



**UNIVERSITÉ
DE GENÈVE**

FACULTÉ DE DROIT



**UNIVERSITÉ
DE GENÈVE**

**INSTITUT DES SCIENCES
DE L'ENVIRONNEMENT**

A Multifaceted Approach to Trade Liberalization and Investment Protection in the Energy Sector

21 - 22 June 2018

University of Geneva

Co-organizers: Ms. Elena Cima (*Graduate Institute of International and Development Studies*)
and **Prof. Makane Moïse Mbengue** (*University of Geneva, Faculty of Law*)

International trade and investment in energy have never been greater than at present. Yet, the international legal framework that regulates trade and investment is not expressly tailored for the energy sector and often overlooks the potential repercussions of energy activities in other contexts. This conference intends to interrogate this challenge from two often conflicting, yet interrelated perspectives:

i. Liberalizing trade and protecting investments in the energy sector

Multilateral trade rules were not designed with energy in mind and, as a consequence, WTO agreements do not contain any energy-specific provisions. Nevertheless, their rules do apply to energy goods and services, as they generally apply to all economic sectors. A fundamental challenge lies in the fact that general WTO rules might not always be adequate to deal with energy. In order to keep the discussion focused, the conference will focus on some of the most challenging areas, such as energy subsidies, green industrial policy more broadly, and transit. The latter poses unprecedented questions regarding the suitability of multilateral trade rules, given the particular characteristics of this industry. Similarly, in the area of subsidies, it is questionable whether the one-size-fits-all approach adopted by the relevant WTO provisions, which do not distinguish undesirable subsidies from those that address legitimate (environmental)

concerns, is adequate or should rather be reformed, and whether new free trade agreements (FTAs) successfully address these questions. Moreover, although fossil fuels are more heavily subsidized than renewable energy, fossil fuel subsidies have never been challenged at the WTO, while most of the recent energy-related disputes concern subsidies to renewable energy producers.

Foreign direct investment plays a crucial role in the energy sector. Here, the level of State interference is higher than in other sectors, as FDIs have the potential to affect national sovereignty over natural resources, and a constant balance between public and private interests is required. Moreover, the severe uncertainty that characterizes this sector often leads to tensions between investors, who seek a stable and predictable investment climate, and host States, trying to retain sufficient policy space to accommodate potential changing circumstances. With these tensions in mind, the conference will strive to: i) investigate to what extent modern investment treaties, and in particular the Energy Charter Treaty, have contributed to improving the investment climate in the energy sector of the state parties; ii) explore the common features of energy-related investment disputes; and iii) analyze the use of stabilization clauses, among others, in long-term investment contracts.

ii. Conciliating trade liberalization and investment protection with environmental and human rights approaches

Liberalizing trade in energy and protecting energy investments pose significant risks in terms of sustainable development. In entering into investment treaties and trade agreements, states should maintain sufficient policy space to meet their environmental protection and human rights obligations. However, as States increasingly strengthen their domestic social and environmental standards, foreign investors in energy intensive industries might make use of provisions in bilateral or multilateral investment treaties to challenge those standards, as they risk to negatively impact their investment's profitability. Stabilization clauses, for example, can be seen as obstacles to sustainable development as they may have a 'chilling effect' on the host State's regulatory powers. Similarly, the one-size fits all approach adopted by the WTO subsidies agreement, as well as the difficulty of differentiating products on the basis of their process and production methods, among other features of the multilateral trading system, do not seem adequate from an environmental standpoint.

It is therefore important to consider all these perspectives when dealing with trade liberalization and investment protection in the energy context, and it is equally central to attempt to bridge the gap between them, in the quest for common solutions. Accordingly, the goal of this conference is precisely to bring together and initiate a constructive dialogue between different international law regimes, in a multi-disciplinary manner.

Conference

The objective of this conference is to bring together academics, policy-makers, and legal practitioners. It will be the second event held by the Platform on International Energy Governance, a consortium of leading universities and research centers active in the field of international energy law and policy. For more information, visit: <https://platform-energygovernance.org/>

Registration

If you wish to attend the Conference, please register by sending an email to Elena Cima (elena.cima@graduateinstitute.ch) indicating your name and affiliation.

Program

Thursday 21 June 2018

14.30-14.45

Welcome and introduction

Prof. Bénédicct Foëx, Dean of the Faculty of Law, University of Geneva

Ms. Elena Cima, PhD Candidate, Graduate Institute of International and Development Studies & **Prof. Makane Moïse Mbengue**, Professor of International Law, University of Geneva, Faculty of Law

14-45-16.15

Panel I – Liberalizing trade in energy

Moderator: **Prof. Gabrielle Marceau**, Senior Counsellor, Legal Affairs Division, WTO; Associate Professor, University of Geneva, Faculty of Law

Panelists:

Dr. Yulia Selivanova, Independent Expert Consultant

Challenges of the Energy Transit Regulation by the Multilateral Trade Rules

Dr. Anna Marhold, Assistant Professor, Tilburg Law School

EU State Aid Law, WTO Subsidy Disciplines and Renewable Energy Support Schemes: Disconnected Paradigms in Decarbonizing the Grid

Dr. Ilaria Espa, Assistant Professor, USI Lugano; Senior Research Fellow, World Trade Institute

Dissecting the Green Component of 21st Century Industrial Policy: Implications for the WTO System

16.15-16.30

Coffee break

16.30-18.00

Panel II – *Protecting and liberalizing investment in energy*

Moderator: **Prof. Attila Tanzi**, Professor of International Law, University of Bologna; Associate Member, 3 Verulam Buildings Chambers, London

Panelists:

Mr. Ruslan Galkanov, Legal Affairs, Energy Charter Secretariat

Contribution of Modern Investment Treaties to Improvement of Investment Climate in the Energy Sector of Host States: An Attempt to Define, Circumstantiate and Explore by Exemplifying the Energy Charter Treaty.

Dr. Kate Parlett, Barrister, 20 Essex Street

Recent Developments in the Investment World: an Update on Renewable Energy and the Relevance of EU Law

Ms. Athina Fouchard Papaefstratiou, Counsel, Eversheds Sutherland

The Role of Stabilization Clauses in Long-Term Investment Contracts

19.00

Formal Dinner

Friday 22 June 2018

09.00-10.30

Panel III – *Environmental and human rights approaches*

Moderator: **Prof. Géraldine Pflieger**, Associate Professor, University of Geneva, Faculty of Social Sciences; Director of the Institute for Environmental Sciences, University of Geneva

Panelists:

Dr. Leslie-Anne Duvic Paoli, Lecturer, King's College London

The Sustainable Developments Goals and their Implications for Energy Trade and Investment

Prof. Harro van Asselt, Professor of Climate Law and Policy, University of Eastern Finland; Senior Research Fellow, Stockholm Environment Institute

The Institutional Complex for Fossil Fuel Subsidies and Their Reform

Ms. Ginevra Le Moli, PhD Candidate, Graduate Institute of International and Development Studies

Human Rights and Responsibilities in the Energy Sector

10.30-10.45

Coffee break

10.45-12.15

Panel IV – *Bridging the gap between different perspectives*

Moderator: **Prof. Makane Moïse Mbengue**, Professor of International Law, University of Geneva, Faculty of Law

Panelists:

Ms. Elena Cima, PhD Candidate, Graduate Institute of International and Development Studies

Non-Trade Concerns and International Economic Law. Promoting Renewable Energy with a New Generation of FTAs

Prof. Eric de Brabandere, Professor of International Dispute Settlement Law, Leiden University

Environmental Counterclaims in Investment Arbitration

Mr. Aaron Cosbey, Senior Associate, IISD

Separating the Baby from the Bathwater: Reconceiving Trade and Investment Law to Allow for Value-Based Distinctions

12.15-12.30

Conclusions

Prof. Joost Pauwelyn, Professor of International Law, Graduate Institute of International and Development Studies; Murase Visiting Professor of Law, Georgetown Law