



**CANADA – CERTAIN MEASURES AFFECTING THE RENEWABLE  
ENERGY GENERATION SECTOR**

**CANADA – MEASURES RELATING TO THE FEED-IN TARIFF PROGRAM**

**NOTIFICATION OF AN APPEAL BY CANADA  
UNDER ARTICLE 16.4 AND ARTICLE 17 OF THE UNDERSTANDING ON RULES  
AND PROCEDURES GOVERNING THE SETTLEMENT OF DISPUTES (DSU),  
AND UNDER RULE 20(1) OF THE WORKING PROCEDURES FOR APPELLATE REVIEW**

The following notification, dated 5 February 2013, from the Delegation of Canada, is being circulated to Members.

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Pursuant to Article 16.4 and Article 17 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (DSU) and Rule 20 of the *Working Procedures for Appellate Review*, Canada notifies its appeal of certain issues in the Reports of the Panel in *Canada – Certain Measures Affecting the Renewable Energy Generation Sector* (WT/DS412/R) and *Canada – Measures Relating to the Feed-In Tariff Program* (WT/DS426/R) and certain legal interpretations developed by the Panel in these Reports.

Canada seeks review by the Appellate Body of the Panel's findings and conclusion that the Government of Ontario's FIT Program, as implemented through the FIT and MicroFIT Contracts<sup>1</sup>, is not covered by the terms of Article III:8(a) of GATT 1994.<sup>2</sup> This conclusion is in error and is based on erroneous findings on issues of law and legal interpretation including the Panel's finding that the Government of Ontario purchases renewable electricity "with a view to commercial resale".<sup>3</sup>

Canada also requests the Appellate Body to find that the Panel acted inconsistently with Article 11 of the DSU by failing to make an objective assessment of the facts related to this issue, specifically with respect to the Panel's finding that the resale of electricity purchased under the FIT Program is "commercial" in nature, and by using this faulty factual finding to support its conclusion about the applicability of Article III:8(a) of GATT 1994 to the FIT Program.<sup>4</sup>

Canada also requests the Appellate Body to find that the Panel failed to find that the Government of Ontario does not purchase renewable electricity "with a view to use in the production of goods for commercial sale".

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<sup>1</sup> For a summary of the measure at issue, see paras. 7.6 and 7.7 of the Panel Reports.

<sup>2</sup> See e.g., para. 7.152 of the Panel Reports.

<sup>3</sup> See e.g., paras. 7.147-7.151 of the Panel Reports.

<sup>4</sup> *Ibid.*