

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

Request for the Establishment of a Panel by India

The following communication, dated 13 October 2006, from the delegation of India to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On 6 June 2006, the Government of India requested consultations with the United States pursuant to Article 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (the "DSU"), 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"). This request was circulated to the WTO Members on 12 June 2006 as document WT/DS/345/1, "*United States – Customs Bond Directive for Merchandise Subject to Anti-Dumping/Countervailing Duties*". Consultations were held in Geneva on 31 July 2006 and in Washington, D.C. on 18 September 2006. However, the parties could not arrive at a mutually agreed solution to resolve the dispute.

Therefore, the Government of India respectfully requests that a panel be established pursuant to Article XXIII of the GATT, Articles 4 and 6 of the DSU, Article 17 of the AD Agreement and Article 30 of the Subsidies Agreement.

The measures at issue include (i) 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, (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"², (iii) the document entitled "Current Bond Formulas"³, and (iv) any amendments, clarifications or extensions to these measures and all related or implementing measures (together, the "Amended Bond Directive"). India understands that the Amended Bond Directive was adopted pursuant to the laws and regulations of the United States that authorize the United States Customs and Border Protection Service ("US Customs") to administer customs laws and

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 (last accessed on 12 October 2006).

² 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_clarificaiton.doc (last accessed on 12 October 2006).

³ 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 (last accessed on 12 October 2006).

regulations including 19 U.S.C. §1484, 19 U.S.C. §1502, 19 U.S.C. §1505, 19 U.S.C. §1623, and 19 U.S.C. §1673g, and the regulations governing the amount and imposition of bonds codified at 19 C.F.R. 113.13, 19 C.F.R. 113.40, 19 C.F.R. 113.62 and 19 C.F.R. 142.2.

Prior to the Amended Bond Directive, the United States required importers-of-record in the United States ("importers") including importers of merchandise subject to anti-dumping duties or countervailing duties to furnish continuous entry bonds ("Continuous Bonds") only for an amount equal to 10 per cent of the duties, taxes and fees paid by the importer on the same merchandise imported in the previous year as general security for compliance with customs regulations. Under the Amended Bond Directive, however, the United States may require importers of certain merchandise subject to anti-dumping or countervailing duties designated by US Customs as a "Special Category" or a "Covered Case" within a Special Category to replace their existing Continuous Bonds with Continuous Bonds for a larger amount that would, in addition, cover the total estimated anti-dumping duties or countervailing duties on the value of imports of such for the previous 12 months (the "Continuous Bond Requirement"). This requirement is in addition to the obligation under the anti-dumping and countervailing duty laws of the United States to provide bonds or make cash deposits at the time of importation equal to the estimated anti-dumping or countervailing duties on imports of such merchandise.

At this time, US Customs has designated only agriculture and aquaculture merchandise as a Special Category and only shrimp as a Covered Case to which a different standard or formula for determining the bond amount will be applied.

US Customs has imposed the Continuous Bond Requirement on importers of certain frozen warmwater shrimp from India subject to anti-dumping duties imposed pursuant to the anti-dumping investigation with respect to imports of certain frozen and canned warmwater shrimp from India, Brazil, Ecuador, Thailand, the People's Republic of China and the Socialist Republic of Vietnam.⁴ On 28 July 2004, the United States preliminarily determined that frozen and canned warmwater shrimp imported from India was being dumped.⁵ On 23 December 2004, the United States published its final determination of dumping⁶, which was subsequently amended⁷ to include only frozen warmwater shrimp (the "subject merchandise") and to exclude canned warmwater shrimp. On 1 February 2005, the United States imposed definitive anti-dumping measures and required importers of the subject merchandise to make cash deposits equal to the estimated weighted-average dumping margins on entries of the subject merchandise from India into the United States.⁸ Even prior to the imposition of definitive anti-dumping duties, in or around October 2004, US Customs requested certain importers of the subject merchandise from India to provide enhanced continuous bonds to cover the total estimated anti-dumping duties on the total value of imports of the subject merchandise for the previous 12 months. In any case, all importers who wished to continue imports of the subject merchandise from India were forced to comply with the Continuous Bond Requirement after the imposition of definitive duties.

⁴ 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).

⁵ *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).

⁶ *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).

⁷ *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).

⁸ *Id.*

India understands that US Customs has actually applied the Continuous Bond Requirement only to the subject merchandise. This singling out of the subject merchandise emphasizes the arbitrary and discriminatory character of the Amended Bond Directive.

The Government of India considers that the Amended Bond Directive and the laws and regulations of the United States referred to above are inconsistent as such with the provisions of:

- (a) Article 18.1 of the AD Agreement together with Article VI:2 of the GATT and Article 1 of the AD Agreement because the Continuous Bond Requirement is a specific action against dumping not in accordance with the provisions of the AD Agreement;
- (b) Article 32.1 of the Subsidies Agreement together with Article VI:3 of the GATT and Article 10 of the Subsidies Agreement because it is a specific action against subsidization not in accordance with the Subsidies Agreement;
- (c) Articles 2.2, 2.3 and 2.4 of the AD Agreement because the Continuous Bond Requirement is not based on a calculation of the margin of dumping in accordance with the requirements of these provisions;
- (d) Articles 1 and 14 of the Subsidies Agreement because the Continuous Bond Requirement is not based on a calculation of the amount of subsidization in accordance with the requirements of these provisions;
- (e) Articles VI:2 and VI:3 of the GATT because 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;
- (f) Note 1 *Ad* paragraphs 2 and 3 of Article VI of the GATT because the simultaneous imposition of the Continuous Bond Requirement and the obligation to provide bonds or make cash deposits for the payment of anti-dumping or countervailing duty under the anti-dumping and countervailing duty laws of the United States does not constitute "... reasonable security (bond or cash deposit) for the payment of anti-dumping or countervailing duty pending final determination of the facts in any case of suspected dumping or subsidization";
- (g) 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 because the Continuous Bond Requirement, to the extent that it is applied after the imposition of provisional measures but prior to the imposition of definitive anti-dumping duties or countervailing duties, as the case may be, does not comply with the requirements of these provisions;
- (h) Articles 9.1, 9.2 and 9.3 (including Article 9.3.1) of the AD Agreement and Articles 19.2, 19.3 and 19.4 of the Subsidies Agreement because 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 determined pursuant to Article 2 of the AD Agreement or the amount of the subsidy determined pursuant to Articles 1.1 and 14 of the Subsidies Agreement;
- (i) 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 because the United States has not complied with its obligation to ensure conformity of its laws, regulations and administrative procedures with the provisions of each of these agreements;

- (j) Articles X:1 and X:2 of the GATT because 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 because the Amended Bond Directive has made changes in the laws and regulations and/or in the administration of the laws and regulations of the United States that are relevant to these agreements and that were required to be notified by the United States to the relevant Committees;

The Government of India considers further that the Amended Bond Directive is inconsistent with:

- (k) Article XI of the GATT to the extent that the Continuous Bond Requirement constitutes a restriction other than "a duty, tax or other charge" and Article XIII of the GATT because it is applied in a discriminatory manner; or
- (l) Alternatively, Article I and Article II:1(a) and (b) of the GATT to the extent that the Continuous Bond Requirement results in a duty or charge imposed on or in connection with importation or is a method of levying duties and charges or is a rule or formality in connection with importation.

For the reasons stated above, the Government of India also considers that the Continuous Bond Requirement under the Amended Bond Directive as applied to importers of the subject merchandise from India is inconsistent with Articles I:1, II:1(a) and (b), VI:2 (including Note 1 *Ad* Paragraphs 2 and 3 of Article VI), XI and XIII of the GATT and Articles 1, 2.2., 2.3, 2.4, 7.1, 7.2, 7.4, 7.5, 9.1, 9.2, 9.3, 9.3.1 and 18.1 of the AD Agreement. Further, the application of the Continuous Bond Requirement only to importers of the subject merchandise from India and five other countries is inconsistent with the requirement of Article X:3(a) of the GATT that the United States must administer the laws, regulations, rulings and decisions referred to in Article X:1 of the GATT in a uniform, impartial and reasonable manner.

The Government of India has identified the specific measures at issue and the legal bases for its claims without prejudice to any arguments that it may develop and present to a panel regarding the WTO-consistency of the measures at issue.

Accordingly, the Government of India respectfully requests the Dispute Settlement Body to establish a panel pursuant to Article 6 of the DSU to examine this matter with standard terms of reference as set out in Article 7.1 of the DSU. The Government of India requests that the establishment of a panel in this matter be placed on the agenda of the meeting of the Dispute Settlement Body on 26 October 2006.
