

THE PRESUMPTION OF CONFORMITY FOR CLIMATE MEASURES: RECONCILING THE CLIMATE CHANGE REGIME AND THE WTO

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ABSTRACT

Climate change is the most pressing concern of the world today, posing an existential threat to the planet's ecosystem and human society. Bold actions are necessary to meet the goal of limiting the temperature increase to 1.5 °C above the pre-industrial level under the Paris Agreement. However, the potential WTO-inconsistency of such climate measures creates legal uncertainty that hampers the state's climate change mitigation strategies. The general exceptions under the General Agreement on Tariffs and Trade (GATT) Article XX (b) or (g) are frequently discussed as a way to justify climate measures under the World Trade Organization (hereinafter "WTO") Agreements. However, close scrutiny of the relevant WTO jurisprudence casts doubts over such a reconciliation strategy. This article proposes a framework for reconciliation based on the presumption of conformity for specific climate measures adopted by the parties to the Paris Agreement with WTO rules. Such presumption of conformity represents the division of competence under which deference will be paid to the respective competency of the WTO and the climate change regime.

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