Introduction

The case involves a dispute between India and the United States related to the concept of ‘domestic content’ as a requirement of India’s Jawaharlal Nehru National Solar Mission (NSM) for solar cells and solar modules. The World Trade Organization (WTO) states that “…WTO members may not apply any measure that discriminates against foreign products or that leads to quantitative restrictions, both of which violate basic WTO principles” (World Trade Organization, n.d.). India wants to require solar energy producers to use solar panels produced by locally based companies. According to U.S. Trade Representative Michael Froman, requiring Indian solar developers to use locally made equipment discriminates against U.S. producers and allegedly violates World Trade Organization principles that require countries to treat both foreign and domestic goods equally (Hughes and Daniel, 2014).

Key Issues

For India, a key issue is protecting local solar cell manufactures from unfair advantages (India’s view) that the WTO principles provide to competitors from China, Malaysia, and the U.S. Those unfair advantages, according to Rao (2013), allow solar products made by U.S. and Chinese companies to be brought into India tax-free, but Indian manufacturers are required to pay taxes on the raw materials necessary to make the same products. That results in India’s solar industry not getting business and subsequently having to stop production or operate at far below normal capacity. India included in the Domestic Content Requirements (DCRs) that a set proportion of specified materials used in the NSM must be manufactured in India. In Phase 1 of the NSM, the DCR’s only covered solar cells and solar modules, which was allowable by the US
since US companies export few of these products to India; however, India wanted to include solar thin film technologies within the DCRs for Phase II of the NSM.

A key issue for the United States is that in Phase II of the NSM, India extended the DCRs to include solar thin film technologies: U.S. exports of thin film technology are dominant in India (Pierson, 2015). The U.S. notes that certain measures of India relating to solar cells and solar modules appear to be inconsistent with several WTO and General Agreement on Tariffs and Trade (GATT) Agreement Articles and “...that the measures appear to nullify or impair the benefits accruing to the United States directly or indirectly under the cited agreements” (WTO, 2014). Basically, the U.S. is making an argument similar to India: they want to preserve the jobs associated with clean energy products that American companies produce and sell to India.

Further, the U.S. maintains the WTO agreements in place allow for such practices and, according to Froman, “Domestic content requirements detract from successful cooperation on clean energy and actually impede India’s deployment of solar energy by raising its costs” (Hughes and Daniel, 2014).

This paper is intended to present the problem, the key issues, and how the role of the World Trade Organization as well as competing viewpoints from organizations dedicated to environmental and climate change policies have influenced the dispute.

World Trade Organization (WTO)

The WTO, according to its own words, “…is a forum for governments to negotiate trade agreements. It is a place for them to settle trade disputes. It operates a system of trade rules. Essentially, the WTO is a place where member governments try to sort out the trade problems they face with each other” (World Trade Organization, n.d.). Hill and Hult (2016) note the WTO is primarily responsible for policing the world trading system and ensuring that member nation-
states adhere to the trade treaties signed by WTO members. There were 159 nations that accounted for 98 percent of world trade as members of WTO as of 2014. The WTO is based in Geneva Switzerland with a staff of over 600 people. The current Director-General of the WTO is Roberto Azevedo.

In regard to dispute settlement between member nations, WTO views this as the “…central pillar of the multilateral trading system, and as a unique contribution to the stability of the global economy” (Wikipedia). The WTO has a comprehensive dispute settlement process. To handle disputes, panels composed of experts in areas relevant to the dispute are appointed by the WTO’s Dispute Settlement Body, the Appellate Body, the Director-General and the WTO Secretariat, arbitrators, and advisory experts. WTO members are obliged to accept the process as exclusive and compulsory.

The WTO is not devoid from criticism. It has been alleged that the WTO is not partial in managing the global economy and has a “systematic bias” (Wikipedia) toward rich countries and multinational corporations which results in harming smaller countries with less negotiating powers. Criticism related to labor and environment; notably that trade can create adverse environmental damage and the gains from trade would be offset by the environmental costs.

There has also been criticism related to the WTO not having an inclusive decision making process and accusations that it does not take into account more diverse interests and objectives. As a result, consensus building has broken down at times prior to presenting items discussed for vote by other WTO members.

**Stakeholder’s Problem: India**

India wanted to include thin film technology as part of the DCR protection under the NSM (thin film solar cell is a second generation solar cell that is made by depositing one or more
thin layers (thin film) of photovoltaic material on a substrate such as glass, plastic or metal. Wikipedia, n.d.). The NSM is crucial to India’s goal to increase renewable energy into the country, as currently 71% of the electricity is generated from coal, (International Energy Agency, 2012). Out of a total of 255 gigawatts of electricity produced, 20 gigawatts is from wind power and only 3 gigawatts from solar power. According to Pierson (2015), one quarter of India’s population have no electricity. The primary problem for India is the need to produce more electricity from sources that are less damaging to the environment.

**Stakeholder’s Problem: United States**

The United States filed the initial WTO complaint against India with the WTO in 2013. On the surface, the primary stakeholder problem appears simple; the U.S. alleged India’s subsidies contained within India’s DCRs for the Jawaharlal Nehru National Solar Mission discriminate against foreign suppliers of solar components. However, the U.S. exposed itself to negative reactions from influential environmental groups, including the Sierra Club, Greenpeace USA, and Friends of the Earth, and those groups urged the U.S. to withdraw the complaint and called for a “…compromise that allows India to build a solar economy” (Rao, 2013). Rao further notes that because India burns so much coal to produce electricity, the pollution from that burned coal is responsible for killing “…tens of thousands prematurely every year” (2013). By blocking India’s attempt to bolster its fledgling solar industry, the U.S. can be viewed as contributing to world-wide pollution since India will be forced to continue burning fossil fuels for energy.

**Stakeholder’s Problem: Word Trade Organization**

The problem for WTO is speculative in that it is not easy to determine answers; was it fair in assigning appropriate representatives to the dispute resolution panel, did the panel
consider the environmental costs associated with the dispute, and was the decision making process inclusive?

Analysis of what may have contributed to the dispute

It is difficult to determine contributing causes. Pierson (2015) notes a positive history between India and the U.S. related to renewable energy. Examples cited were a 2014 Memorandum of Understanding (MoU) both countries signed in which the U.S. agreed to provide up to a billion dollar low-interest loan so that India could develop renewable energy sources. It was also noted the U.S. has pledged up to $4 billion to support the growth of India’s solar power initiatives.

During President Obama’s summit meeting with India’s Prime Minister in January of 2015, they issued a joint statement with proposals for cooperation on technology, trade, defense, communications, as well a clean energy and climate change (the White House, 2015). But a review of that joint statement as it relates to climate and emissions, no targets are set nor are there any meaningful assurances other than a comment that India and the U.S. agree to work together to curb emissions. However, to be fair, there are a number of items that relate directly to energy and climate change cooperation between the two countries. It should be noted that according to the World Bank figures (2011), U.S. carbon emissions dwarf India’s (1.7 tons per person in India versus 17 tons for each U.S. citizen in carbon emissions).

There appear to be real concerns that the U.S. has a double standard by challenging India’s energy subsidies when the U.S. itself provides federal subsidies to U.S. forms in the billions of dollars. Examples such as the Internal Revenue Service’s (IRS) 30% investment tax credit for solar power. Even a personal example from my family, where we received a tax credit
of $5,000 to install a geo-thermal heat system in our home is relevant when taking into consideration the thousands of citizens who took advantage of similar credits.

**Alternative Solutions and Conclusion**

Because the WTO has ruled in favor of the U.S. challenge on August 26, 2015 by announcing their dispute panel found India’s subsidies for solar power contravene WTO trade rules (World Trade Organization, 2015), any proposed alternative solutions appear to be moot. One could speculate about various strategies that could have occurred prior to the U.S. filing the formal complaint against India with the WTO, but speculation seems pointless other than as considerations on how similar future disputes might be handled. In that vein, it might have been advisable for the U.S. to work much more closely with India, separate from the WTO, in trying to resolve their differences. They could have invited representatives from a variety of global environmental groups, solar energy industrial groups, and other relevant constituents to participate in discussions aimed at coming up with a solutions all could accept.

As recently as October 4, 2015, India submitted its climate action plan to the UN climate secretariat ahead of the climate summit to be held in Paris in December of this year (Goswami, 2015). India pledged that for every dollar of economic output, it would further reduce greenhouse gas emissions it produces in that output by increasing non-fossil fuels in their power generation infrastructure. India further pledged to increase its forest and tree cover in an attempt to provide additional carbon sinks.

There are no easy answers when it comes to the efforts of global economies to work with each other in trying to reduce the carbon footprint of human activity on earth. Politics, greed, distrust, and the wide disparity between poor and rich nations work in opposition to accomplish such goals. When I stepped back and looked at the variety of issues that were presented in using
the ‘trade’ dispute between the U.S. and India in this case study, it saddened me to know that we are perhaps at the point where such disputes are commonplace and the political machinations put in place to provide ‘remedies’ for such disputes (e.g. WTO), are only effective if the people overseeing and managing those entities are honest, not subject to special interest influences, and empowered to fairly resolve such disputes. I am not confident that currently exists.
References:


