India – Additional and Extra-Additional Duties on Imports from the United States

WT/DS360

Closing Statement of the United States
at the First Meeting of the Panel with the Parties

September 18, 2007

1. Mr. Chairman, members of the Panel, thank you for meeting with us again today. We appreciate the opportunity we had to present our views and to respond to some of your questions.

2. For the reasons presented in our written submission and reviewed and elaborated in our oral statement yesterday and responses to questions today, the United States has firmly established its *prima facie* case that the AD and the EAD are inconsistent with India's obligations under Article II:1(a) and (b) of the GATT 1994. India has failed to rebut this case.

3. Rather than present a point by point analysis, I am going to focus my closing remarks on a few key points that go to the heart of why the Panel should rejects India's attempts to defend the AD and the EAD under Article II:2(a) .

4. First, India has not contested that the AD or EAD result in duties or charges that exceed its WTO-bound rates. Thus, if the Panel finds that the AD is an ordinary customs duty, or in the alternative an other duty or charge, then it should on the basis of the U.S. *prima facie* case find that the AD results in a breach of India's tariff bindings and is, therefore, inconsistent with Article II:1(a) and (b). The same is true with respect to the EAD.

5. Second, with respect to its arguments under Article II:2(a), India has not provided any evidence that either the AD or the EAD is "equal to" or offsets internal taxes imposed on like products. Reliance on the stated or intended purpose of the duties is insufficient to establish that such duties are not imposed in excess of taxes or charges on like domestic products. We are

struck by how – throughout India's written submission and oral statement – India refers to the AD or the EAD as being "designed to" or "intended to" offset certain internal taxes, or that the "nature, intent and design" of the AD or the EAD is to offset such taxes,[1] but has yet to make a showing or provide an accounting of how the AD and the EAD are in fact "equal to" or not levied in excess of taxes on like domestic products. And has a result, India has failed to provide evidence in support of its contention that either the AD or the EAD is applied in a manner consistent with GATT Article III:2.

6. Third, India's identification of state-level VATs and the Central Sales Tax as two of the internal charges that the EAD is intended to offset is simply not credible. Those taxes already apply to imported products, and the EAD's application to imported products only results in imported products being subject to the EAD in addition to the state-level VATs and Central Sales Tax that the EAD allegedly offsets.

7. Fourth, the United States is troubled that at this stage in the panel proceeding, India has identified none of the internal taxes the AD allegedly offsets, and with the exception of the state VATs and the Central Sales Tax, India has identified none of the internal taxes the EAD allegedly offsets. The United States has requested India on a number of occasions, including in course of consultations and prior to initiating this dispute and in India's recent Trade Policy Review, to identify such taxes and provide an accounting of how they are "equal to" to or offset the AD and EAD respectively. On each occasion, India has failed to meet that request. We hope that India will keep its commitment to the Panel yesterday to identify these taxes that the duties

[1] *See, e.g.,* India Oral Statement at the First Meeting of the Panel, para. 20.

allegedly offset.

8. We stress that providing such an accounting is critical. Without it, India cannot sustain its arguments under Article II:2(a), and in turn cannot support its defense of the AD and the EAD under Article II:1(a) or (b). But, more broadly, the United States is concerned that if Article II:2(a) does not demand such an accounting, that this creates enormous potential for Members to undermine the value of their tariff commitments. We recall the Appellate Body's discussion in *Argentina - Textiles* that together Article II:1(a) and (b) serve "to preserve the value of tariff concessions negotiated by Members with its trading partners, and bound in that Member's schedule."[2] An interpretation of Article II:2(a) that would permit the stated or intended purpose of a charge to demonstrate that the charge meets the requirements of Article II:2(a), would make it all too easy for Members to undermine the value of those concessions: Members could simply ensure that the stated purpose of a duty is to offset internal taxes on like domestic products and, then, be free to impose that duty at any level, regardless of whether that level exceeds its WTO-bound rates. That, is in essence, what India is requesting this Panel to do with respect to the AD and the EAD. That is, to accept the stated or intended purposes of the AD and the EAD alone as proof that the duties meet the required elements of Article II:2(a). We urge the Panel not to heed India's request in this regard and to demand an accounting that the AD and the EAD do not exceed the internal taxes on like domestic products to which they are allegedly equivalent if India is to sustain its Article II:2(a) contentions.

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[2] Appellate Body Report, *Argentina – Measures Affecting Footwear, Textiles, Apparel and Other Items*, WT/DS56/AB/R, para. 47.

9. Mr. Chairman and members of the Panel, this concludes our closing statement. We are happy to entertain any additional questions you may have in connection with these remarks. And, of course, we will elaborate on these points as well as provide others in our second written submission. We thank you again for the time and energy you have devoted to this dispute.