

**UNITED STATES – CONTINUED DUMPING AND
SUBSIDY OFFSET ACT OF 2000**

Recourse by India to Article 22.7 of the DSU

The following communication, dated 10 November 2004, from the delegation of India to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 22.7 of the DSU.

India requests that the Dispute Settlement Body ("DSB") considers, at the forthcoming meeting on 24 November 2004, the following agenda item:

United States – Continued Dumping and Subsidy Offset Act of 2000
Recourse by India to Article 22.7 of the Understanding on Rules and Procedures Governing the Settlement of Disputes

The Panel and the Appellate Body found that the Continued Dumping and Subsidy Offset Act of 2000 ("CDSOA") was inconsistent with the United States' obligations under the General Agreement on Tariffs and Trade 1994 ("GATT 1994"), the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, the Agreement on Subsidies and Countervailing Measures and the Marrakesh Agreement establishing the World Trade Organization. On 27 January 2003, the DSB adopted the Appellate Body report and the Panel report as modified by the Appellate Body report. The United States stated that it intended to implement the recommendations and rulings of the DSB but failed to do so within the reasonable period of time, as determined by the arbitrator pursuant to Article 21.3(c) of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU"), which expired on 27 December 2003.

Consequently, on 15 January 2004, India requested the authorization to suspend the application to the United States of tariff concessions and related obligations under GATT 1994 in an amount to be determined every year on the basis of the amount of offset payments made to affected domestic producers in the latest annual distribution of anti-dumping and countervailing duties under the CDSOA.

On 23 January 2004, the United States objected to the level of suspension proposed and on 26 January 2004, pursuant to Article 22.6 of the DSU, the matter was referred to arbitration. On 31 August 2004, the arbitrator issued its decision as follows:

V. AWARD OF THE ARBITRATOR

5.1 For the reasons set out above, we determine that, in the matter *United States – Continued Dumping and Subsidy Offset Act of 2000 (Original Complaint by India)*, the level of nullification or impairment suffered by India in a particular year can be

deemed to be equal to the total of disbursements made under the CDSOA for the preceding year relating to anti-dumping or countervailing duties paid on imports from India, multiplied by the coefficient identified in Section III.D above.

5.2 Accordingly, we decide that the suspension by India of concessions or other obligations in the form of the imposition of an additional import duty above bound custom duties on a final list of products originating in the United States covering, on a yearly basis, a *total value of trade* not exceeding, in US dollars, the amount resulting from the following equation:

Amount of disbursements under CDSOA for the most recent year for which data are available relating to anti-dumping or countervailing duties paid on imports from India at that time, as published by the United States' authorities.

multiplied by:

0.72

would be consistent with Article 22.4 of the DSU.

To date, the United States has still not implemented the recommendations and rulings of the DSB with respect to the CDSOA, and no mutually satisfactory solution has been reached.

Article 22.7 of the DSU provides that “the DSB shall be informed promptly of the decision of the arbitrators and shall upon request, grant authorization to suspend concessions or other obligations where the request is consistent with the decision of the arbitrator, unless the DSB decides by consensus to reject the request.” Therefore, India hereby requests authorization from the DSB to suspend the application to the United States of tariff concessions and other obligations under GATT 1994, in the form of the imposition of additional import duties on products originating in the United States, at a level not exceeding every year 72% of the amount of CDSOA disbursements relating to anti-dumping or countervailing duties paid on imports from India for the most recent year for which data are available at that time.

In accordance with the arbitration award, India will notify the DSB every year, prior to the entry into force of a level of suspension of concessions or other obligations, the list of products on which the additional import duty will apply. That list will be drawn from the indicative list attached.

ANNEX: Indicative List

1. Almonds fresh or dried, in shell – 08021100
 2. Pistachio – 08025000
 3. Apples fresh – 08081000
 4. Shelled Almonds fresh or dried – 080212
 5. Raisin – 080620
 6. Soybean Crude oil W/N degummed – 15071000
 7. Other Soya-bean oil and its fractions – 150790
 8. Bulgur Wheat – 19041030 or 19043000
 9. Homogenized composite food preparation – 21042000
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