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**UNITED STATES – CERTAIN MEASURES RELATING  
TO THE RENEWABLE ENERGY SECTOR**

**REQUEST FOR THE ESTABLISHMENT OF A PANEL BY INDIA**

The following communication, dated 17 January 2017, from the delegation of India to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

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On 9 September 2016, the Government of India ("India") requested consultations with the Government of the United States of America ("U.S.") pursuant to Articles 1 and 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"), Article XXIII:1 of the *General Agreement on Tariffs and Trade 1994* ("GATT 1994"), Article 8 of the *Agreement on Trade-Related Investment Measures* ("TRIMs Agreement"), and Articles 4, 7 and 30 of the *Agreement on Subsidies and Countervailing Measures* ("SCM Agreement") concerning certain measures of the U.S. relating to subsidies granted and/or maintained contingent upon domestic content requirements in the renewable energy sector. This request was circulated to the WTO Members on 19 September 2016.<sup>1</sup>

Consultations were held in Geneva on 16 and 17 November 2016. Unfortunately, the consultations failed to resolve the dispute.

As a result, India requests the Dispute Settlement Body ("DSB") to establish a Panel to resolve the dispute pursuant to Articles 4.7 and 6 of the DSU, Article XXIII of the GATT 1994, Articles 4.4 and 30 of the SCM Agreement, and Article 8 of the TRIMs Agreement.

**MEASURES AT ISSUE AND LEGAL BASIS**

The present dispute arises from certain measures in the form of incentives which are granted and/or maintained contingent upon the use of domestic over imported goods in the renewable energy sector by various States of the U.S. at the sub-federal level. A brief description of each of these measures and the legal basis of India's claims are set out below:

1. **Incentives granted and/or maintained contingent upon the use of domestic over imported goods under Renewable Energy Cost Recovery Incentive Payment Program ("RECIP") in the State of Washington:** The measures at issue are the incentives provided by the State of Washington for generating renewable energy contingent upon the use of domestic over imported goods under the RECIP. The incentives are in the nature of investment cost recovery for each kilowatt-hour from a customer-generated electricity renewable energy system and payable to any individual, business, local governmental entity, not in the light and power business or in the gas distribution business, or a participant in a community solar project who applies to the light and power business serving the situs of the system for such incentive in terms of the relevant laws.<sup>2</sup> If the customer-generated electricity is produced using certain renewable energy

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<sup>1</sup> See, United States - Certain Measures Relating to the Renewable Energy Sector, Request for consultations by India, G/L/1149; G/SCM/D111/1; G/TRIMS/D/42; WT/DS510/1, circulated on 19 September 2016.

<sup>2</sup> RCW 82.16.120, Section 1(a).

equipment (such as solar modules, solar or wind generator equipped with an inverter, anaerobic digesters or other solar equipment or wind generator equipped with blades, inverters, wind generator equipment with both blades and inverters, solar stirring converters etc., individually and/or collectively referred to as "the Renewable Energy Equipment") manufactured in the State of Washington, a higher amount of incentive is granted.<sup>3</sup> A light and power business, in turn, is allowed a credit against taxes due under the relevant laws in an amount equal to investment cost recovery incentive payments made in any fiscal year under Revised Code of Washington ("RCW").

The said measures under the RECIP are implemented through instruments<sup>4</sup> that include, but are not limited to, the following, operating separately and/or collectively, as well as any amendments, modifications, replacements, successor, and extensions thereto, and any implementing measure or any other related measures thereto:

- (a) *Revised Code of Washington*, Renewable Energy System Cost Recovery, RCW 82.16.110 through 82.16.130; and
- (b) *Washington Administrative Code*, Renewable Energy System Cost Recovery, WAC 458-20-273.

### **Legal Basis**

India considers that the measures at issue are inconsistent with the obligations of the U.S. under the SCM Agreement, the GATT 1994, and the TRIMs Agreement. In particular, India considers that the above measures are inconsistent with the following provisions:

- (a) Articles 3.1(b) and 3.2 of the SCM Agreement because the measures constitute a subsidy within the meaning of Article 1.1 of the SCM Agreement that is granted and/or maintained contingent upon the use of domestic over imported goods;
- (b) Article III:4 of the GATT 1994 because the measures provide less favourable treatment to imported products than that accorded to like products (i.e. the Renewable Energy Equipment) originating in the State of Washington, U.S.;
- (c) Article 2.1 of the TRIMs Agreement, separately and in conjunction with Article 2.2 and with paragraph 1(a) of the Agreement's Illustrative List, because the measures are TRIMs that are inconsistent with Article III:4 of the GATT 1994; and because the measures offer an advantage based on the purchase or use of products originating in or sourced from the State of Washington, U.S.; and
- (d) Article 25 of the SCM Agreement because the U.S. has failed to notify the measures.

Further, India considers that the measures of the U.S., individually and/or collectively, nullify or impair benefits accruing to India directly or indirectly under the cited Agreements in a manner described in Article XXIII:1 of the GATT 1994.

**2. Incentives granted and/or maintained contingent upon the use of domestic over imported goods under Self-Generation Incentive Program ("SGIP") in the State of California:** The measures at issue are the additional financial incentives<sup>5</sup> of 20% provided for installation of eligible distributed generation or Advanced Energy Storage technologies (as identified in the SGIP Handbook 2016) (individually and/or collectively referred to as "the SGIP Equipment") from a "California Supplier" (i.e. any sole proprietorship, partnership, joint venture, corporation, or other business entity that manufactures eligible distributed generation technologies in California and that meets the criteria outlined in Section 3.1.1 of SGIP Handbook 2016).

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<sup>3</sup> RCW 82.16.120, Section 4 read with WAC 458-20-273, Section 501.

<sup>4</sup> In this document, a reference to the term "instruments" means and includes laws, statutes, regulations, notifications, circulars, guidelines, manuals, handbooks and such other documents as may be relevant in each case.

<sup>5</sup> For the rate of financial incentives (\$/W), please refer to SGIP Handbook (February, 2016), in particular, Section 3.1.

The measures under the SGIP are implemented through instruments that include, but are not limited to, the following, operating separately and/or collectively, as well as any amendments, modifications, replacements, successor, and extensions thereto, and any implementing measure or any other related measures thereto:

- (a) *California Public Utilities Code*, Division 1, Part 1, Chapter 2.3, Article 6 (Sections 360 - 380.5); and
- (b) *Self Generation Incentive Program Handbook, 2016* (8 February, 2016) (including, in particular, Section 3.1.1).

### **Legal Basis**

India considers that the measures at issue are inconsistent with the obligations of the U.S. under the SCM Agreement, the GATT 1994 and the TRIMs Agreement. In particular, India considers that the measures are inconsistent with the following provisions:

- (a) Articles 3.1(b) and 3.2 of the SCM Agreement because the measures constitute a subsidy within the meaning of Article 1.1 of the SCM Agreement that is granted and/or maintained contingent upon the use of domestic over imported goods;
- (b) Article III:4 of the GATT 1994 because the measures provide less favourable treatment to imported products than that accorded to like products (i.e. the SGIP Equipment) originating in the State of California, U.S.;
- (c) Article 2.1 of the TRIMs Agreement, separately and in conjunction with Article 2.2 and with paragraph 1(a) of the Agreement's Illustrative List, because the measures are TRIMs that are inconsistent with Article III:4 of the GATT 1994; and because the measures offer an advantage based on the purchase or use of products originating in or sourced from the State of California, U.S.; and
- (d) Article 25 of the SCM Agreement because the U.S. has failed to notify the measures.

Further, India considers that the measures of the U.S., individually and/or collectively, nullify or impair benefits accruing to India directly or indirectly under the cited Agreements in a manner described in Article XXIII:1 of the GATT 1994.

**3. Incentives granted and/or maintained contingent upon the use of domestic over imported goods under Los Angeles Department of Water and Power's ("LADWP") Solar Incentive Program in the State of California:** The measures at issue are the incentives provided in the form of the Los Angeles Manufacturing Credit ("LAMC") for qualifying and approved photovoltaic ("PV") equipment manufactured in Los Angeles (individually and/or collectively referred to as "the PV Equipment") that has confirmed LADWP Solar Incentive Program reservation. The Net Energy Metering and Solar Photovoltaic Incentive Program Guidelines, 2015 provide that the goal of the LAMC is to promote local economic development through manufacturing and job creation within the City of Los Angeles.

The measures under the LADWP Solar Incentive Program are implemented through instruments that include, but are not limited to, the following, operating separately and/or collectively, as well as any amendments, modifications, replacements, successor, and extensions thereto, and any implementing measure or any other related measures thereto:

- (a) *Senate Bill 1*, Chapter 132, An act to add Sections 25405.5 and 25405.6 to, and to add Chapter 8.8 (commencing with Section 25780) to Division 15 of, the Public Resources Code, and to amend Section 2827 of, and to add Sections 387.5 and 2851 to, the Public Utilities Code, relating to solar electricity (Approved 2006) (see also, Sections 25405.5 and 25405.6 of the Public Resources Code ("PRC"); PRC, Division 15, Chapter 8.8, Sections 25780 through 25784; Public Utilities Code, Division 1, Part 2, Chapter 7, Article 3, Section 2827; Public Utilities Code, Division 1, Part 2, Chapter 9, Article 1, Section 2851 - 2854.5; and Cal. Pub. Util. Code §387.5; and

- (b) *Los Angeles Department of Water and Power, Net Energy Metering and Solar Photovoltaic Incentive Program Guidelines* (4 December, 2015), (including, in particular, Section 8);

### **Legal Basis**

India considers that the measures at issue are inconsistent with the obligations of the U.S. under the SCM Agreement, the GATT 1994 and the TRIMs Agreement. In particular, India considers that the measures are inconsistent with the following provisions:

- (a) Articles 3.1(b) and 3.2 of the SCM Agreement because the measures constitute a subsidy within the meaning of Article 1.1 of the SCM Agreement that is granted and/or maintained contingent upon the use of domestic over imported goods;
- (b) Article III:4 of the GATT 1994 because the measures provide less favourable treatment to imported products than that accorded to like products originating (i.e. the PV Equipment) in the City of Los Angeles, U.S.;
- (c) Article 2.1 of the TRIMs Agreement, separately and in conjunction with Article 2.2 and with paragraph 1(a) of the Agreement's Illustrative List, because the measures are TRIMs that are inconsistent with Article III:4 of the GATT 1994; and because the measures offer an advantage based on the purchase or use of products originating in or sourced from the City of Los Angeles, U.S.; and
- (d) Article 25 of the SCM Agreement because the U.S. has failed to notify the measures.

Further, India considers that the measures of the U.S., individually and/or collectively, nullify or impair benefits accruing to India directly or indirectly under the cited Agreements in a manner described in Article XXIII:1 of the GATT 1994.

- 4. Incentives granted and/or maintained contingent upon the use of domestic over imported goods under Montana Tax Incentive for Ethanol Production ("TIEP") in the State of Montana:** The measures at issue are tax incentives provided to ethanol distributors for distilling alcohol, if the ethanol is produced in Montana from Montana agricultural products, including Montana wood or wood products (individually and/or collectively referred to as "the Ethanol Products")<sup>6</sup>. If the producer uses non-Montana agricultural products, the amount of the tax incentive is reduced proportionately, based on the percentage of non-Montana based agricultural or wood products used in the ethanol production.

The measures under the TIEP are implemented through legal instruments that include, but are not limited to, the following, operating separately and/or collectively, as well as any amendments, modifications, replacements, successor, and extensions thereto, and any implementing measure or any other related measures thereto:

- (a) *Montana Annotated Code, 2015*, Title 15 - Taxation, Chapter 70- Gasoline and Vehicle Fuel Taxes, Part 5 - Ethanol Tax Incentive and Administration, 15-70-501 to 15-70-527 (including, in particular, 15-70-522); and
- (b) *Administrative Rules of Montana (ARM)*, Department – Transportation, Chapter – Motor Fuels – Gasoline Tax, Subchapter – Alcohol Tax Incentive, 18.9.601 to 18.9.608.

### **Legal Basis**

India considers that the measures at issue are inconsistent with the obligations of the U.S. under the SCM Agreement, the GATT 1994 and the TRIMs Agreement. In particular, India considers that the measures are inconsistent with the following provisions:

<sup>6</sup> India considers that the term "Ethanol Products" includes, individually and/or collectively, ethanol manufactured from Montana agricultural products including Montana wood or wood products and the agricultural products, wood and wood products produced in Montana which are used for production of ethanol.

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- (a) Articles 3.1(b) and 3.2 of the SCM Agreement because the measures constitute a subsidy within the meaning of Article 1.1 of the SCM Agreement that is granted and/or maintained contingent upon the use of domestic over imported goods;
  - (b) Article III:4 of the GATT 1994 because the measures provide less favourable treatment to imported products than that accorded to like products (i.e. the Ethanol Products) originating in the State of Montana, U.S.;
  - (c) Article 2.1 of the TRIMs Agreement, separately and in conjunction with Article 2.2 and with paragraph 1(a) of the Agreement's Illustrative List, because the measures are TRIMs that are inconsistent with Article III:4 of the GATT 1994; and because the measures offer an advantage based on the purchase or use of products originating in or sourced from the State of Montana, U.S.; and
  - (d) Article 25 of the SCM Agreement because the U.S. has failed to notify the measures.

Further, India considers that the measures of the U.S., individually and/or collectively, nullify or impair benefits accruing to India directly or indirectly under the cited Agreements in a manner described in Article XXIII:1 of the GATT 1994.

**5. Incentives granted and/or maintained contingent upon the use of domestic over imported goods under Montana Tax Credit for Biodiesel Blending and Storage in the State of Montana:** The measures at issue are tax credits available for any individual and/or juridical entity for biodiesel blending and storage in respect of the costs of investment in depreciable property used for storing or blending biodiesel made entirely from Montana-produced feedstock (individually and/or collectively referred to as "the Biodiesel Products")<sup>7</sup>, with petroleum diesel for sale.

The measures under the 'Montana Tax Credit for Biodiesel Blending and Storage' program are implemented through instruments that include, but are not limited to, the following, operating separately or collectively, as well as any amendments, modifications, replacements, successor, and extensions thereto, and any implementing measure or any other related measures thereto:

- (a) Montana Annotated Code, 2015, Title 15, Chapter 32, Part 7, Section 15-32-703.

#### **Legal Basis**

India considers that the measures at issue are inconsistent with the obligations of the U.S. under the SCM Agreement, the GATT 1994 and the TRIMs Agreement. In particular, India considers that the measures are inconsistent with the following provisions:

- (a) Articles 3.1(b) and 3.2 of the SCM Agreement because the measures constitute a subsidy within the meaning of Article 1.1 of the SCM Agreement that is granted and/or maintained contingent upon the use of domestic over imported goods;
- (b) Article III:4 of the GATT 1994 because the measures provide less favourable treatment to imported products than that accorded to like products (i.e. the Biodiesel Products) originating in the State of Montana, U.S.;
- (c) Article 2.1 of the TRIMs Agreement, separately and in conjunction with Article 2.2 and with paragraph 1(a) of the Agreement's Illustrative List, because the measures are TRIMs that are inconsistent with Article III:4 of the GATT 1994; and because the measures offer an advantage based on the purchase or use of products originating in or sourced from the State of Montana, U.S.; and
- (d) Article 25 of the SCM Agreement because the U.S. has failed to notify the measures.

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<sup>7</sup> India considers that the term "Biodiesel Products" includes, individually and/or collectively, biodiesel made from Montana-produced feedstock and feedstock produced in Montana that is used for manufacturing biodiesel.

Further, India considers that the measures of the U.S., individually and/or collectively, nullify or impair benefits accruing to India directly or indirectly under the cited Agreements in a manner described in Article XXIII:1 of the GATT 1994.

**6. Incentives granted and/or maintained contingent upon the use of domestic over imported goods through refund for Taxes paid on Biodiesel by Distributor or Retailer in the State of Montana:** The measures at issue are the refunds of the special fuel tax on biodiesel permissible for licensed distributors who use biodiesel made entirely from ingredients produced in Montana (individually and/or collectively referred to as "the Biodiesel Ingredients")<sup>8</sup>. Additionally, the owner or operator of a retail motor fuel outlet may claim a refund on biodiesel on which the special fuel tax has been paid and that is purchased from a licensed distributor if the biodiesel is made entirely from biodiesel ingredients produced in the State of Montana ("the Biodiesel Ingredients").

The measures under the 'Refund for Taxes paid on Biodiesel by Distributor or Retailer' program are implemented through instruments that include, but are not limited to, the following, operating separately or collectively, as well as any amendments, modifications, replacements, successor, and extensions thereto, and any implementing measure or any other related measures thereto:

- (a) Montana Annotated Code, 2015, Title 15 - Taxation, Chapter 70- Gasoline and Vehicle Fuel Taxes, Part 4- Gasoline and Special Fuel Tax, Section 15-70-401; and
- (b) Montana Annotated Code, 2015, Title 15 - Taxation, Chapter 70- Gasoline and Vehicle Fuel Taxes, Part 4- Gasoline and Special Fuel Tax, Section 15-70-433.

#### **Legal Basis**

India considers that the measures at issue are inconsistent with the obligations of the U.S. under the SCM Agreement, the GATT 1994 and the TRIMs Agreement. In particular, India considers that the measures are inconsistent with the following provisions:

- (a) Articles 3.1(b) and 3.2 of the SCM Agreement because the measures constitute a subsidy within the meaning of Article 1.1 of the SCM Agreement that is granted and/or maintained contingent upon the use of domestic over imported goods;
- (b) Article III:4 of the GATT 1994 because the measures provide less favourable treatment to imported products than that accorded to like products (i.e. the Biodiesel Ingredients) originating in the State of Montana, U.S.;
- (c) Article 2.1 of the TRIMs Agreement, separately and in conjunction with Article 2.2 and with paragraph 1(a) of the Agreement's Illustrative List, because the measures are TRIMs that are inconsistent with Article III:4 of the GATT 1994; and because the measures offer an advantage based on the purchase or use of products originating in or sourced from the State of Montana, U.S.; and
- (d) Article 25 of the SCM Agreement because the U.S. has failed to notify the measures.

Further, India considers that the measures of the U.S., individually and/or collectively, nullify or impair benefits accruing to India directly or indirectly under the cited Agreements in a manner described in Article XXIII:1 of the GATT 1994.

**7. Incentives granted and/or maintained contingent upon the use of domestic over imported goods under Connecticut Residential Solar Investment Program ("CRSIP") in the State of Connecticut:** CRSIP is implemented by, among others, Connecticut Green Bank and Public Utilities Regulatory Authority. The measures at issue are the provision of incentives of up to five per cent of "the then-applicable incentive" provided under the relevant instrument for the use of major system components

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<sup>8</sup> India considers that the term "Biodiesel Ingredients" includes, individually and/or collectively, biodiesel made entirely from ingredients produced in Montana and the ingredients (used for manufacturing biodiesel) produced in Montana.

manufactured or assembled in Connecticut.<sup>9</sup> Further, another additional incentive of up to five per cent of "the then-applicable incentive" is provided for the use of major system components manufactured or assembled in a "distressed municipality" or "a targeted investment community"<sup>10</sup> (individually and/or collectively referred to as "the Connecticut System Components"<sup>11</sup>).

The measures under the CRSIP are implemented through legal instruments that include, but are not limited to, the following, operating separately and/or collectively, as well as any amendments, modifications, replacements, successor, and extensions thereto, and any implementing measure or any other related measures thereto:

- (a) *2016 Supplement to the General Statutes of Connecticut*, Title 16, Chapter 283, Sections 16-245ff and 16-245gg;
- (b) *State of Connecticut Public Act No. 15-194, House Bill No. 6838*, an Act Concerning the Encouragement of Local Economic Development and Access to Residential Renewable Energy;
- (c) *State of Connecticut Public Act No 11-80, Senate Bill No. 1243*, an Act Concerning the Department of Energy and Environmental Protection and Planning for Connecticut's Energy Future; and
- (d) *Request for Qualifications for Eligible Contractors and Third-Party PV System Owners (2016)*.

### **Legal Basis**

India considers that the measures at issue are inconsistent with the obligations of the U.S. under the SCM Agreement, the GATT 1994 and the TRIMs Agreement. In particular, India considers that the measures are inconsistent with the following provisions:

- (a) Articles 3.1(b) and 3.2 of the SCM Agreement because the measures constitute a subsidy within the meaning of Article 1.1 of the SCM Agreement that is granted and/or maintained contingent upon the use of domestic over imported goods;
- (b) Article III:4 of the GATT 1994 because the measures provide less favourable treatment to imported products than that accorded to like products (i.e. Connecticut System Components) originating in the State of Connecticut, U.S.;
- (c) Article 2.1 of the TRIMs Agreement, separately and in conjunction with Article 2.2 and with paragraph 1(a) of the Agreement's Illustrative List, because the measures are TRIMs that are inconsistent with Article III:4 of the GATT 1994; and because the measures offer an advantage based on the purchase or use of products originating in or sourced from the State of Connecticut, U.S.; and
- (d) Article 25 of the SCM Agreement because the U.S. has failed to notify the measures.

Further, India considers that the measures of the U.S., individually and/or collectively, nullify or impair benefits accruing to India directly or indirectly under the cited Agreements in a manner described in Article XXIII:1 of the GATT 1994.

**8. Incentives granted and/or maintained contingent upon the use of domestic over imported goods through the Renewable Energy Credits in the State of Michigan:** The measures at issue are the renewable energy credits offered for each megawatt hour of electricity generated from a renewable energy system constructed using equipment made in the State of Michigan. Further, renewable energy credits are also

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<sup>9</sup> See, 2016 Supplement to the General Statutes of Connecticut, Title 16, Chapter 283, Sections 16-245ff.

<sup>10</sup> Id.

<sup>11</sup> India considers that the term "Connecticut System Components" includes, individually and/or collectively, the major system components manufactured or assembled in Connecticut and major system components manufactured or assembled in a "distressed municipality" or "a targeted investment community".

offered for each megawatt hour of electricity generated from a renewable energy system constructed using a workforce composed of residents of the State of Michigan (individually and/or collectively referred to as "the Renewable Energy System and Equipment")<sup>12</sup>. The renewable energy credits may be traded, sold or otherwise transferred.

The measures under this program are implemented through instruments that include, but are not limited to, the following, operating separately and/or collectively, as well as any amendments, modifications, replacements, successor, and extensions thereto, and any implementing measure or any other related measures thereto:

- (a) *The Clean, Renewable and Efficient Energy Act, Public Act No. 295 of 2008*; including, in particular, Sections 21, 27, 39(2), 41 and 71; and
- (b) *The Rate Book for Electric Service* adopted by Consumers Energy Company and approved by the Michigan Public Service Commission under the *Experimental Advanced Renewable Energy Program*, including, in particular, C.10.3.

### **Legal Basis**

India considers that the measures at issue are inconsistent with the obligations of the U.S. under the SCM Agreement, the GATT 1994 and the TRIMs Agreement. In particular, India considers that the measures are inconsistent with following provisions:

- (a) Articles 3.1(b) and 3.2 of the SCM Agreement because the measures constitute a subsidy within the meaning of Article 1.1 of the SCM Agreement that is granted and/or maintained contingent upon the use of domestic over imported goods;
- (b) Article III:4 of the GATT 1994 because the measures provide less favourable treatment to imported products than that accorded to like products (i.e. the Renewable Energy System and Equipment) originating in the State of Michigan, U.S.;
- (c) Article 2.1 of the TRIMs Agreement, separately and in conjunction with Article 2.2 and with paragraph 1(a) of the Agreement's Illustrative List, because the measures are TRIMs that are inconsistent with Article III:4 of the GATT 1994; and because the measures offer an advantage based on the purchase or use of products originating in or sourced from the State of Michigan, U.S.; and
- (d) Article 25 of the SCM Agreement because the U.S. has failed to notify the measures.

Further, India considers that the measures of the U.S., individually and/or collectively, nullify or impair benefits accruing to India directly or indirectly under the cited Agreements in a manner described in Article XXIII:1(a) and/or Article XXIII:1(b) of the GATT 1994.

**9. Incentives granted and/or maintained contingent upon the use of domestic over imported goods through the Delaware Solar Renewable Energy Credits in the State of Delaware:** The measures at issue are that a retail electricity supplier is eligible to receive an additional 10% credit toward meeting the renewable energy portfolio standards established for solar or wind energy installations sited in Delaware provided that a minimum of 50% of the cost of renewable energy equipment, inclusive of mounting components, are manufactured in Delaware (individually and/or collectively referred to as "the Renewable Energy Equipment and Mounting Components")<sup>13</sup>. Further, a retail electricity supplier is eligible to receive an additional 10% credit toward meeting the renewable energy portfolio standards for solar or wind energy installations sited in Delaware provided that the facility is constructed and/or installed with a minimum of 75% in-state workforce. The renewable energy credits are tradable instruments.

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<sup>12</sup> India considers that the term "Renewable Energy System" includes, individually and/or collectively, the renewable energy systems which are constructed using equipment made in the State of Michigan and/or using a workforce composed of residents of the State of Michigan and those equipment (used for constructing the renewable energy system) made in the State of Michigan.

<sup>13</sup> India considers that the term "Renewable Energy Equipment and Mounting Components" includes, individually and/or collectively, renewable energy equipment, inclusive of mounting components manufactured in Delaware, and equipment used for constructing a facility using Delaware in-State workforce.



The measures under this program/measure are implemented through instruments that include, but are not limited to, the following, operating separately and/or collectively, as well as any amendments, modifications, replacements, successor, and extensions thereto, and any implementing measure or any other related measures thereto:

- (a) *Renewable Energy Portfolio Standards Act, 2005* as incorporated in *Delaware Code*, Title 26, Chapter 1, Subchapter III-A (including, in particular, Section 356);
- (b) *Rules and Procedure to Implement the Renewable Energy Portfolio Standard*, Delaware Public Service Commission (December, 2012).

### **Legal Basis**

India considers that the measures at issue are inconsistent with the obligations of the U.S. under the SCM Agreement, the GATT 1994, the TRIMs Agreement and the Marrakesh Agreement. In particular, India considers that the measures are inconsistent with the following provisions:

- (a) Articles 3.1(b) and 3.2 of the SCM Agreement because the measures constitute a subsidy within the meaning of Article 1.1 of the SCM Agreement that is granted and/or maintained contingent upon the use of domestic over imported goods;
- (b) Article III:4 of GATT 1994 because the measures provide less favourable treatment to imported products than that accorded to like products (i.e. the Renewable Energy Equipment and Mounting Components) originating in the State of Delaware, U.S.;
- (c) Article 2.1 of the TRIMs Agreement, separately and in conjunction with Article 2.2 and with paragraph 1(a) of the Agreement's Illustrative List, because the measures are TRIMs that are inconsistent with Article III :4 of the GATT 1994; and because the measures offer an advantage based on the purchase or use of products originating in or sourced from the State of Delaware, U.S.; and
- (d) Article 25 of the SCM Agreement because the U.S. has failed to notify the measures.

Further, India considers that the measures of the U.S., individually and/or collectively, nullify or impair benefits accruing to India directly or indirectly under the cited Agreements in a manner described in Article XXIII:1(a) and/or Article XXIII:1(b) of the GATT 1994.

**10. Incentives granted and/or maintained contingent upon the use of domestic over imported goods under Made in Minnesota Solar Incentive Program ("MSIP") in the State of Minnesota:** The measures at issue are the: (i) incentives (which are in the nature of performance-based financial incentive expressed as a per kilowatt-hour amount) offered if the solar photovoltaic modules qualify as "Made in Minnesota"; (ii) rebates offered to owners of a qualified property for installing solar photovoltaic modules manufactured in Minnesota; and (iii) rebates offered for the installation of "Made in Minnesota" solar thermal systems. The equipment mentioned at (i), (ii), and (iii) above is individually and/or collectively referred to as "the Minnesota Equipment"<sup>14</sup>.

The measures under the MSIP are implemented through instruments that include, but are not limited to, the following, operating separately or collectively, as well as any amendments, modifications, replacements, successor, and extensions thereto, and any implementing measure or any other related measures thereto:

- (a) Minnesota Statute (2016), including, in particular, MINN. STAT. 216C.411 through 216C.416, and MINN. STAT. 116C.7791.

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<sup>14</sup> India considers that the term "Minnesota Equipment" includes, individually and/or collectively, solar photovoltaic modules and solar thermal systems which are "Made in Minnesota" as defined under the relevant statute.

**Legal Basis**

India considers that the measures at issue are inconsistent with the obligations of the U.S. under the SCM Agreement, the GATT 1994 and the TRIMs Agreement. In particular, India considers that the measures are inconsistent with the following provisions:

- (a) Articles 3.1(b) and 3.2 of the SCM Agreement because the measures constitute a subsidy within the meaning of Article 1.1 of the SCM Agreement that is granted and/or maintained contingent upon the use of domestic over imported goods;
- (b) Article III:4 of the GATT 1994 because the measures provide less favourable treatment to imported products than that accorded to like products (i.e. the Minnesota Equipment) originating in the State of Minnesota, U.S.;
- (c) Article 2.1 of the TRIMs Agreement, separately and in conjunction with Article 2.2 and with paragraph 1(a) of the Agreement's Illustrative List, because the measures are TRIMs that are inconsistent with Article III:4 of the GATT 1994; and because the measures offer an advantage based on the purchase or use of products originating in or sourced from the State of Minnesota, U.S.; and
- (d) Article 25 of the SCM Agreement because the U.S. has failed to notify the measures.

Further, India considers that the measures of the U.S., individually and/or collectively, nullify or impair benefits accruing to India directly or indirectly under the cited Agreements in a manner described in Article XXIII:1 of the GATT 1994.

**11. Incentives granted and/or maintained contingent upon the use of domestic over imported goods under Massachusetts Clean Energy Centre's Commonwealth Solar Hot Water Program, ("CSHWP") in the State of Massachusetts:** The program is administered by the Massachusetts Clean Energy Centre which provides certain rebates to reduce the upfront cost of installing a solar hot water system. The measures at issue are rebates available for both residential-scale and commercial-scale projects if the installed system has eligible Massachusetts manufactured components (individually and/or collectively referred to as "the Installed System and Massachusetts Components")<sup>15</sup>. To qualify, the applicant is required to provide evidence that the solar hot water system uses components from one of the qualified companies that manufactures in Massachusetts.

The measures under the CSHWP are implemented through instruments that include, but are not limited to, the following, operating separately or collectively, as well as any amendments, modifications, replacements, successor, and extensions thereto, and any implementing measure or any other related measures thereto:

- (a) *General Laws of the Commonwealth of Massachusetts*, Part I, Title II, Chapter 23J, Massachusetts Clean Energy Technology Centre;
- (b) *Session Laws of the Commonwealth of Massachusetts*, An Act Relative to Green Jobs in the Commonwealth, Chapter 307 of the Acts of 2008;
- (c) Massachusetts Clean Energy Centre, *Residential and Small Scale Solar Hot Water Program Manual* (February, 2016) (including, in particular, Paragraph 2.7); and
- (d) Massachusetts Clean Energy Centre, *Commercial Scale Solar Hot Water Program Manual* (February, 2016) (including, in particular, Paragraph 2.7).

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<sup>15</sup> India considers that the term "Installed System and Massachusetts Components" includes, individually and/or collectively, the installed systems having eligible Massachusetts manufactured components and the Massachusetts components used in manufacturing the installed system.

**Legal Basis**

India considers that the measures at issue are inconsistent with the obligations of the U.S. under the SCM Agreement, the GATT 1994 and the TRIMs Agreement. In particular, India considers that the measures are inconsistent with the following provisions:

- (a) Articles 3.1(b) and 3.2 of the SCM Agreement because the measures constitute a subsidy within the meaning of Article 1.1 of the SCM Agreement that is granted and/or maintained contingent upon the use of domestic over imported goods;
- (b) Article III:4 of the GATT 1994 because the measures provide less favourable treatment to imported products than that accorded to like products (i.e. the Installed System and Massachusetts Components) originating in the State of Massachusetts, U.S.;
- (c) Article 2.1 of the TRIMs Agreement, separately and in conjunction with Article 2.2 and with paragraph 1(a) of the Agreement's Illustrative List, because the measures are TRIMs that are inconsistent with Article III:4 of the GATT 1994; and because the measures offer an advantage based on the purchase or use of products originating in or sourced from the State of Massachusetts, U.S.; and
- (d) Article 25 of the SCM Agreement because the U.S. has failed to notify the measures.

Further, India considers that the measures of the U.S., individually and/or collectively, nullify or impair benefits accruing to India directly or indirectly under the cited Agreements in a manner described in Article XXIII:1 of the GATT 1994.

Accordingly, India requests the DSB to establish a Panel with standard terms of reference in accordance with Article 7.1 of the DSU.

India asks that this request be placed on the agenda of the regular DSB meeting scheduled on 22nd February 2017.

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