Contents

US, EU, Japan pile pressure to remove local content clause

Amiti Sen, Economic Times

July 20, 2012, New Delhi: India's major trade partners-the US, the EU and Japan-have stepped up pressure to remove local content requirement clause in the ambitious national solar mission project and manufacture of certain electronic products.

However, New Delhi is preparing to defend its policies strongly at the World Trade Organization right till the dispute panel level.

"There is a possibility that US may launch a formal dispute against India, especially for the domestic content clause in the National Solar Mission, but we will fight it," a commerce department official told ET.

The US, the EU and Japan recently asked for a special meeting of the Trade Related Investment Measures or Trims committee of the WTO to address concerns on domestic content requirement or compulsory local-sourcing clause in some policy measures in India, Brazil, Indonesia and Russia.

India's decision to grant preference to domestically manufactured electronic products on security grounds, taken earlier this year, and the 30% mandatory domestic sourcing requirement in the JNSSM were strongly criticised by the three members.

The US expressed concern about telecom licensees in India having to purchase telecom equipment locally and wanted to know if the domestic sourcing requirement covered all private agencies.

"The US wanted to know which clause of security exceptions was being invoked and how security concerns are addressed by domestic content and value addition requirement," the official said.

India maintained that security issues are sacrosanct for all WTO members, and a detailed discussion was not possible since these issues are sensitive and confidential and are dealt on the basis of advice from security agencies.

The EU asked for a timeline on when detailed guidelines of the IT policy was expected, but India refused to give any date.

"We do not expect much trouble on electronic goods sourcing as we are well within our rights to take such measures for security reasons," the official said.

The ground, however, may be a bit wobbly when it comes to defending the requirements under the JNSSM that asks all investors to compulsorily use solar modules manufactured in India and source at least 30% of input locally.

The Trims does not allow any member to impose sourcing restrictions without ample justification. New Delhi is now waiting for the next Trims committee meeting to see what the US, the EU and Japan plan to do on the matter. "We are prepared to fight it till the end, and we will do so," the official said.

[Back to top]

India-US discuss visa, domestic content issues

PTI

New Delhi, 10 December 2012: Domestic issues like hike in visa fee and recent Indian regulations in solar tech policies were raised by India and the US respectively during the high level official meeting today.

With the focus on concerns of various sections in their respective countries, Commerce Secretary S R Rao and Assistant US trade representative Demetrios Marantis discussed issues that were of interest to both the sides.

"Americans would raise issues like domestic content in some sectors in India. India would raise issues such as visa fee. So we raise our respective issues and tried to see that we conveyed a better understanding of our perspective on either side. And we hope we were successful in doing so," Additional Secretary in the Commerce Ministry Rajeev Kher said. He was talking to reporters on the sidelines of a Ficci function.

The US had raised visa fee in 2010 to fund its enhanced costs on securing border with Mexico under the Border Security Act. India has been protesting against the measure at different forums.

India is also considering to drag the US in WTO on the matter.

On the other hand, the US also time and again expresses its concern over certain Indian policies in renewable energy and clean technologies that it says inhibit investments by foreign firms, keen on collaboration with local companies. For example, under the National Solar Mission, India requires that crystalline cells be manufactured in India, a move which is strongly opposed by the US solar industry.

According to reports, India has an ambitious target of generating 20,000 megawatts of solar power by 2022. The US is especially keen on taking a slice of this market.

"Both the sides brought up the issues that were of interest to both of them and we expressed our respective views," he added.

The bilateral trade between India and the US stood at about USD 60 billion in 2011-12.

[Back to top]

Govt to bring in ‘negative list’ for electronics imports

Shruti Srivastava, Indian Express

12 January 2013: The information technology department is in advanced stages of firming up guidelines to make it mandatory for government departments to procure “at least 30 per cent” of their electronic product inputs such as personal computers and dot matrix printers from domestic manufacturers under the recently-approved National Electronics Policy (NEP) 2012.

For the private sector, the government is understood to be working on a ‘negative’ list of items that cannot be imported due to “security concerns”. Once ready, the final list of items is likely to be banned by the Director General Of Foreign Trade (DGFT), a government official told The Indian Express, adding that the guidelines are expected to be made public before April.

The move, if implemented, will be a huge blow to the manufacturers importing items, or simply components, at a time when nearly 90 per cent of electronic hardware products are imported in the country. Global equipment manufacturers and vendors in segments such as telecommunications and electronics have already raised the alarm over the proposed move.

“The department is defining security threat and a clear list of instruments which may entail security concern. Each government department has been asked to prepare a list of items that have security implications for them. After studying the list, a comprehensive final list would be prepared to be sent to the DGFT,” the government official said, adding that the move is WTO-compliant.

According to Article 21 of the General Agreement on Tariffs and Trade (GATT), a country can ban import of items perceived to be security threats.

The mandatory sourcing norm is aimed at giving preferential market access for electronic products manufactured and designed in the domestic market, including mobile devices and SIM cards, to address strategic and security concerns of the government.

The official said that the department is working on the guidelines for the NEP and the “mandatory sourcing norm for government departments” forms a part of the policy. To start with, the department has put personal computers and dot matrix printers under the category of mandatory sourcing from the local manufacturers. As the policy takes shape, more items will be included in the list.

The NEP was approved by the Cabinet in October 2012 with the aim of raising the turnover of the electronic design and manufacturing sector to $400 billion by 2020 and provide employment to around 28 million people at various levels.

The policy envisages the setting up of Semiconductor Wafer Fabs and its eco-system for design and fabrication of chips and chip components, creation of electronic development fund to promote innovations, incentivise setting up of over 200 Electronic Manufacturing Clusters (EMCs) and provide attractive fiscal incentives across the value chain of ESDM sector through a Modified Special Incentive Package Scheme (M-SIPS).

The policy aims at eliminating the “disability costs” in manufacturing on account of infrastructure gaps relating to power and transportation. The policy also entails setting up of a National Electronics Mission with industry participation and promote the country as a electronic hardware manufacturing hub.

[Back to top]

US objects to India sourcing IT products locally

Amiti Sen, Business Line (The Hindu)

New Delhi, 3 February 2013: The US Government has objected to India's plans of making it compulsory for Government agencies to source electronic products, including personal computers, printers and tablets, from domestic manufacturers.

It has also expressed "grave concerns" about private companies being mandated to domestically source IT products in some instances due to security reasons.

"The US may give a non-paper to India listing out its concerns and how those might be addressed," an Indian Government official told *Business Line*.

The US Under Secretary of State for Economic Growth, Environment and Energy Robert Hormats, in his recent interaction with Commerce and Industry Minister Anand Sharma, argued that the domestic sourcing regulations would be a huge setback for US IT companies that want to set up shop in India, the official, who also attended the meeting, said.

Since the domestic sourcing regulations would force some companies to let go of their global supply chains that they have developed over the years, steps needed to be taken to address this area of grave concern, the US official stressed.

Notification

The Ministry of Communications and IT, last Thursday, put out a notification making it mandatory to give preference to domestically manufactured laptop PCs and tablet PCs in Government procurement. Notifications were issued in December for providing preference to domestically manufactured desktop PCs and dot-matrix printers in Government procurement. The time-line prescribed for adhering to the notifications, in most cases, is March 2014.

The proposed rules are meant to help develop a robust Indian technology manufacturing sector, the Indian Government said in a recent statement.

Wherever domestic sourcing restrictions have been placed on private companies, the Government has cited security concerns as the deciding factor.

"The Commerce Minister, too, explained to the US Under Secretary that the move is required to boost domestic manufacturers that were still struggling to grow," the official said.

Technology hardware exporters based in the US and the EU have already written to the Government deploring the move, especially because it would not just apply to Government agencies but also private companies in some instances. Some have indicated that it could violate World Trade Organisation norms.

'No norms breached'

Indian Government officials, however, are confident that no international norms are being breached. "India is not part of the Government Procurement Agreement of the WTO and thus is free to impose any procurement conditions on government agencies. The WTO also allows countries to impose sourcing restrictions for security reasons," another official, who deals with WTO issues, said.

[Back to top]

IT Ministry pushes through with 'go local' procurement policy

Business Line (The Hindu)

New Delhi, 14 June 2013: Telecom and IT hardware suppliers such as Cisco and Hewlett Packard will have to set up a full fledged manufacturing facility in India if they want to get Government contracts. The Ministry of IT and Communications has notified the guidelines under which 30 per cent of all equipment supply contract will be reserved for companies with manufacturing base in the country. The quota for locally made goods will increase over the next few years.

The IT Ministry had announced its policy to bring preferential market access for domestic products in February. This was opposed to by both American and European manufacturers. The Commerce Ministry had also raised concerns over the introduction of a quota system.

Security Concerns

However, the IT Ministry has pushed through with the guidelines on grounds of security concerns. According to the IT Department, equipment made outside the country may carry spyware that could allow unfriendly countries to snoop into India's communication networks.

Under the guidelines issued by the IT Ministry on June 12, a list of 18 products has been given for which the preferential treatment would be given to locally made manufacturers. This list includes tablets, notebooks, scanners, mobile handset and servers. A list of 24 telecom related gear has also been given. This includes SIM cards, set top boxes and parts for mobile network.

Manufacturers will also be required to add value locally instead of just assembling the products here. Most of the hardware makers are only assembling the products due to lack of an ecosystem. For instance, they source things like packaging material and plastic locally but key elements such as the semiconductor chipsets and other electronics that goes inside the equipment is sourced from other countries.

Now under the new policy, the manufacturers will be forced to source a specific percentage of materials within the country. The amount of value addition required will be spelt out by individual ministries and departments at the time of procurement.

Manufacturers are supposed to give a self-certificate that their product is made in the country while bidding for a Government contract. If a complaint is received against a manufacturer then it will be investigated by the Telecom Engineering Centre or the Standardisation Testing and Quality Certification.

Another Policy

The Ministry is working on another policy to bring private companies also under the ambit of the local manufacturing regulation. This is being strongly opposed by the foreign players on grounds that such a move would be against international trade norms.

[Back to top]

DoT to make 100% local sourcing of telecom gears mandatory

Kalyan Parbat, The Economic Times

Kolkata, 28 June 2013: The DoT will shortly amend licence conditions of mobile phone companies under the Indian Telegraph Act to make it "legally binding" on them to buy security-sensitive telecom products from domestic gearmakers. The move comes in the run-up to India notifying the controversial "preferential market access" or PMA policy that progressively calls for 100% local sourcing of security sensitive telecom equipment and electronics from October 2013. The move is likely to send shockwaves throughout the telecom sector since both the Cellular Operators Association of India and the Association of Unified Service Providers of India have claimed that domestic sourcing and value-addition targets mandated by the PMA norms are "unrealistic" since there is no established telecom gear manufacturing ecosystem in India. DoT has resolved to include PMA compliance clauses in a telco's licence conditions after the Department of Electronics & IT claimed that the PMA policy "does not provide any legal framework" for extending the local sourcing provisions to private telecom licensees. In fact, DeiTY has suggested that for "the telecoms sector, the licence issued under the Indian Telegraph Act can be a vehicle under which PMA provisions can be mandated," in an internal note to DoT, a copy of which was reviewed by ET. Endorsing these observations, the telecom department has agreed to tweak the licence conditions of private mobile phone companies to enforce PMA compliance on grounds that India's "telecom networks are security sensitive". What's more, since a majority of private mobile operators have outsourced network management operations to global telecom vendors, DoT also plans to bring them within the ambit of PMA on security grounds. "PMA compliance on security grounds will be implemented under an operator's licence conditions since a telecom network is security sensitive. Since certain licensees have also given their network to managed service providers, they will also be responsible for compliance of PMA," says a DoT with ET. Outsourcing of all key operational functions, a concept pioneered by Bharti Airtel, has been at the heart of India's leading mobile carrier's low-cost, high-volumes business model, which has since been embraced by all leading private mobile operators. DoT also wants to extend PMA compliance to private sector telecom gear procurements to check India's telecom gear import bill, which has shot up nearly 34% to Rs 56,421 crore in 2012-13 from Rs 42,249 crore in 2009-10. "The rising import bill of telecom equipment, including mobile phones, parts and telecom cable during the past four years is a concern and needs to be addressed by domestic manufacturing with good value addition," says the telecom department note. The views of the GSM and CDMA lobbies at home have been seconded by leading international trade bodies like the US-India Business Council, Telecommunications Industry Association (TIA), Information Technology Industry Council and Digital Europe who have collectively warned that "India's arbitrary invocation of PMA clauses to private sector procurements constituted an unprecedented interference and significant disruption in the global telecommunications market", adding that the policy was also at odds with the country's obligations to the World Trade Organisation (WTO). In the final PMA policy document, the list of electronics deemed security sensitive also includes cellphones, tablets, notebooks, netbooks, desktops, monitors, photocopiers, scanners, smart cards, storage USBs and memory cards. Telecom network equipment such as 2G/3G base stations, ordinary sim cards, access routers, DWDM-based network transmission gear, GPON devices, microwave radio systems, network management systems, billing software to 4G broadband network and Wi-Fi wireless systems have also been classified "security sensitive".

[Back to top]

India to Defend PMA Extension to Local Tele Gear Companies

Joji Thomas Philip, The Economic Times

New Delhi, 15 April 2013: India will cite the examples of US, Australia and Taiwan to ward off criticism against its new policy that gives preferential market access (PMA) to domestic telecom gear makers for government contracts.

International business lobbies, including the US-India business council, Information Technology Industry Council, Digital Europe and the Telecommunications Industry Association of US, amongst several others, have warned that India's plans of extending the PMA provisions to private mobile phone companies, would represent an unprecedented interference in the procurement of commercial entities and would also be inconsistent with the country's obligations to the World Trade Organization.

The telecom department (DoT), in its draft response, in an internal note, reviewed by ET, has said that various countries had put restrictive clauses against foreign vendors on security grounds."The US Committee on Foreign Investment had blocked Huawei's attempt to take over Server Company 3Leaf Systems.

Australia recently blocked Huawei's from taking part in that country's National Broadband Network.

Taiwan had earlier blocked Chinese companies from participating in telecom networks in that country," the department's note added.

The DoT internal note also points out that a recent report by the US Congress Panel had said that the two Chinese vendors - Huawei and ZTE - have ties to that country's government and military and must be barred from mergers and acquisitions in the United States.

India in its response will also point out that the US Congress Panel had said that government systems, particularly sensitive systems, should not include Huawei or ZTE equipment, and the report had further added that 'private sector entities in the US should be strongly encouraged to consider long term security risks in doing business with these Chinese vendors for equipment or services'.

Its response will also add the country's new telecom policy (National Telecom Policy - 2102) states that domestic production of telecommunication equipment should meet up to 80% of the sector's requirements by 2020.

The policy further states that India will provide preference to domestically manufactured telecom products that had security implications consistent with its WTO commitments, the department's internal note added.

The DoT has further justified its move stating that that rules to buy from domestic manufacturers 'does not provide price preference to them over imported products and also that there has been no dilution of technical requirement's.

The department is also of the view that this provides sufficient transparency on its part before unveiling the new norms for security sensitive products.

Security agencies here too had a role to play in the formulation of the new rules, as they have warned multiple times that malicious codes could be implanted to networks, before or after manufacturing, and that testing of equipment alone may not solve the problem.

Redefines 'Security Sensitive' Products

The government has redefined "security sensitive" telecom products in the run-up to implementing 100% domestic sourcing of such telecom gear, reports Kalyan Parbat from Kolkata.

In a bizarre round of policy-making, the department of electronics & IT (DeitY) says "electronic products with security implications are those which are necessary for protecting human, animal or plant life and health, apart from protecting the country's security interests," in an internal note, a copy of which was reviewed by ET.

The new clause will be at the heart of the final preferential market access (PMA) norms likely to be notified on April 20.

The new definition of telecom products with security implications was discussed on April 8 during a closed door interaction between communications minister Kapil Sibal and all major telecom industry bodies.

Over 90% of telecom gear classified as security-sensitive comprises electronics.

[Back to top]

India and the WTO procurement deal

Archana Jatkar & Vinitha Johnson, Business Line (The Hindu)

21 February 2013: In 2010, India attained an 'observer status' in the WTO Government Procurement Agreement (GPA). Its accession to full member status in GPA hangs in the balance. It gathered momentum with the slowdown in world trade and increase in current account deficits of several major economies.

The potential size of the market for government procurement is estimated at $1.6 trillion and the need for principles of good governance is felt all the more in these difficult economic times, making active participation of developing countries in the WTO GPA a much-sought-after initiative.

The literature on government procurement suggests two key objectives for countries anticipating accession to the WTO GPA: a) to enhance export markets as provided by GPA member countries, and b) to embrace reforms to internal market and administration so as to benefit from good governance aspects of the WTO GPA.

While a country can employ a combination of objectives, its strategy of accession to the Agreement would need to be considered on its own merits, based on an assessment of potential benefits and costs.

In the WTO GPA, commitments are made in the form of 'government entities' apart from committing certain sectors of goods, services and concession contracts. These commitments are further qualified by thresholds (value of the government purchase) above which the agreement begins to apply, and exclusions and exceptions are determined.

Market Access

Despite the touting of good governance principles of transparency and integrity, these reasons appear to pale in comparison with tangible economic reasons of "market access".

The GPA members present huge figures as indicative of potential market access opportunities. In practice, a large number of contracts granted by the Government are below the threshold value, which is out of the purview of the commitments under the WTO GPA. Further, countries maintain significant 'exceptions' and 'exclusions' for social purposes or for procurement pertaining to certain utilities, or exclude procurement by their sub-central entities.

For instance, in case of Chinese Taipei, data reveals that more than 95 per cent of total procurement contracts above threshold are awarded to domestic firms while in the EU, less than 5 per cent of the size of its total government procurement market — that is, out of €292 billion only €13 billion contracts in value terms was awarded to other GPA countries.

Furthermore, owing to the absence of the principle of non-discrimination, WTO GPA members prohibit the access of certain markets to certain other member countries unless comparable market access is dealt out.

In WTO GPA negotiations, once the size of one's government procurement market and resultant "negotiating capital" is calculated, a complex game of layering one's demands with respect to different negotiating countries comes into play. Several newer challenges are experienced, such as certain countries refusing to commit their sub-central government entities or procurement pertaining to the provision of certain utilities to the disciplines of the WTO GPA.

Countries may also offer certain restricted markets to selective countries in return for increased market access distinct from the market access available to other member countries of the WTO GPA.

India's Situation

Where does all this leave India? India may desist from joining the WTO GPA indefinitely. However, such a decision to 'abstain' from joining this agreement will not be passive anymore and will have to be taken after defending and foraging for market access opportunities elsewhere.

The following are some specific factors that India should consider while deciding its possible accession to the WTO GPA:

India remains outside an elite club which is currently formulating modalities and disciplines for participation in government procurement.

Potential Areas

The members of the club will evolve newer channels of inducing increased participation and impel exclusion of countries through increased application of "Buy Local" laws which may exempt WTO GPA countries in certain countries.

If India considers joining the agreement at a later point of time, it may encounter harsher demands from the then existing members.

The WTO GPA contains certain flexibilities for developing country members — it allows them to phase-in entry of certain entities and social exceptions can be maintained when concomitant market access opportunities are pledged.

Keeping these factors in mind, a CUTS study on government procurement has done some quantitative analyses of market access opportunities for India in GPA and non-GPA countries. It argues that other than construction services, pharmaceuticals and computer and related services offer biggest opportunities for the Indian firms.

Most of the opportunities in these sectors are expected to emerge from the EU, Japan and the US, who are members of the WTO GPA.

By calculating market access opportunities in government expenditure, our study reveals that there is a sizeable market in many major economies who are currently not members of the WTO GPA but expected to be — for instance, $1.7-trillion market in China, $ 960-billion market in Brazil.

Among those who are members of the WTO GPA, government expenditure accounts for as much as 56.2 per cent of gross domestic product in France, a market worth $1.56 trillion and as much as 42.4 per cent in the US amounting to a market of $ 6.37 trillion. These countries present opportunities for Indian suppliers to develop their competitiveness and contest for procurement contracts internationally in sectors such as information technology, pharmaceuticals, minerals, machinery and electrical equipment.

Thus, membership to the WTO GPA may not be entirely bad news for India but it is important to bear in mind that potential benefits of joining this agreement will be determined by various factors, such as India's ability to compete with other member countries, willingness of other countries to make their procurement market available to Indian firms.

Hence, it is advisable to enter this negotiation armed with pertinent information seeking to optimise value for both parties. In this regard, inputs from stakeholders in different government departments, industries, public sector undertakings are crucial, keeping in mind the value that our commitment can generate and what we expect from other GPA members.

(The authors are lawyer and policy analyst, respectively, with CUTS.)

[Back to top]

Widening domestic sourcing net may hurt India's case

Amiti Sen, Business Line (The Hindu)

New Delhi, 11 February 2013: The US could have a stronger case against India at the World Trade Organisation (WTO) if the country goes ahead with its plans of covering more products under domestic sourcing norms in the second phase of the National Solar Mission.

In a response being framed on the draft rules for the second phase circulated by the Ministry of Non-renewable Energy recently, the Commerce Department has taken a view that inclusion of a larger number of items like thin films and solar cells under sourcing norms could spell trouble at the WTO, an official told *Business Line*.

The US filed a complaint with the Dispute Settlement Body of the WTO last week against domestic content requirement in the Jawaharlal Nehru National Solar Mission (JNSSM) which mandates that solar photovoltaic modules based on crystalline technology has to be sourced locally.

"The US is not actually bothered about domestic sourcing of solar modules as mandated under the first phase as most producers under the solar mission prefer to use thin films, which are cheaper and not covered under domestic sourcing. In fact, US companies are exporting a large amount of thin films for the solar mission," the official said.

The dispute raised by the US at the WTO against India is largely to prevent widening of the domestic sourcing net to include thin films that are much cheaper than crystalline modules but have shorter life-span. More than 60 per cent of projects under the solar mission have opted for importing thin films prompting the MNRE to close the loop-hole in policy and include thin films under domestic content requirement as well.

India's main argument in its defence is that domestic content requirement is applicable to grid solar power projects where procurement of solar power will be essentially done by the Government through public sector entity NTPC and thus would fall under the government procurement category. Since India is not part of the Government Procurement Agreement, it could impose any condition on Government procurement.

The argument, however, is not fool-proof as Government procurement is taking place only after solar power has been produced while the initial sourcing is being done by private companies. The greater the number of products that get covered under the procurement net, the weaker could be India's case, fear officials at the Commerce Department.

[Back to top]

US Lodges WTO Challenge Over India Renewable Energy Incentives

Bridges Weekly Trade News Digest

13 February 2013: The US has filed a formal challenge at the WTO regarding India's support policies for solar energy, Washington officials announced last week. At issue in the complaint is a local content requirement in the Asian country's national solar programme, which Washington claims discriminates against foreign solar equipment manufacturers in favour of their domestic counterparts.

The challenge comes amid growing questions over the degree to which countries can help support their burgeoning renewable energy sectors, particularly given the global trade arbiter's recent panel ruling regarding a similar programme in the Canadian province of Ontario. The Canada dispute, which had been tabled at the WTO by the EU and Japan and also involved a local content requirement, is currently facing appeals from all parties.

US officials have stressed that the India-focused complaint targets only the Asian nation's local content requirement, and not the overall objective of developing renewable energy sources.

"Let me be clear: the United States strongly supports the rapid deployment of solar energy around the world, including with India," US Trade Representative Ron Kirk said in announcing the US challenge. "Unfortunately, India's discriminatory policies in its national solar programme detract from that successful cooperation, raise the cost of clean energy, and undermine progress toward our shared objective."

The benefits of local content requirements (LCRs) have long been a controversial topic. While countries often pursue multiple policy objectives through LCRs in the renewable energy sector, primarily to green their economy and to foster the sector's domestic development, while in parallel stimulating employment and investment, some analysts have noted that domestic content requirements might instead increase costs of energy, reduce competition, and therefore potentially slow down innovation.

India's programme - known formally as the Jawaharlal Nehru National Solar Mission (NSM) - was launched in 2010, with the goal of deploying 20,000 MW of solar panels through an interconnected grid by 2022. According to the country's Ministry of New and Renewable Energy, the scheme aims to reduce the cost of solar power generation in India, specifically via long-term policy, large-scale deployment targets, intensive research and development, and domestic production of the necessary raw materials and components.

"The objective of the National Solar Mission is to establish India as a global leader in solar energy, by creating the policy conditions for its diffusion across the country as quickly as possible," according to the programme's mission statement.

One of the mission's goals, the statement says, is to undertake an international leadership role in the area of solar manufacturing across different stages of the value chain, in "leading edge solar technologies." In doing so, it is hoping to achieve a 4-5 GW equivalent of installed capacity by 2020, which would include developing manufacturing capacities for polysilicon material that would allow for the production of approximately 2 GW capacity of solar cells annually.

Washington: Policy gives domestic producers unfair advantage

Under the current phase of India's programme, the US says, New Delhi has required developers of photovoltaic projects using crystalline silicon technology to use solar cells and modules made domestically.

"As a result, solar power developers, or their successors in contract, receive certain benefits and advantages, including subsidies through guaranteed, long-term tariffs for electricity, contingent on their purchase and use of solar cells and solar modules of domestic origin," Washington says in its complaint, arguing that this violates the WTO's rules on national treatment.

Washington also argues that the measure constitutes an illegal subsidy, due to it allegedly providing a subsidy that depends on the use of domestic goods over their imported counterparts.

Among other concerns, the US claims that the Indian measures at issue have not been appropriately notified, thus violating the Subsidies and Countervailing Measures (SCM) Agreement. In its consultations request, Washington also argues that the policies "appear to nullify or impair" the benefits due to the US directly or indirectly under this agreement, as well as the WTO's General Agreement on Tariffs and Trade (GATT) and Trade-Related Investment Measures (TRIMS) Agreement.

The upcoming phase of the programme would extend the local content requirement to cover more types of equipment imports, which the Office of the USTR says is also cause for concern.

The planned changes to the scheme would involve expanding the NSM local content requirement to include solar thin film technologies, which make up most of the US' solar exports to the Asian country. Over half of the projects under NSM have relied on imported thin films, which has been credited for prompting New Delhi to propose bringing these into the local content requirement.

Given that the majority of US solar exports involve solar film technologies, US companies are "not actually bothered by domestic sourcing of solar modules" under the current phase of the programme, one Indian trade official commented to The Hindu. The official speculated that the planned changes could have influenced the timing of the US complaint.

India responds

New Delhi officials quickly responded to Washington's challenge, arguing that the requirement has not substantially reduced imports of equipment and that its policy is in line with WTO rules.

The domestic content provision has been applied to only "a few projects totaling 350 megawatts (MW)," Tarun Kapoor, joint secretary at the Ministry of New and Renewable Energy, told Reuters. India's total capacity for solar generation is 1200 MW, compared to 18 MW three years ago when NSM was in its infancy. India is currently building 1000 MW of solar power plants and will soon be building an additional 2000 MW, the official added, noting that this new capacity will not be subject to a local content requirement.

In the past, India has also argued that the scheme qualifies as government procurement and is thus exempt from national treatment requirements, according to Reuters - an argument that New Delhi could potentially try to use if this case reaches the panel stage, some trade observers have speculated.

A similar argument was also made in Canada's WTO row with the US and EU, only for a dispute panel to find that - while the Ontarian measures at issue were government procurement - it was done with a view for commercial resale. The Ontario scheme was therefore not exempt from the national treatment requirements referred to in the GATT, TRIMS, and SCM Agreements. That finding is currently under appeal by Ottawa.

Dispute panel proceedings do not have precedential effect, however, meaning that the results in the Canada dispute would not necessarily apply in India's case, should the latter dispute reach the panel stage.

Next steps

The request for consultations is the first step in the WTO dispute settlement process. Should the parties to a dispute be unable to reach a resolution after 60 days of talks, the complainant may request the establishment of a panel to hear the complaint.

ICTSD reporting; "The Solar War Heats Up," THE HINDU, 11 February 2013; "Widening Domestic Sourcing Net May Hurt India's Case," THE HINDU, 11 February 2013; "India to consult its solar sector on domestic content issue," SEE NEWS, 11 February 2013; "India Denies Violating WTO Rules on Solar-Product Import," BLOOMBERG NEWS, 07 February 2013; "US Challenges India's Solar Program Restrictions at WTO," REUTERS, 06 February 2013.

[Back to top]

India needs to act fast on local content for Solar Mission

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

21 February 2013: The Ministries of Commerce and Industry and New and Renewable Energy are looking for an early solution that would enable use of more domestic products under the second phase of the Jawaharlal Nehru National Solar Mission without attracting more trouble at the World Trade Organisation.

Official sources told Business Line that MNRE was looking into the concerns expressed by the Commerce & Industry Ministry regarding mandating local sourcing of more products such as thin films and solar cells. The clock is ticking as the second phase of the Solar Mission is to take off from April.

"We have 30 days to respond and another 60 days to hold consultations. We would like to address the concerns raised by the Commerce Ministry," the official said.

India has already been dragged by the US to the WTO over phase I of the Mission that mandates local sourcing of the solar modules.

A cautious Commerce Ministry had expressed reservations on the draft circulated by MNRE proposing to expand local sourcing to more products under the second phase. In fact, the Commerce Ministry is peeved with the MNRE for not consulting it during phase I.

India and the US are already in consultations at the WTO over the ongoing dispute.

In fact, officials of the two Ministries have been holding meetings daily, over stance that will reflect the Government's position, official sources said.

Besides, at the WTO, it is the Commerce Ministry which will take the lead.

MNRE has defended the local content on the grounds that this was Government procurement which is allowed as India is not governed by the Government Procurement Act of the WTO.

But, the Commerce Ministry is apprehensive of questions being raised since the power ultimately will be sold to private consumers and is not limited to Government use. WTO requirement allows domestic sourcing strictly for Government use.

[Back to top]

No barrier to India biz, says US solar firm

M. Ramesh, Business Line (The Hindu)

Chennai, 1 March 2013: In the background of the US government taking India to the World Trade Organisation over India's 'local content requirements' for solar power plants set up under Government of India programmes, US company First Solar has said it is not too bothered by such local content requirements.
(The government has mandated local content requirements for projects set up under the Jawaharlal Nehru National Solar Mission.)

Opportunity Areas

First Solar, which makes thin-film technology based solar cells and modules, and has about 20 per cent of the Indian market, told analysts a few days ago that it did not see the local content requirements as "a significant barrier to our goals for the marketplace."

Noting that there is hardly any production coming out of local producers, First Solar said that it saw "as much opportunity outside of the state-sponsored (Government of India-sponsored) programmes as much as we do inside those programmes." "There is very little production currently going on," James Hughes, CEO, COO and Director, First Solar, told an analyst, answering a question about thin-film module production in India.

Cost Issues

"So we don't spend a lot of out time and effort fretting about the local content requirements, although we do actively engage the government and make our view known," Hughes said.

First Solar says local content requirements would "only drive up cost for local markets and ultimately don't benefit the economy."

First Solar's statement seems to be consistent with the stand taken by the Ministry of New and Renewable Energy that the requirements apply to a very small part of the country's solar ambition — 20,000 MW of grid-connected and 2,000 MW of off-grid plants by 2020.

A large part of the vision comes from the programmes of the various States, none of which has prescribed local content requirements.

[Back to top]

U.S. Challenges India's Solar Energy Incentives at WTO: What's at Stake

Metis Energy Insider

7 March 2013: The transition to a clean energy economy is imperative not only to tackle the climate crisis, but also to spur development through new economic opportunities, new investment, and the creation of new green jobs. In seeking to capture these benefits, however, governments are increasingly turning to trade rules to challenge one others' domestic renewable energy industries, thereby undermining the global clean energy transition we all seek. Put simply, all governments must have the ability to develop domestic renewable energy industries to fight climate change and the entrenched fossil fuel industry behind the crisis.

In the most recent example, the United States has filed a case at the World Trade Organization (WTO) to challenge India's use of subsidies and "buy local" rules in its domestic solar program. This case exemplifies the misguided and harmful impacts of these challenges. It is particularly important because of India's potential as one of the world's largest solar markets and because of the local and global benefits to India's transitioning from fossil fuels to renewable energy.

In order to understand the importance of this case, it is important to first understand the progress that the Indian government has made in supporting solar. India's solar mission provides strong support to solar deployment and includes a goal of developing 20,000 megawatts of solar power capacity by 2022. A key objective of the program is to boost the capacity of India to domestically manufacture solar panels. To achieve this objective, the government of India has required Indian developers of solar photovoltaic ("PV") projects using crystalline silicon technology to buy solar modules manufactured in India in order to take advantage of the programs benefits, including subsidies and guaranteed long-term competitive rates for solar power. These requirements to purchase locally manufactured solar panels are referred to as domestic content rules.

The government of India initially exempted thin film solar cells -- lower efficiency solar panels used in large-scale industrial solar projects -- from the domestic content rules because of low domestic capacity to manufacture such cells. This loophole created an opening for foreign countries, including the United States and China, to export thin-film cells to India. The U.S. exports of thin film solar cells to India have been particularly successful thanks to low interest loans from the U.S. Overseas Private Investment Corporation and the Export-Import Bank.

The result is that foreign thin-film panels now dominate India's market. Whereas global thin film installations are a very small portion of total solar deployment, in India they are the vast majority. To correct this imbalance and protect India's solar manufacturers, India is now considering expanding the use of domestic content rules to thin-film technologies in the second phase of its program, which may curtail imports of U.S. solar panels to India.

Concerned about the impact that the potential expansion of India's domestic content rules to thin-film technologies would have on its exports, the United States filed a claim at the WTO. In its claim, the United States asserts that India's domestic content rules appear to have violated trade rules in the General Agreement on Trade and Tariffs, the Agreement on Trade-Related Investment Measures, and the Agreement on Subsidies and Countervailing Measures by allegedly providing more favorable treatment to domestic solar producers and products than to foreign ones.

According to WTO rules, the U.S. and India have 60 days to try to find a resolution. If no resolution is reached, the U.S. can then request the establishment of a WTO panel to determine whether India has violated trade rules. A recent WTO panel ruling which found that Ontario, Canada's domestic content rules in its renewable energy sectors violated trade rules does not bode well for India's case.

What's at Stake

Historically, as countries have industrialized, domestic content rules have been a standard policy tool used to foster, nurture, and grow their new industries. In this process, countries have sought to find the appropriate balance between allowing some degree of foreign competition while still protecting the new industry until it is internationally competitive.

In the case of India, allowing some degree of foreign competition may be important to stimulate its domestic companies to increase their efficiency and competitiveness. But, foreign competition must not undermine the ability of India to grow its own solar industry.

Here's why we think India must be in the driver's seat when it comes to determining the future of its renewable energy industry, and what is at stake in this case.

First, the growth and success of India's solar industry is being undermined by the power of its coal industry, which receives enormous subsidies and enjoys strong political backing in India. One way to challenge the power of the fossil fuel industry in India is to successfully develop a viable domestic renewable energy industry. The use of domestic content rules is one way to develop a domestic solar industry with skin in the game, which is necessary to counter the power of the fossil fuel industry.

Second, the presence of strong renewable energy industries in multiple countries, including India, can help spur competition and innovation that can ultimately drive down the global price of renewable energy technologies in the medium and long-term.

Third, local content rules can help increase the political support for renewable energy programs by generating multiple local benefits, including new investment opportunities in a growth industry, opportunities for technological innovation, job creation, and new sources of tax revenue. For a country like India, with hundreds of millions of people still living in poverty, these added benefits are critical.

And fourth, because our planet is at stake. Our global climate will remain in peril if only some countries develop renewable energy industries while others continue to rely on fossil fuels. There is absolutely no question that in order to avoid catastrophic climate impacts, all countries must be seriously investing in renewable energy technologies and transitioning away from fossil-fuels now. The global solar industry has seen significant gains in the last few years. In 2012, more than 100 gigawatts of solar PV were installed worldwide, breaking new records. Now is the time to encourage countries to keep developing their domestic solar capacity in order to tackle the climate crisis, not to slow this process with trade disputes.

[Back to top]

Some solar projects may escape local content rule

Richa Mishra, Business Line (The Hindu)

New Delhi, 21 April 2013: The Ministry for New and Renewable Energy proposes to have two categories of projects under the Jawaharlal Nehru National Solar Mission — one with mandated domestic content and the other allowing use of imported equipment.

To participate in the National Solar Mission, developers have to buy solar cells and modules from domestic manufacturers and sign power purchase agreements with power plants under the mission. In return, they receive benefits including subsidies through guaranteed long-term power tariffs.

US Pressure

By having two categories, the Ministry seems to have found a way to stave off US pressure not to bring in more products under the draft guidelines that mandate use of domestic equipment.

Off-grid projects under Batch I of the second phase began from April 1, and tenders for grid-connected projects will be out next month.

While all approvals are in place to rollout grid-connected projects under the second phase, guidelines spelling out the domestic content requirement still need to be formalised.

The second phase will be in two batches as the capacity is high — 3,000 MW.

The earlier proposal bringing more items, such as thin films and solar cells, under the domestic sourcing requirement had so irked the US that it had filed a complaint with the Dispute Settlement Body of the World Trade Organisation against the mandate that crystalline solar photovoltaic modules had to be sourced locally.

Tarun Kapoor, Joint Secretary (Solar), MNRE, said the Ministry was yet to firm up how much of the 750 MW being tendered would fall under the domestic content norm.

He said WTO norms were not being violated under the Solar Mission.

One of the Mission's main objectives is to promote domestic manufacturing in the sector, which is why certain domestic content requirements were made mandatory in various schemes under Phase I. In the second phase, the domestic sourcing content is being expanded.

At the 4th Clean Energy Ministerial, Prime Minister Manmohan Singh had said that "as we expand our reliance on solar energy, we are keen to ensure induction of the best technology and also encourage domestic production of the equipment needed.

Large Market

"India is potentially a large market for production of such equipment. It is also a potentially competitive attractive production base for supplying to other countries. We, therefore, encourage global manufacturers to set up production facilities in this area."

Following the launch of the mission in 2010, the domestic manufacturing capacity of SPV cells and modules has increased from about 200 MW to 2,000 MW. The sourcing of power generated from projects in the second phase will be done by Solar Energy Corporation, which has been formed primarily to execute the mission.

For the first phase, NTPC Vidyut Vyapar Nigam, the trading arm of NTPC, was designated as the nodal agency for sale and purchase of grid-connected solar power.

The first phase of the mission, which concludes on March 31, has 1,500 MW of installed capacity till now.

This includes States' capacity and migrant projects. An additional 10,000 MW will be implemented by the end of 12th Plan ending 2017.

[Back to top]

India says US cannot point fingers on local input norm

Amiti Sen, Business Line (The Hindu)

New Delhi, 2 May 2013: In a move to counter the US gripe against compulsory local sourcing for solar projects, India is digging up cases where American states have mandated domestic sourcing.

At a meeting earlier this week of the WTO Committee on Trade Related Investment Measures, India said water utilities in many US states — South Carolina, Pennsylvania, and West Virginia among others — have made domestic sourcing of ductile iron pipes and fittings compulsory for use in water projects. New Delhi's charges come two weeks after it sought clarifications from the US at a WTO subsidies committee meeting on local content requirements in renewable energy programmes in Michigan, California and Texas.

India's arguments can play a decisive role in the case the US has lodged against India at the WTO for making it compulsory for all investors in programmes under the National Solar Mission to buy some of the inputs locally.

"It is appalling that the US has raised a dispute against India for local content mandate when it has been using it for so long in multiple areas. New Delhi has patiently prepared its case against all such instances and will now fire from all sides," a Government official told *Business Line*.

Ironically, at the moment India does not have much commercial interest in the areas where the US has set local content norms, but removal of restrictions could open new vistas for business.

"We are mainly trying to point out to the US that we are not the only ones trying to encourage domestic industry through local content norms. It is hypocritical to point fingers at us when they are doing the same," the official said.

India asked the US to explain how these measures could be considered consistent with the TRIMs Agreement that prohibits sourcing restrictions without ample justification.

Interestingly, the US has used the same argument in its case against India for domestic sourcing under the Jawaharlal Nehru National Solar Mission. The Mission, which seeks to promote use of solar energy and also build local capacities, made it compulsory under the first phase for all investors to use solar modules manufactured in India and source 30 per cent of the inputs locally.

India's defence is that since the power will be purchased by an arm of public sector NTPC, it qualified as government purchase and was, therefore, exempt from the TRIMs rules.

The US, however, is determined not to allow India to extend the domestic sourcing norm to solar thin films (exempt so far) in its second phase as American companies are major suppliers of thin films for solar projects in the country.

"Once a larger debate on local content being mandated by various countries in different projects starts at the WTO, it will be easier for India to persuade the US to drop its case," the official said.

[Back to top]

India worried over WTO's verdict on Ontario solar case

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

New Delhi, 19 May 2013: The World Trade Organization's (WTO) recent ruling against Ontario's domestic content requirements for renewable energy projects is setback for India, which is defending a similar case filed against it by the US.

But the country has not given up hopes of a favourable verdict, as it believes that the finer details of its case are different.

"Our situation is very different from Ontario's. In our case, production is for Government procurement, which cannot be brought under WTO discipline. Besides, in phase-II of the solar mission, we propose to divide the 750 MW capacity put on offer into two. Some projects would mandate domestic content, and some would be open for use of imported products," a senior official from the Ministry for New & Renewable Energy *told Business Line*.

The Commerce Department, which represents the country at the WTO, is analysing the details of the Ontario verdict.

"We are at the moment going through the judgement as we want to be clear about how the WTO arrived at its decision. This will help us fight our case better," a Commerce Department official said.

In February, the US filed a complaint with the Dispute Settlement Body of WTO against domestic content requirement in the Jawaharlal Nehru National Solar Mission (JNSSM), which mandates that solar photovoltaic modules based on crystalline technology have to be sourced locally. As per WTO rules, members cannot impose such conditions on investors.

India has so far argued in the WTO that as the power produced under the mission will be bought by NTPC, a public sector unit, it amounted to Government procurement, which does not fall under the ambit of WTO rules.

India is not a signatory to the Government Procurement Agreement of WTO, a plurilateral agreement that has just a few countries as members.

The US is hopeful that by successfully fighting its case at the WTO, it will manage to foil India‟ s plans of extending the local content requirement to solar thin films, most of which are supplied by US companies, in the second phase of the mission beginning this year.

The Indian industry is, understandably, worried that removal of domestic content requirement could lead to foreign manufacturers benefiting from it at the cost of local producers.

"The core issue remains that any dilution of the domestic content requirement under the solar mission sets up perverse behaviour in the market place due to current global supply dynamics where value leaks out to exporters in the US and Asia," said Ajay Goel, CEO, TATA Power Solar.

Most Indian manufacturers continue to operate at less than 25 per cent capacity utilisation and incur huge losses.

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

According to Raj Prabhu, CEO, Mercom Capital Group, India should amicably settle its dispute with the US and should help the domestic industry in other ways.

“The focus should be on creating a conducive investment environment with an eye on demand creation,” he added.

[Back to top]