

World Trade Organization (WTO) and its challenges with OPEC

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Abstract: Crude oil is the stimulating engine of world industry and has directly or indirectly dedicated a big deal of international trades to itself. The Group of Petroleum-Exporting Countries (OPEC) is in charge of the control of the main portion of the production and export of this product. On the other hand through its regulations and multi-aspect rules, the WTO supervises the trade of this product as well as the services between the OPEC members. However, the role of this organization in world trade of crude oil and its relations with OPEC is unclear. Today, both OPEC and WTO are eminent international financial organizations. WTO and OPEC each play a completely distinct role in the global financial stage. The former plays this role through its harsh and rigid regulations and the latter by its constant change in the oil price. Things which develop the complex issues of international laws and their related policies are the major position of OPEC in making negotiations regarding the production and procurement of crude oil and finally appraising it on one hand and the position of WTO in making rules of international trades regarding all trading goods on the other. This will raise questions such as: What is the effect of WTO on oil?, Can OPEC and WTO coexist?, is it possible that a country be satisfied of its simultaneous membership of both organizations?

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1. Introduction

For years it was assumed that oil is excluded from the area of GATT's business negotiations and agreements.

While many of the goods became subject to the laws of international trade in the primary agreement, oil and oil products were never clearly discussed in business negotiations.

Most of the Asian or African countries exporting oil were practically colonies of GATT through the first years of their emergence (till early 1960s). The total production chain of oil in these countries was under the control of international oil companies. Since Europe did not produce much oil, European countries did not set high custom tariffs on oil and oil products. In such circumstances where oil producing countries could not influence the international oil trade, they did not have an active participation in GATT. This was a reason for not discussing oil in the cycle of business negotiations.

Yet, some other oil exporting countries like Mexico became a member of GATT many years ago and have been active in negotiations ever since. In the process of negotiations for joining, Mexico was able to include a special condition in his joining protocol regarding oil under the title "conserving natural resources". This condition exempted Mexico from some of GATT's necessities in oil and oil

policy part. Besides, Mexico had a key role in negotiations in Uruguay for policies about appraising natural resources and could affect the results by making changes in the final drafts of the proceedings of the negotiations (Ja'fari, 2005).

It should of course be noted that neither in GATT's rules nor in WTO's existed any instructions to except oil and oil products from the approved rules and even in article 20 of GATT's rules there has been an indirect notice to oil. In the same article, which is related to "general exceptions", it has been mentioned that countries are free to make rules for their export of natural resources in order to save them. The mentioned rule will give the petroleum-exporting countries the right to decide about their natural resources by restricting their exports with having in mind the basis of governing the natural resources.

We will briefly go through the effect of WTO's agreements on oil in the following parts.

2. General Agreement on Tariff & Trade 1994 (GATT 94)

This agreement consists of some rules and regulations regarding the activities of governments and nongovernmental companies in field of import and export which leads into free trade of goods and services and is based on three principles which are

Most Favored Nation Treatment (MFN), National Treatment (NT) and Prohibition of Quantitative Restrictions (PQR).

Favoring the fact that the tariffs set for crude oil, oil products and petrochemical articles are so low, they will never be considered as obstacles in international trade of petroleum.

However, the principle of prohibition of quantitative restrictions which means eliminating any prohibiting element in international trade (except for specific circumstances) is in sheer contrast with OPEC's strategies for allotment of oil.

It is worth mentioning that OPEC allotment will restrict oil production rather than its export.

In addition, clause g of the article 20 of GATT has considered the exceptional situation of the prohibition of quantitative restrictions as: "this action is allowed in cases where the aim of saving in consumption of natural resources is implemented to the same extent in internal consumption and production". In other words, the petroleum-exporting countries can refer to this clause of article 20 of GATT in order to justify OPEC's allotments. Hence, the major and unique restriction of this exception is that these restrictions should also be applied to production and internal consumption (Jimenz, 2002).

One other exceptional case which relates to OPEC is clause h of article 20 of GATT agreement. It mentions the actions which "have been planned in a government to meet the responsibilities determined by a goods agreement and none of its signatories disapproved the agreement". Therefore, apparently the OPEC members can rely on clause h of article 20. This means that "the quantities and the restrictions defined by OPEC are the result of an intergovernmental goods agreement". Of course there is a place for doubt whether all WTO members accept the actions presented by OPEC. Finally, we get to the exceptions regarding the national security issue which is subject 21 of GATT agreement. It implies that no single article of the agreement will be interpreted in a way that:

Necessitates any of the parties to present or reveal information that are in contrast with its national security and benefits.

Avoids each of the parties from making decisions in taking actions good for its national security and benefits.

Prevents any of the parties from their responsibilities which are on their shoulders based on the liabilities to the charter of the United Nations for maintaining peace and global and international safety.

It is generally accepted that governments are qualified to decide about the things which support their "national security and benefits". Considering the

specific reputation of oil department and its strategic importance, the above mentioned exception of the article 21 can be a legal justification for limitations of the import and export of oil and oil products. That is why the United States used to apply some controls on the export of oil and oil products as a result of political and security issues. (Omidbakhsh, 2001).

3. Agreements about subsidies and compensations

This agreement which was signed in negotiations in Uruguay defined "subsidy" as government's financial support which will bring benefits for the economic agencies. This benefit can be in the form of funds transfer, exemption from incomes to be collected or some purchases by the government. According to this definition "subsidy" will be divided into three parts.

Traceable subsidies: the ones which can be named under the WTO's settlement system of discrepancies and their related compensating steps.

Forbidden subsidies: they consist of all export and import subsidies and paid subsidies given to reinforce the consumers in substituting the domestic products with the imported ones.

Untraceable or licensed subsidies: the one given to all industries of a country and which are not restricted to a special industry.

Regarding traceable or forbidden subsidies, any of the countries who is a beneficiary can refer the matter in form of a complaint to the discrepancy settlement column or start their investigation processes in order to get compensating duty for the imported goods from the exporting country. Anyhow, the existing solution of such cases is receiving compensating duty. However, this action is allowed merely when the damage on the industries of the importing country is evident. Otherwise, the members can refer to the discrepancy settlement column. In other words, if there is no damage to the industries of the importing country, it can only bring the case to the discrepancy settlement column but can not directly set the compensating duty (Gheybi, 2006).

One aspect of the above mentioned agreement is that particular subsidies are traceable and according to the meaning of the word. "particular", regarding oil one can discuss that since the subsidy for oil and natural gas supply in domestic markets is lower than the global ones, therefore, it will not be considered as a particular subsidy and eventually it is untraceable. Nevertheless, determining the subsidies as unparticular and recognizing them as untraceable is bound to legal announcement of the committee of subsidies and to WTO's compensating actions. Any implication of the natural resources subsidies will obviously affect on

the ability of the petroleum-exporting countries in utilizing their oil and other natural resources as a reinforcing tool for varying their domestic economics. For instance, in the early 1980s America's international trade court interpreted public benefit as: "it should never ever be given to a specific receivers and if in action special organizations or people benefit from it, they should be subject to paying compensating duty (Omidbakhsh, 2001).

4. Agreement about compensating and anti-dumping rights

This agreement which is a part of WTO's package of agreements provides an exclusive framework for anti-dumping attempts. According to this agreement which is set like a precise legal text (paragraph 1, article 2), a dumped product is the one which is sold with a price lower than its own in the target country, has an export price lower than similar goods in the market of target country and is used in the country it is exported to.

For a member of a WTO to be able to make anti-dumping moves, it is necessary to prove that such thing as dumping has actually happened. Then, it should be proven that it has caused a great damage to the domestic industries of the importing country or will disrupt the process of development of domestic industries. Finally, the cause-effect relationship between dumping and damage should be clarified.

This product can have critical influences on the export of oil products and petrochemical goods.

Supplying cheap energy, oil and gas to these industries in the gas and petroleum-exporting countries has always been considered a reason for dumping in the importing countries. Based on article 2 of the agreement, this reason will be dumping only if supply of the producing companies in the preferred range of prices is restricted to exporting industries. In Petroleum-exporting countries, cheap raw material (oil or gas) is almost to the same extent available for export industries or others and so from this aspect they can not be considered as dumping.

In WTO's framework, anti-dumping actions should only be executed by the governments rather than the private section. Besides, in case that the respective country decides to take these actions, it should first go to the Goods Trade Council of WTO to get a license. Then, the dumped country should refer to discrepancy settlement column and ask for a board of investigators. This board can not express its opinion regarding the dumping but it just can evaluate and assess the legitimacy of the investigations done and information presented by the complaining country.

From the point of view of the secretariat of OPEC, one other issue that exists in interpreting and

executing the international trade laws is misuse of the anti-dumping rules. Since other obstacles of trade are more or less eliminated, today countries are increasingly bringing lame excuses to use anti-dumping tariffs for restricting import. As an example one can mention the actions of the Committee of saving domestic oil (CSDO) which is a group including independent oil producers in the US. Based on United States' anti-dumping rules, this group has tried several times to accuse some countries such as Venezuela, Saudi Arabia, Mexico and Iraq of dumping their petrochemical goods and oil products in America and consequently damaging America's oil industry. These accusations are based only on America's anti-dumping rules rather than that of WTO's. Hence, by collecting the effects of dumping of these exporting countries on the US, America is allowed to be certain of the damages of the competing industries in the US and consider it a cause for anti-dumping actions.

Anyway, the anti-dumping side effects are among the causes which restrict the abilities of the petroleum-exporting countries to exploit natural resources for enhancing their process of economic and industrial development (Jimenez, 2002).

5. Agreement about the technical obstacles confronting trades

This agreement which is a competed version of the Tokyo negotiations (TBT) includes a list of legal issues that should be the base of setting technical rules. This list also includes the environmental subjects. Considering the effect of oil on the environment and the complexity of the technical rules and standards of the oil section, providing that oil becomes a part of WTO, its production and international trade will be influenced by the mentioned agreement. Some of the agreed upon rules of TBT agreement are directly related to petroleum-exporting countries.

Under the TBT agreement, it is mandatory to observe certain standards and technical rules in order to be able to meet the environmental goals. The TBT agreement is considered environmental-oriented from the aspect that it will provide the importing countries with the opportunity to appoint discriminations against crude oil and oil products of the exporting countries. In addition, the environmental movements can easily be justified as they do not need accurate tests to improve their effectiveness. It is not as well necessary to improve the effectiveness of these movements in reaching the environmental goals because these agreements do not obligate their members to present valid documentation and proves to be able to scientifically justify the technical rules. As a result, UNCTAD has

laid down that the environmental rules should be based on necessity and some factors such as effectiveness, indiscrimination, clarity and not causing disturbance in the process of trade should be considered in their collection. (Jimenz, 2001).

6. General agreement about service trading

GATT's general agreement of service trading includes 6 parts, 29 articles and 8 attachments. This agreement can be used regarding all kinds of actions used for service trading no matter in which of these forms like rules, regulations, processes, decisions, directorial actions or else. Its goal is to develop service trading as a tool for rising economic growth of all parties and advancement of all developing countries.

This agreement does not directly affect the oil and oil product trades. Yet, as a result of its significant impact on production of oil, it will indirectly cause changes in its trade and that is possible through changes and transformations brought about in the structure of services related to oil.

In most countries of the world all activities regarding oil industry including services is under the control of governments or private sections which has caused massive exclusiveness by vertical merges. This has reduced the level of competition in these activities. Based on this, provided that oil and oil products get into WTO's negotiations, these activities which have a key function in global oil industry will also need to be part of GATT's agreements and eventually have various effects on different countries (Gheybi, 2006).

7. The joining of the OPEC members to WTO and its consequences

Before, the OPEC members were not able to influence on the results of GATT's negotiations. This was so because none of them participated in GATT's meetings and most of them thought that oil's strategic success in global market is sufficient for oil section to be excluded from all rules and regulations passed by GATT. Today, they are suffering from the consequences of their 50 years of being away from GATT and WTO. Nowadays becoming a member requires more profound economic, political and legal changes.

Here and now on one hand some of the OPEC members have become and some are in the way of becoming a member of WTO. On the other hand, in March 2000, as a permanent international organization, OPEC officially asked WTO to become a superintendent of meeting sessions of some OPEC committees such as general council, development and trade, and environment and trade committees. All

these help so that these countries would be able to coordinate their point of views and benefits (and probably form a forceful alliance within WTO) and raise their competence in bargaining and also affect the results of future WTO negotiations through their active participation.

Pertaining to everyday expansion of WTO's domain and new subjects gradually presented in their negotiations as well as the everyday increase of the optional rules and regulations into mandatory ones, we can rationally come to the point that the legal framework of this organization is ever-increasing and can more and more influence on the international economic relationship of the countries whether a member or not. Therefore, the consequences of becoming a member or overlooking to become one in this organization can not be measured by the present information. Chances are that we witness unforeseen consequences for the nonmember countries (Jimenz, 2001).

Most of the petroleum-exporting countries are the underdeveloped ones and they rely on one single kind of natural resource. Having that in mind, one implies that the greatest impact of WTO's rules on these countries is on their right of national control over their natural resources which is considered their unique relative advantage in foreign trades. The rules that WTO passes or their interpretations can restrict these countries ability in exploiting their relative natural resources to reach economic growth.

WTO's agreements impose several other musts on all countries in using natural resources. These particularly limit petroleum-exporting countries in exploiting their natural resources for accomplishing economic and industrial growth. Rules regarding the subsidies and anti-dumping constrain many policies of the petroleum-exporting countries concerning economic growth. Even now the above mentioned agreements include articles which under special circumstances allow supply of energy to the domestic industries with a lower price than that of the global one. But providing these situations is not easy for the petroleum-exporting countries. WTO's agreements are moving on a track which will go to forbidding the donation of any subsidies to industries in the process of economic and industrial growth of developing countries.

Of course WTO considers certain privileges for developing countries which are:

- having more flexibility in government's use of tools of economic and commercial policy
- longer transfer period (changing internal rules and structures)
- receiving technical assistance

It is worth explaining that all OPEC members that are now WTO members are among the

list of developing countries and hence benefit from these privileges. The title “underdeveloped” will only be given to a country by one of the WTO members and there does not exist a standard definition for it in any of the texts or documents of WTO. Though, proving that a country is developing is not an easy job for a country that demands membership of WTO for the members will oppose this claim and will not simply accept to give these privileges to a country.

OPEC’s secretariat has marked the countries exporting several types of raw materials that in the clauses of section 4 of GATT’s agreements have particularly been named as “developing countries” to prove that the OPEC members are considered developing.

For instance, clause 36 refers to: “... the necessity of providing a suitable situation for the exporters of these goods in order to have access to the global market (of raw materials). And also according to the situation, some policies should be carried out for making stability especially regarding the prices of these goods and causing progress in global market”.

Clause 38 further mentions that: “... if possible, by the means of taking efficient steps in the framework of international arrangements ... a convenient and stable situation which is needed in international market of these goods (raw material) be provided so that the exporters become able to sell their products in good prices and have price stability in the market”.¹¹

It is of course essential to differentiate negotiations of crude oil with WTO members on one hand and having a group like OPEC in WTO on the other. In other words, the behavior of WTO members will not be the same with international trade of oil and OPEC. OPEC is a political-economic association whose members try to defend their benefits against all the pressures and interferences of great economical powers of the world which are also key WTO members. They are also attempting not to lose their authority and interventions in the global oil market.

On the other hand at the present stage neither the structure of power nor the decision making system of WTO allows OPEC, a third-world organization, for such an attendance.

Obviously we should not forget the fact that the developing countries which are WTO members will not be satisfied with OPEC’s participation as a third-world organization as most of the developing countries are among the major importers of crude oil and from this aspect their benefits are in contrast with those of its exporters. Yet, their benefits are remarkably in accordance with those of the developed countries of WTO (Omidbakhsh, 2001).

In the end, it is worth reciting the advantages and disadvantages of becoming a member of WTO:

disadvantages: the possibility of using the following facilities would be less for those countries which are members of WTO:

supplying cheap energy to the domestic industries

restricting the purchases of oil companies to the domestic market

restricting the purchases of governmental companies to the domestic market (this is regarding the consignees of the collateral agreement of governmental purchases)

One should compare the disadvantages of not being a WTO member with the costs on has to bear. Not being a part of GATT system of WTO has serious costs for the nonmember countries because they will be affected by the decisions made in this framework anyway. Remaining out of the cycle of WTO is not advisable for petroleum-exporting countries. That is because even when they do not become a member, these countries should accept the consequences of execution of the agreements on their economy without having any influence on the results of negotiations. Besides, over time it might become more difficult to get a membership of WTO for those who are now qualified by are not a member.

Advantages: the possible advantages for members of WTO might be:

influencing on the results and the future ways of negotiations: since important issues regarding capitalism are going to be discussed about in the future negotiations, it is better for countries to be able to participate in them.

In addition to the impeding factors of international oil trade such as taxes and environmental policies of exporting countries, some countries have recommended that there be separate mechanisms for negotiations between the exporting countries and consumers regarding these issues. However, these mechanisms do not yet exist and it is too soon to predict its future.

Having access to the mechanism of settling discrepancies: this point can be used when the consuming countries apply discriminatory acts against oil. This has been once been used by Venezuela and Brazil in the past and has had satisfactory results.

The World Trade Organization does not directly follow the cases of deviations from its agreements and it is up to the country which claims of having unfairness should take its case to the related column: This has brought amenities to the members and made the WTO agreements flexible.

Weak countries defend their resources in multilateral negotiations; usually the determined conditions of collateral negotiations and agreements are more difficult than the multilateral ones.

It is necessary to emphasize on the fact that these advantages will exist only if the petroleum-exporting countries have a congruent procedure in negotiations and if possible provide alliances inside WTO to increase their power of bargaining in negotiations (Jimenz, 2003).

9. Conclusion

Aiming to assist free trade and remove the obstacles, the World Trade Organization by having the most members compared to other international organizations is now the leading one in international trade and is going to supersede oil and oil trade.

Though oil was not vividly emphasized in the negotiations resulting in the establishment of oil, no law of multi-trade system has clearly excluded it.

The oil exporters, who once thought strategic nature of oil suffices them for remaining out of global multi-trade system, are now concerned that by joining the WTO they will not be able to support oil prices through controlling its production.

In the situation where WTO is going to ban close-to-zero tariffs of goods, some countries like United States and Japan are deciding not to restrict their tariffs of crude oil. Hence, the benefits of the petroleum-exporting countries require them to ask for tariffs of crude oil to become a part of these legal necessities. This is not possible unless joining WTO and participating in its negotiation cycle.

Those petroleum-exporting countries who have not participated in negotiation cycles during the 50 years of GATT and WTO are paying a great cost for being far from the multi-aspect trade system. Besides, the later countries try to join WTO, the more complex, lengthy and liable will be their process of joining. Since the taken decisions in the framework of world trade will affect the nonmember countries as well, it is essential that the OPEC members investigate all advantages and disadvantages of this membership and step in the way.

A- We are now in a situation in which the oil-consuming countries impose discriminatory actions on import of oil products in the form of environmental issues or tariff plans. In such conditions, since there exists a more flexible condition for developing countries in WTO, the system of settling discrepancies will help these countries in having a shelter to restore their rights. Finally, simultaneous membership in OPEC and WTO bring about opportunities for these countries to in addition to their alliance also have an impact on

the results of negotiations through bargaining in multi-aspect contracts.

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