



INDIA – TARIFF TREATMENT ON CERTAIN GOODS

REQUEST FOR THE ESTABLISHMENT OF A PANEL BY JAPAN

The following communication, dated 19 March 2020, from the delegation of Japan to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

My authorities have instructed me to request the establishment of a panel pursuant to Articles 4.7 and 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU"), and Article XXIII of the General Agreement on Tariffs and Trade 1994 ("GATT 1994") with respect to the measures by India imposing customs duties, in excess of the applicable bound rates, on certain goods imported from Japan.

On 10 May 2019, Japan requested consultations with India.¹ The Government of Japan and the Government of India held consultations on 23 May 2019, with a view to reaching a mutually satisfactory solution. Unfortunately, the consultations failed to settle the dispute.

The products set out below fall within the scope of the relevant tariff lines for which India has set the bound rate of 0%. However, India applies duties in excess of the bound rate on these products.

I. IDENTIFICATION OF THE MEASURES AT ISSUE

1. Telephones for cellular networks or for other wireless networks

India applies a 20% duty to products (telephones for cellular networks or for other wireless networks) falling under tariff item nos. 8517 12 11, 8517 12 19, and 8517 12 90 of the First Schedule to the Customs Tariff Act, 1975 ("First Schedule"), which clearly exceeds the applicable bound rate of 0% set forth in India's Schedule of Concessions and Commitments annexed to the GATT 1994 ("India's Schedule")². The measures at issue through which the duties are imposed include:

- a. the Customs Act, 1962 ("Customs Act");
- b. the Customs Tariff Act, 1975 ("Customs Tariff Act") including the First Schedule;
- c. the Finance Bill of 2018 and the Finance Act of 2018;
- d. the Finance Bill of 2019 and the Finance Act of 2019;

¹ WT/DS584/1, G/L/1318, circulated on 14 May 2019.

² Following Japan's consultation request on 10 May 2019, India enacted the Finance Bill of 2019 and the Finance Act of 2019 (collectively, the "Bill and Act"). In the Bill and Act, tariff item nos. 8517 12 10 and 8517 12 90 that were part of the First Schedule which was current at the time Japan submitted its consultation request were replaced with tariff item nos. 8517 12 11, 8517 12 19, and 8517 12 90. Japan understands from the aforementioned replacement in the Bill and Act that the scope of the products covered by prior tariff item nos. 8517 12 10 and 8517 12 90 of the First Schedule are the same as those covered by the tariff item nos. 8517 12 11, 8517 12 19, and 8517 12 90 of the First Schedule currently in force.

- e. Notification No. 24/2005 — Customs, dated 1 March 2005³;
- f. Notification No. 132/2006 — Customs, dated 30 December 2006;
- g. Notification No. 56/2017 — Customs, dated 30 June 2017;
- h. Notification No. 57/2017 — Customs, dated 30 June 2017;
- i. Notification No. 58/2017 — Customs, dated 30 June 2017;
- j. Notification No. 91/2017 — Customs, dated 14 December 2017
- k. Notification No. 89/2019 — Customs (N.T.), dated 10 December 2019; and
- l. any amendments, replacements, extensions, implementing measures or other related measures regarding the measures referred to above.

2. Base stations

India applies a 20% duty to products (base stations) falling under tariff item no. 8517 61 00 of the First Schedule, which clearly exceeds the applicable bound rate of 0% set forth in India's Schedule. The measures at issue through which the duties are imposed include:

- a. the Customs Act;
- b. the Customs Tariff Act including the First Schedule;
- c. Notification No. 24/2005 — Customs, dated 1 March 2005;
- d. Notification No. 132/2006 — Customs, dated 30 December 2006;
- e. Notification No. 50/2017 — Customs, dated 30 June 2017;
- f. Notification No. 56/2017 — Customs, dated 30 June 2017;
- g. Notification No. 58/2017 — Customs, dated 30 June 2017;
- h. Notification No. 74/2018 — Customs, dated 11 October 2018; and
- i. any amendments, replacements, extensions, implementing measures or other related measures regarding the measures referred to above.

3. Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus

India applies 20% or 10% duties, depending on the types of products, to products (machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus) falling under tariff item no. 8517 62 90 of the First Schedule, which clearly exceeds the applicable bound rate of 0% set forth in India's Schedule. The measures at issue through which the duties are imposed include:

- a. the Customs Act;
- b. the Customs Tariff Act including the First Schedule;
- c. the Finance Bill of 2014 and the Finance Act of 2014;

³ All the Notifications referred to in this request are issued by the Ministry of Finance (Department of Revenue).

- d. the Finance Bill of 2018 and the Finance Act of 2018;
- e. Notification No. 24/2005 — Customs, dated 1 March 2005;
- f. Notification No. 132/2006 — Customs, dated 30 December 2006;
- g. Notification No. 12/2012 — Customs, dated 17 March 2012;
- h. Notification No. 11/2014 — Customs, dated 11 July 2014;
- i. Notification No. 12/2016 — Customs, dated 1 March 2016;
- j. Notification No. 50/2017 — Customs, dated 30 June 2017;
- k. Notification No. 57/2017 — Customs, dated 30 June 2017;
- l. Notification No. 58/2017 — Customs, dated 30 June 2017;
- m. Notification No. 22/2018 — Customs, dated 2 February 2018;
- n. Notification No. 75/2018 — Customs, dated 11 October 2018;
- o. Notification No. 02/2019 — Customs, dated 29 January 2019;
- p. Notification No. 36/2019 — Customs, dated 30 December 2019; and
- q. any amendments, replacements, extensions, implementing measures or other related measures regarding the measures referred to above.

4. Parts of telephone sets and other apparatus for the transmission or reception of voice, images or other data

(1) Populated, loaded or stuffed printed circuit boards

India applies 20% duty to products (populated, loaded or stuffed printed circuit boards) falling under tariff item no. 8517 70 10 of the First Schedule, which clearly exceeds the applicable bound rate of 0% set forth in India's Schedule. The measures at issue through which the duties are imposed include:

- a. the Customs Act;
- b. the Customs Tariff Act including the First Schedule;
- c. the Finance Bill of 2020 [and the Finance Act of 2020];
- d. Notification No. 24/2005 — Customs, dated 1 March 2005;
- e. Notification No. 132/2006 — Customs, dated 30 December 2006;
- f. Notification No. 12/2012 — Customs, dated 17 March 2012;
- g. Notification No. 11/2014 — Customs, dated 11 July 2014;
- h. Notification No. 50/2017 — Customs, dated 30 June 2017;
- i. Notification No. 57/2017 — Customs, dated 30 June 2017;
- j. Notification No. 58/2017 — Customs, dated 30 June 2017;

- k. Notification No. 6/2018 — Customs, dated 2 February 2018;
- l. Notification No. 36/2018 — Customs, dated 2 April 2018;
- m. Notification No. 37/2018 — Customs, dated 2 April 2018;
- n. Notification No. 38/2018 — Customs, dated 2 April 2018;
- o. Notification No. 76/2018 — Customs, dated 11 October 2018;
- p. Notification No. 02/2020 — Customs, dated 2 February 2020; and
- q. any amendments, replacements, extensions, implementing measures or other related measures regarding the measures referred to above.

(2) Parts of telephone sets and other apparatus for the transmission or reception of voice, images or other data other than populated, loaded or stuffed printed circuit boards

India applies 10% or 15% duties, depending on the types of products, to products (parts of telephone sets and other apparatus for the transmission or reception of voice, images or other data other than populated, loaded or stuffed printed circuit boards) falling under tariff item no. 8517 70 90 of the First Schedule, which clearly exceeds the applicable bound rate of 0% set forth in India's Schedule. The measures at issue through which the duties are imposed include:

- a. the Customs Act;
- b. the Customs Tariff Act including the First Schedule;
- c. the Finance Bill of 2018 and the Finance Act of 2018;
- d. Notification No. 24/2005 — Customs, dated 1 March 2005;
- e. Notification No. 132/2006 — Customs, dated 30 December 2006;
- f. Notification No. 12/2012 — Customs, dated 17 March 2012;
- g. Notification No. 11/2014 — Customs, dated 11 July 2014;
- h. Notification No. 19/2016 — Customs, dated 1 March 2016;
- i. Notification No. 32/2016 — Customs, dated 5 May 2016;
- j. Notification No. 50/2017 — Customs, dated 30 June 2017;
- k. Notification No. 56/2017 — Customs, dated 30 June 2017;
- l. Notification No. 57/2017 — Customs, dated 30 June 2017;
- m. Notification No. 58/2017 — Customs, dated 30 June 2017;
- n. Notification No. 6/2018 — Customs, dated 2 February 2018;
- o. Notification No. 22/2018 — Customs, dated 2 February 2018;
- p. Notification No. 37/2018 — Customs, dated 2 April 2018;
- q. Notification No. 40/2018 — Customs, dated 2 April 2018;
- r. Notification No. 02/2019 — Customs, dated 29 January 2019;

- s. Notification No. 24/2019 – Customs, dated 6 July 2019;
- t. Notification No. 25/2019 – Customs, dated 6 July 2019;
- u. Notification No. 37/2019 – Customs, dated 30 December 2019;
- v. Notification No. 01/2020 – Customs, dated 2 February 2020;
- w. Notification No. 02/2020 – Customs, dated 2 February 2020; and
- x. any amendments, replacements, extensions, implementing measures or other related measures regarding the measures referred to above.

II. LEGAL BASIS FOR THE COMPLAINTS

Japan considers that each of the foregoing measures is inconsistent with India's obligations under the following provisions:

- i. Article II:1(a) of the GATT 1994 because India has failed to accord to Japan's commerce treatment no less favourable than that provided for in the appropriate Part of India's Schedule;
- ii. Article II:1(b) of the GATT 1994 because India has failed to exempt the products of the territory of Japan, on their importation into India's territory, from ordinary customs duties in excess of those set forth and provided in India's Schedule; and
- iii. Article II:1(b) of the GATT 1994 because India has failed to exempt such products from all other duties or charges of any kind, imposed on or in connection with the importation, in excess of those imposed on the date of the GATT 1994 or those directly and mandatorily required to be imposed thereafter by legislation in force in the territory of India on that date.

As a result, India's foregoing measures also appear to nullify or impair the benefits accruing to Japan directly or indirectly within the meaning of Article XXIII:1 of the GATT 1994.

Accordingly, Japan respectfully requests that, pursuant to Articles 4.7 and 6 of the DSU, and Article XXIII of the GATT 1994, the Dispute Settlement Body establish a panel to examine this matter, with the standard terms of reference as set out in Article 7.1 of the DSU.

Japan asks that this request for the establishment of a panel be placed on the agenda for the next regular meeting of the Dispute Settlement Body.
