Part of the answer might be that a nonfabricated publication would be excused because it would have more social value and be protected by the journalist's freedom of expression. Recall that Judge Lettieri characterized the *Al Akhbar* articles as politically motivated and poorly substantiated. However, this answer is incomplete. Judge Lettieri's judgment ultimately rests on a determination that the *Al Akhbar* articles were intended to, and probably did, undermine public confidence in the Tribunal. If that is the standard, then the freedom to be critical of the Tribunal would still have to be balanced against the cost to the Tribunal and might, in the end, lose out. Because the judgment does not include a discernable limiting principle for protecting the freedom of expression in cases of contempt, it has the potential to be quite expansive.

MONICA HAKIMI
University of Michigan Law School
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World Trade Organization—General Agreement on Tariffs and Trade—national treatment—general exceptions—renewable energy—international environmental law

INDIA—CERTAIN MEASURES RELATING TO SOLAR CELLS AND SOLAR MODULES. WT/DS456/AB/R. *At* https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds456_e.htm.
World Trade Organization Appellate Body, September 16, 2016 (adopted October 14, 2016).

In a proceeding that challenged the domestic content requirements (DCRs) of India's solar energy program, the Appellate Body of the World Trade Organization (WTO) upheld the panel determination that the Indian government's measures violated its international obligations.[1] The decision offers new insights into certain exceptions for environmental policies under the multilateral trading system and elaborates on the relevance of other international legal regimes to the compliance issue under WTO law. Further, it has the potential to increase export opportunities of many countries in the Indian renewable energy market.

Under the so-called "Jawaharlal Nehru National Solar Mission" (2010) aimed at boosting the country's grid-connected solar power capacity, the Indian government entered into long-term agreements with solar power developers to purchase "green" electricity at guaranteed rates, subject to the DCRs mandating the use of locally produced solar cells and solar modules (also known as "solar panels"). The United States challenged the Indian program on the grounds that the DCRs favored domestic solar products to the detriment of foreign competitors. In its defense, India invoked certain policy flexibilities under the General Agreement on Tariffs and Trade (GATT).[2] On February 24, 2016, a WTO panel determined that the measures at issue were inconsistent with the national treatment provisions of Article III:4

[1] Appellate Body Report, India—Certain Measures Relating to Solar Cells and Solar Modules, WT/DS456/AB/R (Sept. 16, 2016) (*adopted* Oct. 14, 2016), *at* https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds456_e.htm.

[2] General Agreement on Tariffs and Trade 1994 [GATT], Marrakesh Agreement Establishing the World Trade Organization, Apr. 15, 1994, 1867 UNTS 154 [hereinafter Marrakesh Agreement], Annex 1A, 1867 UNTS 190, *reprinted in* WORLD TRADE ORGANIZATION, THE LEGAL TEXTS: THE RESULTS OF THE URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS 3, 17 (1999) [hereinafter LEGAL TEXTS].

of the GATT, as well as Article 2.1 of the Agreement on Trade-Related Investment Measures.[3]

In sustaining the panel's decision, the Appellate Body concluded that India had failed to prove how three GATT provisions—Articles III:8(a), XX(j), and XX(d)—could justify its DCRs. The ruling offers new perspectives on these significant provisions and provides food for thought on certain procedural issues of systemic importance.

As to the first provision, GATT Article III:8(a) exempts government procurement (defined as "the procurement by governmental agencies of products purchased for governmental purposes and not with a view to commercial resale or with a view to use in the production of goods for commercial sale") from the general national treatment obligation reflected in Article III. On the basis of the Appellate Body's earlier decision in *Canada—Renewable Energy/Canada—Feed-in Tariff Program*,[4] the panel found that this exemption did not cover the measure at issue since the Indian government was purchasing domestically produced solar power while discriminating against power-generating equipment of foreign origin (paras. 5.4, 5.11). On appeal, India countered that solar cells and modules are not distinguishable from solar power generation, and that the Appellate Body's decision in *Canada—Renewable Energy/Canada—Feed-in Tariff Program* allowed a more flexible interpretation of Article III:8(a) relating to "inputs and processes of production" used in the products procured by government (paras. 5.13, 5.19).

The Appellate Body disagreed, holding that the foreign product at issue must be "like," "directly competitive" with, or "substitutable" for—that is, in a "competitive relationship" with—the domestic "product purchased" (para. 5.22). The Appellate Body held further that the issue of whether Article III:8(a) extends to discrimination over inputs and production processes of the product purchased could be addressed only after the establishment of a competitive relationship between that product and the product subject to discrimination (para. 5.24). Since India did not present an argument to the panel that solar power and solar cells/modules were in such a relationship, and since it failed to prove, on appeal, why the panel misapplied the decision in *Canada—Renewable Energy/Canada—Feed-in Tariff Program*, the Appellate Body concluded that the government procurement derogation did not apply to the DCRs (paras. 5.25, 5.40–.41).

Regarding the second and third provisions at issue, Article XX permits some measures that protect certain societal values even though they otherwise violate the GATT. More specifically, paragraph (j) of Article XX allows measures "essential to the acquisition or distribution of products in general or local short supply" as long as they are "consistent with the principle that all contracting parties are entitled to an equitable share of the international supply of such products" and are "discontinued as soon as the conditions giving rise to them have ceased to exist." Relying on this provision, India claimed that its low capacity to manufacture solar cells

[3] Panel Report, India—Certain Measures Relating to Solar Cells and Solar Modules, WT/DS456/R (Feb. 24, 2016) (*adopted* Oct. 14, 2016), *at* https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds456_e.htm [hereinafter Panel Report].

[4] Appellate Body Reports, Canada—Certain Measures Affecting the Renewable Energy Generation Sector; Canada—Measures Relating to the Feed-in Tariff Program, WT/DS412/AB/R, WT/DS426/AB/R (May 6, 2013) (*adopted* May 24, 2013), *at* https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds412_e.htm [hereinafter *Canada—Renewable Energy/Canada—Feed-in Tariff Program*] (discussed in: Sherzod Shadikhodjaev, *First WTO Judicial Review of Climate Change Subsidy Issues*, 107 AJIL 864 (2013)).

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and modules pointed to the existence of a "general or local short supply" in the internal market, that the DCRs were aimed at reducing the risk of import dependence in that situation, and that it did not intend for the DCRs to be applied indefinitely (paras. 5.51–.52). In rejecting India's argument, the panel adopted a different approach, concluding that "products in general or local short supply" refers to a situation in which "the quantity of available supply of a product, from all sources, does not meet demand in a relevant geographical area or market" (para. 5.49).

Noting that this was the first case in which it had been called upon to interpret Article XX (j), the Appellate Body first sought to define the appropriate "legal standard," looking in particular to the "analytical framework" of Article XX(d) as a comparable context. Article XX(j) requires an assessment of the relationship between the challenged measure and "the acquisition or distribution" of products on the basis of the measure's design and its essentiality to such acquisition/distribution (paras. 5.58, 5.60). Given the similarity between the words "necessary" (in Article XX(d)) and "essential" (in Article XX(j)), the Appellate Body found that the process of "weighing and balancing" relevant factors required by Article XX(d) would be equally pertinent under Article XX(j). Accordingly, this process necessitated an evaluation of the importance of addressing "the acquisition or distribution" of the products in short supply, the measure's contribution thereto, and its trade-restrictiveness as compared to reasonably available alternatives (paras. 5.62–.63).

The Appellate Body stated that "general or local short supply" referred to a shortage of products—whether domestic or foreign—within the territory of the claiming member, or even beyond its boundaries to the extent of the existence of such in-country deficiency, with such shortage to be proved by supply-demand trends (paras. 5.67–.70). It found that this could be determined by analyzing the level of domestic production, the relevant product and geographic market, potential price fluctuations, accessibility of international supplies, and other factors demonstrating the availability and sufficiency of a given product (para. 5.71). The Appellate Body noted further:

> Due regard should be given to the total quantity of imports that may be "available" to meet demand in a particular geographical area or market. It may thus be relevant to consider the extent to which international supply of a product is stable and accessible, including by examining factors such as the distance between a particular geographical area or market and production sites, as well as the reliability of local or transnational supply chains. Whether and which factors are relevant will necessarily depend on the particularities of each case. . . . [A]n assessment of whether a Member has identified "products in general or local short supply" requires a case-by-case analysis of the relationship between supply and demand based on a holistic consideration of all relevant factors. (Paras. 5.71, 5.74)

The Appellate Body also recognized the relevance of a member's development status as indicative of production capacity and exposure to supply disruptions and stressed that the measure's policy rationales, such as energy security or sustainable development, could inform, but not replace, the analysis of short supply (paras. 5.72, 5.78–.79). Utilizing these parameters, it rejected India's claim due to a lack of evidence regarding the inadequacy of *both* domestic and international sources to meet domestic demand for solar cells and modules,

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and actual disruptions in solar imports that would create supply-related risks (paras. 5.73–.77).

Finally, India defended the DCRs under Article XX(d), which excuses unlawful measures "necessary to secure compliance with [GATT-consistent] laws or regulations." India appealed the panel's conclusion that the various domestic and international instruments that it had invoked did not qualify as "laws or regulations" under this provision (paras. 5.91–.93).

The Appellate Body disagreed with India here as well. On the one hand, it stated, the scope of eligible "laws or regulations" was not necessarily confined to legally enforceable instruments and could, where appropriate, comprise certain other rules that do not entail methods of coercion, such as "the imposition of penalties or sanctions" for noncompliance (para. 5.109). On the other hand, the Appellate Body observed that it was necessary to

> consider the degree of specificity or precision with which the relevant instrument lays down a particular rule of conduct or course of action within the domestic legal system of a Member, as opposed to simply providing a legal basis for action that may be consistent with certain objectives. (Para. 5.110)

In sum, the "laws or regulations" issue requires a holistic, case-by-case assessment of the relevant domestic legal system and the "specific characteristics and features" of the cited instruments and rules (para. 5.114), which includes consideration of:

> (i) the degree of normativity of the instrument and the extent to which the instrument operates to set out a rule of conduct or course of action that is to be observed within the domestic legal system of a Member; (ii) the degree of specificity of the relevant rule; (iii) whether the rule is legally enforceable, including, e.g. before a court of law; (iv) whether the rule has been adopted or recognized by a competent authority possessing the necessary powers under the domestic legal system of a Member; (v) the form and title given to any instrument or instruments containing the rule under the domestic legal system of a Member; and (vi) the penalties or sanctions that may accompany the relevant rule. (Para. 5.113)

With respect to domestic instruments, India asserted that the DCRs sought to secure compliance with the rule of "ensur[ing] ecologically sustainable growth while addressing India's energy security challenge, and ensuring compliance with its obligations relating to climate change" (para. 5.126 (quoting from India's first written submission to the panel)).[5] This rule, India contended, was reflected in the Electricity Act (2003) and the related national policy and plans, and thus fell within the scope of "laws or regulations" under Article XX(d) (para. 5.126). But the Appellate Body rejected this contention on the basis that the "hortatory, aspirational, declaratory, and . . . descriptive" passages from the referenced policy and plans had failed to codify a sufficiently normative and specific "rule" that India alleged to exist, while the quoted part of the Electricity Act envisaged the obligation which differed in content from that rule (paras. 5.133 (quoting from the Panel Report), 5.135).[6]

With respect to international instruments, India referred to the preamble of the WTO Agreement, the United Nations (UN) Framework Convention on Climate Change, the Rio Declaration on Environment and Development, and the UN General Assembly

[5] *See also* Panel Report, *supra* note 3, para. 7.275.

[6] *See also id.*, para. 7.313.

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Resolution on the Rio+20 Document, "The Future We Want," to stress the globally recognized demand for addressing sustainable development and climate change problems (para. 5.92, n. 275).

The Appellate Body acknowledged that international instruments could be considered valid "laws or regulations" for Article XX(d) purposes in certain circumstances. First, these instruments must become part of the member state's domestic legal system by means of incorporation (whether by legislative or executive implementation), or via having direct effect within the domestic system without such implementation, or in other ways available under that system. In this respect, one must assess the nature of the instrument, its subject matter, and the member's internal legal order (para. 5.140). Second, the instruments or rules in question must operate with "a sufficient degree of normativity and specificity under the domestic legal system of a Member so as to set out a rule of conduct or course of action" (para. 5.141).

Interestingly, the Appellate Body acknowledged the distinction between the legally binding nature of the instrument as a matter of international law and its status under domestic law. Even if an instrument is internationally binding under the principle of *pacta sunt servanda*, it stated, "this does not mean that, in and of itself, there is a rule, requirement, or obligation within the domestic legal system of a Member that falls within the scope of 'laws or regulations'" for purposes of Article XX(d). (para. 5.141, n. 386)

India contended that the international instruments at issue did have "direct effect" in its legal system because: (1) the executive branch could constitutionally implement them without prior parliamentary action; and (2) its Supreme Court had recognized the international "principles of sustainable development" as part of domestic "environmental and developmental governance" (paras. 5.138, 5.142). Neither the panel nor the Appellate Body questioned India's constitutional order, but both rejected the presented rationales. The panel held that implementation by the executive (and/or legislative) branch by itself did not demonstrate that the international instruments had direct effect in India (para. 5.144). The Appellate Body agreed, noting that whether a particular governmental branch possessed implementing authority was not dispositive of whether those instruments were "laws or regulations" under Article XX(d) (para. 5.145). The Appellate Body found further that references made by the Supreme Court regarding the relevance of various international instruments to the interpretation of domestic law were also insufficient:

> While . . . Decisions and observations by the Supreme Court may serve to highlight the relevance of the international instruments and rules identified by India for purposes of interpreting provisions of India's domestic law, as well as for guiding the exercise of the decision-making power of the executive branch of the Central Government, we do not consider that this is sufficient to demonstrate that the international instruments India identified are rules that form part of its domestic legal system and fall within the scope of "laws or regulations" under Article XX(d). (Para. 5.148)

Having already found certain flaws in India's defense under Articles XX(j) and XX(d), the Appellate Body declined to examine the remaining arguments regarding the essentiality/necessity of the contested measure under those provisions and its consistency with the introductory clause (or *chapeau*) of Article XX (paras. 5.154–.155). But one Appellate Body member presented a "separate opinion" as to why such judicial economy was appropriate in light of

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the "adjudicatory function" of the Appellate Body under the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU).[7] In essence, the separate opinion discussed the "duty" of the Appellate Body to address the issues on appeal and the scope of its discretion as to "how" to perform that duty (paras. 5.156–.163).

* * * *

This is the second time that the Appellate Body has ruled on the legality of localization elements of a green energy promotion scheme under the WTO national treatment principle. The present decision differs in that the complainant did not additionally question the counterpart's measure under the WTO subsidy disciplines during the panel and appellate procedures, although it had raised that issue at the consultation stage.[8] In fact, the United States could have relied on faster dispute settlement and a stronger remedy for a subsidy case, but it omitted this matter after the Appellate Body in *Canada—Renewable Energy/Canada—Feed-in Tariff Program* construed the concept of "subsidy" as not necessarily covering government support in the clean energy sector.[9] With the knowledge of such a climate-friendly interpretation, the United States apparently did not wish to embark on a "risky" challenge against India on similar grounds.

India's Article III:8(a) defense faltered over the threshold issue of the appropriate product coverage. However, the Appellate Body did not rule out the possibility that the government procurement clause might apply to discrimination in relation to inputs and production methods where both government purchases and discrimination concern the same products within the meaning of Article III.

In the case of renewable energy projects, this approach may work for power-generating equipment when, for instance, ministries prefer to install solar panels containing only domestic solar cells for production of green electricity for their own use. In these circumstances, the government procures and discriminates against the final product (solar panels) depending on the country of origin of the related inputs (solar cells).

With respect to energy itself, the Article III:8(a) derogation may come into play when the government buys domestically produced green electricity as opposed to imported conventional electricity or when it acquires solar power from local sources but refuses to use wind power available from neighboring countries. A member invoking this clause could argue that the government procurement and discrimination involve mutually competing ("like" or "directly competitive or substitutable") products, namely electricity generated with different processes of production.

Yet, in and of itself, the appropriate scope of products does not determine whether Article III:8(a) covers input- or production-based measures, as the latter must also meet the remaining conditions of that provision—in particular the requirement regarding the purchases "for governmental purposes and not with a view to commercial resale."

Perhaps more significantly, the decision produced the first legal interpretation of Article XX(j), providing valuable guidance for justifying trade restrictions that members impose

[7] Understanding on Rules and Procedures Governing the Settlement of Disputes, Apr. 15, 1994, Marrakesh Agreement, Annex 2, 1869 UNTS 401, *reprinted in* LEGAL TEXTS, *supra* note 2, at 354.

[8] *See* Panel Report, *supra* note 3, para. 1.1, n. 1.

[9] *See* Shadikhodjaev, *supra* note 4, 867–68, 873–74.

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with a view to mitigating the difficulty of accessing specific products. This provision was originally aimed at addressing temporary shortages of goods that arose immediately following World War II and was intended to terminate at some later point; however, following several reviews and extensions, it was determined that the provision should remain in force.[10] While the original focus might have been on agricultural products and commodities, this ruling clearly shows that the exception can be extended to virtually *any* goods in "general or local short supply," including such novel items as solar cells and modules.

According to the Appellate Body, the analysis of "short supply" evaluates the capacity of the product from *all available* sources to meet the demand in a respective country on the basis of various factors, including "the relevant product and geographic market." With the latter phrase, the Appellate Body seems to have acknowledged a somewhat modified concept of a "market" which, it stated, can be defined by "supply-side and demand-side substitutability," among other things (para. 5.71, n. 236). Indeed, consideration of both product and *geographic* markets together with *supply-* and demand-side factors is typical of antitrust law, but not generally common to trade law.[11]

The Appellate Body previously employed this approach (but only in part) in the WTO subsidy regime by approving of the notion of product substitutability from the perspective of competing producers (suppliers).[12] But the current decision appears to be the first instance where the Appellate Body arguably accepted the possibility of a *full* use of the antitrust approach to the market definition *under the GATT*. As this finding pertains to Article XX (j), which is a *general* exception applicable to the entire body of the GATT, it opens the door for future GATT claims involving the concepts of a geographic market and supply-side substitutability. It is true that in one of the earliest WTO disputes, a panel explicitly rejected the antitrust (competition) law criteria for defining markets under Article III,[13] but the Appellate Body did not review that finding in a subsequent proceeding, and there could be other GATT provisions outside Article III where the issue of a relevant market may arise.

Another noteworthy aspect of the Article XX(j) interpretation concerns acceptable types of covered measures. Although countries tend to cope with product deficits mostly through associated export restrictions, the Appellate Body made it clear that Article XX(j) could also apply to import restrictions when, for example, public monopolies restrict private traders' imports and exports as part of internal sales regulation (para. 5.82).

The decision is also remarkable for considering whether and when a member's obligations under international environmental (or other non-WTO) law can justify its noncompliance with the GATT under Article XX(d). In this context, the Appellate Body accorded considerable deference to national legal systems in accommodating international rules. While WTO

[10] *See* WTO, GUIDE TO GATT LAW AND PRACTICE, vol. 1, 592–95 (1995).

[11] *See* CHRISTIAN A. MELISCHEK, THE RELEVANT MARKET IN INTERNATIONAL ECONOMIC LAW: A COMPARATIVE ANTITRUST AND GATT ANALYSIS 29–30, 149–58 (2013).

[12] Appellate Body Report, European Communities and Certain Member States—Measures Affecting Trade in Large Civil Aircraft, para. 1121, WT/DS316/AB/R (May 18, 2011) (*adopted* June 1, 2011); *Canada—Renewable Energy/Canada—Feed-in Tariff Program*, *supra* note 4, para. 5.178.

[13] Panel Report, Korea—Taxes on Alcoholic Beverages, para. 10.81, WT/DS75/R, WT/DS84/R (Sept. 17, 1998) (*adopted* Feb. 17, 1999).

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law recognizes the sovereignty of each member to determine how to implement multilateral trade agreements,[14] the ruling in question confirmed this with respect to non-WTO international obligations as well. It adds some value to the previous jurisprudence by accepting "other ways" of making public international law part of the domestic legal order, along with the incorporation and direct effect methods, subject to the respective national system. The decision suggests that implementation of international rules by administrative bodies alone cannot substantiate the existence of the "direct effect." At the same time, the Appellate Body fell short of explaining what "direct effect" actually means, except to note that this was a situation not requiring domestic implementation (para. 5.140). In contrast, the panel in *U.S.—Section 301 Trade Act* was clearer on this concept in referring to a state's international obligations that create "legally enforceable rights and obligations for individuals" at the domestic level.[15]

Further, the Appellate Body developed a number of "eligibility criteria" for "laws or regulations" under Article XX(d). It stipulated that international instruments must be sufficiently normative "so as to set out a rule of conduct or course of action" which may be proved not only by legal enforceability but also by other possible characteristics derivable from the respective national regime and the instrument itself (para. 5.121). It follows that even some international "soft law" provisions operationalized on the domestic plane may fall under Article XX(d) if they possess a sufficient degree of normativity and other requisite features mentioned above. Yet, it remains to be seen how normativity of an international rule within a state's legal domain can be demonstrated other than through the enforceability factor.

Finally, the decision provides food for thought regarding certain procedural issues of trade litigation. In a follow-up WTO meeting focused on the present decision, the United States criticized an Appellate Body member's separate opinion for addressing the issue not raised in this appeal.[16] But this separate (nondissenting) opinion should rather be welcomed for the attempt to elucidate why the Appellate Body may decline to make findings, in spite of a party's request to do so. Indeed, as Article 17.12 of the DSU clearly obligates the Appellate Body to "address each of the issues" properly raised by the parties, it is even surprising that the Appellate Body as a whole failed to explain the legal basis for exercising such judicial economy in this particular case.[17]

Moreover, the United States condemned the separate opinion in question as "another example of [the] *obiter dicta* . . . problem" discussed in the WTO in "the recent past," most likely referring to an earlier WTO debate around Appellate Body member Seung Wha Chang, whose reappointment the United States vetoed on the grounds that he had allegedly produced many irrelevant appellate findings ("*obiter dicta*" in the words of the U.S.

[14] *See, e.g.*, Agreement on Trade-Related Aspects of Intellectual Property Rights, Art. 1.1, Apr. 15, 1994, Marrakesh Agreement, *supra* note 2, Annex 1C, 1869 UNTS 299, 33 ILM 1197 (1994), *reprinted in* LEGAL TEXTS, *supra* note 2, at 320.

[15] Panel Report, United States—Sections 301–310 of the Trade Act of 1974, para. 7.72, WT/DS152/R (Dec. 22, 1999) (*adopted* Jan. 27, 2000).

[16] WTO Dispute Settlement Body, Minutes of Meeting Held in the Center William Rappard on Oct. 14, 2016, para. 1.8, WT/DSB/M/386 (Nov. 9, 2016).

[17] The Appellate Body previously simply mentioned Articles 3.2, 3.3, 3.4, and 3.7 of the DSU as a possible basis for it to exercise judicial economy. But it did not provide a detailed analysis of these provisions, which are rather textually silent on this issue. *See* Appellate Body Report, United States—Subsidies on Upland Cotton, paras. 508-09, WT/DS267/AB/R (Mar. 3, 2005) (*adopted* Mar. 21, 2005).

representative).[18] Such allegations raise a systemic question as to the appropriate extent of adjudicators' discussions in WTO rulings, as the existing DSU mandate is not instructive enough on this point. For instance, the Appellate Body in the present case could have simply limited its analysis under Article XX(j) to the assessment of whether India was facing "general or local short supply" of the solar products concerned, without first elaborating on the right "legal standard" and "analytical framework" for the related legal defense, which is exactly what the panel did.

Some may argue that strictly sticking to the submitted inquiry would have sufficiently determined justifiability of the Indian measure and eventually contributed to the "prompt settlement" of the dispute and "the effective functioning of the WTO" within the meaning of Article 3.3 of the DSU. But others may well praise the Appellate Body's current approach for defining general parameters and clarifying the conditions for invocation of Article XX(j), which has never been interpreted before, and thereby providing more "security and predictability to the multilateral trading system" in the sense of Article 3.2 of the DSU. This obviously highlights the need for developing clearer guidance on this issue.

SHERZOD SHADIKHODJAEV*
KDI School of Public Policy and Management, Sejong City, Republic of Korea
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Rights of indigenous peoples—collective rights—recognition of legal personality—right to communal property—conflict between nature reserves and indigenous land—free, prior, and informed consultation—environmental impact—restitution and reparation

CASE OF THE KALIÑA AND LOKONO PEOPLES v. SURINAME. Series C, No. 309. Merits, Reparations and Costs. *At* http://www.corteidh.or.cr.
Inter-American Court of Human Rights, November 25, 2015.

On November 25, 2015, the Inter-American Court of Human Rights (Court) held that the state of Suriname had violated the rights of two indigenous groups by denying recognition of their juridical personality and their entitlement to collective property and judicial protection. In *Kaliña and Lokono Peoples v. Suriname*,[1] the Court also considered the impact of nature reserves on indigenous land rights, as well as the legitimacy of private titling of property that encroaches on land for which collective title has not been attained. The decision pushes the Court's previous jurisprudence significantly—and somewhat controversially—by asserting that under the American Convention on Human Rights,[2] indigenous peoples are entitled,

[18] *See* WTO Dispute Settlement Body, Oct. 14, 2016 Minutes, *supra* note 16, para. 1.8; WTO Dispute Settlement Body, Minutes of Meeting Held in the Center William Rappard on May 23, 2016, paras. 6.1–.49, WT/DSB/M/379 (Aug. 29, 2016).

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[1] Case of the Kaliña and Lokono Peoples v. Suriname, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 309 (Nov. 25, 2015), *at* http://www.corteidh.or.cr/docs/casos/articulos/seriec_309_ing.pdf [hereinafter Merits].

[2] American Convention on Human Rights, Nov. 22, 1969, OASTS No. 36, 1144 UNTS 123, *at* https://www.oas.org/dil/treaties_b-32_american_convention_on_human_rights.htm [hereinafter Convention]. Suriname became a party to the Convention on November 12, 1987.