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

(WT/DS345)

EXECUTIVE SUMMARY OF THE SECOND WRITTEN SUBMISSION OF THE UNITED STATES

July 9, 2007

The Additional Bond Amount Constitutes "Reasonable Security" Within the Meaning of the Ad Note to GATT 1994 Articles VI:2 and VI:3.

1. A central question before this Panel is whether any provisions of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* ("AD Agreement"), SCM Agreement, or the GATT 1994 govern a security requirement for the payment of an antidumping or countervailing duty assessed after an order has been imposed, such as that contemplated by the enhanced bond directive. As the United States has demonstrated in its previous submissions, the Ad Note to Article VI is the sole provision that specifically limits security requirements of this type.

2. As the United States has explained in previous submissions, the "final determination of the facts" in the Ad Note refers to the determination of the facts with respect to the "*payment* of anti-dumping or countervailing duty." In the context of a retrospective duty assessment system, the "determination of the final liability for payment of anti-dumping duties," referenced in Article 9.3.1, must be made in order for the facts with respect to payment to be determined. Thus, the "final determination of the facts" in the Ad Note follows an assessment review as described in Article 9.3.1. This interpretation is consistent with the immediate context in which the phrase appears. The Ad Note refers to "security for payment" and "other cases in customs administration" – in other cases in customs administration, security for payment of duties is required upon entry when the actual amount of liability is not known, and this security is required until the duties are finally assessed and paid. It is also consistent with GATT 1994 Article VI:2 and 3, the provisions to which the Ad Note is appended, and the AD Agreement. GATT 1994 Article VI:2 and 3 address "levy[ing]" antidumping and countervailing duties. In the AD Agreement and SCM Agreement, the term "levy" refers to "the definitive or final legal assessment or collection of a duty or tax." The "final determination" referenced in the Ad Note thus pertains to security pending final legal assessment of duties – an event that in a retrospective duty assessment system does not normally occur until after the completion of the assessment review.

3. The context provided by the AD Agreement also supports this interpretation of the Ad Note. AD Agreement Article 9.2 allows Members to collect antidumping duties "in the appropriate amounts in each case." Article 9.3 states that "[t]he amount of the antidumping duty shall not exceed the margin of dumping as established under Article 2." The "margin of dumping" established following the assessment review described in Article 9.3.1 is a margin of dumping "as established under Article 2" – meaning, a margin of dumping calculated in accordance with the general requirements of Article 2. India is thus incorrect in asserting that this means a "margin of dumping" from the investigation proceeding. The cash deposit and bond secure payment of this amount of duty and ensure that the United States is able to collect duties in that amount, in accordance with Article 9.2. Article 9.3.1 makes clear that "final" liability for payment of antidumping duties occurs at the end of an assessment period – the terminology used coincides with the reference to the "final" determination of the facts with respect to "payment" in the Ad Note, further supporting the view that the Ad Note addresses security pending completion of assessment.

4. Finally, as explained in the U.S. Responses to Panel Questions, this interpretation is consistent with the manner in which the United States administered its antidumping law at the time the Ad Note was negotiated. The Antidumping Act, 1921, established a retrospective duty assessment system, whereby assessment or appraisement of antidumping duties was withheld

pending the determination of whether and to what extent dumping had occurred on individual transactions subject to an antidumping "finding." The 1921 Act, also included provisions for security pending final assessment, which prior to enactment of the Trade Agreements Act of 1979 was usually required in the form of "a bond equal to the estimated value of the merchandise."

5. India offers a reading of both the Ad Note and the AD and SCM Agreements that is at odds with their plain language and irreconcilable with the context in which the relevant language appears. First, with respect to the Ad Note, India argues that dumping cannot be "suspected" after an antidumping duty order is imposed following the completion of the investigation, and thus no case of suspected dumping can exist at that time. This interpretation does not, however, does not conform to the ordinary meaning of the term "suspected" or the context in which the term appears. In the Ad Note, "suspected" dumping refers to dumping that is "imagined to be possible or likely." The immediate context provides that security in such a case may be required for "payment" "pending final determination of the facts." In a retrospective system of duty assessment, whether and in what amount duties are owed on a given entry is not known until completion of assessment, and thus dumping – in the context of payment – is "suspected" during the intervening time. Dumping (if any) with respect to a given set of entries is not "known" until assessment of those entries is completed.

6. India attempts to rely on the phrase "existence of dumping," which is nowhere used in the Ad Note, to support its assertion that the Ad Note does not govern security after issuance of an antidumping duty order in an investigation. However, as the United States has explained, while the "existence of dumping" is confirmed at the conclusion of the investigation, whether a given entry has been dumped, and thus whether duties are owed, is not determined until completion of the assessment review. The "final determination of the facts" is used in the Ad Note in connection with the "payment of anti-dumping or countervailing duty," which in a retrospective system is not established at the conclusion of the investigation.

7. To read the Ad Note and the AD Agreement as India suggests would lead to an absurd result: it would mean that "security for payment of antidumping and countervailing duty" must be released after completion of an investigation (the moment when it has been established that it is likely that some duties will be owed) – and before the amount of duties owed is finally established and those duties have in fact been paid. The United States is not aware of any customs authority that administers security requirements in this manner.

8. Furthermore, India offers an interpretation of the Ad Note in relation to the AD Agreement and SCM Agreement that is inconsistent with the terms of those agreements and fails to give the Ad Note any meaning or legal effect, contrary to the relationship between the GATT 1994 and other WTO agreements contemplated by the *Marrakesh Agreement Establishing the World Trade Organization* ("WTO Agreement"). As a threshold matter, the GATT 1994, including the Ad Note to Article VI, is an "integral part" of the WTO Agreement. As past panels and the Appellate Body have noted, Article VI is "part of the same treaty" as the AD Agreement, and "should not be interpreted in a way that would deprive it or the Antidumping Agreement of meaning." A panel "should give meaning and legal effect to all the relevant provisions," including the Ad Note to

Article VI. Instead of "reading Article VI in conjunction with the Antidumping Agreement," as the Appellate Body in *US – 1916 Act* suggested, India, through a misreading of Articles 7 and 9 of the AD Agreement, attempts to read Article VI and the Ad Note out of the covered agreements entirely, depriving both provisions of any meaning.

9. India's analysis of AD Agreement Article 9 in connection with the U.S. cash deposit requirement illustrates the basic flaws in its approach. First, to argue that Article 9, and not the Ad Note, is the relevant provision applicable to cash deposit requirements, it asserts that the term "cash deposit" is the same as the term "duty" – a position that cannot be reconciled with the text of the AD Agreement or the Ad Note, or the ordinary meaning of either of the terms in question. A "cash deposit" is security for a duty owed, but is not itself a duty. In both the GATT 1994 and the AD Agreement, the term "cash deposit" is used throughout to refer to a form of "security," not a "duty". The Ad Note, for example, provides for "reasonable security (cash deposit or bond)" – it does not characterize cash deposits as "duties". Article 7.2 of the AD Agreement likewise distinguishes a "cash deposit" as a form of "security" from "duties" in stating that "provisional measures may take the form of a provisional duty *or, preferably, a security – by cash deposit* or bond ... ." Insofar as it indicates a preference for requiring payment of cash deposits rather than duties, Article 7.2 suggests that there is in fact a "substantive difference" between a cash deposit requirement and a duty.

10. The sole support India offers for its reading of the GATT 1994 and the AD Agreement in this regard is a single reference by the Appellate Body in *US – Zeroing (Japan)* to cash deposits in its description of an administering authority's right to "collect duties, in the form of a cash deposit." India concedes that this statement was not made in the context of any finding with respect to cash deposit requirements – and indeed, the Appellate Body report contains no analysis of the question of whether cash deposits are in fact duties. A single clause in one sentence in an Appellate Body report, in a different context and unsupported by any relevant analysis, cannot justify a conclusion that plainly contradicts the text of the GATT 1994 and the AD Agreement.

11. Moreover, India misinterprets the term "margin of dumping" in Article 9.3 to refer, alternately, to the margin of dumping established in the investigation or to the margin established for a previous set of entries in a prior administrative review. This reading of Article 9.3, however, is both illogical and inconsistent with the text of that provision and previous reports of the Appellate Body examining that text. Inexplicably, India ignores the one margin of dumping that is based on actual analysis of the particular entries in question and which is used to establish the "final liability" for payment of antidumping duties, referenced in Article 9.3.1: the margin of dumping established in the assessment review. It is this margin (which, contrary to what India asserts, is a margin "as established under Article 2") that is the "margin of dumping" referenced in Article 9.3, and it is payment of duties resulting from this margin that the cash deposit and bond are intended to secure.

12. Contrary to India's claim, the Appellate Body's findings in *US – Zeroing (EC)* are fully consistent with this reading of AD Agreement Article 9. The "margin of dumping established for an exporter or producer" referenced in that section of the Appellate Body's report is the margin of dumping established in an *assessment* proceeding, not the margin of dumping established in an

investigation. Article 9.3 specifies the amount of "assessed" antidumping duties – an amount determined through the administrative review. The margin of dumping it describes is thus the margin of dumping established in that review. Article 9.3 does not prescribe the specific methodology by which duties should be assessed, nor the amount of security that a Member may require pending final assessment.

13. Finally, India attempts to rely on Article 7 of the AD Agreement as a basis to read the Ad Note out of the GATT 1994 entirely, asserting that the Ad Note is confined to "provisional measures" and superseded by Article 7. However, nothing in the text of the Ad Note suggests that it is limited to "provisional measures" and nothing in the text of Article 7 supports the conclusion that it is intended to address security requirements after the imposition of an order. Neither Article 7 nor the concept of "provisional measures" existed at the time the Ad Note was negotiated. Article 7 contains rules with respect to provisional measures – measures (including security) taken prior to a final determination in an investigation. Article 7 does not, however, address security requirements imposed after a final determination has been made, and there is no basis to conclude that it places limitations on those requirements beyond the limitations established in the Ad Note.

14. If India's arguments were accepted, Members would not be permitted to maintain security requirements pending final determination of liability. To preclude a Member with a retrospective system from requiring the posting of security prior to the determination of final liability would create a disparity between retrospective and prospective systems. The nature of prospective systems is that the duties billed at importation are treated as final. Thus, no security need be required. If an importer refuses to pay the antidumping duties owed, the Member maintaining a prospective system may deny entry to the merchandise in question. Members with prospective systems therefore are not required to bear the risk of unsecured liability in the way that Members with retrospective systems would if India's interpretation were accepted. Nothing in the GATT 1994 or AD Agreement suggests that one system is favored over another, and the Appellate Body has confirmed that this is the case. Members with retrospective systems should not be penalized for deferring determination of final liability to the end of the review period.

15. The evidence demonstrates that the additional bond amount satisfies the requirements of the Ad Note: it constitutes "reasonable security" for the payment of antidumping or countervailing duty. The United States imposed the additional bond requirement after it identified a serious and growing problem: when the assessment rate resulting from the administrative review exceeded the cash deposit rate at the time of entry, many importers were not paying the duties lawfully owed. This liability was unsecured by cash deposit, bond, or other security. As a result, the United States has been unable to collect over $600 million in antidumping duties lawfully owed to it. The additional security reflects an assessment of the multiple factors typically considered in establishing security requirements, including the amount of potential liability in the event of default and the likelihood of default. For shrimp, the amount of potential additional liability was significant, as was the risk of default. In excess of $2.5 billion worth of shrimp imports had entered the United States from countries subject to antidumping duty orders during calendar year 2003. This quantity of shrimp far exceeded that of imports subject to previous antidumping duty orders that had resulted in significant unpaid duties. Because antidumping duties are assessed on an *ad valorem* basis, the

sheer quantity of shrimp imports alone increased the likelihood that, all other things being equal, the potential unsecured liability for shrimp would be substantial. No party to this proceeding disputes the fact that rates do increase. Even if the likelihood that rates for shrimp would increase was no greater than the historical norm, the fact that shrimp imports were so substantial in value supported CBP's decision to require greater security for shrimp, as it suggested significantly greater unsecured liability in the event of an increase.

16. As for the risk of default, CBP determined that importers of agriculture/aquaculture merchandise subject to antidumping or countervailing duty liability faced an elevated risk of default, due in part to low capitalization and high turnover rates in the industry as a whole. CBP provides importers subject to the enhanced bond directive with individualized risk assessments, if they so request. In that event, the bond amount reflects an individualized assessment of risk of default. Importers have requested and received individual bond amounts – often substantially lower than those prescribed by the formula – through this process.

The Additional Bond Directive Is Not Inconsistent with AD Agreement Article 18.1 or SCM Agreement Article 32.1.

17. India has failed to demonstrate that the additional bond directive is "specific action against dumping" or a "subsidy" – it is neither "specific" to dumping or a subsidy nor "against" dumping or a subsidy. As the United States explained in its submissions, the directive is a reasonable means of ensuring payment of duties ultimately assessed. Having identified a serious collection problem, CBP took action to secure unsecured liability, as it would in any case in which such liability exists that presents a risk to the revenue, whether or not the "constituent elements of dumping or a subsidy are present." The design of the directive, including the criteria for applying it to particular orders and establishing a bond amount based on individual risk, all pertain to securing against risk of uncollected duties, not the "constituent elements of dumping". Thus, while the directive may be "related to" dumping – as the Appellate Body in *US – Offset Act (Byrd Amendment)* described various measures not inconsistent with Article 18.1 – it is not "specific" to it.

18. With regard to India's claim that the directive is action "against" dumping, neither previous Appellate Body reports examining that term nor the evidence in this proceeding supports this conclusion. The bond is security for the final assessed duty, which itself may be an action against dumping, but the security as such simply allows the United States to obtain payment of duties lawfully owed to it. As the Appellate Body noted in *US – Offset Act (Byrd Amendment)*, "a measure cannot be against dumping or a subsidy simply because it facilitates or induces the exercise of rights that are WTO-consistent." The GATT 1994 and the AD Agreement do not prohibit the United States from obtaining payment for the antidumping duties in question, and the bond requirement facilitates its ability to do so.

19. As for India's claim that the directive was "against" dumping because it adversely affected imports from countries subject to the antidumping order, the evidence demonstrates otherwise. Aside from seasonal fluctuations, imports from most countries subject to the AD order appear to have remained steady or increased. India asserts that "the impact of the bond directive was

magnified in the case of" Brazil, China, and India "because they suffered higher antidumping duty rates than the other three countries subject to antidumping duties." Even if the evidence supported this claim – and a review of the data for these three countries shows no consistent trend – India fails to explain how the effects of the bond directive can, as the U.S. Government Accountability Office ("GAO") put it, "readily be isolated from other changes occurring at the same time, such as the imposition of AD duties." In theory, higher duties themselves may also result in a greater impact on trade, yet India fails to show how the directive itself adversely affected imports.

20. With regard to costs to importers, the mere fact that additional security is required and results in additional costs does not support the conclusion that the security requirement itself is designed to "counteract" dumping. All security requirements, including cash deposits and other reasonable security for the payment of antidumping and countervailing duties, may result in some added cost. If accepted, India's argument would mean that any measure that increases the cost of importing for importers subject to antidumping and countervailing duties is an action "against" dumping. This interpretation is not supported by the analysis of the Appellate Body in *US – Offset Act*. Increasing the cost of importing alone does not necessarily create, as the Appellate Body put it in *US – Offset Act*, an "incentive not to engage in the practice of exporting dumped or subsidized products or to terminate such practices" – indeed, import data for shrimp suggest that no such incentive exists.

21. Even if considered "specific" action "against" dumping or subsidy, the security requirements in question are permitted by the Ad Note and thus are "in accordance with the provisions of GATT 1994, as interpreted by the Anti-dumping Agreement." Again without any textual support or analysis, India refers to a single sentence in the Appellate Body report in *US – 1916 Act* to assert that security requirements contemplated by the Ad Note are "not permitted" responses to dumping or subsidy. The statement quoted by India does not, however, support the proposition for which it is cited. The Appellate Body report in question contains no analysis of the Ad Note, or security requirements generally, and to the extent it discusses Article VI and the AD Agreement, it is fully consistent with the U.S. reading of Article 18.1 and SCM Agreement Article 32.1. For example, the Appellate Body stated that "'the provisions of GATT 1994' referred to in Article 18.1 are in fact the provisions of Article VI of the GATT 1994 concerning dumping," and then proceeded to analyze whether the measure in question "falls within the scope of application of Article VI of the GATT 1994." The Ad Note to Article VI is a provision of Article VI "concerning dumping," and the security requirements at issue fall within its scope. As explained above, the AD Agreement does not contain additional limits on security requirements such as those contemplated by the Ad Note. Thus, if a security requirement is consistent with the Ad Note, it is "in accordance with the provisions of GATT 1994, as interpreted by" the AD Agreement.

22. To suggest, as India does, that Article 18.1 and SCM Article 32.1 mean that measures permitted by Article VI are no longer permitted unless specifically provided for in the AD Agreement or SCM Agreement, is at odds with the text of both provisions and, as noted previously, the relationship between the covered agreements set forth in the WTO Agreement. Were India's reading correct, there would be no need for Article 18.1 or SCM Article 32.1 to refer to the GATT 1994 at all – yet both provisions do refer to GATT 1994. India's assertion that, even if the security

requirement is "reasonable security" within the meaning of the Ad Note, it "would remain inconsistent with Article 18.1," in effect reads the qualifying phrase out of the text entirely. This reading of the text is not consistent with its terms, and contradicts the principle contained in the WTO Agreement that each of the texts, including GATT 1994, shall be integral to it. Moreover, India's interpretation incorrectly presumes that, unless a measure is specifically permitted by the AD Agreement, it is prohibited. The AD Agreement, however, contains rules regarding certain aspects of antidumping and countervailing duty measures. As the Appellate Body has observed, the covered agreements are not exhaustive, and if an action is not expressly prohibited, taking that action does not breach the WTO agreement in question. To read Article 18.1 and SCM Agreement Article 32.1 as broadly as India suggests would impermissibly extend the disciplines of the AD Agreement and SCM Agreement beyond their terms.

The Additional Bond Directive Does not Breach GATT Article I, GATT Article II, GATT Article XI, or GATT Article XIII.

GATT Article I. Contrary to India's assertions, the additional bond directive does not improperly discriminate between products originating in India and products originating in other countries. The directive has been applied to all importers of shrimp subject to the AD orders, and the U.S. action of increasing bond amounts merely addressed the particular risks associated with these imports.

GATT Article II. As explained above, the additional bond directive does not constitute a "duty" (antidumping or otherwise) or an "other charge." CBP does not charge for the bonds, nor does it even require that security take the form of the additional bond. The implication of India's argument that such bonds are "other charges" is that Members may not require bonds as a means to secure importers' obligations unless the bonds are specifically included in a Member's Schedule. Yet many Members do maintain such requirements, and several provisions of the WTO agreements contemplate the use of bonds, suggesting that they are intended to be a device generally available to Members to secure their obligations. Finally, India's assertion that the bond results in a "contingent tariff liability" is incorrect. The bond is security for liability resulting from the antidumping duty order; it does not itself result in tariff liability, "contingent" or otherwise.

GATT Article XI. As was the case with the bond measure at issue in *Dominican Republic – Cigarettes*, the bond directive does not prevent importers from importing shrimp into the United States. Indeed, import data demonstrates that significant quantities of shrimp subject to the AD orders continue to be imported into the United States, and there is no evidence that the bond directive has had any appreciable impact on imports. India's argument that a "limiting effect" of the type referenced in *India – Autos* exists simply when a measure may result in costs to importers proves too much: it would render any bond requirement inconsistent with Article XI. The directive does not mandate an increased bond amount – as noted previously, importers can obtain individual bond determinations and, depending on their ability to pay and history of compliance with U.S. customs laws and regulations, may not be required to obtain a higher bond. Virtually all importers that have made a request have received individualized bond amounts pursuant to this process that are lower than those contemplated by the formula. Importers have a range of mechanisms available

to them to import into the United States without being subject to the additional bond directive, including single entry bonds, cash deposits or security other than a continuous entry bond.

GATT Article XIII. Contrary to India's assertion, the title of Article XIII is "Non-discriminatory Administration of Quantitative Restrictions." Thus by its terms Article XIII governs "quantitative restrictions." Article XIII has in the past been applied to analyze tariff-rate quotas, safeguards, and other measures that contain *quantitative* restrictions on trade; measures that do not restrict trade in this manner are not covered by it. The enhanced bond directive is not a "quantitative restriction." Furthermore, India's interpretation of "restriction" in the context of Article XIII fails for the same reason as it does with respect to Article XI: it suggests that any bond requirement is a "restriction" and thus implicated under Articles XI and XIII.

The Additional Bond Directive Is Not Inconsistent with GATT 1994 Article X:3(a).

23. With regard to GATT 1994 Article X, India has failed to establish a breach. Article X does not govern the substance of a measure, yet India continues to cite aspects of the measure's substance – including the formula used to establish bond amounts absent an individual risk analysis – in support of its claim that Article X was breached. With respect to the application of the directive, CBP did not apply the directive in a nonuniform, partial, or unreasonable fashion. It required the bond of shrimp importers because, using the criteria in the directive, CBP determined that the risk of substantial unsecured liability was high in the case of shrimp. The fact that CBP opted to apply the directive to importers of covered merchandise subject to new orders, rather than preexisting orders, does not render its application "nonuniform, partial or unreasonable," as India claims. CBP considered that applying the new directive to a new order would facilitate its ability to monitor and administer the new bond requirement at its inception. Article X does not prohibit a Member from implementing a new measure in this fashion.

24. Even under India's theory that Article X applies, the evidence demonstrates that CBP administers the bond directive in a "uniform, impartial and reasonable" manner. The directive contains various criteria for identifying importers of merchandise with elevated default risk, and CBP applies these criteria uniformly. CBP faced in excess of $2 billion in imports of shrimp newly subject to an antidumping order. It had experienced $225 million in defaults on importers in industries that, like shrimp, were characterized by low capitalization rates and relatively low barriers to entry and exit, had very little history of paying customs duties prior to imposition of the order, and were highly leveraged. All of these factors suggested that, as with other agriculture/aquaculture merchandise, there was a significant risk of default associated with importers of shrimp. Finally, contrary to India's suggestion, the October 2006 Notice makes the procedures for requesting an individual bond amount clear, and does not impose significant costs on importers to do so. The procedures for requesting an individual bond amount are set forth in the Notice, which itself was published in the *Federal Register*.

India's "As Such" Claims

25. As the United States has demonstrated, India's claims with respect to certain customs laws and regulations are not within the Panel's terms of reference, nor are they consistent with any reasonable reading of the provisions of the agreements in question. Contrary to India's assertion that "it is a Member's panel request (and not its request for consultations) that governs a panel's terms of reference," it is well established that a Member cannot advance claims with respect to a measure included in its panel request, if it failed to include that measure in its request for consultations. In determining whether the consultation requirement has been met, panels are limited to evaluating the request for consultations, not what may or may not have taken place during consultations. Where a Member has provided no indication in its consultation request of the measures at issue, it is well established that the Member may not advance claims with respect to that measure, having failed to request consultations. Nowhere in India's consultation request is there a single reference to the statute and regulations it now seeks to challenge. India is not "focusing the scope of the matter," as it now asserts, but rather is impermissibly *expanding* the matter before the Panel to include measures that were not included in its request for consultations.

26. With respect to the substance of India's claims, in its answers to Panel questions, India contradicts itself when it describes how the laws and regulations purport to breach U.S. obligations under WTO Agreement Article XVI, AD Agreement Article 18.4 and SCM Agreement Article 32.5. In one portion of its submission, India argues that the laws and regulations are "rules and norms of general and prospective application that *require* U.S. Customs to undertake impermissible specific actions against dumping," but elsewhere it proceeds to argue that its claims are based on "the *discretion* conferred by the Amended Bond Directive and 19 U.S.C. 1623 and 19 C.F.R. 113.13 to take impermissible specific actions against dumping."

27. To the extent that India's claims are based on a "requirement" to act in a WTO-inconsistent manner, these claims do not accord with the facts: nothing in the laws and regulations identified by India requires the United States to act inconsistently with its obligations, and India has failed to provide any explanation of how the text of these provisions operate to do so. To the extent India's claims are based on the existence of "discretion" to act in a WTO-inconsistent manner, the proposition India advances – that a Member breaches Article XVI:4 merely by maintaining a law that provides it with the *discretion* to act in a WTO-inconsistent manner – is contrary to the text of the WTO Agreement and the conclusion drawn in numerous prior panel and Appellate Body reports, and would substantially undermine the rights of Members.

28. Furthermore, setting aside the fact that nothing in the cited agreements suggests such an analysis is relevant to demonstrating WTO-inconsistency, India fails to explain which aspects of the text of 19 U.S.C. 1623 and 19 C.F.R. 113.13 it refers to when it describes the purported "statutory purpose and standards" that allegedly "guide the discretion of U.S. Customs" and render these provisions WTO-inconsistent. Instead, it cites to a CBP press release discussing the fact that CBP "must collect the duties of whatever nature owed" – India's suggestion that CBP's obligation to collect duties lawfully owed is somehow inconsistent with the WTO Agreement simply underlines the incongruity of its claim. In addition to arguing that the bond directive as applied to shrimp does not constitute "reasonable" security within the meaning of the Ad Note, India further asserts that the bond directive "as such" is inconsistent with the Ad Note to Article VI and various other provisions

of the AD and SCM Agreements and the GATT 1994. However, India offers absolutely no legal theory as to how the directive "as such" is inconsistent with the Ad Note, and the only evidence it offers in support of its claim relates to the single instance in which the directive has been applied – frozen warmwater shrimp subject to the antidumping orders issued by USDOC in February 2005.

29. With respect to India's "as such" claims under AD Agreement Articles 1 and 18.1 and SCM Agreement Articles 10 and 32.1, India's argument likewise falls short. India does not explain how the directive "as such" is an action against dumping or subsidization. It claims that the directive "requires" importers of merchandise subject to an antidumping order to furnish an enhanced continuous bond, but again, the facts demonstrate that the only instance in which such a bond has been required is with respect to frozen warmwater shrimp subject to the antidumping orders issued by USDOC in February 2005. India has offered no argument regarding how the directive "as such" breaches SCM Agreement Articles 17, 19.2, 19.3, and 19.4 or AD Agreement Articles 7, 9.1, 9.2, and 9.3. Finally, India provides no legal theory, evidence, or even argumentation in support of its "as such" claims under GATT 1994 Articles I, II, and XI.

The Additional Bond Directive Would Be Justified by GATT Article XX(d).

30. The directive is "necessary to secure compliance" with U.S. antidumping and countervailing duty assessment laws, in particular 19 U.S.C. 1673e(a)(1) governing the assessment of antidumping duties, and general customs laws and regulations requiring the payment of duties owed to the U.S. Treasury. As evidenced by, among other things, the criteria the directive uses to determine bond amounts, the directive and its application to shrimp secures compliance with this obligation and general customs laws and regulations requiring payment of duties owed to the U.S. Treasury.

31. As possible WTO-consistent alternatives, India cites U.S. civil remedies or alternately proposes requiring "commercial importers across the board to demonstrate higher levels of financial soundness before being permitted to undertake imports." Civil recovery proceedings are not a reasonable alternative to address the problem faced by CBP: like cash deposits, CBP has used civil recovery to try to recover duties when an importer defaults, yet notwithstanding these efforts, uncollected duties have continued to accrue. Civil recovery produces no remedy if the importer cannot be reached or has no attachable assets by the time the proceeding has concluded. Thus, these measures do not constitute reasonably available alternatives that "would preserve for" the United States "its right to achieve ... the objective pursued." Finally, India's suggestion – that CBP require all importers to demonstrate higher levels of financial soundness – would imply that CBP can require greater security in all cases, but cannot target particular areas – such as collection of antidumping duties – with respect to which a specific problem has been found to exist.

32. The additional bond directive meets the requirements of the chapeau to Article XX. It has not been applied in a manner that would constitute a "disguised restriction on international trade" or "a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail." It has been administered uniformly, and does not discriminate.