

**INDIA – ADDITIONAL AND EXTRA-ADDITIONAL DUTIES ON
IMPORTS FROM THE UNITED STATES**

Request for the Establishment of a Panel by the United States

The following communication, dated 24 May 2007, from the delegation of the United States to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On 6 March 2007, the United States requested consultations with the Government of India pursuant to Article 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU") and Article XXII of the *General Agreement on Tariffs and Trade 1994* ("GATT 1994"), with respect to "additional duties" and "extra additional duties" that India applies to imports from the United States. The United States held consultations with India on 13 April 2007. Unfortunately, those consultations did not resolve the dispute.

The additional duty and extra additional duty, individually and in combination, subject imports to ordinary customs duties or other duties or charges in excess of those in India's WTO Tariff Schedule. The additional duty is calculated inclusive of, and applied in addition to, the basic customs duty. The extra additional duty is calculated inclusive of, and applied in addition to, the basic customs duty and the additional duty. As a result of the additional duty and the extra additional duty, products from the United States are not exempt from ordinary customs duties or other charges in excess of those set forth in India's WTO Tariff Schedule, and are accorded less favorable treatment than that provided for in India's WTO Tariff Schedule. Therefore, the United States considers the additional duty and the extra additional duty each to be inconsistent with Article II:1(a) and (b) of the GATT 1994. India applies these duties to products that include, but are not limited to, imports falling under Harmonized Tariff System (HTS) Codes 2203, 2204, 2205, 2206, and 2208 (beer, wine and distilled spirits, collectively referred to as "alcoholic beverages").

Even if the additional duty and the extra additional duty were considered to be internal taxes applied at the time of importation, these duties subject imports from the United States to internal taxes in excess of those applied to like domestic products or directly competitive or substitutable domestic products in breach of Article III:2 of the GATT 1994, and afford less favorable treatment to imported products than to like domestic products in breach of Article III:4 of the GATT 1994.

The United States understands that the relevant Indian measures include:

- Chapter V of the Customs Act, 1962
- Sections 2 and 3 of the Customs Tariff Act, 1975 ("basic customs duty," "additional duty" and "extra additional duty");

- First Schedule to the Customs Tariff Act, 1975 and any customs notifications issued under section 25 of the Customs Act, 1962 that set forth applied rates of basic customs duties for alcoholic beverages and other imports from the United States that differ from rates specified in the First Schedule including:
 - Customs Notification No. 5/2004 (8 January 2004) and Customs Notification No. 11/2005 (1 March 2005) ("basic customs duty" *inter alia* on HTS code 2208, distilled spirits);
 - Customs Notification No. 20/1997 (1 March 1997) ("basic customs duty" *inter alia* on HTS codes 2203, 2204, 2205 and 2206, beer and wine);
- Customs Notification No. 32/2003 (1 March 2003) ("additional duty" on alcoholic beverages); and
- Customs Notification No. 19/2006 (1 March 2006) ("extra additional duty" *inter alia* on alcoholic beverages)

as well as any amendments, related measures, or implementing measures.

These measures appear to be inconsistent with India's obligations under provisions of the GATT 1994, in particular with:

- (1) Article II:1(b) of the GATT 1994, by imposing an additional duty on imports from the United States in addition to the basic customs duty applied to such imports that results in ordinary customs duties, or other duties or charges imposed on or in connection with importation, in excess of those set forth in India's WTO Tariff Schedule;
- (2) Article II:1(a) of the GATT 1994, by imposing an additional duty on imports from the United States in addition to the basic customs duty applied to such imports that accords less favorable treatment to such imports than provided for in India's WTO Tariff Schedule;
- (3) Article II:1(b) of the GATT 1994, by imposing an extra additional duty on imports from the United States in addition to the basic customs duty on such imports that results, alone or in combination with the additional duty, in ordinary customs duties, or other duties or charges imposed on or in connection with importation, in excess of those set forth in India's WTO Tariff Schedule; and
- (4) Article II:1(a) of the GATT 1994, by imposing an extra additional duty on imports from the United States in addition to the basic customs duty on such imports, that, alone or in combination with the additional duty, accords less favorable treatment to such imports than provided for in India's WTO Tariff Schedule;

and to the extent that the measures impose an internal tax or other charge on imported products,

- (5) Article III:2 of the GATT 1994; and
- (6) Article III:4 of the GATT 1994.

In addition, India's measures appear to nullify or impair the benefits accruing to the United States directly or indirectly under the GATT 1994.

Accordingly, the United States respectfully requests, pursuant to Article 6 of the DSU, that the Dispute Settlement Body establish a panel to examine this matter, with the standard terms of reference as set out in Article 7.1 of the DSU.
