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**INDIA – CERTAIN MEASURES RELATING TO SOLAR CELLS
AND SOLAR MODULES**

RECOURSE TO ARTICLE 22.6 OF THE DSU BY INDIA

The following communication, dated 3 January 2018, from the delegation of India to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 22.6 of the DSU.

Regarding the United States' recourse to Article 22.2 of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU") in the dispute *India – Certain Measures Relating to Solar Cells and Solar Modules (DS456)* in their letter dated 19 December 2017, my authorities have instructed me to emphasize that India has brought the measures at issue into conformity with the DSB's rulings and recommendations and that, therefore, the United States' request for suspension of concessions or other obligations has no legal basis. India has filed its status report dated 14 December 2017 (DS/456/17) wherein it has informed the DSB that it has ceased to impose any measures found inconsistent with the DSB's rulings and recommendations. Accordingly India strongly believes that the DSB cannot grant authorization to suspend concessions in any amount where the Member concerned has come into compliance with the DSB rulings and recommendations.

India underscores that the United States' request is not a valid request under Article 22.2 of the DSU. Article 22.2 envisages that in the event a Member fails to comply with the recommendations and rulings within a reasonable period of time as agreed/determined under Article 21.3 of the DSU, such Member shall, if so requested, and no later than the expiry of the reasonable period of time, enter into negotiations with the party invoking the dispute settlement procedures, with a view to developing mutually agreed compensation. The DSU therefore clearly envisages the rules for compensation or the suspension of concessions in the event of non-implementation of the DSB rulings and recommendations, and mandates the parties to enter into negotiations to agree on mutually acceptable compensation.

The United States has initiated no such procedure, and hence India fails to understand United States' concerns with India's compliance. Only when satisfactory compensation has not been agreed within 20 days after expiry of the reasonable period of time can a party invoking dispute settlement procedures request authorization to suspend the application of concessions or other obligations under the covered agreements under Article 22.2 of the DSU. Clearly, the United States' recourse to Article 22.2 of the DSU seeking suspension of concessions, fails to take into account this critical step, which is a necessary pre-condition to any request to the DSB for suspension. In the absence of initiation of any such discussions, the United States' request under Article 22.2 of the DSU is an invalid one, and needs to be withdrawn by the United States.

Not only does the United States' request fail the requisite pre-conditions of Article 22.2 of the DSU, but it also fails to specify any element of non-compliance and as well as the proposed level of suspension. India stands severely prejudiced by the vagueness and opaqueness of the United States' request under Article 22.2 of the DSU, since the United States' request simply refers to Article 22.2 of the DSU in the abstract, without any indication as to why it considers India to not have complied with the DSB rulings and recommendations, or what is the level of suspension the United States considers would be equivalent to the purported level of nullification or impairment, if any. India therefore strongly objects to the suspension of concessions or other obligations under

the General Agreement on Tariffs and Trade 1994 proposed by the United States in its letter dated 19 December 2017.

Further India submits that the United States' request under Article 22.2 of the DSU is not a valid one, and ignores the basic substantive and procedural requirements necessary for triggering the provision. If the United States has any disagreement as to whether there has been compliance, the fact of non-compliance must first be established in accordance with the procedures of Article 21.5 of the DSU. This has been the consistent practice of WTO Members.

In fact, Article 21.5 of the DSU constitutes the proper procedure for adjudicating a disagreement as to the measures taken by a Member to implement the DSB's recommendations and rulings. Considering that the suspension of concessions is a remedy of last resort under the DSU, it is appropriate that the Member against which suspension of concessions is being sought should have the opportunity to show that it has removed the measure found to be inconsistent by the DSB in the original proceedings. India therefore submits that the determination of the consistency of measures implementing the rulings and recommendations of the DSB must take place under Article 21.5 of the DSU before the level of suspension of concessions or obligations can be assessed under Article 22 of the DSU. In fact India is confident that proceedings under Article 21.5 of the DSU will lay to rest any doubts as regards India's compliance with the rulings and recommendations of the DSB, and will thereby negate the need for any proceedings under Article 22.2 of the DSU in the first place.

In view of the above, India strongly objects to the US request of 19 December 2017 seeking authorisation from DSB for suspension of concessions or other obligations and requests that this objection may be considered in the special session of the DSB scheduled for 12 January 2018.

India also requests the WTO Secretariat to circulate this communication to all members of the DSB.
