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Page: 1/5

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**INDIA – ANTI-DUMPING DUTIES ON USB FLASH DRIVES FROM THE SEPARATE  
CUSTOMS TERRITORY OF TAIWAN, PENGHU, KINMEN AND MATSU**

**REQUEST FOR CONSULTATIONS BY THE SEPARATE CUSTOMS TERRITORY  
OF TAIWAN, PENGHU, KINMEN AND MATSU**

The following communication, dated 24 September 2015, from the delegation of Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu to the delegation of India and to the Chairperson of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

1. The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu requests consultations with the Government of India ("India") pursuant to Articles 1 and 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (the "DSU"), Article XXII of the *General Agreement on Tariffs and Trade 1994* (the "GATT 1994") and Article 17 of the *Agreement on Implementation of Article VI of the GATT 1994* ("AD Agreement"), with regard to the imposition of definitive anti-dumping duties ("ADD") by India on USB Flash Drives (the "subject goods") from, *inter alia*, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu.
2. India initiated an anti-dumping ("AD") investigation against the subject goods on 21 June, 2013 through a formal notification in the Gazette of India. India issued an affirmative finding recommending imposition of ADD by way of another notification dated 19 December, 2014. India issued a customs notification, levying ADD on the subject goods on 22 May, 2015.
3. This request covers the AD investigation against the subject goods and the consequent ADD imposed on the subject goods, *inter alia*, from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu through any notice, notifications, findings, determination, decision memorandum, orders, or any other instrument issued by India from time to time in connection with the said AD investigation. A non-exhaustive list of such notifications, findings, orders, etc. issued by India in the said case, is as under:
  - a. Initiation Notification dated 21 June, 2013;
  - b. Disclosure Statement dated 5 December, 2014;
  - c. Final Findings dated 19 December, 2014; and
  - d. Customs Notification No. 22/2015 dated 22 May, 2015.
4. The request also covers all the amendments, replacements, implementing acts or any other related measure in connection with the above, whether issued before or after the date of the present request for consultations.
5. In addition, the measures at issue also include the provisions of India's laws as relevant and applied in the aforesaid AD investigation, including in particular, the *Customs Tariff (Identification, Assessment & Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995*.

6. The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu considers that Annexure II, sub clause (iii) of the Customs Tariff (Identification, Assessment & Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 read with Rule 9(2) of the said Rules is "as such" inconsistent with Article 3.3 of the AD Agreement as it does not require an assessment of whether cumulative assessment of the effects of imports from more than one country subject to simultaneous antidumping investigations is appropriate in light of the conditions of competition "*between the imported products*". India, as a policy, as confirmed by systematic application of the provision, has also acted and continues to act inconsistently with Article 3.3 of the AD Agreement as it does not require an assessment of whether cumulative assessment of the effects of the imports from more than one country subject to simultaneous antidumping investigations is appropriate in light of the conditions of competition "*between the imported products*".

7. Further, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu considers that the measures at issue described in paragraphs 2 to 4 above are inconsistent with the provisions of the GATT 1994 and the AD Agreement. In particular, the above measures are inconsistent with the following provisions:

- a. In connection with the initiation of the investigation:
  - i. Article 5.2 and 5.3 of the AD Agreement because the application filed by the domestic industry did not contain "sufficient" evidence with regard to (a) normal value, export price and dumping margin as regards the subject goods exported from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, and (b) injury and causal link to the domestic industry in India.
  - ii. Article 5.3 of the AD Agreement because India did not engage in an objective and meaningful examination of accuracy, adequacy and sufficiency of the information filed by the domestic industry.
- b. In connection with rejection of questionnaire responses and application of facts available:
  - i. Article 6.8 and Annex II of the AD Agreement because, *inter alia*,
    1. India resorted to facts available without fulfilling the conditions prescribed in Article 6.8.
    2. India rejected information submitted by the known exporters in violation of the conditions prescribed in paragraphs 1, 3, 6 and 7 of Annex II of the AD Agreement.
    3. India rejected information submitted by the certain known exporters on account of the failure of certain unrelated entities to file separate questionnaire responses in the AD investigation.
    4. India failed to consider facts that are in the possession of the investigating authority and on the records of the case.
    5. India engaged in the punitive application of facts available.
  - ii. Article 6.8 and paragraph 5 of Annex II of the AD Agreement because India disregarded *all* the information submitted by *all* the known exporters.
  - iii. Articles 6.1, 6.2, 6.4 and 6.8, read with 6.11 of the AD Agreement because India refused to accept the information filed on record by a known exporter (who is incorporated outside the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu).
  - iv. Article 6.8 and paragraph 7 of Annex II of the AD Agreement because India failed to apply the "best information" available. In particular,

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1. India did not evaluate how the facts applied was the most fitting or "most appropriate" in relation to each known exporter and other exporters of the subject goods.
  2. India has used information from secondary sources without making any effort to check this information from other independent sources.
- v. Article 6.8 read with Article 6.1 of the AD Agreement because India failed to inform the known exporters in sufficient detail, the alleged deficiencies or gaps in the information filed by them, the consequences of such deficiencies and further failed to provide an opportunity to clarify and correct such alleged deficiencies or gaps within a reasonable period of time.
- c. In connection with the definition of the product under consideration and like article:
- i. Articles 2.2, 2.4, 3.1, 3.4, 3.5, and 3.6 read with Article 2.1 and 2.6 of the AD Agreement because for a subset of the subject goods covered within the scope of the product under consideration, the domestic industry in India does not produce like articles.
  - ii. Article 9.3 read with Article 2.1 and 2.6 of the AD Agreement because a subset of the subject goods on which ADD has been imposed has not been imported into India and for a subset of the subject goods on which ADD has been imposed, the domestic industry in India does not produce like articles.
- d. In connection with the calculation of normal value and dumping margin:
- i. Article 2.2 of the AD agreement because India has not used a comparable price of the like product destined for a third country or the cost of production in the country of origin plus a reasonable amount for administrative, selling, and general costs, as the normal value, without an adequate explanation.
  - ii. Article 2.4 (last sentence) of the AD agreement because India deprived interested parties of the opportunity to make informed requests regarding adjustments for ensuring fair comparison between the export price and constructed normal value.
  - iii. Article 2.4 and 2.4.2 of the AD Agreement because India calculated a single dumping margin the subject goods consisting of 14 different grades, even though it did not determine normal value for 5 of these 14 grades.
  - iv. Article 6.10 because India did not calculate individual margins of dumping for each of the known exporters from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu.
  - v. Article 2.2.1, 2.4 and 6.10 of the AD Agreement because India rejected information pertaining to normal value and export price for certain exporters on the ground that unrelated entities engaged in exports to India did not cooperate in the investigation.
  - vi. Article 9.3 of the AD Agreement and Article VI of the GATT because the margin of dumping was arrived without determining normal value in accordance with Article 2 of the AD Agreement.
- e. In connection with the injury determination:
- i. Article 3.2 of the AD Agreement because India has not considered the existence of a link or relationship or explanatory force between the import of the alleged dumped goods and the price of the domestic like products.
  - ii. Article 3.3 of the AD Agreement because there is no determination on record that the cumulative assessment of the imports from subject countries is appropriate in the light of the conditions of competition between the imported product from these

countries and the conditions of competition between such imported product and the like domestic products.

- iii. Article 3.4 of the AD Agreement because India has not examined and evaluated the existence of a link or relationship or explanatory force between the alleged dumped goods and the state of the domestic industry.
  - iv. Articles 3.1 and 3.5 of the AD Agreement, as well as Article VI of the GATT because India has engaged in a faulty causal link analysis.
- f. In connection with the conduct of the investigation:
- i. Article 5.10 of the AD Agreement because India has not concluded the investigation within 18 months from the date of initiation.
  - ii. Article 6.4 of the AD Agreement because India did not provide timely opportunity for interested parties to see the import statistics used in the investigation, the export price and normal value applied by the investigating authority, and the source of such information.
  - iii. Article 6.2 of the AD Agreement because in absence of the information relating to import statistics used in the investigation, the export price and normal value applied by the investigating authority and the source of such information, the interested parties did not get a full opportunity to defend their interest.
  - iv. Article 6.5 of the AD Agreement because (i) information which, by nature, was not confidential, was treated as confidential information by India; and (ii) India failed to require interested parties providing confidential information to furnish non-confidential summaries thereof.
  - v. Article 6.6 of the AD Agreement because India did not engage in an objective and meaningful examination of the information supplied by the domestic industry.
  - vi. Article 6.9 (first sentence) of the AD Agreement because India did not inform the interested parties of the 'essential facts', including but not limited to:
    - the import statistics;
    - normal value computation;
    - export price computation;
    - dumping margin computation;
    - the sales that were used in comparisons between the normal value and export price;
    - the basis on which comparison was made between different grades / types of the subject goods and adjustments made, if any, for differences that affect price comparability;
    - computation of the lesser duty that is adequate to remove injury;
    - as well as the source of all such information.
  - vii. Articles 6.2 and 6.9 (first sentence) of the AD Agreement because India neither offered full opportunity to a known exporter from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu to defend its interest nor provided disclosure statement to this exporter.

- viii. Article 6.9 (second sentence) of the AD Agreement because India did not provide sufficient time for the parties to defend their interests.
- ix. Article 12.2.2 of the AD Agreement because India did not publish all relevant information, including but not limited to the information detailed in Article 12.2.1 of the AD Agreement.
- x. Article X:2 of the GATT because India has enforced the ADD on the subject goods before it has been officially published.

8. Consequently, the anti-dumping duty imposed against the subject goods in the AD investigation is inconsistent with Article 18 of AD Agreement and Article VI of GATT 1994.

9. The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu further considers that the measures at issue have a serious adverse impact on the export of subject goods from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu to India. Pursuant to Article XXIII:1 of GATT 1994, read with Article 3.8 of the DSU, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu considers that the measures at issue cause nullification or impairment of benefits accruing to it under GATT 1994.

10. The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu reserves its right to raise additional claims and legal matters in relation to the measures at issue during the consultations.

11. The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu looks forward to the reply from India, within the prescribed time limit and proposes that the date and venue of the consultations may be mutually agreed.

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