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WTO Appellate Body Reverses Panel and Finds in Favor of the United States
Offsetting Duties on Imports In Excess of Taxes on Like Domestic Products Break WTO Rules

WASHINGTON - U.S. Trade Representative Susan C. Schwab announced today that the World Trade Organization (WTO) Appellate Body has found in favor of the United States in its challenge against India's additional and extra-additional duties on wine, spirits and other agricultural and manufactured products. India imposed these duties on U.S. imports in addition to and on top of its basic customs duty, resulting in combined duties on imports of alcoholic beverages (beer, wine and spirits) of up to 550 percent. India argued that the duties were permitted because they simply offset certain internal taxes (such as value-added taxes). The Appellate Body reversed the panel, which had found that any import charge offsetting an internal tax need only "serve the same function" as the internal tax and need not be equivalent in amount to that internal tax. In reversing the panel, the Appellate Body agreed with the United States that any import charges aimed at offsetting internal taxes cannot result in a higher amount being charged to imports than to like domestic products.

"This is an important decision for all WTO Members, particularly at a time when they are negotiating tariff commitments," said Ambassador Schwab. "The Appellate Body reversed a deeply flawed panel report and reaffirmed a fundamental WTO rule that Members cannot impose duties on imports that exceed their tariff commitments."

After the United States initiated the dispute, and in response to U.S. concerns, India announced the withdrawal of the additional duty on alcoholic beverages and modifications to the extra-additional duty, which it represented to the panel eliminated any discrimination against U.S. imports. We continue to have concerns about whether these measures have eliminated India's abusive use of additional tariffs, particularly given India's refusal to produce information to support its claims that the duties merely offset internal state-level taxes. We continue to closely monitor the effect of both actions.

The Appellate Body considered that the additional duty on imports of alcoholic beverages and the extra-additional duty on imports of alcoholic beverages and other products would not be justified as offsetting excise duties and other internal taxes on like domestic products insofar as the duties result in charges on imports that exceed those on like domestic products, and consequently, that this would render both the additional duty and extra-additional duty inconsistent with India's tariff commitments. The Panel's interpretation would have opened a Pandora's box by inviting the widespread imposition of "additional" tariffs in violation of WTO commitments.

Unfortunately, because of India's refusal to provide information to the panel on its internal taxes – including in response to direct questioning from the panel – and the panel's failure to make the necessary factual findings, the Appellate Body found itself unable to conclude whether in this particular case India's duties in fact exceeded the amount levied on domestic products.

The Appellate Body's report does, however, provide clear guidance that should help ensure that India does not impose either the additional duty or extra-additional duty to discriminate against U.S. imports. We note that the European Communities recently requested consultations regarding new duties and taxes being levied by Indian state governments on imported liquors.

Background

In response to U.S. concerns, during the dispute settlement proceedings, India announced it was withdrawing the additional duty on alcoholic beverages and modifying the extra-additional duty to provide a refund mechanism. Prior to the announced withdrawal of the additional duty, India imposed it on top of, and in addition to, its basic customs duty. The additional duty ranged from 20 to 75 percent *ad valorem* on imports of beer and wine and from 25 to 150 percent *ad valorem* on imports of distilled spirits, resulting in combined duties on alcoholic beverages of up to 550 percent *ad valorem*. In the WTO, India committed that its tariffs on beer, wine and spirits would not exceed 150 percent.

India continues to apply the extra-additional duty on imports of alcoholic beverages and other agricultural and industrial products at a rate of four percent *ad valorem*. The extra-additional duty also applies on top of, and in addition to, the basic customs duty and for a number products, such as dairy products and electronics, also results in duties on imports in excess of the rates to which India committed in the WTO. As noted, during the dispute settlement proceedings India announced that it was modifying the extra-additional duty by establishing a refund mechanism. We are continuing to monitor the effect of that mechanism.

On June 20, 2007, a WTO panel was established to consider the U.S. claims against the additional duty on alcoholic beverages and the extra-additional duty on alcoholic beverages and other products. The United States argued that India's duties breached Article II:1(a) and (b) of the General Agreement on Tariffs and Trade 1994 (GATT 1994) because they subjected imports to duties in excess of those set out in India's WTO Schedule, and India argued that the duties were justified under Article II:2(a) of the GATT 1994 as offsetting state-level taxes on like domestic products.

On June 9, 2008, the WTO panel circulated its final report. The report concluded that the United States had failed to establish that either duty was inconsistent with India's WTO obligations. The United States appealed the panel report on July 31, 2008.

Between 2002 and 2007, U.S. exports of wine and spirits world-wide averaged approximately $750 million and $806 million, respectively, making the United States the world's 6th largest exporter of wine and 3rd largest exporter of spirits. U.S. exports to India have remained low, however, on account of barriers to the Indian market, including the additional and extra-additional duties. India is a large and growing market for wine and spirits and one identified by the U.S. wine and spirits industries as a top priority.

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