

Oilsands energy products may not be welcome in European Union

The EU's proposed Fuel Quality Directive has raised concerns in Canada at a sensitive time during much larger trade negotiations between the two parties.

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Canada and the European Union are currently negotiating what could potentially be the largest free-trade deal since NAFTA, but there have been signs that products originating from Alberta's oilsands may be penalized under the EU's proposed Fuel Quality Directive—an issue Natural Resources Minister Joe Oliver has said the federal government may take to the World Trade Organization.

In a recent interview with *The Hill Times*, Mr. Oliver (Eglinton-Lawrence, Ont.) said Canada was keeping the issue separate from CETA negotiations, but would be open to taking the EU to an international tribunal if it moves ahead with the Fuel Quality Directive in its current form.

“[W]e have profound problems with the directive as currently drafted. We believe it's fundamentally flawed. It's unscientific. It would single out the oil sands for special negative treatment by assigning a rating to it that is higher than the actual emissions of the oil sands,” Mr. Oliver said.

Mr. Oliver suggested that Canada “may well go to the WTO” to challenge the EU's FQD following a meeting with European officials in May.

“These types of things happen all the time in free trade agreements. We dispute things with the U.S., we take them to tribunal and still we have a good relationship. We just have differences on specific trade issues from time to time—not that often—and we assert our rights,” he said.

But European Union ambassador to Canada Matthias Brinkmann, who spoke to *The Hill Times* last week on the last day of his four-year posting, said he believes that it is still far too early in the negotiation processes—both in terms of the Canada-EU Comprehensive Economic and Trade Agreement and in terms of the EU approving the FQD—to be too concerned about discriminatory trading practices.

Mr. Brinkmann said the European Commission is currently preparing measures to implement the FQD, but “it's absolutely premature to talk about WTO because the process of adopting [FQD] or coming to a decision is not finished yet. The measure doesn't exist yet.”

He defended the EU's prerogative to implement whatever environmental standards its member states deem appropriate—regardless of how sensitive an issue like this may be for the Canadian government.

“[W]hatever you export, it must comply with the regulations for the product in place in the market you export to. We are autonomous to change the rules of the quality of the fuel just as Canada is free to change the rules regarding our cars,” Mr. Brinkmann said.

He added that no matter how environmentally friendly oil-sands producers purport to be, “the fact that it’s bitumen cannot be denied, so it’s one step more—you have to liquefy it first [before it can be used]. That’s energy intensive.”

Energy markets will undoubtedly play a large role in trade negotiations between Canada and the European Union given the federal government’s emphasis on establishing stable export markets for energy products. A number of observers have suggested that anything included in a comprehensive free-trade deal will not preclude either party from appealing to the WTO in the future, if the Canadian government does find reason to complain about discriminatory trading practices regarding Alberta’s oil industry.

Rafal Lapkowski, a counsellor in the Section of Economic and Business Affairs with the EU, said “CETA cannot impede the rights of either Canadians or Europeans to go before the WTO.”

He added that “the rules apply in a non-discriminatory manner, so they apply the same way to our producers as they do to foreign products.”

Lawrence Herman, a counsel specializing in international trade and business with Cassels Brock & Blackwell, said “unless they have some kind of compromise worked out,” specifically referring to the FQD, “this agreement will leave intact the rights and obligations of the parties under the WTO agreement.”

Mr. Herman said it’s still too early to say whether or not the commission is going to approve the directive that’s been debated in Brussels since 2009, but he doesn’t believe that the EU is going to commit to an agreement that disallows “whatever measures they consider necessary to protect the environment—and nor will Canada.”

Following Minister Oliver’s meeting with European Commissioner for Energy Gunther Oettinger on May 8 in Brussels, Mr. Oliver addressed the contentious FQD, indicating his government’s willingness to support “measures designed to achieve real GHG reductions” and to “collaborate with the EU in developing such measures.”

But Mr. Oliver also emphasized the “oilsands crudes have a similar GHG intensity to other heavy crudes consumed in the EU,” and that “any measure that targets the oil sands while ignoring these other crudes is unacceptable.”

Earlier this year, Mr. Oliver was the recipient of an open letter from 12 Canadian and American academics who criticized the government for inaction surrounding climate change, citing his “advocacy in support of new pipelines and expanded fossil fuel production” as an impediment to avoiding dangerous climate change.

They warned that if we continue to invest in expanding fossil fuel production, “we risk locking ourselves into a high carbon pathway that increases greenhouse gas emissions for years and decades to come.”

GHG emissions from fossil fuel production has been a long-standing issue between Canada and the European Union. In a July, 2011 report from the Canadian Association of Petroleum Producers, vice-president of oil-sands operations Greg Stringham wrote that “a good example of poorly designed policy can be found in proposed measures related to GHG emissions from Canadian oil sands now being contemplated in the European Union.

“Although oil sands GHG emissions are in the same range as many other crude oils being used in Europe, the European Union has included draft language in its Fuel Quality Directive that discriminates against Canadian oil sands.”

Martyn Griggs, manager of oilsands at CAPP, said the directive specifically—and unnecessarily—identifies oil sands from Canada as being excessively deleterious to the environment, even though they “actually compete fairly closely in terms of GHG emissions with a number of other heavy oil sources that are imported into the EU, and also some light crudes.”

Mr. Griggs said the oilsands industry is not against policies aimed at reducing greenhouse gas emissions, but is adamant that “what we are looking for is non-discriminatory, transparent policy.” He also warned that if the EU fails to acknowledge the detrimental environmental effects of other energy sources imported into the region, “it doesn’t provide an incentive to other heavy oil jurisdictions to implement either processes or procedures to improve their performance.”

“With Canada, we are very open and transparent with our performance, and we are seeking technology answers to improve on our performance and become more acceptable in the marketplace,” he said.

While there’s disagreement over the environmental effects of oilsands energy products—and whether or not it would be appropriate for Canada to appeal its case to the WTO based on unfair trading practices—some observers believe that the issue won’t act as a barrier to the completion of the Comprehensive Economic and Trade Agreement (CETA) between Canada and the European Union this year.

“This is an important issue but I don’t think that the Canadian negotiators were putting it forward as a deal-breaker,” said Mr. Herman, referring to CETA, as they likely recognized “that the EU would likely not back off from their sovereign right to pass environmental protection measures.”

“The safety valve is to say neither country gives up its rights subject to obligations under the WTO agreement,” he said.

Mr. Herman also said that Canada does indeed have a case if the FQD goes into effect “to bring the matter before the WTO and challenge it as discriminatory against Canadian products—and I think that’s how it will work itself out in the context of CETA.”

But NDP deputy energy critic Jamie Nicholls (Vaudreuil-Soulanges, Que.) said the Canadian government should focus on improving its own environmental record rather than continuing to attempt to persuade European policymakers to drop the FQD entirely.

“We know the government is trying to lobby the EU on their fuel directive, but we believe that they should be working harder on reducing the environmental impact [of the oil sands] instead of trying to convince the Europeans that their fuel directive is wrong,” Mr. Nicholls said.

“We don’t know how much public money is being spent there either,” he said, referring to the government’s \$16.5-million natural resource promotion campaign. “[W]e have a basic question of transparency and accountability about where and how much is being spent internationally.”