

*United States - Anti-Dumping Measures on Certain Shrimp and
Diamond Sawblades from China*

(DS422)

**EXECUTIVE SUMMARY OF THE FIRST WRITTEN SUBMISSION
PEOPLE'S REPUBLIC OF CHINA**

February 9, 2012

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-rate 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.