

How Ontario can fix the Green Energy Act

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The recent World Trade Organization ruling against the Ontario Green Energy Act should come as no surprise to anyone, let alone the Government of Ontario.

The [Green Energy Act](#) was in some respects an enlightened piece of legislation that also illustrates the limits to government intervention in the economy.

The act was put into effect despite what must surely have been warning from legal advisers within the Ontario government that parts of it could well violate international trade and investment rules.

The principal goal of the act seems not to have been about creating a sustainable green energy industry in Ontario. Rather, it was a strategy to create manufacturing jobs quickly, while at the same time providing power production capacity to replace that which was to be lost from closing dirtier coal-fired facilities in the province.

The particular element of the act that was suspect from the beginning was very high local content requirements.

In exchange for the government purchasing low-carbon “green” power at high, guaranteed feed-in tariff (FIT) rates — in some cases more than 10 times that paid for traditional power generation — up to 60 per cent of the content of the generating facility (i.e. solar panels) would have to be produced in Ontario, stimulating a green energy industry and creating thousands of jobs.

The Ontario act was based on a successful German program which began in the 1990s that paid a guaranteed price for power produced without adding greenhouse gases to the environment. The program covered primarily wind and solar production facilities.

The Germans were leaders, creating the world’s first large-scale green power industry. There was no need for local content requirements. Even the German Solar Association (DGS) would have none of it: “German manufacturers have to compete with quality, longer warranties, and better service.” It was also

successful because the Germans developed transmission infrastructure that was capable of handling the new and varied types and qualities of power — a “smart” grid.

Ontario, on the other hand, made a number of errors, including:

- The province overestimated the demand for power, leading it to commit to higher feed-in tariff rates than were necessary. This led to, among other things, operations springing up across the province under the FIT program expecting guaranteed rates upward of 80.2 cents/kWh for their power over extended periods of time (20 years). Ontario also sole-sourced by far the largest contract under FIT to Samsung, effectively blocking access to the energy grid for other companies.
- The province neglected to create an energy grid that would be capable of handling these new, varied and often remote sources of power. It now finds itself paying producers for power that cannot be used by ratepayers.
- The local content provisions were so high that they acted as a barrier to green energy imports, ensuring that Ontario’s trading partners would reciprocate and close their markets to Ontario products. Investors are hesitant to establish their green energy research and development centres in Ontario because they would not be able to commercialize the products on a necessary scale without export opportunities.

Finally, the local content provisions in the Green Energy Act are illegal under the rules that govern world trade. In its recent judgment on the Green Energy Act in case brought against Canada by the European Union and Japan, the WTO ruled that the scheme’s “local content requirement” violates the WTO’s non-discrimination principle enshrined in the General Agreement on Tariffs and Trade (GATT) and the WTO Agreement on Trade-Related Investment Measures (TRIMS).

According to Japan, in its statement before the panel in March of this year, “(the Ontario Green Energy Act) is designed to promote the production of renewable energy generation equipment in Ontario rather than to promote the generation of renewable energy.”

In short, the act is protectionism dressed in a cloak of green.

The saving grace is that it is not too late to save the act by making amendments that will put it on a sustainable footing.

In dropping its high local content requirements, Ontario green energy products will be able to qualify for export, increasing the attractiveness of the province as a possible location for North American green energy R&D and production centres.

It will be expensive and millions of dollars have been wasted. But as we have seen with past cost overruns at nuclear facilities, such is the lot of the Ontario ratepayer.

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