

# Exam - International Climate Change and Energy Law (JUR5911)

## Spring 2011

Please answer question 1 and only **ONE** alternative (a or b) of question 2.

1. The former UNFCCC Executive Secretary, Yvo de Boer, stated “The CDM has been the focus of intense scrutiny, and rightly so, by those who wish to ensure the mechanism’s environmental integrity and contribution to sustainable development, as well by those who want to ensure cost effectiveness. The conclusion that we can draw, looking back from this milestone, is that the CDM is delivering what it was meant to deliver—emission reductions and development. What’s more, it has shown that it can evolve, adapt and improve”. (Press Release, UNFCCC Secretariat, *Kyoto Protocol’s Clean Development Mechanism passes 100 millionth certified emission reduction milestone*, Dec. 18, 2007).

Explain the Clean Development Mechanism (CDM) as defined in the Kyoto Protocol, critically discuss the statement above and identify legal challenges.

### Alternative a:

Country Ethanolia has implemented a climate friendly renewable energy policy. In Article 3 of its Climate and Renewable Energy Act (CREA), Country Ethanolia has committed itself to “ensure that the share of energy from renewable sources in all forms of transport is at least 10% of the final consumption of energy in transport.”

In the transport sector, the only available renewable energy source is biofuel produced from biomass. Providers of conventional fuel that contains at least 10 percent biofuel will receive financial support in form of tax reliefs. The production capacity in Ethanolia for biomass is very limited. For that reason, Ethanolia imports biofuels from other countries. However, there is a concern that production of biofuels in certain countries might not respect minimum environmental requirements. Out of the fear that biomass production will lead to the deforestation of tropical forests, country Ethanolia has included sustainability criteria in its CREA. Article 4 of CREA reads “Biofuels taken into account for the purpose of compliance with the renewable energy target set out in article 3 of this Act shall not be made from biomass obtained from land with high biodiversity value, including primary forests or other forests of native species, nature protection reserves and areas designated for the protection of rare or endangered species.”

In the tropical and forested country Plantania, large areas of primary forests are converted into palm plantations for the production of palm oil biodiesel – a biofuel. Plantania exports its biofuels to several countries, including Ethanolia. When Ethanolia became aware of the production methods for biofuels in Plantania, it urged Plantania to adopt sustainable production methods. In the meantime, biofuel imports from Plantania were not eligible for financial support in Ethanolia. When it became clear that Plantania will not change its production methods, Ethanolia banned the import of biofuels from Plantania.

You are a legal consultant hired by the Government of Ethanolia. You are asked to analyse the compatibility of Ethanolias measures with WTO law.

**Alternative b:**

Climate change mitigation and renewable energy regulation and policies intersect with international trade law in a number of ways. Explain how international law of the World Trade Organization (WTO) could interfere with a country's domestic climate or renewable energy regulation? Which legal solutions exist?