

1. INTRODUCTION

1.1 India and the United States each appeals certain issues of law and legal interpretations developed in the Panel Report, *United States – Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India*¹ (Panel Report). The Panel was established² to consider a complaint by India³ with respect to the imposition, by the United States, of countervailing duties on certain hot-rolled carbon steel flat products from India.

1.1 Panel Proceedings

1.2 India challenged two types of measures related to the imposition by the United States of countervailing duties on imports of certain hot-rolled carbon steel flat products from India, namely: (i) the relevant legislation; and (ii) the specific determinations leading to the imposition of countervailing duties. First, India brought claims against certain provisions of the United States Tariff Act of 1930⁴ (US Tariff Act) as codified in the *United States Code*, Title 19, Chapter 4, Subtitle IV (US Statute)⁵, and of the *United States Code of Federal Regulations*, Title 19, Volume 3, Chapter III, Part 351 (US Regulations).⁶ Second, India challenged several measures related to the United States' original investigation initiated in December 2000, the 2002, 2004, 2006, 2007, and 2008 administrative reviews, and the 2006 sunset review. For both these types of measures, India also challenged their amendments, replacements, implementing acts, or any other related measure in connection with them.⁷ The measures at issue in this dispute are set forth in greater detail at paragraphs 2.1 and 2.2 of the Panel Report.

1.3 India claimed that the US measures were inconsistent with several of the obligations under the Agreement on Subsidies and Countervailing Measures (SCM Agreement), the General Agreement on Tariffs and Trade 1994 (GATT 1994), and the Marrakesh Agreement Establishing the World Trade Organization (WTO Agreement). These obligations pertain to the determination of the existence of a subsidy, specificity, initiation of investigations, evidence, requirements for consultations, calculation of benefit, determination of injury, imposition and collection of anti-dumping duties, review of countervailing

¹ WT/DS436/R, 14 July 2014.

² At its meeting on 31 August 2012, the Dispute Settlement Body (DSB) established a panel pursuant to the request of India in document WT/DS436/3, in accordance with Article 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU). (Panel Report, para. 1.3)

³ Request for the Establishment of a Panel by India, WT/DS436/3.

⁴ United States Tariff Act of 1930, Public Law No. 1202-1527, 46 Stat. 741.

⁵ Specifically, Sections 1677(7)(G); 1675a(a)(7); 1675b(e)(2); and 1677e(b).

⁶ Specifically, Sections 351.511(a)(2)(i)-(iv); and 351.308.

⁷ Panel Report, paras. 2.1 and 2.2.

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duties, and public notice requirements.⁸ In addition, pursuant to Article 19 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), India requested the Panel to suggest two specific ways for the United States to bring its measures into conformity with the three Agreements: (i) that the United States repeal or amend the impugned provisions of the law; and (ii) that the United States withdraw the countervailing duty on hot-rolled carbon steel flat products from India.⁹ India's claims and requests for findings and recommendations are set forth in greater detail at paragraphs 3.1 and 3.2 of the Panel Report.

1.4 On 3 May 2013, the United States submitted to the Panel two requests for preliminary rulings concerning the consistency of India's panel request with Article 6.2 of the DSU. The United States' first request concerned India's claim under Article 11 of the SCM Agreement, which was set out in India's panel request as follows: "[T]he determinations made, and the countervailing measures imposed, by the United States are inconsistent with ... Article 11 of the [SCM Agreement] because no investigation was initiated or conducted to determine the effects of new subsidies included in the administrative reviews".¹⁰ The United States argued that India's claims relating to the alleged initiation of an investigation despite the insufficiency of evidence in the domestic industry's written application, as contained in India's first written submission, fell outside the Panel's terms of reference. The United States' second request concerned India's claim that the United States' 2013 sunset review was inconsistent with Article 12.7 of the SCM Agreement. The United States argued that, because India had not explicitly referred to the 2013 sunset review in its panel request, India's claim in this respect fell outside the Panel's terms of reference. On 21 May 2013, in advance of the first substantive meeting of the Panel with the parties, India provided a written response to the United States' requests for preliminary rulings. On 16 August 2013, the Panel issued preliminary rulings to the parties to the dispute. The contents of the Panel's preliminary rulings are reproduced in Section 1.3.3 of the Panel Report.

1.5 The Panel Report was circulated to Members of the World Trade Organization (WTO) on 14 July 2014. With respect to the United States' requests for preliminary rulings, the Panel found that:

- a. the 2013 sunset review was within the Panel's terms of reference;
- b. India's claim that the United States acted inconsistently with Article 11.1 of the SCM Agreement by failing to "initiate" an investigation into new subsidies was within the Panel's terms of reference; and

⁸ Panel Report, para. 3.1.

⁹ Panel Report, para. 3.2.

¹⁰ WT/DS436/3.

- c. India's claims that the United States acted inconsistently with Articles 11.1, 11.2, and 11.9 of the SCM Agreement in connection with the alleged initiation of an investigation, despite the insufficiency of evidence in the domestic industry's written application, fell outside the Panel's terms of reference.¹¹

1.6 In connection with the provision of high-grade iron ore by the National Mineral Development Corporation (NMDC), the Panel upheld two of India's claims. These claims related to the determination of specificity by the US Department of Commerce (USDOC), and its methodology in the calculation of benefit to the recipients. Specifically, the Panel found that the United States acted inconsistently with:

- a. Article 2.1(c) of the SCM Agreement by failing to take account of all the mandatory factors in its determination of *de facto* specificity regarding the NMDC¹²; and
- b. Article 14(d) of the SCM Agreement by failing to consider the relevant domestic pricing information for use as Tier I benchmarks¹³, in respect of which the United States sought to rely on *ex post* rationalization.¹⁴

1.7 In connection with the Captive Mining of Iron Ore Programme and the Captive Mining of Coal Programme¹⁵, the Panel upheld three claims by India. These claims related to, *inter alia*, the USDOC's appreciation of the evidence, its determination that the Government of India (GOI) provided a financial contribution by providing iron and coal for less than adequate remuneration, and its methodology in the calculation of benefit to the recipients. In particular, the Panel found that the United States acted inconsistently with:

¹¹ Panel Report, para. 8.1. See also paras. 1.42 and 1.43.

¹² Panel Report, para. 8.2.a.i. See also para. 7.193.

¹³ Section 351.511(a)(2)(i)-(iii) of the US Regulations contains the price benchmarking mechanism to be applied by the USDOC when determining whether or not the provision of goods by a government or public body confers a benefit on the recipient. The mechanism provides for three tiers against which the government price is to be compared: Tier I – actual market-determined price; Tier II – world market price; and Tier III – consistency with market principles. (See Panel Report, para. 7.15)

¹⁴ Panel Report, para. 8.2.a.ii. See also para. 7.194.

¹⁵ These "captive mining" programmes refer to those in respect of which the Government of India (GOI) provided iron ore and coal through the grant of the right to mine those minerals. The mining rights at issue were known as "captive mining rights" in that they allowed the beneficiary an exclusive right to mine iron ore or coal for their own use in the production of steel. With particular respect to the coal mining rights, these were granted under the Coal Mining Nationalization Act. The Panel addressed India's challenge of the USDOC's determination that Tata Iron and Steel Company Limited, which later became known as Tata Steel Limited (Tata), was a beneficiary of the Captive Mining of Coal Programme. (See Panel Report, paras. 7.220, 7.233, 7.240, 7.242 (and fn 435 thereto), and 7.245-7.252)

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- a. Article 12.5 of the SCM Agreement, by failing to determine the existence of the Captive Mining of Iron Ore Programme on the basis of accurate information¹⁶;
- b. Article 1.1(a)(1)(iii) of the SCM Agreement, by determining without sufficient evidentiary basis that the GOI granted Tata Steel Limited (Tata) a financial contribution in the form of a captive coal mining lease under the Captive Mining of Coal Programme/Coal Mining Nationalization Act¹⁷; and
- c. Article 14(d) of the SCM Agreement, in connection with the USDOC's rejection of certain domestic pricing information when assessing benefit in respect of mining rights for iron ore.¹⁸

1.8 Additionally, the Panel upheld several more of India's claims. These claims related to, *inter alia*, the US International Trade Commission's (USITC) assessment of injury including its use of cross-cumulation¹⁹, its application of "facts available", and its failure to observe its public notice obligations. In particular, the Panel found that the United States acted inconsistently with:

- a. Article 15.3 of the SCM Agreement, with respect to Section 1677(7)(G) of the US Statute "as such" and "as applied" in the original investigation at issue, in connection with the "cross-cumulation" of the effects of imports that are subject to a countervailing duty investigation with the effects of imports that are not subject to simultaneous countervailing duty investigations²⁰;
- b. Articles 15.1, 15.2, 15.4, and 15.5 of the SCM Agreement, with respect to Section 1677(7)(G) of the US Statute "as such" and "as applied" in the original investigation at issue, in connection with injury assessments based on, *inter alia*, the volume, effects, and impact of non-subsidized, dumped imports²¹;
- c. Article 12.7 of the SCM Agreement, by applying "facts available" devoid of any factual foundation in connection with several determinations concerning Jindal Steel Works (JSW), Vijayanagar Minerals Pvt. Ltd. (VMPL), and Tata²²; and
- d. Article 22.5 of the SCM Agreement, by failing to provide adequate notice of the USDOC's consideration of certain in-

¹⁶ Panel Report, para. 8.2.b.i. See also paras. 7.217 and 7.265.

¹⁷ Panel Report, para. 8.2.b.ii. See also paras. 7.252 and 7.265.

¹⁸ Panel Report, para. 8.2.b.iii. See also paras. 7.263 and 7.265.

¹⁹ The Panel defined "cross-cumulation" as the cumulative assessment of the effects of imports that are subject to a countervailing duty investigation with the effects of imports that are subject to only a parallel anti-dumping investigation. (See Panel Report, para. 7.339)

²⁰ Panel Report, para. 8.2.c. See also para. 7.356.

²¹ Panel Report, para. 8.2.d. See also para. 7.369.

²² Panel Report, para. 8.2.e. See also paras. 7.452, 7.456, 7.465, 7.468, 7.471, 7.473, and 7.475.

country benchmarks when assessing benefit conferred by the NMDC's sales of iron ore.²³

1.9 However, the Panel rejected several of India's claims. These claims related to, *inter alia*, the USDOC's appreciation of the evidence, its assessment of adequacy of remuneration and its determination of benefit, its assessment of "prevailing market conditions" within the meaning of Article 14(d) of the SCM Agreement, its determination of whether the Steel Development Fund (SDF) constituted a public body, its examination of new subsidy allegations in the conduct of administrative reviews, and the USITC's assessment of injury. Specifically, the Panel rejected India's claims that the United States acted inconsistently with:

- a. Article 14(d) of the SCM Agreement, with respect to Section 351.511(a)(2)(i)-(iii) of the US Regulations "as such"²⁴;
- b. Articles 14(d), 19.3, and 19.4 of the SCM Agreement, with respect to Section 351.511(a)(2)(iv) of the US Regulations "as such"²⁵;
- c. Articles 1.1(a)(1), 1.1(b), 2.4, 14(d), and the chapeau of Article 14 of the SCM Agreement, in connection with the provision of high-grade iron ore by the NMDC²⁶;
- d. Articles 1.1(a)(1)(iii), 1.1(b), and 14(d) of the SCM Agreement, in connection with the Captive Mining of Iron Ore Programme and the Captive Mining of Coal Programme²⁷;
- e. Articles 1.1(a)(1), 1.1(a)(1)(i), 1.1(b), 14(b), and the chapeau of Article 14 of the SCM Agreement in connection with the SDF²⁸;
- f. Articles 15.1, 15.2, 15.3, 15.4, and 15.5 of the SCM Agreement, in connection with Sections 1675a(a)(7) and 1675b(e)(2) of the US Statute "as such", and in connection with Section 1675a(a)(7) of the US Statute "as applied" in the sunset review at issue²⁹;
- g. Articles 15.1 and 15.4 of the SCM Agreement in connection with the USITC's evaluation of certain economic factors in its injury determination³⁰;
- h. Article 12.7 of the SCM Agreement, in connection with Section 1677e(b) of the US Statute and Section 351.308(a), (b), and (c) of the US Regulations "as such"³¹;

²³ Panel Report, para. 8.2.f. See also para. 7.352.

²⁴ Panel Report, para. 8.3.a. See also paras. 7.35, 7.52, and 7.64.

²⁵ Panel Report, para. 8.3.b. See also paras. 7.63 and 7.64.

²⁶ Panel Report, para. 8.3.c. See also paras. 7.89, 7.140, 7.171, 7.193, and 7.194.

²⁷ Panel Report, para. 8.3.d. See also paras. 7.241, 7.260, and 7.264.

²⁸ Panel Report, para. 8.3.e. See also paras. 7.279, 7.297, 7.301, and 7.311-7.313.

²⁹ Panel Report, para. 8.3.f. See also para. 7.392.

³⁰ Panel Report, para. 8.3.g. See also para. 7.408.

³¹ Panel Report, para. 8.3.h. See also para. 7.445.

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- i. Article 12.7 of the SCM Agreement, in connection with the application of "facts available" concerning: (i) the USDOC's "rule" to use the highest non-*de minimis* subsidy rate; and (ii) several of the USDOC's determinations³²;
- j. Articles 11.1, 13.1, 21.1, 21.2, 22.1, and 22.2 of the SCM Agreement, in connection with the examination of new subsidy allegations in the administrative reviews at issue³³; and
- k. Article 22.5 of the SCM Agreement, by failing properly to explain in the public notices the reasons for rejecting: (i) the interested parties' argument relating to the treatment of SDF levies; and (ii) the use of NMDC export prices as a price benchmark.³⁴

1.10 Finally, the Panel exercised judicial economy in respect of India's claims under:

- a. Articles 2.1(c) and 2.4 of the SCM Agreement, in connection with the USDOC's determination that the Captive Mining of Iron Ore Programme is *de facto* specific³⁵;
- b. Article 2.1(a) and (b) of the SCM Agreement, in connection with the USDOC's determination that the Captive Mining of Coal Programme/Coal Mining Nationalization Act is *de jure* specific³⁶;
- c. Article 22.5 of the SCM Agreement, in connection with the USDOC's public notice concerning: (i) the GOI's grant of captive coal mining rights to Tata; and (ii) the *de facto* specificity of the Captive Mining of Iron Ore Programme³⁷; and
- d. Articles 10, 19.3, 19.4, 32.1, and 32.5 of the SCM Agreement, Article VI of the GATT 1994, and Article XVI:4 of the WTO Agreement, in connection with India's consequential claims.³⁸

1.11 Pursuant to Article 19.1 of the DSU, having found that the United States acted inconsistently with certain provisions of the SCM Agreement, the Panel recommended that the United States bring its measures into conformity with its obligations under that Agreement. Given the complexities to which implementation may give rise, the Panel declined India's request to exercise its discretion under the second sentence of Article 19.1 to suggest ways in which the United States might implement the recommendation.³⁹

³² Panel Report, para. 8.3.i. See also paras. 7.450, 7.458, 7.459, and 7.480.

³³ Panel Report, para. 8.3.j. See also para. 7.508.

³⁴ Panel Report, para. 8.3.k. See also paras. 7.531 and 7.535.

³⁵ Panel Report, para. 8.4.a. See also paras. 7.218 and 7.219.

³⁶ Panel Report, para. 8.4.b. See also para. 7.253.

³⁷ Panel Report, para. 8.4.c. See also paras. 7.533 and 7.534.

³⁸ Panel Report, para. 8.4.d. See also para. 7.537.

³⁹ Panel Report, para. 8.6.

1.2 Appellate Proceedings

1.12 On 8 August 2014, India notified the Dispute Settlement Body (DSB), pursuant to Articles 16.4 and 17 of the DSU, of its intention to appeal certain issues of law covered in the Panel Report and certain legal interpretations developed by the Panel, and filed a Notice of Appeal⁴⁰ and an appellant's submission pursuant to Rule 20 and Rule 21, respectively, of the Working Procedures for Appellate Review⁴¹ (Working Procedures). On 13 August 2014, the United States notified the DSB, pursuant to Articles 16.4 and 17 of the DSU, of its intention to appeal certain issues of law covered in the Panel Report and certain legal interpretations developed by the Panel, and filed a Notice of Other Appeal⁴² and an other appellant's submission pursuant to Rule 23 of the Working Procedures.

1.13 On 11 August 2014, the United States requested the Appellate Body Division hearing the appeal to extend the deadline for filing the United States' appellee's submission in this appeal by seven calendar days, to 2 September 2014, due to the size and complexity of India's appeal. On 12 August 2014, the Division invited India and the third parties to comment in writing, no later than 15 August 2014, on the United States' request. India and the European Union provided comments. India requested that any extension of the deadline for the United States to file its appellee's submission be equally granted to India. The European Union requested the Division, if it accepted the United States' request, to consequently extend the deadline for third participants to file their notifications and written submissions. On 19 August 2014, the Division issued a Procedural Ruling to the participants and third parties in respect of the United States' request. The Division decided, pursuant to Rule 16 of the Working Procedures, to extend the date for filing the appellees' submissions to 1 September 2014. Consequently, the Division also decided to extend the date for filing the third participants' written submissions and notifications to 3 September 2014. This Procedural Ruling is attached to this Report as Annex 3.

1.14 On 1 September 2014, India and the United States each filed an appellee's submission.⁴³ On 3 September 2014, five third participants (Australia, Canada, China, the European Union, and Saudi Arabia) each filed a third participant's submission.⁴⁴ On the same day, Turkey notified its intention to appear at the oral hearing as a third participant.⁴⁵

1.15 The oral hearing in this appeal was held on 24-26 September 2014. The participants each made an opening oral statement. Four third participants

⁴⁰ WT/DS436/6 (attached as Annex 1 to this Report).

⁴¹ WT/AB/WP/6, 16 August 2010.

⁴² WT/DS436/7 (attached as Annex 2 to this Report).

⁴³ Pursuant to Rules 22 and 23(4) of the Working Procedures.

⁴⁴ Pursuant to Rule 24(1) of the Working Procedures.

⁴⁵ Pursuant to Rule 24(4) of the Working Procedures.

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(Australia, Canada, China, and Saudi Arabia) made oral statements. The participants and third participants responded to questions posed by the Members of the Appellate Body Division hearing the appeal.

1.16 By letter dated 6 October 2014, the Chair of the Appellate Body notified the Chair of the DSB that the Appellate Body would not be able to circulate its report within the 60-day period stipulated in Article 17.5 of the DSU, or within the 90-day period pursuant to the same provision. The Chair of the Appellate Body explained that this was due to scheduling issues arising from the substantial workload in the Appellate Body in the second half of 2014 including: (i) the request for the extension of the deadlines for filing the appellees' and third participants' submissions in this appeal; (ii) the fact that the Appellate Body comprised only six Members when the appeal was filed; (iii) the overlap in the composition of the Divisions hearing the different appeals during this period; (iv) the number and complexity of the issues raised in these and concurrent appeal proceedings; and (v) the additional time required for translation of the report for circulation in all three official languages. Consequently, the Chair of the Appellate Body informed the Chair of the DSB that the report in this appeal would be circulated no later than 8 December 2014.

2. ARGUMENTS OF THE PARTICIPANTS AND THIRD PARTICIPANTS

2.1 *Claims of Error by India – Appellant*

2.1.1 *The Panel's terms of reference*

2.1 India requests the Appellate Body to reverse the Panel's preliminary ruling that the claims in Sections XII.C.1 and XII.C.2 of India's first written submission to the Panel were outside the Panel's terms of reference. India further requests the Appellate Body to complete the analysis in respect of these claims on appeal. India's appeal in this regard is contingent on the Appellate Body rejecting its appeal that the sale of high-grade iron ore by the NMDC does not constitute an actionable subsidy under the SCM Agreement.

2.2 In its appellant's submission, India claims that the Panel acted inconsistently with Article 11 of the DSU, and erred in its application of Article 6.2 of the DSU, by failing to address the meaning of the term "initiated" in India's panel request. India also claims that the Panel acted inconsistently with Article 11 of the DSU by failing to take into account: (i) the fact that the United States did not suffer prejudice by the alleged lack of clarity of the panel request; and (ii) certain questions circulated during consultations.

2.1.1.1 The meaning of the word "initiated" in India's panel request

2.3 India argues that the Panel erred in its construction of the term "initiated", as used in India's panel request. India recalls that paragraph 12(f)(i) of its panel

request stated that "no investigation was initiated or conducted", in violation of Article 11 of the SCM Agreement⁴⁶, and Sections XII.C.1 and XII.C.2 of its first written submission referred to "initiating investigation[s] ... [without] sufficient evidence", in violation of Articles 11.1, 11.2, and 11.9 of the SCM Agreement.⁴⁷ In India's view, the term "initiated" is defined as a term of art in footnote 37 of the SCM Agreement to mean a "procedural action by which a Member formally commences an investigation as provided in Article 11". Thus, the term "initiated" in India's panel request should be construed in the light of that definition, such that the phrase "no investigation was initiated or conducted" should be understood to mean "such investigations not being commenced and performed in a manner '*provided in Article 11*' of the SCM agreement".⁴⁸ According to India, such reading of its panel request would automatically cover violations of Articles 11.1, 11.2, and 11.9 of the SCM Agreement, including the commencement of investigations without sufficient evidence.

2.4 India submits that, although its panel request referred to Article 11 of the SCM Agreement only generally, the interlinked nature of its provisions and their common relationship to the initiation and conduct of investigations means that its panel request was sufficient to present the problem clearly in relation to all of the provisions of Article 11, except Articles 11.6, 11.8, 11.10, and 11.11. India's decision to limit its claims in its first written submission to Articles 11.1, 11.2, and 11.9 of the SCM Agreement should not influence the construction of its panel request. In India's view, by failing to examine the meaning of the term "initiated" as set out in India's panel request, the Panel failed to apply correctly the legal standard under Article 6.2 of the DSU to the facts of this case.

2.5 Furthermore, India argues that the Panel failed to conduct an objective assessment because the Panel, "[i]n a mere footnote", dismissed India's claim in relation to the meaning of the term "initiated".⁴⁹ In India's view, in order to discharge its duties under Article 11 of the DSU, the Panel should have, first, examined whether the term "initiated" should be construed in the light of the definition provided in footnote 37 of the SCM Agreement, and, second, should have examined whether the claims in Sections XII.C.1 and XII.C.2 of India's first written submission were captured by that definition.

2.1.1.2 Relevance of prejudice and questions during consultations

2.6 India argues that the Panel erred by failing to apply the findings of the Appellate Body in *Korea – Dairy* and of the panel in *US – Lamb*. India recalls its

⁴⁶ India's appellant's submission, para. 663 (quoting India's panel request, para. 12).

⁴⁷ India's appellant's submission, para. 664 (quoting India's first written submission to the Panel, section XII.C.1).

⁴⁸ India's appellant's submission, para. 674 (quoting India's response to United States' requests for preliminary rulings, para. 10 (emphasis original)).

⁴⁹ India's appellant's submission, para. 675.

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argument before the Panel that, pursuant to the Appellate Body's finding in *Korea – Dairy*, an assessment of compliance with Article 6.2 of the DSU must take into account whether the ability of the respondent to defend itself was actually prejudiced by an alleged defect in the panel request. In India's view, the United States "merely asserted" that it sustained prejudice, but offered no supporting particulars.⁵⁰ According to India, in rejecting India's argument, the Panel failed to assess the relevance and implications of the Appellate Body's finding in *Korea – Dairy* in relation to its argument.

2.7 India further recalls its argument before the Panel that, based on the panel's finding in *US – Lamb*, one of the "attendant circumstances" to consider in assessing whether a panel request complies with Article 6.2 is the consultations held between the parties, including the written questions circulated for that purpose.⁵¹ In India's view, therefore, the Panel should have taken into account the questions circulated by India during the consultations stage in construing its panel request. India contends that the Panel mistakenly relied on the Appellate Body report in *US – Upland Cotton* in finding that it could not refer to events that had occurred at the consultations stage of the dispute.⁵² According to India, unlike the panel in *US – Lamb*, the Appellate Body in *US – Upland Cotton* was not dealing with the relevance of what took place during consultations in the context of Article 6.2 of the DSU, and the Appellate Body in that case was not seized with the question of harmoniously applying Article 6.2 of the DSU with Article 4.6 of the DSU.⁵³

2.8 India submits that prior adopted findings of the Appellate Body and panels form part of the *acquis* of the WTO system and, unless cogent reasons permit, a subsequent panel cannot disregard such earlier findings.⁵⁴ Thus, in order to discharge its duties under Article 11 of the DSU, the Panel should have considered and assessed the relevance and implications of such findings, and should have justified its failure to apply those findings with cogent reasons.⁵⁵

2.1.1.3 Completion of the analysis

2.9 India requests the Appellate Body to complete the analysis of the claims in Sections XII.C.1 and XII.C.2 of its first written submission to the Panel in the event that it reverses the Panel's preliminary ruling under appeal.

2.10 In India's view, there are sufficient undisputed facts on the record and factual findings by the Panel to facilitate completion of the analysis. In

⁵⁰ India's appellant's submission, para. 668.

⁵¹ India's appellant's submission, para. 669 (referring to India's response to United States' requests for preliminary rulings, para. 25; and Panel Report, *US – Lamb*, para. 5.40).

⁵² India's appellant's submission, para. 671 (referring to Panel Report, para. 1.37).

⁵³ India's appellant's submission, para. 672 (referring to Appellate Body Report, *US – Upland Cotton*, para. 286).

⁵⁴ India's appellant's submission, para. 670. (fn omitted)

⁵⁵ India's appellant's submission, para. 670.