

The views expressed in this presentation are the views of the author and do not necessarily reflect the views or policies of the Asian Development Bank (ADB), or its Board of Governors, or the governments they represent. ADB does not guarantee the accuracy of the data included in this presentation and accepts no responsibility for any consequences of their use. Terminology used may not necessarily be consistent with ADB official terms.

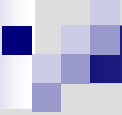
ENERGY ISSUES ON THE TRADE LIBERALIZATION AGENDA

April 2008

Katrin Elborgh-Woytek and Azim Sadikov
Trade Policy Division
Policy Development and Review Department
International Monetary Fund

Outline

- Energy-specific issues in trade agreements
- Energy-related WTO principles and rules
- Other treaties and agreements covering energy issues
- Issues for future energy trade agenda

- 
- Energy is the number one commodity in global trade, accounting for almost 15 percent of total trade in 2006;
 - To date, very few energy-specific provisions in multilateral and regional trade agreements.

Energy-specific issues in trade agreements (1)

- Until recently, many major energy exporters not members of WTO;
- Some, however, have joined recently (Saudi Arabia) or are in the process of acceding (Russia, Kazakhstan, Azerbaijan, Iraq, others).

Energy-specific issues in trade agreements (2)

- Security of supply aspects/strategic interests;
- Public service obligations;
- High degree of government regulation (transparency/versus complexity of regulative frameworks);
- Previously considered “natural monopoly”;
- Environmental and developmental aspects;

Energy-specific issues in trade agreements (3)

- Energy tariffs mostly reflect energy policy goals, rather than trade policy;
- Import tariffs usually unbound, but low;
- Legal uncertainty as higher tariffs could be imposed without violating WTO commitments;

Energy-specific issues in trade agreements (4)

- Elimination of import barriers not sufficient for liberalization of energy trade;
- Market access in downstream products becomes important with industrialization in energy-endowed countries;

Energy-specific issues in trade agreements (5)

- Critically, trade restrictions in energy sector are more pertinent to export barriers;
- Liberalization measures to include non-discriminatory access to transportation pipelines and networks, distribution systems, and storage facilities.

Classification issues

- Distinction between production-related services, which fall under GATS, and production itself, which does not fall under GATS;
- In practice: if services carried out by entity that owns raw material, treated as production; if services carried out by entity that does not own raw material, treated as provision of services.

Classification of services

- Energy services include exploration, development, drilling, extraction, construction, engineering, production, processing, refining, generation, transportation, transmission, distribution, storage, and marketing;
- No specific section for energy services in WTO classification of services (W/120), but three relevant sub-sectors under business and transport services.

GATT and WTO principles fully applicable to energy

- MFN principle;
- National treatment principle;
- Tokyo and Uruguay Rounds discussed:
 - dual-pricing practices and resulting subsidies;
 - reverse dumping;
 - export restrictions and export taxes;
 - problems of natural resource product displacement.

Agreements most relevant to cross-border energy trade:

- Tariffs and Trade (GATT);
- Trade in Services (GATS);
- Technical Barriers to Trade (TBT);
- Trade Related Investment Measures (TRIMS; covers only investment in goods, not in services);
- Subsidies and Countervailing Measures (SCM);
- Government Procurement.

GATT Principles (1)

- MFN: “like” energy materials and products can not be discriminated against on basis of origin (*imports*) or destination (*exports*);
- National treatment: laws, regulations, taxes and charges should not discriminate between imports and domestically-produced “like” energy material and products;
 - Products that are not “like” can be treated differently.

GATT Principles (2)

- Art. XI: Prohibition of quantitative restrictions, including restrictions to import/export energy below a certain price, but...
- Provision allowing temporary export prohibitions in order to relieve critical shortages in the exporting country (most energy-relevant exception from Art. XI).

GATT Principles (3)

- Freedom of Transit (Art. V);
- But many countries critical for energy transit are not yet WTO members...
 - transit often impeded not by government decisions, but by private energy companies;
 - in some cases, excessive transit fees for energy charged (landlocked countries most at risk, as transport routes are limited);
 - most transit disputes outside WTO since countries are not WTO members.

GATT Principles (4)

- State trading companies to act in manner consistent with principles of non-discrimination and to make purchases on basis of commercial considerations (Art. XVII);
- But...
 - energy sector still dominated by government-owned or -controlled companies;
 - this applies also to enterprises with special privileges granted by the state.

GATT Principles (5)

- Exceptions permitted to pursue certain policy objectives:
 - measures relating to conservation of exhaustible natural resources (Art. XX);
 - measures to protect essential security interests, including those relating to fissionable materials (Art. XXI).

GATS Principles (1)

- Energy services mainly supplied through commercial presence, cross-border trade, and movement of natural persons;
- Lack of access to transportation and distribution networks often impede energy trade;
- Limited provisions dealing with monopolies and exclusive service suppliers.

GATS Principles (2)

- Restrictive business practices by incumbent operators (Art. VIII and Art. IX);
- Members commit to ensure that monopolist in transportation and distribution does not act against MFN principle or specific commitments (Art. VIII).

Subsidies (1)

- Traditionally: granted to energy producers and downstream industries;
- More recently: to achieve environmental policy objectives;
- WTO-compatibility depends on target of subsidy (export industries, imports, or domestic subsidies).

Subsidies (2)

- Dual energy pricing
 - implies lower prices for industrial producers;
 - favors energy-intensive production;
 - violates WTO rules only when preferential pricing is linked to exports.

Technical Standards

- TBT Agreement: requirement of non-discrimination applicable in relation to “like” products (definition of “like” critical);
- TBT relevant in connection with national or regional labeling initiatives for energy technologies.

WTO accession issues

- To date, many energy producers outside WTO system;
- Issues raised in WTO accession negotiations:
 - pricing practices (Saudi Arabia, Russia);
 - natural resource development policies;
 - procurement;
 - restrictive practices.

Concerns of energy exporters


- Market access for energy products and materials;
- Access to energy services markets of WTO members;
- Transit;
- Consumption taxes and excises imposed by energy-importing countries;
- Requests for binding of export duties can cause difficulties for some energy exporters, as export duties on energy constitute major source of revenue.

Preferential agreements with energy content (1)

- Energy Charter Treaty (ECT): multilateral investment protection treaty for energy sector
 - incorporates WTO provisions as basis for energy trade; expands and elaborates transit provisions;
 - non-derogation from GATT/WTO provisions core principle;
 - develops principles of GATT Art. V to address issues connected with grid-bound energy transport;
 - recognizes sovereign rights over energy resources.

■ **Preferential agreements with energy content (2)**

- NAFTA: energy chapter covers both investment and cross-border trade (licenses, fees, taxation, and minimum price requirements);
- ASEAN: provides for cooperation in use and development of energy (exploration, technology transfer, energy security etc.).



Preferential agreements with energy content (3)

- Energy sector constitutes exception from many investment chapters of free trade agreements and bilateral investment treaties.



The outlook.....

Doha Round

- Energy services essential aspect of negotiations on services, but no clear-cut definition, and so far limited commitments;
- Goods or services (e.g. electricity)?
- Source-neutral classification proposed;
- Technologically-neutral market access commitments discussed.

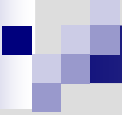


Environmental/climate change issues gaining importance on the energy trade agenda (1)

- Negotiations of Committee on Trade and the Environment;
- Renewable energy and trade in biofuels (also linked to negotiations in agriculture);
- Can liberalization of “green markets” result in broader dissemination of energy-saving technologies?
- Harmonization of energy efficiency standards;
- National labeling initiatives;

Environmental/climate change issues gaining importance on the energy trade agenda (2)

- Could governments discriminate among energy goods and materials on the basis of the technologies used in the production of such goods? (Obligation to treat “directly competitive or substitutable products” not worse than domestic products (GATT Art. III, 2));
- Question: does definition cover different types of energy?



In view of the importance of energy trade and more wide-spread WTO membership of energy producers, energy-specific provisions could be expected to feature more prominently in both multilateral and regional trade agreements in the future.