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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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But what if the push for "foreign direct investment (FDI) by multinational firms", not multilateral efficiency, is the "key driving forc[e]" of these North-South agreements? What if "much of the efficiency gains of increased trade and investment are eaten up by a patchwork of complex rules"? What if these PTAs "raise the barriers for competitors from non-member states" and result in a "prisoner's dilemma" in which "multilateralism unravels"?

These are the concerns raised by Mark S. Manger in his book *Investing in Protection: The Politics of Preferential Trade Agreements Between North and South*. It provides a pointed critique to those who view PTAs as catalysing the broader liberalization process governed more slowly by multilateral agreements.

Indeed, to Manger, protectionism is the primary motivation for firms urging the passage of PTAs. He contends that manufacturing firms from developed countries use PTAs to create trade barriers, for instance by incorporating strict rules-of-origin requirements. In addition, service firms create first-mover advantages by locking in regulatory rules and technical and legal standards to stifle competition. These protectionist manoeuvres trigger defensive agreements from non-member countries as their firms seek to close competitive gaps. Thus, "the competitive dynamic between countries becomes the driving force of bilateral deals".

What hope then, lies for a resurgence of multilateralism? Is the sprawling labyrinth of PTAs destined to halt global compromise? On a hopeful note, Manger predicts that PTAs' influence will remain "partial and incomplete" due to high transaction costs resulting from repeated negotiations and the "burden of compliance with numerous agreements".

Manger provides a useful guide to PTA rules, the lobbying that precedes their enactment, and the ripple effect they produce around the globe. With his focus on multinational firm lobbying and negotiation, Manger demonstrates how PTA formation politicizes trade and is not a direct shift towards more efficient markets. His case-studies of NAFTA, the defensive EU-Mexico and Japan-Mexico PTAs, Chile, and Japan's agreements with Malaysia and Thailand detail the jockeying of politicians, firms, and other interest groups as countries race to ratify trade agreements and entrench advantages over competitors. Manger avoids polemical judgement of free trade doctrine, and instead makes his case through statistical analysis and a clear narrative of the struggles of parties to complete, alter, and resist the formation of these agreements. In sum, a reading of these case-studies would be beneficial to those already sceptical of bilateral agreements, as well as those who are convinced that PTAs provide a promising alternative to broad resolutions.

reviewed by Thomas ROOKS

International Trade Regulation and the Mitigation of Climate Change: World Trade Forum
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Now in its thirteenth year, the World Trade Forum (WTF) has firmly established itself as one of the leading events for the trade law community. Held annually in the quiet town of Bern, Switzerland, the Forum features presentations by leading trade lawyers, economists, diplomats, and political scientists from all around the globe. While many other conferences in the field prefer to choose a general theme that could accommodate everyone's research interests, the Forum is usually organized around a highly specialized topic every year. The subjects usually fall into two categories. The first group includes classical issues in the multilateral trading system that fascinate generation after generation of trade lawyers, such as regulatory barriers and non-discrimination (1998), development (2003), dispute settlement mechanisms (2002), and negotiating approaches (2004). The second group encompasses the many emerging issues that present new challenges to the existing legal framework of the multilateral trading system, such as sustainable development (1999), human rights (2001), genetic engineering (2005), and the food crisis (2008). The present volume is the collection of the papers presented at the

2007 WTF, which addresses the relationship between government measures to mitigate climate change and WTO rules. Consistent with the quality standard set by the preceding volumes, the present book also provides some of the most authoritative accounts on the issue of climate change and trade.

To have an intelligent debate on the relationship between climate change and trade, one needs to understand three separate but related issues: the scientific basis of climate change, the international legal framework on cross-border co-operation to deal with climate change, and the trade implications (both direct and indirect) of various policies to address climate change. The four chapters in Part I provide such background readings and much more. Among them, the chapter by Howse and Elliason is probably the most interesting for trade lawyers. The chapter canvassed almost every conceivable issue, ranging from the Kyoto-type carbon trading schemes, carbon tax, and the Clean Development Mechanism (CDM), government measures that promote the use of renewable energy, either through fiscal and non-fiscal measures, or border measures that provide more favourable treatment to green technologies and equipment from foreign sources, to mandatory regulations or schemes that aim at boosting energy efficiency in particular sectors. While the authors argue that, in general, governments will need to structure their climate policies in such a way as to avoid breaching their trade obligations, they also recognize that, in a few specific areas, the WTO rules shall be modified to better accommodate climate goals.

With the stage set by part I, the rest of the volume expands into detailed discussions on various aspects of the climate change-trade relationship, including issues arising from trade in goods, services, subsidies, and miscellaneous issues such as technology transfer, investment, and procurement. Trade in goods is addressed in part II, and the main problem there is the discrimination among otherwise identical products on the basis of their different production and processing methods (PPMs), a controversial issue that has brought the WTO to the spotlight with the highly publicized Tuna/Dolphin and Shrimp/Turtle cases. As the issue is far from settled within the trade law circle, it is no surprise that the contributors in this part could not reach an agreement either. Nonetheless, their contributions raise some interesting new perspectives on how to think about the problem.

Part III focuses on trade in renewable energy sources. The first two chapters discuss how the various incentive schemes could be vulnerable under the Agreement on Subsidies and Countervailing Measures, as well as how the issue could be addressed in the ongoing Doha Round. The last chapter analyses biofuel certification schemes, which provides an interesting contrast with the contributions in part II as the main legal issues here are again PPM, TBT, and Article XX.

In part IV, the contributors discuss issues arising from trade in services such as classification, a perennial problem in services negotiations, as well as whether the Members should explore new negotiating approaches, such as negotiating for the sector something similar to the Reference Paper for the telecommunication sector.

In part V, our journey gets even more interesting as the discussions spread into some less-frequented territories of trade law: investment and procurement. Investment is the focus of the first three chapters, which present a lively debate on whether the various CDM initiatives might violate the obligations under the Trade-related Investment Measures Agreement. Government procurement is the subject of the last two chapters, which discuss how the various green procurement measures could be accommodated under the Government Procurement Agreement.

In contrast to the issue-specific discussions in the proceeding chapters, the two chapters in part VI offer solutions that are much more comprehensive in nature. The first chapter discusses how the climate change challenge could be dealt with under the existing institutional framework of the WTO, while the second chapter outlines how the change in the negotiating structure could steer the negotiations on environmental goods and services in a more fruitful direction.

As the recent turmoil at the Copenhagen climate change summit has shown, getting countries around the world to agree on binding legal agreements on climate change is very difficult. The more recently discovered mistake in the estimate of the rate of recession of the Himalayan glaciers[8] by the

8. IPCC statement on the melting of Himalayan glaciers, 1–20 January 2010, Geneva, online: http://www.ipcc.ch/pdf/presentations/himalaya-statement-20january2010.pdf.

Intergovernmental Panel on Climate Change in its Fourth Assessment Report reveals, however, that even for Nobel-laureate scientists, it is probably equally difficult, if not more, to properly understand the science behind climate change. Even if the climate change threat is real, the way to fix it might be surprisingly cheap and easy.[9] Thus, history might well prove the gloomy predictions on climate change to be one of the biggest laughing stocks in human history. Nonetheless, until the day that we find out the truth (or we might never find out), one thing is certain: most government policies that purport to address climate change will have some impacts on trade, and some of these impacts can be pretty significant. Aided by the excellent studies in this book, we could take comfort that we could still understand the trade law dimensions of climate change mitigation policies, even though the intricacies of the science of climate change might forever remain a mystery to humanity.

reviewed by Henry GAO

Beyond Open Skies: A New Regime for International Aviation
by Brian F. HAVEL.
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For over a century, human flight has captured the interest and imagination of states and their citizenry. Through national control of airspace, however, states have also "captured" the citizenry's right to fly. There are, of course, immense benefits to state control of at least some of the facets of air transportation. For example, the excellent safety record of the airline industry owes a significant debt to its national regulators. To many within and outside the industry, however, nationality-based restrictions on the economic dimensions of air transportation—principally relating to market access and the right to own and control an airline—present an unusual and debilitating paradox in an industry which has facilitated the globalization of so many others. In *Beyond Open Skies: A New Regime for International Aviation*, Brian Havel, who directs the International Aviation Law Institute at DePaul University's College of Law, Chicago, approaches the current negotiations for a second-stage transatlantic agreement between the European Union (EU) and the United States (US) as one possible resolution of this paradox.

As the title suggests, Havel's point of entry centres on the US's "open skies" policy as an incomplete form of liberalization. Two principal restrictions effectively and systemically undermine further relaxations. The first relates to the restrictions placed on cabotage traffic—the right of a foreign airline to operate between two points within the home country. The second relates to the requirement contained in both bilateral agreements and national laws that nationals remain in control of both the ownership and management structure of the airline through the maintenance of "substantial ownership and effective control", or what Havel refers to as a "citizenship purity" test. Together, these restrictions prevent the airline industry from both accessing global capital and moving from the current alliance-based arrangements to more meaningful merger-based consolidations. By eliminating the two restrictions and consolidating the two markets in a second stage transatlantic agreement, both regions can achieve considerable benefits for both the industry and consumers.

This is the dominant, but not the only, script of the book. In noting the confluence between transatlantic and global discussions on the liberalization of air transport regulation, Havel proposes to extend the agreement's influence by leaving the agreement open for ratification by third parties. In this way, Europe and the United States can harness their collective influence to shape a new regime of global proportions.

Havel's work is by far the most detailed single work on the liberalization of the transatlantic market since the signing of the first stage open skies agreement between the US and the EU. It is extremely well researched, and the research well documented both within the text and in asides contained within the

9. See e.g., the various approaches to halt climate change explored by Steven LEVITT and Stephen DUBNER in their new book, *SuperFreakonomics: Global Cooling, Patriotic Prostitutes, and Why Suicide Bombers Should Buy Life Insurance* (London: Allen Lane, 2009), 165–209.