

February 2021

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Recommended Citation

Robert C. Goodwin, Jr., Aspects of Department of Energy International Legal Programs: Introduction, 56 Denv. L.J. 289 (1979).

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ASPECTS OF DEPARTMENT OF ENERGY INTERNATIONAL LEGAL PROGRAMS¹

Introduction

ROBERT C. GOODWIN, JR.*

The articles that follow represent a sampling of the legal issues dealt with by the attorneys who work under me at the Department of Energy (DOE). Although these issues may appear to have little in common, they are, in fact, parts of a fascinating collection of interconnected international and emergency preparedness legal problems in the energy area. The issues related to information systems on the international oil market, for example, touch both on one of the major DOE regulatory programs, the transfer pricing program, and on the International Energy Agency (IEA). The latter deserves special mention since implementation of its emergency programs has been the focus of considerable U.S. Government legal effort.

The agreement on an International Energy Program (IEP),² entered into by most of the free world's major energy consuming countries, established the International Energy Agency, as well as a number of specific goals and programs. The most significant of these was an emergency oil sharing arrangement to be implemented in case of a cutoff or serious reduction in oil supplies available to the IEA group of countries. The recent difficulties in Iran, although not of a magnitude to trigger IEA action to date, have served as a reminder

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1. The views expressed herein are those of the authors and should in no way be taken as representing the views of the U.S. Department of Energy.

2. Done at Paris, Nov. 18, 1974, T.I.A.S. No. 8278, 27 U.S.T. 1685.

that the purpose of the IEP is not simply to deal with politically motivated embargoes, but rather to address supply disruptions from any cause.

One of the difficult issues faced regarding the implementation of an emergency sharing system, was how to utilize the assistance and expertise of international oil companies without exposing them to antitrust risks. The solution, with respect to the U.S. companies involved, was, in the first instance, the formation of a Voluntary Agreement among those companies under the provisions of section 708 of the Defense Production Act, which provided antitrust immunity so long as the procedures of the statute and Agreement were followed. The first Voluntary Agreement, which set out the permissible range of U.S. company activities in implementing the IEP, was approved by the Attorney General on March 28, 1975. In December of that year, Congress passed the Energy Policy and Conservation Act, which contains provisions on voluntary agreements to carry out the IEP. A new Voluntary Agreement was entered into pursuant to this authority and remains in effect.

While one of the principal legal problems in regard to the implementation of the international emergency preparedness programs has been in the antitrust area, implementation of domestic emergency preparedness programs has involved considerably more technical legal issues. Specifically, the Strategic Petroleum Reserve Program has involved real estate acquisition questions, and general procurement and contract law issues.

As the above discussion indicates, the sampling that follows is truly that—a sampling. While this collection of articles may only provide a glance at international energy issues, we hope that the reader will find the view interesting and informative.