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(19-5409)

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**UNITED STATES – CERTAIN MEASURES RELATING
TO THE RENEWABLE ENERGY SECTOR**

**NOTIFICATION OF AN OTHER APPEAL BY INDIA UNDER ARTICLES 16.4 AND 17
OF THE UNDERSTANDING ON RULES AND PROCEDURES GOVERNING
THE SETTLEMENT OF DISPUTES (DSU), AND UNDER RULE 23(1) OF
THE WORKING PROCEDURES FOR APPELLATE REVIEW**

The following communication, dated 20 August 2019, from the delegation of India, is being circulated to Members.

Pursuant to Articles 16.4 and 17 of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("**DSU**") and Rule 23(1) of the Working Procedures for Appellate Review ("**Working Procedures**"), India hereby notifies the Dispute Settlement Body ("**DSB**") of its decision to appeal to the Appellate Body certain issues of law and legal interpretation covered in the Panel Report entitled *United States – Certain Measures Relating to the Renewable Energy Sector (WT/DS510/R, WT/DS510/R/Add.1)*, which was circulated on 27 June 2019 ("**Panel Report**").

Pursuant to Rules 23(1) and 23(3) of the Working Procedures, India simultaneously files this Notice of Other Appeal and its Other Appellant's Submission with the Appellate Body Secretariat. India is also providing an executive summary of the Other Appellant's Submission, in accordance with the Guidelines in Respect of Executive Summaries of Written Submissions in Appellate Proceedings (WT/AB/23).

For the reasons further elaborated in its Other Appellant Submission, India appeals and requests the Appellate Body to reverse the findings and conclusions of the Panel with respect to the errors of law and legal interpretations contained in the Panel Report described below:¹

1. The Panel erred in holding that the "made-in-Washington" bonus as set out in Section 82.16.165 of the Revised Code of Washington ("**RCW**") did not fall within the terms of the reference of the Panel.² Specifically, the Panel failed to make an objective assessment of the matter before it and to make appropriate findings to assist the DSB in making relevant recommendations as required under Article 11 of the *DSU*. Additionally, by ruling that the "made-in-Washington" bonus under RCW 82.16.165 was a distinct measure, the Panel effectively ruled that it was not a matter before it requiring examination and thus the Panel erred in applying Article 7.1 read with Article 6.2 of the *DSU*. As a result, India requests the Appellate Body to reverse the Panel's findings in paragraphs 7.29 and 8.1(b) of the Panel Report and to find that the "made-in-Washington" bonus under RCW 82.16.165 is amendment/ modification (or alternatively, closely related) to the original measure and falls within the terms of the reference of the Panel. India further requests the Appellate Body to complete the legal analysis and find that the Measure 1, as amended (including "made-in-Washington" bonus under RCW 82.16.165) is inconsistent with the United States'

¹ Pursuant to Rule 23(2)(c)(ii)(C) of the Working Procedures for Appellate Review, this Notice of Other Appeal includes an indicative list of the paragraphs of the Panel Report containing the alleged errors, without prejudice to the ability of India to refer to other paragraphs of the Panel Report in the context of its other appeal.

² Panel Report, paras. 7.28, 7.29, 8.1(b); Addendum to the Panel Report (Annex E-1), paras. 3.4 – 3.8.

obligations under Article III:4 of the GATT 1994 and to make appropriate recommendations to the DSB under Article 19 of the DSU.³

2. The Panel erred in holding that India did not make a *prima facie* case that the Minnesota solar thermal rebate under Measure 10 had ongoing effects, and therefore, constituted a matter before the Panel that required examination in order to provide a positive solution to the dispute.⁴ Specifically, the Panel failed to make an objective assessment of the matter before it as required under Article 11 of the DSU while holding that it was not clear whether rebate payments may continue following the repeal of the Minnesota solar thermal rebate, in particular with respect to previously approved application.⁵ Additionally, the Panel erred in holding that repealed measure i.e. Minnesota solar thermal rebate did not constitute a matter before it requiring examination under Article 7.1 read with Article 6.2 of the DSU. As a result, India requests the Appellate Body to reverse the Panel's findings and conclusions in paragraphs 7.76, 7.77 and 8.3(b) of the Panel Report. India further request the Appellate Body to complete the legal analysis and to find that the Minnesota solar thermal rebate under Measure 10 is inconsistent with the United States' obligations under Article III:4 of the GATT 1994 and make appropriate recommendations to the DSB under Article 19 of the DSU.⁶

³ India's request in this Notice of Other Appeal must be read along with its Other Appellant's Submission.

⁴ Panel Report, paras. 7.76, 7.77, 8.3(b); Addendum to the Panel Report (Annex E-1), paras. 4.7, 4.8.

⁵ Panel Report, para. 7.72.

⁶ India's request in this Notice of Other Appeal must be read along with its Other Appellant's Submission.