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**INDIA – CERTAIN MEASURES RELATING TO SOLAR CELLS
AND SOLAR MODULES**

REQUEST FOR CONSULTATIONS BY THE UNITED STATES

The following communication, dated 6 February 2013, 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"); Article 8 of the *Agreement on Trade-Related Investment Measures* ("TRIMs Agreement"); and Articles 4, 7, and 30 of the *Agreement on Subsidies and Countervailing Measures* ("SCM Agreement") concerning certain measures of India relating to domestic content requirements under 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 participate in the NSM and to enter into and maintain power purchase agreements under the NSM or with National Thermal Power Company Vidyut Vyapar Nigam Limited. 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.

The legal instruments through which India establishes and maintains domestic content requirements under the NSM and provides subsidies under the NSM relating to those domestic content requirements include, but are not limited to, the following:

- *Resolution: Jawaharlal Nehru National Solar Mission*, No. 5/14/2008 (Ministry of New and Renewable Energy, January 2010);
- *Guidelines for Selection of New Grid Connected Solar Power Projects, Batch-I* (Ministry of New and Renewable Energy, July 2010);
- *Guidelines for Selection of New Grid Connected Solar Power Projects, Batch-II* (Ministry of New and Renewable Energy, August 2011);
- *Request for Selection Document for New Grid Connected Solar Photo Voltaic Projects under Phase 1 of JNNSM* (National Thermal Power Company Vidyut Vyapar Nigam Limited, August 2010);
- *Request for Selection Document for New Grid Connected Solar Photo Voltaic Projects under Phase 1, Batch II of JNNSM* (National Thermal Power Company Vidyut Vyapar Nigam Limited, August 2011);

- *Draft Standard Power Purchase Agreement for Procurement of ___ MW Solar Power on Long Term Basis* (National Thermal Power Company Vidyut Vyapar Nigam Limited, August 2010);
- *Draft Standard Power Purchase Agreement for Procurement of ___ MW Solar Power on Long Term Basis (Second Batch)* (National Thermal Power Company Vidyut Vyapar Nigam Limited, August 2011); and
- Power Purchase Agreements entered into by National Thermal Power Company Vidyut Vyapar Nigam Limited and solar power developers, or successors in contract, under the NSM;¹

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

India's measures appear to be inconsistent with:

- Article III:4 of the GATT 1994 because the measures appear to provide less favorable treatment to imported solar cells and solar modules than that accorded to like products originating in India;
- Article 2.1 of the TRIMs Agreement because the measures appear to be trade-related investment measures inconsistent with Article III of the GATT 1994;
- Articles 3.1(b) and 3.2 of the SCM Agreement because the measures appear to provide a subsidy contingent upon the use of domestic over imported goods; and
- Articles 5(c), 6.3(a), and 6.3(c) of the SCM Agreement because the measures appear to cause serious prejudice to the interests of the United States through displacement or impedance of imports of U.S. solar cells and solar modules into India and through lost sales of U.S. solar cells and solar modules in India.

As India has not appropriately notified these measures, India appears to have failed to comply with Article 25 of the SCM Agreement.

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

Attached please find the statement of available evidence, pursuant to Articles 4 and 7 of the SCM Agreement.

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

¹ The Power Purchase Agreements include those between National Thermal Power Company Vidyut Vyapar Nigam Limited and the following solar power developers: Aftaab Solar Pvt. Ltd.; Alex Solar Private Ltd.; Alex Spectrum Radiation Pvt. Ltd.; Amrit Energy Pvt. Ltd.; Azure Power (Rajasthan) Pvt. Ltd.; CCCL Infrastructure Ltd.; Coastal Projects Ltd.; DDE Renewable Energy Private Ltd.; Electrical Manufacturing Co. Ltd.; Electromech Maritech Pvt. Ltd.; EMC Ltd.; Enfield Infrastructure Ltd.; Essel Infraprojects Ltd.; Finehope Allied Engineering Pvt. Ltd.; Firestone Trading Pvt. Ltd.; Fonroche Energie S.A.S; GAIL (India) Ltd.; Green Infra Solar Farms Ltd.; Greentech Power Private Ltd.; Indian Oil Corporation Ltd.; Jackson Power Private Ltd.; Karnataka Power Corporation Ltd.; Khaya Solar Projects Pvt. Ltd.; Kiran Energy Solar Power Pvt. Ltd.; LEPL Projects Ltd.; Lexicon Vanijya Pvt. Ltd.; Maharashtra Seamless Ltd.; Mahindra Solar One Pvt.; Newton Solar Pvt. Ltd.; Northwest Energy Pvt. Ltd.; NVR Infrastructure and Services Pvt. Ltd.; Oswal Woollen Mills; Precision Technik Pvt. Ltd.; PUNJ LLOYD Solar Power Ltd.; Rithwik Projects Pvt. Ltd.; Saidham Overseas Pvt. Ltd.; Saisudhir Energy Ltd.; SEI Solar Power Pvt. Ltd.; Shree Saibaba Sugars Ltd.; Solariredirect S.A.; Sujana Towers Ltd.; SunBorne Energy Services India Pvt. Ltd.; SunEdison Energy India Private Ltd.; Symphony Vyapaar Private Ltd.; Vasavi Solar Power Pvt. Ltd.; Viraj Renewables Energy Pvt. Ltd.; VS Lignite Power Pvt. Ltd.; and Welspun Solar AP Pvt. Ltd.

Statement of Available Evidence

1. *The Electricity Act, 2003*, No. 36 of 2003 (May 26, 2003);
2. Ministry of Power, *National Electricity Policy*, Gazette of India, No. 23/40/2004-R&R (Vol. II) (February 12, 2005);
3. Ministry of Power, *National Tariff Policy*, Gazette of India, No. 23/2/2005-R&R (Vol. III) (January 6, 2006);
4. Ministry of New and Renewable Energy, Statement to Parliament: *Government Announces Jawaharlal Nehru National Solar Mission* (November 23, 2009);
5. Ministry of New and Renewable Energy, *Resolution: Jawaharlal Nehru National Solar Mission*, No. 5/14/2008 (January 11, 2010);
6. Ministry of New and Renewable Energy, Press Release: *Jawaharlal Nehru National Solar Mission is a Historic and Transformational Initiative of the UPA Government* (January 11, 2010);
7. Ministry of New and Renewable Energy, *Jawaharlal Nehru National Solar Mission: Towards Building Solar India* (2010);
8. Ministry of New and Renewable Energy, *Guidelines for Selection of New Grid Connected Solar Power Projects, Batch-I* (July 2010);
9. Ministry of New and Renewable Energy, *Guidelines for Selection of New Grid Connected Solar Power Projects, Batch-II* (August 2011);
10. Ministry of New and Renewable Energy, Press Release: *Jawaharlal Nehru National Solar Mission* (April 27, 2012);
11. Ministry of New and Renewable Energy, Press Release: *Preference for Domestic Solar Cells* (May 21, 2012);
12. Ministry of New and Renewable Energy, Presentation: *Jawaharlal Nehru National Solar Mission – An Update* (September 6, 2012);
13. Ministry of New and Renewable Energy, *Jawaharlal Nehru National Solar Mission : Phase II – Policy Document* (December 2012);
14. National Thermal Power Company, *36th Annual Report, 2011-2012* (2012);
15. NVVN², *Request for Selection Document for New Grid Connected Solar Photo Voltaic Projects under Phase 1 of JNNSM* (August 2010);
16. NVVN, *Draft Standard Power Purchase Agreement for Procurement of ___ MW Solar Power on Long Term Basis* (August 2010);
17. NVVN, *Draft Standard Power Sale Agreement for Sale of ___ MW Solar Power on Long Term Basis* (August 2010);
18. NVVN, *List of Selected Projects* (2010);
19. NVVN, *Request for Selection Document for New Grid Connected Solar Photo Voltaic Projects under Phase 1, Batch II of JNNSM* (August 2011);

² National Thermal Power Company Vidyut Vyapar Nigam Limited.

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20. NVVN, *Draft Standard Power Purchase Agreement for Procurement of ___ MW Solar Power on Long Term Basis (Second Batch)* (August 2011);
 21. NVVN, *List of Selected Projects under JNNSM Phase I Batch II* (2011);
 22. NVVN, Presentation: *JNNSM Phase-I Journey so Far* (June 27, 2012);
 23. Central Energy Regulatory Commission, *Terms and Conditions for Tariff Determination from Renewable Energy Sources*, No. L-7/186(201)/2009-CERC (September 16, 2009);
 24. Central Energy Regulatory Commission, *Terms and Conditions for Tariff Determination from Renewable Energy Sources*, L-1/94/CERC/2011 (June 2, 2012);
 25. Central Energy Regulatory Commission, *Determination of Levellised Generation Tariff*, Petition No. 53/2010 (suo-moto);
 26. Central Energy Regulatory Commission, *Determination of Levellised Generation Tariff*, Petition No. 256/2010 (suo-moto) (November 9, 2010);
 27. Central Energy Regulatory Commission, *Determination of Levellised Generation Tariff*, Petition No. 243/SM/2012 (suo-moto) (October 25, 2012); and
 28. U.S. Energy Information Administration, *Solar Photovoltaic Cell/Module Shipments Report 2011* (September 2012).
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