

Trade & Energy Security: Linkages, Key Issues & Does WTO have a role?

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Some points to Ponder...

- What is Energy Security?
 - From an energy suppliers perspective?
 - From an energy user's perspective?
 - Transit....?
- Energy products – what are we talking about?
 - Goods or services or both?
 - Are these goods or services tradeable?
 - If so, how are they regulated/traded?

Some more points to ponder

- Trade & Energy Products?
 - Volume/Value of trade?
- Is “energy” covered in the WTO?
 - If not – Does the WTO have a role?
 - If yes – How is it covered? What are the linkages?
- Special focus on Accessions/RAMs

Energy Security

- Energy security defined...
 - “ ... as the ability of an economy to guarantee the availability of energy resource supply in a sustainable and timely manner with the energy price being at a level that will not adversely affect the economic performance of the economy.”
 - A Quest for Energy Security in the 21st Century, Asia-Pacific Research Centre (2007)
- Energy insecurity defined...
 - “Energy insecurity can be defined as the loss of welfare that may occur as the result of a change in price or availability of energy.”
 - Energy Security: Externalities and Policies, Bohi & Toman (1993)

Background

- Very few energy majors as members of GATT/WTO -- but this is now changing....
- GATT/WTO membership
 - 23 GATT Contracting Parties (1947) → 159+1 WTO Members today + 24 in accession (including some energy majors)
- So will energy security issues play a more prominent role at the WTO in the future?

Energy Security Issues Covered in the WTO?

- Pricing Policy
- State-owned and State-trading enterprises
- Investment regime and competition policy
- Import restrictions (bans, quotas, licensing)
 - General Exceptions and Security Exceptions
- Export restrictions
- Export duties
- Subsidies (industrial and export subsidies)
- Transit trade
- Trade in services (GATS and the energy sector)
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Pricing Policy

- GATT/WTO Provisions of Relevance
 - MFN/National Treatment (interests of exporting parties)
 - GATS (Domestic regulations affecting trade in services)
 - Transparency provisions?
- Accession Negotiations on Pricing Policy
 - Standard protocol commitment (Applies to all products, not specifically energy-related)
 - Dual Pricing (also linked to subsidies)

Pricing Policy

- **Dual Pricing:** “the maintenance of prices for energy consumed domestically at a level below the global market price or the price at which the energy is sold for export” (*P. Milthorp & D. Christy (2011)*)

i.e. sale at different prices (domestically/export)

- Should pricing reflect “competitive advantage”? “Cost recovery +”? Other factors (e.g. Oman)?
- Basic WTO/GATT principle: Application on non-discriminatory basis (regardless of nationality).
- •Do all energy products have a world mkt price? •8

Pricing Policy

- **Protocol commitment (Saudi Arabia)**

“In response to concerns expressed by a member of the Working Party, the representative of Saudi Arabia stated that producers/distributors of NGLs in Saudi Arabia would operate, within the relevant regulatory framework, on the basis of normal commercial considerations, based on the full recovery of costs and a reasonable profit. He confirmed that his Government's policy was to ensure that these economic operators, in respect of their supplies of NGLs to industrial users, would fully recover their production and investment costs (fractionation, overheads, financing charges, transportation, maintenance and upgrade of fractionation and distribution infrastructure) and make a profit in the ordinary course of business. The Working Party took note of these commitments”.

Pricing Policy

- **Protocol commitment (Russia)**

“In response to the concerns expressed, the representative of the Russian Federation stated that upon accession, **producers/distributors of natural gas** in the Russian Federation **would operate, within the relevant regulatory framework, on the basis of normal commercial considerations, based on recovery of costs and profit**. He confirmed that the policy of his Government was to ensure, upon accession, that these economic operators, in respect of their supplies to industrial users, would recover their costs (including the cost of production, overheads, financing charges, transportation, maintenance and upgrade of extraction and distribution infrastructure, investment in the exploration and development of new fields) and would be able to make a profit, in the ordinary course of their business. **He added that his Government would continue to regulate price supplies to households and other non-commercial users, based on considerations of domestic social policy**. The Working Party took note of these commitments”.

State-trading and SOEs

- Role of State in transition economies and in the energy sector
- GATT/WTO disciplines on STEs (i.e. enterprises with “exclusive or special privileges”
 - STEs obliged to operate “in accordance with commercial considerations”
 - Members to notify STEs to WTO for transparency purposes
- SOEs/STEs in the energy sector incl.:
 - Gazprom (Russia); Aramco (Saudi); UkrGasEnergo (Ukraine); PDVSA (Venezuela)

Import/Export Restrictions

- GATT/WTO – General Elimination of QRs on X/Ms
 - But, there are exceptions... such as for “conservation of exhaustible natural resources” or for “essential national security interests”
 - Referred to in the context of energy sector in GATT accessions (Mexico) and in WTO accessions (Russia)
- In the context of energy security it is export restrictions that are perhaps more relevant.

Export Restrictions

- Energy-specific elements in Russia's package
 - Concerns regarding export licensing requirements in the energy sector and the *de facto* export restraint on natural gas due to the monopoly power and exclusive rights to export availed by Gazprom
 - Recourse to GATT Article XX(i)? Russia's export restrictions aimed to ensuring supply of essential materials to domestic industry would not apply for competitive advantage or to protect the industry.
 - Russia was committed to eliminate all export restrictions that could not be justified under the provisions of the WTO Agreement.
- Export duties: Price-based measures (as opposed to quantitative restrictions) can have equivalent effect

Export Duties

- Very few GATT/WTO disciplines on export duties. Tariffs or duties typically apply to imports (and some members would like to keep it that way...).
- Others (e.g. resource rich members) may for fiscal or other reasons seek to reserve their rights to tax exports.
- RAMs/acceding govts often requested to eliminate or bind export duties at zero.

Export Duties

- Only a few protocol commitments and even fewer bindings of export duties

Standard protocol commitment:

- “The representative of [...] confirmed that [...] would apply export duties only in accordance with the provisions of the WTO and any such duties would be published in [its] official journal. Changes in the application of such measures would also be published in the official journal.”

- Russia an exception among RAMs...

- Export duties levied on a number of products, including energy products such as crude oil, natural gas and petrochemicals
- Russia applied different rates of export duties and levies based on bilateral agreements and FTAs. Russia also applied different export duties to oil produced in different oil fields. Oil with lower export duty not equally available to all WTO Members.
- Reservations on such “application” and its conformity with basic principles such as GATT Article I (MFN).

Export Duties

- In addition to standard protocol commitment, Russia committed that:
 - “export duties and charges of any kind imposed on, or in connection with exportation, any advantage, favour, privilege or immunity granted by the Russian Federation to any product destined for any other country shall be accorded immediately and unconditionally to the like product destined for the territories of all other WTO Members”
- + Export duty bindings (Part V Goods Schedule)
 - On over 700 tariff lines, which include a number of energy products such as oil, gas and their derivatives.
 - Russians have committed not to increase export duties or to reduce or eliminate these duties in accordance with the bindings and the timetable inscribed in its Goods Schedule

Subsidies

- Prohibited or actionable subsidies under the WTO Agreement on Subsidies & Countervailing Measures (SCM Agreement)
- Subsidies in the context of the energy sector?
- Investment incentives (not constituting an export subsidy)
 - Venezuela: Investment incentives (tax breaks) for petrochemicals and coal industries that were not contingent on export requirements
- SCM Agreement & Dual pricing
 - Pricing policies have to be examined to determine whether energy inputs have been provided to exporting industries at prices lower than to domestic industries catering to the domestic market (constituting a prohibited export subsidy).
 - Pricing policies have also to be examined on whether they in effect are provided to energy and energy-intensive industries at a lower price to support these industries (constituting an actionable subsidy).

Transit Trade

- GATT Article V: Transit of importance to land-locked cty's and in the context of transport of (energy) products to non-neighboring cty's
- Article V applies to all products (i.e. is not energy-specific)

Transit Trade

- Energy-sector reference in Ukraine's accession (which appears to have served as a basis that was built upon in Russia's accession package).
 - "The representative of Ukraine confirmed that Ukraine would apply all its laws, regulations and other measures governing transit of goods (including energy), such as those governing charges for transportation of goods in transit, in conformity with the provisions of Article V of the GATT 1994 and other relevant provisions of the WTO Agreement. The Working Party took note of this commitment."
 - "The representative of the Russian Federation confirmed that the Russian Federation would apply all its laws, regulations and other measures governing transit of goods (including energy), such as those governing charges for transportation of goods in transit by road, rail and air, as well as other charges and customs fees imposed in connection with transit [.....] in conformity with the provisions of Article V of the GATT 1994 and other relevant provisions of the WTO Agreement. [.....] The Working Party took note of this commitment."

Trade in Services

- GATS provides the framework for trade in all services (incl. energy-related services)
 - General obligations and disciplines: MFN, domestic regulations, monopolies and exclusive service suppliers
 - Specific commitments in GATS schedule: subject to MA/NT limitations
- In the existing services classification - there is no separate “energy services” category. But some services sub-sectors are energy related:
 - Services incidental to mining (18+)
 - Services incidental to energy distribution (10+)
 - Transportation of fuels (9+)
- RAMs have taken the bulk of commitments in these sub-sectors

Trade in Services

- Ukraine GATS Schedule - Additional commitment on “pipeline transportation”
 - “Ukraine commits itself to provide full **transparency** in the formulation, adoption, and application of measures affecting access to and trade in services of pipeline transportation. Ukraine undertakes to ensure **adherence to the principles of non-discriminatory treatment in access to and use of pipeline networks** under its jurisdiction, within the technical capacities of these networks, with regard to the origin, destination, or ownership of product transported, **without imposing any unjustified delays, restrictions or charges**, as well as **without discriminatory pricing** based on the differences in origin, destination, or ownership.”

Disputes involving Energy Security

- **US – Gasoline Dispute (1995):** Venezuela and Brazil challenged the “Gasoline Rule” under the US Clean Air Act that set out the rules for establishing baseline figures for gasoline sold on the US market (different methods for domestic and imported gasoline) in violation of GATT 1994 national treatment obligations...
- **Canada- Renewable Energy (2010):** Japan, EU, US raised (National Treatment + TRIMs) concerns over the domestic content requirements of the Feed-In-Tariff (FIT) Programme, adopted by the Government of the Province of Ontario.

Summing up

- Energy security issues may continue to gain prominence with scarcity of energy and the entry of energy producers, consumers and transit economies in the WTO
- But does the WTO have a role on energy security in the context of accession negotiations, trade negotiations and dispute settlement?

Any comments/questions?

Thank you for your kind attention!!!!

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