



Trade Issues in Renewable Energy Policies

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Outline of Presentation:

1. **Renewables as part of UNFCCC Measures**
2. **ECT / WTO principles**
3. **Main policy instruments used to promote renewables**
4. **Concerns about compliance with ECT/WTO**
5. **Conclusions**



Renewables as part of climate policy

Renewables:

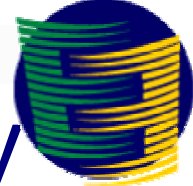
- an **instrument** of climate policy
or
a policy **objective** in its own right?
 - Where do renewables policies go beyond implementing climate policy?
 - By internalising externalities of GHG emissions renewables become part of instrument portfolio
 - Security of supply argument for renewables?
- => Concerns about trade distortions



UNFCCC

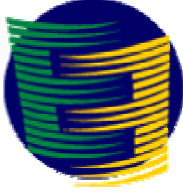
1. **Drafters were fully aware of possible trade restricting effects of climate change policies**
2. **Article 3: “*Measures taken to combat climate change, including unilateral ones, *should not* constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade.*”** **≈ GATT Article XX “Chapeau”**

Concerns about renewable energy policies and trade distortions



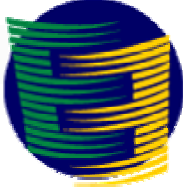
Current renewable policies

1. might distort trade in energy
2. often aim at boosting domestic production and reducing imports
3. often include some elements of discrimination
4. run counter to the general trend of electricity market opening



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ECT Trade (WTO) Principles:

- 1. Most-Favored Nation Treatment**
- 2. National Treatment**
- 3. Tariff-only regulation of trade**
- 4. General Exceptions**
- 5. Agreement on Subsidies and Countervailing Measures**



Most Favored Nation Treatment: non discrimination between foreign goods

GATT Article I:

- **Non-discrimination on imports and exports between foreign goods**
- **Any advantage, favour, privilege or immunity granted by any contracting party to any product of any other country shall be accorded immediately and unconditionally to the like product of all other contracting parties.**



National Treatment: non-discrimination between imported and domestic like products

GATT Article III:

- 1. No higher internal taxes**
- 2. No less favourable treatment in respect of laws, regulations and requirements affecting internal sale, offering for sale, purchase, transportation, distribution or use**
- 3. No quantitative regulation relating to the mixture, processing or use of products which requires that any specified amount or proportion of any product which is the subject of the regulation must be supplied from domestic sources**



Tariff-only regulation of trade

GATT Article XI:

Not allowed: to use prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licences or other measures



General Exceptions:

- health protection**
- conservation of resources**

if no discrimination or restriction on international trade

GATT Article XX:

1. “... nothing in this Agreement ... prevent[s] the adoption or enforcement ... of measures:

(b) necessary to protect human, animal or plant life or health;

(g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption”

2. « Chapeau »: Measures under or (g) may not constitute arbitrary or unjustifiable discrimination or disguised restriction on international trade



(WTO) Agreement on Subsidies and counter vailing measures (ASCM)

- 1. Disciplines the use of subsidies; regulates the actions of countries to counter the effects of another country's subsidies**
- 2. Prohibited: a subsidy that requires recipient to meet export targets, or to use domestic goods instead of imported goods**
- 3. Actionable: a subsidy that has an adverse effect on another country's interests**
- 4. Remedy: Dispute settlement OR, if domestic producers are hurt by imports of subsidized products, countervailing duty**



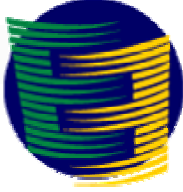
(WTO) Agreement on Subsidies and Counter Vailing Measures (ASCM)

- 1. The ASCM fully applies to all forms of energy, including renewables**
- 2. Export subsidies don't appear to be very relevant at this stage of market development**
- 3. Subsidies contingent upon the use of domestic renewables: e.g. feed-in tariffs**
- 4. Remedies:**
 - (a) Dispute Settlement available and practicable**
 - (b) Countervailing subsidized electricity: practicable?**



Implications of ECT/WTO obligations for renewables

- 1. ECT/WTO does not limit countries' sovereign rights over natural resources**
- 2. But: internal policies may not distort trade or protect domestic industries**
- 3. Local renewables quota obligations and similar measures potentially restrict imports of foreign electricity**
- 4. Foreign and domestic electricity - whatever their method of production – are “like” products and should be treated on equal footing**



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Main EU instruments of renewable policy

	<i>Financial measures</i> (subsidies/loans/grants/fiscal measures)	<i>Non-financial measures</i>
RD&D	- Fixed government RD&D subsidies - Grants for demonstration, development, test facilities, etc. - Zero (or low) interest loans	
Investments	- Fixed government investment subsidy - Bidding system on the investment subsidy/grant - Subsidy on switching to renewable energy production or on the replacement of old renewable energy installations - Zero (or low) interest loans - Tax advantage for renewable energy investments - Tax advantage on (interest on) loans for renewable energy investments	- negotiated agreements between producers and government
Production	- feed-in tariffs at a fixed level set by the authorities - bidding system on the feed-in tariffs necessary to operate on a profitable base - tax advantage on the income generated by renewable energy	- quota obligation on production
Consumption	- tax advantage on the consumption of renewable energy	- quota obligation on consumption



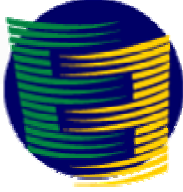
Examples:

supply	<i>Feed-in tariff</i> Germany, Austria, Spain, France, Greece, Portugal, Finland	<i>Competitive Bidding</i> Ireland <i>Obligation for producers</i> Italy
	<i>Price support of the demand</i> Netherlands	<i>Quota-Obligation for consumers or suppliers</i> UK, Austria (small hydro), Belgium
demand	price	quantity



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Concerns on National Treatment

- **There is a NT problem when competitive opportunities for selling foreign electricity are not the same as for domestic electricity**

Specific concerns about renewables obligations



Obligations can be met only from domestic sources.

Examples:

- 1. Only Austrian small hydro**
- 2. Only Flemish electricity can get green certificates**
- 3. Non-EU electricity excluded from guarantees of origin**



Concerns about Feed-in laws and general purchase requirements

1. **Article XX may be invoked subject to the requirement of the “Chapeau” (even-handedness)**
2. **Obligation to purchase locally produced renewables violates both Articles III (NT) and XI (Prohibition of quantitative measures)**



Concerns about *de facto* discriminations (NT)

1. Renewable portfolio definitions may *de facto* exclude imported electricity from eligibility.
Example: exclusion of power plants above certain capacity or older than certain age
2. Only “recognized” (*domestic?*) plants may qualify under a renewable scheme, and the power of granting recognition is vested in local authorities.
Example: Austrian “eco-plants”
3. Informational requirements may render purchase of foreign electricity more onerous because of higher informational costs.



MFN concern

- **Reciprocity requirements are inherently contrary to GATT Article I.**
- **Example: Italian Electricity Liberalisation Act and MICA Decree 11/11/99: renewable electricity quota can be met by importers by «importing electricity from new renewable energy plants from countries with similar instruments on the basis of reciprocity»**

Cost of annual energy subsidies - 1995-98, \$US bn

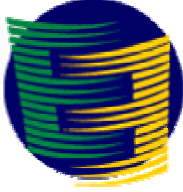
(Pershing & Mackenzie: Removing Subsidies - Leveling the Playing Field for Renewable Energy Technologies, 2004)



	OECD countries	Non-OECD countries	Total
Coal	30	23	53
Oil	19	33	52
Gas	8	38	46
All fossil fuels	57	94	151
Electricity	a)	48	48
Nuclear	16	nil	16
Renewable & end-use	9	nil	9
Non-payments and bail out ^b	0	20	20
Total	82	162	244
% global energy subsidies	34%	66%	100%
Per capita subsidies (\$/cap)	88	35	44
Per capita GDP (\$/cap, 2000)	23,132	3,903	7,316

Notes: a) Subsidies for electricity in OECD countries have been attributed to fossil fuels according the shares.

b) Subsidies from non-payments and bail out operations have not been attributed to energy sources.



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Conclusions

1. **ECT/WTO Members are free to regulate environment-related products and their production, subject to ECT/WTO binding principles**
2. **Many current renewable energy policies raise concern because of protectionist and discriminatory elements**
3. **ECT/WTO is not an obstacle to renewable or GHG policy, room to find ECT/WTO compatible support measures**
4. **Need for building policy coherence between the multilateral trading system, global climate & efficient energy policies and renewable policies**