Including energy in the rules of trade and investment

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The World Energy Council has been actively involved with issues in trade of energy and energy services since before 2007, in concert with a number of international organisations.

Historically, neither the GATT (General Agreement on Tariffs and Trade) nor the WTO (World Trade Organisation) Agreement had a direct bearing on international energy trade. Trade in hydrocarbons, fissionable materials and cross-border transmission of electricity largely took place outside the multilateral trading system. The GATS (General Agreement on Trade in Services) covers only limited kinds of energy services involved in trans-border movement. While a few issues involving energy goods reached the GATT and WTO dispute settlement stage (for example reformulated gasoline), these were relatively rare.

There are however, important developments that show a convergence between the international energy business and the rules embodied in the WTO regime. First is the accession of some and impending accession of other major oil-producing states to the WTO. The second is climate change and the recognition that progress in reducing greenhouse gases through the UNFCCC and various national measures directly engages the application of WTO rules. This was an important issue at the COP meeting in Copenhagen in December 2009 and will likely be on the agenda for COP-16 in Mexico this year.

The WEC 2009 Task Force report on Trade and Investment Rules for Energy (www.worldenergy.org/publications) stresses the importance of WTO rules for maintaining open energy markets, more crucial than ever in the context of the financial crisis and efforts aimed at stimulating economic recovery. The report emphasises the benefits of completing the Doha Round, particularly as a means of promoting trade in energy-related goods and services in general and in climate-friendly goods and services in particular, both of which can assist in the economic recovery and in GHG reduction through stimulating exchanges in “green” technologies.

There are three guiding principals to more efficient management of energy resources. The first is that open trade in energy goods and services is indispensable for economic progress generally and for meeting the needs of developing countries in particular. There is thus an intertwining of trade in energy and issues of economic development as parts of a whole. The second is that to meet economic development objectives, energy markets must be allowed to operate as efficiently as possible. This requires a rules-based system that guarantees the operations of market mechanisms through non-discrimination (meaning national and most-favoured-nation treatment), regulatory transparency and access to fair, open and impartial adjudicative processes. These rights and obligations are embedded in the WTO system and, because of that, the WTO and the interests of the energy sector converge.

The third principle is that structural factors unique to the energy sector constrain or at least qualify the full application of WTO rules, the most important being that energy resources typically belong to the state and that many countries have structured their petroleum and electricity sectors around state-owned enterprises. State ownership and sovereignty interests differentiate energy goods from typical goods and services in international trade.

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Two specific actions can be negotiated immediately: First, as the global community looks for solutions to the challenge of climate change, agreement to reduce trade barriers and open markets in energy services, including environmentally-friendly goods and services, should be pursued as a priority. Such action should be within the WTO and be as broadly-based and cover as many like-minded countries as possible.

Second, in ongoing consideration under the UNFCCC and elsewhere, it will be important to ensure the integrity of the rule of law under the WTO Agreement, both to ensure stability of international energy markets and to promote the realisation of global development priorities under the principles referred to above. The WTO should bring its unique expertise to bear on the question of what, if any, forms of border measures could legitimately be applied by countries that adopt domestic greenhouse gas reduction measures.

With rapid changes in the energy sector, combined with challenges of climate change, a more comprehensive discussion by the international community of this and other areas of potential WTO ‘governance’ relevant to energy markets is crucial. ❑