

World Trade Organisation

Panel Proceedings

*Canada – Certain Measures Affecting the Renewable
Energy Generation Sector (DS412)*

*Canada – Measures Relating to the
Feed-In Tariff Program (DS426)*

Third Party Oral Statement

by

Norway

at the Third Party Session of the Panel

Geneva, 28 March 2012

Mr. Chairman, Members of the Panel,

1. Norway welcomes this opportunity to present its views on the issues raised in these panel proceedings. Norway's comments relate to both DS412 and DS 426. Norway did not present a written third party submission to the Panel, and will therefore in this oral statement briefly set out its views on one legal issue; the applicability of the GATT Article III:8.¹
2. In response to Japan's and the European Union's claims that the "FIT Program" is contrary to Canada's obligations under the GATT Article III:4, Canada argues that this provision is not applicable in this case because the measure falls within the scope of the GATT Article III:8.
3. According to the GATT Article III:8, Article III of the GATT "shall not apply to laws, regulations or requirements governing the procurement by governmental agencies of products purchased for governmental purposes and not with a view to commercial resale or with a view to use in the production of goods for commercial sale".
4. Canada asserts that the Ontario Power Authority (the OPA) is a governmental agency which procures the product of renewable energy for governmental purposes. Norway notes that there is disagreement between the parties as to whether there is any "procurement" in this case. In this respect, Norway agrees with Japan and the European Union that the crucial question is whether the OPA is *actually* "purchasing" renewable energy or whether the Authority is just an intermediary, some sort of "clearing house"². As we see it, it is not sufficient that the activities of the OPA is called or referred to as "procurement". The FIT program may only fall within the ambit of GATT Article III:8 if the OPA *actually* acquires renewable energy. Without going too deeply into the facts of this dispute, Norway tends to

¹ The General Agreement on Tariffs and Trade 1994 ("the GATT").

² Japan's first written submission, paras. 287-289; European Union's first written submission, paras. 114-115.

agree with the European Union that the OPA seems to be more of an intermediary than an entity actually purchasing – or procuring – renewable energy.³

5. If the Panel, however, should reach the conclusion that the OPA is actually procuring renewable energy, it will need to consider whether this purchase – or procurement – is for “governmental purposes”. Canada stresses that the purchase is “in furtherance of aim of the Government of Ontario”, and that this constitutes “governmental purposes”.⁴ This interpretation by Canada would in practice allow every single purchase made by a government to constitute a “governmental purpose” as every such purchase will have some sort of aim by that entity.
6. Like other third parties in their written submissions, Norway would urge the Panel to show caution when interpreting the term “governmental purpose”. If Canada’s interpretation is accepted, this could, as noted by others, have the consequence that every governmental procurement effected through purchase would fall under Article III:8. This would result in the language “governmental purposes” being made inutile, and also circumvent the obligation of the GATT Article III:4.⁵
7. Before concluding, Mr. Chairman, Norway notes that some of the third parties have discussed the term “public body” and other questions related to the case *US – Anti-Dumping and Countervailing Duties*.⁶ Although this has not been extensively raised by the Parties in this case, Norway would like to support Saudi-Arabia in urging that the principles with respect to the terms “public body” and “governmental control” as established by the Appellate Body in the above-mentioned case should be respected.
8. Thank you for your attention. Norway stands ready to respond to any questions the Panel may have.

³ European Union’s first written submission, para. 57.

⁴ Canada’s first written submission para. 88.

⁵ Australia’s third party submission, para. 41. Korea’s third party submission, para. 32. China’s third party submission, para. 15.

⁶ Saudi Arabia’ third party submission, paras. 2-17 . El Salvador’s third’ party submission paras. 5-8.