

A MINOR WIN FOR INDIA AT WTO

Relevant for: International Relations | Topic: World Trade, WTO and issues involved

In a welcome judgment for India, a World Trade Organization (WTO) panel in June accepted its claim in a dispute concerning U.S. regulations on domestic content requirement in the production of renewable energy. This was also significant as New Delhi had earlier lost a similar dispute over its own domestic content requirements. Though Washington has since challenged the ruling, in the light of the Donald Trump administration's allegations against the WTO, it is important to discern the reasoning adopted by the organisation in reaching its conclusion.

The dispute revolved around certain States in the U.S. that give incentives to local producers in the form of tax rebates, refunds and credits when they produce renewable energy using locally manufactured products. Article III of the WTO's General Agreement on Tariffs and Trade (GATT) requires that countries do not provide less favourable treatment to 'like products' originating from other nations. For instance, a solar photovoltaic cell manufactured in the U.S. should be liable to the same amount of tax as one made anywhere else in the world.

But how does the WTO determine whether an item is a 'like product'? The organisation's criteria pertains to the product's end use, composition, substitutability, consumer preferences and tariff classifications.

In this case, the U.S. conceded that the import from India was a 'like product'. What it disputed was the causal link between the incentives provided by the respective States and its effect on the Indian goods. For instance, the U.S. argued that the figures quoted by India showing a growth in the number of solar photovoltaic (PV) systems installed in Washington State between 2005 and 2015 do not support its assertion that additional incentives by themselves have induced the wide-scale adoption of locally made renewable energy products.

However, the WTO panel rejected this argument, stating instead that Washington State's additional incentive accords an advantage on the use of local products not available for 'like imported products'. India, the panel held, was not required to prove factually that the rise in the production of PV systems was caused by a rise in the production of upstream local products at the cost of 'like-imported products'.

The 'mere incentivisation' of only the local products was sufficient to make a prima facie case that Washington State's additional incentive affected the sale, purchase, transportation, distribution or use of the relevant products, the panel said.

The ruling is also important considering that the U.S. imported 44% of the Indian solar module exports in the 2018-2019 period.

We believe that this dispute could have been easily avoided had the two countries settled their differences beforehand. This is especially so because there are various other disputes pending between the countries at the WTO involving the export promotion scheme brought in by India and the imposition of excess customs duty on steel and aluminium by the U.S. New Delhi claims that its export promotion schemes are in consonance with its developing country status while Washington has cited 'national security' as the reason for the imposition of the duty.

Armin Rosencranz is a professor of law at Jindal Global Law School in Sonapat, Haryana, from which Aditya Vora is a recent graduate

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