

INDIA – CERTAIN MEASURES RELATING TO SOLAR CELLS AND SOLAR MODULES

REQUEST FOR CONSULTATIONS BY THE UNITED STATES

Addendum

The following communication, dated 10 February 2014, from the delegation of the United States to the delegation of India and to the Chairperson of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

My authorities have instructed me to request consultations with the Government of India ("India") pursuant to Articles 1 and 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"), Article XXII of the *General Agreement on Tariffs and Trade 1994* ("GATT 1994"), and Article 8 of the *Agreement on Trade-Related Investment Measures* ("TRIMs Agreement") concerning certain measures of India relating to domestic content requirements under "Phase II" of the Jawaharlal Nehru National Solar Mission ("NSM") for solar cells and solar modules. [↓](#)

Specifically, it appears India requires solar power developers, or their successors in contract, to purchase and use solar cells and solar modules of domestic origin in order to enter into and maintain certain power purchase agreements under the NSM or with National Thermal Power Company Vidyut Vyapar Nigam Limited or the Solar Energy Corporation of India. In addition, solar power developers, or their successors in contract, receive certain benefits and advantages, such as long-term tariffs for electricity, contingent on their purchase and use of solar cells and solar modules of domestic origin.

The legal instruments through which India establishes and maintains domestic content requirements under Phase II of the NSM include, but are not limited to, the following:

1. Ministry of New and Renewable Energy, *Resolution: Jawaharlal Nehru National Solar Mission*, No. 5/14/2008 (January 2010);
2. Ministry of New and Renewable Energy, *Jawaharlal Nehru National Solar Mission Phase II Policy Document* (December 2012);
3. Press Information Bureau, *Government of India Cabinet Committee on Economic Affairs, Setting up of 750 MW of Grid connected Solar PV Power Projects under Batch-I of Phase-II of Jawaharlal Nehru National Solar Mission with Viability Gap funding support from National Clean Energy Fund* (October 3, 2013);
4. Ministry of New and Renewable Energy, *Solar Energy Corporation of India, Request for Selection of Solar Power Developers for 750 MW Grid Connected Solar Photo Voltaic Projects under JNNSM PHASE-II: Batch-I, No.: SECI/2013/JNNSM/Ph-II, Batch-I/Solar PV/750MW* (October 4, 2013);
6. Ministry of New and Renewable Energy, *Approval for Implementation of a Scheme for Setting up of 750 MW of Grid-connected Solar PV Power projects under Batch-I of Phase-II of Jawaharlal Nehru National Solar Mission with Viability Gap Funding support from National Clean Energy Fund* (October 15, 2013);
7. Solar Energy Corporation of India, *Request for Selection (RfS) Document for 750 MW Grid Connected Solar Photovoltaic Projects Under JNNSM Phase II Batch-I* (October 28, 2013);
8. Ministry of New and Renewable Energy, *Jawaharlal Neru National Solar Mission Phase-II Guidelines for Implementation of Scheme for Setting up of 750 MW Grid-connected Solar PV Power Projects under Batch-I* (October 25, 2013);
9. Solar Energy Corporation of India, *Amendments in the RfS Document of JNNSM Phase-II, Batch-I, No.:SECI/JNNSM/SPV/P-2/B-1/RfS/102013* (November 29, 2013);
10. Solar Energy Corporation of India, *Amendments in the RfS Document of JNNSM Phase-II, Batch-I,*

11. Solar Energy Corporation of India, *Clarifications on the queries raised by various stakeholders* (November 30, 2013);
12. Solar Energy Corporation of India, *Draft Standard Power Purchase Agreement for Procurement of ___MW Solar Power on Long term Basis* (November 30, 2013);
13. Solar Energy Corporation of India, *Draft Standard Power Purchase Agreement for Procurement of ___MW Solar Power on Long term Basis* (January 8, 2014); and
14. Power Purchase Agreements entered into under Phase II of the NSM, such as by National Thermal Power Company Vidyut Vyapar Nigam Limited or the Solar Energy Corporation of India, or successors in contract;

as well as any amendments, related measures, or implementing measures.

India's measures appear to be inconsistent with:

- Article III:4 of the GATT 1994 because they provide less favorable treatment to imported solar cells and solar modules than that accorded to like products originating in India; and
- Article 2.1 of the TRIMs Agreement because they are trade-related investment measures inconsistent with Article III of the GATT 1994.

India's measures also appear to nullify or impair the benefits accruing to the United States directly or indirectly under the cited agreements.

We look forward to receiving your reply to the present request and to fixing a mutually convenient date for consultations.
