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to demonstrate how a Member could justify the use of import substitution measures – "essentially protectionist policies" – under the chapeau of Article XX.<sup>879</sup>

7.389. We have already found that India has failed to demonstrate that the DCR measures fall within the scope of Articles XX(j) or XX(d). We further note that the arguments that India advances in connection with the requirements of the chapeau of Article XX<sup>880</sup> are essentially a repetition of the arguments that it presents in relation to the issue of whether solar cells and modules are "essential to the acquisition or distribution of products in general or local short supply" under Article XX(j), and "necessary to secure compliance with laws or regulations" under Article XX(d). As a consequence, we have already addressed the substance of these arguments and factual assertions in the preceding sections of this Report.

7.390. Based on the foregoing, we see no compelling reason to proceed with any further examination of the DCR measures under the chapeau of Article XX of the GATT 1994, and we therefore refrain from doing so.

## 8 CONCLUSIONS AND RECOMMENDATION

8.1. The measures at issue in this dispute (the DCR measures) are the domestic content requirements imposed by India under Phase I (Batch 1), Phase I (Batch 2), and Phase II (Batch 1) of the National Solar Mission, which are incorporated or otherwise reflected in various documents within each Batch, including the *Guidelines* and *Request for Selection* documents, the model power purchase agreement, and the individually executed power purchase agreements between Indian government agencies and solar power developers.

8.2. For the reasons set forth in this Report, the Panel concludes that:

- a. the DCR measures are inconsistent with Article 2.1 of the TRIMs Agreement and Article III:4 of the GATT 1994, and are not covered by the derogation in Article III:8(a) of the GATT 1994; and
- b. the DCR measures are not justified under the general exceptions in Article XX(j) or Article XX(d) of the GATT 1994.

8.3. Under Article 3.8 of the DSU, in cases where there is an infringement of the obligations assumed under a covered agreement, the action is considered *prima facie* to constitute a case of nullification or impairment. We conclude that, to the extent that the measures at issue are inconsistent with Article 2.1 of the TRIMs Agreement and Article III:4 of the GATT 1994, they have nullified or impaired benefits accruing to the United States under those agreements.

8.4. Pursuant to Article 19.1 of the DSU, we recommend that India bring its measures into conformity with its obligations under the TRIMs Agreement and the GATT 1994.

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<sup>879</sup> Japan's third-party submission, para. 23.

<sup>880</sup> See paras. 7.384. to 7.385.