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TRADE POLICY MAKING IN INDIA

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Trade policy making in India has been perceived as confused, contradictory and ill conceived. While several authors have attributed this to the need to deal with an internal clientele used to a protectionist environment on the one hand and the advantages of openness in trade on the other, very few have recognised the changes in negotiating stances that India has been taking in recent years.

BACKGROUND (1952 TO 1991)

Any analysis of India's existing trade agreements as well as its position on important WTO issues has to bear in mind the economic and policy environment from which these strategies have evolved. On a historical perspective, the period 1947 to 1991 was an era of protectionism based on a development strategy anchored on the concept of large- scale import substitution. The Planning Commission in its first Five Year Plan (1951-1955/56) document had the following to say on matters concerning trade:-

“The expansion of trade has, under our conditions, to be regarded as ancillary to agriculture and industrial development rather than as an initiating impulse in itself. In fact, in view of the urgent needs for investment in basic development, diversion of investment on any large scale to trade must be viewed as a misdirection of resources.”

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Trade and trade policy were not of primary importance and the latter would be determined automatically by whatever was needed to augment and make more favourable conditions under which domestic industry and agriculture had to operate. Over the years, this gave rise to architecture of permits, permissions and licences to provide protection to domestic industry. At the same time, overseas investments, flow of technology and trade was strictly controlled by bureaucratic mechanisms, a complicated tariff structure and quantitative restrictions. The Chief Controller of Imports and Exports was a powerful figure that could decide the incentives for exporters, the concessions for importers and thus, alter terms of trade. It has been argued that the two outstanding features of the tariff regime were that of the development of a large confusing system of exemptions and the lack of economic and/or welfare rationale in the tariff structure.

In the international arena, India has been a founder member of GATT since 1948. However, India's approach to trade issues in the multilateral context was conditioned by its political perception as a spokesperson of the developing world rather than as a negotiator for any trade or commodity bloc. During these years, India did not leverage its position to gain advantage in trade or improve relations for itself or for the developing countries it professed to represent.

By the 1970s, the Quantitative Restrictions regime and the license/permit systems had developed into a very complex and costly administrative system. A process of liberalisation that began in 1980 was slow and fragmented. This was also the period that saw strong debates between trade reformists and the government. Reformists argued that a semi-managed exchange rate should be used to manage trade flows. They also argued that as long as import of consumer manufactures remained banned, industrialists would have strong incentives to raise capital intensity of production, as this was the cheapest way to replace these imports. It was further argued that restricting the imports of capital goods and essential raw materials was inhibiting productivity and creating unnecessary economy-wide inefficiencies.

LIBERALISATION PHASE (1991 TO 1996)

India's balance of payment position worsened to crisis point in 1991. This led to a change in attitudes and policies. The Eighth Five Year Plan document (1992/3-1997/8) has the following comments on the 1991 crisis. The excerpt is long, but describes the situation better than any other source:-

“The Balance of Payment situation has been continuously under strain for over almost a decade. During the Seventh Plan period the ratio of the current account deficit to GDP average 2.4 % – far above the figure of 1.6% projected for this period in the Plan documents. This deterioration in the Balance of Payments occurred despite robust growth in exports in the last three years. The already difficult Balance of Payments situation was accentuated in 1990-91 by a sharp rise in oil price and other effects of the Gulf War. With the access to commercial borrowings going down and the non-residents deposits showing no improvements, financing the current account deficits had become extremely difficult. Exceptional financing in the form of assistance from IMF, the World Bank and the Asian Development Bank had to be sought. While the immediate problems have been resolved to some extent, it is imperative that during the 8th Plan steps are taken to curb the fundamental weakness in Indian's Balance of Payments situation so that it does not cause serious disruption to the economy.”

The events described above finally tipped opinions in favour of reform, and the policy environment became more amenable to change. Internal trade became freer as the license/or permit system loosened its control of economic activity, and increasing emphasis was placed on the need for a more competitive export sector. Slowly but surely, the two biggest events in Indian economic history – the emergence of a market-based reform project and an incremental re-introduction to the global economy – began to take shape. But even in these circumstances, the policy for reform was not led by trade strategy. Rather, the effort was to liberalise licensing, reduce restrictions on production and investment, open up financial markets, and correct fiscal, monetary and currency rate policies. Trade policy reform was slower in coming, and emerged more from restructuring of tariffs and import duties rather than

from a clearly articulated vision. This was due to the focus on getting the financials of the country right in the first instance. India prided itself on never having been an external debt defaulter, and policy makers were concerned about keeping up this image. Trade policy, was thus, at best, only a secondary issue.

Consequently, India's stand in the Uruguay round of trade initiatives strongly suggests that reforms process did not immediately translate into a greater willingness to engage in trade negotiations. On the domestic front, the Uruguay Round (UR) of negotiations seems to have played almost no role at all in moulding or accelerating the liberalization process. Initially India was unhappy with the invitation to a new round in the first place and opposed the inclusion in the GATT agenda of services, intellectual property and trade related investments. A group of developing countries, including Brazil, got together to articulate their objections. However, the position weakened soon and, in the end, India stood alone in its opposition to a new round. Thus, though India engaged in the preliminaries, its absence became conspicuous during the Round itself.

“In the view of unfriendly observers, India has been a pirate: it has made sporadic forays designed to throw negotiation into disarray...However, whether hostile or not, all observers agree that India has not taken any bold initiatives to give a new direction to the proceedings in any of the negotiation groups”.

There appears to be three reasons for Delhi's reluctance to give anything away in the discussions. First, India was such a small player in international trade that any reciprocal tariff concessions would almost certainly result in a net welfare loss. Second, import substitution had resulted in such a wide variety of industries in India, some of them inefficient, that any reciprocal concessions to economies that a small industrial base would hurt India more than it would the other economy. Thirdly, several internal policies had a distorting effect on the export sector. For example the textile and garment sector was reserved for the small industries sector. The Indian textile industry thus was characterised by a wide array of technologies and production techniques. In short, market access negotiations in the UR were not attractive and

India's attitude to other issues was well-known. This made Indian an unattractive bargainer, which resulted in India being left out or ignored.

At the same time, there were several forays that India made to get some advantage for itself. About the middle of the round of negotiations, with help from Argentina (Carlos Correa) and Brazil (Ricuperco), India participated in an organised pushback on TRIPS. It also took advantage of those situations, particularly in mode 4, where IT professionals could gain access. And even in the area of agricultural strategies, India's effort to protect its producers and markets was largely successful. In some sense, its marginalisation in the main discussions provided ample time and space to campaign the cause of special and differential treatment and to concentrate on items of its defensive interests. By declining to aggressively seek concessions from its major trading partners, India had found a way to deflect attention from its major own protection levels, and thus effectively prevented UR negotiations from interfering with its reform process at home. This desire to minimise external pressures to liberalize, arising potentially from the WTO and bilateral agreements has remained an important feature of the Indian trade strategy.

CHANGES (1996 TO 2004)

India saw two coalition Governments in 1996 and 1997, which were therefore the years of some political instability. The political environment in 1996 and 1997 put trade and reform issues on the backburner. It was only in 1998 that Parliament had occasion to examine the implications of the Marrakesh agreements. A Parliamentary Standing Committee of the Commerce ministry, headed by the eminent left wing economist and parliamentarian, Ashok Mitra, went into the implications of the agreement for the country. Membership of the committee spanned across the political spectrum, and contained several eminent figures including one who would be a future Minister for Commerce. The report of this committee was tabled in both houses of the Parliament in December 1998. The reports starts with the leftist concern that the Marrakesh agreement calls upon the member countries to surrender some of their sovereign rights to the decisions and wishes of the WTO. It also expresses concern over the lack of transparency in the negotiations, absence of consensus building inside

and outside Parliament, and the lack of consultation with the States. The Committee makes the following broad observations:-

1. Developing countries in general have failed to extract any significant leverage out of the WTO system.
2. India failed to extract concessions pertaining to its interests in the agreement on IT products.
3. Global free trade over which WTO presides is quite some distance from the concept of fair and equitable international trade, and that the balance is tilted in favour of the developed world.
4. India should reiterate its reservation with reference to Articles 70.8 and 70.9 of the TRIPS in ministerial meetings.
5. There is need to introduce transparency in the government actions in respect of WTO related issues. There is also need to improve coordination between various ministries dealing with WTO issues.

The tabling of the report of the Committee resulted in several very important developments. First, in accepting the multilateral structure, the Committee committed the parliament and the nation to the process of globalisation of trade. The acceptance of the framework of the WTO was an important victory for the managers of Government policy, and from this point, there would be no turning back from engaging with the world in trade.

Second, Commerce Ministers from that day have been careful in reporting to Parliament a step-by-step account of the negotiations and the stance taken by the Government. There have been several Parliamentary questions, call attention notices and debates on issues involving the WTO. Industry associations and interest groups became active in trying to understand and debate the positive as well as negative issues of the agreements. In short, we see the report as the beginning of a stage of transparency in negotiations that persists even today.

Third, administrative coordination between ministries improved. In the run up to the Seattle negotiations, issues and strategies were discussed not only within ministries, but also with industry and trade groups. The delegation to Seattle included a large delegation from industry that was consulted regularly. It also included members of parliament from the opposition. In Seattle, it was clear that India had put a lot of thought behind the negotiations.

EVOLUTION OF TRADE POLICY PROCESSES

Other changes were seen as well from 1999. The consultation process encompassed an active effort to communicate. During that year, over 30 seminars were held in different parts of the country. There were talk shows and media briefings. The Ministry of Industry conducted workshops in most states on the TRIPS agreement and the implications of the product patent regime. The debate on multilateralism became much more inclusive. The Ministry of Commerce and industry (MoCI) lost some of its secretiveness.

Trade policy in India is primarily the responsibility of the MoCI and it plays a major role in defining and setting policy. The MoCI occupies a privileged and exclusive space in Indian politics, and formulates policy largely in isolation earlier, that is, without consulting other government branches, often taking instructions directly from the Prime Minister. The MoCI also negotiates bilateral agreements. However, the consistency of domestic and external policies is addressed at the cabinet with the assistance of advisory committees. Inter-ministerial consultations always include the Ministry of Finance (MoF), and the Ministry of External Affairs (MoEA). Ministry of Textiles (MoT), Ministry of Agriculture (MoA) are involved in the process on specific agenda. A small group of ministers, consisting of the Ministers for Commerce, Finance, External Affairs, Agriculture, assists the Prime Minister at stages leading up to the ministerial decision. The cabinet is invariably consulted on negotiating stances and strategies, and the Prime Minister is kept informed daily on the progress of the negotiations. After each of these, the Commerce Minister briefs Parliament.

India's trade policy can be said to consist of three levels:- (i) its multilateral negotiating position at the international level; (ii) the framing and operation of import-export policy at home ('traditional' trade agenda), and (iii) sectoral policy affected by trade agreements ('new' trade agenda). The first level deals mainly with trade agreements, WTO, Free Trade Agreements (FTAs), etc. The second one focuses on changes in the tariff level, duty drawbacks, subsidies, incentives for exporters and the concessions for importers, etc, and in a sense is a support mechanism for the exporters to deal with uncertainties of the exposure to globalisation. The last level deals with emerging sectoral trade agreements such as General Agreements on Trade in Services (GATS).

Though the structure remained the same, there was more interaction and more thought on issues. That this has resulted in greater maturity in handling the WTO agenda can be evidenced from several subsequent developments.

The negotiations and the failure of movement at Seattle demonstrated to the Indian public and legislators the weaknesses of a consensus bound arrangement, and that a lack of consensus could derail the transactions. Introduction of labour standards and Singapore issues were strongly resisted by several countries, including India some several leading groups. At Doha, the stand that India took, considered intransigent by all, won domestic legitimacy to the MOC in the process of negotiation, and the acceptance of Parliament and States. That India was an important client to be consulted, was evident subsequently from the discussions on agriculture, and way forward could be found only after several countries, including India, had agreed on the approach.

TRIPS

One of the most interesting examples of these has been the handling of the obligations under TRIPS. Product patents for pharmaceuticals and agro-chemicals had been done away with in the 1970 Indian Patents Act, which provided for process patenting enabling the patented drugs to be developed and marketed in India without fear of infringement action. A healthy indigenous industry, strong in chemistry developed, and was opposing introduction of product patents that would affect its growth.

Commitments under TRIPS required that product patents should be introduced by 1 January 2005, and that a system of Mailbox for applications started by 1997. The latter did not happen in time, and the US took India to the dispute settlement panel, where India lost the case as well as the subsequent appeal.

The Parliamentary Committee report dealt at length on this case, used strong language about the arm-twisting by the US, but finally recommended appropriate legislation that took place in April 1999. In some sense, this served as a wake up call. The MoCI engaged in looking at options for 2005; internally, there was a call to local industry for shaping up and getting prepared for competition; tariff concessions to pharmaceutical industry including major income tax deductions for research and development were announced; and India decided to take the debate international. At Cancun and at Doha India pressed for implementation of TRIPS clauses that provided for technology transfer and for compulsory licensing provisions. The South African case of drug delivery for AIDS patients came up as a strong argument against protecting multinational pharma companies' interests. India took up at WHO and other forums, the inequities to poor nations of a high drug cost product patent regime.

There was sufficient groundswell of support for this position in the country and the Patents Amendment Law was on the brink of not being approved, even as late as December 2004. The required legislation was put through as Ordinance on the last day of the year, and finally accepted by Parliament, after much protest by the left, a few months later. The Government, in this strategy, was able to cater to the requirements of the local industry, and to use the emotions of the critics to push through a legislation that is barely adequate to meet international standards. In fact, some of the clauses of the legislation can be said to be TRIPS non-compliant; but the US has decided against taking the matter up for dispute settlement at the WTO. In effect, not only has India been able to take advantage of all the flexibilities in TRIPS, but has also been able to push the boundaries further than would have been considered possible. In short, the strategy adopted for handling internal dissension, demands of local industry, and its international commitment, can be considered quite clever and effective.

AGRICULTURE

The agreement on agriculture is another area where there has been maturity in dealing with diverse and often contradictory requirements. At Marrakesh, agriculture was put on the backburner for later discussions, as it suited Japan to do so. This was convenient for India, and post-1999, in Doha and at Cancun, India has been able to spearhead the demand for reduction of subsidies by the developed nations. At Doha, inept handling by the US of the concerns of African countries gave India the policy space needed to sensitise internal interests. It was always clear that India would have to give up some subsidies in agriculture, in return for market access for its products. The framework agreement, already moulded in the earlier Government, was inked within months of the new Government assuming power. It provides for flexibility to choose sensitive products for continued protection, and for an adequate time frame to decide on the products that would have to be given up. The battle now is for the numbers to persuade US, EU and Japan to give up more in real terms, not just in nominal terms. The policy makers and the political parties, already accept that agriculture subsidies will be reduced.

DEALING WITH WTO PROCESSES

India has also leveraged the structural advantages of the WTO agreements. At Doha, interventions by India accounted for the inclusion of Public Health concerns in TRIPS. Interventions in Geneva have been pointed and effective. Before the dispute settlement board, there has been considerable success (see some major cases at [Annex 1](#)), and some failures. India won the dispute on shrimp fishing against the US and against Turkey on textiles. India defended steel exports to US before adjudication proceedings in the US. Patents issued in the US for items in the realm of public knowledge in India, like the medicinal uses of neem, were effectively contested.

India emerged as a major user of the provisions of anti-dumping and safeguards between 1999 and 2002. Over 300 cases were taken up, and dozens of anti-dumping notifications issued, several against imports from China. In 2003, as a conscious decision to liberalise trade further, recourse to anti-dumping measures was reduced.

ITAT

The agreement on hardware for IT products was one that could have caused some concern. The agreement required India to reduce tariffs on inputs and products for the IT industry to zero by 2005. The agreed list contained several goods that were used by the entertainment industry for the manufacture of televisions etc. With a large indigenous manufacturing base, it was important to find a soft landing for these agreements. Work on this started as early as 2002. Tariffs for selected inputs were reduced, that would help local industry to add greater value. Tax concessions and excise duty concessions were announced, and simultaneously, the concept of countervailing duty on imported products, to the extent of local duties, was also introduced. Customs tariffs were reduced progressively by 5% every year, starting with input materials, and finally in the budget of 2005, all tariffs in the agreement were reduced to zero. The benefits of this for the computer and the telecom industry have been quite significant.

At the negotiations, India has been able to take an effective position against the Singapore issues that it considers not to be in its interest. In the services sector, for example, issue of access for its professionals is being pushed effectively at various forums.

REGIONAL TRADE INITIATIVES

As a further proof of moving forward, India has, in the last few years engaged itself more openly in advocating regional trade. The initialling of the South Asian Free Trade Agreement may have more to do with politics than with trade, but the FTA with Thailand has opened up opportunities for bilateral trade that did not exist before. In the next few months, the Comprehensive Economic Cooperation Agreement with Singapore would be signed. India is engaging with ASEAN, China and even exploring possible bilateral sectoral arrangements with the US.

The confidence that has developed in trade policy making has had much to do with the performance of the economy since 2000 and the policy measures for liberalisation. Tariff reduction has been doggedly pursued year after year, and from average values

of around 47% even five years ago, the country is at around 17% today. Peak rates are down to 15%, except for agricultural products. Exports as well as imports have been growing year on year, at an excess of 25%. Reforms in the financial sector, including dematerialising of stocks, an open architecture for trade, introduction of futures and derivatives trading and commodity futures, have made investments in India interesting and profitable. Inward remittances, and the growth of the software industry afford opportunities for the services sector that can be exploited only through an open architecture for trading. The young middle class is an eager consumer of global products, and manufacturing facilities for televisions and mobile phones are being constructed. Industry and consumers are realising that openness in trade is a good thing, and that inherent competitiveness is good for the economy and for the consumer.

THE ROAD AHEAD

At this stage of its development India is looking forward to engage more progressive not only at the multilateral level but also at the bilateral and regional level. The integration of South Asian countries into a trading block may take some time to realize, but would be pursued at a pace that would be acceptable to all constituents. Participation in ASEAN trade is of important and India would pursue this opportunity vigorously. Regional trade pacts with China and with Japan are in the area of consultation. Trade with China will continue to grow.

At the multilateral level India's primary concern would be agriculture and services. On the issue of reduction of agricultural subsidies, India would be seeking enlargement of its list of sensitive products and exert greater pressure on reduction in tariffs by the developed countries. Non-tariff barriers to agricultural trade including phyto-sanitary conditions, and environmental issues would be taken up strongly to increase market access of Indian agricultural products.

In the area of services India would seek to extend opportunities for cross border service. It would seek greater flexibility in movement of technically qualified personnel and greater opportunities for its skilled manpower to work in different countries. It would seek that the agenda for negotiations in the WTO is not enlarged to

cover all of the Singapore issues. It would ensure that public health concerns are highlighted and that there are opportunities for its pharmaceuticals products to provide cheaper drug delivery to rest of the world.

At the same time, it would continue the process of reform and liberalization by opening up FDI in more sectors including retail, real estate and infrastructure. Irrespective of the political composition of the country and succeeding governments, progress along the path will perhaps be always be a balance of management of internal constituents and external opportunities.

Some of the cases involving India in DSB (WTO)

1. India – Quantitative Restrictions on Imports of Agricultural, Textile and Industrial Products: Involving India and USA

India maintained quantitative restrictions on the importation of agricultural, textile and industrial products falling in 2,714 tariff lines. India invoked balance-of-payments justification in accordance with Article XVIII:B of the GATT 1994, and notified these quantitative restrictions to the Committee on Balance-of-Payments Restrictions.

The Panel was established to consider a complaint by the United States relating to quantitative restrictions imposed by India on imports of agricultural, textile and industrial products. Panel findings were against India.

2. India – Measures Relating to Trade and Investment in the Motor Vehicle Sector, complaint by the United States (WT/DS175/1)

This request, dated 1 May 1999, is in respect of certain Indian measures affecting trade and investment in the motor vehicle sector. The United States contends that the measures in question require manufacturing firms in the motor vehicle sector to: (i) achieve specified levels of local content; (ii) achieve a neutralization of foreign exchange by balancing the value of certain imports with the value of exports of cars and components over a stated period; and (iii) limit imports to a value based on the previous year's exports. According to the United States, these measures are enforceable under Indian law and rulings, and manufacturing firms in the motor vehicle sector must comply with these requirements in order to obtain Indian import licenses for certain motor vehicle parts and components. The United States considers that these measures violate the obligations of India under Articles III and XI of GATT 1994, and Article 2 of the TRIMS Agreement. On 15 May 2000, the US asked for the establishment of a panel.

3. India - Patent Protection for Pharmaceutical and Agricultural Chemical Products, complaint by the United States (WT/DS50)

The period of implementation was agreed by the parties to be 15 months from the date of the adoption of the reports i.e. it expires on 16 April 1999. India has undertaken to comply with the recommendations of the DSB within the implementation period. At the DSB meeting on 28 April 1999, India presented its final status report on implementation of this matter, which disclosed the enactment of the relevant legislation to implement the recommendations and rulings of the DSB.

4. India - Patent Protection for Pharmaceutical and Agricultural Chemical Products, complaint by the European Communities (WT/DS79/1)

India indicated at the DSB meeting of 21 October 1998, that it needed a reasonable period of time to comply with the DSB recommendations and that it intended to have bilateral consultations with the EC to agree on a mutually acceptable period of time. At the DSB meeting on 25 November 1998, India read out a joint statement done with the EC, in which it was agreed that the implementation period in this dispute would correspond to the implementation period in a similar dispute brought by the US (DS50). At the DSB meeting on 28 April 1999, India presented its final status report on implementation of DS50, which report also applies to implementation in this dispute. The report disclosed the enactment of the relevant legislation to implement the recommendations and rulings of the DSB.

5. United States – Import Prohibition of Certain Shrimp and Shrimp Products, complaint by India, Malaysia, Pakistan and Thailand against US

At the DSB meeting on 25 November 1998, the US informed the DSB that it was committed to implementing the recommendations of the DSB and was looking forward to discussing with the complainants the question of implementation. At the DSB meeting on 27 January 2000, the US stated that it had implemented the DSB's rulings and recommendations. The US noted that it had issued revised guidelines implementing its Shrimp/Turtle law which were intended to (i) introduce greater flexibility in considering the comparability of foreign programmes and the US programme and (ii) elaborate a timetable and procedures for certification decisions. The US also noted that it had undertaken and continued to undertake efforts to initiate

negotiations with the governments of the Indian Ocean region on the protection of sea turtles in that region. Finally, the US stated that it offered and continued to offer technical training in the design, construction, installation and operation of TEDs to any government that requested it.

6. Turkey – Restrictions on Imports of Textile and Clothing Products, complaint by India.

DSB ruling was in favour of India. At the DSB meeting of 19 November 1999, Turkey stated its intention to comply with the recommendations and rulings of the DSB. On 7 January 2000, the parties informed the DSB that they had agreed that the reasonable period of time for Turkey to implement the DSB's recommendations and rulings would expire on 19 February 2001. Pursuant to the agreement reached, Turkey also is to refrain from making more restrictive restrictions affecting imports of specified textile and clothing products from India, to increase the size of the quotas of India on certain specified textile and clothing products and to treat India no less favourably than any other Member with respect to the elimination of or modification of quantitative restrictions affecting any product covered by the agreement.

7. European Communities – Anti-Dumping Investigations Regarding Unbleached Cotton Fabrics from India, complaint by India (WT/DS140/1)

This request, dated 3 August 1998, is in respect of alleged repeated recourse by the EC to anti-dumping actions on unbleached cotton fabrics (UCF), from India. India considers, in the light of the information, which has become available before and after the adoption of Regulation 773/98, that the determination of standing, the initiation, the selection of the sample, the determination of dumping and the injury are inconsistent with the EC's WTO obligations. India is also of the view that EC's establishment of the facts was not proper and that EC's evaluation of facts was not unbiased and objective. India also contends that EC has not taken into account the special situation of India as a developing country. India alleges violations of Articles 2.2.1, 2.4.1, 2.4.2, 2.6, 3.3, 3.2, 3.4, 3.5, 4.1(I), 5.2, 5.3, 5.4, 5.5, 5.8, 6.10, 7.1(I), 7.4, 9.1, 9.2, 12.1, 12.2 and 15 of the Anti-Dumping Agreement, and Articles I and VI of GATT 1994. India also alleges nullification and impairment of benefits accruing to it under the cited agreements.

8. United States - Measure Affecting Imports of Woven Wool Shirts and Blouses, complaint by India (WT/DS33)

The US announced that the measure was withdrawn as at 22 November 1996, before the Panel had concluded its work. Therefore, no implementation issue arose.

9. India - Measures Affecting Export of Certain Commodities, complaint by the European Communities (WT/DS120/1)

This request, dated 16 March 1998, is in respect of India's EXIM Policy (1997-2002), which allegedly sets up a negative list for the export of several commodities. The EC alleges that under this policy, raw hides and skins are listed as products the export of which requires an export licence, and that these licences are systematically refused. The EC contends that this is in effect an export embargo and violates Article XI of GATT 1994.

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