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Notice on Information gathering in relation to Information and Communication Technology goods subject to import duties by India and on possible EU commercial policy measures under Regulation (EU) No 654/2014

(C/2024/7450)

The European Commission is seeking information and views regarding the Union's economic interests in Information and Communication Technology (ICT) goods as affected by India's WTO-inconsistent duties applicable to EU imports into India, and on the possible use of Regulation (EU) No 654/2014. The European Commission will take the received input into account in considering possible proportionate commercial policy measures in response to India's WTO-inconsistent duties, should a mutually agreed satisfactory solution between the EU and India not be found.

Deadline to submit the information:

60 days from the date of publication of this notice in the Official Journal of the European Union. *[To be updated with precise date after OJ publication.]*

Why is the European Commission consulting:

The Commission is seeking information and views regarding the Union's economic interests in accordance with Article 9 of Regulation (EU) No 654/2014 of 15 May 2014 ('Enforcement Regulation') [1]. The input received should assist the Commission in assessing the parameters for the definition of possible commercial policy measures, in particular the necessity and proportionality of such measures. This procedural step does not prejudge any further EU action under the Enforcement Regulation.

Who is being consulted:

The Commission expects to receive input from entities whose interests are affected by India's WTO-inconsistent duties on certain ICT goods, as well as from those potentially affected by possible EU commercial policy measures in response.

Context:

Since 2014, India applies import duties in excess of the 0% bound rate in its Schedule of Concessions and Commitments annexed to the GATT 1994 on imports of certain goods in the information and communication technology sector. These goods include cell phones and telephone handsets, wires used for telecommunication, static converters and base stations. Applied duties go up to 20 % on imports from the EU.

Consultations with India at the WTO took place on 21 May 2019 but failed to resolve the issue. On 17 February 2020, the EU requested the establishment of a WTO panel. On 17 April 2023, the WTO panel concluded that India's import duties on the goods at issue are in breach of India's obligations under the GATT 1994.

Throughout 2023 the Commission and the Indian authorities engaged in bilateral contacts to discuss a possible solution, both on the substantive matter of the dispute and on procedural possibilities to provide for an alternative appeal arbitration, substituting for the non-functioning Appellate Body, however without success.

On 8 December 2023, India submitted an appeal notice to the WTO (i.e. to the non-functioning Appellate Body). India has not agreed to an alternative appeal arbitration in this case. These actions *de facto* prevent and block the final and binding resolution of the dispute in this case.

The Enforcement Regulation specifically provides for the enforcement of the EU's WTO rights in such a situation, notably, following the circulation of a WTO panel report upholding, in whole or in part, the claims brought by the EU, if an appeal under Article 17 of the WTO Dispute Settlement Understanding cannot be completed and if the third country has not agreed to interim appeal arbitration under Article 25 of the WTO Dispute Settlement Understanding.

[1] OJ L 189, 27.6.2014, p. 50, as amended by Regulation (EU) No 2021/167 of 10 February 2021.

In such cases, the Enforcement Regulation lays down rules and procedures to ensure an effective and timely exercise of the Union's rights to suspend or withdraw concessions or other obligations under international trade agreements, with the intention of responding to breaches by third countries of international trade rules which affect the Union's interests. The ultimate objective of action under the Regulation is to seek a satisfactory solution that restores benefits for the Union's economic operators.

Affected commercial interests:

India's imports of EU-origin ICT goods have been constrained as a result of the imposition of WTO-inconsistent duties, which provide a significant competitive advantage to domestically produced goods and create an incentive to gradually substitute imports.

In 2022-2024, India's imports of the relevant EU goods exceeded US$ 3 billion on average. The Commission has examined the trade effects of India's excessive duties focusing on tariff lines 8504 40 90 and 8517 62 90. These tariff lines traditionally represented the bulk of EU's exports to India in the relevant good categories. The value of lost EU exports as a result of India's duties on these tariff lines is estimated to fall within a bracket of €58-93 million annually. Input submitted pursuant to this information gathering exercise will be taken into account to complete the assessment of the affected commercial interests.

Commercial policy measures under the Enforcement Regulation:

Commercial policy measures under the Enforcement Regulation may take different forms and must be determined on the basis of the following criteria where relevant, in light of available information and of the EU's general interest:

— Effectiveness in inducing compliance of third countries with international trade rules;

— Potential to provide relief to economic operators within the EU, affected by third country measures;

— Availability of alternative sources of supply for the goods, concerned, in order to avoid or minimise any negative impact on downstream industries, contracting authorities or entities, or final consumers within the EU;

— Avoidance of disproportionate administrative complexity and costs in the application of the measures;

— Any specific criteria that may be established in international trade agreements.

In line with Article 5 of the Enforcement Regulation, in this particular case, it may be appropriate to consider the possible introduction or increase of import duties beyond MFN ([2]) and/or GSP ([3]) levels on specific imports from India. Import duties may be introduced or increased on one or several goods' categories and/or specific goods. The level of the duties would be determined in a manner to ensure proportionality with the trade losses suffered by EU exporters.

Use of information and confidentiality

To receive full consideration, written comments should be as detailed as possible and include supporting documents. At the end of this consultation you you will find a space in which you may upload supporting documents.

Under the terms of the Enforcement Regulation, information received pursuant to this notice shall be used only for the purpose for which it was requested.

([2]) Most-Favoured-Nation import duty rates, as per the EU's schedule of concessions and commitments annexed to the GATT 1994.

([3]) Generalised System of Preferences pursuant to Regulation (EU) No 978/2012 of the European Parliament and of the Council of 25 October 2012 applying a scheme of generalised tariff preferences and repealing Council Regulation (EC) No 732/2008, OJ L 303, 31.10.2012, p. 1.

Entities submitting input may request that information supplied be treated as confidential. In such cases, the input shall be accompanied by a non-confidential summary which presents the information in a generalised form or a statement of the reasons why the information cannot be summarised. If it appears that a request for confidentiality is not justified and if the supplier is unwilling either to make the information public or to authorise its disclosure in generalised or summary form, the information in question may be disregarded by the Commission. The confidential treatment will not preclude the disclosure of general information by the institutions of the EU and the authorities of the Member States. Such disclosure must take into account the legitimate interest of the parties concerned in not having their business secrets divulged.

Information received pursuant to the Enforcement Regulation may be subject to a request for access to documents under EU Regulation 1049/2001 on public access to European Parliament, Council and Commission documents. ([4]) In such cases, the request will be assessed against the conditions set out in Regulation 1049/2001 and in accordance with applicable data protection rules.

For more information or should you encounter any problems in filling out the form, please contact:

TRADE-REG-654-2014-INFOGATHERING@ec.europa.eu

([4]) Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ L 145, 31.5.2001, p. 43.

INFORMATION GATHERING FORM

Information about you:

1. Language of my contribution:

2. I agree to the personal data protection provisions.

3. First name

4. Surname

5. Email address

6. I am giving my contribution as:

(*If you are a law firm or consultant assisting companies responding to this consultation, please select the response 'company/business'.*)

7. Scope:

8. Level of governance:

— Local authority

— Local agency

9. Level of governance:

— Parliament

— Authority

— Agency

10. Organisation name:

11. Organisation size:

12. Transparency register number:

13. Country of origin:

Information requested:

The European Commission invites entities affected by India's WTO-inconsistent import duties on ICT goods to share:

14. up-to-date information on their exports and/or their imports into India from the EU under the Indian Tariff Codes that are listed in the table below.

8504 40 90 – Static converters: other
8517 13 00 – Smartphones
8517 14 00 – Other telephones for cellular networks or for other wireless networks
8517 61 00 – Base stations
8517 62 90 - Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus: other

8517 71 00 – Aerials and aerials reflectors of all kinds; parts suitable for use therewith
8517 79 10 – Populated, loaded or stuffed printed circuit boards
8517 79 90 – Parts of telephone sets, telephones for cellular networks or for others: other

15. up-to-date information on the value of their EU exports and/or their imports into India from the EU in relation to the same Indian Tariff Codes that are subject to customs duties.

8504 40 90 – Static converters: other
8517 13 00 – Smartphones
8517 14 00 – Other telephones for cellular networks or for other wireless networks
8517 61 00 – Base stations
8517 62 90 - Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus: other
8517 71 00 – Aerials and aerials reflectors of all kinds; parts suitable for use therewith
8517 79 10 – Populated, loaded or stuffed printed circuit boards
8517 79 90 – Parts of telephone sets, telephones for cellular networks or for others: other

In assessing the necessity and the parameters of possible commercial policy measures, the Commission is seeking input from entities affected by the Indian import duties as well as from entities potentially affected by possible EU commercial policy measures:

16. views and information they consider relevant with regard to the indicative categories of goods indicated in **the list below**, which are representative of some of India's main exports to the EU, which could be subject to possible EU commercial policy measures in response.

The indicative list below is aimed at facilitating the collection of input.

I. **Agriculture and fisheries**

HS code	Description
0307 43	Frozen cuttle fish and squid
0711 40	Cucumbers and gherkins provisionally preserved
0712 20	Dried onions
0804 50 00, 0811 90 11, 0811 90 31, 0811 90 85	Mangoes, fresh and frozen
0806 10	Fresh grapes
0901	Coffee
0902	Tea
0910 11, 0910 12	Ginger
1006	Rice
2401 10, 2401 20	Tobacco

II. **Chemicals and plastics**

HS code	Description
3204	Synthetic organic colouring matter, whether or not chemically defined; preparations based on synthetic organic colouring matter of a kind used to dye fabrics or produce colorant preparations; synthetic organic products of a kind used as fluorescent brightening agents or as luminophores, whether or not chemically defined (excl. preparations of heading 3207, 3208, 3209, 3210, 3213 and 3215)
3902 10	Polypropylene, in primary forms
3907 61, 3907 69	Poly(ethylene terephthalate), in primary forms

III. **Metals**

HS code	Description
7601 to 7616	Aluminium

IV. **Textiles and footwear**

HS code	Description
6101 to 6117 6201 to 6217	Apparel
6302	Bedlinen, table linen, toilet linen and kitchen linen of all types of textile materials (excl. floorcloths, polishing cloths, dishcloths and dusters)
6403	Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of leather (excl. orthopaedic footwear, skating boots with ice or roller skates attached, and toy footwear)

V. **Machinery and electrical equipment**

HS code	Description
8412 90	parts of non-electrical engines and motors, n.e.s.
8502 31	generating sets, wind-powered
8503 00	parts suitable for use solely or principally with electric motors and generators, electric generating sets and rotary converters, n.e.s.
8504 40	static converters

HS code	Description
8517 13	smartphones for wireless networks
8517 14	telephones for cellular networks or for other wireless networks (excl. line telephone sets with cordless handsets, and smartphones)
8517 62	Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus

VI. **Other**

HS code	Description
4011	new pneumatic tyres, of rubber
6907	ceramic flags and paving, hearth or wall tiles; ceramic mosaic cubes and the like, whether or not on a backing (excl. of siliceous fossil meals or similar siliceous earths, refractory goods, tiles specially adapted as table mats, ornamental articles and tiles specifically manufactured for stoves)

17. any other input they consider relevant with regard to other goods/areas.

18. If you wish to share any supporting documents, please upload them below and indicate to which questions they refer.

Please make sure you do not include any personal data in the files you upload if you want your data to remain anonymous.

19. Does your contribution include confidential information?

20. If yes, please clarify which parts of your contribution are confidential. In such cases, please provide a non-confidential summary of that information.

If it appears that a request for confidentiality is not justified and if you do not wish to authorise its disclosure in generalised or summary form, the Commission reserves its discretion to disregard the information provided.