

Research on the WTO Energy Agreement ^①

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ABSTRACT: The legal process of the international trade, which is dominated by the World Trade Organization, has a profound impact to promote the orderly and equitable global trade. However, as the largest commodities, energy was alienated to the uniform trade rule, this hampered the orderly trade of the energy and impeded the stable development of the global economy. It will have an important significant to discuss the international energy trade with the frame of the WTO.

KEY WORD: WTO; Energy Trade; Legalization; Energy Trading Agreement

The effort of the international community to establish a unified international energy trade rules has been exist for years, it undergoes the attempt to reform the existing energy cooperation mechanism to the establish of the unified and comprehensive world energy organization, finally, the task to adjust the global energy trade was vested to WTO.

1. Introduction

It is the most ideal choice to deal with energy trade under the WTO framework. It is not only practical feasibility, but also important implications for the development of WTO itself.

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1.1 The History of WTO and Energy Trade

The multilateral trading system and the energy trade rules have been connected for long time. The energy trade rule have been proposed as early as drafting the “Havana Charter” of the “International Trade Organization”, unfortunately, the main energy exporters were absent from the negotiation and all countries are very prudent to the unified energy trading rule since the importance the energy, so the endeavor to enact the unified energy trading rules were aborted.

The Tokyo Round and Uruguay Round negotiations of the GATT started the preliminary attempt to enact the energy rules, but the attempt failed again since the energy trade is closely related to the state sovereignty over natural resources and the sensitivity of the issues. The energy trading rules have not established till 1995 when the WTO established.

The Doha Round Negotiation of the WTO, which were started in 2001, started the special talk regarding the energy trade rules, the negotiations are currently focused in the areas of biofuels and energy trade in services.

1.2 The WTO Regulation Form of Energy Trade

There are three models of establish energy trading rules under the framework of WTO:

First, Enact Energy Trading Agreement

The first model refers to building a comprehensive, integrated and independent energy trade agreement. The contents of this agreement including every aspects of the energy trade, such as the basic concepts regarding the energy trade, the principle rules of the energy trade and the concrete provisions.

Second, WTO Agreement Amendment

The second model of regulating the energy trade under the framework of WTO is to build an specific and specialized provision of energy trading in the WTO agreement, that means the current agreement need to be amended.

Third, Interpretation of WTO Agreement

The third models of the energy trade under the framework of the WTO is to interpret the current WTO rules. The WTO rules would suitable to regulate the energy trade.

Compared with the other two ways, we can find that the best way to regulate the energy trade under the framework of WTO is enacting the overall “Energy Agreement”. This paper intends to discuss the rule of this agreement in depth.

2. The Main Contents of WTO Energy Agreement

The unified WTO agreement on energy trade should include the following rules: the basic concepts regarding the energy trade, the principle rules of the energy trade and the concrete provisions.

2.1 Define the Basic Concept

The agreement should define the basic concepts relating energy trade.

First, the concept of energy, It is better to divide energy into the primary energy and secondary energy. The primary energy is the energy which is mine directly from the nature, such as the petroleum, gas and so on. The secondary energy is the energy which have been processed.

Second, the subjects of the energy market. The subjects of the energy market mainly include the following three: (1) Energy exporting countries;(2) Energy importing countries; (3) Transit countries.

2.2 Basic Principles

As part of the WTO rules, the Energy Agreement enshrined the basic rules of the WTO. Combined with the practical energy trade, the following basic rules should be clearly stipulated:

First, free trade. This means all contracting parties should abolish all restrictive measures in international energy trade.

Second, most favorable nation treatment. This means that all countries should give all countries the same favor which it has already given to others.

Third, national treatment. This means that all countries should treat foreigners and nationals same.

2.3 Concrete Rules

The Energy Agreement should consist following provisions:

First, Rules on Infrastructure

Most of the energy goods was shipped by the fixed infrastructure, so it is necessary to stipulate the rule on infrastructure to specify the problem of the admission of the third parties, the new or extra capacity of the infrastructure, non-intervention of the energy direction.

Second, Rules on State-Owned Enterprise

One of the biggest features of the international energy trade is the wide participation of the state-owned enterprise, therefore, one of the biggest challenges of the energy trade regulation is the regulation rules of the state-owned enterprise. The fair application rules of the private and state-owned rules and the rules of subsidy should be stipulated.

Third, Rules on Investment

Energy trade is completed through the fixed infrastructure, these infrastructures are mostly invested by the government. But with the development of the economy market, a lot of the private investor participate in the infrastructure investment (such as the pipe of the gas and petroleum and so on). Therefore, the agreement need to stipulate a fair and open market environment for the private investor.

Fourth, Exceptional Clauses

Since the significant important of the energy to a country, it is necessary to stipulate some of the exception rules for the energy trade beside the "General

exception” rules of “GATT,14”, and the “Security exception” rules of the “GATT, 21”. Such as, Intellectual property protection exception, free trade exception, and so on.

The energy trade is highly complicated, therefore, a lot of rules were need to clarify this. This would be the most important and difficulty part of the WTO energy trade negotiation.

3. Impact of WTO Energy Agreement

The overall and unified energy trade rules would have an enormous impact on the world energy trade, even the world economy.

3.1 Impact on Global Energy Market

(1) The WTO energy agreement would insure the energy trade in a faire way. This would insult the energy trade from the political influence and protect the export restriction and some other negative effects.

(2) It is help to use the WTO DSB to settle the energy trade dispute. This unique dispute settlement mechanism would contribute the orderly trade of the energy.

3.2 Impact on China

As a large consumer and importer of the energy in the world energy market, China would be influence of a lot by the WTO Energy Agreement:

(1) It would provide an orderly legal environment for China to import energy.

(2) It would provide a chance for China to participate the legal system of the energy trade rules.

(3) China still faces a lot challenges to this international rules and perfect its national energy related rules.

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