

Pascal Lamy 'WTO can make contribution'

Energy industry in search of 'fair trade' rules

| By Karel Beckman

If decision-makers in the energy industry were to go out in the streets and stage demonstrations to get their viewpoints heard, they would no doubt make one demand above all: they would call for 'clear and fair rules of regulation and trade'. That, at least, was the cry most often and most insistently heard from the energy sector at the 20th World Energy Congress in Rome.



Pascal Lamy. Photo: Corbis

'Governments must establish global rules of energy trade', concluded the World Energy Council (WEC) in its Energy Policy Scenarios study. 'We need rules of trade and regulation', said Gerald Doucet, secretary-general of the WEC, in a special session devoted to the subject.

The demand from energy companies for 'fair rules' has of course a lot to do with the wave of resource nationalism sweeping the world, which is particularly detrimental to the interests of private energy companies from the western world. 'Countering nationalistic, parochial, or corrupt energy policy and practice is a key element in energy availability', said the WEC in its Energy Policy Scenarios. Rex Tillerson, Chairman and ceo of ExxonMobil, warned that 'isolationist or protectionist energy policies could have severe consequences for the global economy and for global energy security over the longer term.'

The problem, as the WEC acknowledges, is that there currently is no universally set of accepted rules to govern international energy activities. Striking a sombre note, André Mernier, Secretary General of Energy Charter Secretariat (ECS), said that it is currently 'probably impossible' to 'negotiate new rules regarding trade and regulation'. Energy 'is a topic that is almost too popular', said Mernier. 'We have to work with what we have got.' With 'what we have got', Mernier referred to the GATT/WTO rules that are accepted by a large part of the international community. Hence, not surprisingly, the WEC called upon the WTO for help in this

crucial arena. The WEC asked the WTO 'to prepare an energy chapter for the round of trade negotiations beyond Doha that covers all aspects of energy development including the value to be placed on carbon by signatories'.

In response, WTO director-general Pascal Lamy came up in Rome with a detailed response of what the WTO in his view can do to establish international rules in the energy sector. Lamy pointed out, realistically, that big world energy actors such as Russia, Iran, Kazakhstan, Ukraine, Iraq, Algeria and Liberia are not (yet) WTO members. Saudi Arabia and the Gulf States have only recently joined. 'It is therefore no surprise that energy has not been singled out so far as a specific sector of trade of WTO', he said. 'Yet', he added, 'since our basic rules are applicable to all forms of trade, they also apply to trade in energy goods and services. And these rules can be enforced through the WTO dispute settlement mechanism even if they were not negotiated with energy in mind.'

He gave a number of examples. 'We have a general rule on transparency mandating governments to publish domestically all trade-related regulations and to notify relevant legislation to the WTO. We have a rule that generally prohibits export restrictions. We also prohibit discrimination on the basis of origin or destination of products. We also have rules on freedom of transit, on actions by state-trading enterprises, and on trade-distorting subsidies. In certain circumstances,

members may invoke exception provisions which allow them to implement restrictions if they relate to the protection of exhaustible natural resources. As you can see many of these rules can become relevant for trade in energy goods.'

But the WTO-director admitted that 'existing WTO rules may not address appropriately all the needs of energy trade.' For example, 'back in the 70s and 80s, governments tried but did not manage to tackle the issues of dual pricing practices and export restrictions on raw materials. Disputes arose concerning the exact scope of the transit obligation, and were eventually settled between the countries concerned.'

'The existence of natural monopolies and the role of state-owned enterprises also raise particular challenges', Lamy said.

Nevertheless, energy is already part of the current WTO-negotiations in three ways, Lamy pointed out. 'The first area where energy stands explicitly on the Doha agenda is the services negotiations. For the first time Members are discussing energy as a specific services sector.' Energy was not addressed in any comprehensive manner during the Uruguay Round, said Lamy, because the liberalization of the sector was not yet on the political agenda. As a result, WTO Members undertook limited commitments to open their markets to foreign operators in energy services, including services incidental to mining at oil and gas fields, services incidental to energy distribution and pipeline transportation of fuels. However, progressive unbundling of state-owned integrated utilities and technological developments 'have created room for private operators. This, in turn, has raised the profile of energy services in the WTO'.

According to Lamy, the current negotiations on energy services cover a broad range of activities relevant for energy companies and span all energy sources, including

renewables. 'Commitments are sought on activities such as drilling; engineering; technical testing and analysis services; construction work for long distance and local pipelines, and for mining; wholesale trade services and retailing services of fuels. Furthermore, some members have proposed to negotiate additional disciplines which would address, for instance, regulatory transparency, non-discriminatory third-party access to networks and grids, the need for an independent regulator, and requirements preventing certain anti-competitive practices. All this is already on the table.'

A second area of the Doha Round relevant for the energy sector relates to clean technology. The Doha Round aims at opening markets to environmental goods and services. Many of these have a direct application for promoting energy efficiency, such as material needed for production of renewable energy, heat management and pollution control.

The third area relates to the 'trade facilitation' negotiations. 'Members have been discussing possible improvements to the "transit" obligation contained in the old GATT rules that oblige members to allow passage of goods in transit across their territories. In the current Doha Round, proposals have been tabled to clarify the meaning of this obligation and whether it includes fixed installations, such as pipelines. There are also proposals on the table addressing export restrictions on energy goods and other raw materials. The question of subsidies in the form of low-priced energy products, especially natural gas, is also part of the on-going negotiations.'

Lamy concluded that the WTO 'can make an important contribution to the complex energy chessboard. Fairer rules of the game may contribute to countering temptations towards energy nationalism and preventing eruption of conflicts.' ■

'I would like to see our oil companies be able to enter the European market'

Chabib Khelil

Minister of Energy of Algeria

'It makes sense for the EU to build and safeguard good and cooperative relationships with all its main suppliers, and, in particular, with Russia and to carry out a real European foreign energy policy'

Paolo Scaroni

ceo of ENI

'We need to open our markets to each other's investments, to ensure the production of energy at a reasonable price and the dissemination of new technologies'

Pierluigi Bersani

Italian Minister of Economic Development