



18 December 2018

(18-7990)

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Original: English

INDIA – CERTAIN MEASURES ON IMPORTS OF IRON AND STEEL PRODUCTS

NOTIFICATION OF AN APPEAL BY INDIA UNDER ARTICLES 16.4 AND 17 OF THE UNDERSTANDING ON RULES AND PROCEDURES GOVERNING THE SETTLEMENT OF DISPUTES (DSU), AND RULE 20 OF THE WORKING PROCEDURES FOR APPELLATE REVIEW

The following communication, dated 14 December 2018, from the delegation of India, is being circulated to Members.

1. Pursuant to Article 16.4 and Article 17.1 of the *DSU*, India hereby notifies to the Dispute Settlement Body its decision to appeal to the Appellate Body certain issues of law and legal interpretations covered in the report of the Panel in *India – Certain Measures on Imports of Iron and Steel Products* (WT/DS518/R). Pursuant to Rule 23(1) of the Working Procedures for Appellate Review, India is simultaneously filing this Notice of Appeal with the Appellate Body Secretariat.

2. For the reasons to be further elaborated in its submissions to the Appellate Body, India appeals, and requests the Appellate Body to reverse or declare of no legal effect the findings and conclusions of the Panel with respect to the errors of law and legal interpretations contained in the Panel Report described below:

a. The Panel erred in stating that there are "Lingering Effects" of the Measure at issue

3. India appeals the finding of the Panel that the impugned safeguard measures applied by India on Imports of Iron and Steel Products continue to have "lingering effects" despite its expiry. In this regard, India submits that the Panel erred on the grounds that: (a) The Panel did not provide sufficient justification for its findings and recommendations; (b) The Panel has mischaracterized the precedents it relied on to make such a ruling; (c) The Panel's recommendation results in remedies under the DSU having retrospective effect; and (d) The Panel overlooked the standard of burden of proof required to establish the lingering effects.

4. India requests the Appellate Body to reverse the findings of the Panel that the impugned safeguard measures applied by India on Imports of Iron and Steel Products continue to have "lingering effects" despite its expiry. India also requests the Appellate Body to overrule the recommendation of the Panel to the DSB that to the extent the measure continues to have any effects, India bring it into conformity with its obligations under those agreements.

b. The Panel's finding with respect to the obligations incurred under the GATT 1994 and the effect of the obligations incurred under the GATT 1994 is erroneous

5. India challenges the conclusion of the Panel that India has not demonstrated that the measure at issue resulted in a suspension of its obligations under Article XXIV of the GATT 1994, specifically under Articles XXIV:4, XXIV:8, and XXIV:12. India also challenges Panel's conclusion that the Indian competent authority failed to provide a reasoned and adequate explanation with regard to the effect of the relevant obligations of the GATT 1994, more specifically the finding of the Panel with respect to the Article II:1(b) and Article XXIV of GATT 1994. India believes that the Panel, created an artificial distinction while interpreting the meaning of obligation incurred under GATT to

state that India has not demonstrated that the measure at issue resulted in a suspension of its obligations under Article XXIV of the GATT 1994. Further, with respect to the conclusion of the Panel with respect to effect of India's obligation under Article II:1(b) and Article XXIV of GATT 1994, the Panel failed to appreciate that India incurred obligations under Article II:1(b) and Article XXIV GATT, 1994 including tariff concessions which triggered increase in imports and subsequent serious injury to Indian domestic Industry.

6. India requests the Appellate Body to reverse the findings of the Panel that India has not demonstrated that the measure at issue resulted in a suspension of its obligations under Article XXIV of the GATT 1994, specifically under Articles XXIV:4, XXIV:8, and XXIV:12. India also request the Appellate Body to overrule the conclusion of the Panel that Indian competent authority failed to provide a reasoned and adequate explanation with regard to the effect of the relevant obligations of the GATT 1994, more specifically the finding of the Panel with respect to the Article II:1(b) and Article XXIV of GATT 1994.

c. The Panel's Findings that India failed to provide a reasoned explanation that the increase in imports of the product concerned into India occurred as a result of unforeseen developments are erroneous

7. India further challenges the finding of the Panel that India violated Article XIX of GATT 1994 on the ground that India failed to provide a reasoned explanation that the increase in imports of the product concerned into India occurred as a result of unforeseen developments. While giving its conclusion, the Panel has basically suggested that India was required to do a country-wise and a product wise analysis. The Panel has also stated that the timing of the unforeseen developments is a relevant consideration for showing that the unforeseen developments resulted in an increase in imports. India submits that the findings of the Panel besides being erroneous, cast an additional and unwarranted burden on India which is not expressly mentioned in GATT 1994 or the Agreement on Safeguards.

8. India requests the Appellate Body to reverse the conclusion of the Panel that India violated Article XIX of GATT 1994 on the ground that India failed to provide a reasoned explanation that the increase in imports of the product concerned into India occurred as a result of unforeseen developments.

d. The Panel erred in stating that the Annualization of data done by Indian Authority was inconsistent with Article 4.2(a) and 4.2(b) of the Agreement on Safeguards

9. India also challenges the conclusion of the Panel that the safeguard measures imposed by India was inconsistent with Article 4.2(a) and 4.2(b) of the Agreement on safeguards on the ground that Indian competent authority failed to base its analysis of trends in imports and trends in injury factors on objective evidence, when it relied at least partly on annualized data. India considers that the findings of the Panel are erroneous because: (a) Annualization is a widely used statistical tool and its usage does not require a "compelling explanation" as long as there is no evidence of bias; and (b) the lack of explanation regarding annualization is not a violation of Article 4.2(a) of the Agreement on Safeguards.

10. India request the Appellate Body to reverse the decision of the Panel that the safeguard measures imposed by India was inconsistent with Article 4.2(a) and 4.2(b) of the Agreement on safeguards on the ground that Indian competent authority failed to base its analysis of trends in imports and trends in injury factors on objective evidence, when it relied at least partly on annualized data.

e. The Panel erred in stating that Indian competent authority failed to properly examine the price competition between imported and domestic products, when it based its price comparison on the average unit price of imported products and the average unit price of the like or directly competitive domestic products

11. India challenges the finding of the Panel that Indian competent authority failed to properly examine the price competition between imported and domestic products, when it based its price comparison on the average unit price of imported products and the average unit price of the like or directly competitive domestic products. India believes that while giving its conclusion, the Panel

failed to appreciate that the Agreement on Safeguards does not at all envisage a comparison of prices as required in Article 2.4 of the Anti-Dumping Agreement. The Panel failed to appreciate that agreement on safeguard does not require a division/categorization of every subset of a product with respect to their pricing.

12. The Appellate Body is requested to reverse the conclusion of the Panel that Indian competent authority failed to properly examine the price competition between imported and domestic products, when it based its price comparison on the average unit price of imported products and the average unit price of the like or directly competitive domestic products.

f. The Panel's finding with respect to the Non-attribution analysis is erroneous

13. India appeals against the conclusion of the Panel with respect to the non-attribution analysis in as much as it is based on the erroneous conclusion with respect to the determination of "relevance" of "other factors". India believes that the Panel failed to consider that with regard to the "other factors", the text of Article 4.2(a) specifically empowers the Competent Authority to make a judgment whether a particular factor is relevant or not, based on the tests of its being "of an objective and quantifiable nature" and "having a bearing on the situation" of the domestic industry. It is only after the Competent Authority decides about the "relevance" of a factor applying the twin criteria that the obligation of carrying out the non-attribution analysis in terms of the second part of Article 4.2(b) shall arise.

14. India requests the Appellate Body to declare the finding of the Panel that India violated Article 4.2(b) of the Agreement on Safeguards in as much as the finding of the Panel is based on erroneous conclusion with respect to the non-attribution analysis regarding the determination of "relevance" of "other factors" erroneous.

15. India notes that the above grounds of appeal are without prejudice to the arguments developed in India's Appellant's Submission.
