

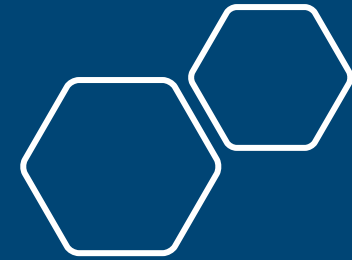
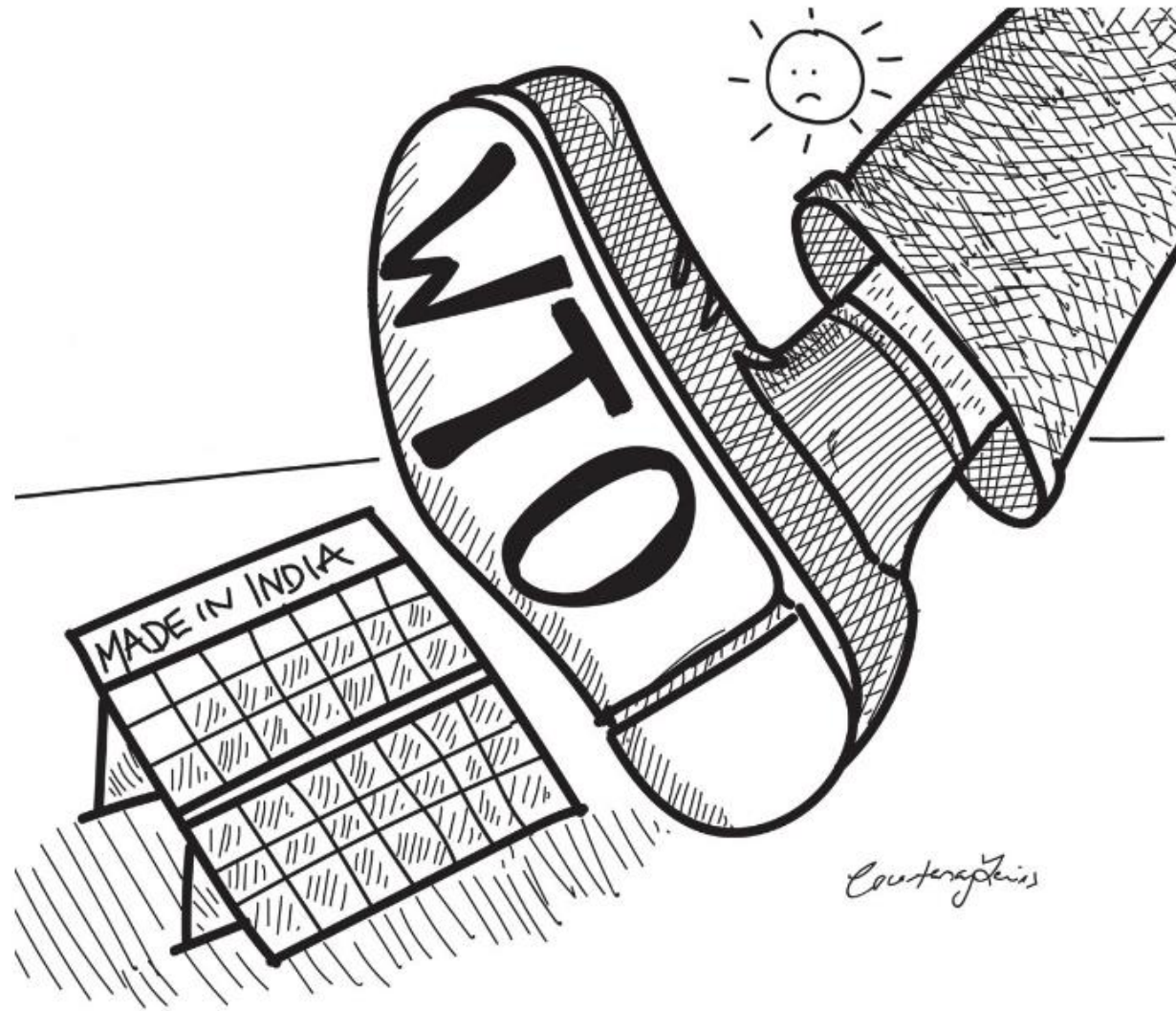
International Energy Integration

Dr. Patrick Abel, MJur (Oxon)

Max Weber Fellow, EUI (LAW)

Assistant Professor, University of
Passau, Germany





Structure of this seminar

1 WTO law

2 Plurilateral law: ECT

3 Regional and bilateral law

1 WTO law

- WTO law applies without modification to energy
- Paralysis of dispute settlement, but substantive law still important
- Energy as a good under the GATT
- Energy production and dissemination as services under the GATS
- MFN (Art. I:1 GATT), national treatment (Art. III:2 and 4 GATT)
- Prohibition of quantitative restrictions Art. XI GATT
- Schedules of concession Art. II GATT
 - Most energy commodities have had traditionally low tariffs
 - Very different: Modern renewable technology, certain fossil fuels such as petroleum

1 WTO law

- Treating renewable and fossil energies different
- “Likeness“ of renewable and fossil products
 - E.g. electricity generated by coal or by solar panels
- Question of “likeness” under Art. I and III GATT
 - Problem of non-product-related process and production methods (PPMs), e.g. WTO Appellate Body Report, Japan – Alcoholic Beverages II (4 October 1996) WT/DS8,10,11/AB/R

1 WTO law

- Justification under Art. XX lit. a, b or g of the GATT (general exception)
 - Air as an “exhaustible natural resource”, WTO Appellate Body Report, US – Gasoline (29 April 1996) WT/DS2/AB/R
 - Two-tier test, esp. problem of the chapeau
 - Problematic especially for the CBAM, principle of common but differentiated responsibilities under international climate change law
 - Rational relationship between CBAM and climate change mitigation effect
 - No coercion to adopt carbon pricing as the only viable climate protection policy
 - But the EU can request a measure „comparable in effectiveness“
 - Serious and even-handed attempt to negotiate a bi- or multilateral agreement needed

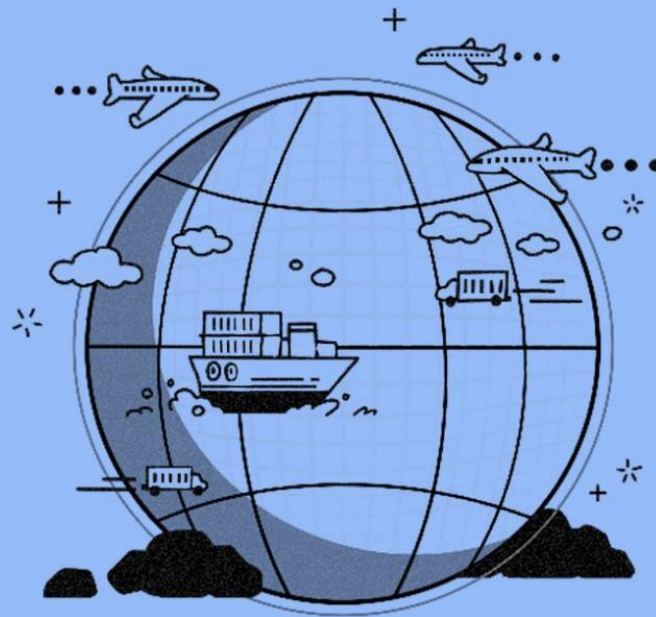
1 WTO law

- Justification under Art. XXI GATT (security exception)
 - The argument made that there is a measure that "it considers necessary for the protection of its essential security interests" must at least be plausible: *Russia—Traffic in Transit* (4 April 2019) WT/DS512/R; *Saudi Arabia—IPRs* (16 June 2020) WT/DS567/R; *US—Certain Measures on Steel and Aluminium Products* (9 December 2022) WT/DS544/R.
 - But see WTO Panel Report, *US—Origin Marking Requirement* (21 December 2022) WT/DS597/R: parts of Art. XXI GATT are self-judging

2 Plurilateral energy law: Energy Charter Treaty

- 1998 Energy Charter Treaty, formerly 53 treaty parties throughout Europe, but also outside Europe, e.g. Japan
- However, important countries do not take part, e.g. US, China, Brazil, India, Russia.
- Trade and investment
- WTO-plus and WTO-x approach: Deepen existing WTO obligations (e.g. on energy transit in Article 7 deepening Article V GATT on transit of goods), adding new obligations (esp. investment protection, incl. arbitration)
- Very controversial, EU states have terminated the ECT, incl. Germany

3 Regional and bilateral energy law



Free Trade Agreement (FTA)

['frē 'trād ə-'grē-mənt]

A pact between two or more nations to reduce barriers to imports and exports among them.

3 Regional and bilateral energy law

- FTAs to deepen economic integration between partners (see Art. XXIV GATT)
- Includes energy as a good and service
- *Cima* 2018:
 - Renewable energy-specific provisions
 - EU FTAs have specific energy chapters, for example the EU-UK TCA
 - Renewable energy-related provisions
 - Environmental and sustainable development provisions, again present in EU FTAs
 - Renewable energy-affecting provisions
 - Provisions that apply to all sectors and thus include energy, e.g. MFN, NT, etc.

3 Regional and bilateral energy law

- Examples for how EU FTAs address energy:
- Right to regulate-clauses
- Commitment to enforce environmental laws
 - EU-New Zealand FTA novelty: You can bring this to arbitration and enforce non-compliance with trade sanctions
- Energy chapters, for example Art. 299 et seq [EU/UK TCA](#) (but temporary in force only until 30 June 2026)
- Other examples in EU-Singapore FTA, EU-Vietnam FTA, EU-Kazakhstan Enhanced Partnership and Cooperation Agreement

Conclusion

- Energy is subject to multilateral integration in the WTO
- Many trade disputes relate to energy and raw materials for energy
- Plurilateral integration exists under the ECT, but it is heavily criticized
- FTAs play an increasingly major role, at times with specific energy chapters

**Thank you for your
attention!**



Patrick.Abel@eui.eu

Patrick.Abel@uni-passau.de