

Energy in WTO Law and Policy: Towards a Framework Agreement

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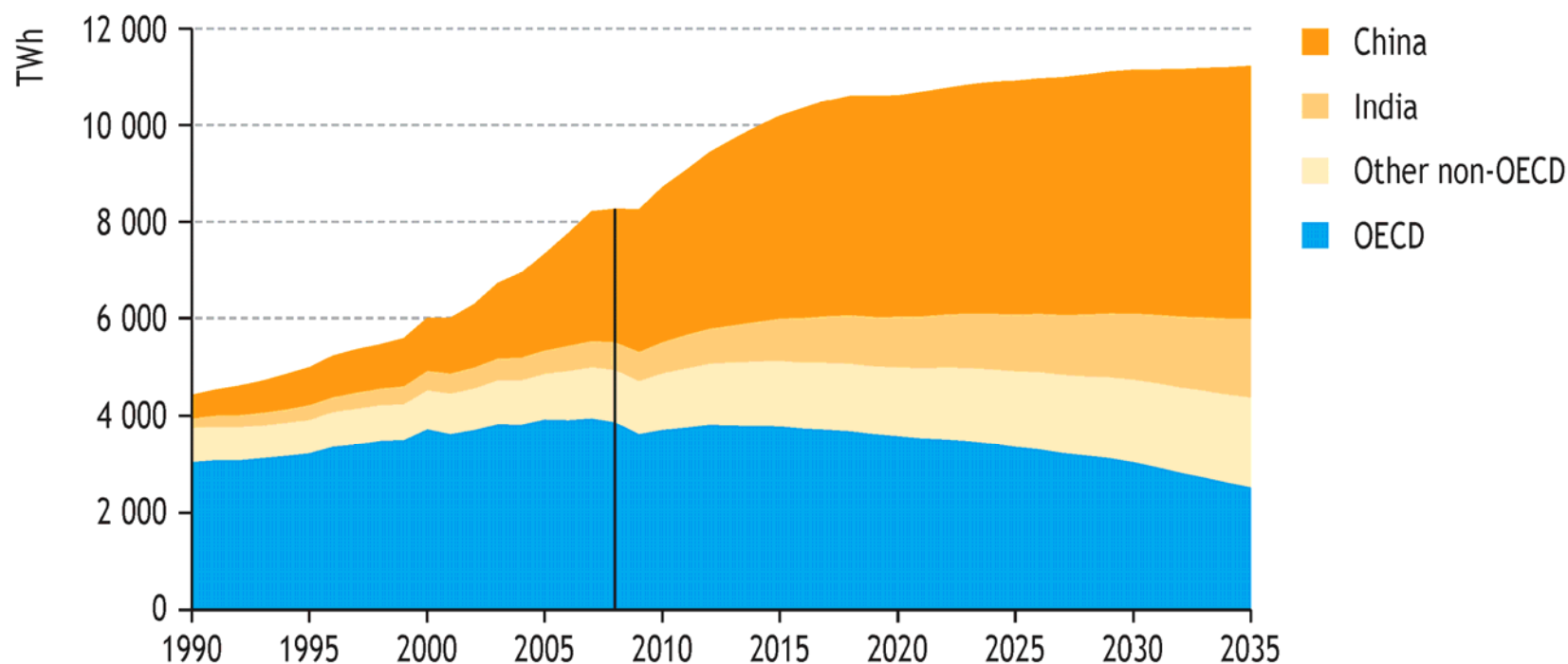
A Focus on Energy Regulation

- What role for trade regulation in energy?
- Neglected area of trade regulation
 - Electricity defined as a good and not service
 - No specific rules on energy in GATT (subsidies)
 - Weak rules on transportation and transit
 - Lack of attention in GATS and EGS negotiations
 - Lack of antitrust rules and abuse of monopoly powers, relation to OPEC unsettled
- Lack of WTO awareness in the industry
- Key issue in climate change mitigation

Coal remains the backbone of global electricity generation

World
Energy
Outlook
2010

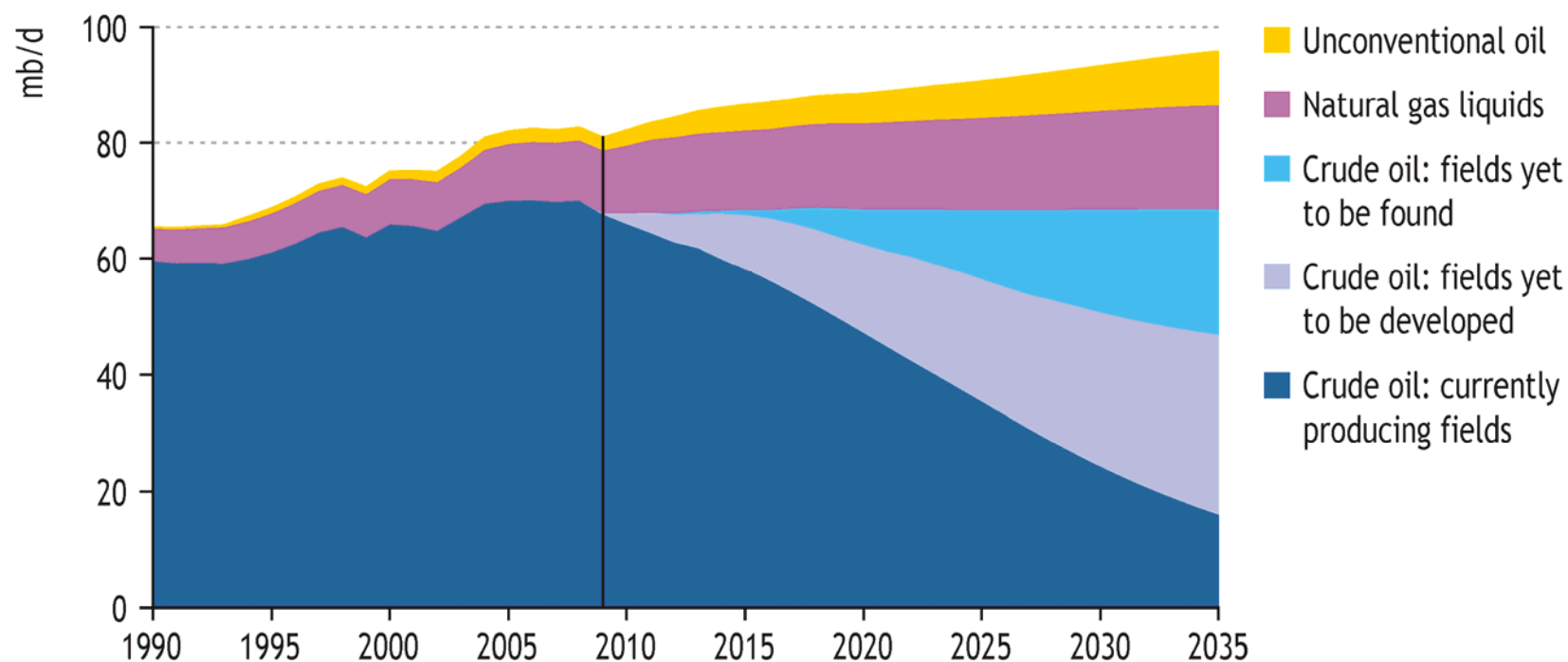
Coal-fired electricity generation by region in the New Policies Scenario



A drop in coal-fired generation in the OECD is offset by big increases elsewhere, especially China, where 600 GW of new capacity exceeds the current coal capacity of US, EU & Japan

Oil production becomes less crude

World oil production by type in the New Policies Scenario



Global oil production reaches 96 mb/d in 2035 on the back of rising output of natural gas liquids & unconventional oil, as crude oil production plateaus

Climate Change Mitigation

- Reduction of GHG emissions depends upon increased recourse to renewable energies, nuclear power and much enhanced efficiency
- Long-distant trade in energy supplies will increase (international grids) besides local supplies
- Need to create incentives for research and use of renewable energy

Topics and Regulatory Areas involved

Within WTO law disciplines

- Definition of energy
- Export/import/production restrictions
- Transit of energy supplies
- Subsidies /renewable and non-renewable)
- Dual Pricing
- Government procurement
- Monopolies and State trading
- Energy services
- Transfer of technology
- Intellectual Property TRIPs
- Tariffs and taxes (EGS)
- PPMs and border tax adjustment
- Carbon tariffs
- TRIMS

Outside WTO law

- Access to energy supplies and transit (Energy Charter)
- OPEC production control
- Competition policy
- Investment protection
- Atomic energy treaties and non-proliferation
- CO2 abatement (UN Framework Convention,
- CFC abatement (Montreal Protocol)
- CAP & Emission Trading
- Clean Development Mechanism (CDM)
- Biodiversity
- Pollution control and liability

Transit Rights

- Renewable energy production depends upon transmission and transit rights
- Article V GATT (4)

All charges and regulations imposed by contracting parties on traffic in transit to or from the territories of other contracting parties shall be reasonable, having regard to the conditions of the traffic.
- How to enhance legal security on international transmissions in grids?
- General or special rule of energy (oil, gas, electricity)?

Subsidies

- 90 % of Subsidies to non-renewable energy
- WTO does not distinguish between renewable and non-renewable energy in GATT, ASCM and Ag Agreement
- Role of Article XX(g) GATT?
- Future role of non-actionable subsidies (R&D)?
- General rules or special rules for energy?

Towards Building Blocks

- Impact of general WTO rules and other agreements
- Identification of issues and regulatory Approaches
- Pro and cons of special rules (lex specialis) for energy in goods and services
- Identification of appropriate forum
- Relationship of different institutions in international architecture
- WTO dispute settlement

Hypothesis: Towards a WTO Framework Agreement

- Energy requires an integrated approach and does not lend itself to fragmented negotiations:
 - All forms of energy should in principle be subject to the same rules and thus conditions of competition.
 - The production and transmission of energy is a complex operation which often involves both goods and services.
 - It also entails technology and thus is affected by intellectual property rights.
 - The sector shows a high level of governmental involvement which calls for coherent rules on competition and government procurement.

Towards a WTO Framework Agreement (Cont'd)

- Energy agreement would not render the current structure of the WTO Agreements obsolete.
 - Recourse to a framework convention implies that its provisions may refer to pertinent provisions of other agreements of the WTO
 - They may also incorporate provisions of agreements outside the scope of the WTO, as did the TRIPS Agreement for the Paris and Berne Conventions on industrial property and copyright
 - Or, they allow reference to other provisions without incorporating them, for example the European Energy Charter, a future and revised UNFCCC or Kyoto Protocol.
- Both reference and incorporation allow the building of a comprehensive and coherent agreement on energy within the WTO subject to binding dispute settlement.

Thank you for your attention!

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Cottier et al, The Prospects of international
Trade Regulation: From Fragmentation to
Coherence, CUP 2011