



Trends in Bioenergy Law and Policy

Victor Mosoti
Development Law Service
FAO Legal Office
victor.mosoti@fao.org

18 February 2008

2. What are the Policy and Law Drivers for Bioenergy?

Many well acknowledged:

- Energy security and independence...
 - Necessity for lower transportation costs...
 - Additional market for agricultural commodities
 - Contribution to rural development and job creation
 - Clean fuel, climate change mitigation
-

3. And for developing countries...an opportunity...

Comparative advantage:

- more land
- better climate
- greater variety of suitable crops
- lower labor costs

Reduced oil import bill:

- Interest in domestic production and use to reduce expenditure on imported oil and
- to promote rural development

Export opportunities:

- Increased demand by developed countries offers potential export opportunities

4. Key Elements in Policy Responses?

Key Elements	Comments
Policy and Institutional Coordination	State agency responsible for sector oversight e.g a “technical committee” (Peru) or “implementing authority” (Argentina). Main responsibility is to promote production and use and set standards. Also they may manage incentive schemes and fix prices.
Market Regulation, Mandates, Targets etc	Including blending targets for ethanol-gasoline and ethanol-diesel (5% Argentina, South Africa, 10% Colombia, Indonesia etc). Provisions on which regions in the country can grow which biofuel crops and when.
Incentives	Exemptions from VAT, corporate tax and excise tax (Argentina), promotion of SMEs, exemption from EIAs, water treatment charges; extensive financial support and Kyoto CDM benefits, etc.
Trade regulation	Requirement that biofuel producers purchase feedstock from local farmers (Paraguay) certificate of origin for feedstock sold (Argentina) and a new tariff scheme (Philippines)
Bioenergy R&D	Promotion of research especially in production methods and use. Extensive financial commitments by government e.g. China and Argentina.

5. International Trade Issues

Three key issues:

- Classification of biofuels.
 - The question of subsidies.
 - Consistency of domestic regulatory measures with WTO rules.
-

6. International Trade Issues

A. *Classification of Biofuels*

- # WTO Members are encouraged to express tariff commitments as “bound rates” applied on an MFN basis.
- # Crucial to the bound tariff system is classification of products – little guidance from the WTO on product categories.
- # Hence, popularity of the WCO HS system at 6-digit level.
- # Tariff classification applied to biofuels based on whether the products are agricultural or industrial.

6. International Trade Issues

A. *Classification of Biofuels*

- # HS classification is important because it determines whether a product is agricultural or industrial under WTO rules.

- # Annex 1 of AoA states that provisions of the agreement apply to HS Chapters 1-24 (less fish and fish products).
 - Ethanol (HS 22) is an agricultural product (though no direct reference to ethanol, but HS 2207 is ethyl alcohol).
 - Biodiesel (HS 38) is an industrial product
 - Implications: the AoA has separate rules on: (i) tariff rates (tariffication of certain QRs); (ii) and different rules on subsidies.

- # Biofuels could also be considered as “environmental goods”. See Doha Declaration para. 31(iii). India/Brazil have made proposals for EGS that include biofuels.

6. International Trade Issues

A. *Classification of Biofuels*

What to do about classification?

- Targeted reforms: Amendments to the HS system...introduce a specific HS heading for biofuels.
 - Multilateral: A WTO “Agreement on Biofuels” to be negotiated in which WTO Members can agree to limit tariffs on biofuels regardless of the existing HS classifications.
 - Unilateral: WTO Members could undertake tariff reductions for biofuels while retaining tariff protection for other products under the same HS classification.
-

7. International Trade Issues

B. The Question of Subsidies

Subsidies to promote production and use

- Clearly, government subsidies have been crucial to the economic viability of biofuels.
- Classification is important because it determines: (i) tariffs; (ii) applicable WTO disciplines on subsidies
- For example: if a biofuel is within the HS classifications listed in Annex I of the AoA, then rules of the AoA apply in addition to the SCM.
 - AoA imposes disciplines on domestic subsidies
 - SCM prohibits export subsidies and subsidies linked to export performance
- Hence, questions can be raised about the WTO consistency of:
 - Production subsidies: like the \$1/gallon Volumetric Tax Credit for biodiesel produced from virgin oils or fats in the U.S.; or the 36 cents/liter production subsidy for biodiesel in the U.K.
 - Consumption subsidies: like various exemptions from gasoline tax that EU members grant to biofuel purchasers as per the 2003 EU Directive.
 - Subsidies to biofuel feedstock producers: usually as part of general programs of agricultural support e.g. agricultural input support

8. International Trade Issues

C. WTO Consistency of Domestic Regulation and Stds

⚡ *What is the consistency of domestic regulations and standards with relevant WTO rules?*

- From the basis of GATT Arts. I and III (non-discrimination) what is the consistency of:
 - Internal taxation measures? Such as differential taxes favoring particular biofuels or feedstocks even when it is non-discriminatory...e.g, U.S Excise Tax Credit for fuel ethanol...in this case, what about directly competitive or substitutable products like biodiesel?
 - Non-fiscal internal regulatory measures? [non-fiscal measures for imports must be no less favorable than for like domestic products]. Such measures that impact trade are:
 - labeling for consumer protection and information purposes.
 - health and safety regulations concerning handling and transportation of particular fuels, etc.
 - restrictions or limits on the amount or kind of biofuel to be contained in fuel blends with conventional fuel.
 - mandates to use particular percentages of biofuel for a specific purpose e.g buses or taxis.

9. In sum...

- # **Is the policy setting harmful to markets trade and food security?** ...depends, policies are highly supportive, highly ambitious, give lots of incentives: only a few developing countries have nationally debated and approved laws and policies, many others in formulation. But reality seems to be setting in e.g in The Philippines where interest in the 2006 Biofuels Act is waning and focus shifting to other renewables.

- # and...countries increasingly acknowledge the **importance of specific support programs as espoused in bioenergy laws and policies** for the sector. Currently a surprising degree of commonality in the basic policy and law elements of bioenergy. Further research: closer and more systematic analysis of the substantive content of laws and policies essential.

- # **Is coordination necessary at the international level?** ...definitely yes, evidence (i) the complexities around HS classification; (ii) different points of view regarding subsidies; (iii) environmental concerns are certainly almost global now. Unilateral measures are not optimal.

- # **What then is the ideal institutional setting for such coordination?** ... optimal would be a forum that is tested, that allows tariff negotiations to proceed, without losing sight of the important international policy context and development concerns.