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**UNITED STATES – CUSTOMS BOND DIRECTIVE FOR MERCHANDISE
SUBJECT TO ANTI-DUMPING/COUNTERVAILING DUTIES**

Request for Consultations by India

The following communication, dated 6 June 2006, from the delegation of India to the delegation of the United States and to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

My authorities have instructed me to request consultations with the United States of America (the "United States") pursuant to Article 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes*, Article XXII:1 of the *General Agreement on Tariffs and Trade 1994* (the "GATT"), Article 17 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* (the "AD Agreement") and Article 30 of the *Agreement on Subsidies and Countervailing Measures* (the "Subsidies Agreement") with respect to the Customs Bond Directive 99-3510-004 on Monetary Guidelines for Setting Bond Amounts issued on 23 July 1991, as amended by the Amendment to Bond Directive 99-3510-004 for Certain Merchandise subject to Antidumping/Countervailing Duties dated 9 July 2004¹, and any clarifications and amendments thereof² (together, the "Amended Bond Directive").

On 27 January 2004, pursuant to Section 732 of the Tariff Act of 1930, as amended (the "Act"), the United States initiated an anti-dumping investigation (the "investigation") with respect to imports of certain frozen and canned warmwater shrimp³ from India and certain other countries. On 28 July 2004, pursuant to Section 733 of the Act, the United States preliminarily determined that

¹ Posted on the Internet Website of the United States Customs and Border Protection Service at http://www.cbp.gov/xp/cgov/import/add_cvd/bonds/07082004.xml, as accessed on 26 May 2006.

² These include, for example, (i) the document entitled "Current Bond Formulas", posted on the Internet Website of the United States Customs and Border Protection Service at http://www.cbp.gov/linkhandler/cgov/import/communications_to_trade/pilot_program/current_bond.ctt/current_bond.doc, on 9 July 2004, as accessed on 26 May 2006; and (ii) the document entitled "Clarification to July 9, 2004 Amended Monetary Guidelines for Setting Bond Amounts for Special Categories of Merchandise Subject to Antidumping and/or Countervailing Duty Cases", posted on the Internet Website of the United States Customs and Border Protection Service at http://www.cbp.gov/linkhandler/cgov/import/add_cvd/bonds/bond_clarification.ctt/bond_clarification.doc, as accessed on 26 May 2006.

³ The investigation was initiated pursuant to the *Initiation of Antidumping Duty Investigations: Certain Frozen and Canned Warmwater Shrimp from Brazil, Ecuador, India, Thailand, the People's Republic of China and the Socialist Republic of Vietnam*, 69 Fed. Reg. 3876 (27 January 2004).

frozen and canned warmwater shrimp imported from India was being dumped⁴ (the "Preliminary Determination"). On 23 December 2004, the United States published its final determination of dumping⁵, which was subsequently amended⁶ to include only frozen warmwater shrimp (the "subject merchandise") and to exclude canned warmwater shrimp (the "Final Determination"). On 1 February 2005, the United States imposed definitive anti-dumping measures and required importers-of-record in the United States ("importers") to make cash deposits equal to the estimated weighted-average dumping margins on entries of the subject merchandise from India into the United States.⁷

Prior to the Amended Bond Directive, importers including those of merchandise subject to anti-dumping duties or countervailing duties were required to give continuous entry bonds ("continuous bonds") only as general security for compliance with customs regulations. Under the Amended Bond Directive, however, the United States required importers of categories of merchandise subject to anti-dumping or countervailing duties that are designated as "Special Categories" to replace their existing continuous bonds with enhanced continuous bonds that would, in addition, cover the total estimated anti-dumping duties or countervailing duties on the value of imports for the previous 12 months (the "enhanced bond requirement"). At this time, agriculture and aquaculture merchandise are the only categories of merchandise designated as a Special Category under the Amended Bond Directive. Within this Special Category, shrimp has been designated as a "Covered Case" in which a different standard or formula for determining the bond amount will be applied. The designation of agriculture and aquaculture products as the only Special Category and shrimp as the only Covered Case emphasizes the arbitrary and discriminatory character of the Amended Bond Directive.

Pursuant to the Amended Bond Directive, the United States has imposed the enhanced bond requirement on importers of the subject merchandise from India.

The Government of India considers that the Amended Bond Directive is inconsistent as such with the provisions of:

- (a) Article 18.1 of the AD Agreement together with Articles VI:2 of the GATT and Article 1 of the AD Agreement insofar as the enhanced bond requirement is a specific action against dumping not in accordance with the provisions of the AD Agreement and with Article 32.1 of the Subsidies Agreement together with Articles VI:3 of the GATT and Article 10 of the Subsidies Agreement insofar as it is a specific action against subsidization not in accordance with the Subsidies Agreement;
- (b) Articles VI:2 and VI:3 of the GATT insofar as it results in charges to importers in excess of the margin of dumping or in excess of the amount of the subsidy determined to have been granted, as the case may be;
- (c) Note 1 *Ad* paragraphs 2 and 3 of Article VI of the GATT insofar as the enhanced bond requirement is unreasonable as security for the payment of anti-dumping duty or countervailing duty;

⁴ *Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Negative Critical Circumstances Determination: Certain Frozen and Canned Warmwater Shrimp from India*, 69 Fed. Reg. 47111 (4 August 2004).

⁵ *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from India*, 69 Fed. Reg. 76916 (23 December 2004).

⁶ *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from India*, 70 Fed. Reg. 5145 (1 February 2005).

⁷ *Id.*

- (d) Articles 7.1, 7.2, 7.4 and 7.5 of the AD Agreement and Articles 17.1, 17.2, 17.4 and 17.5 of the Subsidies Agreement to the extent that the enhanced bond requirement may be characterized as a provisional measure or is applied prior to the imposition of definitive anti-dumping duties;
- (e) Articles 9.2 and 9.3 (including Article 9.3.1) of the AD Agreement and Articles 19.3 and 19.4 of the Subsidies Agreement insofar as the only permissible measure that may be taken after the imposition of anti-dumping duties pursuant to Article 9.1 or the imposition of countervailing duties pursuant to Article 19.2, as the case may be, is the collection of duties in appropriate amounts not exceeding the margin of dumping or the amount of the subsidy found to exist;
- (f) Article 18.4 of the AD Agreement, Article 32.5 of the Subsidies Agreement and Article XVI:4 of the Marrakesh Agreement Establishing the World Trade Organization insofar as the United States has failed to comply with its obligation to ensure conformity of its laws, regulations and administrative procedures with the provisions of each of these agreements;
- (g) Article X of the GATT insofar as the Amended Bond Directive (including any clarifications and amendments), has not been published in the Federal Register or the Customs Bulletin of the United States and Article 18.5 of the AD Agreement and Article 32.5 of the Subsidies Agreement insofar as the Amended Bond Directive has made changes in its laws and regulations and in the administration of its laws and regulations that are relevant to these agreements and about which the United States has not informed the relevant Committees;
- (h) Article II of the GATT insofar as the enhanced bond requirement results in imposition of charges in excess of those imposed on the date of the entry into force of the GATT or mandatorily required by legislation in force on that date and Article I of the GATT insofar as the enhanced bond requirement will be applied to imports of agriculture and aquaculture products designated as Special Category merchandise from those Members that are subjected to antidumping or countervailing duties; and
- (i) Article XI of the GATT to the extent that the enhanced bond requirement may be characterized as a restriction other than a duty, tax or other charge and Article XIII of the GATT to the extent that it is applied in a discriminatory manner.

For the reasons stated above, the Government of India also considers that the enhanced bond requirement under the Amended Bond Directive as applied to importers of the subject merchandise from India is inconsistent with Articles I, II, VI:2 (including Note 1 *Ad* Paragraphs 2 and 3 of Article VI), XI and XIII of the GATT and Articles 1, 7.1, 7.2, 7.4, 7.5, 9.2, 9.3, 9.3.1 and 18.1 of the AD Agreement.

The Government of India reserves its right to raise additional factual claims and legal matters during the course of the consultations.

We look forward to receiving your reply to the present request and to fixing a mutually convenient date and venue for consultations.
