

## ERGO

*Analysing developments impacting business*

### INDIA LOSES WTO DISPUTE VIS-A-VIS IMPORT DUTIES ON CERTAIN ICT PRODUCTS

24 April 2023 [Introduction](#)

On 2 April 2019, the European Union (EU) requested consultations with India concerning the tariff treatment that India accords to certain goods in the Information and Communications Technology (ICT) sector. The European Union claimed that the measures appear to be inconsistent with Articles II:1(a) and II:1(b) of the General Agreement on Tariffs and Trade (GATT) 1994. On 17 February 2020, the European Union requested the WTO Dispute Settlement Body (DSB) for establishment of a dispute resolution panel (the Panel). The dispute viz; *INDIA - TARIFF TREATMENT ON CERTAIN GOODS IN THE INFORMATION AND COMMUNICATIONS TECHNOLOGY SECTOR* was adjudicated by the Panel and on 17 April 2023, the Panel issued its report which held that India's measures were not consistent with its WTO obligations and the same were to be brought into conformity. Brazil, Canada, China, Indonesia, Japan, Korea, Norway, Pakistan, the Russian Federation, Singapore, Chinese Taipei, Thailand, Turkey, Ukraine and the United States reserved their third-party rights and made submissions.

#### [Measures in Dispute](#)

The measures at issue are the import duties applied by India on imports of certain ICT products in excess of the binding limits committed by India as set forth in its Schedule of Concessions and Commitments annexed to the GATT 1994 ('India's WTO Schedule' or 'WTO Schedule'). The ICT products concerned have been argued to fall within the scope of the committed binding limits included in India's WTO Schedule with respect to the following tariff lines (based on the HSN of 2007):

- 8504.40.02 - --Static converters for automatic data processing machines and units thereof, and telecommunication apparatus
- 8517.12 - Telephones for cellular networks or for other wireless networks
- 8517.61 - Base stations
- 8517.62 - -Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus
- 8517.70 - Parts

- 8518.30.01 - Line telephone handsets
- 8544.42.01 - -Other electric conductors, for a voltage not exceeding 1,000 V; --Of a kind used for telecommunications

In its WTO Schedule, India had bound/committed to cap the ad valorem duty rate for the above tariff lines at 0%. Yet, since 2014, the import duty rate applied by India on imports of these ICT products falling within the scope of the aforementioned tariff lines went up in the range of 7.5% to 20% (depending on the tariff line) and was therefore contended by the EU to be in excess of the bound rate committed by India.

The EU contended that the measures at issue are inconsistent with India's obligations under the covered agreements and, in particular, with Article II:1 (a) and (b) of the GATT 1994, because, by application of the tariff lines at higher than 0% duty, India accords to the EU, vis-a-vis these ICT goods, treatment less favourable than that provided for in India's WTO Schedule and that India does not exempt these goods from ordinary customs duties or other import duties in excess of those set forth and committed by India in its WTO Schedule.

### *Key Conclusions of WTO Dispute Panel*

The key pillar of India's contentions in defence was that the Ministerial Declaration on Trade in Information Technology Products (ITA), which India joined on 26 March 1997, is the source of India's legal obligations apropos the subject matter of this dispute and would have primacy as the ITA modifies or limits the scope of India's WTO tariff commitments set forth in its WTO Schedule - but the WTO Panel disagreed.

The WTO Members that joined the ITA are committed to eliminate customs duties and other duties and charges of any kind, with respect to ICT products agreed thereunder. The Annex to the ITA required members to adopt such measures into their WTO Schedules of Concessions by modifying their schedules. India accordingly modified its WTO Schedule and subsequently updated its schedules to align them with the HS2002 and HS2007, which included the 15 (fifteen) tariff items identified in the present disputes.

Without taking a position on whether the scope of India's concessions under the ITA is 'static' in nature, the Panel ruled that the ITA cannot overwrite the tariff commitments set forth in India's WTO Schedule (which it found not be static in nature) and therefore proceeded to apply Articles II:1(a) and (b) by comparing, on the one hand, the tariff treatment accorded by India to certain products, and, on the other hand, India's WTO tariff commitments as set forth in its WTO Schedule.

Key conclusions of the Panel are as under:

The Panel ruled that, *at the time of the Panel's establishment*, India's tariff treatment of the identified ICT products was in violation of India's WTO obligations. The Panel also ruled that the application of customs duties in excess of those provided for in a Member's Schedule, or subject to terms, conditions or qualifications not set forth in the Schedule, was inconsistent with the MFN clause under the WTO and consequently, a violation.

However, the Panel also recorded that as of 1 February 2022, India accords unconditional duty-free treatment to some of the identified ICT products and is therefore acting consistently with its WTO obligations with respect to such products.

### *Comments:*

The Panel report notes that India has now fully accorded zero duty treatment to some of the goods in question but clearly holds that tariff rates higher than 0 % for the products is in violation of India's WTO commitments. However, given India's recent policy to increase import tariffs on certain goods to promote manufacturing, some of which could be considered

ICT goods (or falling under tariff lines agreed under the ITA), we are potentially likely to see similar challenges in the coming days.

India has already indicated its intention to appeal this decision (as and when formally adopted), but there is presently no functional WTO Appellate body (on account of disagreement and blocking proposals by the US). Hence, at this point, we don't foresee any significant tariff impact of this Panel report vis-a-vis the import duties at issue. However, the findings and reasoning of the Panel in this case raises important questions about India's policy to increase import duties on ICT products in the longer term.

Here, it is pertinent to remember that this tariff increase by India was to boost the domestic manufacturing eco-system - in this regard, a *Phased Manufacturing Programme to promote indigenous manufacturing of Cellular Mobile Handsets* (and its sub-assemblies and parts/ sub-parts/ inputs of the sub-assemblies thereof) was implemented, followed by Production Link Incentive schemes. In this context, it is relevant to mention that amongst the Government of India's flagship Production Link Incentive (PLI) schemes to encourage local manufacturing, the PLI scheme for manufacture of smartphones in India has the largest budgetary outlay (of close to INR 41,000 crore) and has been one of the most successful too, with massive increase in exports from India.

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