Vietnam asks.

2. In its first request for findings, Vietnam asks the Panel to find:

> ***That the application of zeroing to individually investigated respondents in the second and third administrative reviews, and its continued application in the subsequent reviews, is inconsistent with Articles 9.3, 2.1, 2.4.2, and 2.4 of the Anti-Dumping Agreement and Article VI:2 of the GATT 1994.***

3. Vietnam's claims under Article 9.3 of the AD Agreement and Article VI:2 of the GATT 1994 fail because Vietnam has not demonstrated that any antidumping duties were applied in excess of the margin of dumping with respect to the individually examined exporters/producers in the second and third administrative reviews. As we have explained, Article 9.3 and Article VI:2 provide that any antidumping duty applied shall not exceed the margin of dumping. Because Vietnam has not established that any antidumping duty was applied at all, Vietnam has not established that any antidumping duty was applied in excess of the margin of dumping.

4. Vietnam asks the Panel nevertheless to find that the United States acted inconsistently with Article 9.3 because that provision limits the antidumping duty to the margin of dumping "as established under Article 2." Vietnam suggests that, "prior to reaching the additional obligations regarding duty assessment contained in Article 9.3, the authority must calculate the margin of dumping in accordance with Article 2." Vietnam's interpretation of Article 9.3 is incorrect and would be redundant of the obligations in Article 2, which are found within the text of that provision. In any event, however, this aspect of Vietnam's claim under Article 9.3 is dependent upon Vietnam's separate claims under Articles 2.1, 2.4.2, and 2.4 of the AD Agreement, which are without merit.

5. Article 2.1 describes the situation wherein "a product is to be considered as being dumped." The Appellate Body has explained that Article 2.1 is a "definitional" provision, which, "read in isolation, [does] not impose independent obligations."[1] It is not clear how the challenged measures could be found inconsistent with a definition.

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[1] *US – Zeroing (Japan) (AB)*, para. 140.

6. Vietnam also asks the Panel to find that the application of zeroing to individually investigated respondents in the second and third administrative reviews is inconsistent with Article 2.4.2 of the AD Agreement. For this claim to succeed, the Panel must find that Article 2.4.2 applies to administrative reviews. However, Article 2.4.2, by its terms, is limited to the "investigation phase." The Appellate Body and prior panels have recognized distinctions between investigations and other proceedings under the AD Agreement, consistently finding that the provisions in the AD Agreement with express limitations to investigations are, in fact, limited to the investigation phase of a proceeding. The express limitation of the obligations in Article 2.4.2 to the investigation phase is consistent with the differences in the antidumping systems applied by Members for purposes of the assessment phase. If the obligations regarding comparison methodologies found in Article 2.4.2 were applied to the assessment of antidumping duties, this divergence of assessment systems would not be possible. Thus, to retain the flexibility for Members to apply different assessment systems, it was necessary to limit the requirements of Article 2.4.2 to the investigation phase.

7. Lastly, Article 2.4 of the AD Agreement requires investigating authorities to make a "fair comparison" between normal value and export price and then provides detailed guidance as to how that fair comparison is to be made. Article 2.4 recognizes that the normal value and export price transactions to be compared may occur, among other things, with respect to models with differing physical characteristics, at distinct levels of trade, pursuant to different terms and conditions, and in varying quantities. The focus of Article 2.4 is on how the authorities are to select transactions for comparison and make appropriate adjustments for differences that affect price comparability. This all occurs prior to making the comparisons between export price and normal value to ensure that the comparisons are "fair" comparisons. Vietnam proposes an interpretation of Article 2.4 that would encompass the aggregation of comparisons, which takes place, if at all, after the comparisons are made. Nothing in the text of Article 2.4 indicates that the scope of that provision reaches such post-comparison aggregation.

8. The open-ended approach inherent in Vietnam's interpretation of the "fair comparison" obligation in Article 2.4 would result in disputes that are virtually impossible to resolve in any principled, text-based way. Several prior panels have cautioned against such a broad, open-ended understanding of the "fair comparison" requirement.

9. In its second request for findings, Vietnam asks the Panel to find:

> ***That the USDOC's zeroing methodology is, as such, inconsistent with Article 9.3 of the Anti-Dumping Agreement and Article VI:2 of the GATT 1994.***

10. Vietnam asserted very late in this proceeding, in response to a written question from the Panel after the first substantive meeting, that it is seeking an "as such" finding against "zeroing." However, Vietnam has advanced no arguments and pointed to no evidence that would support a finding that any "zeroing methodology" exists as a measure that can be challenged "as such." As the Appellate Body explained in *US – Zeroing (EC)*:

> [A] complaining party must clearly establish, through arguments and supporting evidence, at least that the alleged "rule or norm" is attributable to the responding Member; its precise content; and indeed, that it does have general and prospective application. It is only if the complaining party meets this high

> threshold, and puts forward sufficient evidence with respect to each of these elements, that a panel would be in a position to find that the "rule or norm" may be challenged, as such.[2]

In this dispute, Vietnam has pointed to no evidence and made no argument that would "clearly establish" that "the alleged 'rule or norm' is attributable to the [United States]; its precise content; and indeed, that it does have general and prospective application." Instead Vietnam merely cites repeatedly to prior panel and Appellate Body reports. While "[e]vidence adduced in one proceeding, and admissions made in respect of the same factual question about the operation of an aspect of municipal law, may be submitted as evidence in another proceeding,"[3] it is necessary to actually adduce the evidence and point to any such admissions. Vietnam has not done so with respect to the existence of any "zeroing methodology." The United States submits that the Panel lacks any evidentiary basis for finding that the "zeroing methodology" is a measure that is inconsistent, as such, with Article 9.3 of the AD Agreement and Article VI:2 of the GATT 1994.

11. In its third request for findings, Vietnam asks the Panel to find that:

> ***The use of margins of dumping determined using the zeroing methodology to calculate the all others ("separate") rate in the second and third administrative reviews is, as applied, inconsistent with Articles 9.4, 9.3, 2.4.2 and 2.4 of the Anti-Dumping Agreement.***

12. Article 9.4 of the AD Agreement, on the face of its text, establishes only a limited obligation related to the maximum antidumping duty that may be applied to companies not individually examined, in certain circumstances. Article 9.4 does not prescribe a methodology for assigning a rate to companies not individually examined in an assessment review. Article 9.4 does not prescribe the *maximum* rate that may be applied to companies not individually examined in situations where the rates calculated for the individually examined companies are all zero, *de minimis*, or based on facts available. And Article 9.4 certainly does not prohibit "zeroing."

13. To the extent that any prohibition of "zeroing" exists in the AD Agreement, it has been identified by panels and the Appellate Body in provisions other than Article 9.4. Even if the challenged measures were found to be inconsistent with those other provisions, that would not mean that, as a consequence, the measures are also inconsistent with the limited obligations in Article 9.4.

14. With respect to Article 9.3 of the AD Agreement, Vietnam's Second Written Submission asserts that "Article 9.3 prohibits the assessment of antidumping duties that exceed the margin of dumping properly calculated pursuant to Article 2. Thus, the margin of dumping for a respondent, individually examined or not, serves as the maximum for the amount of antidumping

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[2] *US – Zeroing (EC) (AB)*, paras. 197-198 (citations omitted).

[3] *US – Continued Zeroing (AB)*, para. 190.

duties to be applied."[4] Even if Vietnam were correct that Article 9.3 establishes obligations with respect to the antidumping duty applied to companies not individually examined – and the United States believes that Vietnam's understanding is not correct – Vietnam's claim under Article 9.3 is nevertheless dependent on the Panel finding that the separate rates applied to companies not individually examined in the second and third administrative reviews were inconsistent with the covered agreements when they were originally calculated in the original investigation.[5] But those rates were not inconsistent with the covered agreements when they were originally calculated. The rates were not subject to the covered agreements when they were originally calculated – because the WTO Agreement did not apply between the United States and Vietnam at that time – and they cannot now be found to have been inconsistent with the covered agreements at the time they were originally calculated.

15. As we have noted, the panel in *US – DRAMS* explained that "the AD Agreement only applies to those parts of a pre-WTO measure that are included in the scope of a post-WTO review. Any aspects of a pre-WTO measure that are not covered by the scope of the post-WTO review do not become subject to the AD Agreement by virtue of Article 18.3 of the AD Agreement."[6] In this dispute, Commerce did not recalculate the rates that were calculated in the original investigation and Commerce did not make any new comparisons of export price and normal value. The separate rates in question were determined once and only once in the original pre-WTO investigation – before the entry into force of the WTO Agreement for Vietnam – and were then applied in the final results for the second and third administrative reviews.

16. Vietnam also claims that the separate rates applied to companies not individually examined in the second and third administrative reviews are inconsistent with Article 2.4.2 of the AD Agreement. Article 2.4.2 is limited to the "investigation phase" and does not apply to determinations in administrative reviews. Vietnam asks the Panel to ignore the limitation in the text of Article 2.4.2 in order to find that the determinations in the second and third administrative reviews are inconsistent with that provision. Furthermore, Commerce made no comparisons of normal value and export price during the second and third administrative reviews in order to determine the separate rates to apply to companies that were not individually examined. Commerce relied on rates calculated during the original investigation, but did not recalculate or otherwise reexamine those rates, and nothing in the AD Agreement required Commerce to do so. Thus, Commerce took no action during the second and third administrative reviews that was inconsistent with the obligations in Article 2.4.2 of the AD Agreement. For Vietnam's claim to succeed, the Panel would have to find that the pre-WTO dumping margin calculations performed during the investigation were inconsistent with Article 2.4.2 at the time they were calculated. But, as we have explained, that is not possible because the United States had no WTO obligations with respect to Vietnam at that time.

17. Vietnam also claims that the separate rates applied to companies not individually examined in the second and third administrative reviews are inconsistent with Article 2.4 of the

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[4] Vietnam Second Written Submission, para. 49 (emphasis added).

[5] *See* Vietnam First Written Submission, para. 214.

[6] *US – DRAMS*, para. 6.14.

AD Agreement. Article 2.4 establishes an obligation that a "fair comparison" be made between normal value and export price and then provides detailed guidance as to how that fair comparison is to be made. Commerce made no comparisons of normal value and export price during the second and third administrative reviews in order to determine the separate rates to apply to companies that were not individually examined. So, there can be no breach of the "fair comparison" requirement based on action taken by Commerce during the second and third administrative reviews.

18. To the extent that Vietnam's claim is dependent upon a finding that the dumping margins calculated during the investigation were inconsistent with Article 2.4 at the time that they were originally calculated, the claim must fail because such a finding is not possible. The dumping margin calculations made during the investigation were performed prior to Vietnam's accession to the WTO and the United States had no WTO obligations with respect to Vietnam at that time. Additionally, we would recall that Article 2.4 does not contain any obligations in respect of post-comparison aggregation, and it does not create an obligation to provide for offsets, or a prohibition of "zeroing."

19. In its fourth request for findings, Vietnam asks the Panel to find that the:

> ***Application of an all others ("separate") rate that fails to consider the results of the individually investigated respondents in the contemporaneous proceeding and produces an antidumping duty prejudicial to companies not selected for individual investigation is, as applied in the second and third administrative reviews, inconsistent with Articles 9.4, 17.6(i), and 2.4 of the Anti-Dumping Agreement.***

20. No provision of the AD Agreement establishes a contemporaneity requirement with respect to the antidumping duty rates applied to companies not selected for individual examination when all of the margins of dumping calculated for examined companies are zero or *de minimis* or based on facts available. Article 9.4 of the AD Agreement only establishes limited obligations relating to the maximum antidumping duty that may be applied to companies not individually examined. However, when all dumping margins calculated for individually examined companies are zero or *de minimis* or based on facts available, as was the case in the second and third administrative reviews, then Article 9.4 does not specify the maximum antidumping duty that may be applied. There is nothing in the text of Article 9.4 that establishes a contemporaneity requirement in such a situation.

21. Vietnam claims in its second written submission that "The actions of the individually investigated exporters, all of whom eliminated their dumping behavior, constitutes the entirety of the evidence available on the response of exporters to the antidumping duty order."[7] Vietnam's claim is not relevant as a legal matter because nothing in the text of Article 9.4 conditions a Member's right to apply antidumping duties to companies that are not individually examined on a factual finding that other companies continued to dump during a particular period. Furthermore, Vietnam is incorrect as a matter of fact. In the first and second administrative reviews, numerous companies failed to respond to Commerce's questionnaires and Commerce

[7] Vietnam Second Written Submission, para. 75.

accordingly determined the margin of dumping for these companies based on facts available using an adverse inference. These adverse findings with respect to dumping cannot be considered evidence that dumping in the industry had ceased, but Vietnam asks the Panel to ignore these facts.

22. With respect to Vietnam's claim under Article 17.6(i) of the AD Agreement, because Vietnam did not raise any claims under Article 17.6(i) in its panel request, no claims under this provision are within the Panel's terms of reference. Furthermore, Article 17.6(i) establishes a general obligation in respect of a dispute settlement panel's assessment of the facts of the matter. On its face, Article 17.6(i) does not impose any obligations on WTO Members. Thus, it is not clear how a Member may be found to have acted inconsistently with Article 17.6(i). In any event, Article 17.6(i) does not impose any additional obligations on Members in a situation in which Article 9.4 of the AD Agreement does not specify the maximum antidumping duty that may be applied to companies not individually examined. Rather, Article 17.6(i) provides a specific standard for the Panel's examination of Commerce's assessment of the facts.

23. Vietnam contends that Commerce failed to make "an unbiased and objective evaluation of the facts" in assigning rates to companies not individually examined in the second and third administrative reviews because "[t]he entire record before the USDOC evidenced an industry that did not dump subject merchandise above a *de minimis* amount" and thus, the rates assigned to companies not individually examined purportedly had "no basis in fact."[8] Nothing in the text of Article 9.4 conditions a Member's right to apply antidumping duties to companies that are not individually examined on a separate factual finding that other companies continued to dump during a particular period. Even if it did, though, Vietnam's claim would be undermined by the facts: a number of producers/exporters failed to cooperate in the first and second administrative reviews and Commerce therefore assigned to them antidumping duty rates determined on the basis of facts available. This is hardly evidence that dumping had stopped.

24. Vietnam asks the Panel to find that the challenged measures are inconsistent with Article 2.4 of the AD Agreement, this time because of the requirement in Article 2.4 that "the sales being compared be made 'at as nearly as possible the same time.'"[9] Vietnam asserts that this establishes a general contemporaneity requirement, including with respect to the application of antidumping duties to companies not individually examined. The obligation in Article 2.4 that the export price and normal value comparison be made "in respect of sales made at as nearly as possible the same time" relates to the calculation underlying the determination of dumping. This obligation does not relate to the calculation of the maximum antidumping duty that may be applied to companies not individually examined pursuant to Article 9.4, nor to the actual antidumping duty applied to such companies when the duty is based on a previously determined dumping margin. Nothing in the text of the AD Agreement supports the linkage that Vietnam attempts to establish between Articles 2.4 and 9.4.

[8] Vietnam Responses to Panel Questions, Question 22, paras. 60-61; *see also* Vietnam Responses to Panel Questions, Question 24, para. 65; *see also* Vietnam Second Written Submission, paras. 75-76, 80.

[9] Vietnam Responses to Panel Questions, Question 20, para. 52.

25. Additionally, the margins of dumping calculated during the original investigation were not inconsistent with Article 2.4 at the time that they were calculated, both because the calculations were performed prior to Vietnam's accession to the WTO and because there is no evidence and Vietnam does not appear to suggest that the comparisons made during the original investigation were not made "in respect of sales made at as nearly as possible the same time."

26. In its fifth request for findings, Vietnam asks the Panel to find that:

> ***The application of an antidumping duty based on adverse facts available to the Vietnam-wide entity in the second and third administrative reviews, and its continued application in subsequent reviews, is inconsistent with Articles 6.8, 9.4, 17.6(i) and Annex II of the Anti-Dumping Agreement.***

27. As noted earlier, no claim under Article 17.6(i) of the AD Agreement is within the Panel's terms of reference, and, on its face, Article 17.6(i) does not impose any obligations on WTO Members. Vietnam appears to invoke Article 17.6(i) in relation to its argument that Commerce lacked sufficient evidence to justify treating the Vietnam-wide entity as a single exporter or producer comprised of companies that did not demonstrate their independence from the government. However, the United States and Vietnam agree that, as a general matter, an investigating authority may, consistent with Article 6.10 of the AD Agreement, treat more than one company as a single entity based upon the relationship between those companies.[10] In its second written submission, Vietnam confirms its view "that common control by the government of multiple entities may permit an authority to collapse this entity into a single entity and to apply a single rate to this single entity."[11]

28. The question is whether the facts of record in the second and third administrative reviews justified Commerce's determinations to treat the Vietnam-wide entity as a single exporter or producer. We have explained that the facts amply supported Commerce's determinations, and there is no basis for Vietnam's assertion that Commerce failed to make an "unbiased and objective" evaluation of the facts.

29. Article 6.8 and Annex II of the AD Agreement permit the use of the facts available in any case "in which any interested party refuses access to, or otherwise does not provide, necessary information within a reasonable period or significantly impedes the investigation. . . ." Rather than being limited in its application to individually examined companies, Article 6.8 refers to "*any* interested party." That includes companies not selected for individual examination and groups of companies treated as a single entity. Additionally, contrary to Vietnam's arguments, the quantity and value information requested was "necessary information" within the meaning of Article 6.8 and Annex II. The scope of "necessary information" is not limited only to that information used to calculate a dumping margin.

30. Because certain companies that were part of the Vietnam-wide entity refused to provide necessary information in the second administrative review, Commerce applied an antidumping

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[10] *See, e.g.,* Vietnam Responses to Panel Questions, Question 35, para. 90.

[11] Vietnam Second Written Submission, para. 117.

duty rate to the Vietnam-wide entity that was based upon the facts available. Commerce's application of facts available to the Vietnam-wide entity in the second administrative review was not inconsistent with Article 6.8 and Annex II of the AD Agreement. In the third administrative review, Commerce did not apply to the Vietnam-wide entity a rate based upon facts available. Rather, Commerce applied to the Vietnam-wide entity the only rate that had ever been applied to it, relying on the same methodology used for the other separate rate companies in the third administrative review.

31. With respect to Vietnam's claim under Article 9.4 of the AD Agreement, as we have explained, Article 9.4 establishes a limited obligation with respect to the maximum antidumping duty that Members may apply to companies not individually examined. Where all the rates calculated for examined companies are zero or *de minimis*, as in the measures at issue in this case, then it is not possible to calculate a maximum antidumping duty according to the terms of Article 9.4, and Article 9.4 does not specify a maximum antidumping duty that may be applied to companies not individually examined.

32. In its last request for findings, Vietnam asks the Panel to find that:

> ***The USDOC's determinations in the second and third administrative reviews, and on a continuing basis, to limit the number of individually investigated respondents such that they restrict certain substantive rights under the Anti-Dumping Agreement is inconsistent with Articles 6.10, 6.10.2, 9.3, 11.1, and 11.3 of the Anti-Dumping Agreement.***

33. Article 6.10 of the AD Agreement does not require investigating authorities to determine margins of dumping for every exporter or producer where the number of exporters or producers "is so large as to make such a determination impracticable." Vietnam argues that Commerce's determinations were inconsistent with Article 6.10 because Commerce "made no effort to explore alternatives" to examine more exporters and producers when it limited its examination. Nothing in the text of Article 6.10, or any other provision of the AD Agreement, requires Commerce to "explore alternatives" as proposed by Vietnam.

34. With respect to Vietnam's claim under Article 6.10.2 of the AD Agreement, Vietnam itself has put before the Panel the evidence necessary to demonstrate that Commerce did not act inconsistently with the obligations in that provision. Article 6.10.2 requires that companies not initially selected who wish to have an individual margin of dumping calculated must "submit[] the necessary information in time for that information to be considered." The information provided by Vietnam in response to the Panel's written questions demonstrates that the "necessary information" was never submitted in either the second or third administrative reviews and this conclusively establishes that Commerce was under no obligation to determine individual margins of dumping for "voluntary respondents" in those proceedings.[12]

35. Vietnam now suggests that Commerce acted inconsistently with Article 6.10.2 by "discouraging" voluntary responses, contrary to the prohibition against doing so in the last

[12] *See* Vietnam Responses to Panel Questions, Question 42, para. 100.

sentence of that provision.[13] Vietnam offers no evidence of so-called "discouraging behavior" other than Commerce's determinations to limit its examination, which, as we have explained, are consistent with the requirements of Article 6.10. Commerce cannot be found to have acted inconsistently with one provision of the AD Agreement by virtue of its proper application of another provision.

36. Vietnam's assertion that Commerce acted inconsistently with Article 9.3 because it "failed throughout the shrimp antidumping proceeding to make any connection between the antidumping duty assigned to companies not selected for individual examination and their margin of dumping or any facts otherwise on the record" makes no sense.[14] Of course there is no connection between the antidumping duty applied to companies not individually examined and "their margin of dumping," because no margin of dumping was determined for them. If Vietnam's interpretation were accepted, Members would no longer have the right to limit the examination and would, in all cases, be required to determine individual margins of dumping for all companies. Vietnam's proposed interpretation reads the second sentence of Article 6.10, and all of Article 9.4, out of the AD Agreement.

37. Vietnam's claims under Articles 11.1 and 11.3 are likewise devoid of merit. Vietnam's claims under Articles 11.1 and 11.3 appear to be dependent on its claims that Commerce's determinations to limit its examination are inconsistent with Article 6.10 of the AD Agreement, but we have shown that they are not. A somewhat more disturbing implication of Vietnam's argument is that, regardless of whether Commerce's determinations are inconsistent with Article 6.10, the determinations to limit the examination nevertheless are inconsistent with Articles 11.1 and 11.3. But Commerce cannot be found to have acted inconsistently with one provision of the AD Agreement due to the proper exercise of U.S. rights under a separate provision of the AD Agreement.

38. Additionally, Vietnam's interpretation that Articles 11.1 and 11.3 "require that an authority permit revocation determinations on a company-specific basis" is incorrect and inconsistent with prior Appellate Body reports interpreting these provisions. The Appellate Body has confirmed that Article 11.1 does not impose any independent or additional obligations on Members[15] and that "Article 11.3 does not require investigating authorities to make their likelihood determination on a company-specific basis."[16] Vietnam's proposed interpretations have been considered before and rejected.

39. Finally, in its first, fifth, and sixth requests for findings, Vietnam asks the Panel to make findings related to the "continued application" of "zeroing," the "continued application" of "an antidumping duty based on adverse facts available to the Vietnam-wide entity," and Commerce's

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[13] Vietnam Second Written Submission, para. 133.

[14] Vietnam Second Written Submission, para. 120.

[15] *EC – Tube or Pipe Fittings (AB)*, para. 81, 84 (Affirming the panel's finding. The panel explained that "Article 11.1 does not set out an independent or additional obligation for Members." *EC – Tube or Pipe Fittings (Panel)*, para. 7.113).

[16] *US – Corrosion-Resistant Steel Sunset Review (AB)*, para. 150 (emphasis added).

determinations "on a continuing basis" to limit its examination. No so-called "continued use" measure is within the Panel's terms of reference because Vietnam failed to specifically identify any such measure in its panel request, contrary to the obligation in Article 6.2 of the DSU.

40. Even if Vietnam had referenced a "continued use" measure in its panel request, such a measure appears to be a fictional construct supposedly composed of an indeterminate number of potential future measures that did not exist at the time of Vietnam's panel request (and may never exist). Such so-called "continued use" cannot be subject to dispute settlement because it could not be impairing any benefits accruing to Vietnam, and it consists of proceedings that had not resulted in "final action" at the time of the consultations request, as required by Article 17.4 of the AD Agreement.

41. Additionally, the facts in this dispute do not support a conclusion that the three challenged "practices" "would likely continue to be applied in successive proceedings."[17] In *US – Continued Zeroing*, where there was "a lack of evidence showing that zeroing was used in one periodic review listed in the panel request" or "the sunset review determination was excluded from the Panel's terms of reference," the Appellate Body found that "the Panel [had] made no finding confirming the use of the zeroing methodology in successive stages over an extended period of time whereby the duties are maintained."[18] In this dispute, the original investigation, the first, fourth, and fifth administrative reviews, and the sunset review are not within the Panel's terms of reference and hence no substantive findings that Commerce acted inconsistently with the AD Agreement or the GATT 1994 may be made with respect to those proceedings.[19]

42. Additionally, Vietnam has failed to establish that "zeroing" had any impact on the margins of dumping calculated for the individually examined respondents in the second and third administrative reviews, and Vietnam has failed to establish as a factual matter that Commerce used the zeroing methodology in connection with the application of a dumping margin to separate rate respondents in those proceedings, or to the Vietnam-wide entity.

43. We also note that Vietnam asks the Panel to expand the Appellate Body's reasoning in *US – Continued Zeroing* beyond "zeroing" to encompass the other "challenged practices", but Vietnam's claims regarding the other "challenged practices" are without merit, as we have shown.

44. Therefore, Vietnam cannot establish "a string of determinations, made sequentially. . . over an extended period of time" with respect to any of the "challenged practices," and so its claims must fail.

45. For all of the reasons we have given, the United States submits that each of Vietnam's claims is without merit and we thus respectfully request that the Panel reject Vietnam's claims.

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[17] *US – Continued Zeroing (AB)*, para. 191.

[18] *US – Continued Zeroing (AB)*, para. 194.

[19] *See US – Continued Zeroing (AB)*, para. 194.