REPORT TO THE BOARD OF THE EUROPEAN SOCIETY OF INTERNATIONAL LAW
INTEREST GROUP ON ENERGY AND INTERNATIONAL LAW
2023 - 2024

ESIL IG Co-convenors:

Dr. Elena Cima, University of Geneva
Prof. Ilaria Espa, Università della Svizzera Italiana
Dr. Alessandro Monti, University of Copenhagen

1. ACTIVITIES

A) Conference on 'Trade-Related Climate Measures in Energy-Intensive Sectors: From Divergence to Interoperability through International Law?'

This very first Conference of the IG on Energy and International Law took place at the University of Geneva on 13-14 June 2024. The conference aimed to shed light on the possible strategies to coordinate the implementation of trade-related climate measures in energy-intensive sectors at the international level.

The Conference was organized on the basis of an international call for papers. Selected papers will be published in the *Journal of World Energy Law and Business* as part of a Special Issue edited by the three Co-Conveners of the IG in February 2025.

The program of the Conference is attached to this Report as Annex 1.

B) Workshop ESIL Annual Conference in Vilnius "Floating Offshore Wind: The Law and Policy of an Emerging Technology" (Hybrid Format), Wednesday 4 September

On 4 September 2024, the IG on Energy and International Law organized a Workshop as part of the 19th ESIL Annual Conference in Vilnius. The Workshop was titled "Floating Offshore Wind: The Law and Policy of an Emerging Technology", it was organized on the basis of an international call for papers, and took place in hybrid format.

The program of the Workshop is attached to this Report as Annex 2.

2. PLANNED ACTIVITIES

A) Roundtable on Critical Minerals at the 2024 Annual Conference of the African Society of International Law

The IG on Energy and International is planning a Roundtable in partnership with the African Society of International Law (AfSIL). The Roundtable will be part of the 13th Annual Conference of AfSIL, which will take place in Lagos, Nigeria on November 1 and 2 on "Africa and the Energy Transition". The Roundtable will address the topic of "Africa's Role in the Global Critical Minerals Supply Chain."

B) Publication: Special Issue on the Journal of World Energy Law and Business

Selected papers from the Conference organized in June 2024 by the IG on Energy and International Law will feature in a Special Issue of the Journal of World Energy Law and Business edited by the three Co-convenors of the IG and which will be published in February 2025.

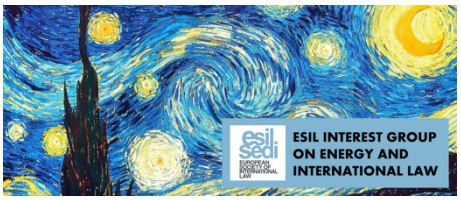
3. FUTURE ACTIVITIES

The ESIL IG on Energy and International Law is exploring the possibility to organize workshops as side events at both the 2025 ESIL Research Forum organized by the Department of Law of the Università di Catania, and at the 20th ESIL Annual Conference that will take place in Berlin, Germany. More detailed information on forthcoming activities will be communicated as soon as the relevant details are finalized.

4. GOVERNANCE

Since its creation in 2023 until 2024, the Energy and International Law Interest Group was governed by three Co-conveners: Elena Cima (Chair) (University of Geneva), Ilaria Espa (Università della Svizzera Italiana), and Alessandro Monti (University of Copenhagen). They run the Interest Group's day-to-day business and organize its regular events. They have also managed to meet during Conferences and Seminars of common interest.

Annex I



UNIVERSITÉ DE GENÈVE
FACULTÉ DE DROIT

ESIL INTEREST GROUP ON ENERGY AND INTERNATIONAL LAW

Conference on Trade-Related Climate Measures in Energy-Intensive Sectors: From Divergence to Interoperability through International Law?

University of Geneva, 13-14 June 2024

Uni Mail (*Bd du Pont-d'Arve 40*) Room MR 060

Many nations worldwide are increasingly recognising the importance of internalising environmental costs within their production processes. Simultaneously, numerous countries have either adopted or are contemplating trade-related climate measures to tackle issues related to carbon leakage and competitiveness. A notable instance is the European Union's implementation of a Carbon Border Adjustment Mechanism (CBAM), and other countries, such as the United States, are exploring similar carbon border adjustment programs. The objective of these measures is to prevent industries in countries with robust climate policies from facing a competitive disadvantage compared to those in nations with weaker or no climate policies.

Such trade-related climate measures, of which CBAM is just one example, are particularly pertinent to energy-intensive sectors characterised by embedded carbon—such as steel, cement, chemicals, and specific manufacturing processes—which contribute significantly to carbon emissions and frequently encounter challenges associated with competitiveness. To address these challenges, several trade-related measures involve placing a price on embedded carbon, representing the quantity of carbon dioxide emissions linked to the production of a specific product.

A notable challenge arises when countries employ different methodologies to calculate embedded carbon, posing obstacles to the effective implementation of border carbon adjustment mechanisms or other carbon footprint policies.

The challenges arising from divergent methodologies in calculating embedded carbon are multifaceted. First, the lack of consistency in determining embedded carbon due to varying methodologies poses significant hurdles in accurately comparing emissions associated with domestically produced goods and imports. Second, this lack of consistency can be perceived as a trade barrier, potentially igniting disputes between nations. The perceived unfairness or

discrimination resulting from these inconsistent approaches could strain international trade relations. Moreover, the variations in methodologies may give rise to market distortions, affecting the competitiveness of industries, as sectors in countries with more rigorous methodologies might bear higher carbon costs, introducing potential distortions to the market.

In response to these challenges, potential solutions involve international harmonisation efforts, where common principles and standards are established to calculate embedded carbon consistently, ensuring uniformity and fairness. Collaborative efforts among countries to bridge gaps in methodologies and foster a shared understanding could also contribute to resolving these issues. Furthermore, guided by international bodies or agreements, standardisation initiatives hold the promise of aligning methodologies, creating globally accepted standards for calculating embedded carbon and promoting fair and transparent trade practices. In essence, addressing these challenges requires a concerted global effort to harmonise, collaborate, and standardise methodologies in the pursuit of equitable and effective solutions. While inclusive climate clubs may represent a potential forum for reaching such outcomes, other deliberative spaces for advancing discussions on equivalence and convergence include the Organization for Economic Co-operation and Development (OECD), the World Trade Organization (WTO), the United Nations Framework Convention on Climate Change (UNFCCC) Secretariat and the United Nations Conference on Trade and Development (UNCTAD).

The Conference

This conference, which inaugurates the activities of the Interest Group on Energy and International Law of the European Society of International Law, aims to shed light on the possible strategies to coordinate the implementation of trade-related climate measures in energy-intensive sectors at the international level.

Registration

If you wish to attend the Conference, please register by sending an email to Ms. Nolwen Guilleman (Nolwen.Guilleman@etu.unige.ch) indicating your name and affiliation.

Program

Thursday 13 June 2024

14.30-14.45 **Welcome and introduction**

Prof. Makane Moïse Mbengue, Professor of International Law, Faculty of Law

Dr. Elena Cima, Lecturer, University of Geneva, **Prof. Ilaria Espa**, Associate Professor, Università della Svizzera Italiana, and **Dr. Alessandro Monti**, Assistant Professor, University of Copenhagen

14.45-15.15 **Keynote**

Prof. Ralph Ossa, Chief Economist, WTO

15-15-16.00 **Panel I – *Cooperation on Carbon Border Adjustment***

Prof. Harro Van Asselt, Hatton Professor of Climate Law, University of Cambridge

Bridging the Divide: Assessing the Viability of International Cooperation on Border Carbon Adjustments

Discussant: **Dr. Kateryna Holzer**, Senior Researcher, University of Eastern Finland

Chair: **Dr. Alessandro Monti,** Assistant Professor, University of Copenhagen

16.00-16.30 **Coffee break**

16.30-17.15 **Panel II – *The Contribution of Free Trade Agreements***

Dr. Alexandra R. Harrington, Lecturer in Law, Lancaster University

Climate Measures and Energy-Intensive Sectors: A comparison of EU and UK Free Trade Agreements

Dr. Zamira Xhaferri, Lecturer in European Law, University of Amsterdam

Externalizing the European Green Deal: New approaches to 'green' the EU's Free Trade Agreements

Chair: **Prof. Ilaria Espa,** Associate Professor, Università della Svizzera Italiana

17.15-18.00 **Panel III – *The Development of Low-Carbon Standards***

Dr. Charles Codère, Postdoctoral Researcher, NEME Research Chair on New Challenges of Economic Globalization, Laval University, Québec (Canada)

Harmonized Implementation Of Corporate Climate Disclosure Standards: A Key For Effective Carbon Border Adjustment Mechanisms

Dr. Tetyana Payosova, Senior Associate, Van Bel & Bellis

The role of international standards in the design of trade-related climate measures in energy-intensive sectors

Chair: **Prof. Gabrielle Marceau**, Associate Professor, University of Geneva / Senior Counsellor, WTO

Friday 14 June 2024

09.00-09.45 **Panel IV– *From Divergence to Interoperability?***

Mr. Marcin J. Menkes, Associate Professor, Warsaw School of Economics

The Collision of Trade and Climate: Aligning Carbon Border Adjustment with Renewable Energy Policies

Dr. Marat Karatayev, Research Fellow, University of Nottingham **& Prof. Lorenza Mola**, Associate Professor, University of Turin

The Interconnectivity and Interplay of Trade and Investments in Anti-Leakage Policies: The Insight from a Bipartite Network Analysis

Chair: **Dr. Daniel Ramos**, Legal Officer, WTO

09.45-10.30 **Panel V – *Fairness and CBDR***

Ms. Debolina Bhatt, PhD Candidate, Geneva Graduate Institute **& Dr. Vishal Sharma,** Assistant Professor of Law, Bennett University

CBDR and CBAM: Who Will Pay the Price of Carbon?

Ms. Rachele Magnaghi, PhD Candidate, University of Milan

The EU CBAM Regulation and the U.S. BCA Proposals - A Potential 'BCA Coalition'? Comparing the Main Implementation Challenges under the non-discrimination obligation and CBDR-RC

Chair: **Mr. Nicolas Lockhart,** Partner, Sidley Austin

10.30-11.00 **Coffee break**

11.00-12.15 **Panel VI – *Commodification of CO_2 and Justice Implications***

Dr. Luciano Donadío, Permanent Mission of the Argentine Republic to the International Organizations in Geneva/Siglo 21 University **& Mr. Agustín Giustiniani,** Permanent Mission of the Argentine Republic to the International Organizations in Geneva/PhD Candidate, Geneva Graduate Institute

CBAM and the New Turn in the Commodification of CO2: Legal, Practical and Justice Issues

Dr. Kateryna Holzer, Senior Researcher, University of Eastern Finland

Balancing Trade and Environment: Lessons from the Malaysia-EU Biofuel Dispute

Ms. Yang, Ting Yu Yang, National Taiwan University, Department of Law

Balancing CBAM and WTO: When Environmental Justice Meets Trade Justice, Excluding Developing Countries' Voices

Chair: **Dr. Elena Cima**, Lecturer, University of Geneva

12.30-12.40 **Conclusions**

ESIL Interest Group on Energy and International Law

Annual Conference of the European Society of International Law
Pre-Conference Workshop:
Floating offshore wind: the Law and Policy of an Emerging Technology

Wednesday, 4th September 2024, 12:30 – 15:30 EEST
Radisson Blu Hotel Lietuva, Vilnius, Lithuania, and Zoom (hybrid)

Floating offshore wind represents a significant advancement in the global transition towards sustainable energy. Unlike traditional bottom-fixed offshore wind turbines, which are fixed to the ocean floor and limited by water depth, floating turbines can be located in deeper waters, significantly increasing the potential for green electricity generation. The deployment of floating offshore wind allows for an expansion of the geographic potential of offshore wind energy beyond coastal waters and other areas with limited depth. It thereby provides an opportunity for numerous countries to increase their renewable energy capacity, by harnessing the wind potential in their maritime spaces. Beyond contributing to the reduction of greenhouse gas emissions, the deployment of offshore wind contributes to enhancing energy security, by diversifying energy sources and reducing dependency on imported fossil fuels. Moreover, the development, installation, and maintenance of floating offshore wind farms can foster the creation of new jobs, stimulating economic growth in coastal communities and beyond. At the same time, the development of offshore wind poses a wide range of regulatory and policy challenges, which only partially coincide with those related to traditional bottom-fixed offshore wind development, for instance in terms of maritime spatial planning, permitting, supply chain development, and auction models.

This pre-conference workshop, organized by the Interest Group on Energy and International Law on the occasion of the 19th ESIL Annual Conference, aims to shed light on the regulatory challenges at the international, European, and national levels for the regulation of the floating offshore wind sector.

Programme

12:30 – 12:45	**Opening remarks** ***ESIL IG Interest Group Convenors***
12:45 – 13:45	**<u>Session 1: Floating offshore wind in international and EU law</u>** ***Floating Wind Turbines as an Object of International Maritime Conventions*** *Alexander Severance, Special Counsel, DLA Piper* ***Floating Offshore Wind in EU Law*** *Matteo Fermeglia, Assistant Professor, University of Amsterdam & Ceciel Nieuwenhout, Assistant Professor, University of Groningen* ***Human Rights and Offshore Energy Production*** *Alexandra Harrington, Lecturer, Lancaster University* ***International Legal Framework for Offshore Floating Wind Infrastructures*** *Zhen Sun, Associate Professor, World Maritime University & Youna LBL Lyons, Chair of the Board and Trustee, Advisory Committee on Protection of the Sea*
13:45 – 14:00	***Discussion and coffee break***
14:00 – 15:15	**<u>Session 2: Floating offshore wind in selected jurisdictions</u>** ***The Legal Framework for Promoting Floating Offshore Wind Power in Taiwan*** *Anton Gao, Professor, National Tsing Hua University, Taiwan* ***Regulatory Enablers to Deploy Floating Offshore Wind in an Emerging Market Like Colombia*** *Margarita Nieves-Zarate, PhD Researcher, University of Groningen & Arturo Pulido Pérez, Ministry of Mines and Energy, Colombia* ***Floating Offshore Wind in Italy: Regulatory and Policy Framework in a Rising Mediterranean Market*** *Alessandro Monti, Assistant Professor, University of Copenhagen & Elisa Scotti, Professor, University of Macerata* ***Floating Offshore Wind: Law and Policy in India*** *Uday Shankar, Associate Professor, Indian Institute of Technology Kharagpur & Arindam Basu, Assistant Professor, Indian Institute of Technology Kharagpur* ***Harnessing Aeolus: the Case of Floating Wind Farms in Greece*** *Georgia Plakoutsi, LL.M. Graduate, Utrecht University*

15:15 – 15:25	**Discussion**
15:25 – 15:30	**Concluding remarks**