

INDIA – SOLAR CELLS¹

(DS456)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	<i>United States</i>	<i>GATT Arts. III:4, III:8(a), XX(d), XX(j)</i> <i>TRIMs Art. 2.1</i>	Establishment of Panel	<i>23 May 2014</i>
			Circulation of Panel Report	<i>24 February 2016</i>
Respondent	<i>India</i>		Circulation of AB Report	<i>16 September 2016</i>
			Adoption	<i>14 October 2016</i>

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Domestic content requirements (DCR measures) imposed by India in the initial phases of India's Jawaharlal Nehru National Solar Mission (NSM), on solar power developers selling electricity to the government.
- **Product at issue:** Solar cells and/or modules used to generate solar power.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **GATT Art. III:4 and TRIMS Art 2.1 (national treatment):** The Appellate Body upheld the Panel's finding that India's DCR measures were inconsistent with WTO non-discrimination obligations under Art. III:4 and Art. 2.1.
- **GATT Art. III:8(a) (government procurement derogation):** The Appellate Body concluded that the Panel was properly guided by its report in *Canada – Renewable Energy* in finding that the measures were not covered by the derogation under Art. III:8(a) because the product being procured (electricity) was not in a “competitive relationship” with the product discriminated against (solar cells and modules). The Appellate Body rejected India's claim that the Panel acted inconsistently with DSU Art. 11 in assessing India's arguments regarding the scope of Art. III:8(a).
- **GATT Art. XX(d) (general exceptions – necessary to secure compliance with laws):** The Appellate Body agreed with the Panel's finding that India had not demonstrated that its measures were justified under Art. XX(d). In the context of this provision, India neither demonstrated that the domestic instruments being challenged set out a rule to ensure ecologically sustainable growth, nor did it prove that the international instruments identified fell within the scope of Art. XX(d). According to the Appellate Body, identifying a “rule” that falls within the scope of “laws or regulations” under Art. XX(d) may involve considering factors such as the degree of normativity of the domestic or international instrument and the extent to which it operates to set out a rule of conduct or course of action that is to be observed within the domestic legal system of a Member.
- **GATT Art. XX(j) (general exceptions – essential to acquisition or distribution of products in general or local short supply):** The Appellate Body upheld the Panel's finding that solar cells and modules were not “products in general or local short supply” within the meaning of Art. XX(j), and that the DCR measures were not justified under this provision. According to the Appellate Body, an assessment of whether products are in short supply should give consideration to all relevant factors, including the quantity of the product made available through domestic and international sources, potential price fluctuations in the relevant market, and the purchasing power of foreign and domestic consumers.

¹ *India – Certain Measures Relating to Solar Cells and Solar Modules*