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INDIA - TARIFF TREATMENT ON CERTAIN GOODS

REQUEST FOR CONSULTATIONS BY JAPAN

The following communication, dated 10 May 2019, from the delegation of Japan to the delegation of India, is circulated to the Dispute Settlement Body in accordance with Article 4.4 of the DSU.

My authorities have instructed me to request consultations with the Government of India, pursuant to Articles 1 and 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes, and Article XXII:1 of the General Agreement on Tariffs and Trade 1994 ("GATT 1994") regarding the tariff treatment India accords to certain goods.

The Government of India has continued to adjust the rates of various indirect taxes, including custom duties, in support of policies seeking to foster domestic production and value addition. Especially since announcement of the "Make in India" campaign in September 2014, India has continuously and systematically raised import duties on a wide range of products in various sectors, such as electronics systems, mining, automobiles, renewable energy, defense manufacturing, food, processing, automobile components, and textiles and garments. These tariff treatments seem to have been implemented by the Government of India under the aforementioned policies, aiming at further incentivizing domestic value addition. Through those policies, among its wide range of tariff increases, India appears to subject a number of goods to import duties inconsistent with its Schedule of Concessions and Commitments annexed to the GATT 1994 ("India's Schedule"). This request for consultation addresses some of the tariff treatments which are, simultaneously, clearly in excess of bound rates and of substantial interest to Japan.

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 10 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. 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) Notification No. 56/2017—Customs, dated 30 June 2017¹;
- (e) Notification No. 57/2017—Customs, dated 30 June 2017;
- (f) Notification No. 91/2017—Customs, dated 14 December 2017; and
- (g) 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

¹ All the Notifications referred to in this request for consultations are issued by the Ministry of Finance (Department of Revenue).

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. 56/2017—Customs, dated 30 June 2017;
- (d) Notification No. 74/2018—Customs, dated 11 October 2018; and
- (e) 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;
- (d) the Finance Bill of 2018 and the Finance Act of 2018;
- (e) Notification No. 57/2017—Customs, dated 30 June 2017;
- (f) Notification No. 22/2018—Customs, dated 2 February 2018;
- (g) Notification No. 75/2018—Customs, dated 11 October 2018;
- (h) Notification No. 02/2019—Customs, dated 29 January 2019; and
- (i) 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 10% 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) Notification No. 24/2005—Customs, dated 1 March 2005;
- (d) Notification No. 132/2006—Customs, dated 30 December 2006;
- (e) Notification No. 11/2014—Customs, dated 11 July 2014;
- (f) Notification No. 50/2017—Customs, dated 30 June 2017;
- (g) Notification No. 58/2017—Customs, dated 30 June 2017;
- (h) Notification No. 6/2018—Customs, dated 2 February 2018;
- (i) Notification No. 36/2018—Customs, dated 2 April 2018;
- (j) Notification No. 38/2018—Customs, dated 2 April 2018;
- (k) Notification No. 76/2018—Customs, dated 11 October 2018; and
- (l) 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. 50/2017—Customs, dated 30 June 2017;
- (e) Notification No. 56/2017—Customs, dated 30 June 2017;
- (f) Notification No. 57/2017—Customs, dated 30 June 2017;
- (g) Notification No. 6/2018—Customs, dated 2 February 2018;
- (h) Notification No. 37/2018—Customs, dated 2 April 2018;
- (i) Notification No. 40/2018—Customs, dated 2 April 2018; and
- (j) any amendments, replacements, extensions, implementing measures or other related measures regarding the measures referred to above.

II. LEGAL BASIS FOR THE COMPLAINTS

Each of the foregoing measures appears to be inconsistent with India's obligations under Article II:1(a) and (b) of the GATT 1994, because:

- (i) India has failed to accord to the commerce of another Member treatment no less favourable than that provided for in the appropriate Part of India's Schedule;
- (ii) India has failed to exempt products which are the products of the territory of another Member, 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) 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.

The Government of Japan reserves the right to raise additional factual claims and legal matters during the course of the consultations.

The Government of Japan looks forward to receiving the Government of India's reply to this request for consultation and to agreeing upon a mutually acceptable date for the consultations.
