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**OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE**

**Docket Number USTR-2016-0018**

**Dispute Number WTO/DS510**

**WTO Dispute Settlement Proceeding Regarding United States – Certain Measures  
Relating to the Renewable Energy Sector**

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice with request for comments.

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**SUMMARY:** The Office of the United States Trade Representative (USTR) is providing notice that on September 9, 2016, India requested consultations with the United States under the Marrakesh Agreement Establishing the World Trade Organization (WTO Agreement) concerning certain measures relating to the renewable energy sector in the United States. You can find that request at [www.wto.org](http://www.wto.org) in a document designated as WT/DS510/1. USTR invites written comments from the public concerning the issues raised in this dispute.

**DATES:** Although USTR will accept any comments received during the course of the dispute settlement proceedings, you should submit your comment on or before November 25, 2016, to be assured of timely consideration by USTR

**ADDRESSES:** You should submit written comments through the Federal eRulemaking Portal: <http://www.regulations.gov>, docket number USTR-2016-0018. Follow the instructions for submitting comments in section III below. For alternatives to on-line

submissions, please contact Sandy McKinzy at (202) 395-9483. If (as explained below) the comment contains confidential information, then the comment should be submitted by fax only to Sandy McKinzy at (202) 395-3640.

**FOR FURTHER INFORMATION CONTACT:** Robert Anderson, Associate General Counsel, Office of the United States Trade Representative, 600 17th Street NW, Washington DC 20508, (202) 395-7630.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

USTR is providing notice that consultations have been requested pursuant to the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU). If these consultations do not resolve the matter and a dispute settlement panel is established pursuant to the DSU, the panel, which would hold its meetings in Geneva Switzerland, would be expected to issue a report on its findings and recommendations within nine months after it is established.

**II. Major Issues Raised by India**

On September 9 2016, India requested consultations concerning certain U.S. measures relating to domestic content requirements and subsidies instituted by the governments of the states of Washington, California, Montana, Massachusetts, Connecticut, Michigan, Delaware and Minnesota (collectively, US States), in the energy sector. India alleges that these domestic content requirements and subsidies are

maintained under the following instruments.

1. Renewable Energy Cost Recovery Incentive Payment Program (RECIP) maintained under the authority of the Revised Code of Washington (RCW 82.16.110 through 82.16.130) and the Washington Administrative Code (WAC 458-20-273).
2. State of California Self-Generation Incentive Program (SGIP) under the California Public Utilities Code (Sections 360-380), as modified by the Senate Bill 412, and the SGIP Handbook 2015.
3. Los Angeles Department of Water and Power's (LADWP) Solar Incentive Program implemented by the LADWP under the Solar Photovoltaic (PV) Incentive Program Guidelines.
4. Montana Tax Incentive for Ethanol Production (TIEP) under the Ethanol Tax Incentive and Administration Act of 1983 (Montana Code Annotated 2015, Section 15-70-522).
5. Montana Tax Credit for Biodiesel Blending and Storage under Montana Code Annotated 2015, Section 15-32-703.
6. Refund for Taxes paid on Biodiesel by Distributor or Retailer under the Montana Code Annotated 2015, Section 15-70-433.
7. Massachusetts Clean Energy Centre's Commonwealth Solar Hot Water Program, (CSHWP) under Chapter 307 of the Acts of 2008 (Green Jobs Act of 2008), codified in Chapter 23J of the Massachusetts General Laws read with the Residential and Small Scale Solar Hot Water Program Manual and the Commercial Scale Solar Hot Water Program Manual.
8. Connecticut Residential Solar Investment Program (CRSIP) under 2012

Connecticut General Statutes, Title 16, Chapter 283, Section 16-245ff read with 2014 Connecticut General Statutes, Title 16, Chapter 283, Section 16-245gg.

9. Michigan Energy Credits under the Clean, Renewable and Efficient Energy Act, 2008 (CREEA), Chapter 460, Section 27/(Section 460.1027) and 39(2)/(Section 460.1039); and Experimental Advanced Renewable Energy Program (EARP) under Section 21/(Section 460.1021) of the CREEA read with Rule C10.3 of the Rate Book for Electric Service adopted by Consumers Energy Company and approved by the Michigan Public Service Commission.

10. Delaware Solar Renewable Energy Credits under the Renewable Energy Portfolio Standards Act 2005 (RPS Act). Delaware Administrative Code, Title 26, Public Utilities, Rules and Procedures to Implement the Renewable Energy Portfolio Standard.

11. Made in Minnesota Solar Incentive Program (MSIP) administered pursuant to the criterion established under the Made in Minnesota Solar Energy Production Incentive law (Minnesota Statute § 216C.414, subd. 2 (2013)).

India alleges inconsistencies with Articles III:4 and XVI:1 of the General Agreement on Tariffs and Trade 1994; Article 2.1 of the Agreement on Trade-related Investment Measures; Articles 3.1(b), 3.2, 5(a), 5(c), 6.3(a), 6.3(c), and 25 of the Agreement on Subsidies and Countervailing Measures; and Article XVI:4 of the Marrakesh Agreement establishing the World Trade Organization.

### **III. Public Comments: Requirements for Submissions**

USTR invites written comments concerning the issues raised in this dispute. You

should submit your comment electronically to [www.regulations.gov](http://www.regulations.gov), docket number USTR-2016-0018. For alternatives to electronic submissions, contact Sandy McKinzy at (202) 395-9483.

To submit comments via [www.regulations.gov](http://www.regulations.gov), enter docket number **USTR-2016-0018** on the home page and click “search.” The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting Notice under Document Type on the left side of the search-results page, and click on the link entitled “Comment Now!” For further information on using the [www.regulations.gov](http://www.regulations.gov) website, please consult the resources provided on the website by clicking on “How to Use Regulations.gov” on the bottom of the home page.

The [www.regulations.gov](http://www.regulations.gov) website allows users to provide comments by filling in a “Type Comment” field, or by attaching a document using an “Upload File” field. USTR prefers that comments be provided in an attached document. If a document is attached, it is sufficient to type “See attached” in the “Type Comment” field. USTR prefers submissions in Microsoft Word (.doc) or Adobe Acrobat (.pdf). If the submission is in an application other than those two, please indicate the name of the application in the “Type Comment” field.

Submit any comments containing business confidential information by fax to Sandy McKinzy at (202) 395-3640. A person requesting that information contained in a comment be treated as confidential business information must certify that s/he would not customarily release the information to the public. Any page containing business confidential information must be clearly marked “BUSINESS CONFIDENTIAL” on the top and bottom of that page. Filers of submissions containing business confidential

information also must submit a public version of their comments electronically through [regulations.gov](http://www.regulations.gov). The non-confidential summary will be placed in the docket and will be open to public inspection.

USTR may determine that information or advice contained in a comment, other than business confidential information, is confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If a submitter believes that information or advice is confidential, s/he must clearly designate the information or advice as confidential and mark it as "SUBMITTED IN CONFIDENCE" at the top and bottom of the cover page and each succeeding page, and provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the Uruguay Round Agreements Act (19 U.S.C. 3537(e)), USTR will maintain a docket on this dispute settlement proceeding, docket number USTR-2016-0018, accessible to the public at [www.regulations.gov](http://www.regulations.gov). The public file will include non-confidential public comments USTR receives regarding the dispute. If a dispute settlement panel is convened, or in the event of an appeal from a panel, USTR will make the following documents publicly available at [www.ustr.gov](http://www.ustr.gov): the U.S. submissions and any non-confidential summaries of submissions received from other participants in the dispute. If a dispute settlement panel is convened, or in the event of an appeal from a panel, the report of the panel, and, if applicable, the report of the Appellate Body, will also be available on the website of the World Trade Organization, at [www.wto.org](http://www.wto.org).

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Office of the U.S. Trade Representative.

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