

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

Notification of an Appeal by the United States
under Article 16.4 and Article 17 of the Understanding on Rules
and Procedures Governing the Settlement of Disputes (DSU),
and under Rule 20(1) of the Working Procedures for Appellate Review

The following notification, dated 1 August 2008, from the Delegation of the United States, is being circulated to Members.

Pursuant to Article 16 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (“DSU”) and Rule 20 of the Working Procedures for Appellate Review, the United States hereby notifies its decision to appeal to the Appellate Body certain issues of law covered in the report of the panel in *India – Additional and Extra-Additional Duties on Imports from the United States* (WT/DS360/R) (“Panel Report”) and certain legal interpretations developed by the panel in this dispute.

1. The United States seeks review by the Appellate Body of the panel's legal conclusions that the United States failed to establish that:

- (a) India's additional customs duty (AD) on imports of alcoholic beverages from the United States is inconsistent with Article II:1(b) of the *General Agreement on Tariffs and Trade 1994* (GATT 1994);¹
- (b) the AD imposed on imports of alcoholic beverages from the United States is inconsistent with Article II:1(a) of the GATT 1994;²
- (c) India's extra-additional customs duty (EAD)³ on imports from the United States, including alcoholic beverages, is inconsistent with Article II:1(b) of the GATT 1994;⁴
- (d) the EAD imposed on imports from the United States, including alcoholic beverages, is inconsistent with Article II:1(a) of the GATT 1994;⁵ and
- (e) the AD on alcoholic beverages and the EAD fall outside the scope of Article II:2(a) of the GATT 1994.⁶

¹See, e.g., Panel Report, paras. 7.297-7.299.

²See, e.g., Panel Report, para. 7.401.

³The panel refers to this measure as the “SUAD.” See, e.g., Panel Report, para. 7.18.

⁴See, e.g., Panel Report, paras. 7.392-7.394.

⁵See, e.g., Panel Report, para. 7.401.

⁶See, e.g., Panel Report, paras. 7.260-7.295, 7.346-7.390.

These findings are in error and are based *inter alia* on erroneous findings on issues of law and related legal interpretations as described below and the panel's failure to undertake an objective assessment described in paragraph 3.

2. The errors in the panel report include:

- (a) the erroneous interpretation and application of Articles II:1(b), II:2, and III:2 of the GATT 1994;⁷ and the following erroneous findings on issues of law and related legal interpretations:
- (b) Article II:1(b) applies only to duties or charges that "inherently discriminate against imports";⁸
- (c) the duties and charges described in Article II:2 fall outside the scope of Article II:1(b);⁹
- (d) establishing a *prima facie* case that the AD and the EAD fall within the scope of Article II:1(b) requires the United States to demonstrate that the measure "inherently discriminates against imports," including by demonstrating that the measures fall outside the scope of Article II:2;¹⁰
- (e) a charge equivalent to an internal tax falls within the scope of Article II:2(a) regardless of whether the internal tax to which it is equivalent is imposed consistently with Article III:2 of the GATT 1994;¹¹
- (f) a border charge equivalent to an internal tax is subject to Article III:2;¹²
- (g) establishing that a duty or charge falls outside the scope of Article II:2(a) requires the complaining party to raise and establish an "independent" claim under Article III:2;¹³
- (h) "equivalent" in Article II:2(a) means having or serving the same function (in the sense of purpose or objective) and does not relate to the amount, effect or function (in the sense of operation) of the charge;¹⁴ and
- (i) a responding party is not required to support its assertions that a measure falls within the scope of Article II:2(a).¹⁵

⁷See, e.g., Panel Report, paras. 7.125-7.172, 7.179-7.215, 7.240-7.299, 7.331-7.394.

⁸See, e.g., Panel Report, paras. 7.141, 7.156; *see also*, e.g., 7.128-7.164.

⁹See, e.g., Panel Report, paras. 7.133-7.141, 7.156-7.160.

¹⁰See, e.g., Panel Report, paras. 7.156-7.164, 7.258-7.261, 7.297-7.299, 7.392-7.394.

¹¹See, e.g., Panel Report, paras. 7.199-7.215.

¹²See, e.g., Panel Report, paras. 7.196, 7.206-7.215.

¹³See, e.g., Panel Report, para. 7.215.

¹⁴See, e.g., Panel Report, paras. 7.179-7.198, 7.273-7.274, 7.369.

¹⁵See, e.g., Panel Report, paras. 7.159-7.164, 7.293-7.297, 7.388-7.390.

3. The United States requests the Appellate Body to find that the panel failed to make "an objective assessment of the matter before it, including an objective assessment of the facts of the case and the applicability of and conformity with the relevant covered agreements" as required by Article 11 of the DSU with respect to India's assertion that the AD on alcoholic beverages and the EAD constitute "charges equivalent to an internal tax imposed consistently with [Article III:2] in respect of the like domestic product" and fall within the scope of Article II:2(a) of the GATT 1994. The panel failed to undertake an objective assessment, for example, by:

- (a) not requiring India to support its assertions (in particular that the AD on alcoholic beverages and the EAD are "equivalent" to internal taxes on like domestic products), including by finding that India was not required to specify the particular internal taxes to which it asserted the AD and the EAD are equivalent or to substantiate that the Indian states imposed such taxes;¹⁶
- (b) making inferences that are not supported by evidence before the panel about the existence and operation of Indian state-level excise taxes and the AD on alcoholic beverages, for example by inferring, based on the AD being collected at the time the panel was established and on general references to state-level excise taxes under provisions of Indian law, that state-level excise taxes exist and that the AD is "equivalent" to them,¹⁷ and relying on evidence pertaining to the AD on products other than alcoholic beverages to make findings about the AD on alcoholic beverages that are not supported by evidence before the panel;¹⁸
- (c) making inferences that are not supported by evidence before the panel about the existence and operation of Indian state-level value-added taxes (VATs), sales taxes and other local taxes and the EAD, for example by inferring, based on the EAD being collected at the time the panel was established and on general references to state-level VATs, sales taxes and other local taxes under provisions of Indian law, that such taxes exist and that the EAD is "equivalent" to them,¹⁹ and relying on evidence pertaining to the AD to make findings about the EAD that are not supported by evidence before the panel;²⁰ and
- (d) disregarding evidence before the panel that Indian state-level VATs, the Central Sales Tax, and other local taxes apply to imported products.²¹

4. The United States seeks review by the Appellate Body of the panel's legal conclusion that the United States is not challenging Section 12 of the Customs Act and Section 3(1) of the Customs Tariff Act with respect to the AD on alcoholic beverages and its related finding that the United States is only challenging the AD as specified in Customs Notification (CN) 32/2003.

5. The United States seeks review by the Appellate Body of the panel's legal conclusion that the United States is not challenging Section 12 of the Customs Act and Section 3(5) of the Customs Tariff Act with respect to the EAD and its related finding that the United States is only challenging the EAD as specified in Customs Notification (CN) 19/2006.

¹⁶See, e.g., Panel Report, paras. 7.160-7.164, 7.270.

¹⁷See, e.g., Panel Report, paras. 7.247, 7.262-7.295.

¹⁸See, e.g., Panel Report, paras. 7.247- 7.248, 7.263, 7.279-7.281.

¹⁹See, e.g., Panel Report, paras. 7.336, 7.346-7.394.

²⁰See, e.g., Panel Report, para. 7.336.

²¹See, e.g., Panel Report, para. 7.366-7.367, 7.371, 7.388.

6. In light of the errors in the panel's legal findings, related legal interpretations, and conclusions, as well as its failure to make an objective assessment of the matters elaborated above, the United States requests that the Appellate Body reverse the panel and find that the AD on alcoholic beverages and the EAD are each inconsistent with Article II:1(a) and (b) and are not justified under Article II:2(a).
