

Differential electricity taxes:

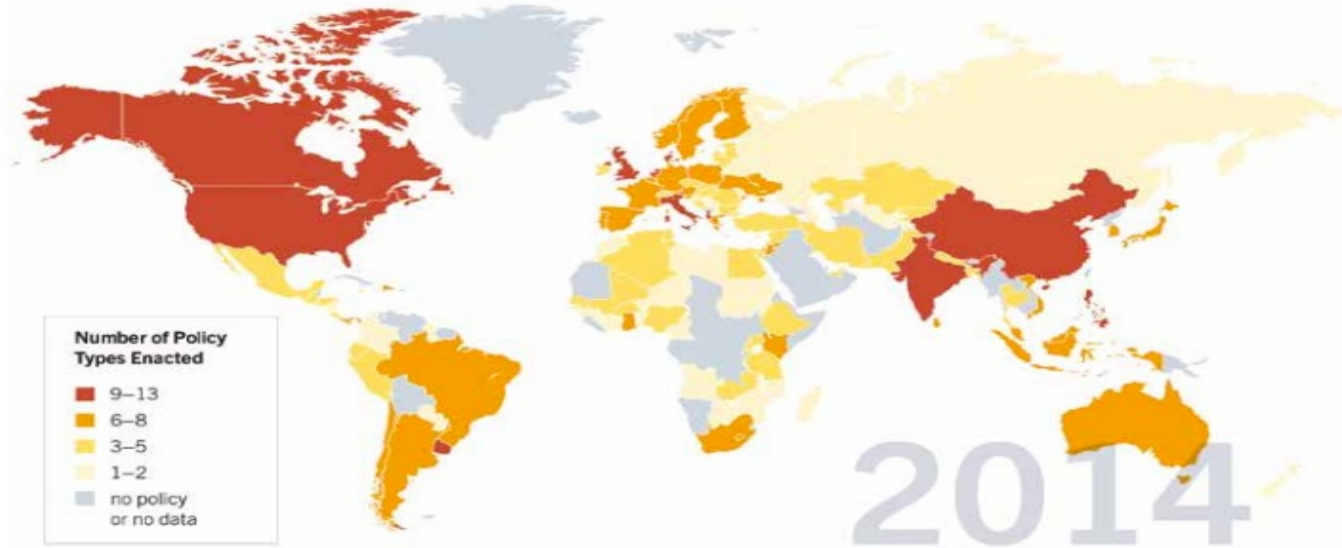
*Meandering the murky line between
protectionism and environmental protection*

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POLICY MAPS

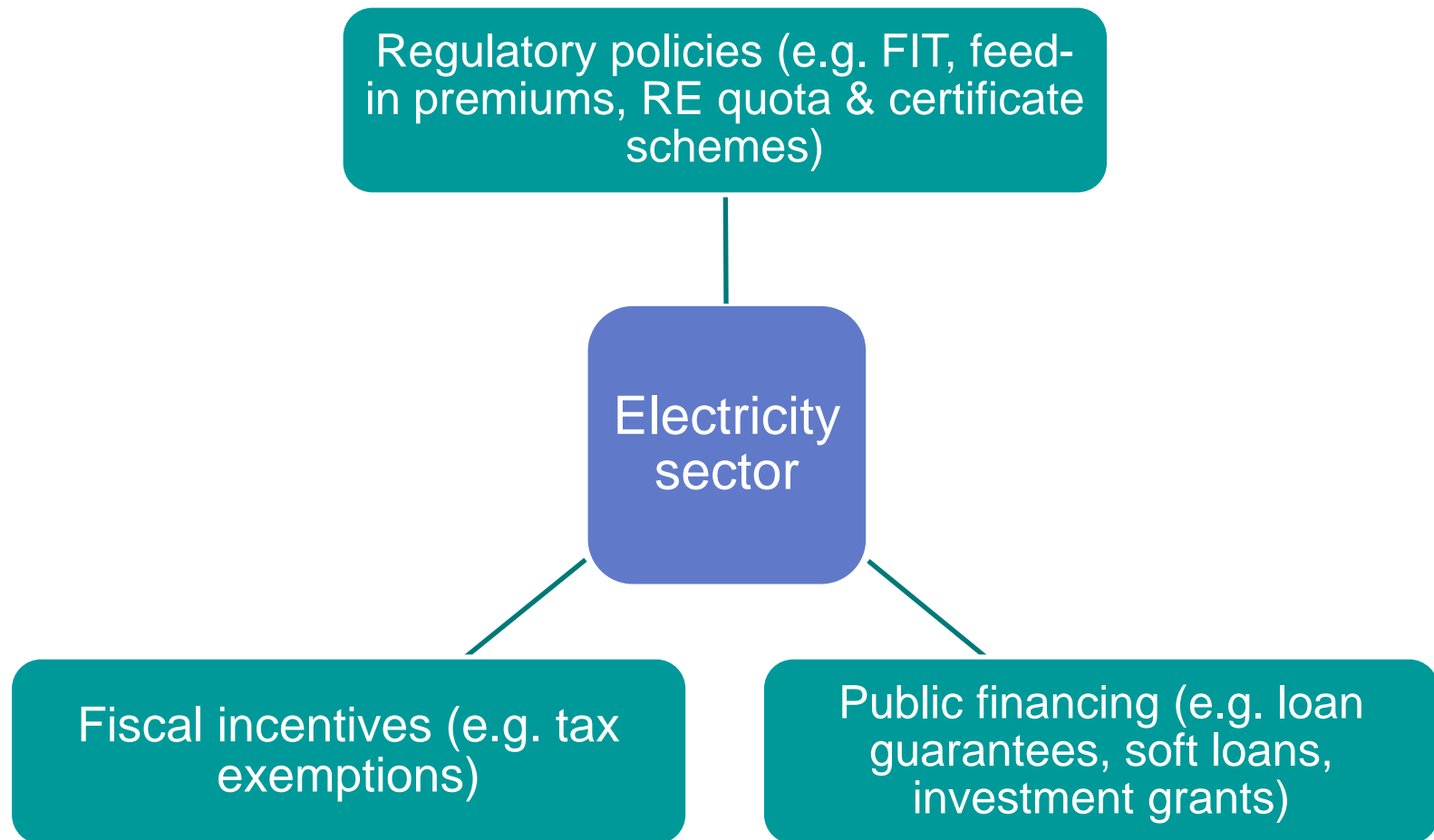
Countries with Renewable Energy Policies, Early 2014



Countries with Renewable Energy Policies, 2005

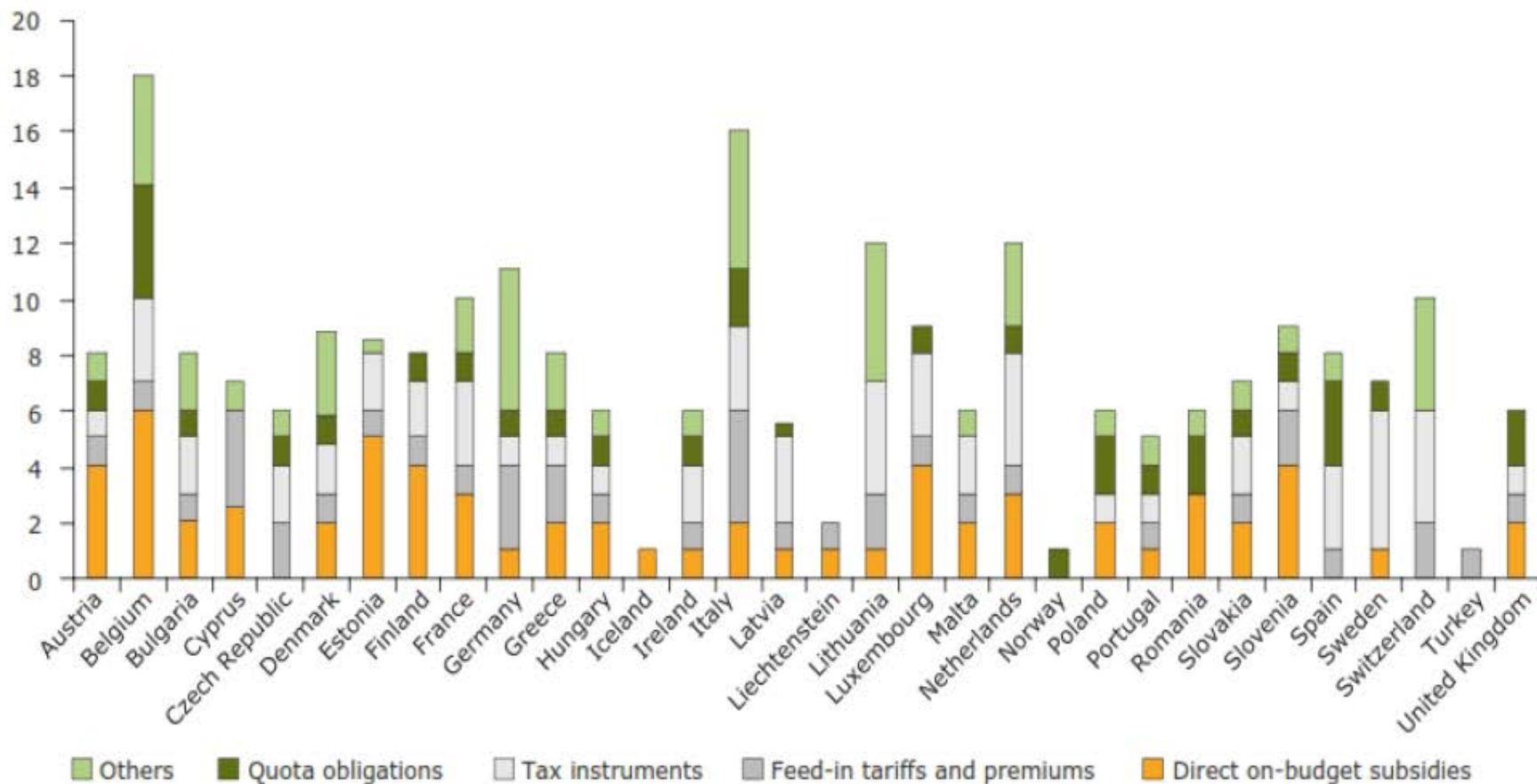


144
COUNTRIES
HAVE DEFINED
RENEWABLE
ENERGY TARGETS



Types of instruments to support renewable energy

Number of measures



Source: [EEA Technical report No 21/2014](#)

A differentiated electricity tax



From RE
promotion to
steering

- Swiss Energy Strategy 2050
- A shift from command-and-control and subsidies towards incentives, such as tax exemptions

From a uniform
tax to a
differentiated tax

- based on electricity sources
- based on CO2 footprint

Use of RE
certificates for
taxation
purposes

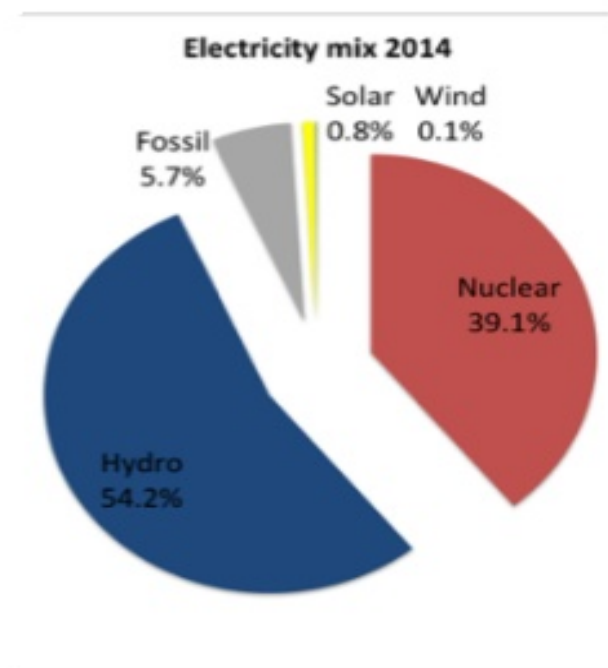
- guarantees of origin (GOs)
- green certificates
- electricity labels
- tax exemption certificates (e.g. levy exemption certificates (LECs) of the UK Climate Change Levy scheme)

What if also levied on imports? *De facto* discrimination?

Swiss electric system

- Consumed
 - 56 000 GWh
- Produced
 - 61 500 GWh
- Imported: 28 000 GWh
- Exported: 32 500 GWh

Source: Swissgrid (*Energie Uebersicht 2014*)



How WTO law applies?

- Electricity is a good (GATT Schedule of Concessions HS 2716.00, *Canada-Renewable Energy*)
 - GATT (MFN, national treatment, optional tariff commitments), ASCM subsidy rules (tax exemptions, tax rebates), TBT rules (use of certificates)
 - GATS (to the extent that a tax affects services suppliers)
- Electricity is special
 - homogeneity as a final product
 - reliance on grids & therefore trade constraints but prospects for a global interconnected grid & increasing role of int. law

Discrimination analysis

- Likeness of grey and green electricity and a potential violation of GATT Art. III:2:

Scenario 1: 'like' => same tax

Scenario 2: 'directly competitive & substitutable' => tax treatment, which does not afford protection for domestic electricity

Scenario 3: 'unlike' => same tax only for domestic and foreign electricity of the same electricity type

- Under scenarios 1 & 2, justification under Art. XX GATT could be available

Justification under general exceptions of GATT Art. XX

- Under para (g): as a measure related to environmental protection (for differential treatment of fossil fuel & possibly nuclear electricity)
- Under para (b): as a measure addressing life and health risks (for differential treatment of nuclear electricity)
- Chapeau: it's important that a different treatment 'where the same conditions prevail' has a link to the objective under the paragraph

Additional design features:

Restrictions on eligibility of certificates

- Quantitative restrictions on foreign RECs eligible for tax exemptions
 - Art. XI GATT violation: a ‘restriction on importation’ made effective through ‘other measures’
 - Art. III:4 GATT violation: less favourable treatment accorded to suppliers of imported green electricity
 - Justification under Art. XX problematic: ‘a means of arbitrary discrimination’
- Qualitative requirements to RECs
 - RECs attached to a green label: ok if the label is equally accessible for domestic and foreign electricity facilities

Conclusions

- To be in line with WTO rules, imported and domestic electricity must either be taxed equally (*but that would be difficult to achieve if judged on the whole*) or the differences in taxation must not exceed what is required for environmental and/or health reasons (*that might be needed for justification*).
- Additional requirements and constraints for imported green electricity eligible for tax exemptions may complicate the compliance of a differentiated electricity tax with WTO law.

Thank you!

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