

Trade and Climate Change – Workshop, 27th November 2009

NCCR Trade P5.9 ‘Subsidization of Fossil Fuel and Renewable Energy’

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Abstract of paper on ‘Subsidization of Renewable Energy in WTO’

Building on the significant results of the first phase of NCCR Trade as well as on the author’s continuous research on the law of subsidies, this paper will analyze the legal status of measures providing incentives for the generation and use of Renewable Energy (RE) under WTO rules. It will both consider the current regulation and look at the future suggesting – when appropriate – novel interpretation of the rules or – if necessary – law reform.

The paper proposes to address the topic in three different progressive steps. First, it will provide a brief but necessary introduction to RE and the type of measures that are used to incentivize its use (‘RE measures’) and, most importantly, to the most recent (*economic/political*) *assessment* of their *effectiveness* based on the experience of the major jurisdictions (eg EU, US). Secondly, it will assess the various types of RE measures under the current WTO subsidy rules, most notably the GATT, the ASCM and the AG. This will turn on determining whether the measures identified in the first part raise any subsidy issue. More specifically, this exercise will require to establish whether these measures satisfy the *definition* of subsidy and the other requirements which may make them legally *objectionable*. Thirdly, assuming that certain RE measures are currently objectionable under WTO law, the final part of the paper will be devoted to the issue of the possible *legal justification* of RE measures under the current rules (by focussing on the controversial applicability of the ‘general exceptions’ under Article XX of the GATT) and – if these are deficient – suggest law reform (particularly by resurrecting the category of ‘non-actionable’ subsidies under the ASCM). This ‘justification idea’, which clearly goes beyond the mere legal discourse and is being increasingly aired in the scholarly circles, will be developed thoroughly, at every stage, from its economic, political, sociological and legal foundations up to suggesting a possible *operative legal framework* and a *draft text*.

Short working bibliography:

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Howse, R (2005): ‘Post-Hearing Submission to the International Trade Commission: World Trade Law and Renewable Energy: The Case of Non-Tariff Measures’, Renewable Energy and International Law Project

Howse, R (2009): ‘Do the World Organization disciplines on domestic subsidies make sense? The case for legalizing some subsidies’ in Bagwell, KW, Bermann, GA and Mavroidis, PC (eds), *Law and Economics of Contingent Protection in International Trade* (Cambridge: Cambridge University Press)

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