

Task Force on Rules of Energy Trade

Terms of Reference

Introduction

An issue that has generated increasing concern, and is also highlighted in the new WEC Scenarios report, is the need for clearer international rules governing energy trade and investment. Concerns about security of supply by consuming nations and security of demand by supplying nations are more pronounced than ever and threaten the international fabric of the globe. GATT and the WTO Agreement govern trans-border movement of energy in various ways, but do not deal with energy in a coordinated manner and leave many aspects unclear and unanswered questions, particularly regarding new forms of energy such as biofuels and the carbon footprint.

A background report to WEC by Lawrence Herman of the Canadian law firm, Cassels Brock & Blackwell is available to all Task Force members.

Objectives

The main objective of the Task Force is to provide a systematic analysis of how WTO rules -- and the rules of regional trade agreements -- affect international energy trade and, where desirable, to make recommendations for improving or clarifying those rules consistent with the interests of the energy industry.

The ultimate goal is to work directly with the World Trade Organization and other international organizations (such as the OECD, the IAEA, UNCTAD, etc.) as well as NGOs active in the field on preparations for the next round of trade negotiations (post-Doha) so as to put energy goods and services into the mandate.

Scope of Work

The Task Force will embark on the following phased activities: (1) Information gathering efforts; (2) consideration of Tier One issues, where substantive review is a priority for the energy industry; (2) consideration of Tier-Two issues, where trade issues are important but less vital or immediate for WEC examination.

Under Item (1) on information gathering, an inventory of work of the various international organizations and NGOs most active in the field will be compiled (to the extent not already done), including a compendium negotiating proposals relevant to WEC that have been tabled in the Doha Round.

Tier-One trade law issues to be reviewed in substance by the Task Force will be the following: (1) the scope of the GATT national treatment obligation and the permitted use of exceptions and the application to global energy trade; (2) the significance of WTO rules affecting subsidies, particularly in application to new forms of energy, such as

biofuels; (3) the potential expansion of the GATS to assist and promote trade in energy services; (4) the need for additional rules and disciplines to promote increased energy investments; (5) how WTO rules can be harnessed to promote energy security and competition policy; and (6) how WTO rules might either assist or retard climate change initiatives, trade in environmental goods and the range of “new frontier” issues.

Tier-Two items, comprising less urgent but nonetheless important areas affecting international energy trade, will include an examination of the following: (1) WTO rules respecting border tax adjustments and their impact on energy trade; (2) trade rules and disciplines affecting State-owned enterprises, monopolies and quasi-monopolies; (3) rules respecting government procurement in the energy sector; (4) use of trade rules to promote energy security and transit rights; (5) the efficacy of international rules applicable settlement of investment and other trade disputes; and (6) developing-country issues (such as special and differential treatment) and their significance to the international energy industry

Methodology

The Task Force will comprise an energy industry Chair and a Director of the Task Force supported by 15-20 legal experts and corporate planners from the energy industry.

Initially, for Phase I on information gathering, the Chair and Director of the Task Force will gather the information electronically from members and other sources and circulate a draft report. The Task Force will meet by June 2008 in London to complete this phase.

For Phase II the Task Force will consider specific briefing papers prepared by the Director in teleconference mode or at two meetings organised by WEC London in autumn 2008 and early 2009.

A decision on Phase III work will not be taken by the WEC Studies Committee until Spring 2009.

Deliverables

A draft of the report on Phase I will be submitted in June 2008 to ECT, UNCTAD and WTO for feedback. It will be reviewed by the WEC Studies Committee at its meeting in Mexico City in November 2008. It will then be released as a WEC report to a wider audience.

The report of Phase II will involve at least three Task Force meetings in late 2008 and 2009. It will be ready for consideration by the WEC Studies Committee at its meeting in Iceland in September 2009 for review with trade officials of selected governments in developing and developed countries with large producing and consuming interests.