

(As delivered)

IN THE WORLD TRADE ORGANIZATION

Before the Appellate Body

**Canada – Certain Measures Affecting the Renewable
Energy Generation Sector**

(AB-2013-1 / DS412)

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

(AB-2013-2 / DS426)

Oral Statement

by

Norway as a Third Participant

**Hearing of the Appellate Body
Geneva**

14-15 March 2013

Mr Chairman, Members of the Division,

1. Norway welcomes this opportunity to make a brief statement as a Third Participant before the Appellate Body in this appeal. Norway did not present a written third participant submission to the Appellate Body, and will therefore in this oral statement briefly set out its views on one legal issue; the interpretation of the term “governmental purposes” in Article III:8(a) of the GATT 1994.
2. According to the GATT Article III:8(a), 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”.
3. The Panel stated that the ordinary meaning of the term “governmental purposes” is relatively broad, and accepted that this may encompass Canada’s interpretation, i.e. “whenever a government purchases a product for a stated aim of the government”.¹ Norway shares the concern expressed by others about this interpretation,² which we believe that in practice would 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. The language “governmental purposes” would then be rendered inutile in this provision.³
4. Moreover, the Panel found that “the term ‘governmental purposes’ should be interpreted in juxtaposition to the expression ‘not with a view to commercial resale or with a view to use in the production of goods for commercial sale’ that appears in Article III:8(a)”.⁴ Accordingly, the Panel seems to argue that because purchase of goods for “governmental purposes” and purchase of goods “with a view to commercial resale” are mutually exclusive, these shall be assessed as two separate legal requirements.⁵ Norway, like the United States, agrees with the Panel that a purchase with a view to commercial resale cannot at the same time be products purchased for governmental purposes.⁶ However, like

¹ Panel Report, para. 7.139.

² See EU’s Other Appellant Submission, para. 60; Australia’s Third Participant Submission, para. 6.

³ Brazil’s Third Participant Submission, para. 9.

⁴ Panel Report, paras. 7.145 and 7.139.

⁵ Ibid.

⁶ United States’ Third Participant Submission, para. 17.

others,⁷ Norway believes that the requirement “for governmental purposes” has independent meaning. In Norway’s view, the Panel erred by basing its joint assessment of the two requirements on its conclusion of “with a view to commercial resale” only, and thereby not concluding on the interpretation of “governmental purposes”.

5. Thank you.

⁷ Brazil’s Third Participant Submission, para. 10; United States’ Third Participant Submission, para. 17.