再生能源之購電政策與 WTO 協定之合致性—

以加拿大及印度之再生能源措施案為例

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摘要

發展再生能源發電已被普遍認為處理氣候變遷問題上之重要選項。然而，欲以再生能源發電取代以燃煤及天然氣為主的火力發電，在無政府介入的情況上，市場上並無足夠的經濟誘因，促使再生能源發電產業的發展。當國家提供財務支持其再生能源之產業時，此一政策即有可能構成補貼，而在 WTO 架構下受到挑戰。第一個針對再生能源補貼政策向 WTO 爭端解決機構提出控訴者即為日本。日本首先於 2010 年 9 月 13 日向加拿大針對其安大略省的再生能源固定電價收購政策提出諮商請求，並主張系爭措施因歧視外國生產的再生能源發電設備而違反其在 WTO 協定下之義務，包括 GATT 第 3.4 條及 TRIMs 協定第 2.1 條之國民待遇原則及 SCM 協定第 3.1(b)條之禁止性補貼等規定。WTO 爭端解決小組在本案中認定，系爭措施因以自製率做為取得固定電價收購之條件，違反 GATT 第 3.4 條及 TRIMs 協定第 2.1 條之國民待遇則，但是對於是否構成 SCM 協定下之補貼，多數成員則以控訴國未舉證企業受有利益此一要件而否定其主張。印度的再生能源政策亦在 WTO 下受到挑戰，由於美國主要的爭點仍在主張其結合自製率之 FIT 措施違反不歧視原則，印度則首次以 GATT 第 20 條第(j)款做為扶植國內產業之抗辯事由。從加拿大及印度的再生能源措施案中，可看到發展再生能源相關產業與維持自由貿易精神的兩難。

Abstract

Development of renewable energy sources in the electricity sector is generally accepted as an important opportunity to address environmental concerns such as climate change. However, displacement of fossil fuel based electric generation with renewable energy sources often is not economically viable without some form of government intervention. State programs to support renewable energy sources are increasingly under challenge at the World Trade Organization (“WTO”). The first country brought this issue into WTO Dispute Settlement Body was Japan. On September 13, 2010 Japan requested consultations with Canada claiming that a

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number of measures taken by Ontario's government regarding its FIT program were inconsistent with WTO rules. Specifically, Japan contended that Ontario's FIT program, as well as individually executed contracts for FIT and micro-FIT projects, discriminated against equipment for renewable energy generation facilities produced outside of Ontario resulting in violations of Articles 3.4 and III:5 of the General Agreement on Trade and Tariffs, Article 2.1 of the Agreement on Trade Related Investment Measures and Articles 3.1(b) and 3.2 of the Subsidies and Countervailing Measures Agreement. On December 19, 2012, the panel circulated a report finding that the domestic content requirements did indeed accord less favorable treatment to imported products in violation of GATT article 3.4 and TRIMs article 2.1. However, in a divided opinion the panel found that Japan and the EU had failed to carry their burden of showing that the guaranteed prices offered by the Feed-In Tariff Programme were a "benefit," as required by the SCM Agreement for a finding that the government measure at issue is a subsidy. The Appellate Body report, adopted on May 24, upheld the panel's ruling in favor of the EU and Japan on the grounds that Ontario's program discriminated against imports, but did not reach a definitive conclusion with regard to the subsidy issue. Not long afterwards, India's FIT programmes also were accused by U.S. and New Zealand in the WTO focused on the violation of the articles of non-discrimination. Although India tried to invoke the Article 20 (j) to justify it's local content requirement, it didn't succeed eventually. Both cases show the difficulties to strike a balance between the development of renewable energy technologies and the free trade.