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India – Certain Measures Relating to Solar Cells and Solar Modules (India–Solar Cells), DS456

Adopted	14 October 2016
Complainant	United States
Respondent	India
Third Parties	Brazil; Canada; China; European Union; Japan; Korea, Republic of; Malaysia; Norway; Russian Federation; Turkey; Ecuador; Saudi Arabia, Kingdom of; Chinese Taipei

Measures at Issue

This dispute concerned domestic content requirements (DCR measures) imposed under India's National Solar Mission. These requirements are imposed on solar power developers selling electricity to the government under the National Solar Mission. They concern solar cells and solar modules, which are used to generate solar power.¹

Main Adopted Findings of the Panel and Appellate Body

GATT Article III:4 and TRIMs Article 2.1

The panel found that the DCR measures are trade-related investment measures that 'require the purchase or use by an enterprise of products of domestic origin' and that 'are mandatory or enforceable under domestic law or under administrative rulings, or compliance with which is necessary to obtain an advantage'. The panel therefore found that the DCR measures are covered by paragraph 1(a) of the Illustrative List in the Annex to the TRIMs Agreement, and were thus inconsistent with Article III:4 of the GATT 1994 and also Article 2.1 of the TRIMs Agreement.² The panel also performed a separate and additional examination of the DCR measures under Article III:4 of the GATT 1994, and found that the DCR measures accord 'less favourable treatment' within the meaning of that provision.³

1 Panel Report, *India–Solar Cells*, para. 2.1.

2 *Ibid.* para. 7.73.

3 *Ibid.* para. 7.99.

GATT Article III:8(a)

The panel found that the DCR measures were not covered by the government procurement derogation in Article III:8(a) of the GATT 1994. This was so because the DCR measures were indistinguishable from the measures that the Appellate Body examined in *Canada–Renewable Energy/Feed-In Tariff Program*, which were found to not be covered by the same derogation.⁴ The Appellate Body upheld this finding.⁵

GATT Articles XX(j) and XX(d)

The panel rejected India's defense raised under Article XX(j) of the GATT 1994. The panel found that solar cells and modules are not 'products in general or local short supply' in India within the meaning of that provision.⁶ The panel also rejected India's defense raised under Article XX(d) of the GATT 1994, i.e. that the DCR measures secure India's compliance with 'laws or regulations' requiring it to take steps to promote sustainable development. With the exception of one of India's domestic measures, the panel found that all international and domestic instruments India offered in this context were not 'laws or regulations' within the meaning of Article XX(d). With respect to the one other domestic measure, the panel found that it was not a law or regulation in respect of which the DCR measures 'secure compliance'.⁷ The Appellate Body upheld the panel's findings.⁸

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⁴ *Ibid.* para. 7.135.

⁵ Appellate Body Report, *India – Solar Cells*, para. 5.41. Based on this conclusion, the Appellate Body further confirmed the panel's finding that the DCR measures were inconsistent with Article 2.1 of the TRIMs Agreement and Article III:4 of the GATT 1994. *Ibid.* para. 6.2(c).

⁶ Panel Report, *India – Solar Cells*, para. 7.265.

⁷ *Ibid.* para. 7.333.

⁸ Appellate Body Report, *India – Solar Cells*, paras. 5.90 and 5.151.