INDIA – ADDITIONAL AND EXTRA-ADDITIONAL DUTIES ON IMPORTS FROM THE UNITED STATES

(WT/DS360)

EXECUTIVE SUMMARY OF THE SECOND SUBMISSION OF THE UNITED STATES OF AMERICA

November 2, 2007

I. Introduction

1. India's additional customs duty (AD) and extra-additional customs duty (EAD) on imports from the United States are inconsistent with Article II:1(a) and (b) of the *General Agreement on Tariffs and Trade 1994* (GATT 1994). The AD and the EAD are both ordinary customs duties, and by imposing them, India is exceeding the rates specified in its Schedule to the GATT 1994 (WTO-bound rates).

II. The AD and EAD Are Each Inconsistent with GATT 1994 Article II:1(b)

2. GATT 1994 Article II:1(b) prohibits a Member from levying "ordinary customs duties" or "other duties or charges imposed on or in connection with importation" (ODCs) in excess of the rates established in the Member's Schedule. The term "ordinary customs duty" means a duty applied as a matter of course on the importation of a good into the customs territory of a Member at the time of importation that is either *ad valorem*, specific, or a combination thereof. An "ordinary" customs duty is a duty that is "normal, customary or usual."

3. Ordinary customs duties are subject to the first sentence of GATT 1994 Article II:1(b), which prohibits such duties in excess of WTO-bound rates. ODCs in contrast are subject to the second sentence of Article II:1(b), which prohibits ODCs at any rate if not specified in the relevant Member's Schedule. Thus, the consequence of a duty being considered an ODC is that a Member may not impose it at any rate if that Member has not inscribed in it its Schedule, *even if* it would not result in duties that exceed the Member's WTO-bound rate. Were the duty to be considered an ordinary customs duty, however, the Member could impose it up to its WTO-bound rate.

4. The AD and EAD are both "ordinary customs duties" within the meaning of GATT Article II:1(b). The AD is an "ordinary customs duty" because it applies: (i) at the time of importation (and, in this connection, it must be paid by the importer before the good may clear customs); (ii) as a matter of course upon a good's importation (and, in this connection, it applies generally on the importation of alcoholic beverages into India and the event for which liability ensues is importation); and (iii) as a combination of *ad valorem* and specific duties.

5. The EAD is likewise an "ordinary customs duty" because it applies: (i) at the time of importation (and, in this connection, it must be paid by the importer before the good may clear customs); (ii) as a matter of course upon a good's importation (and, in this connection, it applies generally on the importation of products into India and the event for which liability ensues is importation); and (iii) as an *ad valorem* duty.

6. In this regard the AD and the EAD are no different than India's basic customs duty (BCD). India has already conceded that the BCD is ordinary customs duty within the meaning of GATT 1994 Article II:1(b). Like the AD and the EAD, the BCD applies: (i) at the time of importation; (ii) as a matter of course upon a good's importation; and (iii) as a combination of *ad valorem* and specific duties. In addition to these similarities, there are a number of additional

similarities which are reviewed in our first written submission, oral statement and responses to the Panel's questions.

7. India, however, contends the AD and the EAD are "fundamentally distinct" from the BCD, and, on that basis, that the AD and the EAD are not ordinary customs duties. The principle distinction India draws between the BCD and the AD and the EAD is that the latter are intended to offset internal taxes imposed on like domestic products. However, whether the AD and the EAD constitute ordinary customs duties must be based on an examination of their structure, design and effect; the stated purpose or intent of the duties does not determine whether either is or is not an ordinary customs duty. The situation in *EEC – Parts and Components* is analogous to the present dispute. The *Parts and Components* panel rejected the notion that the stated purpose of the anti-circumvention duty under domestic law provided sufficient basis to characterize the measure as an internal tax rather than a customs duty.

8. An interpretation of GATT 1994 Article II:1(b) that would permit the stated purpose or intent of a measure to determine whether it fell within the scope of that article would permit Members to avoid or manipulate WTO commitments simply by attributing a particular purpose to a measure (regardless of what the measure in fact does) or by calling a measure by one name versus another. In this dispute, India may attribute a different purpose to the BCD on the one hand and the AD and EAD on the other, but all three constitute "ordinary customs duties" and neither the AD nor the EAD offset or counterbalance internal taxes on like domestic products.

9. India's focus on the "distinctions" between the BCD and the AD and the EAD suggests that in its view a Member may only impose one duty that may properly be characterized as an "ordinary customs duty" under GATT 1994 Article II:1(b). However, nothing in the text of GATT 1994 Article II:1(b) suggests Members are limited to a single "ordinary customs duty" and, in fact, the text refers to "ordinary customs duties." Use of the plural "duties" suggests that GATT 1994 Article II:1(b) prohibits "ordinary customs duties" on the importation of products – whether resulting from the application of one or more individual duties – in excess of those specified in the relevant Member's Schedule.

10. Even if the AD or the EAD were not an "ordinary customs duty," each would constitute an "other duty or charge" (ODC) within the meaning of GATT 1994 Article II:1(b). The AD and the EAD would each necessarily constitute an ODC if it were not an ordinary customs duty. This is because the word "other" as used in GATT 1994 Article II:1(b) means duties or charges that are not ordinary customs duties that are applied on or in connection with importation. If the AD and EAD are not an ordinary customs duty, then they must necessarily be something *other* than an ordinary custom duty. The AD and the EAD apply at the time of importation and as a consequence of importation. Moreover, in asserting that the AD and the EAD are charges equivalent to an internal tax within the meaning of GATT 1994 Article II:2(a), India has implicitly characterized both as charges "imposed on importation" since the chapeau to GATT 1994 Article II:2 makes clear that it concerns measures "imposed on importation."

11. The AD when imposed with India's BCD results in ordinary customs duties on imports of alcoholic beverages in excess of India's WTO-bound rate by amounts ranging from 48-400 percentage points. With respect to the EAD when imposed with India's BCD it results in ordinary customs duties on imports in excess of India's WTO-bound rate. The EAD also results in ordinary customs duties on imports in excess of WTO-bound rates in any situation where the BCD is already at or very near India's WTO-bound rate. Were either the AD or the EAD to be considered an ODC, it would exceed the ODCs specified in India's Schedule as India's Schedule does not specify any ODCs for alcoholic beverages or any other product.

12. India has not contested the U.S. *prima facie* case that the AD and the EAD each result in duties on imports in excess of those specified in India's Schedule. Therefore, if the Panel finds the AD and the EAD are ordinary customs duties or ODCs within the meaning of GATT 1994 Article II:1(b) it should also find on the basis of the U.S. *prima facie* case that the AD and the EAD exceed India's WTO-bound rates. The AD and the EAD are therefore each as such inconsistent with GATT 1994 Article II:1(b).

13. Because the AD and the EAD are each inconsistent with GATT 1994 Article II:1(b), they are also each inconsistent with GATT 1994 Article II:1(a). By imposing ordinary customs duties on imports of alcoholic beverages from the United States in excess of those set forth in India's Schedule, the AD accords imports from the United States less favorable treatment than provided for in India's Schedule and, as such, is inconsistent with GATT 1994 Article II:1(a). Because the EAD results in customs duties on imports that exceed those set out in India's Schedule, it accords imports from the United States less favorable treatment than provided for in India's Schedule.

III. Neither the AD Nor the EAD Are Charges Within the Meaning of Article II:2(a)

14. India asserts that the AD and the EAD are charges imposed in accordance with GATT 1994 Article II:2(a) and describes GATT 1994 Article II:2(a) as comprising three elements: "Article II:2(a) ... permits WTO Members to levy certain charges at the border, provided that such charges are (a) 'equivalent' to an 'internal tax'; (b) imposed in a manner that is consistent with Article III:2; and (c) in respect of a 'like domestic product'." These are the same elements the United States identified in its oral statement at the first panel meeting.

15. With respect to the first element, a charge "equivalent to an internal tax" means a charge imposed on the importation of a product that is "equal in force, amount, or value" and corresponds or is "virtually identical especially in effect or function" to an internal tax imposed on like domestic products. India appears to focus on only one aspect of "equivalence", the amount of the charge in relation to the internal tax. While the amount of the respective liability is certainly a factor, the ordinary meaning of the word "equivalent" does not appear to prejudge the aspects of two measures that might be examined to determine whether they correspond or are virtually identical. Accordingly, the analysis should review the structure, design and effect of the two measures.

16. The United States assumes that India's assertion that the imports subject to the AD and the EAD and the domestic products subject to various internal taxes (to which the AD and the EAD are allegedly equivalent) are "like" is correct. Accordingly, for the AD and the EAD to be imposed consistently with GATT 1994 Article III:2, the AD and the EAD must be applied in a manner consistent with the first sentence which concerns "like" products and requires that internal taxes on imported products not be "in excess" of internal taxes on like domestic products by any amount. The requirement applies to each import in respect of each like domestic product. The AD and the EAD result in charges on imported products in excess of those on like domestic products if it leads to excess taxation in even one Indian state.

17. India asserts that the AD is equivalent to state excise duties imposed on like domestic products. India admits that the AD "could in some cases, have been less than the excise duty being charged on like domestic products in some States, and in other cases equal to or perhaps slightly in excess of the excise duty being charged in some other States."

18. On the basis of this admission alone the Panel may find that the AD is not imposed in accordance with GATT 1994 Article II:2(a). Any amount by which a tax on imports is in excess of that tax on like domestic products results in a breach of GATT 1994 Article III:2, and, in relation to like domestic products, less taxation of some imports does not remove the breach resulting from excess taxation other imports. Although India's admission alone provides sufficient reason to reject its assertion under GATT 1994 Article II:2(a), there are other grounds as well.

19. First, the AD is an ordinary customs duty and, therefore, it is not a charge equivalent to an internal tax within the meaning of GATT 1994 Article II:2(a). Second, even if the AD were not considered an ordinary customs duty but an other duty or charge on importation, India has presented no evidence that it is "equivalent" to an any internal tax on like domestic alcoholic beverages or imposed consistently with GATT 1994 Article III:2. To accept the stated or intended purpose of the AD as proof that it is "equivalent" to state excise taxes without factual evidence to support that assertion would lead to the result that Members could very easily undermine the value of their tariff concessions by simply asserting that duties in excess of WTO-bound rates are intended to offset internal taxes (regardless whether they actually do).

20. Third, we recall that explanatory note to Section 3(1). The plain reading of this explanatory note is that where the like domestic product is subject to various tax rates, the "excise duty for the time being leviable on a like article if produced or manufactured in India" *means* the highest rate of excise duty imposed. Because the rate of excise duty on like domestic alcoholic beverages varies from state to state, this means that with respect to alcoholic beverages Section 3(1) provides that imports of alcoholic beverage shall be liable to an additional duty that is equal to the *highest* rate of excise duty imposed by any of the Indian states. Accordingly, Section 3(1) read with the explanatory note subjects imports of alcoholic beverages to rates of AD that exceed the rate of excise duties on like domestic alcoholic beverages in at least some Indian states and, therefore, the AD is not imposed consistently with GATT 1994 Article III:2.

21. We further note the evidence referred to in the EC's Third Party Submission that the taxation resulting from the AD on imports "exceeds by a large margin the taxation resulting from taxes denominated 'excise duty' in the legislation of most Indian States."

22. In sum, the AD not a charge equivalent to an internal tax (state excise duties) and, as India even concedes, is imposed on imports in excess of state excise duties on like domestic alcoholic beverages. Therefore, the AD is not a charge equivalent to an internal tax imposed consistently with GATT 1994 Article III:2.

23. India also seeks to justify the EAD by asserting that it is imposed in accordance with GATT 1994 Article II:2(a) and identifies state level VATs and the CST in addition to unnamed other local duties and charges as the internal taxes to which EAD is allegedly equivalent.

24. As an initial matter, India also acknowledges that the EAD may in some instances be "marginally 'in excess' of the tax on like domestic products. India argues that this "marginal" amount in excess would be "below the *'de minimis'* level permissible" under the Ad Note to GATT 1994 Article III. However, the relevant inquiry with respect to the EAD concerns the first sentence to GATT 1994 Article III (to which the Ad Note does not apply) because the EAD and internal taxes to which the EAD is allegedly equivalent concern "like" products. There is no "permissible" *de minimis* level of excess taxation permitted under the first sentence of GATT 1994 Article III:2. Therefore, India has disproved its own assertions that the EAD is imposed consistently with GATT 1994 Article III. In any event, there is ample reason to reject India's assertions that the EAD is justified under GATT 1994 Article II:2(a).

25. Foremost, the EAD is not "a charge equivalent to an internal tax" because it is an "ordinary customs duty". It therefore cannot be a charge equivalent to an internal tax. In addition, with respect to its assertions that the EAD is equivalent to other local taxes and charges, India has not identified any such other local taxes or charges. As a consequence, India cannot sustain its assertion that the EAD is "equivalent" to other local taxes or charges on like domestic products.

26. Starting with the state level VATs, these internal taxes imposed by the various Indian states are not, in terms of their structure, design or effect, "equivalent" to the EAD. First, according to India the state level VATs are set generally at four different rates whereas the EAD is set at a single rate of four percent for all products.

27. Second, while the state level VATs may generally breakdown into these four rates, there is no requirement that the individual states apply the same rate to the same domestic products. Thus, one state may apply a VAT of four or 12.5 percent on a particular product, whereas another state may apply no VAT on that same product whereas the EAD prescribes for all products, and on the importation of a product into any state, a rate of four percent.

28. Third, the state level VATs operate by crediting against the VAT owed on a product's transfer, the VAT paid on the product's previous transfers. By contrast, there is no mechanism for crediting against the EAD owed on a product, taxes or charges paid on the product's previous transfers. Nor is there a mechanism for crediting the EAD paid on product against the VAT owed on the product's subsequent transfers in India.

29. The CST is not equivalent to the EAD for similar reasons. Like the VAT, the CST is imposed at various rates and may vary from state to state and from product to product whereas the EAD prescribes a flat four percent rate that does not vary from product to product or based on the recipient or the state into which the product is imported.

30. Further, with respect to both the VAT and the CST, the amount of EAD owed on imports as compared to the amount of VAT or CST owed on like domestic products is not equivalent, since it does not correspond and is not virtually identical to the VAT or CST respectively on like domestic products.

31. Finally, we reiterate that the stated purpose of the EAD is not sufficient to support India's assertion that it is a charge equivalent to an internal tax.

32. India has also conceded two critical points that demonstrate that the EAD is not imposed consistently with GATT 1994 Article III:2: (i) the state level VATs and the CST apply to imported products sold within India; and (ii) the EAD is not eligible as a credit against the state level VATs or CST owed on that sale. This means that imported products are subject to the EAD as well as the state level VATs and CST with no offsetting credit against either for the EAD paid. As a consequence, and since domestic products are not subject to the EAD, imported products are subject to charges in excess of those on like domestic products and therefore the EAD is not imposed consistently with GATT 1994 Article III:2.

33. India's assertions that it has "calibrated" the EAD with the state level VATs and CST to ensure "equality of taxation" for imported goods is simply incorrect. India may contend that imports are exempt from the EAD (or subject to a 1 percent rate) when like domestic products are exempt from the state level VATs and CST (or subject to a 1 percent VAT or CST). However, this does not address the point raised in the preceding paragraph that imported products are subject to the EAD – regardless of the rate at which it is imposed – in addition to the state level VATs and the CST when domestic products are only subject to the latter.

34. Moreover, the explanatory note to Section 3(5) appears to indicate that the rate of EAD may not vary on the same product based on the applicable VAT or CST rate. The plain reading of this explanatory note means that where the like domestic product is subject to various tax rates, the "sales tax, value added tax, local tax or any other charges for the time being leviable on a like article on its sale, purchase or transportation in India" *means the* highest rate of such tax or charge imposed. Section 3(5) calls for a single rate of EAD for each product. As a consequence, where the like domestic product is subject to various rates of state level VAT or CST, the EAD

on imports will necessarily exceed the rate of state level VAT or CST on at least some like domestic products.

35. India's assertions that it has "calibrated" the EAD with the state level VATs and CST also wrongly suggests that the rate of EAD on the one hand and the rates of state level VATs and the CST on the other are the same. They are not.

36. India also suggest that the EAD is calibrated to the CST and VAT because the EAD paid on an input for a finished product may be credited against the *central excise tax* (abbreviated "CENVAT") owed on the finished product. Taxes owed under the central excise tax, however, would not appear relevant to the question of whether the EAD results in charges on imports in excess of those imposed by the state level VATs or CST on like domestic products. And, India has acknowledged there is no mechanism for crediting the EAD paid against the state level VAT or CST owed.

37. In sum, the EAD is not a charge equivalent to an internal tax (state level VATs, the CST, or unnamed other local taxes or charges) and, as India even concedes, it is imposed on imports in excess of internal taxes on like domestic product. Therefore, the EAD is not a charge equivalent to an internal tax imposed consistently with GATT 1994 Article III:2.

IV. Terms of Reference

38. India has invited this Panel to make findings with respect to two Customs Notifications issued after the date of this Panel's establishment on June 20, 2007. The Panel should not accept India's invitation because these measures are not within the Panel's terms of reference.

39. As an initial matter, it is not clear that either customs notification accomplishes what India contends it does. First, contrary to India's assertions, Customs Notification 82/2007 does not appear to "effectively remove" or "effectively override" the AD. Section 3(1) is mandatory, providing that imports "shall . . . be liable" to the AD, and remains in force. In addition, as India acknowledges, Customs Notification 32/2003 also "'remains in force' in as much as it contemplates an AD on alcoholic liquor."

40. Second, Customs Notification 102/2007 raises a number of questions as to its effect on the EAD. In addition, Customs Notification 19/2006, requiring imposition of the EAD, remains in force.

41. In any event, neither of these measures are within this Panel's terms of reference and, accordingly the Panel, may not take their effect on the AD and EAD into account in making findings on the latter. In this regard, the U.S. request for the establishment of a panel in this dispute forms the basis of this Panel's terms of reference. The U.S. panel request does not include Customs Notification 82/2007 or Customs Notification 102/2007 as neither of these measures existed at the time. This Panel's term of reference were fixed on the date of its

establishment, June 20, 2007. Accordingly, this Panel's terms of reference are limited to those measures existing on the date of establishment and cited in the U.S. panel request. Because Customs Notification 82/2007 and Customs Notification 102/2007 are not cited in the U.S. panel request, and did not even exist on the date of establishment, they are outside this Panel's terms of reference and the Panel, therefore, may not make findings with respect to them.

42. India contends that Customs Notification 82/2007 "effectively removes the AD on alcoholic liquor imposed by [Customs Notification] 32/2003" and that as a result imports of alcoholic beverages are "not liable to an additional duty within the meaning of Section 3(1) of the [Customs Tariff Act]." If this is true, it would not seem tenable for India to also argue that Customs Notification 82/2007 does not "change the essence" of Customs Notification 32/2003. A measure effectively removing liability for another measure would seem to necessarily change the essence of the latter measure.

43. In *Chile – Price Bands*, the Appellate Body found that "if the terms of reference in a dispute are broad enough to include amendments to a measure – as they are in this case – and if it is necessary to consider an amendment in order to secure a positive solution to the dispute – as it is here – then it is appropriate to consider the measure as amended in coming to a decision in a dispute." The parameters the Appellate Body described in *Chile – Price Bands* do not exist with respect to this dispute. Considering Customs Notification 82/2007 (or Customs Notification 102/2007) would be contrary to the objective of securing a positive solution in this dispute. We note that the Appellate Body in *Chile – Price Bands* prefaced its finding quoted above by stating that it did not mean to condone amending measures during proceedings to shield a measure from scrutiny and that the complaining party should not have to adjust its pleadings to deal with a measure as a "moving target." That concern is particularly acute in this dispute.

44. First, the "amendments" at issue are customs notifications that India contends "effectively remove" the AD and "effectively addresses the issue of double taxation" of the EAD. India has already acknowledged that its Central Government can, at its discretion, withdraw Customs Notification 82/2007 and reinstate Customs Notification 32/2003. We understand this same discretion to exist with respect to Customs Notification 102/2007. India has also acknowledged that it contemplates that "subsequent to the removal of the AD," the Indian states will impose measures similar to the AD. And we further note that Section 3(1) of the Customs Tariff Act mandates imposition of the AD. It is also unclear, as noted above, whether Customs Notification 102/2007 in fact resolves the issue of "double taxation" of imports. Accordingly, there is a very real possibility that after conclusion of these proceedings, Customs Notification 82/2007 or Customs Notification 102/2007 may be withdrawn, that the Indian states may introduce measures similar to the AD, or that Customs Notification 102/2007 may not in fact eliminate charges on imports in excess of those on like domestic products. We offer that consideration of these notifications in relation to AD and EAD would not contribute to securing a positive solution in this dispute given the uncertainty today as to what the measures accomplish or how long they will remain in effect and that possibility that the AD may be reimposed.

45. Second, as explained above, it is not clear the effect either Customs Notification 82/2007 or Customs Notification 102/2007 have on the measures in dispute. Were they to have the effect India contends, this could demand an adjustment in the U.S. arguments in this dispute. Given the limited time the United States has had to review and understand either measure, and the India's Central Government's asserted "complete discretion" to issue customs notifications, this appears to be a "moving target" situation. The extent to which either Customs Notification 82/2007 or Customs Notification 102/2007 has an effect on the AD or EAD would be a matter for the compliance stage of this dispute, as India itself noted in its arguments in *India – Autos*.

V. The AD and EAD Are Mandatory, Not Discretionary

46. India asserts that Section 3 of the Customs Tariff Act and Section 12 of the Customs Act are not mandatory and as a consequence that they "may not be characterized as 'measures' subject to challenge by the United States." The Panel should reject India's argument.

47. First, Section 3(1) and 3(5) of the Customs Tariff Act and Section 12 of the Customs Act are mandatory. Section 3(1) of the Customs Tariff Act and Section 12 of the Customs Act require both imposition of the AD and its imposition at the "highest rate." Section 3(5) of the Customs Tariff Act requires that if the EAD is imposed it shall be levied at the "highest rate." Sections 3(2), 3(6) and 3(7) of the Customs Tariff Act are also mandatory, requiring that the AD and EAD shall be calculated on top of and in addition to the BCD.

48. Second, on account of these requirements, Section 12 of the Customs Act and Section 3(1), 3(2) and 3(7) of the Customs Tariff Act when imposed together with the BCD mandate a breach of GATT 1994 Article II:1(a) and (b) with respect to the AD. None of these measures provide the Central Government the discretion to act in a manner consistent with GATT 1994 Article II:1(a) or (b). Although Customs Notification 32/2003 specifies the rate of AD on alcoholic beverages, the statutory provisions mandating its imposition result in a breach regardless of the rate of AD specified in a customs notification. Because India already imposes the BCD on imports of alcoholic beverages at its WTO-bound rate, imposition of the AD at any rate in addition to the BCD results in ordinary customs duties in excess of India's WTO-bound rate.

49. If the AD were considered an ODC, Section 12 of the Customs Act and Section 3(1), 3(2) and 3(7) of the Customs Tariff Act would likewise necessarily breach of GATT 1994 Article II:1(b) because India does not specify any ODCs in its Schedule. These statutory provisions also mean that the AD is not justified under GATT Article II:2(a) because, as explained above, the AD is not "equivalent" to an internal charge and these provisions require that, where internal taxes are imposed on like domestic products at different rates, the rate of AD on imports shall be the highest of those rates. Therefore, Section 12 of the Customs Act and Section 3(1), 3(2) and 3(7) of the Customs Tariff Act also necessarily result in charges on imports that are not equivalent to any internal charge and are in excess of internal taxes on like domestic products.

50. The above is also true with respect to the EAD as well. If the EAD were considered an ODC, Section 12 and Section 3(5), 3(6) and 3(7) would necessarily constitute a breach of GATT Article 1994 Article II:1(b), because India does not specify any ODCs in its Schedule. These statutory provisions also mean that the EAD is not justified under GATT Article II:2(a) because, as explained above, the EAD is not "equivalent" to any internal charges and these provisions require that, where internal taxes are imposed on like domestic products at different rates, the rate of EAD on imports shall be the highest of those rates. Therefore, Section 12 of the Customs Act and Section 3(5), 3(6) and 3(7) of the Customs Tariff Act necessarily result in charges on imports that are not equivalent to any internal charge and are in excess of internal taxes on like domestic products.

51. The United States suggests, however, that the Panel need not engage in elaborate analysis of whether Section 12 of the Customs Act or Sections 3(1) and 3(5) of the Customs Tariff Act are mandatory verses discretionary as the U.S. claims concern the AD comprising a number of provisions of Indian law (including Section 3(1) of the Customs Act and Customs Notification 32/2003) that when imposed together with the BCD result in ordinary customs duties on alcoholic beverages that exceed India's WTO-bound rate in breach of GATT 1994 Article II:1(a) and (b). Similarly, the U.S. claims with respect to the EAD concern the EAD comprising a number of provisions of Indian law (including Section 3(5) and Customs Notification 19/2006) when imposed together with the BCD result in ordinary customs duties on imports that exceed India's WTO-bound rate in breach of GATT 1994 Article II:1(a) and (b). With respect to both the AD and the EAD, the provisions of Indian law comprising them, when applied together with the BCD, mandate a breach of GATT 1994 Article II:1(a) and (b). India itself acknowledges that the AD and the EAD are mandatory in so far as Customs Notification 32/2003 and 19/2006 specify the rates at which imports shall be liable to the AD and the EAD respectively.

VI. Conclusion

52. The United States respectfully requests the Panel to find that: (1) the AD is: (a) inconsistent with GATT 1994 Article II:1(b) as an ordinary customs duty that subjects imports of alcoholic beverages to ordinary customs duties in excess of those set forth in India's WTO Schedule; and (b) inconsistent with GATT 1994 Article II:1(a) as an ordinary customs duty that affords imports of alcoholic beverages from the United States less favorable treatment than that provided for in India's WTO Schedule; and (2) the EAD: (a) inconsistent with GATT 1994 Article II:1(b) as an ordinary customs duty that subjects imports, including alcoholic beverages and products listed in Exhibit US-1, to ordinary customs duties in excess of those set forth in India's WTO Schedule; and (b) inconsistent with GATT 1994 Article II:1(a) as an ordinary customs duty that affords import from the United States, including alcoholic beverages and products listed in Exhibit US-1, less favorable treatment than that provided for in India's WTO Schedule. Accordingly, the United States also respectfully requests that the Panel recommend, pursuant to Article 19.1 of the DSU, that India bring its measures into conformity with the covered agreements.