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INDIA – ADDITIONAL DUTIES ON CERTAIN PRODUCTS FROM THE UNITED STATES

REPORT OF THE PANEL

TABLE OF CONTENTS

1 COMPLAINT BY THE UNITED STATES.....	3
2 PANEL ESTABLISHMENT AND COMPOSITION	3
3 PANEL PROCEEDINGS.....	4
4 NOTIFICATION OF MUTUALLY AGREED SOLUTION	5

1 COMPLAINT BY THE UNITED STATES

1.1. On 3 July 2019, the United States requested consultations with India pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) and Article XXIII of the General Agreement on Tariffs and Trade 1994 (GATT 1994) with respect to India's imposition of additional duties on certain products originating in the United States (additional duties measure).¹

1.2. The United States alleged that India did not impose the additional duties measure on like products originating in the territory of any other WTO Member. Additionally, the United States alleged that India appeared to be applying rates of duty to United States' imports greater than the rates of duty set out in India's schedule of concessions. The United States thus claimed that the additional duties measure appeared to be inconsistent with Articles I:1 and II:1(a) and (b) of the GATT 1994.

1.3. Consultations were held on 1 August 2019 but failed to resolve the dispute.

2 PANEL ESTABLISHMENT AND COMPOSITION

2.1. On 19 September 2019, the United States requested the establishment of a panel pursuant to Article 6 of the DSU with standard terms of reference.²

2.2. In its panel request, the United States claimed that India's additional duties measure applied only to products originating in the United States. According to the United States, the additional duties measure did not apply to like products originating in the territory of any other WTO Member, and thus appeared to be inconsistent with the most-favoured-nation obligation in Article I of the GATT 1994. Additionally, the United States claimed that the additional duties measure resulted in rates of duty greater than the rates of duty set out in India's Schedule of Concessions, and thus appeared to be inconsistent with Article II of the GATT 1994.

2.3. The United States stated that the legal instruments through which India imposed the additional duties measure included:

- a. Government of India, Ministry of Finance, Department of Revenue, Notification No. 48/2018 – Customs, 20 June 2018;
- b. Government of India, Ministry of Finance, Department of Revenue, Notification No. 49/2018 – Customs, 20 June 2018;
- c. Government of India, Ministry of Finance, Department of Revenue, Notification No. 56/2018 – Customs, 3 August 2018;
- d. Government of India, Ministry of Finance, Department of Revenue, Notification No. 62/2018 – Customs, 17 September 2018;
- e. Government of India, Ministry of Finance, Department of Revenue, Notification No. 77/2018 – Customs, 1 November 2018;
- f. Government of India, Ministry of Finance, Department of Revenue, Notification No. 80/2018 – Customs, 15 December 2018;
- g. Government of India, Ministry of Finance, Department of Revenue, Notification No. 03/2019 – Customs, 29 January 2019;
- h. Government of India, Ministry of Finance, Department of Revenue, Notification No. 06/2019 – Customs, 26 February 2019;

¹ Request for consultations by the United States, WT/DS585/1.

² Request for the establishment of a panel by the United States, WT/DS585/2.

- i. Government of India, Ministry of Finance, Department of Revenue, Notification No. 11/2019 – Customs, 29 March 2019;
- j. Government of India, Ministry of Finance, Department of Revenue, Notification No. 14/2019 – Customs, 1 May 2019;
- k. Government of India, Ministry of Finance, Department of Revenue, Notification No. 15/2019 – Customs, 14 May 2019;
- l. Government of India, Ministry of Finance, Department of Revenue, Notification No. 16/2019 – Customs, 15 June 2019;
- m. Government of India, Ministry of Finance, Department of Revenue, Notification No. 17/2019 – Customs, 15 June 2019;

as well as any amendments, replacements, related measures, or implementing measures.

2.4. At its meeting on 28 October 2019, the Dispute Settlement Body (DSB) established a panel pursuant to the United States' request in document WT/DS585/2, in accordance with Article 6 of the DSU.³

2.5. The Panel's terms of reference are the following:

To examine, in the light of the relevant provisions of the covered agreements cited by the parties to the dispute, the matter referred to the DSB by the United States in document WT/DS585/2 and to make such findings as will assist the DSB in making the recommendations or in giving the rulings provided for in those agreements.⁴

2.6. Following the agreement of the parties, the Panel was composed on 7 January 2020 as follows⁵:

Chairperson: Mr Hugo Cayrús

Members: Mr Anthony Abad
Mr César Montaña Huerta

2.7. Brazil, Canada, China, the European Union, Guatemala, Indonesia, Japan, Malaysia, Mexico, Norway, the Russian Federation, Singapore, Switzerland, Chinese Taipei, Türkiye, Ukraine, and the Bolivarian Republic of Venezuela reserved their rights to participate in the Panel proceedings as third parties.

3 PANEL PROCEEDINGS

3.1. On 7 February 2020, following consultations with the parties, the Panel adopted its Working Procedures and partial timetable up to the first substantive meeting with the parties. Following consultations with the parties, the Panel revised its timetable on 5 May 2020, 9 June 2020, and 4 November 2020.

3.2. In accordance with this timetable, the United States submitted its first written submission on 27 February 2020, and India submitted its first written submission on 30 April 2020. Also on 30 April 2020, India submitted a separate request for a preliminary ruling. The United States responded to India's request for a preliminary ruling on 26 May 2020, and India submitted comments on the United States' response on 24 June 2020. The United States filed a further submission responding to India's comments on 8 July 2020.

3.3. The Panel received third-party written submissions on 19 May 2020 from China, the European Union, Japan, Norway, the Russian Federation, Switzerland, Türkiye, and Ukraine. Further, on 2 June 2020, the Panel received additional third-party written submissions concerning India's

³ DSB, Minutes of the meeting held on 28 October 2019, WT/DSB/M/436, para. 6.7.

⁴ Constitution note of the Panel, WT/DS585/3, para. 2.

⁵ Constitution note of the Panel, WT/DS585/3, para. 3.

request for a preliminary ruling from the European Union, the Russian Federation, Türkiye, and Ukraine.⁶

3.4. Due to the COVID-19 pandemic and related restrictions on travel and in-person meetings, it was not possible to physically meet with the parties at the WTO premises on the dates scheduled in the Panel's timetable. In consultation with the parties, the Panel postponed the first substantive meeting several times to a date to be determined.

3.5. On 12 January 2023, the Panel wrote to the parties seeking their views "on how they see the way forward in these proceedings". In response to further communications from the Panel on this issue, the parties indicated on several occasions that they were conferring on the way forward and engaging in discussions with respect to reaching a positive resolution of this dispute, and that they would benefit from additional time to provide their views to the Panel on this issue. The Panel agreed to those requests.

4 NOTIFICATION OF MUTUALLY AGREED SOLUTION

4.1. By a letter dated 13 July 2023, pursuant to Article 3.6 of the DSU, the parties notified the DSB that they had reached a mutually agreed solution to the matter raised in this dispute. This letter was circulated as document WT/DS585/7 on 17 July 2023. Also on 13 July 2023, the parties jointly wrote to the Panel advising it of their mutually agreed solution.

4.2. The Panel takes note of the mutually agreed solution between the parties to the dispute and of Article 3.7 of the DSU, which provides that "[t]he aim of the dispute settlement mechanism is to secure a positive solution to a dispute. A solution mutually acceptable to the parties to a dispute and consistent with the covered agreements is clearly to be preferred."

4.3. The Panel also takes note of Article 12.7 of the DSU, which provides that "[w]here a settlement of the matter among the parties to the dispute has been found, the report of the panel shall be confined to a brief description of the case and to reporting that a solution has been reached". Accordingly, the Panel concludes its work by reporting that a mutually agreed solution to this dispute has been reached between the parties.

⁶ Japan also sent a communication to the Panel advising that its third-party written submission of 19 May 2020 contained its comments on India's request for a preliminary ruling.