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978-0-521-76619-7 - International Trade Regulation and the Mitigation of Climate Change: World Trade Forum

Edited by Thomas Cottier, Olga Nartova and Sadeq Z. Bigdeli

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INTERNATIONAL TRADE REGULATION AND THE MITIGATION OF CLIMATE CHANGE

What can trade regulation contribute towards ameliorating the GHG emissions and reducing their concentrations in the atmosphere? This collection of essays analyses options for climate change mitigation through the lens of the trade lawyer. By examining international law, and in particular the relevant WTO agreements, the authors address the areas of potential conflict between international trade law and international law on climate mitigation and, where possible, suggest ways to strengthen mutual supportiveness between the two regimes. They do so taking into account the drivers of human-induced climate change in energy markets and of consumption.

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CAMBRIDGE
UNIVERSITY PRESS

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CAMBRIDGE UNIVERSITY PRESS
 Cambridge, New York, Melbourne, Madrid, Cape Town, Singapore,
 São Paulo, Delhi, Dubai, Tokyo

Cambridge University Press
 The Edinburgh Building, Cambridge CB2 8RU, UK

Published in the United States of America by Cambridge University Press, New York

www.cambridge.org
 Information on this title: www.cambridge.org/9780521766197

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First published 2009

Printed in the United Kingdom at the University Press, Cambridge

A catalogue record for this publication is available from the British Library

Library of Congress Cataloguing in Publication data

International trade regulation and the mitigation of climate change : World Trade
 Forum / Edited by Thomas Cottier, Olga Nartova and Sadeq Z. Bigdeli.

p. cm.

ISBN 978-0-521-76619-7

1. Foreign trade regulation – Environmental aspects – Congresses. 2. International trade –
 Environmental aspects – Congresses. I. Cottier, Thomas. II. Nartova, Olga. III. Bigdeli,
 Sadeq Z. IV. World Trade Forum (11th : 2007 : Berne, Switzerland) V. Title.

K3943.A6I58 2009

343'.087–dc22

2009011369

ISBN 978-0-521-76619-7 Hardback

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 accuracy of URLs for external or third-party Internet websites referred to
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ABBREVIATIONS

AB	Appellate Body
AEP	American Electric Power
AG	Advocate General
AMS	aggregate measure of support
AoA	Agreement on Agriculture
AOSIS	Alliance of Small Island States
APEC	Asia-Pacific Economic Cooperation
ASCM	Agreement on Subsidies and Countervailing Measures
BTA	Border Tax Adjustment
CAFE	Corporate Average Fuel Economy
CBD	Convention on Biological Diversity
CDM	Clean Development Mechanism
CEC	Commission for Environmental Cooperation
CERs	certified emission reductions
CIEL	Center for International Environmental Law
CITES	Convention on International Trade in Endangered Species
CLASP	Collaborative Labelling and Appliance Standards Programme
CO ₂	carbon dioxide
COP	Conference of the Parties
COP 13	thirteenth Conference of the Parties
CPC	United Nations Provisional Central Product Classification
CTE	Committee on Trade and Environment
CTESS	Committee on Trade and Environment Special Session
CVD	Countervailing duty
DDA	Doha Development Agenda
DEFRA	Department for Environment, Food and Rural Affairs
DMD	Doha Ministerial Declaration
DNA	Designated National Authority
DSB	Dispute Settlement Body
DSU	Dispute Settlement Understanding
EAI	Environmental Area Initiative
EC	European Community
ECJ	European Court of Justice

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ECN	Energy Research Centre of the Netherlands
EFTA	European Free Trade Association
EGS	environmental goods and services
EISA	Energy Independence and Security Act 2007 (US)
EPA	Environmental Project Approach
EPACT	Energy Policy Act 2005 (US)
EPFL	Ecole Polytechnique Fédérale de Lausanne
EPPs	environmentally preferable products
ERUs	emission reduction units
ESIS	Energy Standards Information System
ESTs	environmentally sound technology
ETS	Emissions Trading Scheme
EU	European Union
FAO	Food and Agriculture Organization (United Nations)
FDI	foreign direct investment
FSC	Forest Stewardship Council
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GEF	Global Environment Facility
GHG	greenhouse gas
GMOs	genetically modified organisms
GPA	Government Procurement Agreement
GSP	General System of Preferences
HFCs	hydrofluorocarbons
HS	Harmonized System
HWWI	Hamburgisches Weltwirtschafts Institut
IBEW	International Brotherhood of Electrical Workers
ICJ	International Court of Justice
IEA	International Energy Agency
IEC	International Electrotechnical Commission
IGOs	intergovernmental organisations
IAs	international investment agreements
IISD	International Institute for Sustainable Development
ILC	International Law Commission
IMF	International Monetary Fund
IMO	International Maritime Organization
INC	Intergovernmental Negotiating Committee
INMETRO	National Institute of Meteorology, Standardization and Industrial Quality (Brazil)
IPCC	Intergovernmental Panel on Climate Change
IPRs	intellectual property rights
ISEAL	International Social and Environmental Accreditation and Labelling

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ISO	International Organization for Standardization
ITO	International Trade Organization
KP	Kyoto Protocol
LDCs	least developed countries
LNG	liquefied natural gas
MDGs	Millenium Development Goals
MEAs	multilateral environmental agreements
MEP	Member of European Parliament
MFN	most-favoured-nation
NAFTA	North American Free Trade Agreement
NAMA	non-agricultural market access
NGOs	non-governmental organisations
NPR-PPMs	non-product related processes and production methods
NTBs	non-tariff barriers
ODA	Official Development Assistance
OECD	Organisation for Economic Co-operation and Development
OIE	World Organisation for Animal Health (formerly International Office of Epizootics)
PFCs	perfluorocarbons
PPMs	production and process methods
R&D	research and development
RE	renewable energy
RECs	renewable energy certificates
RES	renewable energy standards
RFS	renewable fuel standard
RPS	renewable portfolio standards
RRS	Round Table on Responsible Soy
RSB	Round Table on Sustainable Biofuels
RSPO	Round Table on Sustainable Palm Oil Production
RTFO	Renewable Transport Fuel Obligation Programme
S&D	support and development
SCM	Subsidies and Countervailing Measures Agreement
SGS	Société Générale de Surveillance
SPS	Sanitary and Phytosanitary Measures Agreement
STOs	specific trade obligations
TBT	Technical Barriers to Trade Agreement
TEDs	turtle excluder devices
TPA	third party access
TPES	total primary energy supply
TRECs	tradeable renewable energy certificates
TRIMS	Trade Related Investment Measures Agreement
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights

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UK	United Kingdom
UN	United Nations
UNCED	United Nations Conference on Environment and Development
UNCLOS	United Nations Conference on the Law of the Sea
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNFCCC	United Nations Framework Convention on Climate Change
UNGA	United Nations General Assembly
US	United States
WCO	World Customs Organization
WIPO	World Intellectual Property Organization
WSSM	World Standards Services Network
WTO	World Trade Organization
WWF	World Wildlife Fund

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PREFACE

The World Trade Forum series was established in 1997 to offer an opportunity for an international in-depth discussion of issues facing the world trading system. The topic chosen for the 11th World Trade Forum was: International Trade Regulation and the Mitigation of Climate Change. On 21 and 22 September 2007 more than seventy-five people representing international organisations and governments, as well as distinguished academic scholars, climate scientists and students of international economic law from many different countries met at the World Trade Institute of the University of Bern to discuss what role the multilateral trading system could play in promoting state participation in the fight against global warming. The forum was opened by a leading climatologist from the NCCR 'Climate', Martin Grosjean, who provided the forum with an overview of the science behind the climate change debate.

The theme of climate change is particularly timely because the Intergovernmental Panel on Climate Change (IPCC) 4th Assessment Report, the first volume of which was published in February 2007, reaffirms that human activities have indeed contributed to the warming of the globe. Earlier, in 2006, the Stern Review on the economics of climate change, supported by many economists, some of whom are Nobel Prize winners, stated that 'the benefits of strong and early action far outweigh the economic costs of not acting'. This year's World Trade Forum, after touching briefly upon the current state of scientific knowledge on climate change, outlined the background for the legal ways forward after the expiry of the Kyoto Regime in 2012. Scholars and experts participating in the various sessions of the Forum addressed the WTO Agreements relevant to the climate change debate and made suggestions which led to this collection of essays.

Such a high-level exchange of expertise would not have been possible without the guidance of Professor Dr Thomas Cottier, Managing Director of the World Trade Institute. The co-editors of this volume

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PREFACE

Sadeq Z. Bigdeli and Olga Nartova are indebted to Thomas Cottier for selecting the theme of the conference and his significant role in helping shape the programme and encouraging high-level participation in the Forum. The editors are also indebted to the authors of the chapters in this collection not only for their valuable input to the content of the conference but also for making the effort to revise their drafts for publication. At the same time, the World Trade Forum could not have taken place without support of the discussants and participants who with their openness and active involvement in the debates contributed to the success of the event.

Organising the conference requires the work of a dedicated team and the efforts of all those involved were much appreciated. We wish to express our gratitude to Susan Kaplan and her assistants, Josephina Delahaye and Jane Müller, for preparing the manuscript. Many thanks also go to Sofya Matteotti-Berkutova, NCCR research fellow, for her work in preparing the conference web page, preparing online abstracts for the preliminary and final programmes and for undertaking many other tasks. Moreover, we would like to extend our sincere thanks to the administrative staff of the World Trade Institute, in particular Margrit Vetter for doing everything it takes to put on a successful conference. Special thanks are due to Christian Steiger who supervised the audio-visual equipment.

The World Trade Forum is a non-profit event, and we are very grateful for the support provided by the Ecoscientia Foundation. Also, this conference would not have been possible without funding from the Swiss National Science Foundation in support of the NCCR Trade Regulation and the invaluable counsel and guidance of Dr Susan Brown-Shafii, Scientific Coordinator of the NCCR project.

Our special thanks are due to Finola O'Sullivan of Cambridge University Press and her staff, in particular Brenda Burke and Richard Woodham, for their commitment to the book project and excellent support.