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Bennett Ostdiek and John Fabian Witt

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Designing Border Carbon Adjustments for Enhanced Climate

Action

*Michael A. Mehling, Harro van Asselt, Kasturi Das,
Susanne Droege, and Cleo Verkuijl*

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The Paris Agreement advances a heterogeneous approach to international climate cooperation. Such an approach may be undermined by leakage—the displacement of emissions from states with more to less stringent climate policy constraints. Border carbon adjustments offer a promising response to leakage, but they also raise concerns about their compatibility with international trade law. This Article provides a comprehensive analysis of border carbon adjustments and proposes a way to design them that balances legal, administrative, and environmental considerations.

The Economic Structure of International Investment Agreements with Implications for Treaty Interpretation and Design

Alan O. Sykes

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This Article argues that international investment agreements (IIAs) serve a dual economic function—to discipline host country policies that impose international externalities on foreign investors, and to curtail inefficient risks associated with agency costs, risk aversion, asymmetric information, and time inconsistency problems that uneconomically increase the cost of imported capital in host countries. It draws on the economic analysis to explain central features of IIAs and their evolution over time, and to address various controversial issues in international investment litigation.

The Czar and the Slaves: Two Puzzles in the History of International Arbitration

Bennett Ostdiek and John Fabian Witt

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In 1822, the Russian czar resolved a dispute over compensation for slaves fleeing to British lines during the War of 1812. American observers have long asserted that this canonical decision favored the United States. But new debate has recently arisen among historians. Uncovering evidence from diplomatic archives, this Article concludes that the czar did indeed side with the United States. Moreover, the case demonstrates how nineteenth-century American statesmen pressed international law into service in support of slavery.

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