



ENERGY SECURITY THROUGH TRANSPARENCY ACT of 2009

Background

Oil, gas and mining revenues are critically important economic sectors in about 60 developing and transition countries, which are also paradoxically home to more than two-thirds of the world's poorest people. Despite receiving billions of dollars per year from extractive companies, these countries rank among the lowest in the world on poverty, economic growth, authoritarian governance, conflict and political instability, suffering from what has come to be known as the 'resource curse.' Opaque and unaccountable management of natural resource revenues by foreign governments leads to corruption and mismanagement, which in turn creates unstable and high-cost operating environments for multinational companies, and threatens the security of the energy supply of the United States and other industrialized countries.

Regular reporting by corporations of payments made to foreign governments for oil, gas and mineral extraction would aid efforts to end corruption, make producing countries and their energy supplies more stable, and enable citizens of these countries to hold their leaders to account for the misuse of their abundant natural resource wealth. Civil society in resource-rich countries, including Publish What You Pay global coalition members, have stated that they support this legislation because it would buttress their advocacy by providing a constant stream of reliable data that is not contingent upon the political will of their own government.

In short, transparent and accountable government leads to less conflict and corruption, more prosperity and stability, which in turn helps secure supplies and ensure lower prices.

The Energy Security through Transparency Act of 2009 is legislation that will soon be introduced in the United States Congress. If passed, it would require companies registered with the U.S. Securities and Exchange Commission (SEC) to report how much they pay each government for access to their oil, gas and minerals.

Similar legislation was first introduced in the U.S. House and Senate in 2008, and was the subject of several formal hearings (the reports from those hearings are available from PWYP). The Congress adjourned for the year without taking formal action on the legislation.

Coverage of the Energy Security through Transparency Act

This disclosure would apply to all companies that file with the SEC, regardless of where they are based, and would be added to existing SEC requirements. The regulation would apply to all corporations required to file periodic reports with the SEC - 90% of the major internationally operating oil companies. Considering most of the world's extractive industries would be covered by this law, and would set a new international standard for corporate and state behavior.

Of the top 50 largest oil and gas companies by proven oil reserves, twenty are national oil companies that do not operate internationally. These companies are not registered with the SEC or any other exchange, only operate within their own country, and as such, these national oil companies do not compete with internationally operating companies. (i.e. Saudi Arabian Oil Company, Iraq National Oil Company, etc.).

Of the remaining 30 *internationally* operating companies, 27 would be covered by the legislation. This includes Canadian, European, Russian, Chinese, Brazilian, and other international companies. The three companies not covered are Gazprom (London); Petronas (Kuala Lumpur) and the Romanian National oil company (Bucharest).

The legislation covers payments to all governments in the world, so if an SEC registered entity is engaged in exploration or production activities in a country, those payments would be disclosed under the ESTT Act.

The ESTT Act and the EITI

No single initiative is sufficient on its own. We view the ESTT Act and the Extractive Industries Transparency Initiative (EITI) as part of a comprehensive package to ensure transparency and accountability in the oil, gas and mining industries. The ESTT Act would add momentum to the global transparency movement and we hope countries would be encouraged to join the EITI once ESTT Act disclosure begins.

The EITI is a critical first step in the global effort to increase transparency and fight the resource curse. But any voluntary agreement necessarily has limited reach. The EITI helps make the case for the ESTT Act and the ESTT Act helps advance the goals of the EITI.

This regulation will be a complement to EITI, and in fact, the reporting requirements of the bill are modeled after those of the EITI. In several important respects the ESTT Act goes further than EITI because companies will be required to disaggregate their payments and will have to report payments to countries that have not yet signed up to EITI. The Chairman of the Board of EITI, Dr. Peter Eigen, has said that it welcomes any legislation that reinforces the goals of EITI, which the ESTT Act certainly does.

One important distinction between the ESTT Act and the EITI is that the ESTT Act requires that companies disclose separate figures for their natural resource revenue payments within each of the following categories: host government production entitlements, profits taxes, royalties, dividends, bonuses, fees, and other substantial payments as determined by the SEC. Currently, the EITI does not mandate disaggregated reporting (by company or payment type) but several countries, including Nigeria and Mongolia, require some form of disaggregation.

Publish What You Pay strongly advocates for disaggregated information and it is an emerging best practice. The investor community has stated that for effective investment analysis of extractive industry companies, detailed data on payments to host governments is necessary in order to make informed comparisons across companies and the industry. Robert Jenkins, Chairman of F & C Asset Management, an institutional investment firm, testified on behalf of the legislation in 2008, stating, "the more transparent the information, the easier to quantify the downside. The more understandable the downside, the more confident one can be in pursuing the upside. Thus can transparency breed confidence, confidence reputation and reputation a lower cost of capital."

In short, the information that would be provided through the ESTT Act regulation benefits everyone: investors that want to know where their money is going, companies that want to protect their reputations, consumers who want to know where their money goes, and people in countries where the money is often being stolen or squandered.

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