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India Raises State-Purchase Price of Wheat

Mukesh Jagota and Debiprasad Nayak, Dow Jones Institutional News

New Delhi, 17 October 2013: India Thursday increased by 4% the price that government agencies pay for procuring wheat, a senior official said, a decision that would help farmers but likely stoke already-high inflation and strain government finances.

A panel of ministers cleared a farm-ministry proposal to increase the price of wheat, the main winter crop, to 1,400 rupees (\$22.86) per 100 kilograms, said the official.

The government offers a minimum purchase price for key staples under a decades-old policy that aims to prevent any shortage of rice and wheat, as well as to protect farm incomes. State-run granaries are overflowing due to bumper production in the past two years, and a portion of these stocks, stored in poor conditions, is now infested with parasites or has been damaged by rain.

According to data from the Food Corporation of India, the main grain-procurement agency, state warehouses are stocked with 38 million tons of wheat, more than double the minimum stocks the country needs to maintain under local rules.

Farmers may prefer selling to the government because of the higher price it offers, further complicating India's grain-storage problem.

Much of this grain is supplied through government welfare programs, and increasing the minimum price means the government's subsidy expenses would increase as well. Food subsidies account for more than 40% of all government subsidies.

Analysts said the rise in minimum purchase price would also increase the market price of the grain and add to food inflation. Food prices have pushed consumer inflation to 9.84% in September, according to the latest government data.

The ministerial panel has also increased the purchase price of rapeseed to 3,050 rupees per 100 kg from 3,000 rupees, said the official, who didn't want to be identified.

In India, sowing of winter crops begins in November, and harvest starts at the end of March or early April.

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Govt mulls offset policy for purchases from foreign firms

Amiti Sen, Business Line (The Hindu)

New Delhi, 18 November 2013: India is considering a national offset policy that would make it compulsory for foreign companies selling goods to the Government for sourcing part of their supplies from domestic producers.

The proposed move is expected to boost domestic manufacturing and also lead to technology transfer, a Commerce Ministry official told *Business Line*.

The offset policy, being framed by the Commerce Ministry, will be applicable only on Government procurement for non-commercial purposes estimated at over \$100 billion annually, the official added. “We have to necessarily restrict the offset policy because the General Agreement on Tariff and Trade (now the World Trade Organization) does not allow such conditions to be imposed for commercial procurement,” the official said. India already has an offset policy for the Defense sector where foreign suppliers have to buy at least 30 per cent of the total value of the supplies locally. Although an offset policy is absent for all other sectors, the Railways and Air India have been imposing sourcing conditions on some of their procurement orders.

“Only a handful of sectors, apart from defense, are engaged in some sort of offsetting against their purchases made from foreign companies. Our objective is to streamline the process and also ensure that the sectors that have not been benefiting from offset start doing so. That is why our policy also includes cross-sector offsetting,” the official said.

In other words, if a particular Ministry or agency, for instance the Commerce Ministry, does not have anything to sell to offset a part of what it is purchasing, it could ask the foreign seller to buy something from another sector of equal value.

Discussion Paper

The Commerce Ministry has already circulated a discussion paper to various ministries inviting comments following which a Cabinet paper would be drafted. The Government is proposing to fix offset percentage at 20-30 per cent of the total procurement from a company, depending on the sector.

Although the WTO’s Government Procurement Agreement (GPA) does not allow offsetting even for non-commercial purposes, it does not affect India as it is not part of the pact.

Before finalizing an offset policy across sectors, the Commerce Ministry has to be first sure about which sector it would actually benefit, a Delhi-based trade expert pointed out.

“In many sectors such as fertilizers and coal, India is more interested in importing the product than the seller. We have to see whether buyers will be ready to agree to our offset conditions,” he said.

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US, EU oppose India's local sourcing norms in telecom

Kalyan Parbat, Economic Times

Kolkata, 14 April 2014: India's local sourcing and testing rules aimed at tightening network security and spurring domestic telecom manufacturing have ruffled feathers in the US and Europe.

Barely hours after a powerful US trade body accused the country of encouraging protectionism in the telecom arena, the European Union (EU) has questioned India's plans to locally screen network gear from July 1 despite it having been cleared in globally certified labs. Both say such a move to double test the same equipment will not just delay supply of critical products but also increase cost of telecom services, hurting consumers.

In a recent internal meeting, the EU said testing should be repeated only if a telecom product undergoes significant changes that impact its core safety properties.

It has demanded that India must also drop "the in-country security testing requirement", for those products not covered by Common Criteria Recognition Arrangement (CCRA), a top industry executive aware of the discussions told ET. That is in addition to EU's opposition to India locally testing IT products which are already CCRA-approved.

The CCRA is the top global agency that defines testing rules to certify IT products used in telecom networks and counts the US, UK, Canada, Germany, France Japan and India as among its members. In this light, EU has sought clarifications on whether India would allow certified labs in Europe to also test pure network gear not covered by CCRA. The opposition is especially since India is yet to develop a telecom gear testing ecosystem on a global scale. It has, in fact sought "an update on India's lab capacity to conduct local testing", another official familiar with the EU meeting said.

The EU's concerns stem from DoT's decision to locally screen all telecom network elements, including IT products used by telecom operators in India from July 1. More so, since DoT is yet to spell out the non-IT network devices that will be screened locally.

Mainline telecom equipment used in mobile networks includes base stations, mobile switching centres, network management & billing systems and transmission devices. But DoT also plans to locally test pure IT systems such as routers, switches and storage devices that go into modern mobile and broadband networks.

The EU has also exhorted "India to frame local testing norms aligned with prevailing global standards for 3G networks", the official quoted above added. Neither the EU nor the European Commission replied to ET's email queries in this light.

The EU's views mirror concerns voiced by the Telecommunications Industry Association (TIA), a leading US trade body representing manufacturers and suppliers of high-tech communications networks, which recently said India must not embrace telecom policies that "rely on protectionism".

"There is no evidence that location of an internationally accredited testing lab corresponds with the level of security assurance provided to it or the product itself," the TIA recently wrote in a letter to the US International Trade Commission.

"There are long-standing, internationally accredited labs conducting such testing and location does not have a bearing on the accuracy of the test as long as the lab has achieved appropriate certification," it added.

The TIA had also warned that India risked supply chain disruptions and increased costs for telecom service providers (TSPs) and their vendors as it currently lacked the requisite "lab testing capacity". It said the local testing deadline should be deferred, failing which, potential supply chain disruptions could hit consumer pricing.

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U.S. Declines to Counter India Claims Of Illegal Subsidies for Energy Programs

Daniel Pruzin, WTO Reporter

4 October 2013: The U.S. has declined to counter claims made by India that a number of U.S. state and municipal authorities may be providing subsidies for promoting renewable energies that are illegal under global trade rules.

Last April India asked the U.S. to explain how local content requirements under the state of Michigan's 2008 Clean, Renewable, and Efficient Energy Act (Public Act 295) and solar energy programs offered by the city of Austin, Texas, complied with Article 2 of the World Trade Organization's Agreement on Trade-Related Investment Measures (TRIMs).

Article 2 prohibits investment measures that are in violation of the national treatment principle established under Article III of the General Agreement on Tariffs and Trade (GATT). Article III:4 in particular requires WTO members to provide imported goods the same treatment afforded domestically produced goods with respect to all laws, regulations and requirements affecting their internal sale.

In a communication forwarded to WTO members Oct. 4, the U.S. provided India with information on how Michigan's program works, including an acknowledgment that any energy system containing a threshold level of 50 percent Michigan-made equipment will earn incentive credits that go toward meeting the state's requirement that at least 10 percent of a state electric provider's retail supply portfolio include renewable energy by 2015.

However, the U.S. did not respond to India's request for an explanation of how the local content requirements comply with Article 2 of the TRIMs Agreement. The U.S. did note that the incentive credits in question accounted for only 0.0021 percent of all renewable energy credits granted by Michigan in 2012.

In regards to the Commercial Solar Photovoltaic Performance-Based Incentive Program offered by Austin Energy, a publicly owned power company and a department of the city of Austin, the U.S. said a previously mentioned incentive for use of equipment manufactured or assembled in the Austin Energy service area has been removed from the guidelines for qualification for the rebates.

The U.S. did not address India's concerns regarding a second program, Austin Energy's Residential Solar PV Rebate Program. India said both Austin programs offer higher rebates and higher payments for solar power generated from equipment which is at least 60 percent manufactured or assembled in Austin Energy's service area.

Local Content

The U.S. has yet to address India's questions raised last April regarding similar local content requirements in the Los Angeles Department of Water and Power's Solar Photovoltaic Incentive Program, the state of California's Self Generation Incentive Program (SGIP) and solar energy incentive programs in the states of Delaware, Minnesota, Massachusetts and Connecticut. Water utilities in South Carolina, Pennsylvania, West Virginia and several New England states have been mandating domestic content for equipment use

in water projects, India charges.

The matter was also raised at a meeting of the WTO's TRIMs Committee Oct. 4. U.S. officials told the meeting that they were in discussion with the Los Angeles Department of Water and Power about its program and would provide more information at a later date. The officials also said they were still awaiting further clarification from India regarding its questions on the state water utilities programs.

India posed its questions regarding the U.S. state and municipal programs after the U.S. announced Feb. 6 that it was initiating WTO dispute settlement proceedings to address what it said were illegal domestic content requirements in India's national solar energy program, the Jawaharlal Nehru National Solar Mission (JNNSM).

According to the Office of the U.S. Trade Representative (USTR), India initially required that developers of solar photovoltaic projects employing crystalline silicon technology use solar modules manufactured in India. India later expanded the domestic sourcing requirement to cover crystalline silicon solar cells as well. India has also drafted new provisions that might expand the scope of the domestic content requirements to include solar thin film technologies, which comprise the majority of U.S. solar exports to India, USTR charged. India also offers solar energy developers participating in the JNNSM a guarantee that the government will purchase a certain amount of solar power at a highly subsidized tariff rate, provided they use domestically manufactured solar equipment instead of imports.

Local content requirements have become a growing concern for WTO members. In addition to India's complaint regarding the U.S. state and municipal programs, the TRIMs committee also heard complaints from the U.S., Japan and the European Union regarding local content provisions in Brazil's telecommunications and automotive sectors, Indonesia's telecommunications and energy sectors, Nigeria's oil and gas industry, Russia's auto investment program, Ukraine's electric power sector and Uruguay's wind power projects.

Electronic Products

On a positive note, the U.S., Japan and the EU said they were pleased with recent indications that India was preparing to remove domestic content requirements in government procurement for electronic products. India's Department of Information Technology issued a policy notice in February 2012 requiring that procured electronic products having national security implications contain at least 30 percent domestic content.

Last year a WTO dispute panel struck down local content requirements in the Canadian province of Ontario's green energy program (88 WTO, 5/7/13). The panel backed complaints from Japan and the EU that the minimum domestic content provisions in Ontario's Ontario's Feed-In-Tariff (FIT) violated Article III:4 of GATT by affording less favorable treatment to imported equipment and components for renewable energy generation facilities than that given to like products originating in Ontario.

According to a report issued Sept. 25 by the Information Technology & Innovation Foundation (ITIF), a Washington-based think tank, local content requirements reduce global trade in goods and services by almost \$100 billion per year. In particular, the ITIF argued, a rapidly growing number of countries, including Argentina, Brazil, China and India, "have come to embrace a new kind of mercantilist trade policy that seeks to pressure foreign enterprises to 'localize' economic activity so that these countries can create domestic jobs."

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Local sourcing mandatory in Phase II of solar projects

Metis Energy Insider

21 October 2013: Cocking a snook at the US, which had objected to compulsory local sourcing conditions imposed in the first phase of India's National Solar Mission, the country is all set to extend similar norms to the second phase as well.

Domestic sourcing conditions would, however, be imposed on just 50 per cent of capacity earmarked for the second phase, a senior Government official has said.

But, this may fail to pacify the Americans as the Ministry for New & Renewable Energy (MNRE) has decided to expand the coverage of local sourcing norms to include solar thin films, mostly imported from the US during the first phase.

Interestingly, this MNRE move comes despite the Commerce Ministry warning it against continuing with its domestic sourcing clause, given it could lead to further acrimony at the World Trade Organisation.

Second Phase

The MNRE is coming up with tenders for a 750 MW grid connected solar projects under the second phase of the Jawaharlal Nehru National Solar Mission on October 24.

Phase-1 of the Solar Mission only stipulated compulsory purchase of solar modules from local companies, and not thin films. Both modules and thin films can be used in solar projects, and are interchangeable. "We made a mistake in the first phase by not including thin-film in the local sourcing norms as it led to power producers importing cheap thin films rather than use domestically produced modules," the official said.

Flouting Norms?

The US dragged India to the World Trade Organisation in February this year for stipulating local sourcing norms in Phase-1 of the Solar Mission on the grounds that it flouted norms that discourage discriminatory practices against foreign companies.

MNRE is of the view that it is important to continue protecting the fledgling domestic solar industry as it is operating way below capacity.

In 2013, analysts expect close to 1 GW worth of project installations in India, of which only 10-15 per cent will use domestically made cells and modules, even though the domestic industry has a capacity to provide for 100 per cent of these installations.

Since WTO rules are not binding on sourcing done by the Government, MNRE is hopeful that by restricting local sourcing clause to just half the projects, it may escape action, as it could claim that power produced is being used by the Government. However, proving this may be difficult.

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Solar mission: US takes India to WTO, again

Nayanima Basu, Business Standard

New Delhi, 12 February 2014: The government on Tuesday said it hadn't violated global trading norms under the World Trade Organization (WTO), even as the US filed a second case against India on the second phase of the Jawaharlal Nehru National Solar Mission (JNNSM).

In February 2013, the US had filed a similar case related to the first phase of the mission. However, it didn't pursue that case.

On Monday, US Trade Representative Michael Froman said the compulsory domestic content requirements "discriminate against US exports" by requiring solar power developers to use Indian-manufactured equipment instead of American products. "This kind of discrimination is against WTO rules and we are determined to stand up for US workers and businesses," Froman said.

Under WTO dispute-settlement body norms, a complainant first seeks consultations with the target country, which typically takes 60 days. Subsequently, a panel of lawyers is constituted and the case is officially registered as a trade dispute.

Commerce Secretary Rajeev Kher said, "Now, they have come in for a second-phase challenge. It is not a surprise. It has happened earlier. They have had a consultation and now, they are going to have a consultation again. We will participate in that consultation. Our policy is WTO-compliant."

He said in JNNSM phase-II, most contracts had been awarded to American firms. Bids were invited in October 2013, when the second phase was launched. The final results of the bids will be announced on February 20.

Kher alleged it was the US that was following restrictive policies for its local solar panel manufacturers in 13 states. Last year, India had filed a report to WTO's subsidies and countervailing measures committee, saying the US was running a subsidies programme for local content requirements, primarily in the states of Connecticut, Delaware, Massachusetts and Minnesota.

India was yet to receive an official consultation request from the US, Kher said. On Wednesday, the Ministry of New and Renewable Energy will hold a meeting, at which the matter will be discussed.

Sources indicated the US was keen on furthering the interests of just one company from that country — First Solar Inc, the world's largest solar thin-film manufacturer. The company is promoted by the Walton family that owns Walmart stores. Apparently, their solar films were based on cadmium telluride, which was "harmful and poisonous", said an official involved in the talks, on condition of anonymity.

Some leading Indian solar photovoltaic (PV) module manufacturers such as Tata Power Solar and Moser Baer have told Business Standard there are various difficulties in penetrating the US market due to the support provided to the domestic manufacturers there by the government of that country. "The US seems to be completely misguided in this issue and is just showing double standards. The policy of government procurement is allowed. The US seems upset because it is not able to sell products in its market. Maybe, it is feeling threatened, as other solar panel producers from Japan and China are aggressively entering India," said Ajay Goel, chief executive officer, Tata Power Solar.

He added the matter would be raised during the India-US energy dialogue, for which US Energy Secretary Ernest Moniz was coming to India for two days. Initially, the dialogue was scheduled for January, but was delayed due to a diplomatic row between both countries.

Deepak Puri of Moser Baer said the requirement for JNNSM was meagre compared to the requirements of governments in countries that didn't have domestic content requirement.

India is also looking into an anti-dumping case involving supplies of solar panels from China and the US.

JNNSM was launched in January 2010 with an aim to secure 20,000 Mw of solar power by 2022.

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India says it is WTO-compliant on Solar Mission

Dilasha Seth & Dipanjan Roy Chaudhury, Economic Times

New Delhi, 21 February 2014: Nearly 10 days after the US filed a dispute against India at WTO over discriminating against its producers in the second phase of the solar mission, India has readied a strong counter against the US for providing export credits to its solar products like thin film panels and preferential treatment for purchase of power produced from US-made solar products in 13 of that country's states.

Firmly maintaining that India's solar mission was fully WTO-complaint, Indian government officials pointed out that there were significant concerns over importing 'thin-film technology' for solar panels 'overwhelmingly' from the US.

The US has alleged that in phase II of the Jawaharlal Nehru National Solar Mission (JNNSM), the domestic content requirement was expanded to cover thin film technology, which was exempt from such requirements under phase I, which will likely cause even greater harm to the US producers than under phase 1 as thin film comprised a majority of the solar product exports to India.

"One or two of the major US producers of thin films have got export credits from the US government which is encouraging an inflow of older technology into India. Moreover, the cost of products sourced from the US and China are suspiciously lower than the known production cost," a ministry of external affairs official said.

Moreover, there are over a dozen states in the US that have schemes in place to offer preference to purchase of power produced by US-made solar products.

"It is India that has a case to file against the US in the WTO on solar energy products instead of the other way round," the official added.

The commerce department is examining the evidence of 13 US states which follow equally restrictive policies on solar power.

Thin film panels made from cadmium telluride are environmentally damaging and hence, banned in a few countries and is not even a preferred choice worldwide.

Thin film panels are known to be less efficient in power generation than crystalline technology. Due to the heavy imports from the US, thin film usage in India is estimated to be over 55% of the total installed photovoltaic capacity, against just 10% globally.

US has alleged that the domestic content requirements discriminated against US solar cells and modules by requiring solar power developers participating in phase II to use Indianmanufactured solar cells and modules instead of US or other imported equipment.

However, India counters that claim based on facts. In phase 1 of the solar mission, of the 140 mw capacity generated under batch 1 and 340 mw generated under batch 2, 25 mw and 140 mw of power was

produced from US-made modules and cells. "US firms have actually been a major beneficiary of the solar mission," the official pointed out.

Power procurement from all grid-connected solar power projects is carried out by central government agencies, which is subsequently bought by the state distribution companies to sell to consumers.

"There is no level of subsidy offered in selling power to the distribution companies, so basically the procurement is for government use, which is fully WTO compliant," the official added. India has not signed the government procurement agreement of the WTO.

In India, there is no local sourcing requirement for any power purchased by the state government, the official maintained. "Of the 2,180 megawatts of solar plants commissioned in India, about 1519 mw worth of energy comes from the state government schemes."

The department of commerce is currently examining the consultation document and preparing a reply. The countries would get 60 days to resolve the matter and if they fail to do that, the US could request the establishment of a WTO dispute settlement panel.

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US, India to hold second round of talks on solar trade dispute

Amiti Sen/Richa Mishra, Business Line (The Hindu)

New Delhi, 18 March 2014: The second phase of India's solar mission will come under the scrutiny of the US this week as the two countries begin consultations on compulsory local-buying requirements for certain components used in the programme.

The US has alleged that the domestic sourcing requirements flout World Trade Organization (WTO) norms as they discriminate against foreign companies.

The consultations, scheduled on March 20-21, will give an opportunity to India to explain its stand. If the US is not satisfied it may ask the WTO to set up a dispute settlement panel to fight the case.

“We are ready to explain our position. Our arguments remain the same as those made when the US had complained against the first phase,” a Government official told *Business Line*.

Govt procurement

Since the power produced by the projects under the Jawaharlal Nehru National Solar Mission will be bought by a Government agency, India has argued that all equipment purchases fall under the category of ‘Government Procurement’.

As India is not a member of the Government Procurement Agreement of the WTO, it is not obligated to follow multilateral rules laid down for Government procurement.

India has already faced one round of consultations on the matter in 2013 after the US complained against the first phase that stipulated that all solar modules have to be purchased locally.

It launched a fresh complaint in February after the second phase of the mission — that will produce 750 MW of energy — continued with the sourcing norms. Although half of the project in the second phase will not have to conform to local sourcing conditions, for the remaining half it has been mandated that domestic procurement will also cover solar thin films.

“The US had gone slow after filing the first complaint as it had hoped that India would discontinue the domestic sourcing clause in the second phase. Since that did not happen, it has launched a second attack,” another official said.

The US counter-argument to India's defence is that since the local sourcing condition has been applied on purchase of power equipment and not power (which will be bought by the Government), it cannot qualify as Government procurement.

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Solar mission: US wants India to do away with local sourcing norms in new projects

Amiti Sen/Richa Mishra, Business Line (The Hindu)

2 April 2014: The US is mounting pressure on India to do away with the condition of local-buying of components in the next batch of solar power projects under the country's ambitious national solar mission.

In a formal consultation held last week at the World Trade Organisation (WTO), the two countries could not reach an understanding on the validity of the domestic buying condition in the projects granted so far under the mission.

Next batch soon

“The US has not yet disclosed whether it will ask the WTO to set up a dispute settlement panel for a full-fledged fight with India on the issue. But, it is certainly trying to intimidate us so that the domestic sourcing clause is not included in the second batch of projects in the second phase of the mission,” a Government official told Business Line.

“What we could assess at the meeting is that it will see how many American companies can qualify for the second round of projects, and then may be work out its action plan,” the official added.

India plans to roll out the next batch of projects after the general elections. The capacity of projects under the second batch is yet to be finalised.

The US argument against the local buying clause in the solar projects under the Jawaharlal Nehru National Solar Mission launched in 2010 is that it discriminates against foreign manufacturers of components and thus violates WTO norms.

It lodged its first complaint against India early last year after 950 MW solar projects were granted by the Ministry of New and Renewable Energy in two batches, with a condition that all solar modules for the projects have to be purchased locally.

The second complaint was made last month after the Ministry granted projects totalling 750 MW under the first batch of the second phase. Although India has tried to make peace by restricting local sourcing norms to just half the projects in the second phase, the US is miffed by the fact that its scope has been expanded by including thin films.

Government purchase

India has so far argued at the WTO that since sourcing of power generated under the solar mission is done by a Government-owned agency, the purchases are, in fact, Government procurement which does not fall within the purview of the multilateral agency. Only members of the WTO's Government Procurement Agreement, a pluri-lateral agreement involving a handful of countries, are governed by the rules on Government purchases.

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U.S. To Seek WTO Panel On India Solar Program, Charges GATT, TRIMS Violations

World Trade Online

16 April 2014: The United States next week will request a World Trade Organization panel to challenge India's local content requirements in both phases of the Jawaharlal Nehru National Solar Mission (JNNSM), an initiative designed to boost the country's solar power sector.

Under the initiative, purchasing domestic solar cells and modules is a condition for companies to enter into power purchase agreements with Indian power companies and get benefits such as favorable rates for electricity purchases, according to the text of the U.S. panel request as released by the WTO.

The U.S. is charging that India applies this local content requirement to both Phase I and Phase II of the JNNSM and is thereby violating the national treatment obligations of Article III.4 of the General Agreement on Tariffs and Trade. It also charges a violation of Article 2.1 of the Agreement on Trade-Related Investment Measures, which forbids countries from applying investment measures that are inconsistent with its national treatment obligations.

The panel request does not challenge India as violating its obligations under the Agreement on Subsidies and Countervailing Measures (ASCM), which prohibits subsidies contingent on the use of domestic over imported goods.

The U.S. claimed India violated Article 3 of the ASCM in its formal WTO consultation request complaining about Phase I of the JNNSM, which it filed in February 2013. But it did not do so in its formal consultation request for Phase II of the JNNSM.

The U.S. and India held consultations over the first and second phases of the JNNSM on March 20, 2013, and March 20, 2014, respectively, but those consultations did not resolve the dispute, according to the panel request.

The U.S. plans to make its first panel request at the April 25 meeting of the Dispute Settlement Body (DSB), where India will be able to reject the request. Under WTO rules, the U.S. can then wait for the next DSB meeting in May or request a special meeting to take place before then. India cannot reject the second U.S. request for a panel.

The U.S. panel request against the Indian solar program is coming at a time when the Indian parliamentary elections are underway. USTR Michael Froman did not address the solar dispute at an April 3 House Ways and Means Committee hearing. But he indicated he favors resolving U.S. problems relating to Indian intellectual property policies through negotiation rather than litigation.

"USTR is standing up for American workers and businesses who manufacture and export solar energy products as well as taking decisive action to make solar energy more affordable and accessible in India, in line with President Obama's commitment to address climate change," a USTR spokeswoman said in an email to *Inside U.S. Trade*.

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India Rejects U.S. Panel Request in Solar Dispute, Probes State Programs

World Trade Online

30 April 2014: India is fighting back against U.S. charges that its national solar program violates World Trade Organization rules, both by rejecting the U.S.'s first request for a dispute settlement panel last week and by questioning solar power programs that have been enacted by four U.S. states.

The U.S. is challenging the local content requirements in both phases of India's Jawaharlal Nehru National Solar Mission (JNNSM), an initiative designed to boost the country's solar power sector. The U.S. made its first panel request on the Indian solar program at the April 25 meeting of the WTO Dispute Settlement Body (DSB).

But India rejected that request at the meeting, saying it believed a mutually agreed solution was still possible and therefore was not in a position to agree to the panel's establishment.

Under WTO rules, India can reject the first panel request, but not a second one. The U.S. can wait for the next DSB meeting in May to make its second request or it can call for a special meeting to take place before then.

At the DSB meeting, the U.S. repeated the points it made in its panel request – that India's local content requirements in both Phase I and Phase II of the JNNSM violates the national treatment obligations of Article III.4 of the General Agreement on Tariffs and Trade.

The U.S. is also charging that India is violating Article 2.1 of the Agreement on Trade-Related Investment Measures, which forbids countries from applying investment measures that are inconsistent with its national treatment obligations. The U.S. is not alleging a violation of the WTO Agreement on Subsidies and Countervailing Measures (ASCM), which it had previously done in its first request for consultations.

Solar power developers participating in the JNNSM are required to purchase domestic-made solar cells and modules to enter into power purchase agreements with Indian power companies, according to the U.S. panel request. If they meet the local content requirement, these developers can also receive additional benefits and advantages, the U.S. charges.

The U.S. and India held consultations over the first and second phases of the JNNSM on March 20, 2013, and March 20, 2014, respectively. However, those consultations did not resolve the dispute.

The U.S. panel request came two days after environmental groups including Greenpeace and the Sierra Club urged U.S. Trade Representative Michael Froman to drop the WTO challenge. The groups argued that the need to stop global climate change should outweigh commercial considerations for U.S. solar firms.

"While it is critical to support and build a U.S. solar industry, the development of our solar industry should not come at the expense of India's ability to develop its solar industry," the April 23 letter said. At the same time India is fending off the U.S. challenge, it is shining the spotlight on renewable energy incentive programs put in place by the U.S. states of Minnesota, Delaware, Connecticut and

Massachusetts that provide benefits for companies that use renewable energy equipment manufactured in that state.

In questions submitted to the U.S. in April 2013, India asked the U.S. to explain how these programs are not prohibited subsidies as outlined in Articles 3.1 and 3.2 of the ASCM. Under the ASCM, prohibited subsidies are ones that are contingent upon export performance or on the use of domestic over imported goods.

For instance, the Massachusetts program identified by India provides an additional rebate if companies use "a significant component" that was manufactured by a company with "a significant Massachusetts presence."

The U.S. responded to the questions in a seven-page reply that was circulated to all members on April 24. In each case, the U.S. provided a detailed explanation of the programs, but did not directly address India's allegations that the programs in question were inconsistent with the ASCM.

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