Index

Abbott, F 25, 209, 225
Abbott, K 150, 151
Acemoglu, D 3, 160
Adlung, R 191, 197
agriculture
  biofuels 160, 214–15, 268–71, 360, 369–70, 467
  and food security see food security and agricultural trade
Akerlof, G 156
Al-Tayer, A 32
Alcott, B 312
Alder, M 181–99, 507
Alexander, S 333
Andemariam, S 69
Ankersmit, L 366
Antarctic Treaty 17
anti-dumping, and energy security 247, 252
Anton, D 391
Appleton, A 156
Arcuri, A 157, 175
Arnaiz, P 49–73, 506
ASEAN Comprehensive Investment Agreement (ACIA) 472–3
Asia-Pacific Economic Cooperation (APEC) 23–4, 289–93, 295–300, 408
Astoria, R 41
Atapattu, S 40
Atkin, E 221
Atwood, T 342
Australia
  Anvil Hill Watch Association v Minister for the Environment and Water Resources 335
  carbon pricing 220–21
  guaranteed minimum price for carbon units, reduction of 405
Wildlife Preservation Society of Queensland Proserpine v Minister for the Environment and Heritage 335
aviation emissions, EU 25, 335–6, 342, 368–9, 380, 381–4, 514–15
Baetens, F 427, 434, 437, 439, 443, 444–5, 448, 454, 456, 460
Baker, J 1
Bali Conference see WTO Bali Conference
Banifatemi, Y 427, 497
Bankes, N 322
Baracol-Pinhão, D 196
Barnard, C 387
Bartels, L 46, 47, 104, 115, 338, 344, 368, 446, 453
Barton, J 215
Baslar, K 17
Bast, E 3
Bastin, L 423
Beitz, J 154
Beitz, C 14
Bellman, C 275
Belyi, A 235
Bengtsson, L 304
Bennett, L 458
Bernstein, S 150, 158
Bertrisch, G 89–90, 105
best available technology (BAT) and standard setting 150–51, 157–8
  see also sustainable standard-setting; technology
Betts, R 379
Bewick, J 135
Beyerlin, U 36
Biermann, F 16, 17, 79
Bigdeli, S 119–47, 506, 507, 512
biofuels 160, 214–15, 268–71, 360, 369–70, 467
Birnie, P 431
Bisset, R 182
BITs (bilateral investment treaties) and foreign investment in renewable energies 470, 472, 480–84, 492–9
  international investment law and climate change initiatives 436, 446, 447, 448–9, 453, 454–5
  and investor-state dispute settlement (ISDS) 417–18, 419, 421
Bjorklund, A 485
Blue Box policies, WTO Agreement on Agriculture 262–3, 266
Bodansky, D 12, 36, 43
Bodderick, J 485
Bogojević, S 380–81
Research handbook on climate change and trade law

Boli, J 151
border carbon adjustments 368, 509–10
border tax adjustments 69–70
and carbon credit mechanisms see carbon
credit mechanisms and export border
tax adjustments, WTO legal constraints
and PPMs (processes and production
tools) see carbon taxes, PPMs and
the GATT, border tax adjustments
Bortscheller, M 33
Bosselman, F 134
Bosselmann, K 36
Boute, A 435, 457, 458, 459
Boyd, A 214
Boyle, A 180
Bracken, L 401, 403
Bradsher, K 298
Brazil, climate change and biofuels 214–15
Brevetti, R 409
Brewer, T 408, 472
BRICS/BASIC Group, climate change and
biofuels 209–15
Brobeck, S 136
Broches, A 480
Brohm, R 79
Brousseau, E 13
Brown, A 202, 227
Brown, C 435
Brückmann, R 388
Brune, M 228
Bruner, C 151
Brunnée, J 16
Brunsson, N 150
Bunda, J 485
Burke-White, W 431, 478
Burniaux, J-M 308
Buruma, H 479
Busch, M 479
business-to-business (B2B) relationships,
sustainable standard-setting 155, 157,
159, 161
Cabral, L 151
Cabrol, E 418
Calliess, G-P 151
Canada
British Columbia carbon tax 438
EU–Canada CETA 420, 429, 449–50, 453,
480
EU–Canada FTA and climate mitigation
398, 404, 405, 406
Green Energy and Green Economy Act 120
Hourly Ontario Energy Price (HOEP) as
benchmarks, concerns over 127–8, 146
Ontario FIT programmes and renewable
generator benefits 125–9
Caplan, E 136
carbon capture and storage (CCS) 305, 321–2,
323, 377
carbon credit mechanisms and export border
tax adjustments, WTO legal constraints
and PPMs and the GATT 77–108, 506
Agriculture Agreement application on
domestic and export subsidies 115
border tax adjustments on export 111
carbon tax as consumption tax suggestion
111
competitive effects and carbon credit
causing injury 113–14
GATT Article XX exception availability and
SCM Agreement 115–17
Pigouvian producer tax suggestion 111
production processes (PPM), taxes on 118
prohibited export subsidy or import
substitution subsidy 112
specific subsidies and GATT Article 5
adverse effects 113–14
specificity of export subsidies and import
substitution subsidies 112–13
Subsidies and Countervailing Measures
(SCM) Agreement 110–11, 113–14,
117–18
subsidy countervailability 114–15, 116–17
subsidy prohibitions 112–13
carbon credits, and REDD+ 334, 343
carbon footprint of imported products,
determining 96–7
carbon leakage concerns 309–10, 397, 399
carbon pricing 220–21
carbon taxes 3, 111, 307–10, 316, 320–21
see also taxation
carbon taxes, PPMs and the GATT 77–108,
506
energy as non-product related production
and process methods (NPR PPMs) 79,
84–5, 87
like-products and relevant GATT/WTO
non-discrimination disciplines 79, 86,
88–9
most-favoured nation treatment 97–8
non-product related production and process
methods (NPR PPMs) and likeness 79,
92–3, 94
Index 521

Cardwell, D 298
Cardwell, M 153, 160
Carrington, D 229
Cashore, B 150
Cassimatis, A 338
Cendra de Larragán, J de 80
Chaffin, J 298
Chaisse, J 434, 462–501, 507
Chandley, J 136
Chang, H 336
Charney, J 52
Charnovitz, S 26, 88, 95, 96
Chaudhary, A 210
Cheng, Y 478
Chianale, G-F 239, 240
Chien, C 217
Chile, Global Patent Pool for clean technologies 207
China
export strength compared to other developing countries 293–4
renewable energy investment 212–13
Chinkin, C 180
Choi, W 495
Choudhury, B 197, 424
Christol, C 15
Chubb, P 220
Cimino, C 298, 299
Clark, P 3
Claro, E 288
clean technologies
alternatives for intellectual property and green innovation 226
and European Patent Office (EPO) 218–19
and intellectual property 209–15
liberalization of trade in 187
light-emitting diodes (LED) 221–2
substantive reforms 224–5
transfer and dissemination 219–20
climate change
and biofuels 214–15
common but differentiated responsibilities
see common but differentiated responsibilities in transnational climate change governance
as common concern 65–7
food security and agricultural trade 267–71
and foreign investment in renewable energies 465–9
global warming rate 379
green paradox models and international trade rules 304–6
indicators and criteria 159–61
initiatives, and international investment law
see international investment law and climate change initiatives, relationship between
law application, and investor-state dispute settlement (ISDS) 418–19, 426–9, 427
measures, and territory and extraterritoriality 331–6
and WTO legitimacy see WTO legitimacy and climate change
see also GHG emissions
climate change mitigation and WTO 505–18
border carbon adjustments 509–10
Committee on Trade and Environment (CTE) and Environmental Database (EDB) 515–16
cooperation mechanisms 518
Doha Ministerial Declaration 517–18
economic incentives 509–10
environmental and climate change objectives 508–13
financial support programs 512
GATT Article XX exemptions 510–11
liberalization of environmental goods and services 517–18
monitoring trade and trade-related policies 514–17
and Multilateral Environmental Agreements (MEAs) 518
Paris Agreement and nationally determined contributions (NDCs) 505–6
policy tools 509–10
pricing mechanisms 510
relevant WTO rules 510–13
Technical Barriers to Trade (TBT) Agreement 512, 515, 516–17
Trade Policy Review Mechanism (TPRM) 514–15
WTO as negotiation forum 517–18
climate change, services trade and GATS 181–99, 507
cross-border supply 189
disciplines under GATS 188–96
domestic regulations, de jure or de facto discrimination distinction 192–3
domestic regulations and right to regulate 191–3
domestic regulations and trade-restrictive effects 190
domestic regulations, transparency and good governance provisions 193
Environmental Goods Agreement (EGA) proposal 186–7, 198
Environmental Goods and Services Agreement negotiation 187
environmental services 184–8, 191
environmentally preferable products and trade in goods 186
GATS and GATT comparison 193, 195
GATT Services Sectoral Classification List (W/120) 184–6
liberalization of trade in climate and clean energy goods and services 187, 197–8
market access limitations 190, 191
modes of supply of services 189
movement of natural persons 189
national treatment and Most-Favoured Nation (MFN) 186, 188, 190, 191, 192, 195–6
renewable energy and energy-efficiency services 187
services classification system 184
services inputs in goods production 182–3,
186
services trade increase 182
subsidizing green services 194–6
and TBT Agreement 193
technology and knowledge transfer 183, 185
trade in goods and trade in services, distinction between 189–90
Trade in Services Agreement (TiSA) negotiations 198
WTO Committee on Specific Commitments, ‘climate-related services’ classification proposal 187–8
climate justice and human rights 227–8
climate mitigation measures 12–13, 103–4,
201–2, 438, 439–40
Coase, R 131–2, 143–4
Codex Alimentarius 157, 173, 175
Cohen, B 478
Cole, D 1
Cole, T 497
Combet, G 220
common but differentiated responsibilities
territory and extraterritoriality 342–3
Trans-Pacific Partnership (TPP) and Transatlantic Trade and Investment Partnership (TTIP) 399–400, 407
UNFCCC (UN Framework Convention on Climate Change) 14, 15, 16, 20, 34–5,
41–4, 45–6, 47, 48, 330, 342
WTO legitimacy and climate change 20–21
common but differentiated responsibilities in transnational climate change governance 31–48
developed countries contribution to capacity-building in developing countries 33
direct application in WTO Dispute Settlement 41–4
equitable principle of estoppel as general principle of international law 41–3
international legal norms binding erga omnes (custom and general principles of law) 35
interpretation of members’ rights and obligations in WTO Dispute Settlement 44–8
legal status 33–7
Marrakesh Agreement 37–8
multilateral environmental agreements (MEAs) 34, 35, 40–48
precautionary principle 38
Rio Declaration on Environment and Development 33–4, 38, 39
Stockholm Declaration 33
voluntarist approach to international law 35
common concern, climate change as 13–17, 19–20, 22–9, 65–7
Commonwealth of Independent States, nuclear-based energy control 242
compensation assessment 424–6
see also investor-state dispute settlement (ISDS)
competition
competitive advantage concerns, Trans-Pacific Partnership (TPP) and Transatlantic Trade and Investment Partnership (TTIP) 402–4
competitive effects, carbon credit mechanisms 113–14
and consumer perception 90–92
‘effective competition’ standard 126–7, 128, 130–37
subsidy regulation and feed-in tariffs 139–42, 144–5
compulsory licensing, trade wars in the TRIPS council 205, 206, 208, 226
Conrad, C 26, 69
conservation of exhaustible resources 100–102
consumers citizen empowerment, EU climate law and human rights 389
competition and consumer perception 90–92
sophistication impact 152
consumption tax, carbon tax as 111
Continental Shelf Convention 18
Convention on Biological Diversity (CBD), and rights of indigenous peoples 345
Convention on International Trade in Endangered Species (CITES) 347
cooperation mechanisms 12–13, 66, 158–9, 401, 518
Correa, C 225
Cosbey, A 137, 435, 476
Cossey, M 239, 244
‘cost-based’ subsidy rating system, abandonment of 134–5
cost-benefit analysis (CBA) of climate change regime participation 13
Cottier, T 9–30, 65, 67, 77, 78, 81, 196, 199, 253, 506
Covert, T 3
Crawford, J 336, 337, 339
Crosby, D 239
Cruciani, M 465
Cuba, intellectual property rights and clean technologies 207–8
Cullet, P 19, 34, 36, 39
Dai, Y 212
Darby, M 156
Das, K 41
Dasgupta, P 307–8
Daughbjerg, C 269
Davenport, C 2, 406
Davey, W-J 243
Davis, M 220, 343
Dawar, K 397
Dawson, M 376
De Cordoba, S 408
De Meester, B 189
De Melo, J 183, 300
de minimis support level, food security and agricultural trade 260, 266, 274, 275, 276–7
De Schutter, O 201
Deane, F 68
Delimatsis, P 1–5, 45, 148–80, 506, 512, 516
Delucchi, M 119
Demaret, P 81, 82, 84, 86, 87, 90
DeMestal, A 420
democratic change effects, international investment law 442–3
DeSadeleer, N 376, 388, 389, 390
Desmedt, A 104
Desta, M 238, 239
developing countries
absence of developing countries from WTO environmental goods agreement negotiations 291–3
biofuel production and Policy Coherence for Development (PCD) 270–71
China’s export strength comparison 293–4
consideration of special and differential rules, WTO environmental goods agreement 298
developed countries contribution to
capacity-building in 33
export credits and differential treatment, net
food-importing countries 261–2
lack of significant export prowess 293–4
least developed countries 208–9, 261–2,
265–6
technology support 204–5
and WTO GATT agreements 316–17
Dhar, B 41
Di Maria, C 308–9
'diagonal test’ in determining existence of de
facto discrimination 94–5
Diaz-Bonilla, E 276
Diebold, N 138
Diehl, A 484
differential treatment, carbon taxes, PPMs and
the GATT, national treatment 93–7
Diggelmann, O 60
Dijkstra, N 408
Dimopoulos, A 415–33, 448, 507
Dingwerth, K 149
direct and indirect taxes, distinction between
82, 83–4, 87–8
see also taxation
discrimination
arbitrary or unjustifiable discrimination
between countries where same
conditions prevail 104–6
between like products of different origins
95–6
‘diagonal test’ in determining existence of
de facto discrimination 94–5
domestic regulations, de jure or de facto
discrimination distinction 192–3
Disdier, A-C 153–4
dispute settlement
direct application in WTO Dispute
Settlement 41–4
foreign investment in renewable energies
483–4
interpretation of members’ rights and
obligations in WTO Dispute Settlement
44–8
investor-state see investor-state dispute
settlement (ISDS)
Trans-Pacific Partnership (TPP) and
Transatlantic Trade and Investment
Partnership (TTIP) 409–10
distortion-based view of subsidies 131, 142–3,
146
diversification of products, and sustainable
standard-setting 153–4
Doha Declaration see WTO Doha Declaration
Dolzer, R 417, 426, 444, 445
domestic regulations
climate change rules, effects of compliance
with 419, 427–8, 432
de jure or de facto discrimination
distinction 192–3
environmental cases, territory and
extraterritoriality 334–5
host state’s right to regulate 442, 454–5
production taxes, green paradox models and
international trade rules 321, 322–3
right to regulate, climate change, services
trade and GATS 191–3
and trade-restrictive effects 190
and Trans-Pacific Partnership (TPP) and
Transatlantic Trade and Investment
Partnership (TTIP) 402–4, 406
see also national treatment obligations;
sovereignty issues; state involvement
Donnelly, C 180
D’Orsi, M 472, 476, 477
Dürkop, M 84
Durán Medina, V 70
duty to protect 49–73, 506
climatiche change as common concern 65–7
duty to rescue 50
genocide and ‘never again’ promise 51–3
individual state’s duty to act 66–7
international community duty 53, 58
natural or environmental catastrophes 55
political will to apply the necessary
measures 54
precautionary principle and scientific
uncertainty 67, 72
responsibility to rebuild 54
root causes prevention 54
and state cooperation 66
state duty to protect its own population 53,
58, 59–60
states’ responsibility to prevent situations of
human suffering 54
states’ secondary responsibility to protect
international community 53
UN General Assembly Resolution A/60/L.1:
Limiting the Scope of Responsibility
56–8, 59–60
UN High-Level Panel on Threats,
Challenges and Change, More Secure
World 55–8, 64
duty to protect, responsibility to protect (R2P)
consequences 70–72
extraterritoriality issues 63–4, 66
human security 64
International Commission on Intervention and State Sovereignty (ICISS) Report 53–5, 58, 59, 61, 66
obligatory nature 61–2
origins 51–3
‘over-demandingness’ complaint 62–3
positive action requirements and human rights 62–3
reconceiving as duty to prevent, protect and rebuild 60–64, 65–7, 71
UN 2009 Report of the Secretary-General: implementing R2P 58–9, 61, 62, 63–5
duty to protect, WTO rules relating to climate change
border tax adjustments (BTAs) 69–70
disputed trade measures 69–70, 71
GATT Article XX, tariff or quantitative restriction measures 68–9
GHG-intensive imports, disincentives to trade in 69–70
legal trade measures 68–9
national GHG-emission standards, mandatory 70
process-production methods (PPM) issues 69, 70
Dworkin, M 144
Eckersley, R 343
economic incentives, climate change mitigation 509–10
Ecuador, environmentally-sound technologies and intellectual property 205–6, 216–17
Edenhofer, O 119, 125, 236
Edwards, R 475
‘effective competition’ standard 126–7, 128, 130–37
Ehri, D 94, 95, 239, 240, 250
Eichenberg, M 77, 78, 79, 80, 85, 93
Eichner, T 308, 310
Elgie, S 438
Elizalde, J 140–41, 142
emissions see GHG emissions
Energy Charter Treaty (ECT) 344, 447
energy efficiency
and carbon taxes and energy efficiency 307–10, 316, 320–21
EU Energy Efficiency Directive 359
Gains, and Jevons’ Paradox 312–14, 317
renewable energy see renewable energy services, and renewable energy 187
and substitution effects 313
energy as non-product related production and process methods (NPR PPMs) 79, 84–5, 87
energy security and WTO law 233–55, 507
Agreement on Subsidies and Countervailing Measures (ASCM) 238
energy sources, different physical characteristics and end-uses 235–6
energy-supply chains 252
future directions 251–3
import barriers 246–7, 248, 252
imports regulation 234, 237, 246–8, 252
Most-Favoured-Nation (MFN) Treatment 240, 243, 251
national treatment obligations and market access 239, 243–4, 248, 251
natural resources as non-tradable goods 238–9
natural resources and sovereignty 237–9, 251
natural resources as tradable goods 237–9
oil crises effects 233
Permanent Sovereignty over Natural Resources (PSNR) 237, 251
renewable energy tariffs 252
Schedules on Goods and Accession Protocols 240
State-trading enterprises (STEs) 241–2, 243, 251, 253
and sustainable development 234
third-party access to energy transportation facilities, concerns over 249, 252
transit regulation and GATT Article V 248–51, 252
transit State interests 235
UN Provisional Central Product Classification, services in international trade in gas and renewable electricity 254–5
World Customs Organization (WCO) Harmonised System 237–8, 250
energy security and WTO law, export restrictions
exporter-specific interests 235, 246
and protectionism 251–2
rights of way for the construction of infrastructures 245–6, 248–9, 250, 252
State-controlled entities and GATT Article XVII 241–3
tariffs and Schedules of Concessions 240, 247
third-party access to facilities 245
trade in goods and GATT regulation (Article XI:1) 239–40, 251
trade in services and GATS limitations 243–6
energy-supply mix, government’s definition of 138
environmental catastrophes, duty to protect 55
‘environmental good’ definition disagreements 408
Environmental Goods Agreement, WTO see WTO Environmental Goods Agreement
environmental protection and human rights 376–7
investor-state dispute settlement (ISDS) 419–20
significance of 366–7, 372–3
environmental services climate change, services trade and GATS 184–8, 191
considerations, WTO environmental goods agreement 299–300
environmental standards, host state’s right to set and change 454–5
environmentally preferable products (EPPs) 285–6
environmentally-sound technologies and intellectual property 205–6, 216–17
Epiney, A 95
Epps, T 70, 201, 407, 408
equitable principle of estoppel as general principle of international law 41–3
Espa, I 27
Estevadeordal, A 479
Esty, D 12
EU aviation emissions 25, 335–6, 342, 368–9, 380, 381–4, 514–15
Biofuels Directive 268–71
clean technologies and climate change 218–19
Environmental Goods Agreement with US 408–9
European Business and Technology Centre (EBTC), India 219
European Patent Office (EPO) and clean energy 218–19
EU–Canada CETA 420, 429, 449–50, 453, 480
EU–Canada FTA and climate mitigation 398, 404, 405, 406
EU–Peru FTA and climate mitigation 399, 404
EU–South Korea FTA and climate mitigation 399, 404, 406
food security policy 268–71
Fuel Quality Directive 269
Maastricht Guidelines on Violations of Economic, Social and Cultural Rights 62
multilateral environment agreements (MEAs) with global significance 395–6
organic food production 154–5, 159
Trans-Pacific Partnership (TPP) and Transatlantic Trade and Investment Partnership (TTIP) 398–402, 403–4, 409–10, 480
EU cases Ålands Vindkraft 362, 364–6, 367, 371, 385, 386, 387–8
Arcelor v European Parliament and Council 438
Association Vent De Colère v Ministre de l’Écologie 385
ATAA v Secretary of State for Energy and Climate Change 25, 336, 342–3, 368, 381, 382–3
Belgian Waste (Commission v Belgium) 363, 364
Billerud 384
Bund für Umwelt und Naturschutz Deutschland 376
Bundesrepublik Deutschland v Nordzucker 384–5
Cassis de Dijon 363, 386
ClientEarth 376
Commission v Belgium (Wallonian Waste) [1992] 386
Commission v Council [2005] 375
Commission v Denmark [1988] 378
Commission v Estonai [2012] 380
Commission v France [2005] 375
Commission v Greece [2004] 375
Commission v Ireland [2013] 375
Commission v Ireland [2013] 375
Commission v Latvia [2013] 380
Commission v Poland [2012] 380
Commission v Spain [2005] 375
Costa v Enel 250
Drax Power v Commission 380
Essent Belgium 362, 366, 371, 387–8
Germany v Commission [1987] 375

Panagiotis Delimatsis - 9781783478446
Downloaded from Elgar Online at 03/18/2019 08:39:17AM via free access
Germany v Commission [2007] 380
Iberdrola v Commission 380
Inter-Environnement Wallonie 375
Inuit Tapiriit Kanatami (Canada) v European Commission 340
Janecek 375
Keck and Mithouard 166
Kraaijeveld 375
Peter Sweetman 375
Plantanol v Hauptzollamt Darmstadt 459
Procureur de la République v Association de Défense des Bruleurs del’Huiles Usagées 363, 379
Rewe v Bundesmonopolverwaltung für Branntwein 387
Schrem 154
Seymour-Smith and Perez 95
Société Arcelor Atlantique 381
UK v Commission [2005] 380
Van Gend & Loos 376
Waddenzee 375
Wells 375
EU climate law and human rights 375–93, 507
2050 roadmap for low carbon economy 361, 377–8
aviation emissions and EU ETS 380, 381–4
carbon capture and storage (CCS) 377
Charter for Fundamental Rights 390
citizen empowerment 389
Climate and Energy Package 377
environmental protection 376–7
free movement of goods principles 386–7
and global warming rate 379
greenhouse gas (GHG) emission reduction goals 377–85, 391–2
healthy environment and human rights 388–92
internal market policy and environmental policy concerns 378–9
market empowerment 376–88
preferential treatment over imports 387
private self-interest concerns 378–9
proportionality test 387–8
Renewable Energy Directive 385–8
rule of reason application 386–7
second and third generation rights 390
EU climate law and human rights, Emissions Trading Scheme (ETS) 377, 378–85
annulment actions 380
Directive validity challenges 381–4
excess emissions penalty 384–5
harmonization and discretion factors 380–81
monitoring, reporting and verification obligations 384
EU climate law and WTO 352–74, 507
2020 Strategy 357–8, 358–9, 360, 368
2050 roadmap for low carbon economy 361, 377–8
biofuel provisions and food security 360, 369–70
border carbon adjustments 368
carbon capture and storage (CCS) 359, 361
Climate and Energy Package 358–61
climate law and internal market law relationship 362–7
Directorate General for Climate Action (DG CLIMA) 356–7
Emissions Trading Scheme (ETS) (cap and trade) 359–60, 367–9, 372
Energy Efficiency Directive 359
environmental protection objective, significance of 366–7, 372–3
EU environmental policy 353–4
European Climate Change Programme (ECCP) 358
free movement of goods and proportionality test 364, 365–6
future directions 361
GHG emissions reduction 355, 361
global strategy for sustainable development 355
green certificates (Sweden) 365
integrationist policies 356–7, 371–3
and Kyoto Protocol obligations 355, 358, 359
land-based sustainability criteria and GATT Article XX 370, 372–3
legislative and policy frameworks 353–61
MFN treatment in respect of ‘like products’ 369–70
process and production methods (PPMs) 370
proportionality test 371
renewable energy sources increase 357–8, 360–61, 364, 365, 366
rule of reason application and climate protection 363, 366
Seventh Environment Action Programme (EAP) 356–7
substantive EU climate law 367–71
528 Research handbook on climate change and trade law

sustainable development strategy (SDS) 354–5, 371
WTO and renewable energy mandate 366, 369–71
WTO, Technical Barriers to Trade (TBT) Agreement 369, 370–71, 372
European Climate Change Programme (ECCP) 358
European Convention on Human Rights 390–91
European Court of Human Rights
Brincat v Malta 391
Budayeva v Russia 391
Fadeyeva v Russia 391
Grimkovskaya v Ukraine 391
Kyrtatos v Greece 391
Tatar v Romania 391
European Free Trade Association (EFTA) court, EFTA Surveillance Authority v Norway 387
Evans, G 60
evidentiary rules and precautionary principle, investor-state dispute settlement (ISDS) 429–32
exports
border tax adjustments see carbon credit mechanisms and export border tax adjustments, WTO legal constraints
China’s export strength compared to other developing countries 293–4
and energy security see energy security and WTO law, export restrictions
food security and agricultural trade 261, 262, 264, 265, 273
imports and exports, call for identical provisions, and carbon taxes 85–7
WTO Agreement on Agriculture 261–2
WTO environmental goods agreement 293–4, 295–6
see also imports
expropriation effects 419, 438–40, 449, 452, 458
extraction costs and different classes of exhaustible resources 310
extraterritoriality see territory and extraterritoriality
fair and equitable treatment
international investment law 440–43, 449–50, 458–9
investor-state dispute settlement (ISDS) 419
Fair Labour Association (FLA) 157
Fairtrade International (FLO) 157, 158
Fan, S 268
Farid, M 2
Farrell, J 152
Fauchald, O 91, 463, 466
Feenberg, A 151
Feldman, M 421
Filis, A 370
financial issues
‘financial contribution’ and subsidy regulation 122–4
financial independence, sustainable standard-setting 157, 160
financial support programs 512
government financial contributions 123–4, 125–6
Green Climate Fund and IP finance 212, 226
resource availability, food security and agricultural trade 262
Fink, C 498
Fischer, C 310, 311
Fishman, J 14
Fleurke, F 375–93, 507
Fontagné, L 154
food aid 262, 264, 265
food miles, labelling for 332
food security and agricultural trade 256–78, 507
biofuel production effects and sustainability 268–70
biofuel production and Policy Coherence for Development (PCD) in developing countries 270–71
biofuel provisions, EU climate law 360, 369–70
climate change 267–71
EU policy 268–71
Food Aid Convention 262
Global Food Safety Initiative (GFSI) 152–3
food security and agricultural trade, Bali negotiations 271–7
Agreement on Subsidies and Countervailing Measures 274
export competition 273
Green Box policies 273
peace clause 273–4
public stockholding for food security purposes 273–4
Special Safeguard Mechanism by Small Vulnerable Economies 271–2
stocktaking exercise 272
tariff quotas 273
Trade Facilitation Agreement 275
work programme 274–5
food security and agricultural trade, Doha Declaration 263–7
Aggregate Measurement of Support (AMS) commitments 265–6
food aid and export subsidy commitments 264, 265
Food Security Mechanism 263
Green Box exemptions 266
international food stockholding system consideration 264
market access provisions 265
rural development and poverty alleviation promotion 266
Safe Box and food aid transactions in emergency situations 265
Special Products designation 265, 267, 274
Special Safeguard Mechanism and tariff lines 265, 266–7, 272, 274
food security and agricultural trade, WTO Agreement on Agriculture 257–63
Aggregate Measurement of Support (AMS) 258–60, 262–3, 274, 275–6
Blue Box policies and production limitations 262–3, 266
de minimis support level 260, 266, 274, 275, 276–7
domestic support measures, exemption from reduction commitment 260–61
export credits and differential treatment of the least developed and net food-importing countries 261–2
food aid and export subsidies 262
Green Box exemptions 260–61, 263
international financial institutions, resource availability 262
Least-Developed and Net Food-Importing Developing Countries (NFIDC), decisions on measures concerning 261–2, 265–6
market access commitments 257–8, 262–3
market price support 258–60
non-exempt measures 259–60
special safeguard measures 258
tariffication requirement exceptions 258, 262
foreign investment, state treatment, and international investment law 448–50
foreign investment in renewable energies 462–501, 507
biomass applications 467
and climate change mitigation 465–9
disadvantages 478–9
energy pathways 466
fossils fuels and GHG emissions 462
green economy and protectionism concerns 468
international treaties ‘Spaghetti Bowl’ 484–5
renewable energy types 465–7
Rio + 20 and global shift to green industrial growth 467–9
solar thermal applications 467
UN Renewable Energy for All initiative 468
see also international investment law and climate change initiatives, relationship between; investor-state dispute settlement (ISDS)
foreign investment in renewable energies, NAFTA as TRIMS Plus agreement 480–84
dispute resolution 483–4
local purchase of goods or services 492–5
research and development guidelines 489–92
reservations in respect of measures 483
tribunals finding breach of Article 1106 488–92
tribunals rejecting claim of breach of Article 1106 488–92
foreign investment in renewable energies, performance requirements and BITs 470, 472, 480–84, 492–9
categories 470–71
foreign exchange balancing requirements 473
GATT and investment-related measures 473 and incentives 469
international arbitration 486–95
local content requirements 473, 475
most-favoured nation (MFN) treatment 495–9
normative framework under investment treaties 479–85
and principle of national treatment (NT) 469, 492–5
prohibited 482–3
quantitative restrictions prohibitions 474–5
trade balancing measures 473
trade in goods and services contrary to GATT and GATS, prohibition of 469–70, 474–5
trade litigation on 474–7
530 Research handbook on climate change and trade law

and WTO Trade-Related Investment Measures Agreement (TRIMS) 469–70, 472–7
and WTO Trade-Related Investment Measures Agreement (TRIMS), TRIMS Plus obligations 477–99
Forest Stewardship Council (FSC) 157, 158, 179
Fortese, F 405
fossil fuels 3, 314–16, 319–20, 332, 335, 400–401, 462
see also GHG emissions
Foster, C 431
Fouilleux, E 149
Fraser, J 226
free movement of goods principles 364, 365–6, 386–7
free trade of goods and products, green paradox models 315–17, 318–19, 320
free-riding concerns 296–7, 397
French, D 20
Froeb, L 141
Gaillard, E 427, 485
Gallagher, K 212
Gantz, D 435
Garnaut, R 200, 396
GATS see WTO GATS (General Agreement on Trade in Services)
GATT see WTO GATT (General Agreement on Tariffs and Trade)
Gault, J 235
Gearty, C 390
Geloso Grosso, M 183
George, C 395
geothermal applications 467
Gerlagh, R 308, 309, 310
GHG emissions
aviation emissions, EU 25, 335–6, 342, 368–9, 380, 381–4, 514–15
Emissions Trading Scheme, EU see EU climate law and human rights, Emissions Trading Scheme (ETS)
EU climate law and human rights 377–85, 391–2
foreign investment in renewable energies 462
GHG-intensive imports, disincentives to trade in 69–70
green paradox models and international trade rules 304–6, 311–12, 318–22, 324

Paris Agreement COP21 2–4, 34–5, 206, 218, 219, 334, 379, 505–6
reduction, EU climate law and WTO 355, 361
territory and extraterritoriality 332–4, 342 voluntary sustainability standards (VSS) 159
WTO environmental goods agreement, plurilateral approach 292–3
WTO legitimacy and climate change 10, 19, 20, 24
see also climate change; fossil fuels
Glanville, L 61
Global Food Safety Initiative (GFSI) 152–3
Global Forum for Food and Agriculture 277–8
Global Partnership for Good Agricultural Practice (GlobalG.A.P.) 157, 178, 179
Global Patent Pool for clean technologies 207
global warming see climate change
Goh, G 84
Goldenberg, S 216
Gómez-Palacio, I 244
Gordon, K 420, 446, 447, 448, 456
Gore, A 213, 215
Gourgourinis, A 31–48
Gover, K 330, 348
government financial contributions 123–4, 125–6
see also financial issues
Grabosky, P 384
Grafton, R 308, 310
Green, A 70, 93, 201, 407, 408
Green Box policies 260–61, 263, 266, 273
green certificates (Sweden) 365
Green Climate Fund 212, 226
green industrial growth 467–9
green innovation 223–4, 226
see also clean technologies
green paradox models and international trade rules 302–25, 507
carbon capture and storage (CCS) 305, 321–2, 323
carbon emissions, alternative policies to mitigate 318–22
carbon leakages 309–10
carbon taxes and energy efficiency 307–10, 316, 320–21
climate change problems and carbon emissions 304–6
command-and-control of emitted carbon quantities 318–19
delayed policy models 316
domestic production taxes 321, 322–3
energy efficiency implementation 317
energy policies, inclusion of other 311
extraction costs and different classes of exhaustible resources 310
fossils fuels, competitive pressure on 314–16
global climate warming effects 304–5
governance of green paradox phenomena 314–22
increased emissions, sources of 311–12, 324
inevitability concerns 322–5
Jevons’ Paradox and energy efficiency gains 312–14, 317
Khazzoom-Brookes Postulate on energy efficiency improvements 313
mainstream taxonomies 308–9
policies to support backstop technologies 309, 310–11, 324
seemal causes of green paradox phenomena, avoidance of 314–16
sources of green paradox phenomena 306–14
subsidies to fossil fuel producers 319–20
substitution effects and energy efficiency 313
tax mechanisms, alternative 320–21, 322–3
taxonomies, alternative 309–11
taxonomies of green paradoxes 306–7
 technological challenges 321–2, 323
transboundary or cross-temporal policy coordination, lack of 316–17
WTO GATT agreements and developing countries 316–17
WTO GATT agreements and free trade of goods and products 315–17, 318–19, 320
WTO GATT agreements and tax policy 321
green standards, evolution of 149–61
see also sustainable standard-setting
Greene, A 403
greenhouse gas emissions see GHG emissions
Greening, L 313
Greenstein, S 152
Griller, S 84
Grobbeelaar, S and S 214
Grosso, M 183, 188, 197
Gruszczynski, L 431
Gudgeon, K 479
Gulliver, J 134
Gunningham, N 384
Gunst, A-J 249
Guzman, A 469, 484

Hachez, N 153
Haghighi, S 233, 236, 241
Harvey, R 293–4
Handl, G 337
Hannah, E 158
Hardin, G 12
Haritz, M 19
Harris, P 12
Harrison, J 421
Harstad, B 308, 310
Hawke, L 33
Headey, D 268
Heal, G 307–8
Held, D 209
Henkin, L 52
Henry, C 206
Hepburn, J 490
Hertel, M 32, 44
Hestermeyer, H 463, 474, 475
Hey, E 33, 36–7
Hickman, L 229
Higgins, R 237
Higgins, W 172
Hilman, J 47, 77, 78, 79, 80, 81, 83, 93, 94, 96, 97, 104, 106
Hilpold, P 21, 66
Hilson, C 356, 390
Hoe Lim, A 181–99, 507
Hoel, M 308, 310, 311
Hoepfner, M 15
Hoffman, A 439
Hogan, W 128–9, 134–5, 136, 144
Holm, H 20
Holzer, K 26, 47, 78, 79, 80, 118
Honkonen, T 36, 40
Horn, H 89, 91, 93, 132, 339
Horn, L 14
Hotelling, H 307, 310
Houthakker, H 133
Hovenkamp, H 141
Huse, R 25, 29, 96, 161, 172, 196, 286, 293, 296, 338, 341
Hudec, R 88, 89, 91, 92, 95
Hufbauer, G 47, 298, 299
human rights 21–2, 62–3, 64, 102–5, 227–8
and EU climate law see EU climate law and human rights
ICAO (International Civil Aviation Organization) 25, 368, 515
ICISS (International Commission on Intervention and State Sovereignty) Report 53–5, 58, 59, 61, 66

Index 531
532 Research handbook on climate change and trade law

ICJ (International Court of Justice)
Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons 18
Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Uganda) 237
Barcelona Traction 15–16
Bosnia Herzegovina v Serbia 63, 71
Corfu Channel 19
Gabčíkovo-Nagymaros Project (Hungary/Slovakia) 31, 36, 234–5
Namibia (Legal Consequences) Advisory Opinion 99
North Sea Continental Shelf 15
Pulp Mills on the River Uruguay (Argentina v Uruguay) 31
on responsibility to protect and duty of conduct 63
on transboundary environmental harm 18–19
ICSID (International Centre for the Settlement of Investment Disputes) 417–18, 421, 426, 427, 479–80, 481
ADF v US 486
Alpha v Ukraine 419
Arif v Moldova 498
Bayindir Insaat Turizm Ticaret Ve Sanayi v Pakistan 419, 442
Biwater Gauff v Tanzania 423–4
Cargill v Mexico 489
CMS v Argentine Republic 427–8, 441, 458
Corin Products v Mexico 486
Desarrollo de Santa Elena v Costa Rica 425, 439
Duke Energy Electroquil v Ecuador 442, 445, 456, 459
Enron v Argentine Republic 441
Feldman Karpa v United Mexican States 443
Fireman’s Fund v United Mexican States 439
Genin v Estonia 442
Impregilo v Argentina 496
Inceyva Vallisoleta v El Salvador 419
Kardassopoulos v Georgia 419
Lemire v Ukraine 492–5
Mobil and Murphy v Canada 489–92, 495
MTD v Chile 425, 498
Parkerings-Compagniet v Lithuania 442
Piero Foresti v South Africa 423, 424
Quiborax v Bolivia 419
Salini and Italstradale v Kingdom of Morocco 417
SGS v Philippines 450
Siemens v Argentine Republic 443, 450
Tate & Lyle Ingredients Americas v Mexico 488–9
Tecmed v Mexico 430, 439, 441, 450
Tokios Tokelès v Ukraine 419
Tso Yap Sun v Peru 496
Vivendi v Argentina 422, 424, 442, 450
ICTSD (International Centre for Trade and Sustainable Development) 223
IEA (International Energy Agency) 407
IFOAM (International Federation of Organic Agriculture Movements) 158, 159
ILA (International Law Association) New Delhi Declaration on Sustainable Development 35–6
ILC (International Law Commission), Articles on Responsibility of States for Internationally Wrongful Acts 43
ILO (International Labour Organization), Indigenous and Tribal Peoples in Independent Countries 344–5, 347, 348, 349
imports
energy security and WTO law 234, 237, 246–8, 252
and exports, call for identical provisions, and carbon taxes 85–7
GHG-intensive imports, disincentives to trade in 69–70
import substitution 112, 121
imported like products 93–4
preferential treatment 387
WTO Agreement on Agriculture 261–2, 265–6
WTO legitimacy and climate change 28, 29
see also exports
India
European Business and Technology Centre (EBTC) 219
R&D and clean technologies 210–12
indigenous peoples 209, 343–9
inevitability concerns, green paradox models 322–5
infrastructure, rights of way for construction of, and energy security 245–6, 248–9, 250, 252
innovation prizes 226
intellectual property, and trade wars see trade wars in the TRIPS council
International Arbitral Awards, *Texaco Overseas Petroleum Co v Libyan Arab Republic* 18
international arbitration, foreign investment in renewable energies 486–95
international investment law and climate change initiatives, relationship between 434–61, 507
and BITs 436, 446, 447, 448–9, 453, 454–5
climate change initiatives compatibility 446–56
climate change initiatives, discouraging states from reneging on 456–9
climate mitigation actions 438, 439–40
country-specific reservations 452–3
democratic change effects 442–3
exclusions limiting application of investment treaty obligations 450–53
expropriation without compensation 438–40, 452, 458
fair and equitable treatment 440–43, 449–50, 458–9
general exceptions modelled on Article XX GATT 450–52
host state’s right to regulate in the public interest 442
host state’s right to set and change environmental standards 454–5
indirect expropriation 449
international regime for climate change 437–8
national treatment obligation 443–5, 451–2, 459
potential conflicts 437–46
private sector investment effects 456–8
rules giving primacy to other agreements 453–4
state treatment of foreign investors 448–50
states’ ‘police power’ to regulate 439–40, 451–2, 458
types of businesses treated ‘in like circumstances’ 443–5
UNFCCC and Kyoto and Doha commitments 437–8
see also foreign investment in renewable energies; investor-state dispute settlement (ISDS)
international law 16–22, 41–3, 337–8, 339–40
see also WTO headings
International Organic Accreditation Service 158
international standardization 151, 174–7, 299
international trade rules, and green paradox models see green paradox models and international trade rules international treaties ‘Spaghetti Bowl’ 484–5
investment law, and climate change initiatives see international investment law and climate change initiatives, relationship between
investor-state dispute settlement (ISDS) 415–33, 507
access to the documents by third parties 423–4
and BITs 417–18, 419, 421
climate change law application 418–19, 426–9
compensation assessment 424–6
domestic climate change rules, effects of compliance with 419, 427–8, 432
environmental protection provisions 419–20
evidentiary rules and precautionary principle 429–32
fair and equitable treatment (FET) standard breach 419
and ICSID Convention 417–18, 421, 426, 427
identification of material jurisdiction (rationie materiae) 417–20
indirect expropriation effects 419
and international climate change law 427
international investment law scepticism effects 416
interpretative methods 428–9
jurisdiction of investment tribunals 417–20
jurisdiction rationie personae 421–4
legality of environmental measures assessment, and third-party submissions 422
limited mandate under arbitration agreement 418–19
remedies to 424–6
scope of 417–20
systemic interpretation of international law and Vienna Convention on Law of Treaties (VCLT) 428
third party participation and amicus curiae 421–4
and UNCITRAL Arbitration Rules 422, 423
534  Research handbook on climate change and trade law

see also foreign investment in renewable energies; international investment law and climate change initiatives, relationship between
IPCC (Intergovernmental Panel on Climate Change) 1, 226, 304
IRENA (International Renewable Energy Agency) 462, 500
ISEAL (International Social and Environmental Accreditation and Labelling) Alliance 158
ISO standards 157, 159, 161, 163, 167, 173–4, 175, 179
ITLOS (International Tribunal for the Law of the Sea) 38–9

Jackson, J 81, 82
Jacobs, F 376
Jacobson, M 119
Jacobsson, B 150
Jaeckel, A 14
Jamieson, S 479
Jans, J 354
Jansen, M 25
Japan, clean technology investments and light-emitting diodes (LED) 221–2
Javadekar, P 212
Jensen, K 342
Jensen, S 308
Jevons’ Paradox and energy efficiency gains 312–14, 317
Johnson, J 55
Johnson, L 432, 435
Johnson, O 120
Johnston, A 386, 388
Jones, A 141

Karachalios, K 203–4, 218
Karni, E 156
Kasteng, J 298, 299
Kaufmann, C 80, 98
Kaul, J 11, 13, 19
Kendall, K 77, 82
Kennedy, D 135
Kennedy, K 475
Kerstin, M 60
Khatun, F 294, 295
Khazzoom-Brookes Postulate on energy efficiency improvements 313
Khor, M 204, 268
Kill, T 428
Kim, R 36
Kinnear, M 486

Kirgis, F 15
Kirk, A 405
Kirwin, J 409
Kiss, A 17, 36
Klein, N 201–2, 204, 209, 229
Knahr, C 419
Knight, E 212
knowledge (technology) transfer 24–5, 29, 183, 185, 214, 217, 226–7

see also technology
Köhler, E 13
Koivurova, T 14
Kolsky Lewis, M 282, 332
Kolstad, C 509
Kono, D 161
Konoplyanik, A 233
Kontolemis, Z 14
Kopela, S 42
Koroma, A 31
Kotschwar, B 479
Krajewski, M 191, 197, 457
Krämer, L 376
Kretschmer, T 151
Kulaçoglu, V 509, 512
Kulick, A 431
Kulovesi, K 67, 359, 361, 369, 457
Kuntze, J-C 119
Kyoto Protocol 1, 2, 23, 201–2, 319, 323, 400, 437–8, 454
common but differentiated responsibilities 20, 34, 41–3, 47, 334
and EU climate law 355, 358, 359

see also WTO headings
labelling
for ‘food miles’ 332

Ladly, S 32, 44
Lakhani, A 462, 479
Lamy, P 200–201, 253
Lane, E 202, 223
Lang, A 137
Langille, J 161, 341
Lanz, R 182
Larbprasertporn, P 32
Latif, A 223–4
Lau, C 93
Leal-Arcas, R 14, 29, 67, 200, 358, 370, 396, 397
least developed countries 208–9, 261–2, 265–6
see also developing countries
Index 535

WTO Agreement on Agriculture 257–60, 262–3
market empowerment, and human rights 376–88
market-correcting measures as subsidies 130–47
Marrakesh Agreement 37–8
Marshall, A 143
Marx, A 153, 158
Maskus, K 224–5
Mathew, A 408
Matteotti-Berkutova, S 13, 17, 18
Matthews, A 275, 276
Mattli, W 150
Maupin, J 496
Maurer, A 182
Mavroidis, P 25, 89, 91, 93, 132, 137, 164, 245, 339, 476
MEAs (multilateral environmental agreements) 23, 24, 34, 35, 40–48, 282, 395–6, 406–7, 518
see also WTO environmental goods agreement, plurilateral approach
Medema, S 144
Meidinger, E 157
Melnik, S 233–55, 507
Meltzer, J 369
Menell, P 202, 222–3
Merkouris, P 45
Meyer, T 332
MFN (most-favoured nation) treatment carbon taxes, PPMs and the GATT 97–8
climate change, services trade and GATS 186, 188, 190, 191, 192, 195–6
energy security and WTO law 240, 243, 251
foreign investment in renewable energies, performance requirements 495–9
‘like products’, EU climate law 369–70
WTO environmental goods agreement 282, 283, 284, 295–300
see also national treatment obligations
Michielsen, T 309–10
Miles, K 434–5, 438, 444
‘missing money’ and liberalized market
compensation problems 128–9
see also liberalization effects
Mitchell, A 332, 369, 370–71
Mitchell, T 3
Mittal, S 463
Modi, N 210
Moerenhout, T 119
Moffa, A 12

liberalization effects 128–9, 187, 197–8, 297–300, 344–5, 517–18
Liberti, L 425
licensing, compulsory 205, 206, 208, 226
like circumstances, types of businesses treated in 443–5
like products 79, 86, 88–97, 113–14, 168–70, 369–70
Lininger, C 111
‘list-based’ approach and tariff reduction 286–7, 297–8
Lo, C 395, 397, 401
local content requirements (LCRs) 120–21, 473, 475
local purchase of goods or services, foreign investment in renewable energies 492–5
Loconto, A 149
Low, P 25, 26, 28, 44, 45, 47, 78, 79, 82, 83, 93, 94, 96, 97
Loya, T 151
McAusland, C 47
McCray, J 438
McElroy, M 1
McKibben, B 216
McLeod-Kilmuray, H 376
McMahon, J 256–78, 507
Maertens, M 154
Magraw, D 33
Malloy, K 135
Maniruzzaman, A 32
Mann, H 485
Marboe, I 425
Marceau, G 24, 93, 105, 161, 239, 253, 345
Marin-Duran, G 420
Marine Aquarium Council (MAC) 158
Marine Stewardship Council (MSC) 157
market access 145–6, 165, 190, 191, 265
national treatment obligations 239, 243–4, 248, 251
organic food 154–5, 156, 159
Research handbook on climate change and trade law

Mohan, V 212
Molinuevo, M 498
monitoring mechanisms 160, 384, 514–17
Montemayor, R 275, 276–7
Moon Agreement 17
Morosini, F 32, 37, 44
Mortenson, J 485
movement of natural persons 189
Muchlinski, P 244
Muir, E 388, 391
Muir, J 497
multilateral negotiations deadlock 285–9
Munito, D 499–500
Munro, J 394–411, 507
Murase, S 40
Murillo, J 17
Murrell, L 135

Nadakavukaren Schefer, K 16, 21, 49–73, 506
Nartova, O 184
national treatment obligations
and carbon taxes see carbon taxes, PPMs
and the GATT, national treatment
and foreign investment in renewable
energies 469, 492–5
international investment law and climate
change initiatives 443–5, 451–2, 459
and market access 239, 243–4, 248, 251
and MFN (most-favoured nation) treatment
see MFN (most-favoured nation)
treatment
see also domestic regulations; sovereignty
issues; state involvement
nationally determined contributions (NDCs),
Paris Agreement 505–6
natural persons, movement of 189
natural resources and sovereignty 237–9, 251
Netherlands, Urgenda 334–5, 342, 391–2
Neven, D-J 245
New Zealand
indigenous peoples and preferential trade
agreements 344
Royal Forest and Bird Protection Society v
Buller Coal 335
Newcombe, A 419, 451, 496, 498
Newman, E 59
Nielsen, L 463, 474
Nimubona, A 407–8
non-governmental body involvement,
sustainable standard-setting 178–9
non-product related production 79, 84–5, 87,
92–3, 94
non-product-related production 26, 29
non-tariff barriers, inclusion of, WTO
environmental goods agreement 298–9
North American Free Trade Agreement
(NAFTA) 202, 238, 452
Chemtura Corporation v Canada 428
environment obligations 395
Ethyl v Canada 416
Metalclad Corporation v The United
Mexican States 416, 425
as TRIMS Plus agreement see foreign
investment in renewable energies,
NAFTA as TRIMS Plus agreement
Obama, B 215, 216, 218
O’Brien, J 78, 81
OECD
Better Policies for Development 271
FTAs and environmental issues 396–7
oil crises effects, energy security 233
Okediji, R 224–5
Okubo, A 92
Oliveira Martins, J 308
Olson, M 11
Oppenheim, L 20
organic food production 154–5, 156, 158, 159
Ortino, F 95
Ortiz, F 464, 499
Otker-Robe, I 12
‘over-demandingness’ complaint, duty to
protect 62–3
Pakistan, Leghari v Federation of Pakistan
391–2
Pal, R 137
Palese, B 209
Paradell, L 496, 498
paradox, green paradox models see green
paradox models and international trade
rules
Pardo, A 13, 15
Paris Agreement COP21 2–4, 34–5, 206, 218,
219, 334, 379, 505–6
Partain, R 302–25, 507
patents 223–4, 226
see also trade wars in the TRIPS council
Pattberg, P 149
Paulsson, J 418
Pauwelyn, J 42, 45, 78, 79, 80, 83, 84, 88–9,
94, 96, 97, 99, 102, 106, 347, 428
Payosova, T 9–30, 506
PCA (Permanent Court of Arbitration), Allard
v Barbados 418
Index 537

PCIJ (Permanent Court of International Justice)

Free Zones of Upper Savoy and the District of Gex 447

SS Lotus 338, 447

peace clause, food security and agricultural trade 273–4

PECF (Programme for the Endorsement of Forest Certification) 157

Peel, J 33, 34, 36

Peeters, M 384

performance requirements, foreign investment in renewable energies see foreign investment in renewable energies, performance requirements

Permanent Sovereignty over Natural Resources (PSNR), energy security and WTO law 237, 251

Perrez, F 18

Peru

EU–Peru FTA and climate mitigation 399, 404

US–Peru FTA 403–4

Peters, A 52, 60, 63, 64, 66, 67

Petersen, L 405

Petersmann, E 96, 415

Pethig, R 308, 310

Pietro, D 496

Pigou, A 143–4

Pigouvian producer tax suggestion 111

Pirani, S 233

plurilateral approach see WTO environmental goods agreement, plurilateral approach

Pogoretskyy, V 233–55, 507

Pohl, J 420, 446, 447, 448, 456

Polaires Maduro, M 388

Polanco Lazo, R 70

Polanyi, K 132

Poli, S 364

policies to support backstop technologies, green paradox models 309, 310–11, 324

policy frameworks, EU climate law and WTO 353–61

policy tools, climate change mitigation and WTO 509–10

Polimeni, J 312

Poretti, P 194, 195

Posner, R 141

Potts, J 154, 156, 159, 370

poverty alleviation and food security 266

Powers, S 52

PPMs (processes and production methods) 24–5, 26–7, 69, 70, 118, 167–71, 370

and carbon taxes see carbon taxes, PPMs and the GATT

precautionary principle 38, 67, 72, 429–32

preferential tariffs 288

see also tariffs

Prest, J 119

pricing mechanisms, climate change mitigation 510

Prislan, V 479

private action and voluntary sustainability standards (VSS) 177–9

private sector

investment effects 456–8

public–private cooperation 131–4, 138, 142–3, 150–51

private self-interest concerns, and human rights 378–9

‘project-based’ approach and tariff reduction 287–8

proportionality test 364, 365–6, 371, 387–8

protection, duty see duty to protect

protectionism concerns 89–90, 93–4, 95, 101, 251–2, 468

public domain suggestions 226

see also trade wars in the TRIPS council

public interest, host state’s right to regulate in 442

public morals exception, territory and extraterritoriality 341–2

public stockholding, food security and agricultural trade 266, 273–4

public–private cooperation 131–4, 138, 142–3, 150–51

Puig, S 486

Puth, S 81, 84, 87

Qatar Petroleum, and state involvement in gas extraction 241–2

Qin, D 304, 305

quantitative restrictions

foreign investment in renewable energies 474–5

WTO rules relating to climate change 68–9

Quick, R 93, 98

‘race to the bottom’ concerns, Trans-Pacific Partnership (TPP) and Transatlantic Trade and Investment Partnership (TTIP) 402–4

Radi, Y 495

Ragwitz, M 457

Rainforest Alliance/Sustainable Agriculture Network (RA-SAN) 158
538  Research handbook on climate change and trade law

Rajamani, L 36
Ramnewash-Oemrawsingh, S 391
Ramos, D 505–18
ratione materiae, investor-state dispute settlement (ISDS) 417–20
ratione personae, investor-state dispute settlement (ISDS) 421–4
REDD+ and carbon credits 334, 343
Redgwell, C 40
Regan, D 96, 338
Reichman, J 226
Reid, E 352–74, 384, 386, 507
Reisman, M 52
renewable energy 99, 187, 212–13, 252, 332
EU climate law 357–8, 360–61, 364, 365, 366, 369–71
and foreign investment see foreign investment in renewable energies
see also ‘energy’ headings
Rennkamp, B 214
research and development 210–12, 214, 226–7
see also trade wars in the TRIPS council
responsibility to protect (R2P)
and duty to protect see duty to protect, responsibility to protect (R2P)
WTO legitimacy and climate change 21–2, 506
Revesz, R 333
Reyna, J 188
Rimmer, M 200–229, 507
Rio Declaration on Environment and Development 20, 33–4, 38, 39, 336–7, 467–9
Ritter, H 309
Roberts, A 429, 478
Rockström, J 379
Rodrik, D 145
Roessler, F 243
Roht-Arriaza, N 151
Romer, P 313
Rubini, L 129, 130, 137
Rubins, N 485
Ruddigkeit, D 78, 80, 85, 98
rule of reason application, EU climate law 363, 366, 386–7
Russia, Gazprom and State involvement in gas extraction and trade 241
Rwanda, international community inaction (1994) 51–2
Ryngaert, C 337, 338
Safe Box and food aid transactions in emergency situations 265
SAI (Social Accountability International) 157, 158
Salacuse, J 436, 478
Salant, S 310, 311
Salpukas, A 134
Salzman, J 298, 322
Samuelson, P 11
Sands, P 17, 21, 33, 34, 36
Sarnoff, J 202
Sauvé, P 188, 194, 195
Schenk, L 12
Schill, S 419, 427, 433, 434, 460, 496, 497
Schlagenhöf, M 84
Schoenbaum, T 93
Schopf, M 309
Schott, J 497
Schreuer, C 417, 426
Schreuerer, C 444, 445
Schrijver, N 479
Schumpeter, J 132
Schurmans, M 39
Schwartz, B 487
scientific uncertainty 67, 72, 430
Scott, J 32, 333, 339, 341–2, 369
security, energy see energy security
Seddon, J 150
Selivanova, Y 241, 250
Sell, M 23, 26
Serbia, NATO involvement (1999) 52
Serkin, C 425
services trade, and GATS see WTO GATS
Shariff, N 77, 78, 81
Shasikant, S 204
Shelk, J 136
Shelton, D 36, 391
Shihata, I 480
Shim, R 463
Shue, H 50, 62
Simcoé, T. 152
Simma, B 428
Sims, R 268
Singer, J 131
Singh Ghaleigh, N 380
Smagadi, A 14
Smith, F 153, 160
Snidal, D 150, 151
Sobel, D 63
social aspects of goods production 168
social cost theory, subsidy regulation and feed-in tariffs 133–4, 135, 143–4
solar thermal applications 467
Solomon, I 227–8
Somsen, H 390
Somsen, J 376
Soprana, M 194, 195
South Africa, R&D and technology transfer 214
South Korea, EU–South Korea FTA and climate mitigation 399, 404, 406
sovereignty issues 17–19, 237, 237–9, 251, 404, 405
see also domestic regulations; national treatment obligations; state involvement
special safeguard measures, food security and agricultural trade 258, 265, 266–7, 271–2, 274
Spracker, S 395
Spulder, D 158
Staden, A 478
standard-setting, sustainable see sustainable standard-setting
Stango, V 152
state involvement
and duty to protect 53, 54, 58, 59–60, 66–7
energy security 241–3, 251, 253
international investment law 439–40, 442, 448–50, 451–2, 458
investor-state dispute settlement see investor-state dispute settlement (ISDS)
sustainable standard-setting 150–51
see also domestic regulations; national treatment obligations; sovereignty issues
Steenblik, R 133, 183, 188
Steinbach, A 388
Stephens, T 421
Stern, N 396
Stewardson, R 81, 82, 84, 86, 87
Stiglitz, J 206
Stocker, T 304, 305
Stocker, W 16
Stockholm Declaration 33
Stone, C 21, 36
Stumpf, C 90
subsidies
carbon credit mechanisms and export border tax adjustments 110–11, 112–14, 117–18
definition 110–11, 117–18, 121–3
food security and agricultural trade 262, 264, 265, 274
fossil fuels 3, 319–20, 332, 400–401
subsidy regulation and feed-in tariffs, WTO 119–47, 506, 507
competitive bidding role 144–5
‘cost-based’ rating system, abandonment of 134–5
distortion-based view of subsidies 131, 142–3, 146
‘effective competition’ standard 126–7, 128, 130–37
feed-in tariffs as subsidies, declassifying 121–9, 507
‘financial contribution’ category list 122–3
‘financial contribution’ or ‘price support’, FIT as 123–4
functioning market standard as alternative 145–6
government loan as financial contribution 125–6
government purchase of goods as financial contribution 123–4, 126
government’s definition of energy supply-mix 138
Hourly Ontario Energy Price (HOEP) as benchmarks, concerns over 127–8, 146
‘import substitution’ subsidies prohibition 121
judicial economy regarding ‘income or price support’ 124
local content requirements (LCRs) 120–21
market-correcting measures as subsidies 130–47
misappropriation of competition law 139–42
‘missing money’ problem and liberalized market compensation problems 128–9
Ontario FIT programmes and renewable energy generator benefits 125–9
overcompensation interpretation 138–9
public–private dichotomy 131–4, 138, 142–3
social cost theory 133–4, 135, 143–4
subsidy definition and SCM Agreement 123
substitution effects and energy efficiency 313
Sufrin, B 141
Sugathan, M 287, 294, 408
Sullivan, N 436, 478
supply chains 152–3, 252
Sussman, E 435, 457, 458
sustainable development 234, 268–70, 354–5, 370, 371, 372–3
sustainable standard-setting 148–80, 506, 512, 516
best available technology (BAT) and standard setting 150–51, 157–8
consumer sophistication impact 152
Global Food Safety Initiative (GFSI) 152–3
green standards, evolution of 149–61
industry-driven initiatives 157
international standardization 151
organic food markets 154–5, 156, 159
public–private cooperation 150–51
standard-setting bodies (SSBs) and co-regulation 150–52, 159, 162
standard-setting groups 158
standards, continuity and change 152–5
state involvement 150–51
United Nations Global Compact (UNGC) and supply chain sustainability 152–3
sustainable standard-setting, TBT Agreement 161–79, 512, 516
Code of Good Practice and new WTO Standard for International Standardization 166–7, 179
international standardization bodies and TBT Committee decision 174–7
mandatory and voluntary compliance and market access 165
non-governmental body involvement 178–9
non-incorporated PPMs 167–71
PPMs and determination of likeness 168–70
private action in VSS schemes 177–9
relevant international standards pursuant to 171–4, 177–8
technical regulations/standards 162–6
sustainable standard-setting, voluntary sustainability standards (VSS) 148–9, 152–4, 155–61
biodiversity criteria 159
biofuels 160
business-to-business (B2B) relationships 155, 157, 159, 161
climate change-related indicators and criteria 159–61
competition among VSS-compliant products 155
coordination with other schemes 158–9
determination of likeness 170
and diversification of products 153–4
financial independence 157, 160
and GHG emissions 159
information asymmetries 155, 156
institutional breakthroughs 156–7
legitimacy issues 174–5
monitoring mechanisms, call for 160
non-incorporated process and production methods 156
private action and relevant international standards 177–9
social aspects of goods production 168
Sweden
green certificates 365
Nycomb v Latvia 459
RosInvest v Russia 428
Swenson, D 436
Swinbank, A 269
Swinnen, J 154
Switzer, S 268, 271
Switzerland, transfer and dissemination of clean technologies 219–20
Sykes, A 133, 137, 146, 148
Talus, K 235
Tamiotti, L 67, 505–18
Tamm Hallström, K 172
tariffs
energy security 240, 247, 252
feed-in see subsidy regulation and feed-in tariffs, WTO
food security and agricultural trade 258, 262, 265, 266–7, 272, 273, 274
Trans-Pacific Partnership (TPP) and Transatlantic Trade and Investment Partnership (TTIP) 408
WTO environmental goods agreement 286–8, 297–8
taxation
alternative mechanisms, green paradox models 320–21, 322–3
carbon taxes see carbon taxes
direct and indirect taxes, distinction between 82, 83–4, 87–8
export border tax adjustments see carbon credit mechanisms and export border tax adjustments, WTO legal constraints
taxonomies of green paradoxes 306–7, 309–11
Taylor, J 135
TBT (Technical Barriers to Trade) Agreement see WTO Technical Barriers to Trade (TBT) Agreement
technology
best available technology (BAT) and standard setting 150–51, 157–8
and green paradox models 309, 310–11, 321–2, 323, 324
support for developing countries 204–5
technical regulations/standards 162–6
technology transfer 24–5, 29, 183, 185, 214, 217, 226–7
territory and extraterritoriality 329–51, 507
aviation emissions in EU regulatory framework 335–6
carbon-related trade measures 332–6
climate change, measures to address 331–6
common but differentiated responsibilities principles 342–3
domestic environmental cases 334–5
fossil fuel subsidies 332
indigenous peoples and trade 343–9
Kyoto Protocol and GHG emission reductions 334
labelling for ‘food miles’ 332
public international law and prescriptive jurisdiction 337–8, 339–40
public morals exception 341–2
REDD+ and carbon credits 334, 343
renewable energy subsidies 332
responsibility to protect (R2P) 63–4, 66
Rio Declaration Principle 12 336–7
subsistence activities 346–7
territorial connection, underlying aims 341–3
trade as exercise of jurisdiction 336–43
trade liberalization and indigenous peoples 344–5
tradeable permits for GHG emissions 332–3
UNFCCC and territorially-bounded GHG emissions 333–4, 342
WTO case nexus, need for 338–43
WTO GATT Article XX 330, 331, 339, 341–2, 346, 348
Tesón, F 52
third-party access 245, 249, 252, 421–4
Thomas, G 136
Thomason, J 135
Tietje, C 92, 416
Tirole, J 158
Tobin, J 479
Torrez, M 47
TPP see Trans-Pacific Partnership (TPP) and Transatlantic Trade and Investment Partnership (TTIP)
Trachtman, J 4, 46, 91, 93, 105, 109–18, 161, 506

Index 541

trade
balancing measures, and foreign investment in renewable energies 473
and foreign investment in renewable energies 469–70, 474–7
in goods, and energy security 239–40, 251
in goods and trade in services, distinction between 189–90
liberalization effects 128–9, 187, 197–8, 297–300, 344–5, 517–18
remedies and reduced trade effects 298–9
restrictive effects, and domestic regulations 190
in services, and energy security 243–6
services trade see climate change, services trade and GATS
tradeable permits for GHG emissions 332–3
see also WTO GATS; WTO GATT
Trade Policy Review Mechanism (TPRM) 514–15
Trade in Services Agreement (TiSA) negotiations 198
trade wars in the TRIPS council 200–229, 507
alternative models of research and development 225–7
BRICS/BASIC Group, IP and clean technologies 209–15
carbon pricing 220–21
clean technologies, alternatives for IP and green innovation 226
clean technologies and climate change 218–19
clean technologies, transfer and dissemination 219–20
clean technology investments and light-emitting diodes (LED) 221–2
climate change and biofuels 214–15
climate justice and human rights 227–8
climate mitigation and adaptation 201–2
compulsory licensing, and competition law 226
developed countries 215–22
developing countries 203–9
developing countries, compulsory licensing powers 205, 206, 208
developing countries, Third World Network and South Centre involvement 204–5
environmentally-sound technologies and intellectual property 205–6, 216–17
Global Patent Pool for clean technologies 207
Green Climate Fund and IP finance 212, 226
542  *Research handbook on climate change and trade law*

innovation prizes 226
intellectual property and clean technologies 202–3, 205–6
international programme on climate action 215–18
least developed countries 208–9
patents 223–4, 226
procedural reforms and green patent applications 223–4
public domain suggestions 226
reform considerations 222–8
renewable energy investment 212–13
research and development 210–12, 214
small island states and indigenous communities 209
substantive reforms and clean technologies 224–5
technology support for developing countries 204–5
technology transfer of clean technologies 217
technology transfer and international R&D agreements 226–7
Tran, S 202, 222–3, 369, 370–71
Trans-Pacific Partnership (TPP) and Transatlantic Trade and Investment Partnership (TTIP) 173, 394–411, 507
‘best endeavours’ commitments on phasing out fossil fuel subsidies 400–401
carbon leakage concerns 397, 399
climate-related matters, rationale for covering 395–7
climate-specific obligations 397–401
common but differentiated responsibilities 399–400, 407
dispute settlement role 409–10
domestic environmental laws and competitive advantage concerns 402–4
domestic environmental laws, enforcement of 406
‘environmental good’ definition disagreements 408
environmental goods and services market access 407–9
EU and US, divergent approaches 398–402, 403–4, 409–10, 480
free-riding concerns 397
general environmental obligations 401–7
information exchange and cooperation 401
joint measures, promotion of 400
Kyoto Protocol, Clean Development Mechanism 400
MEAs, implementation of 406–7
prohibition on waiving or derogating protections in climate laws 405–6
‘race to the bottom’ concerns 402–4
sovereign rights to protection 404, 405
tariffs on environmental goods, elimination consideration 408
trade and investment barriers to climate-friendly goods and services, removal of 400
trade and investment flows, attraction of 404–5
trade liberalization as tool to facilitate mitigation of climate change 398–9
and UNFCCC 399, 400, 401, 406–7
transboundary harm concerns 15, 17–18, 20
transboundary policy coordination, lack of 316–17
transit regulation, and energy security 235, 248–51, 252
transportation facilities’ access 249, 252
see also infrastructure
Tridimas, T 364
TRIMS Agreement see WTO Trade-Related Investment Measures (TRIMS) Agreement
Trüeb, H 81, 82, 87
Tsui, A 400, 408
TTIP see Trans-Pacific Partnership (TPP) and Transatlantic Trade and Investment Partnership (TTIP)
Ukraine, pipeline transportation of natural gas 245
UN General Assembly Resolutions 13–14, 15, 18, 56–8, 59–60
UN Guiding Principles on Business and Human Rights 62
UN High-Level Panel on Threats, Challenges and Change, *More Secure World* 55–8, 64
UN Millennium Report on human intervention 53
UN Provisional Central Product Classification, and energy security 254–5
UN Renewable Energy for All initiative 468
UN Secretary-General 2009 Report, and responsibility to protect (R2P) 58–9, 61, 62, 63–5
UNCITRAL (UN Commission on International Trade Law) Arbitration Rules 422, 423
*Chemtura v Canada* 430
*Chevron and Texaco v Ecuador* 422, 423
Index 543

domestic agenda and international programme on climate action 215–18
Environmental Goods Agreement with EU 408–9
Environmental Protection Agency (EPA), carbon pollution reduction 216
Federal Energy Regulatory Commission (FERC), Office of Market Oversight and Investigation 134
Keystone XL Pipeline 216
Mass. v EPA 2
Model Bilateral Investment Treaty 447, 448–9
organic food production 154–5, 159
technology transfer of clean technologies 217
Trans-Pacific Partnership (TPP) and Transatlantic Trade and Investment Partnership (TTIP) 398–402, 403–4, 409–10, 480
US v Sinovel Wind Group Co. 213
US–Peru FTA 403–4

Van Bork, P 286, 293
Van Calster, G 81, 84, 87
Van den Bossche, P 26, 69, 91, 93, 94, 99, 101, 103, 104, 163, 182
Van der Ploeg, F 303, 309, 310
Van der Werf, E 308–7
Van Doren, P 135
Van Harten, G 448, 449
Vandevelde, K 484
VanDuzer, A 415, 422, 425, 434–61, 507
Vedder, H 354
Verheyen, R 19
Verhoosel, G 434
Verschuuren, J 384
Vijil, M 183
Vikari, L 64
Vikhlyaev, A 285, 286, 289
Viljoen, W 294
Villiger, M 35
Viñuales, J 416, 425, 430
Vladi, V 431
Vogel, D 157
Voigt, C 19, 36, 42, 234, 334
voluntary compliance 35, 165
voluntary sustainability standards (VSS) see sustainable standard-setting, voluntary sustainability standards (VSS)
Von Staden, A 431

CME Czech Republic v The Czech Republic 429, 441
Glamis Gold v US 429, 441, 442
International Thunderbird Gaming Corporation v United Mexican States 443
Lone Pine Resources v Canada 431
Merrill & Ring v Canada 470, 488
Mesa v Canada 436, 438
Methanex Corporation v US 416, 422, 440, 443
Occidental Exploration v Ecuador 441, 443
Paushok v The Government of Mongolia 418, 498
Pope & Talbot v Canada 443, 444–5, 470, 487, 488
Saluka v Czech Republic 425, 442
Sanum v Laos 498
SD Myers v Canada 439–40, 443, 444, 470, 486–7, 488
White Industries v India 498
Windstream Energy v Canada 431

UNCLOS (UN Convention on the Law of the Sea) 17, 18, 38–9
UNDRIP (UN Declaration on the Rights of Indigenous Peoples) 344, 347, 348
UNEP (UN Environment Programme) 218–19
UNFCCC (UN Framework Convention on Climate Change) 9, 201–2, 210, 224, 306, 311, 312, 332, 358, 368, 437–8, 447, 454, 518
on common but differentiated responsibilities 14, 15, 16, 20, 34–5, 41–4, 45–6, 47, 48, 330, 342
on equity 19–20, 21
on international trade 23
Paris Agreement COP21 2–4, 34–5, 206, 218, 219, 334, 379, 505–6
and territorially-bounded GHG emissions, territory and extraterritoriality 333–4, 342
and Trans-Pacific Partnership (TPP) and Transatlantic Trade and Investment Partnership (TTIP) 399, 400, 401, 406–7
UNGCC (UN Global Compact), and supply chain sustainability, sustainable standard-setting 152–3
unilateral measures, avenues for 25–9
US capacity markets in wholesale electricity 134–5
Clean Power Plan 1–2

Panagiotis Delimatsis - 9781783478446
Downloaded from Elgar Online at 03/18/2019 08:39:17AM
via free access
Research handbook on climate change and trade law

Voon, T 485
Vossenaar, R 290
Vranes, E 26, 46, 77–108, 109, 117, 156, 167, 506
Wälde, T-W 249
Waldhoff, H 90
Warburton, D 220
Watson, K 253, 298, 299
WCO (World Customs Organization)
  Harmonised System, energy security 237–8, 250
Weaver, J 134, 135
Webb, S 463
Weber, R 80, 98
Wedgwood, R 52
Weiler, T 441
Wellens, K 15
Werksman, J 14
Westberg, J 407
Willems, A-R 249
WIPO (World Intellectual Property Organization), GREEN Initiative 220, 222
Withagen, C 303, 309, 310
Wold, C 200
Wolfrum, R 16–17
Wong, J 62
Wouters, J 153, 158
WTO (World Trade Organization)
  carbon credit mechanisms see carbon credit mechanisms and export border tax adjustments, WTO legal constraints
  climate change and duty to protect see duty to protect, WTO rules relating to climate change
  climate change mitigation see climate change mitigation and WTO common but differentiated responsibilities see common but differentiated responsibilities in transnational climate change governance
  energy security see energy security and WTO law
  environmental goods agreement see environmental goods agreement, WTO and EU climate law see EU climate law and WTO
  multilateral trade agenda 4
  subsidy regulation see subsidy regulation and feed-in tariffs, WTO
  WTO Agreement on Agriculture
    carbon credit mechanisms and export border tax adjustments 115
    and food security see food security and agricultural trade, WTO Agreement on Agriculture
  WTO Agreement on Subsidies and Countervailing Measures (ASCM) 26–7, 69, 70, 82, 85, 86–7, 238
  WTO Appellate Body Report
    Brazil–Retreaded Tyres 4, 48, 103, 106, 331, 373, 510–11, 513
    Canada–Aircraft 111, 112, 118, 125, 126
    Canada–Continued Suspension of Obligations in the EC–Hormones Dispute 43
    Canada–Periodicals 93
    Canada–Wheat Exports and Grain Imports 242, 243
    China–Audiovisual Products 116
    China–Auto Parts 83, 167, 238
    China–Rare Earths 100–101, 116, 237, 238
    China–Raw Materials 37–8, 101, 237
    climate change as global problem 9–10
    Dominican Republic–Cigarettes 27, 94
    EC–Aircraft 45, 118, 126–7, 140–41
    EC–Asbestos 26, 89, 91, 94, 95, 103, 139, 163–4, 168–9, 451
    EC–Bananas 43, 44, 403, 475
    EC–Biotech 44–5, 46
    EC–Hormones 38, 43, 175–6
    EC–LCA 126
    EC–Renewable Energy Generation Sector 477
    EC–Seals 26, 27, 28, 46–7, 48, 100, 103, 163–4, 166, 167–8, 170, 331, 340–41, 345–7, 348, 349
    EC–Tariff Preferences 39, 40
    Japan–Alcoholic Beverages II 91, 92, 93, 94
    Japan–DRAMs (Korea) 125, 127
    Korea–Beef 99–100, 102–3, 139, 171, 276, 373
    Korea–Measures Affecting Government Procurement 43
    Korea–Taxes on Alcoholic Beverages 90
    Peru–Agricultural Products 43, 348
    Philippines–Distilled Spirits 91, 139, 169
US–Clove Cigarettes 27, 94, 139, 161, 168, 169–70, 371
US–Continued Suspension of Obligations in the EC–Hormones Dispute 43, 432
US–COOL 166, 172–3
US–Cotton 140
US–Foreign Sales Corporations 110–11
US–Gambling 171
US–Gasoline 100, 101, 104, 105, 106, 509
US–Lumber IV 122, 123, 128, 131, 132, 133, 139, 238, 487
US–Measures Affecting Trade in Large Civil Aircraft (Second Complaint) 113
US–Upland Cotton 115, 126, 140
see also WTO Panel Report
WTO Bali Conference Agreement on Trade Facilitation 280, 291 and food security see food security and agricultural trade, Bali negotiations
WTO Committee on Trade and Environment (CTE) and Environmental Database (EDB) 515–16
WTO Dispute Settlement 41–8
WTO Doha Declaration 23, 24, 31–2, 280–81, 291, 298, 437–8, 517–18 and food security see food security and agricultural trade, Doha Declaration
Asia-Pacific Economic Cooperation (APEC) initiative, ‘list-based’ approach 290–91
Bali Ministerial Meeting, Agreement on Trade Facilitation 280, 291 China’s export strength compared to other developing countries 293–4 developing countries, consideration of special and differential rules 298 developing countries, lack of significant export prowess 293–4 Doha Round negotiations 280–81, 291, 298 environmental goods, disagreement over scope of 285–6 environmental services considerations 299–300 environmentally preferable products (EPPs) 285–6 export destination effects 295–6 free riding costs 296–7 ‘integrated’ or ‘hybrid’ approach and preferential tariffs 288 international standards for environmental goods 299 liberalization progress 297–300 ‘list-based’ approach and tariff reduction 286–7, 297–8 most-favoured nation (MFN) preferences 282, 283, 284, 295–300 multilateral negotiations deadlock 285–9 non-tariff barriers, inclusion of 298–9 ‘project-based’ approach and tariff reduction 287–8 proposal 186–7, 198 ‘request-and-offer’ approach and preferential tariffs 288 trade remedies and reduced trade effects 298–9 WTO Environmental Goods Agreement, plurilateral approach absence of developing countries from negotiations 291–3 blocking powers 283–4 carbon emitters, lack of representation from some of important 292–3 legal order, open nature of 284, 296–7 and multilateral treaties, legal distinction 282 road towards 285–9 in WTO legal order 281–4 see also MEAs (multilateral environmental agreements)
WTO GATS (General Agreement on Trade in Services) 193, 195, 243–6, 469–70, 474–5 Environmental Goods Agreement (EGA) 186–8, 198 services trade and climate change see climate change, services trade and GATS Trade in Services Agreement (TiSA) negotiations 198 WTO GATT (General Agreement on Tariffs and Trade) 27 and carbon taxes see carbon taxes, PPMs and the GATT energy security 239–40, 241–3, 248–51, 252
foreign investment in renewable energies 469–70, 473, 474–5
green paradox models and international trade rules 315–17, 318–19, 320, 321
WTO GATT (General Agreement on Tariffs and Trade) Article XX 4, 26–8, 45–6, 47, 68–9, 115–17, 450–52, 510–11
carbon taxes and PPMs see carbon taxes, PPMs and the GATT, justification under Article XX
land-based sustainability criteria 370, 372–3
territory and extraterritoriality 330, 331, 339, 341–2, 346, 348
WTO Kyoto Protocol see Kyoto Protocol
WTO legitimacy and climate change 9–30, 506
Agreement on Subsidies and Countervailing Measures (ASCM) 26–7, 69, 70, 82, 85, 86–7
climatic change implications for international trade 22–3
climate as global public good 10–12
collective action problem of mitigating climate change 12–13
common but differentiated responsibilities 20–21
common concern, and climate change 19–20, 22–9
common concern origins 13–17
cost-benefit analysis (CBA) of climate change regime participation 13
Doha Development Agenda see WTO Doha Declaration
Environmental Goods Agreement see WTO Environmental Goods Agreement
equity and common concern concept 19–20
fundamental human rights and responsibility to protect 21–2
greenhouse gas emissions 10, 19, 20, 24
importation of products 28, 29
and international law, relationship to 16–22
international product and production standards 28–9
Ministerial Declaration on Trade and Climate Change suggestion 24
and multilateral environmental agreements (MEAs) 23
non-product-related process and production methods (npp–PPMs) 26, 29
obligations erga omnes 15–16, 20
permanent sovereignty over natural resources and common concern concept 17–19
processes and production methods (PPMs) 24–5, 26–7
responsibility to protect (R2P) 21–2, 506
TBT Agreement see WTO Technical Barriers to Trade (TBT) Agreement
technology transfer 24–5, 29
trade negotiation avenues 23–5
transboundary harm concerns 15, 17–18, 120
unilateral measures, avenues for 15–16, 25–9
WTO Marrakesh Agreement 37–8
WTO Ministerial Declaration on Trade and Climate Change suggestion 24
WTO as negotiation forum 517–18
WTO Panel Report
Argentina–Hides and Leather 85, 93, 96
Belgian Family Allowances (Allocations familiales) 95
Brazil–Aircraft 122–3
Brazil–Retreaded Tyres 102
Canada–Aircraft 122–3, 131
Canada–Automotive Industry 95, 96
Canada–FIRA 242–3, 473
Canada–Herring 100
China–Rare Earths 239
China–Raw Materials 239
Colombia–Ports of Entry 239
EC–Animal Feed Proteins 114
EC–Asbestos 99
EC–Biotech 347–8
EC–Countermeasures on DRAMs 126
EU–Anti-Dumping Measures on Biodiesel from Argentina 247
EU–Anti-Dumping Measures on Biodiesel from Indonesia 247
EU–Biodiesels 370
India–Automotive Industry 473, 474–5
India–Quantitative Restrictions 39–40, 474–5
India–Solar Cells and Solar Modules 332
Indonesia–Automotive Industry 95, 96, 114, 473
Italian Discrimination Against Imported Agricultural Machinery 89
Japan–Alcohol I 91
Japan–Measures Affecting Consumer Photographic Film and Paper 95
Korea–Various Measures on Beef 243
Mexico–Soft Drinks 85
Thailand–Cigarettes 99, 372, 451
US–Softwood Lumber 343, 348
Index 547

US–Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India 112
US–Countervailing Measures (China) 247
US–Export Restraints 122, 123
US–Gasoline 92, 97, 99
US–Measures Affecting Alcoholic and Malt Beverages 91, 92
US–Poultry (China) 239
US–Superfund 79, 85, 97
US–Taxes on Automobiles 91
US–Tuna I 99
US–Tuna II 98–9, 370
see also WTO Appellate Body Report
WTO renewable energy mandate 366, 369–71
WTO Standard for International Standardization 166–7, 179
and sustainable standard-setting see sustainable standard-setting, TBT Agreement

WTO Trade-Related Investment Measures (TRIMS) Agreement 469–70, 472–99
NAFTA as see foreign investment in renewable energies, NAFTA as TRIMS Plus agreement
WTO TRIPS (Trade-Related Aspects of Intellectual Property Rights) council, and trade wars see trade wars in the TRIPS council
Wu, M 279–301, 322, 517
Wurzel, R 358

Xue, L 212

Yafimava, K 249
Young, M 4, 329–51, 507
Young, S 472

Zdouc, W 69, 91, 93, 94, 99, 101, 103, 104
Zeng, H 464, 480, 484
Zhang, R 181–99, 507
Zielinski, P 217
Zillman, D 134
Zumbansen, P 151