

**ActionAid USA * Center for Biological Diversity * Center for Food Safety *
Center for International Environmental Law * Communication Workers of America *
EcoEquity, USA * Friends of the Earth U.S. * Global Exchange * Greenpeace USA *
Institute for Policy Studies Global Economy Project *
Public Citizen's Global Trade Watch * Sierra Club**

The Honorable Ron Kirk
United States Trade Representative
600 17th Street NW
Washington, DC 20508

October 18, 2012

Dear Ambassador Kirk:

We are writing to express our deep concern regarding the World Trade Organization (WTO) challenges that the EU and Japan have launched against Ontario's electricity feed-in tariff (FIT) program and the U.S. involvement in this matter. Ontario's FIT is designed to achieve the twin goals of reducing greenhouse gas emissions which cause climate change and transitioning to a clean-energy economy. These laudable goals are also shared by the Obama administration.

We believe it is imperative that governments have the flexibility to put in place policies to address these goals, and that trade rules not undermine such efforts. We are deeply disappointed that the United States has filed a third-party submission supporting the EU and Japan claims that this program violates WTO rules. We urge the United States instead to support the Government of Ontario's effort to combat climate change and create green jobs.

This FIT program provides that the provincial Ontario Power Authority, a public utility, will procure electricity generated by wind and solar at a 20-year purchase price per kilowatt-hour that is significantly higher than the market rate for conventional electricity. As such, the program helps to incentivize clean energy production that will reduce greenhouse gas emissions. Realizing that combating the climate crisis and transitioning to a clean-energy economy must include relocalizing production and creating green jobs, the government of Ontario stipulated that to qualify for the guaranteed renewable-source electricity purchase price, developers must have a certain percentage of their project costs originate from Ontario.

Although the program is new, it has already achieved significant success. It is estimated that the program has helped create over 20,000 jobs and has led to contracts for more than 4,600

megawatts worth of green energy.¹ This innovative program should not only be supported in Ontario, but should be replicated in the United States and elsewhere.

We are troubled by reports that the WTO has issued an interim ruling in this matter that finds the program to violate the WTO's General Agreement on Trade and Tariffs (GATT) and Agreement on Trade Related Investment Measures (TRIMS). It is imperative that countries have the policy space to put in place laws and regulations to tackle climate change, relocalize production, and create clean energy jobs. The WTO must not undermine these goals.

In addition to the principle of ensuring that trade rules do not undermine governments' ability to tackle climate change, Canada seems to be on firm legal ground in arguing that a government-initiated and government-administered feed-in tariff program for a public utility is a government procurement policy, and therefore should not be subject to the non-discrimination requirements of Article III of GATT. Particularly when viewed in the context of the climate crisis, we believe it is essential to interpret the WTO agreements in the broadest ways possible.

We are interested in better understanding your views on this matter, especially given that the U.S. government also requires policy space to enact green-energy programs that combat the climate crisis and promote the development of our green-energy economy. We request an opportunity to discuss this matter further with you.

We look forward to working with the U.S. government to ensure innovative green-energy programs like Ontario's are replicated here. We request U.S. government support for the Government of Ontario's effort to combat climate change and create clean green jobs.

Sincerely,

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¹ <http://www.energy.gov.on.ca/docs/en/FIT-Review-Report-en.pdf>