

Workshop in International Commerce
Green Trade Tensions and Policies
2024 First Semester

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COURSE DESCRIPTION

The global economy is currently at a critical juncture, experiencing a significant paradigm shift in trade governance. Trade policy is increasingly viewed through the prism of enhancing resilience, protecting the environment, strengthening labor standards, and upholding human rights. These non-trade policy aspects have come to the forefront as the geopolitical context has shifted and the transition to green and digital economies has gathered force. However, at times, these different non-trade policy goals can clash, revealing the complexities and challenges inherent in both achieving economic growth and societal and environmental objectives, while abiding by international trade rules. Against this backdrop, this course will delve into the intricate interplay between trade and environmental policies, examining how the drive towards sustainability impacts global trade dynamics, in particular in the era of geopolitical competition.

This course will begin with an analysis of basic WTO rules and cases, focusing on the principles of non-discrimination and their exceptions. The most fundamental principles of the WTO are non-discrimination: the Most Favored Nation (MFN) and National Treatment (NT). However, these principles are increasingly being viewed as exceptions in light of overarching concerns such as environmental protection, labor rights, and security. The growing frequency, and at times, the alleged abuse of these exceptions, particularly in the realm of green trade policy, underline the complexity of balancing global trade with environmental imperatives.

This course will delve into the growing instances where the application of WTO principles has led to tensions, especially in the cases where developed countries have restricted market access for environmentally harmful products and both developed and developing countries have provided subsidies to foster green industries, occasionally incorporating discriminatory elements. This course will also discuss policy responses from countries, including a carbon

tariff such as the Carbon Border Adjustment Mechanism (CBAM) of the EU and a green industrial policy such as the Inflation Reduction Act (IRA) of the US. Additionally, the course will examine the supply chains of electric vehicles and critical materials. This will enable a discussion on the dilemma faced by countries worldwide in balancing the dual goals of transitioning to a green economy and enhancing supply chain resilience, especially considering China's dominance in clean energy technologies and supply chains.

The course will be conducted through lectures and presentations on theoretical aspects of the issues and actual cases, and discussions on recent issues and way forwards. In particular, students are expected to actively engage in class discussions throughout the course.

The basic knowledge of the WTO rules and trade negotiations, for example, from the classes such as “Understanding International Trade Law,” “WTO and Multilateral Trade Agreement,” and “Trade Rules and Digital Standards” will be useful for this course although they are not required as prerequisites. It is not encouraged for students who have already completed the 'Seminar in International Trade: Emerging Trade Issues and Negotiations' in the first (spring) semester of 2023 to enroll in this course, as there will be some overlap in content.

The final assessment for the course will be based on a take-home exam (40%), class presentation (30%), and participation (30%).

COURSE OUTLINE

The following list of reading and reference materials is based on Peter Van den Bossche & Werner Zdouc, Law and Policy of the World Trade Organization (5th ed. 2021), with respect to the WTO rules. Additional reading materials on emerging issues, if any, will be available in “etl” webpage, no later than a few weeks before each class.

Students in this course are also advised to regularly keep up with current developments in international trade area. Useful sources include, inter alia, Financial Times, The Economist, and Inside US Trade.

1. Introduction and Issue Scoping

- Financial Times, “China’s striking advances in green technology”
- The Economist, “World trade: The new order of trade”, “Trade law” A fraying system”, “Precautionism: In search of resilience”, “The environment: making trade greener”, and “The new rules: A changed world”, Special report, Oct 9th 2021
- The Economist, “China’s EV onslaught”, Jan 11th, 2024

- B. Copeland, J. Shapiro and S. Taylor, “Globalization and the Environment”, the Handbook of International Economics, Vol. V, Sep 2021

2. Most-Favored Nation (MFN), National Treatment and GATT Art II

- Van den Bossche & Zdouc, Law and Policy of the World Trade Organization, Ch. 4, 5 & 6
- *WTO, Korea – Taxes on Alcoholic Beverages (WT/DS75/R)*
- *WTO, Korea – Measures Affecting Imports of Fresh, Chilled and Frozen Beef (WT/DS161, 169/R)*
- *WTO, Indonesia – Certain Measures Affecting the Automobile Industry (WT/DS64/R)*

3. General Exceptions

- Van den Bossche & Zdouc, Law and Policy of the World Trade Organization, Ch. 8
- *WTO, U.S. – Standards for Reformulated and Conventional Gasoline (WT/DS2/R & AB/R)*
- *WTO, EC – Measures Affecting Asbestos and Products Containing Asbestos (WT/DS135/R & AB/R)*
- *WTO, U.S. – Import Prohibition of Certain Shrimp and Shrimp Products (WT/DS58/R & AB/R)*
- Joel P. Trachtman, WTO Trade and Environment Jurisprudence: Avoiding Environmental Catastrophe, Harvard International Law Journal, Vol. 58(2), Spring 2017

4. Subsidies and related issues

- Van den Bossche & Zdouc, Law and Policy of the World Trade Organization, Ch. 12
- *WTO, EU and Certain Member States–Measures Affecting Trade in Large Civil Aircraft (WT/DS316/R & WT/DS316/AB/R)*
- *WTO, Canada–Certain Measures Affecting the Renewable Energy Generation Sector/Canada–Measures Relocating to the Feed-in Tariff Program Australia (WT/DS 412, 426/R & WT/AB/412, 416/R)*
- Mark Wu & James Salzman, “The Next Generation of Trade and Environment Conflicts: the rise of green industrial policy”, Northwestern University Law Review 108:2 (2014)
- Alessandro Gili & Davide Tentori, “The Fight for Global Technology Leadership: A Matter for Geopolitics”, The Comeback of Industrial Policy, ISPI (2023)
- Jennifer Hillman & Inu Manak, “Rethinking International Rules on Subsidies”, CFR (2023)

- Chad P. Bown, “Modern Industrial Policy and the WTO”, PIIE (2023)

5. Clean Energy and Industry Supply Chains and Related Issues

- Alex Capri (2021), “The Geopolitics of Electric Vehicles: Techno-nationalism Reshapes the Automotive Industry”, Hinrich Foundation (2021)
- Alex Capri (2021), “A Rough Road Ahead: Electric Vehicles and Semiconductors Navigate Geopolitics”, Hinrich Foundation (2021)
- Alicia Garcia-Herrero, Heather Grabble and Axel Kaellenius, “De-risking and Decarbonising: A Green Tech Partnership to Reduce Reliance on China”, Brugel (2023)
- Henry Sanderson, “The Problem with De-risking: Transitioning to Clean Energy Requires Trade with China”
- Van den Bossche & Zdouc, Law and Policy of the World Trade Organization, Ch. 8
- *WTO, U.S. – Origin Marking Requirement (WT/DS597/R)*

6. Trade and Environment

(1) Overview and Discussions at the WTO

- WTO, World Trade Report 2022: Climate change and international trade
- WTO, “The Interface between the Trade and Climate Change Regimes: Scoping the Issues”, Staff Working Paper ERSD-2011-1 (2011)
- WTO, “Taxes and Charges for Environmental Purposes - Border Tax Adjustment, Note by Secretariat”, WT/CTE/W/47 (1997)

(2) Environment-related trade measures and initiatives: carbon border adjustment mechanism (CBAM), US-EU Global Sustainable Steel and Aluminum Arrangement and Climate Club

- P. Lamy, G. Pons and P. Letureq, “Greening EU Trade 3: A European Border Carbon Adjustment Proposal”, Europe Jacques Delors, Policy Paper (2020)
- Briefing: Trade Related Aspects of a Carbon Border Adjustment Mechanism. A Legal Assessment, European Parliament (2020)
- Catrina Rorke, “The Case for Climate and Trade”, Center for Climate and Trade (2022)
- Joseph E. Stiglitz, Todd N. Tucker, and Isabel Estevez, “Fighting Climate Change Through Trade: Despite Many Setbacks, Biden Can Still Make Progress”, Foreign Affairs (2022)
- W. Nordhouse, “The Climate Clubs: How to Fix a Failing Global Effort”, Foreign

Affairs (2020)

- Chad P. Bown and Kimberly A. Clausing, “How Trade Cooperation by the U.S., the EU and CHina can fight climate change”, PIIIE (2023)

COURSE SCHEDULE

- 03/04 General Introduction and Issue Scoping
- Paradigm shift in trade governance system
 - Globalization and the environment: Policy
 - Clashes of environmental goals and other goals
- 03/11 Most-Favored Nation (MFN) and National Treatment (NT)
- Overview of MFN and NT
 - Overview of GATT Article II (Schedule of Concessions)
 - Korea – Alcoholic Beverages
- 03/18 WTO cases on MFN and NT
- Korea – Various Measures on Beef
 - Indonesia – Certain Measures Affecting the Automobile Industry
- 03/25 General Exceptions
- Overview of General Exceptions
 - U.S. – Standards for Reformulated and Conventional Gasoline
- 04/01 Cases on Environmental Exceptions
- EC – Measures Affecting Asbestos and Products Containing Asbestos
 - U.S. – Import Prohibition of Certain Shrimp and Shrimp Products
- 04/08 Group Exercises on Application of MFN & NT to Cases
- 04/15 WTO Subsidy Rules and Cases
- Overview of subsidy rules
 - EC and Certain Member States – Measures Affecting Trade in Large Civil Aircraft
 - Canada – Measures Relating to the Feed-in Tariff Program
- 04/22 WTO Subsidy Case and related issues
- Canada – Measures Relating to the Feed-in Tariff Program
 - Emergence of green industrial policies and how to address green subsidies
- 04/29 Green Industrial Policies and WTO Subsidies Reform
- Recent green industrial policies: the IRA of the US, Green Industry Bill of France, EU’s Critical Raw Material Act and Net-Zero Industry Act
 - How to reform subsidy rules

05/06 No Class as a Day Off for Children's Day (make-up class on 06/17)

05/13 Clean Energy and Industry Supply Chains and Related Issues

- Supply chains of electric vehicles and critical materials
- Cases of solar panel dumping investigation and electric vehicle anti-subsidy investigation: Dilemma between transitioning to a green economy and enhancing supply chain resilience

05/20 Security Exceptions

- Overview of WTO rules on Security Exceptions (security exceptions for climate crisis?)
- U.S. – Origin Marking Requirement (WT/DS597/R)

05/27 WTO and Climate Change Framework

- Tension between trade and environment
- Trade policies adopted/discussed to address climate change at the WTO
- Recent developments at Trade and Environmental Sustainability Structured Discussions (TESSD)

06/03 Unilateral, Bilateral and Plurilateral Mechanisms/Initiatives

- EU's Carbon Border Adjustment Mechanism: overview and compatibility with the WTO rules
- US-EU Global Arrangement on Sustainable Steel and Aluminum: recent development and compatibility with the WTO rules
- Climate club

06/10 Group Exercises and Discussions on Environment-related Rules and Cases

06/17 Take-home Exam