

Contents

<i>List of figures</i>	xvi
<i>List of tables</i>	xvii
<i>Acknowledgements</i>	xviii
Introduction	1
PART I INTERSTATE ENERGY GOVERNANCE: SELECTED LEGAL ISSUES FROM TRADE, ENVIRONMENT AND LAW OF THE SEA	
Conceptualization of Part I	7
1 A fragmented global energy governance	15
I. Introduction to global energy governance: an inescapable eventuality or an elusive dream?	15
II. International cooperation in energy	23
III. Facts and figures around energy supply and consumption	30
IV. Fields of interstate cooperation relating to energy	33
A. Trade	35
1. The World Trade Organization	36
2. Preferential trade arrangements	38
3. The Energy Charter Conference	41
4. The Organization of the Petroleum Exporting Countries	42
5. The Gas Exporting Countries Forum	44
B. Investment	45
1. Energy Charter Conference	46
2. The World Trade Organization system	48
3. Proliferation of bilateral and multilateral investment treaties	49
4. The Convention on the Settlement of Investment Disputes	50
C. Environmental protection	51
1. United Nations Framework Convention on Climate Change and its Kyoto Protocol	53

2. World Trade Organization	55
3. Energy Charter Conference	56
4. European Union	56
5. North American Free Trade Agreement	57
D. Energy transit	58
1. UN and its legal order	59
2. World Trade Organization	61
3. Energy Charter Conference	63
4. North American Free Trade Agreement	64
5. Association of Southeast Asian Nations	65
6. European Union	67
E. Energy security	68
1. International Energy Agency	69
2. International Energy Forum	72
3. World Petroleum Council	73
4. The Group of Eight (G8)	74
5. The Group of Twenty (G20)	75
6. Major Economies Forum on Energy and Climate	76
F. Other phenomena with implications for the global energy economy	78
1. National oil companies	78
2. Global markets	80
V. Conclusion and recommendations	82
2 Energy as a special sector in the World Trade Organization	90
I. Introduction	90
II. The international trade system	91
A. The GATT	91
B. The WTO	93
C. International trade in energy	98
III. Special characteristics of energy	100
A. Economic aspects	101
B. Energy as an asset of strategic and political value	102
C. International development	103
D. Diversity of energy sources	103
E. Finite resources	104
F. Energy security	105
G. Transportation of energy	107
IV. Energy trade: challenges and concerns	108
A. Supply and demand	108
B. Trade in goods v. trade in services	111
C. Transit via fixed networks: pipelines and grids	111

D. Combating climate change	113
E. Energy security	115
V. WTO law and energy trade: selected debates	117
A. The applicability of WTO law to energy trade	119
1. The International Trade Organization and the GATT creation	120
2. Energy tradable products	121
3. Energy trade was not excluded from the GATT	121
4. GATT negotiations	122
5. Accession of energy-exporting countries to the GATT	124
6. The Uruguay Round	127
7. The WTO coverage	128
8. Accession of energy-endowed countries to the WTO	129
B. Unresolved energy trade issues	131
1. Energy vis-à-vis other goods and services	132
2. Trade in energy under the existing WTO regime	134
2.1. Definitional/classification issues	134
2.2. General Agreement on Tariffs and Trade	135
2.3. General Agreement on Trade in Services	136
2.4. Agreement on Technical Barriers to Trade	136
2.5. Agreement on Subsidies and Countervailing Measures	136
2.6. Exceptions	137
3. Final remarks	137
VI. Conclusion	138
3 Trade, environment, and energy: implications for the conservation of oil resources	140
I. Introduction	140
II. Trade and environment	143
A. Environment in the GATT/WTO: past and present interaction	144
B. 'Exhaustible natural resources' and GATT Article XX(g)	148
III. The 'conservation' of exhaustible natural resources under GATT Article XX(g): GATT and WTO decisions	150
A. GATT decisions	151
1. <i>US – Tuna (Canada)</i>	151
2. <i>Canada – Herring and Salmon</i>	152
3. The <i>Tuna-Dolphin</i> saga	153
3.1. <i>US – Tuna-Dolphin I (Mexico)</i>	156
3.2. <i>US – Tuna-Dolphin II (EEC)</i>	157

B. WTO decisions	159
1. <i>US – Gasoline</i>	159
2. <i>US – Shrimp-Turtle</i>	163
3. <i>US – Tuna-Dolphin III</i>	168
4. <i>China – Raw Materials</i>	173
IV. Implications for the conservation of oil as an exhaustible natural resource	180
A. The conservation of oil resources under GATT Article XX(g)	181
1. Violation of GATT or WTO-plus commitments? The applicability of Article XX(g)	181
2. Subsection (g) – the first tier	183
3. The chapeau – the second tier	187
4. GATT Article XX(g): narrow application	188
B. The scope of Article XI:1 with regard to conserving natural resources	189
V. Conclusion	192
4 Energy and law of the sea: Eastern Mediterranean Basin scenarios	194
I. Introduction	194
II. The normative framework	200
A. The territorial sea	201
B. The continental shelf	204
C. The exclusive economic zone (EEZ)	207
III. The principal legal implications for EMB coastal States	211
A. The Cyprus–Turkey nexus	211
B. The Greece–Turkey nexus	214
C. The Lebanon–Israel nexus	216
1. Oil and gas explorations: energy and economic opportunities	221
2. Political conflict	224
3. Complications for the delimitation of the disputed EEZ area	227
3.1. Contrasting maritime proclamations: the disputed EEZ area	228
3.2. The applicability of UNCLOS	230
3.3. The absence of a bilateral agreement between Lebanon and Israel	233
3.4. The Lebanon–Cyprus Agreement	235
3.5. The Israel–Cyprus Agreement	239

3.6. Resolving the dispute through dispute settlement procedures	244
3.6.1. The International Tribunal for the Law of the Sea (ITLOS)	246
3.6.2. The International Court of Justice (ICJ)	247
3.6.3. Arbitration	249
IV. Conclusion	252
PART II EU ENERGY GOVERNANCE: SELECTED LEGAL ASPECTS	
5 EU energy security	257
I. Introduction	257
II. Energy and the EU: contextualization, facts and figures	260
A. Contextualizing EU energy security	260
1. The traditional EU energy position: dependent and undiversified	260
2. Energy security: definitions	262
B. Energy consumption in the EU	266
C. Energy production in the EU	272
D. Energy pricing in the EU	273
E. Overall energy challenges in the EU	274
III. Legal aspects of EU energy policy	276
A. The EU's structure regarding competences in energy policy	278
B. Energy governance and the Treaty of Lisbon	286
1. Pre-Lisbon Treaty	286
2. The Lisbon Treaty	287
C. Challenges to achieving a common EU energy security policy	291
IV. Diversity of EU energy policy	295
A. Types of EU energy policy	296
B. Factors affecting EU energy policy	300
V. Geostrategic context regarding the nexus of EU and energy security	306
A. Nexus of EU energy policy and foreign policy	307
B. Rise in shale gas extraction and its effect on EU energy security	316
C. Environmental protection	319
D. Energy trade and transit	321
VI. Conclusion	328

6 The EU and its systemic relationship to the Energy Community and the Energy Charter Treaty	332
I. Introduction	332
II. EU energy policy and its complications	333
III. EU external energy relations	336
A. The BRIC countries	336
B. The Euro-Mediterranean Partnership	341
C. The Africa-EU Energy Partnership	343
D. Persian Gulf-EU Partnerships	344
IV. Linking the European Union to the Energy Charter Treaty and the Energy Community	346
A. The Energy Charter Treaty and its relationship to the EU	346
B. The Energy Community and its relationship to the EU	350
V. Dispute settlement in the Energy Charter Treaty and in the Energy Community	354
A. Dispute settlement in the Energy Charter Treaty	354
B. Dispute settlement in the Energy Community	357
VI. Certain issues relating to concurrent special legal regimes	360
A. General remarks	360
1. Fragmentation of international law as it relates to normative conflicts	361
2. Legal hierarchies in addressing normative conflicts	363
3. Principle of harmonization in treaty interpretation	366
B. Normative conflicts and the EU legal order	370
C. Normative conflicts and the Energy Charter Treaty	370
D. Normative conflicts and the Energy Community	372
E. Other conflict-related matters relevant to the European Union–Energy Charter Treaty–Energy Community nexus	372
1. Concurrent jurisdictions	372
2. <i>'Inter se'</i> legal agreements	375
VII. Conclusion	376

PART III RENEWABLE ENERGY IN THE WTO AND EU: SELECTED LEGAL ASPECTS

7 Renewable energy in the World Trade Organization	383
I. Introduction	383
II. Setting the scene	385
III. Facts and figures on renewable energy and its governance	390
IV. The WTO and renewables	394
A. Initial remarks	394
B. Environmental protection objectives and the WTO	399

1. <i>US – Shrimp</i>	401
2. <i>US – Gasoline</i>	402
3. The SPS Agreement	404
4. The TBT Agreement	405
5. The SCM Agreement	406
6. Discussion	406
C. The promotion of renewables and the WTO	408
1. The Canada Renewables cases	408
2. Other WTO cases connected to renewable energy	412
2.1. <i>China – Wind Power</i>	412
2.1.1. A recountal of the case	413
2.2. <i>US – Countervailing Measures (China)</i>	415
2.3. <i>EU and a Member State – Importation of Biodiesels</i>	416
2.4. <i>US – Countervailing and Anti-Dumping Measures (China)</i>	416
2.5. <i>EU and Certain Member States – Renewable Energy Measures</i>	417
2.6. <i>India – Solar Cells Measures</i>	417
2.7. Recurring issues in renewables-related WTO cases	417
V. Energizing the discussion	421
A. Stronger governance of energy trade	423
B. WTO's treatment of renewable energy	426
1. Trade policy shapes green energy governance	428
2. Renewable subsidies: changing the playing field	430
3. Are feed-in tariffs subsidies?	431
4. The case of local contents	436
5. Green Subsidy Fund	437
6. Funding energy security through GHG emissions control	438
7. General exceptions under GATT Article XX	439
VI. Conclusion	441
8 Renewable energy in the European Union	445
I. Introduction	445
II. Renewable energy and the EU	448
A. Definition of renewable energy sources	448
B. EU energy in numbers	450
1. Renewables	450
2. Energy mix	452

3. Wide disparity among EU Member States in the share of renewables	454
4. EU's CO ₂ footprint	455
III. Principal aspects of the normative context regarding EU renewable energy policy	457
A. The intra-EU aspects of the normative context	458
1. Treaty on the Functioning of the European Union: provisions on State aid	460
2. Commission Regulation (EC) No. 800/2008 (the 'General Block Exemption Regulation')	461
3. The 2008 Guidelines on State Aid for Environmental Protection	461
4. Directive 2009/28/EC (the 2009 Renewable Energy Directive)	463
5. Selected EU cases with implications for renewable energy	465
5.1. <i>Outokumpu</i>	465
5.2. <i>Preussen Elektra</i>	465
B. The extra-EU aspects of the normative context	466
1. The Kyoto Protocol and the EU	467
2. The WTO and the EU	468
2.1. <i>EU and Certain Member States – Importation and Marketing of Biodiesel and Measures Supporting the Biodiesel Industry (hereinafter 'EU – Biodiesel')</i>	468
2.1.1. Facts	469
2.1.2. Legal issues	470
2.1.3. Analysis	471
IV. Current developments with implications for EU renewable energy policy	474
A. Review of State aid rules	475
B. Extension of environmental impact assessment requirements to conventional energy exploration	476
C. The EU ETS	477
1. The EU ETS and the WTO	478
2. Towards a global carbon market?	480
3. Inclusion of aviation	480
4. Shipping	482
V. Conclusion	484

PART IV LOOKING FORWARD: BRIDGING THE POLICY OBJECTIVES OF ENERGY, TRADE, AND ENVIRONMENT

9 Sustainable development and mega-regionals: the TTIP and TPP	489
I. Introduction: using preferential trade agreements to promote sustainable development	489
II. The Transatlantic Trade and Investment Partnership	494
A. An introduction	494
1. Timeline	495
2. Goals	498
3. Importance	499
B. The TTIP and sustainable development	500
1. Central sustainability goals	500
1.1. Environmental protection	501
1.2. Economic sustainability	503
1.3. Social sustainability	504
2. European Union trade policy and next generation agreements	505
C. The TTIP and energy	507
1. Raw materials and natural resources	507
2. Energy efficiency and renewable energy generation	510
D. Looking forward	511
III. The Trans-Pacific Partnership	512
A. An introduction	512
1. A 21st-century agreement	513
2. The need for the Trans-Pacific Partnership	516
B. The Environment Chapter	516
1. The need for an Environment Chapter	518
2. The enforcement of the Environment Chapter	519
2.1. Domestic regulations	520
2.2. Corporations and sustainability	520
C. The Trans-Pacific Partnership and sustainable development	521
1. Trade and biodiversity	521
2. Trade and climate change	522
3. Marine fisheries	523
4. Trade and conservation	524
IV. Comparing the TPP with the TTIP on sustainable development	525
A. Scope	525
B. Enforcement	526
C. Dispute resolution	527

D. Implementation	528
E. Sovereign determination in legislation	529
V. Conclusion	530
<i>Index</i>	533
