

# Free Trade, Fair Trade, and Selective Enforcement

Timothy Meyer  
Vanderbilt Law School  
[tim.meyer@vanderbilt.edu](mailto:tim.meyer@vanderbilt.edu)

# Sel. Enforcement in Trade Law

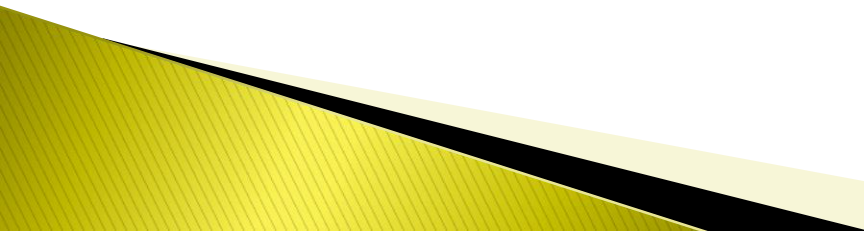
- ▶ Trade rules on government support generally enforced against natural resource substitutes, but not natural resources
  - ▶ Renewable Energy
    - Since 2008, at least 25 challenges to government financial support for renewable energy (\$135 billion in 2014)
    - No direct fossil fuel support challenges (\$934 billion in 2014)
  - ▶ Fisheries
    - Since 1990, at least 16 challenges to aquaculture
    - No direct challenges to wild fisheries subsidies
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Table 1: Renewable Energy Trade Disputes				
Date	Type of Dispute (Legal Claim)	Complainant	Respondent	Industry or Program Targeted
March 2009	Domestic (AD/CVD)	European Union	United States	Biodiesel
December 2009	Domestic (AD/CVD)	Peru	United States	Biodiesel
September 2010	WTO (NT, SCM)	Japan, European Union	Canada	Ontario Province's FIT Policy
October 2010	Domestic (AD/CVD)	Australia	United States	Biodiesel
December 2010	WTO (SCM)	United States	China	Chinese wind subsidy
May 2011	Domestic (AD/CVD)	European Union	Canada	Biodiesel (from U.S.)
November 2011	Domestic (AD/CVD)	United States	China	Solar Panels
November 2011	Domestic Investigation (NT)	China	United States	State-level RE support programs
January 2012	Domestic AD/CVD	United States	China, Vietnam	Wind Components
July 2012	Domestic (AD/CVD)	China	United States; South Korea; European Union	Polysilicon
July 2012	Domestic (AD/CVD)	European Union	China	Solar Panels
September 2012	WTO (AD/CVD)	China	United States	Wind Components (among other products)
November 2012	Domestic (AD/CVD)	India	China, Taiwan; Malaysia; United States	Solar Panels
November 2012	WTO (NT, SCM)	China	European Union, Greece, Italy	Certain EU member states' feed-in tariffs
May 2013	WTO (NT, SCM)	Argentina	European Union	Biodiesel
February 2013	WTO (NT)	United States	India	India's National Solar Mission
February 2013	Domestic (AD/CVD)	European Union	United States	Ethanol
December 2013	WTO (AD)	Argentina	European Union	Biodiesel
June 2014	WTO (AD)	Indonesia	European Union	Biodiesel
July 2015	Domestic (AD/CVD)	Canada	China	Solar
January 2016	Domestic (AD/ CVD)	China	United States	Biofuels

Table 2: Fisheries Trade Disputes			
Date	Type of Dispute (Legal Claim)	Complainant	Respondent
February 1991	Domestic (AD/CVD)	United States	Norway
August 1997	WTO (AD/CVD)	Chile	United States
September 1997	Domestic (AD/CVD)	United States	China
July 2003	Domestic (AD/CVD)	United States	Vietnam
August 2003	Domestic (AD/CVD)	United States	Vietnam
April 2004	Domestic (AD/CVD)	European Union	Norway/Faroe Islands
December 2004	WTO (AD/CVD)	Thailand	United States
January 2005	Domestic (AD/CVD)	United States	Brazil, China, Ecuador, India, Thailand, Vietnam
November 2005	WTO (AD/CVD)	Ecuador	United States
March 2006	WTO (AD/CVD)	Norway	European Union
April 2006	WTO (AD/CVD)	Thailand	United States
June 2006	WTO (AD/CVD)	India	United States
February 2010	WTO (AD/CVD)	Vietnam	United States
February 2011	WTO (AD/CVD)	China	United States
February 2012	WTO (AD/CVD)	Vietnam	United States
February 2015	Domestic (AD/CVD)	European Union	Turkey
August 2015	Domestic (AD/CVD)	European Union	Turkey

# Selective Enforcement=Implicit Subsidy

- ▶ Targets of selective enforcement face:
  - Litigation costs
  - Liability
  - Lost investment/higher costs of capital
- ▶ Especially perverse when:
  - the “subsidized” product has negative externalities &
  - the “targeted” product has potential positive externalities, which depend on innovation and investment

# Proposal

- ▶ WTO Secretariat or national governments should create an administrative process that identifies products that compete with products at issue in trade disputes & benefit from the same conduct.
  - ▶ Weak Version: Creates information that can be the predicate for an ordinary challenge.
  - ▶ Strong version: A centralized "prosecutor" is empowered to bring cases on the basis of the information created.
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