

## INTERNATIONAL TRADE

### WTO RULES AGAINST INDIA ON INTERNATIONAL TRADE NORMS GRANTING A TEMPORARY WIN FOR THE UNITED STATES

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On October 31, 2019, the WTO Dispute Settlement Panel ruled that certain export schemes run by India violate Articles 3.1(a) and 3.2 of the Subsidies and Countervailing Measures Agreement (SCM Agreement). The U.S. government brought the challenge in May 2018, alleging that export subsidies provided by India under five sets of measures, including: the Export Oriented Units, Electronics Hardware Technology Park, and Bio-Technology Park (EOU/EHTP/BTP) Schemes; the Export Promotion Capital Goods (EPCG) Scheme; the Special Economic Zones (SEZ) Scheme; a collection of duty stipulations described in these proceedings as the Duty-Free Imports for Exporters Scheme (DFIS); and the Merchandise Exports from India Scheme (MEIS); were in violation of the prohibition on export subsidies set forth under the SCM Agreement. It claimed that the subsidies were hurting American companies and that the subsidies run by the Indian Government were giving undue advantage to Indian companies. "According to the Indian Government, thousands of Indian companies are receiving subsidies totaling over \$7 billion annually from these programs, and India has increased the size and scope of these programmes," the office of U.S. Trade Representative said in a statement. The United States also said that India gives prohibited subsidies to producers of steel products, pharmaceuticals, chemicals, information technology products, textiles, and apparel.

The WTO's [website](#) states that India argued before the Panel that the special and differential provisions of Article 27 of the SCM Agreement excluded it from the application of the prohibition on export subsidies as a developing country. However, the Panel found that India had graduated from this threshold since its per capita gross national product had crossed \$1,000 per annum, and that no further transition period under Article 27.2(b) is available to India after graduation. The website goes on to state that India also argued, on the basis of a legal technicality in the SCM Agreement, that in four of the five schemes at issue (i.e. all the challenged schemes except for the SEZ Scheme), it can under certain conditions utilize the exemption from or remission of duties or taxes on an exported product. On these grounds, the Panel rejected the United States' claims regarding certain challenged customs duty exemptions under DFIS, and regarding the challenged exemption from excise duties under the EOU/EHTP/BTP Schemes. However, the Panel found that the remaining measures under the four schemes did not meet the conditions thereof, and therefore India was required to withdraw the subsidies under all four schemes.

Overall, the Panel gave India varying deadlines with respect to each

of the five schemes (about 3-6 months) to withdraw the prohibited subsidies. India has the right to appeal this ruling and more likely than not, it will appeal the decision before an appellate body of the WTO. In an interesting twist, the Appellate Body of the WTO may cease its operations indefinitely in December due to insufficient number of confirmed judges, and if that continues before India's appeal can be heard, it will delay the U.S.'s authority to impose any sanctions against India.

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