

World Trade Law and Renewable Energy: the Case of Non-tariff Measures

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Over the last two decades, trade and environment issues have typically been a source of intense controversy and conflict in the world trading system. Renewable energy, however, represents an area where we believe that freer less-distorted trade and environmental protection have the potential to be mutually reinforcing. Historically, electrical energy itself has not been traded across borders, with some exceptions (Canada and the US and in the EU). However, with the de-monopolisation of electricity in an increasing number of jurisdictions, and the unbundling of functions such as generation, grid operation, transmission, and retailing as well as the development of financial instruments such as futures and options contracts for energy, the structure of the entire market is starting to change, complicating the analysis under WTO law. This article aims to raise questions and suggest areas where domestic and international policymakers may need to consider undertaking further analysis.

I. Introduction

This article, which closely follows a paper that REIL was asked to prepare by the United Nations Conference on Trade and Development (UNCTAD), considers the question of non-tariff barriers and renewable energy primarily from the perspective of the law of the World Trade Organization (WTO). Further work that REIL is engaged in will also consider regional and bilateral trade and investment agreements.

Over the last two decades, trade and environment issues have typically been a source of intense controversy and conflict in the world trading system, reflecting and intensifying cleavages between environmentalists and supporters of free trade, and between developed and developing countries. Renewable energy, however, represents an area where we believe that freer less-distorted trade and environmental protection have the potential to be mutually reinforcing. Within the United States, demonopolisation and restructuring for competition in the electrical utilities sector has led to new opportunities for renewables. The same ought to be true globally. The removal of barriers to trade in renewable energy equipment and technology prom-

ises to reduce the cost and increase the feasibility of meeting global environmental obligations. It also helps to unlock the enormous potential of renewable energy in the developing world, where conventional power has not solved the problem of rural electrification – a key to development in a number of countries. In addition, given the rapidly rising energy needs of the fastest growing developing countries, there is an urgent need for alternatives to fossil-fuel generation that are sustainable. As current events illustrate, the widespread expansion of nuclear power raises serious issues of national and international security, which are not present with renewables. Finally, the eventual possibility of global trading schemes in Renewable Energy Certificates would allow developing countries with a comparative advantage in certain kinds of renewables generation – wind or solar power, for instance –

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