

INDIA — EXPORT RELATED MEASURES

(DS541)

**RESPONSE OF THE UNITED STATES TO WRITTEN QUESTION
POSED BY THE PANEL REGARDING WHETHER TO HOLD A SECOND
SUBSTANTIVE MEETING (Question 91)**

March 4, 2019

SINGLE SUBSTANTIVE MEETING

91. To both parties: The Panel recalls that, pursuant to footnote 1 to the timetable, it may schedule additional meetings if required. Do you consider that a second substantive meeting is necessary and, if so, why?

1. A second substantive meeting is unnecessary for purposes of this proceeding and would instead be inappropriate in this proceeding in light of the requirements of the *Agreement on Subsidies and Countervailing Measures* (“SCM Agreement”). The Panel has or will have all the information it needs, without holding a second substantive meeting, “to make such findings as will assist the DSB in making the recommendations or in giving the rulings provided for in” the SCM Agreement.¹

2. There are compelling substantive and procedural reasons for not holding a second meeting.

3. First, the substantive meeting together with the submissions filed by the parties and third parties has provided sufficient opportunity to develop the evidence and arguments to present to the Panel. Indeed, the facts and issues discussed during two full days of questions and answers during the substantive meeting were not new. The Panel’s questions and the parties’ and third parties’ answers focused on a few specific points. These topics included: (1) the understanding of Article 4 of the SCM Agreement; (2) the interpretation of Article 27 of the SCM Agreement; (3) the elements of an export subsidy; and (4) whether the challenged schemes are proper duty drawback schemes. There would be nothing new to discuss that warrants holding a second substantive meeting.

4. The parties have submitted hundreds of pages of written submissions, presented lengthy opening and closing statements, held two full days of questions and answers in the substantive meeting, and are answering up to 92 questions posed by the Panel with the opportunity to comment on each other’s responses.

5. Moreover, on February 15, 2019, the Panel granted India’s request for a two-week extension to complete the answers to the Panel’s questions to the parties. The Panel advised the parties to “respond to the attached questions as fully as they would in the event that the Panel were not to hold a second substantive meeting.” This extension gives the parties additional time to address the Panel’s questions and provide comprehensive written responses to the Panel’s questions that further makes a second substantive meeting unnecessary.

6. Finally, Article 4.6 of the SCM Agreement calls for a panel to submit its final report to the parties and have the final report circulated within 90 days of the date of composition of the panel and the establishment of the panel’s terms of reference. In this dispute, the 90-day deadline for the Panel to circulate its final report has long passed. Adding an unnecessary second substantive meeting would only further delay the resolution of this expedited dispute under Article 4 of the SCM Agreement.

7. Panels faced with a similar 90-day deadline under Article 21.5 of the DSU have chosen to hold only one substantive meeting. These panels have not considered that a second

¹ See the Panel’s terms of reference resulting from Article 7.1 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (“DSU”), as well as Article 11 of the DSU.

substantive meeting was required for “due process” or other purposes. There is no basis for India’s assertion that a second substantive meeting is somehow required under the DSU.