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Master Thesis of International Business Law

**A Study on the Subsidy Discipline under WTO Legal
Framework Regarding Renewable Energy**

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2015.12

ABSTRACT

In this world of limited resources, with the continuous consumption of fossil fuels, the pollution of the environment and climate change issues are getting more and more concern nowadays. In order to achieve emission reduction and promote green economic development, the renewable energy industry is strongly supported by governments around the world. Although it has an indivisible part to play in the global energy market, there still exist many obstacles on the road of renewable energy. As a result, the development of such large-scale industry necessarily needs government support. Appropriate stimulation can not only make up the shortcomings of renewable energy on the higher cost of research and technology, but also can equilibrate its competitiveness in the energy market. However, along with the rapid growth of international energy trade, disputes regarding renewable energy subsidy issues correspondingly rise up. Among the government measures supporting renewable energy, subsidy as an incentive measure is widely used in energy sector and it thus has become the most controversial issue in recent disputes. In the field of international trade, WTO rules are now commonly accepted and applied by many countries on the trade of energy products. For member states, when they experience energy trade disputes, trade investigations can be carried out; for example, the United States section 301 investigation, or they could request Dispute Settlement Consultation from the WTO, or even take countervailing measures that will directly impact the diffusion of renewable energy. It is known to all that the WTO legal framework is very large, but also very complicated. With the absence of any particular agreement regarding energy trades, analysis of subsidy issues on renewable energy in this thesis will be conducted on the base of current disciplines in WTO framework. In the end, the purpose of this thesis is to try to propose appropriate solutions based on the analysis of the status quo so as to find a balance between free trade and environmental protection.

The first part of this paper provides an overview on the background of renewable energy. It introduces the significant values of renewable energy along with how necessary it is for governments to subsidize the renewable energy industry for long-run development. In addition, this part gives a brief introduction to the current status

quo of the implementations of subsidies in both developed countries and developing countries.

Then it will give a general review of the current subsidy discipline under the WTO legal framework. Since there is no special agreement in the renewable energy subsidy perspective, these subsidies will be treated no differently from general subsidies on goods and services. This part will focus on the basic analysis of the concept and requirements of constituting “subsidy” based on the Agreement on Subsidies and Countervailing Measures and General Agreement on Tariffs and Trade.

In accordance with the definition and criterion of subsidy within WTO legislation, the third part attempts to analyze the existing contradiction between practice of renewable energy subsidy and the lack of explicit legal schemes under current WTO disciplines. It firstly analyzes the legitimacy of renewable energy subsidies under the SCM agreement. Then it looks into GATT for exceptional provisions. It will also discuss the progress of relevant negotiations regarding this issue under the Doha Round.

Chapter four describes the predicament of renewable energy subsidies under the situation that a particular discipline is missing through case study on the China vs. US wind power case. Possible defense for China will also be discussed in this part.

After previous legal analysis, this paper aims at seeking possible alternative solutions to the lagging legal system by either reactivating non-actionable subsidies category under the SCM agreement or creating a new model in the perspective of renewable energy, so that reasonable subsidization under the pure purpose of environmental protection could be justifiable under WTO rules in the future.

Chapter six is the last part of the thesis, which makes a conclusion on the subsidy issues regarding renewable energy within the WTO legal system. It summaries the paradox that subsidization is needed on renewable energy development on the one hand, while corresponding subsidy discipline is lacking on the other.

KEYWORDS:

Renewable Energy, Subsidy, Countervailing Measures, World Trade Organization (WTO), the Agreement on Subsidies and Countervailing Measures (the SCM agreement), the General Agreement on Tariffs and Trade (GATT).

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