

INTRODUCTION

INTERNATIONAL TRADE IN ENERGY SYMPOSIUM: THE EVOLVING RULES OF THE ROAD

Over the last two decades, international trade in energy has become an important issue on the national and international agenda. While the oil price shocks of the 1970s and the collapse of oil prices in the mid-1980s are perhaps the most familiar in our collective memory, price controls on natural gas flows, restricted access to hydroelectric power across national frontiers, and government policies designed to assist ailing domestic energy industries also can have important consequences for the international economy and U.S. national security. In addition, changes in general U.S. international trade laws and policies can have significant implications for energy trade. The recent enactment of the United States-Canada Free-Trade Agreement, for example, may have appreciable effects on the U.S. uranium and natural gas industries.

Recognizing that energy is increasingly being viewed as an international trade issue, the International Law and Practice Section of the American Bar Association sponsored a one-day seminar on June 9, 1988, in Washington, D.C., inviting speakers from government, the legal community, and the energy industry to provide their views on the actual and potential applications of international trade law to energy flows. This issue of the *Journal* contains essays based on a number of the presentations made at the conference.

The seminar covered a broad range of issues. One central question for the 1990s is the relationship between energy trade and national security: will the United States have sufficient access to secure supplies of energy resources—especially oil—to satisfy its military and civilian needs? In light of the recent declines in domestic oil production and rising oil imports, the concerns over U.S. vulnerability to oil supply disruptions and price increases are growing. Jeffrey P. Bialos' article, *Oil Imports and National Security: The Legal and Policy Framework for Ensuring U.S. Access to Strategic Resources*, examines the legal and policy framework in which U.S. policy makers can address such

energy security problems. Specifically, the article analyzes the utility of Section 232 of the Trade Expansion Act of 1962, which empowers the President to impose restrictions on imports that threaten to impair U.S. national security. Mr. Bialos' essay focuses on the relationship between oil imports and national security (i.e., what are the appropriate standards for determining "energy security" in an oil importing nation?); the past uses of Section 232 to address energy security issues; and the prospects for future U.S. energy security. While President Reagan found, under Section 232, that oil imports are threatening to impair U.S. security, he did not take affirmative steps to address the problem. Mr. Bialos argues that the Bush Administration should utilize its authority under existing law to shape a comprehensive energy security policy which balances the short-term benefits of today's low-priced oil against the long-term costs of increased reliance on the Persian Gulf states.

Imports of cheap energy and foreign barriers to U.S. energy exports also can cause economic injury to specific domestic energy sectors, but they may not be so widespread as to constitute a threat to national security. For example, price discrimination or barriers to U.S. exports of energy-related products can cause substantial injury to specific sectors of the economy. In such instances, traditional trade remedies, including the antidumping law and Section 301 of the Trade Act of 1974, may be available to private parties. Under the antidumping law, duties will be imposed on imports which are determined to be priced at "less than fair value" and cause or threaten to cause material injury to a domestic industry producing a product that is like the imported product. Section 301 provides private parties with the means to petition the President to retaliate against unjustifiable, unreasonable, and discriminatory acts, policies, and practices of foreign governments which burden or restrict U.S. commerce. The President may respond to the petition by, for example, imposing prohibitive tariffs on the offending country's exports to the United States in order to pressure that country to change the practice or policy in question. The applicability of these two remedies to energy trade are the subject of A. Paul Victor and Eric P. Salonen's article, *The Application of U.S. Unfair Trade Laws to Energy Flows: Prospects and Risks*.

Other possible unfair trade practices that can affect particular energy sectors include foreign government subsidies of their energy industries, which otherwise may not be competitive. In these instances, an appropriate remedy may be the countervailing duty law, which requires the imposition of duties on imports which are determined to have benefited unfairly from foreign subsidies and are causing or

threatening to cause material injury to a domestic industry producing a product that is like the imported product.

Where other unfair trade practices exist, Section 337 of the Tariff Act of 1930, which is directed at unfair methods of import competition, may provide relief. Under this statute, the International Trade Commission can impose an exclusion order on imports of offending merchandise. The application of Section 337 and the countervailing duty law to energy trade are among the issues examined by Stephen J. Powell and John D. McNerney in *International Energy Trade and the Unfair Trade Laws*.

The antitrust laws also can affect energy trade flows. Reinier H. Lock, N.J. Schultz and Howard I. Wetston examine the application of the antitrust laws of the United States and Canada to each country's energy regulation. Their article, *United States-Canada Energy Trade and Evolving Antitrust Standards in Domestic Energy Regulation*, also considers the impact of the United States-Canada Free-Trade Agreement on the regulation of these countries' energy industries.

Two specific energy sectors, the natural gas and uranium industries, face unique international trade problems and issues. In *Trade in Natural Gas: The Changing Regulatory Framework*, Robert C. Platt examines natural gas trade between the United States and Canada in the context of the respective regulatory frameworks which each country has developed. He also discusses the potential impact of the United States-Canada Free-Trade Agreement on these energy flows.

Developments in U.S. trade laws and policies concerning uranium imports, and the potential benefits of these rules for the domestic uranium industry, are the subject of Joseph P. Griffin and Paul E. Dorin's article, *Huffman v. Western Nuclear, Inc.: An Examination of the Domestic Uranium Industry's Recent Defeat*. In particular, the article focuses on the Supreme Court's ruling that trade restrictions are not mandatory where the Secretary of Energy makes a finding that the domestic uranium industry is nonviable.

Finally, in *Politics Before Business: A Study in Risk Analysis by a Multinational Corporation*, Robert E. Ebel addresses the increasingly

important role that political risk analysis plays in the decisionmaking processes of energy businesses. The essay focuses on the impact of economic sanctions on trade in energy and the efficiency of sanctions as a tool of national policy.

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