United States – Rules of Origin for Textiles and Apparel Products

(WT/DS243)

Executive Summary of the Second Submission of the United States

January 24, 2003

I. INTRODUCTION

1. The issues for resolution in this dispute are clear and call for a straightforward reading of the provisions of Article 2 of the *Agreement on Rules of Origin* ("ARO"). Through its first submission, oral statement, and answers to questions from the Panel, India urges the Panel to ignore the words of Article 2 and instead adopt its novel interpretations that at their core are simply India's disagreement with the determinations of origin for certain products. Starting with India's first claim - - that Section 334 was enacted to pursue trade objectives in violation of Article 2(b), India has latched on to the idea that one of the goals of Section 334, preventing circumvention of quotas, is impermissible because circumvention must involve fraud. However, there is no consensus among Members as to whether any type of circumvention is legitimate, and therefore no basis for India's claim under Article 2(b). It is ironic that India seeks to sanction the United States for identifying, as one of four goals, addressing circumvention, when Article 5.1 of the *Agreement on Textiles and Clothing* ("ATC") calls on Members to take action against circumvention. Moreover, it would be unfortunate for a Member to be penalized for doing just what the ARO mandates - - enacting clear, concise, and transparent rules.

2. India bases its claim under Article 2(c) on analyses imported from dissimilar GATT provisions. Unable or unwilling to meet the standard plainly set out in the text of the provision, India instead attempts to convince the Panel to substitute a GATT analysis for discrimination. However, once again, India fails to meet its burden under that GATT standard. The words of Article 2(b) cannot be read to require an analysis of assumed "changed competitive conditions" upon the adoption of a rule of origin. Rather, this argument reveals India's true intent - - it would simply like Section 334 to go away and either force the United States to reach the specific origin determinations it seeks for particular products, or revert to a system with no product-specific rules of origin (by utilizing a case-by-case administrative system that India appears to favor). This is somewhat curious since trade data reveals that Indian exporters, and indeed international trade in the products at issue, have not been restricted, distorted or disrupted, but, on the contrary, have grown significantly. It is also curious since India appears to be contesting specific instances (Section 405) where origin rules reverted to pre-Section 334 principles.

3. Finally, India's claims with respect to Section 405 center on the idea that because it was a the result of a settlement, and as such its terms reflect changes that the EC requested, Section 405 impermissibly "favors" the EC and discriminates against India. Here again, however, not only does India make little effort to support its allegations, the analysis it offers for the basis of its allegations is also faulty.

II. INDIA HAS FAILED TO ESTABLISH THAT SECTION 334 OF THE URAA IS INCONSISTENT WITH U.S. OBLIGATIONS UNDER THE ARO

4. India's allegations regarding Section 334 are essentially that the U.S. rules of origin were enacted to protect the domestic textile industry and that they have restricted, distorted and disrupted trade. India's arguments in support of its allegations, however, are confused and sometimes contradictory. The only clear thread running through them is India's desire to operate in an environment in which Section 334 does not exist.

5. India is the complainant in this dispute, and as such India bears the burden of coming forward with argument and evidence sufficient to establish a *prima facie* case of a breach of a Member's WTO obligations.[1] If the balance of evidence and argument is inconclusive with respect to a particular claim, India, as the complaining party, must be found to have failed to establish that claim.[2] India has not established a *prima facie* case that Section 334 breaches U.S. obligations under the ARO.

A. The Goals of Section 334 are Not Impermissible Trade Objectives in the Context of Article 2(b)

6. The Statement of Administrative Action ("SAA") lists four objectives for Section 334: i) to reflect the important role assembly plays in the manufacture of apparel products; ii) to combat transshipment; iii) to harmonize U.S. rules with those of major trading partners and major textile and apparel importing countries such as the EC and Canada; and iv) to advance the ARO goal of harmonization.[3] India has focused its allegations on a charge that Section 334 is an impermissible "trade objective" in breach of Article 2(b) by arguing that, because it disagrees with the United States as to what constitutes circumvention, the U.S. effort to prevent circumvention through having clear, concise and transparent rules is a hoax.

7. What India is asking the Panel to do is to disregard what the SAA says about Section 334 and make a subjective judgment that one of Section 334's goals, preventing circumvention, is somehow illegitimate and that this one "illegitimate goal" makes all of Section 334 inconsistent with the ARO. However, as India noted in its first submission, and as was affirmed in the U.S. first submission, WTO dispute settlement panels have acknowledged that the SAA expresses an authoritative expression of the purpose of U.S. legislation.[4] The SAA stated that Section 334 would combat circumvention[5] by: lessening confusion resulting from differences between U.S. practices and the practices of other major trading partners; facilitating the use of more effective labeling requirements; and focusing on practices more easily subject to inspection by the U.S.

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[1] *See, e.g.,* Appellate Body Report on *United States - Measures Affecting Imports of Woven Wool Shirts and Blouses from India*, WT/DS33/AB/R, adopted 23 May 1997, page 14; Appellate Body Report on *EC Measures Concerning Meat and Meat Products (Hormones)*, WT/DS26/AB/R, WT/DS48/AB/R, adopted 13 February 1998, para. 104; Panel Report on *Korea - Definitive Safeguard Measure on Imports of Certain Dairy Products*, WT/DS98/R, as modified by the Appellate Body, adopted 12 January 2000, para. 7.24.

[2] *See, e.g.,* Panel Report on *India - Quantitative Restrictions on Imports of Agricultural, Textile and Industrial Products*, WT/DS90/R, as affirmed by the Appellate Body, adopted 22 September 1999, para. 5.120.

[3] Statement of Administrative Action in "Message of the President of the United States Transmitting the Uruguay Round Agreement, Text of Agreements, Implementing Bill, Statement of Administrative Action and Required Supporting Documents," H.R. Doc. No. 316, 103d Cong. 2d Sess., Vol. 1(1994) at 656, *et. seq.*, Exhibit US-6 at 119.

[4] *See* India first submission, para. 58, U.S. first submission, para. 29, *United States - Section 129(c)(1) of the Uruguay Round Agreements Act*, WT/DS221/R, 30 August 2002, paras. 6.36-6.38.

[5] As the United States noted in answer to panel question 14 (para. 22), the reference in the SAA to transshipment has the same meaning as "circumvention" as that term is used in the ATC.

Customs Service.[6] The United States has explained in its submissions and in answers to questions from the Panel what practices could be harmonized (cutting would no longer confer origin) and how these changes would prevent circumvention (clear guidance for importers and Customs officers), and so will not repeat those explanations here.[7]

8. India's complaint is not so much with whether or how the United States was going to deter circumvention but with whether trying to address circumvention was acceptable. In its answers to Panel questions 2 and 17 (answers 17(b) and 17(d)) India sets a standard for judging whether preventing circumvention is legitimate - such circumvention must only be clearly fraudulent. India also makes the bald claim that the United States was not seeking to prevent fraudulent circumvention, but rather "legal circumvention" and that this was therefore illegitimate. India's arguments, however, fail for several reasons. First, as India itself acknowledges, and as noted by the EC, there is no consensus as to what constitutes "circumvention." The ATC provides examples of circumvention practices that frustrate the effective integration of textiles into the GATT, but does not define circumvention and there is no consensus among Members on the concept of legitimate vs. illegitimate circumvention (*See* India answer 17(a), EC answer to question 43(a), and U.S. answer to question 18(a) (paras. 27-32) (and exhibit US-7).). India is therefore asking the Panel to make a subjective determination, that the U.S. goal of preventing circumvention is a trade objective, without proving that there is an understanding among Members as to what "circumvention" means.

9. Moreover, if preventing quota circumvention were determined to be a "trade objective" for purposes of Article 2(b), then Members would be severely hampered in their ability to ensure compliance with textile and apparel quotas and to comply with Article 5 of the ATC. What India so easily objects to as "protectionism" is a methodology for implementing measures sanctioned under the ATC. Rules of origin designed to simplify and provide certainty in origin determinations ensure transparency and predictability, and allow importers, exporters, and Members to work together to prevent circumvention, as directed by ATC Articles 5.1 and 5.5. Such a design is clearly consistent with the purpose of Article 2 of the ARO.[8]

10. Finally, even assuming *arguendo* that the Panel would elect to disregard the statements in the SAA as "untrue," India would still have the burden of proving that the true purpose of Section 334 was a trade objective - - protection of the domestic industry. India has presented no

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[6] SAA, Exhibit US-6 at 119.

[7] *See* U.S. answers to panel questions 14 (para. 22) and 19.

[8] It should also be noted that India's contention regarding the true purpose of Section 333 of the URAA being to prevent circumvention, rather than Section 334, suggests that India has mis-read or is mis-representing Section 333. (See India answer to question by the panel 17(a).) Section 333 establishes new and more rigorous Customs measures to counteract circumvention, once circumvention is uncovered (such as the publication of names of violators, additional "reasonable care" measures for importers to take when doing business with published violators, etc.). Thus, the purpose of Section 333 is to establish "after the fact" remedies, which is different from Section 334, the purpose of which is to prevent circumvention from happening in the first instance. Both are valid measures to counteract and deter circumvention.

evidence to support this allegation, not in its first submission, oral statement or answers to panel questions. The United States already has a regime in place for the purpose of protecting its domestic industry during the ATC transition period, i.e., a quota regime, and it does not need to use additional measures or subterfuge for such purposes. The quota regime that is in place under the transitional ATC agreement provides effective protection for the domestic industry. Indeed this is why this dispute exists - - even though India's quotas are increased annually by a scheduled factor, India requested but did not receive additional increases in their quota, beyond those agreed to by India and the United States, and commenced these proceedings within days of U.S. textile officials rejecting their request. It would indeed be a leap of legal logic, WTO or otherwise, to then find by "implication," as India urges, that the true purpose of Section 334 was to protect the U.S. domestic industry. *See* India answer to panel question 17(a).[9]

11. Moreover, India has not met its burden under its proposed standard of showing that the design, structure and architecture of Section 334 "reveals," *prima facie*, that the United States' "true objective" in enacting Section 334 was protection of its domestic industry. India cites to the conclusions of the Appellate Body in the *Japan - Taxes on Alcoholic Beverages* and *Chile - Taxes on Alcoholic Beverages* disputes,[10] in which this interpretative standard was developed, but makes little effort to discuss the factors identified by the Appellate Body in those disputes to determine whether the design, structure and architecture of Section 334 reveals a discriminatory intent. While the United States does not consider that this analysis is necessary or relevant, or that it is the U.S. burden to make and rebut India's case, the United States would like to point out one instance where India has failed to meet its burden of proof under this standard - the "applied so as to afford protection" standard identified in these disputes.

12. One factor reviewed in this determination is the connection between the stated objectives and the results of the measure.[11] In Section 334, the United States has achieved what it set out to do - the rules reflect where the most important manufacturing process takes place, there is closer harmonization with our major trading partners, and the clear, concise rules have resulted in a greater ability to identify circumvention. In addition, Section 334 has facilitated an enormous increase in trade in textile and apparel products to the U.S. market. Accordingly, a conclusion that Section 334 was enacted to protect the U.S. textile industry, and is therefore a trade objective

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[9] In addition, the United States would like to be clear that nothing it has ever said amounts to, or should be construed as, an "admission," as India claims, that the true goal of Section 334 was protection of the U.S. domestic industry. *See* India answer to question from the panel, question 2.

[10] Report of the Appellate Body, *Japan – Taxes on Alcoholic Beverages*, WT/DS8/AB/R, WT/DS10/AB/R, WT/DS11/AB/R, adopted 1 November 1996, pages 26-29, Report of the Appellate Body, *Chile – Taxes on Alcoholic Beverages*, WT/DS87/AB/R, WT/DS110/AB/R, adopted 12 January 2000, paras. 62, 69-71.

[11] *See Chile-Alcohol*, paras. 56-57, 69-71.

in the context of Article 2(b), would not be based on any legal or factual foundation.[12] The United States urges the Panel not to adopt India's "trade objective by implication" standard.[13]

B. India has Not Shown that Section 334 Restricts, Distorts or Disrupts International Trade

1. India's Analytical Framework is Inconsistent with Article 2(c)

13. India, in its first submission and in answers to panel questions, seems to suggest that the Panel may assess whether Section 334 "creates restrictive, distorting, or disruptive effects on international trade" by looking at the effect on one single Member's trade.[14] This reading simply cannot be found in the words of Article 2(c). If the Members wanted to proscribe rules of origin that affected only one Member (or a couple for that matter) it would have been easy: the provision could have read: "Members shall ensure that their rules of origin shall not themselves create restrictive, distorting or disruptive effects on another Member's trade." However, even this provision would require some presentation of trade effects data and India is not, apparently, prepared to discuss *actual* effects on *its* trade. Rather, India seems to argue that the Panel should instead adopt a GATT product discrimination analysis, which would assess, India claims, "whether the rules of origin create conditions of competition with restrictive, distorting and disruptive effects."[15] India calls this a "conduct-oriented" approach (preamble to India answer 26) and urges that it should be pre-supposed that mere *adoption* of a rule of origin will have an "immediate impact" that distorts or restricts trade. This argument is, at best, circular and contradicted by India's own behavior. As a preliminary matter, it seems strange that India would advocate a legal position not in accordance with its behavior in this dispute. India, advocate today of a finding that says, essentially, "upon adoption assume impact [read effect]," waited *eight years* to bring this dispute, and its case is founded upon the basis that its trade has suffered as a result of the change in the U.S. rules of origin. This necessarily involves a *backward* look at the effect of the change. Indeed, the only evidence that India has so far presented to this Panel regarding its Article 2(c) claim is the charge by one of its exporting associations that its members have lost business since Section 334,[16] (a claim that stands in stark contrast to actual U.S. import statistics).

14. India's interpretation is inconsistent with the text of Article 2(c) and unnecessary. The drafters of the ARO must certainly have been aware of GATT Articles I and III and if they had wanted to adopt a product discrimination standard for Article 2(c), perhaps they could have done

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[12] In addition, contrary to India's assertions, the United States has not advocated that a claim under Article 2(b) can only be made "if and when trade data are available . . ." India Oral Statement paras.43-44. That point is relevant only to Article 2(c).

[13] See India answer 17(a) to questions from the Panel.

[14] India answer to question 11(b) from the panel and India first submission, para. 93.

[15] India oral statement paras. 39-45 and answers to panel questions 11 and 28 (India answers 14 and 26).

[16] In addition, as noted above, India only commenced these proceedings when it did not get an increase in its U.S. quota, and after India apparently decided not to pursue its claim under ATC procedures.

so -- although that, again, would contradict the ARO's sanctioning of product-specific rules. The United States submits that they chose not to do that because product differentiation *is* allowed under the ARO (India seems to confuse differentiation with discrimination). There is no need for the Panel to resort to adopting this analysis when, in addition to the terms of the provision, there is other WTO guidance, more similar to Article 2(c) on which to rely. Further, as India itself notes, this analysis presumes an element of intent, which is not found in Article 2(c).

15. India makes a laborious argument that the panel should look at the effects of a change in rules of origin on conditions of competition in its answer to Panel question 26. This argument is misguided. As a preliminary matter, the United States notes again that the text of Article 2(c) does not discipline changes in rules of origin *per se*; instead, it applies to rules of origin "themselves." Thus, the type of comparative argument suggested by India is precluded by the text of Article 2(c) itself. Moreover, the fact that Article 2(i) sets forth specific disciplines on changes in rules of origin and does so expressly further indicates that 2(c) was not meant to discipline changes *per se*. The panel must examine whether the U.S. rules, as enacted, "create restrictive, distorting, or disruptive effects on international trade," not whether the change in U.S. rules altered conditions of competition.

16. In its questions to India (question 26(e)), the panel correctly noted that under India's interpretation of 2(c), "Members cannot introduce changes to their rules of origin, given that different rules of origin are almost bound to produce different trade effects." India's response, that changes are permitted provided they comply with Article 2, does not answer the panel's implied objection. Furthermore, at no time does India present analysis, pursuant to the WTO jurisprudence that it cites, of how Section 334 "changed the competitive conditions."

17. India suggests in its answer to question 11(b) that the Panel should follow the reasoning of the panel in *United States – Section 337 of the Tariff Act of 1930*[17] and consider conditions of competition. Doing so, however, would misinterpret that report. India's approach to *Section 337* would mean by definition that there could be no changes in rules of origin because somebody always benefits and somebody always loses. In *Section 337*, the panel rejected the proposition that Article III allows "balancing more favourable treatment of some imported products against less favourable treatment of other imported products . . ." because such an interpretation would "lead to great uncertainties about the conditions of competition between imported and domestic products."[18] Finally, and most significantly, in neither *Section 337* nor in the *Oilseeds*[19] case (cited by India in its answer to the panel question 26) did the panel conclude that a measure was inconsistent with the GATT solely because it had an impact on conditions of competition. In *Section 337*, the panel did not find the U.S. measure inconsistent with Article III because the

[17] Report of the Panel in *United States – Section 337 of the Tariff Act of 1930* (*"Section 337"*), L/6439, BISD 36S/345, adopted 7 November 1989.

[18] *Section 337*, para. 5.14.

[19] *EEC – Payments and Subsidies to Processors and Producers of Oilseeds and Related Animal Feed Proteins* (*"Oilseeds"*), L/6627, BISD 37S/86, adopted 25 January 1990.

measure had an impact on conditions of competition; instead, it first found that the measure subjected imported products to legal provisions that are different from those applicable to products of domestic origin, and it relied on the conditions of competition test to determine whether this differential treatment accorded to imported products less favorable treatment.[20] In the *Oilseeds* case, the panel was considering whether the benefits to the United States under the EC's tariff concession for oilseeds were being nullified or impaired by subsidies granted by the EC.[21] The panel did not look to conditions of competition to determine whether Article II had been violated; instead, it looked to conditions of competition to determine if benefits under Article II were being nullified or impaired, despite no violation of Article II. India's reading would in essence make this a non-violation claim.

2. The Interpretation of "restrictive, distorting, disruptive effects"

18. Article 2(c) itself gives guidance on how rules of origin might themselves create restrictive, distorting, or disruptive effects on international trade, for example by imposing "unduly strict requirements" as a "prerequisite for the determination of the country of origin" or by requiring "the fulfilment of a certain condition not related to manufacturing or processing as a prerequisite for the determination of the country of origin." India had the correct interpretation earlier, when it noted that the meaning of Article 2(c) could be ascertained from the "immediate context [of] the second sentence of Article 2(c) according to which rules shall not impose requirements that are unduly strict or unrelated to manufacturing or processing."[22]

19. The determination of whether Section 334 creates restrictions or distortions or disruption on international trade can be made simply, by looking at trade flows. As India acknowledges, the drafters of the ARO gave us a specific example of how rules of origin can create the prohibited effects - through unduly strict requirements or the imposition of conditions not related to origin determinations. In the second sentence, the drafters also were clear that some effects would occur from simply having requirements and would not be considered to rise to the level of "distortions" of international trade. This also makes common sense, as the ARO does not operate to address constant disputes about specific origin determinations for particular products which may have an uneven effect on one Member *versus* another.[23]

20. A reading of Article 2(c) that does not require some showing of *actual* effects on international trade would render the provision meaningless and would mean that a complainant would never have to prove, in a case where it was specifically alleging that a provision had been violated, that there actually was a violation. As was noted in the U.S. response to the Panel's

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[20] *See* paras. 5.19-5.20.

[21] *See* paras. 142-144.

[22] India oral statement para. 45.

[23] *See* U.S. answer to question 11 from the panel, paras. 10-16. In response to question 11(b), India speaks of Article 2(c) as serving "to protect expectations regarding the level of imports: and "expectations regarding the trade between the third countries." Setting aside India's dismissal of the need to show the Panel hard data to satisfy its allegations, nothing in the ARO suggests that it was designed to protect expectations of levels of imports.

questions, in a given case, a change to rules of origin could eliminate restrictive, distorting, or disruptive effects produced by the former rules; or, it could be that, while the change in rules had an impact on trade, the result was a more transparent and more easily administered system, with benefits to trade, and rules that more accurately reflect commercial realities (i.e., reflect the important role of assembly).

21. The United States submits that, despite India's claims to the contrary, the Panel will not make history by looking for actual effects on international trade in its assessment of "restrictive effects," as India suggests, because an important principle of treaty interpretation is sufficient in this case. The *Vienna Convention on the Law of Treaties* directs that examiners of a treaty provision determine the ordinary meaning of the provision from its words and in its context, as well as the object and purpose of the agreement.[24]

22. This interpretation is further supported by similar provisions in other WTO agreements. As the Panel correctly noted in question 26(b) to India, Article 6.3 of the SCM Agreement, which addresses effects of subsidies on imports and exports is at least equally relevant to an analysis of Article 2(c) (effects on international trade) as GATT cases that address discrimination among like products. This is especially so if India is correct that the term "trade effects" does not appear anywhere in the GATT, because it does appear in ARO Article 2(c), as well as in Articles 2(a) and 3.2 of the Agreement on Import Licensing Procedures, as the Panel noted.

23. Far from being restrictive, our clear and transparent rules of origin have facilitated a significant expansion of international trade, from India and the rest of the world. As shown in the attached Exhibit US-8, trade in the HTS classifications that India has identified as being affected by Section 334 and 405 (footnotes 23, 25 and 56 of India's first submission) cannot be said to show a pattern of effects of a "restrictive, distorting or disruptive" action; in fact, the contrary is the case. Therefore, India has not shown how Section 334 breaches the U.S. WTO obligations in Article 2(b) and 2(c). Finally, the United States notes that India has not made any specific allegations regarding an Article 2(d) discrimination claim with respect to Section 334.

C. India has Not Shown that Section 405 is Discriminatory or That It Restricts, Distorts and Disrupts International Trade

24. India appears to have three claims with respect to Section 405 - - that Section 405, enacted to settle a WTO dispute with the EC, "favors" the EC in violation of Article 2(b) and 2(d), and that Section 405 has restricted, distorted or disrupted trade in violation of Article 2(c). India made a vague argument in its first submission that because the settlement was reached to end a U.S.-EC dispute, that was a "trade objective." However, as we explained in the first submission and oral statement of the United States, it would be absurd to find that a settlement, which furthers the goals of the WTO, is an impermissible trade objective under Article 2(b).[25]

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[24] *See Vienna Convention*, Article 31.

[25] *See also* Third Party Submission of the European Communities, paras. 26-27.

25. Similarly, with respect to India's charge that Section 405 restricts, distorts, and disrupts international trade, the United States first notes that India has made little effort to develop this claim, either legally or factually. In addition, changes in rules of origin for quota goods will usually have quota implications that will be different for different Members, depending on their quota levels and the nature of their exports. In accordance with the terms of bilateral textile agreements incorporated into the ATC, there are several examples where U.S. textile and apparel quotas appear to treat imports from India more favorably than those of other WTO Members, for example with respect to duck fabric, skirts, cotton terry towels, as well as the annual growth rates for certain categories.

26. Finally, trade statistics do not bear out India's claims of a disruption of its trade. Section 405 was effective in May, 2000 and in 2001, a year in which overall U.S. imports of textile and apparel products contracted, U.S. imports of products affected by Section 405 demonstrated no particular pattern that would indicate trade restriction, disruption or distortion. In fact, in several categories of Section 405 products, U.S. imports from the world and from India instead showed healthy increases, for example, HTS 6213 (imports from world up 44 percent; imports from India up 57 percent); 6302.59 (imports from world up 21 percent; imports from India up 5 percent); 6302.93 (imports from world up 16 percent; imports from India up 70 percent); and 6303.99 (imports from the world up 35 percent; imports from India up 142 percent).

27. India's primary claim with respect to Section 405 is its charge that because the exceptions to Section 334 took into account specific products of interest to the EC, this "favored" the EC and is discriminatory. Of course, any settlement has to be satisfactory to the complaining party. But if the settlement is applicable to all Members on an MFN basis, it will in all likelihood benefit all exporting Members. Neither can India rely on *Canada - Certain Measures Affecting the Automotive Industry* to substantiate a claim of *de facto* advantage in favor of the EC. In that dispute the Appellate Body was addressing an advantage given to *some* products that was based on the country of affiliation of the producers. However, in that case, the *de facto* discrimination resulted because Canada was giving advantage to some of the *same* (*like*) products based on nationality. In this dispute, India's charges in respect of the U.S. rules of origin relate to *different* products.[26] Furthermore, while it is true that in that report the Appellate Body made a reference to "*de facto* advantage," GATT Article I:1 is not at issue in this case. If India had wished to make such a claim, it could have brought a dispute under that provision. India did not do so.

III. CONCLUSION

28. For the foregoing reasons, the United States requests that the Panel find that India has failed to establish that Section 334 of the URAA and Section 405 of the Trade and Development Act of 2000 are inconsistent with Articles 2(b)-(e) of the ARO.

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[26] Report of the Appellate Body in *Canada – Certain Measures Affecting the Automotive Industry*, WT/DS139/AB/R, WT/DS142/AB/R, adopted 19 June 2000, paras. 81 and 85.