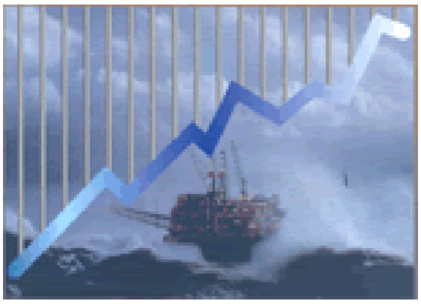
UNCTAD/ITCD/TSB/9

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

TRADE AGREEMENTS, PETROLEUM AND ENERGY POLICIES

EXECUTIVE SUMMARY



UNITED NATIONS
New York and Geneva, 2000

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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 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 production or consumption". Although this exception might appear to give a measure of comfort to petroleum producers, there is some question as to the extent of its scope. Indeed, the different views on its possible application are reflected in the differing approaches to this issue taken by Mexico and Venezuela upon their accession to the GATT. It might be anticipated, then, that initiatives to clarify and perhaps reduce the scope of this exception could arise in future trade negotiations, and perhaps in the negotiations on the accession of individual countries.

Article II of GATT 1994 maintains a symmetry between the treatment of export duties and import duties, in that while they are permitted, they must be applied on an unconditional MFN basis and can be bound against increase through inclusion in negotiated schedules of concessions.

Trade negotiations have focused on import duties, most of which have been bound in the WTO schedules, while only a few cases of bindings of export duties and taxes appear in the schedules. There are some instances, however, where countries currently applying for accession to the WTO are being requested to "bind" export duties at zero.

The Agreement on Subsidies and Countervailing Measures greatly increased the stringency and precision of disciplines in this area. The prohibition of export subsidies applies in principle to all countries, although developing countries enjoy special and differential treatment in some respects. The developing country exporters of petroleum and petroleum products fall into the category of those states that are obliged to eliminate export subsidies over an eight-year period (as from 1 January 1995), or over a two-year period for subsidized exports which total 3.25 percent of world trade in the product concerned.

The provision by governments of products or services for use in the production of exported goods, on terms or conditions more favourable than for goods for domestic consumption, is considered to constitute an export subsidy if such terms or conditions are more favourable than those commercially available on world markets to their exporters. This could imply that schemes to provide petrochemical exporters with energy inputs at prices lower than world prices could be claimed to constitute a prohibited export subsidy if the same advantages were not also available as inputs into the production of goods for domestic consumption.

Even if the energy inputs were not directly linked to exports, but available only to particular industries, they would still be considered "specific" and thus "actionable" under the Agreement, in that the downstream products could be subject to countervailing duties if they were deemed to cause material injury to domestic producers in importing markets. It is clear, however, that providing all domestic industries with energy below world prices is not a “specific” subsidy in the sense of the Agreement on Subsidies and Countervailing Measures, and is therefore not "actionable", although the determination of "specificity" may give rise to different interpretations and, thus, be open to challenge in certain cases.

The improved disciplines on "actionable subsidies" facilitate action against subsidies the effect of which is to displace or impede the exports of a like product of another WTO Member into the importing market or into a third-country market. This could eventually provide the basis for challenging subsidies for other energy products competing with petroleum or petroleum products.

Petrochemical products have also been targets for anti-dumping duties. The imposition of such duties is facilitated when sales of the products on the domestic market account for less than 5 percent of exports of the product to the country concerned, which is often the case for petroleum-producing countries.

The Uruguay Round did produce some significant reductions in most-favoured-nation (MFN) tariffs on petroleum products, and, in some cases, also resulted in a reduction in the degree of tariff escalation. Nevertheless, the tariffs on crude oil in the United States and Japan remain unbound.

The General Agreement on Trade in Services (GATS) provides a framework for the negotiation of commitments on trade in services which can involve cross-border services (e.g., pipeline and maritime transport), commercial presence (e.g. foreign investment in oilfield services or distribution of gasoline, etc.) or movement of natural persons (e.g., the entry of foreigners to provide exploration or other oilfield services). In the context of negotiations under GATS, commitments can be negotiated to extend "market access" and/or "national treatment" in those sectors, but neither is a general obligation under GATS. However, all measures applied to trade in services must be extended on an unconditional MFN basis, unless applied in the context of a regional integration agreement which meets the criteria of Article V of GATS, or subject to a specific derogation under Article II:2. Commitments can be traded for commitments in trade in other services or in goods on the basis of reciprocity. It appears that developing petroleum-exporting countries have not made commitments on oilfield services, but may be requested to do so in future negotiations.

Apart from the substantive disciplines imposed on petroleum trade by GATT 1947, and subsequently by the WTO, an extremely important issue is the efficacy of the dispute-resolution mechanism that enforces the trade rules that have been agreed to in the WTO. This is an especially important question for less economically powerful states, which typically will not have sufficient economic and political influence to enforce obligations unilaterally. It is generally agreed that the WTO represents a significant advance over GATT 1947. In this context, it is particularly useful to examine the history of GATT/WTO dispute resolution with specific reference to the petroleum sector.

All three of the dispute-settlement cases in the history of the GATT/WTO that involved petroleum or petroleum products concerned measures relating to environmental protection, an aspect that makes them especially relevant in the light of the potential for future trade disputes in this area. In the first GATT case involving petroleum, the European Community (EC) objected to the U.S. "gas guzzler" tax on automobiles. The United States believed that the threshold in this tax created an incentive to purchase more fuel-efficient automobiles, which would normally lead to increased conservation. However, the EC argued that the tax violated Article III:2 of the GATT (national treatment with respect to internal taxation), since most of the cars affected by the tax were imported from the EC. The GATT Panel held that the fact that EC automobiles bore most of the burden of the tax did not mean that the measure had the effect of affording protection to domestic cars. It also held that fuel-inefficient imported automobiles were not "like" fuel-efficient domestic automobiles for the purposes of Article III:2, and therefore that different and less favourable treatment could be accorded to them.

The second GATT case, brought by Mexico, Canada and the EC against the United States, concerned a U.S. tax on petroleum designed to finance the cleaning up of hazardous waste sites (the "Superfund tax" case). While the GATT Panel found certain aspects of the Superfund legislation to be incompatible with the national treatment obligation of GATT Article III, it also accepted in principle that environmental taxes with purely domestic objectives can be brought to bear on petroleum sector imports.

The first dispute resolved under the improved dispute-settlement mechanism of the WTO also involved the petroleum sector. Venezuela, together with Brazil, successfully challenged the United States over its regulation of fuels and fuel additives (the reformulated gasoline case), which favoured domestic refiners. The WTO Panel found that the United States had breached its national treatment obligation by imposing less favourable standards on imported gasoline. On appeal, the Appellate Body modified the Panel report with respect to the interpretation of GATT Article XX (g), but left the Panel's conclusion intact. It reconfirmed that Article XX contains provisions designed to permit important state interests -- including the conservation of exhaustible natural resources -- to be protected. WTO Members have the autonomy to determine their own environmental policies and objectives, and to implement the corresponding legislation. With respect to WTO, that autonomy is limited only by the need to respect the rules of the GATT and the associated agreements.

These cases demonstrate the utility of the dispute-settlement mechanism in dealing with discriminatory measures against imports of petroleum products, imposed under the guise of environmental protection. However, the possibility that amendments to the rules governing the application of environmental measures will be sought in future negotiations needs to be monitored closely.

The biggest challenge to petroleum-exporting countries in the area of environmental measures probably comes from the United Nations Framework Convention on Climate Change (UNFCCC). The Convention sets an ultimate objective of stabilising greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous man-induced interference with the climate system. It establishes a framework and a process for agreeing to specific actions at a later stage. Most members of the Organization for Economic Cooperation and Development (OECD) plus the states of Central and Eastern Europe -- the so-called Annex I countries -- have taken the commitment to adopting policies and measures aimed at returning their greenhouse gas emissions to 1990 levels by the year 2000. In December, 1997 in Kyoto, Japan, a protocol was adopted by consensus by the Parties of the Climate Change Convention. The Kyoto Protocol represents the first multilateral instrument which contains legally-binding obligations to reduce emissions. The Protocol also establishes emissions trading between countries and a range of other flexible mechanisms as valid tools to achieve reductions. Pending the entry into force of the Protocol, several OECD countries have taken a number of initiatives aimed at reducing carbon emissions, the most effective probably being the introduction of carbon/energy taxes.

Petroleum-exporting countries have traditionally considered that the high consumption and excise taxes imposed by importing countries on gasoline and other petroleum products undermine their ability to derive income from their own natural resources. As these taxes are imposed in a non-discriminatory manner on imports and domestic production (although in fact, the latter does not usually exist), they are not inconsistent with GATT obligations. However, this does not mean that they cannot be the subject of negotiated concessions (a precedent exists in the Tokyo Round negotiations on tropical products). In the light of the various new proposals for extension of multilateral trade obligations further into the realm of domestic policy, there would seem to be no reason why the binding and reduction of these taxes could not be included in a WTO work programme for future negotiations.

The WTO Multilateral Trade Agreements (MTAs) contain provisions for future negotiations in a number of areas, including trade in services and the possible expansion of the Agreement on Trade-Related Investment Measures to include investment and competition policy. In this respect, the first WTO Ministerial Conference, held in Singapore in December, 1996, generated an ambitious work plan for Members to pursue over the next few years. In the lead up to the Third WTO Ministerial Conference, the EU and Japan have followed up by submitting specific proposals for negotiating new multilateral rules on investment and competition policy. Developing countries have responded with counter-proposals so as to ensure that issues that are of interest to them are included in any future trade agenda. These might include issues of particular relevance to the petroleum sector, such as the question of internal taxes or the problem of tariff escalation in the petrochemicals sector.

An insight into the possible future agenda for negotiations relating to energy issues and petroleum in particular can be gleaned from an examination of how these issues have been treated at the regional level. In many cases, the approaches taken in regional agreements have found their way to the multilateral stage. The agreements with the most obvious implications for petroleum-exporting states, and the demands they are likely to face in the event of either regional or multilateral trade negotiations, are the North American Free Trade Agreement (NAFTA), the Energy Charter Treaty (ECT), and the forum for Asia-Pacific Economic Cooperation (APEC).

The NAFTA holds considerable potential interest for petroleum exporting countries for at least three reasons. *First*, it is an agreement that includes both a major petroleum-importing country (the United States) and a major petroleum-exporting developing country (Mexico), as well as Canada which is also a major supplier to the United States. The NAFTA "package" may therefore have broader applicability in suggesting directions for other North-South bargains. *Second*, and related to the first point, the NAFTA in many respects reflected an attempt to reinforce and supplement GATT disciplines. *Third*, the NAFTA deals specifically with trade in energy in a separate chapter.

The approach of the NAFTA energy chapter is of “interpreting” GATT principles in such manner as to introduce new obligations. It interprets some GATT obligations more strictly than has been the case in the past, and even adds to such obligations, for example with respect to export duties and taxes, and export restrictions. One of the effects of this approach is to constrain the ability of NAFTA parties to use dual pricing as a means of encouraging domestic diversification in the petroleum sector (for example, into petrochemicals). The energy chapter also restricts recourse to certain GATT exceptions that have special importance for petroleum exporting countries. It is important to note, however, that Mexico has exempted itself from much of the scope of the energy chapter by means of annexes to the NAFTA.

Apart from the provisions in the energy chapter, the NAFTA includes many provisions elsewhere in the text that have special importance for the energy sector. One example is the NAFTA provisions on "fair trade" actions. The NAFTA introduces additional disciplines, beyond those imposed by the WTO, on certain measures allegedly aimed at the promotion of "fair trade" -- especially legislation relating to subsidies and dumping.

A major difference between the GATT 1994 and the NAFTA is the inclusion in the latter of provisions relating to foreign investment. There are four fundamental principles underlying the NAFTA treatment of foreign investment: (a) national treatment with respect to investment by NAFTA Parties; (b) MFN treatment for foreign investors of other Parties; (c) a minimum international standard of "fair and equitable treatment" for investments by investors of other Parties; and (d) a prohibition on the use of performance requirements with respect to NAFTA investors. While the investment provisions may seem to represent an almost total capitulation to the traditional agenda of capital-exporting countries with respect to facilitation of foreign investment, the NAFTA carries with it some important exceptions, especially for Mexico, where the agreement essentially leaves non-basic petrochemicals as the only area open to foreign investment in the Mexican oil and gas sector.

The NAFTA also includes a range of provisions dealing with trade and environment, although these are not gathered together in one chapter. A separate Agreement on Environmental Cooperation is nevertheless an important part of the NAFTA institutional structure. While the NAFTA environmental provisions are not specific to the oil and gas sector, they are important in striking a balance between trade and environmental considerations that may provide some indication of how this trade-environment nexus will be treated in such potentially thorny areas of dispute as climate change, which are of direct concern to petroleum exporting states.

The second regional arrangement examined in this book, the 1994 Energy Charter Treaty (ECT), establishes for the energy sector a regime for investment, trade, and transit. The signatories to the ECT include all the members of the European Community, several Central and Eastern European countries, Russia, all newly independent states of the former Soviet Union, Australia, and Japan. The ECT is rooted in the 1991 European Energy Charter, a non-binding declaration of policy designed to promote the development of an efficient energy market throughout Europe, which was negotiated in response to the collapse of the Soviet Union.

The ECT is reminiscent of the NAFTA in many respects, especially in its reference to GATT and WTO principles. This is of special significance for the ECT, given that (unlike the NAFTA Parties) not all ECT signatories are members of the WTO, with Russia being the most important exception in this respect. With respect to ECT parties that are also parties to the GATT there is a general provision that nothing in the ECT shall derogate from GATT obligations as between GATT parties *inter se*. Where one of the trading parties (such as Russia) is not party to the GATT, trade in energy materials and products is to be subject to the trade rules as represented by the pre-Uruguay Round GATT 1947.

Specific trade obligations and exceptions are found at various places throughout the treaty. As with the NAFTA, these provisions follow the trends in GATT law and practice as reflected in the Uruguay Round, although there are some differences on how the NAFTA and ECT treat GATT obligations. While the NAFTA approach was to broaden the scope of GATT principles through interpretation and additions, this is not always the case for the ECT. For example, with respect to the GATT national security exception, the NAFTA narrowed the possible scope of this provision while the ECT arguably expands it.

The agreement on principles to govern foreign investment in the energy sector was a critical goal of Western states in the negotiations on the ETC. Unlike NAFTA, the foreign investment regime under the ECT makes a distinction between pre-investment (when the issue is one of access) and post-investment (when risk is assumed and the investor is vulnerable to the national policies of the host country) stages. The pre-investment stage is characterized by “soft law” undertakings to create an hospitable environment for foreign investment. The post-investment stage, however, brings with it “hard law” obligations more reminiscent of the NAFTA, which are enforceable by international arbitration. Investors are accorded full national treatment and most-favoured-nation treatment. Additionally, expropriation or nationalization is conditioned on the traditional requirements insisted on by capital-exporting States.

The ECT, unlike the NAFTA, includes a specific article on sovereignty over energy resources. This would appear to be an attempt to provide some counterbalance to the provisions regarding protection of foreign investors, although it is not clear that the article adds significantly to the substance of the treaty. The treaty essentially confirms that states retain broad rights to manage their energy resources, although this is balanced by what would seem to be a “soft law” commitment to facilitate access to energy resources in a transparent and non-discriminatory manner.

The ECT also includes a number of provisions on environmental aspects of the energy sector. As with the NAFTA, these provisions are primarily of a “soft law” character. However, their articulation, their modernity, and their extensiveness arguably represent improvements over NAFTA.

The third regional arrangement analysed -- the forum for Asia-Pacific Economic Cooperation (APEC) -- was created in 1989. It has evolved into the major governmental forum on the Pacific Rim for cooperating on trade and economic relations. In the 1994 Bogor meeting, APEC leaders adopted a Declaration of Common Resolve, which included a commitment to move toward free trade and investment in conformity with the GATT by 2010 for industrialized economies and by 2020 for developing economies.

The energy agenda of the APEC is carried out through the Energy Working Group (EWG), created in 1990 as one of ten sectoral working groups; it is assisted in its work by five Expert Groups. The EWG work plan reflects both the Energy Action Program, adopted as part of the Osaka Action Agenda, and any relevant decisions taken by APEC Leaders, trade ministers or energy ministers. More generally, it reflects the fourteen Non-Binding Energy Policy Principles agreed on by the Working Group in 1994, and endorsed by the APEC Energy Ministers at their inaugural meeting in 1996.

The United States is the most likely proponent of initiatives to include new rules affecting energy policies and international trade, therefore, the third chapter of this book addresses the energy trade policy of that country. Energy is a very special sector in U.S. foreign economic policy, important aspects of which have thus far been isolated from the main currents of multilateral trade agreements. While U.S. negotiators now hope to negotiate multilateral and regional agreements that affect trade in energy-related goods and services, their objectives in these negotiations are limited. The goals of U.S. negotiators are complicated by the sometimes complementary and sometimes competing demands of three distinct areas in national policy: economics (which entails both export promotion and access to raw materials), security (the United States needs reliable supplies of strategic goods but also has conflicts with some oil-rich states), and environmental protection. In its efforts to balance these objectives, the United States seeks to retain the authority to impose restrictions on imports for reasons of security or environmental protection, while also promoting U.S. exports of energy-related goods, services, and capital. The United States will pursue some of its energy-related trade objectives in the new round of multilateral negotiations, but the commitments made in this forum will be neither absolute nor exclusive.

The U.S. policy on trade in energy has always reflected the tension between security and economics. Due to its special role in national security, this is a sector that is peculiarly resistant to full integration into the rules and disciplines of the global trading regime. "Energy security" for the United States entails three distinct considerations. One is the need to maintain secure access to a strategically vital commodity. The second concern relates to the leverage that oil producers may employ. The third consideration stems from the power that oil wealth can bring to currently or potentially hostile states.

Economic and security objectives are not always in conflict. In fact, these two aspects of U.S. objectives are entirely consistent on one key point: It is in the interests of the United States to encourage multiple sources of energy production around the world, diversifying the global portfolio both by commodity and by region. This promotes U.S. security objectives by preventing excessive dependence on any one country or region, while also advancing U.S. economic objectives by creating new opportunities for the exportation of goods, services, and capital. Economic and security objectives are generally in harmony when it comes to exports, but can clash over energy imports. It is in the *economic* interests of the United States to maintain relatively open access for imported energy, but the *security* implications of these imports are more complex. It remains a principle of U.S. policy that the country must have the ability to restrict energy imports whenever deemed necessary for reasons of national security.

The United States' conception of energy security is based in large part on propinquity: The sources that are geographically closest are considered to be the most reliable, and hence have received the greatest attention, the most preferential treatment, and the negotiation of the strictest disciplines. One might perceive a series of more or less concentric circles of energy security, in which sources become more vulnerable to disruption as one moves farther away from the centre.

In oil trade, the first circle consists of Canada and Mexico, which supply over one fourth of U.S. crude oil imports. The second circle consists of producers in the rest of the Western Hemisphere. The perceived reliability of sources declines as one moves beyond these suppliers to the other circles. It is no coincidence that these circles roughly correspond to the trade agreements that the United States has negotiated or is now negotiating.

The strategically vital nature of energy, and especially oil, has led on several occasions to the imposition of import restrictions by the United States. These restrictions, which have variously been imposed on a global or country-specific basis, fall within a major "loophole" in GATT law. If challenged, the United States would justify these restrictions under the "national security" exception (GATT Article XXI). However, it is not clear whether the United States would seek to bring the national security exceptions in GATT/WTO rules, which countries have heretofore been allowed to invoke rather loosely, under the tighter discipline of NAFTA rules.

Energy is nevertheless an economic sector of vast importance, and one in which the United States cannot afford to forego market opportunities. While the country is often seen as a net energy importer, the U.S. dependence on foreign sources of hydrocarbons is counterbalanced by its status as an exporter of goods, services, and capital used in the production of energy.

The energy export-promotion aims of the United States are primarily targeted towards developing countries. One reason for this targeting is that there simply is more untapped potential for energy supply and demand in the developing countries. The same increment of economic growth will *ceteris paribus* produce more demand for energy in a developing country than it will in an industrialized country and hence encourage more trade and investment opportunities.

"Green trade" issues are among the highest-profile matters in contemporary trade policy. Nowhere is this more evident than in the case of energy and allied sectors, which are often identified as leading contributors to such environmental problems as oil spills, global warming, and potential nuclear disasters. The GATT and WTO have tackled this issue in some notable disputes, and it is possible that other U.S. environmental laws will be the subject of WTO dispute-settlement cases in the future.

As mentioned above, NAFTA provides what is sometimes called a "GATT-Plus" approach. The question now is whether NAFTA will set the model for agreements with other energy-exporting countries in the Western Hemisphere, or whether the United States will take a more cautious approach with countries that are geographically and politically more distant. The negotiations might provide for greater disciplines in this sector, giving Member countries of the planned Free Trade Area of the Americas (FTAA) certain advantages in terms of market access, but limiting the scope of policies designed to use energy as a stimulus to development. There is nevertheless reason to doubt whether other energy-exporting countries in the Americas will acquire the same status in U.S. policy as the two immediate neighbours.

The energy trade provisions in APEC may be less sweeping than those of the FTAA. The APEC countries have smaller quantities of exportable energy surpluses. The negotiations thus far in APEC have aimed more at nondiscriminatory arrangements that will be globalized in the WTO than discriminatory arrangements in an FTA.

A limited scope of goods is currently subject to liberalization initiatives in APEC which will be completed in the WTO. The APEC list of goods does not include crude oil and derivatives, and a number of other products that fall within a reasonable definition of "energy" are also excluded. U.S. negotiators are interested primarily in reducing foreign tariffs on energy-related products and barriers to energy services, so as to create new opportunities for U.S. firms and investors. The United States has indicated that it considers energy services among the priority services for liberalization in the negotiations under GATS to begin in January 2000.

The U.S. tariffs on crude oil are very low but unbound. This means that there is no legal guarantee that this tariff will remain at such a low level; the United States could impose a much higher tariff rate without violating the WTO rights of oil exporters. Tariffs represent one area in which Canada and Mexico are in a more advantageous position than other oil exporters as they face zero duties on both raw materials and refined products. While their duty-free access to the U.S. crude oil market offers only a slight margin of preference, their duty-free rights are legally protected by the treaty obligations of NAFTA. Other exporters face at least the hypothetical threat of increased tariffs. The most likely scenario for the imposition of such tariffs would be for reasons of national security, although it is also possible that some future administration might consider imposing an oil-import fee either to raise revenue or to discourage the consumption of hydrocarbons.

While the General Agreement on Trade in Services (GATS) brought services within the WTO regime, it allowed countries to establish exceptions in specific sectors. The vast majority of the global energy services industry is not covered by GATS specific commitments. Planning for the new round of services negotiations is now underway in the United States. The U.S. negotiators have shown greater interest in the certain sectors, two of which -- engineering and environmental services -- are particularly important for the energy field.

The anti-dumping (AD) and countervailing duty (CVD) laws are a recurring source of friction between the United States and its trading partners. This has not previously been a key issue in the energy sector, but that could have changed with petitions filed in 1999 by a regional group of independent oil producers. If the U.S. Department of Commerce and U.S. International Trade Commission had granted the petitions against Venezuela, Mexico, Iraq, and Saudi Arabia, tariffs of between 33 and 170 percent could have been applied to oil imports. The case did not make it past the first formal step, which was a Department of Commerce determination that the petitioners lacked the necessary "standing" to file these petitions.

There are some energy-related aspects of the trade-remedy laws that might be reflected in WTO negotiations or in the FTAA negotiations. One such topic is the allegation that export restrictions on raw materials constitute a form of subsidy on downstream products. Under U.S. law and policy, restrictions on the exportation of raw materials can be treated as an indirect export subsidy to goods that are made from those materials. Variously referred to as "dual-pricing" or "natural-resource subsidies," this doctrine has been employed in such diverse cases as Mexican petrochemicals (where lower domestic prices of oil were alleged to constitute a subsidy to producers of carbon black feedstock), Argentine leather goods (where a ban on the exportation of hides was alleged to constitute a subsidy to the leather goods industry), and Canadian lumber (where the pricing practices of provincial authorities were alleged to constitute a subsidy to domestic softwood lumber producers). However, such actions could be challenged in the WTO.

The petroleum sector remains one of the leading areas for U.S. direct investment abroad, as well as foreign direct investment in the United States. Petroleum accounts for two-thirds of U.S. investment in Africa, more than one-quarter of U.S. investment in the Middle East, and significant shares of U.S. investment in Canada, Asia, and Europe. One anomaly in the data concerns Latin America, where oil projects account for less than ten percent of total U.S. investment. If accurate, these data suggest that the FTAA initiative -- if accompanied by privatization and liberalization of investment -- may open up major new opportunities for U.S. capital in the region.

The United States strongly encourages the privatization of state-owned enterprises, and the expansion of opportunities for foreign investors in specific stages of oil exploration, extraction, and refinement. As noted above, the EU, Japan and several other countries have proposed that multilateral rules on investment be negotiated in the WTO. The United States has not indicated that it supports this approach. However, in the FTAA, the investment working group is examining the issues of national treatment, most-favoured nation status, expropriation, repatriation of profits, performance requirements, and dispute settlement. The U.S. negotiators have also pursued their objectives through bilateral investment treaties, having reached 45 such treaties since the early 1980s. All of these treaties were reached with developing countries and economies in transition, including oil-exporting countries such as Ecuador, Kazakhstan, and Trinidad & Tobago.