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INDIA — CERTAIN MEASURES RELATING TO SOLAR CELLS AND SOLAR MODULES

AUTHORED BY - VRINDA YADAV

Abstract

The case analysis explores the dispute between the United States and India on the former's Domestic Content Requirement (DCR) policy, which was put into effect as a component of the latter's Jawaharlal Nehru National Solar Mission (JNNSM). The programme required government-funded solar projects to use domestically produced solar cells and modules, which caused the United States to file a complaint with the WTO. The paper highlights the conflict between advancing renewable energy and upholding international trade regulations by examining the legal obstacles, WTO/Panel findings, and the mutually agreed-upon solution established between the parties. The resolution emphasizes how critical discussion and compromise are to solving intricate trade-environmental problems inside the framework of the multilateral trading system.

Introduction

In the fields of international trade law and renewable energy policy, the case "India — Certain Measures Relating to Solar Cells and Solar Modules" (DS456)¹ are a significant legal dispute. The Jawaharlal Nehru National Solar Mission (JNNSM) and its supporting Domestic Content Requirement (DCR) policy are two domestic Indian initiatives that are intended to encourage the use of solar energy. This disagreement was brought before the World Trade Organisation (WTO). Like many other countries, India has been aggressively seeking renewable energy alternatives to solve issues with environmental degradation, and energy security, and meeting its obligations under international agreements like the Paris Agreement. Launched in 2010, the JNNSM aimed to set aggressive goals for solar power output and provide incentives for solar project investments to hasten the deployment of solar energy in India.

However, the DCR policy under the JNNSM ended up becoming a point of dispute. To support

¹ India – Certain Measures Relating to Solar Cells and Solar Modules

India's domestic solar manufacturing sector and generate jobs there, this policy required a specific proportion of solar cells and modules used in government-funded solar projects to be obtained domestically.

The United States, a significant participant in the global solar industry, expressed concerns about India's DCR policy, arguing that it discriminated against foreign providers of solar products and distorted the worldwide market for solar energy equipment, in violation of international trade regulations. The United States maintained that India had violated WTO agreements, such as the Agreement on Trade-Related Investment Measures (TRIMs) and the Agreement on Subsidies and Countervailing Measures (SCM), by implementing measures that unfairly favored home-grown manufacturers.

The parties engaged in consultations, and a panel of trade experts examined the case and then appealed to the WTO Appellate Body as part of the WTO's dispute resolution procedure. The decisions rendered by the Appellate Body and WTO panels had a big impact on international trade law in general as well as India's capacity to assist home-grown businesses and implement renewable energy policy.

This introduction lays the groundwork for a thorough examination of the DS456 case's legal, economic, and policy aspects. We can learn a great deal about how international trade laws and the development of renewable energy intersect by carefully examining the specifics of the dispute, including the arguments put forth by the US and India, the conclusions of the WTO panels, and the ramifications of the decisions.

Background

"India – Solar Cells" is a dispute that centers on the Jawaharlal Nehru National Solar Mission (National Mission), which was started by India almost half a decade ago. Ensuring national energy security and promoting environmentally sustainable growth were the National Mission's two main goals. The mission's primary practical objective was to produce 100,000 megawatts (MW) of solar power capacity by 2022.

The Indian government agreed, as part of the National Mission, to only buy power from generators that use solar panels and cells that are indigenous to India. This rule was a crucial component of the larger plan to encourage domestic solar energy component manufacturing and

use.

The Indian government set up a scheme whereby it would purchase electricity from solar energy providers at fixed rates guaranteed for 25 years as part of the operating framework. Subsequently, these utilities would purchase the electricity and use it to provide final consumers. However, there was one very important requirement placed on solar energy providers: they had to use a specific proportion of solar cells and modules made in the United States in their energy production processes.

The General Agreement on Tariffs and Trade 1994 (GATT) and the Agreement on Trade-Related Investment Measures (TRIMs Agreement) both contain provisions about national treatment. The United States objected to India's requirement that domestically produced solar cells and modules be used. It was argued that India was unfairly discriminating against international rivals in breach of its WTO requirements by giving preference to components made domestically.

The disagreement highlights the conflict between India's obligations under international trade agreements and its goal to advance home-grown industry and energy security under the National Mission. It brings up difficult issues of how, within the WTO's structure, national policy goals and international trade regulations should be balanced.

Measure and Product at Issue

The Measure In Question is the domestic content requirements (DCRs) that were placed on solar power providers that sold electricity to the government during the early stages of India's Jawaharlal Nehru National Solar Mission (NSM).

The product in question is solar power generation equipment, such as modules and/or cells.

Legal Challenges

WTO Agreement Violation: The United States alleges that India's actions violate several WTO accords, notably:

- Article III: 4² of the GATT 1994, which deals with the idea of national treatment, which maintains that imported goods receive the same treatment as goods produced domestically.

² (WTO | Legal Texts - Marrakesh Agreement, n.d.)

- Trade-related investment measures that conflict with the GATT are forbidden under Article 2.1³ of the Agreement on Trade-Related Investment Measures (TRIMs Agreement).
- The Agreement on Subsidies and Countervailing Measures (SCM Agreement) has provisions that regulate subsidies and their impact on global commerce, namely articles 3.1(b), 3.2, 5(c), 6.3(a) and (c), and 25.⁴

Benefits Nullified or Impairment: According to the United States, India's actions negate or reduce the benefits that it will receive, either directly or indirectly, from the mentioned WTO accords. This shows that American exporters and manufacturers in the solar energy sector can be unfairly harmed by the regulations.

Reasonable period and Compliance: India and the US discussed how to execute the DSB's recommendations and findings within a reasonable time frame after the panel was established and the Appellate Body processes began. Regarding Article 22 of the Dispute Settlement Understanding (DSU), the legal argument here is whether India has complied with the WTO dispute settlement process and if the United States can request permission to suspend concessions or other obligations.

Overall, the legal challenges center on evaluating how India's DCR measures align with its obligations under WTO agreements, figuring out if these actions negate or reduce benefits under those agreements, and handling issues related to compliance with the dispute resolution process, such as the appropriate time frame for implementation and possible sanctions for non-compliance.

WTO/Panel Findings

Timeline:

- 24 September 2014: The panel was composed after the parties agreed.
- 24 February 2016: Panel report circulated to Members.
- 16 September 2016: Appellate Body report circulated to Members.

Summary of Key Findings:

Article III: 4 of the GATT 1994 and Article 2.1 of the TRIMs Agreement both state that WTO

³ "WTO | Legal Texts - Marrakesh Agreement."

⁴ "WTO | Legal Texts - Marrakesh Agreement."

non-discrimination obligations do not apply to India's DCR policies.

Article III: 8(a) of the GATT 1994 stated that the measures were not eligible for the government procurement exemption since the acquired product (electricity) was not in a "competitive relationship" with the product that was discriminated against (solar cells and modules).

Article XX (d) (required steps to "secure compliance" with laws or regulations) and Article XX (j) (important measures for "products in general or local short supply") did not provide India with an adequate justification.

- 14 October 2016: The Appellate Body report's modifications were adopted by the DSB collectively with the Panel report.

Article III: 4 of the GATT 1994 and Article 2.1 of the TRIMs Agreement both prohibit discrimination, and the WTO found that India's Domestic Content Requirement (DCR) provisions for solar cells and modules under the Jawaharlal Nehru National Solar Mission violated these duties. Because the acquired product (electricity) was not assessed to be in a "competitive relationship" with the discriminating product (solar cells and modules), the measures were not declared excluded under the government procurement provision of Article III: 8(a) of the GATT 1994.

Article XX (j) deals with essential steps for products that are in short supply, and Article XX (d) permits steps to ensure conformity with domestic laws or regulations. India did not justify the measures it took. These findings were maintained by the Appellate Body, which emphasized that the Panel had followed proper precedent and that evaluations conducted by Article XX (j) ought to take into account several variables, such as local production, supply levels, market dynamics, and consumer purchasing power. It also made clear the standards for classifying rules under Article XX (d).

Reasonable period

- November 8, 2016: India notified the DSB of its plan to put the recommendations into effect.
- 16 June 2017: Reasonable 14-month duration agreed upon, with an expiration date of 14 December 2017.

Proceedings under Article 22 of the DSU:

- December 19, 2017: The US asked for permission to halt concessions; India objected, citing the US's refusal to discuss compensation.
- January 12, 2018: The matter was referred to arbitration.

The United States claimed that India had not complied with the Dispute Settlement Body's (DSB) recommendations and rulings within a reasonable time frame, so it requested permission from the DSB to suspend concessions or other obligations under Article 22.2 of the Dispute Settlement Understanding (DSU). Nevertheless, India objected to this request on January 3, 2018, by DSU Article 22.6. India contended that the United States had not entered into talks for mutually agreeable compensation, hence it had not met the requirements of Article 22.2, and it had complied with the recommendations and findings within the allotted time limit.

At the DSB meeting on January 12, 2018, the matter was referred to arbitration according to Article 22.6 of the DSU.

Compliance Proceedings

- 23 January 2018: India requested the establishment of a compliance panel, deferred initially and then referred to the original panel, if possible.

Mutually Agreed Solution

- 13 July 2023: India and the US reached a mutually agreed solution, withdrawing requests related to the suspension of obligations and compliance panel.

On July 13, 2023, India and the United States informed the Dispute Settlement Body (DSB) that they had reached a mutually agreed solution to the dispute, as per Article 3.6 of the DSU. Consequently, the United States withdrew its request to the DSB, made under Article 22.2 of the DSU, seeking authorization to suspend tariff concessions or other obligations applicable to India under the GATT 1994. Similarly, India withdrew its objection, made under Article 22.6 of the DSU, regarding the level of suspension proposed by the United States. Additionally, India withdrew its request for the establishment of a compliance panel under Article 21.5 of the DSU. This indicates that both parties resolved the dispute amicably and withdrew their respective requests and objections related to the dispute settlement process.

Conclusion

The dispute involving India and Solar Cells sheds light on the difficulties in implementing WTO regulations for renewable energy policy, specifically about India's solar mission and its domestic content requirements (DCR). The case, which the United States started, focused on compliance with the GATT and TRIMs Agreement's non-discrimination rules. The panel and appeal body determined that the measures violated WTO regulations, even though India provided reasons under GATT Article XX.

In conclusion, both India and the US chose a diplomatic choice, postponing more action and focusing on communication to prevent drawn-out court cases. This instance emphasizes the necessity of maintaining policy coherence within the multilateral trading system by striking a balance between economic interests and environmental goals.

It sets a standard for negotiating the complex relationships between trade and environmental concerns in renewable energy legislation and promotes openness, predictability, and collaboration for mutually beneficial outcomes.

