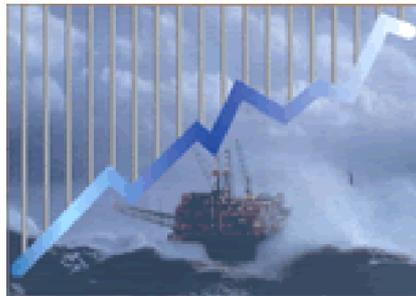


UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

**TRADE AGREEMENTS,
PETROLEUM AND ENERGY POLICIES**



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PREFACE

The idea for this book originated at a Seminar for Arab countries held in Casablanca in November 1994 to assess the implications of the Uruguay Round for Arab countries. It was at this meeting that the misconception that the WTO did not apply to petroleum became apparent. Chapter 1 was, therefore, prepared in response to a request to UNCTAD at the Casablanca meeting and was revised in light of discussion at the follow meeting in Bahrain (March 1996). It was discussed again at a workshop of Arab countries held in Chavannes-de-Bogis, Switzerland, in November, 1996, at a meeting hosted by the Islamic Development Bank in June, 1997, the national seminars in Algeria (1998) and Venezuela (1997 and 1999), a regional seminar for acceding Arab countries in Amman (May 1999), and again at another Chavannes-de-Bogis seminar of Arab countries in September 1999. Mr. Murray Gibbs, Head of the Trade Negotiations and Commercial Diplomacy Branch, prepared Chapter 1, with assistance from Mr. Xiaobing Tang and Ms. Simonetta Zarrilli, and contributions from Ms. Mina Mashayekhi, Mr. Victor Ognivtsev and Ms. Jolita Butkeviciene. Useful comments were received from Mr. Vijay Kelkar (presently Secretary of Finance of India), Mr. Reinaldo Figueredo (former Venezuelan Foreign Minister), and Mr. Sergio Delgado, now a staff member of the World Trade Organization.

It became evident, however, that an insight to possible future initiatives in WTO multilateral negotiations could be better gleaned from an analysis of the rules being designed for the energy sector, and the petroleum sector in particular, on regional agreements. Mr. Owen Saunders, Director of the Institute of Natural Resources Law of the University of Calgary, Canada, who had drawn attention to the relevance of such agreements, was recruited to prepare Chapter 2.

Chapter 2 suggested the crucial role that the United States plays as importer and exporter of energy-related goods and services. Therefore, and due to the possible implications that the United States' energy trade policy may have for multilateral and regional negotiations, Mr. Craig VanGrasstek, Professorial Lecturer at the School of International Service of the American University, Washington, D.C. and President, Washington Trade Reports, was asked to prepare Chapter 3.

Ms. Simonetta Zarrilli up-dated the existing material and was responsible for the final review and editing of the book.

Ms. Jocelyn Maximo typed and formatted the book and Mr. Diego Oyarzun designed the cover page.

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EXECUTIVE SUMMARY

The purpose of this study is to assist petroleum-producing countries in preserving their ability, in the context of future trade negotiations, to use their natural energy resources to promote their development and enhance their competitiveness in the world market, while defending and improving market access for their exports within the framework of the World Trade Organization (WTO).

At the regional seminar of Arab countries held in Casablanca in November, 1994, the question of the implications of WTO membership for trade in petroleum and petroleum products was raised. It was discussed again at the second regional seminar held under the auspices of the project RAB/95/005, in Bahrain, from 16 to 18 March, 1996, as well as a workshop of Arab countries held in Chavannes-de-Bogis, Switzerland, in November, 1996. It has also been discussed at a meeting hosted by the Islamic Development Bank in June, 1997, the national seminars in Algeria (1998) and Venezuela (1997 and 1999), a regional seminar for acceding Arab countries in Amman (May 1999), and again at another Chavannes-de-Bogis seminar of Arab countries in September 1999. This book has been prepared as the result of those discussions. It is, however, addressed to a broad range of countries, and not exclusively to petroleum-exporting countries, since it also addresses issues such as trade in energy services, environmental protection, and national security. The paragraphs that follow summarize the main findings of the book, especially with respect to:

- the potential constraints that WTO membership may impose on the policy options of petroleum-exporting states;
- the possibilities open to such states for defending their interests within the WTO framework;
- the evolving international trade agenda and its relevance for trade in petroleum and petroleum products;
- the relevance of initiatives at the regional level for this agenda; and
- the United States' energy trade policy and its possible implications in multilateral and regional fora.

The strategic importance of petroleum trade to the world economy has been such that in the past it has been treated as a special case, in a largely political context and not within the GATT multilateral framework of trade rules. It appears that there has been a "gentlemen's agreement" to this effect. In any case, until the 1980s, most of the developing country exporters of petroleum were not contracting parties to the GATT (with the exception of Gabon, Indonesia, Kuwait, and Nigeria). The general attitude of the petroleum exporting countries seems to have been that they had little to gain from GATT membership, as they exported one product where

Executive Summary

market access was not the issue, while they had much to lose by being bound by the GATT rules with respect to both their policies in the petroleum sector and their import regimes in general.

However, immediately preceding and during the Uruguay Round, a number of OPEC and other petroleum-exporting developing countries (e.g., Mexico, Brunei Darussalam and Venezuela) acceded to the GATT and thus became original members of the WTO. A number of others are in the process of accession (e.g., Algeria, Azerbaijan, Kazakhstan, Oman, Russian Federation, Saudi Arabia and Uzbekistan) or have indicated an interest (e.g., Islamic Republic of Iran). Ecuador became the first country to accede to the WTO.

A major policy issue in the petroleum sector is "dual pricing" (or "two-tier pricing") practices for natural resources, whereby governments keep domestic prices lower (or export prices higher) than if they had been determined by market forces. This is of fundamental interest to petroleum producing countries as it enables them to use their natural resources to promote industrialization, through attracting investment and supporting the competitiveness of their industrial sector. The issue of dual-pricing, together with the related issue of export restrictions on the part of some major trading nations, was raised at the 1982 GATT Ministerial Meeting, and again in the course of the Uruguay Round negotiations, with a view to elaborating new rules to govern these practices. While dual-pricing as such is not inconsistent with WTO rules, problems arise in finding acceptable mechanisms to keep domestic prices lower than world prices and in controlling access to the lower-price energy; such mechanisms include (a) export restrictions, (b) export duties or taxes, and (c) the provision by the government of low-cost energy inputs. During the Uruguay Round negotiations, some participants sought to elaborate GATT Articles in such a way as to restrict policy options in the petroleum sector. The proposals were related mainly to "dual-pricing" and export restrictions. However, as noted below, the only relevant new obligations were those included in the Agreement on Subsidies and Countervailing Duties.

A fundamental principle of GATT 1994 is the prohibition of quantitative restrictions on trade, which in principle applies equally to exports and imports (Article XI). It is subject, however, to a number of exceptions. The most relevant exceptions with respect to petroleum trade are to be found in Article XX (general exceptions) and Article XXI (national security). Of special interest to petroleum-exporting states is Article XX (g), which generally exempts from normal GATT disciplines those measures "relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic

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