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Brexit Options

- Bilateral Energy Agreement with EU, adopting most of EU law, possibly within Energy Community
- Reliance upon WTO disciplines, European Energy Charter and PTA with third states
- Challenges of climate change mitigation and need for regional and transcontinental grid development



Decarbonization of Electricity

2015 Paris Accord

IPCC, Climate Change 2014 – Synthesis Report
(November 1, 2014):

- Maintaining warming at below 2°C includes:
 - Renewable Energy
 - Nuclear Energy
 - Phase out fossil fuels except for installed carbon capture and storage by end of 21st Century

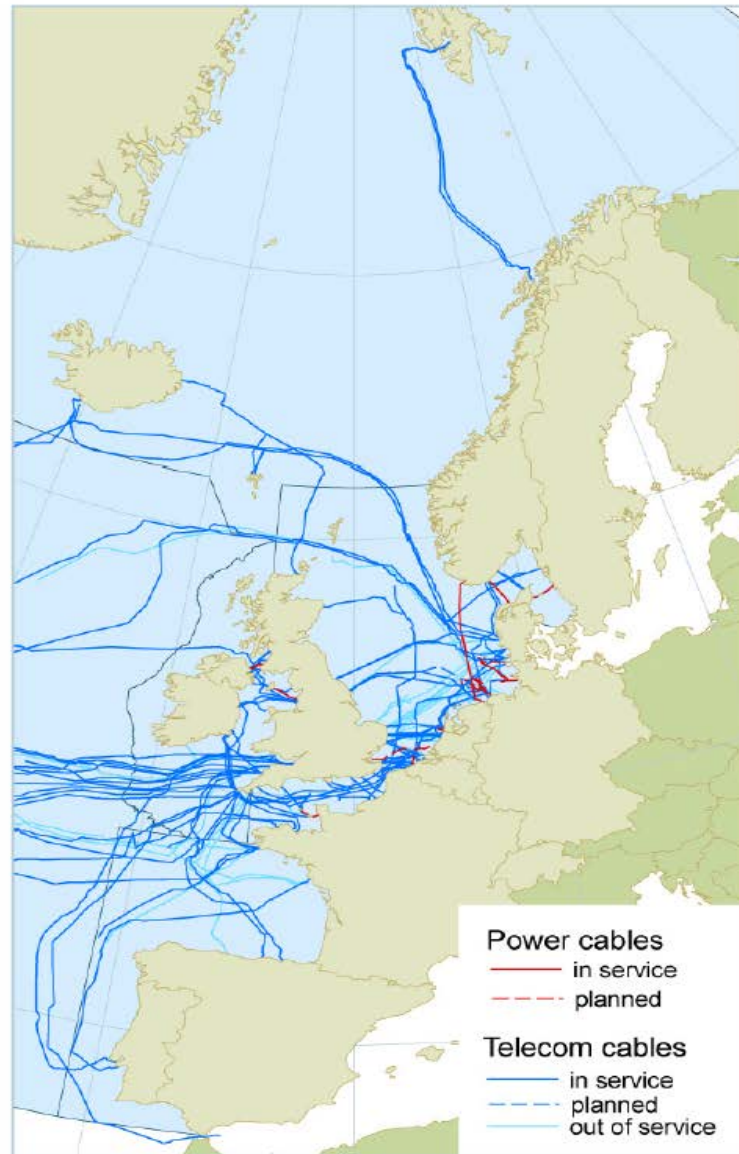
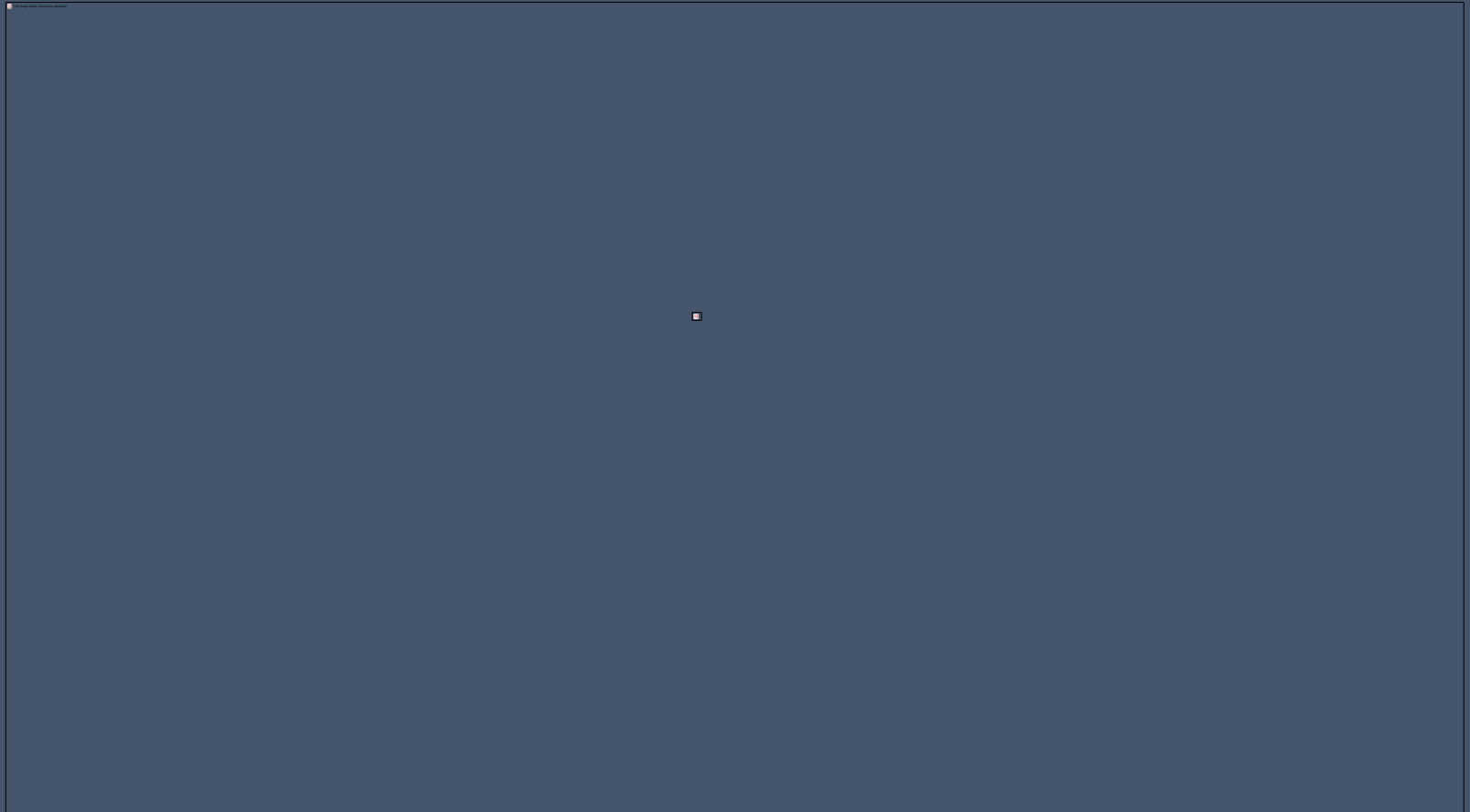


Figure 2: Submarine cables in the OSPAR Maritime area (incomplete). Compiled from different sources by the German Federal Agency for Nature Conservation.

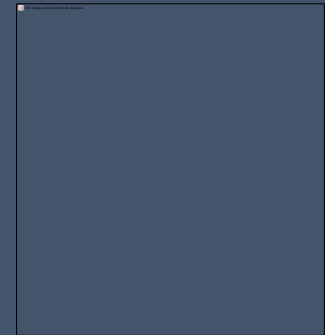
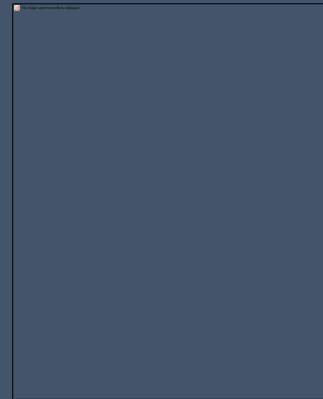
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Wind Farming in Greenland



Global Grid Transmission

- Ultra High Voltage AC
- High Voltage Direct Current (HVDC)
- Gas insulated lines
- Super conducting cables
- Most probable: HVCD
 - Less thermal losses
 - Can conduct synchronous network



Relevant EU Regulations

- Regulation No 256/2014 of 26 February 2014 concerning the notification to the Commission of investment projects in energy infrastructure within the European Union
- Regulation No 347/2013 of 17 April 2013 on guidelines for trans-European energy infrastructure
- Regulation No 1227/2011 of 25 October 2011 on wholesale energy market integrity and transparency
- Commission Regulation No 838/2010 of 23 September 2010 laying down guidelines relating to the inter-transmission system operator compensation mechanism and a common regulatory approach to transmission charging
- Commission Regulation No 774/2010 of 2 September 2010 laying down guidelines relating to inter-transmission system operator compensation and a common regulatory approach to transmission charging
- Regulation No 67/2010 of 30 November 2009 laying down general rules for the granting of Community financial aid in the field of trans-European networks

Relevant EU Regulations

- Regulation No 714/2009 of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation No 1228/2003
- Regulation No 680/2007 of 20 June 2007 laying down general rules for the granting of Community financial aid in the field of the trans-European transport and energy networks
- Regulation 714/2009 of the European Parliament and the European Council of July 13, 2009 on conditions for access to the network for cross-border exchanges in electricity, OJ 14.8.2009 L 211/15
- Commission Regulation (EU) 2015/1222 of July 24, 2015 establishing a guideline on capacity allocation and congestion management, OJ 25.7.2015 L 197/24

Relevant EU Directives

- Directive 2009/28/EC of 23 April 2009 on the promotion of the use of energy from renewable sources
- Directive 2009/72/EC of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC
- Directive 2008/92/EC of 22 October 2008 concerning a Community procedure to improve the transparency of gas and electricity prices charged to industrial end-users
- Directive 2005/89/EC of 18 January 2006 concerning measures to safeguard security of electricity supply and infrastructure investment

Relevance of WTO Law

- GATT disciplines were not negotiated with a focus on energy but apply to international trade in energy and infrastructure
- All main producers of oil, coal, gas and biofuels, nuclear and hydropower today are Members of the WTO
- Challenges of climate change adaptation and mitigation: not well prepared
- Essential shift to PPMs and sustainability concerns

WTO Coverage

- WTO law discipline extend to
- Electricity (GATT, TBT)
- Hardware and equipment, grids (GATT, SCM, ADA, Safeguards)
- Investment and local content (TRIMS)
- Coal, Oil and gas (GATT)
- Biofuels (AoA)
- Energy related services (GATS)
- Intellectual property rights (TRIPS)
- Government Procurement (GPA)

Energy Related Complaints

- DS419 China — Measures concerning wind power equipment (Complainant: United States) 22 December 2010
- **DS 412/426 Canada — Measures Relating to the Feed-in Tariff Program (Complainants: Japan and European Union) Report of the Appellate Body WT/DS 412/416/AB/R (May 6, 2013)**
- DS449 United States — Countervailing and Anti-dumping Measures on Certain Products from China (Complainant: China) 17 September 2012
- DS473 European Union — Anti-Dumping Measures on Biodiesel from Argentina (Complainant: Argentina) 19 December 2013
- DS 510 United States — Certain Measures Relating to the Renewable Energy Sector (Consultations by India 9. Sept. 2016)
- **DS 456 India - Certain Measures relating to Solar Cells and Solar Modules - Report of the Appellate Body WT/DS456/AB/R (September 16, 2016)**
- DS476 European Union and its Member States — Certain Measures Relating to the Energy Sector (complaint by Russia) Panel established 7 March 2016

MFN

- EU internal energy market access rights not subject to MFN and third party access (tariffs, QRs, internal market integration) due to Articles XXIV GATT and V GATS
- Spillover-effects of disciplines on non-tariff barriers due to mainly *de facto* national treatment and MFN effects



National Treatment

- Allows addressing Dual Pricing, but subject to Article XX(d) GATT
- Equal treatment and level playing field, but subject to environmental exceptions (Art. XX(g))
- Services subject to national treatment only to the extent schedules and subject to further restrictions based upon mode of supply restrictions (Art XVI and XVII)



National Treatment

- *United States – Standards for Reformulated and Conventional Gasoline*, WT/DS2/AB/R, adopted 20 May 1996, DSR 1996:I, 3
- *United States – Import Prohibition of Certain Shrimp and Shrimp Products*, WT/DS58/AB/R, adopted 6 November 1998, DSR 1998:VII, p. 2755
- *United States – Import Prohibition of Certain Shrimp and Shrimp Products – Recourse to Article 21.5 of the DSU by Malaysia*, WT/DS58/RW, adopted 21 November 2001, upheld by Appellate Body Report WT/DS58/AB/RW, DSR 2001:XIII, p. 6529

US – Shrimps Turtle (AB)

- 166. Another aspect of the application of Section 609 [US Public Law 101-102 of 1989] that bears heavily in any appraisal of justifiable or unjustifiable discrimination is the failure of the United States to engage the appellees, as well as other Members exporting shrimp to the United States, in serious, across-the-board negotiations with the objective of concluding bilateral or multilateral agreements for the protection and conservation of sea turtles, before enforcing the import prohibition against the shrimp exports of those other Members.

US – Shrimps Turtle (Art. 21.5 DSU Malaysia) (Panel)

- 5.46 The approach of the Appellate Body leads us to conclude that it is not solely the fact that the United States negotiated seriously with some Members and less seriously with others which is at the origin of its finding of unjustifiable discrimination in relation to negotiations, even though it would have been sufficient in itself to justify such a conclusion. We believe that another reason for the Appellate Body finding is that the United States, by unilaterally defining and implementing criteria for applying Section 609, failed to take into account the different situations which may exist in the exporting countries. In other words, the United States failed to pass the "unjustified discrimination" test by applying the same regime to domestic and foreign shrimp.

Electricity: Market Coupling

- Regulation 714/2009 of the European Parliament and the European Council of July 13, 2009 on conditions for access to the network for cross-border exchanges in electricity, OJ 14.8.2009 L 211/15
- Commission Regulation (EU) 2015/1222 of July 24, 2015 establishing a guideline on capacity allocation and congestion management, OJ 25.7.2015 L 197/24

Regulation 2015/1222

- Art. 1 Para 4: Swiss Clause:
- The Union single day-ahead trading and interday coupling may be opened to market operators and TSO operating in Switzerland on the condition that the national law in that country implements the main provisions of Union electricity market legislation and that there is an intergovernmental agreement on electricity cooperation between the Union and Switzerland

Weaknesses of WTO Law

- Export restrictions loosely termed (Art. XII GATT)
- Disciplines on monopolies and state trading loosely termed (Art. XVII GATT, Art VIII GATS)
- Energy Services not well organised in CPC and schedules
- Lack of anti-trust rules in WTO
- Subsidy disciplines not suitable for energy (fossil fuels, feed-in tariffs)



PTAs

- TTIP likely to provide for accession to third parties
- CETA remains bilateral and subject to independent UK-Canada PTA



CETA (2016)

- Agreement applies to energy
- No specific chapter on energy cooperation
- Many reservations of MS and provinces on national treatment in energy sector
- UK-Canada bilateral agreement could expand on these disciplines



TTIP (EU Proposal 2016)

- Combines energy and raw materials
- Prohibition on export monopolies
- Prohibition of dual pricing
- Transit rules referring to Art V GATT
- Third Party access to energy transport infrastructure
- Cooperation on technical standards and energy efficiency, R&D cooperation, Energy Consultation Mechanism
- No provision on long distance interconnection and trade (grids), fossil fuel subsidies



Future Sectorial Agreements in WTO

- 2015 Paris Accord
- Long-distant trading in RE required to substantially increase stable supplies and storage (interconnection, network regulation, trading rules)
- Reduction and phasing out of fossil fuels and reinforcement of RE energy transfer of technology



Conclusions

- EU UK Agreement on Energy adopting most of acquis (continuity)
- Building upon WTO disciplines in relation to non-EU third countries and support developing global approaches on trade and climate change disciplines
- Addressing specific needs on energy on PTAs



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