

Possible approaches to energy related services – concept paper by Iceland and Norway

The importance of the energy sector is widely recognised. Reliable, efficient and competitively priced energy is a fundamental requirement for economic and social development in any country. Energy related services constitute an integral part of the energy production chain. WTO Members have undertaken limited commitments in this area.

Given the wide range of activities involved in energy production and use, TISA should take a broad approach when considering which services to include in sector specific disciplines for trade in energy related services. The range of activities includes services related to impact assessment, exploration, development, design, construction, extraction, production, storage, transportation, generation, transmission, distribution, marketing, energy consumption, as well as energy efficiency and related services.

The energy related services sector has certain attributes that distinguishes it from other sectors in trade in services which warrant specific attention in the discussions on rules improvements. In our view, it would be helpful to explore options for sector specific provisions addressing certain pertinent issues and principles.

Issues that we have identified so far (partly based on the collective request on energy related services):

1. Each WTO Member has full sovereignty and sovereign rights with respect to the ownership of natural resources, including energy resources. To make commitments on trade in energy related services on the basis of the GATS does not interfere with these rights. The ownership of natural resources falls outside the scope of TISA. In this context it would be helpful to clarify the criteria for determining whether a regulatory measure is of a type that affects trade in energy related services, and therefore is inside the scope of a new agreement. Sector specific criteria would facilitate an ambitious outcome on specific MA and NT commitments in the sector.
2. The right of WTO Members to regulate services and to introduce new regulations to meet national policy objectives is particularly pertinent in the field of energy related services. In exercising this right, Members have to make sure that the regulatory measures on aspects not covered by market access and national treatment are clearly defined, transparent and objective.
3. In some WTO Members the energy services market is dominated by one or very few entities with exclusive rights to natural resources, and in need of procuring energy related services. The dominant position warrants some sort of disciplining, addressing issues normally regulated in public procurement rules and competition rules. Possible provisions would include transparency and objectivity, an independent regulator and requirements that prevent anti-competitive practices for energy related services.
4. TISA should encompass all services related to the production of energy from renewable or non-renewable energy sources, and all delivery forms, such as fuels, heat, and electrical energy. Specific rules in the energy related services sector should therefore establish that commitments are neutral with respect to the energy source, technology and whether offered onshore or offshore.