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ANATOMY OF THE CASE OF ARAB COUNTRIES AND THE WTO

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The article discusses accession of Arab countries to the WTO and some of the obstacles they face. The article also examines the impact of the multilateral trading system on selected sectors such as oil and agriculture of Arab countries. The proposition in this article is that the WTO is not a perfect institution. In WTO accession, politics matter more than commerce or trade. I argue that joining the WTO is a balancing act. As a result of economic liberalization, there would losers in industries of Arab countries. However, winners could compensate for any loss.

I. Lebanon and Syria in GATT 1947

The General Agreement on Tariffs and Trade (hereinafter GATT) 1947 was negotiated by twenty three countries. As an agreement, it never itself came into force. GATT was always applied provisionally through the Protocol of Provisional Application.¹ GATT 1947 was a code under which countries will conduct their mutual commercial relations. The purpose of GATT was to establish an open system of world trade between the contracting parties. The GATT operated as an agreement and a pragmatic institution.² The GATT 1947 was the beginning for series of negotiations that ended up with the establishment of the WTO in 1994. The end of the Uruguay Round brought with it legalization of world trade politics after GATT was considered a geopolitical document created to contain the spread of non-market ideology to other countries.³ As some legal scholars and WTO members claim, the WTO has become a rule-based trade body. The Uruguay Round results both clarified and extended existing GATT obligations in virtually every facet i.e. goods, services, and intellectual property.

Of the twenty-three original contracting parties to the GATT 1947, only two, Lebanon and Syria, were from the Arab Middle East.⁴ However, Lebanon withdrew from

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¹ In order to enter into force, article XXVI.6 of GATT 1947 requires governments with minimum share of world trade to deposit their instruments of acceptance. However, few countries did so. Therefore, GATT was applied through the Protocol of Provisional Application. See Protocol of Provisional Application to the General Agreement on Tariffs and Trade, signed Oct. 30, 1947, 61 Stat. A2051, 55 U.N.T.S. 308.

² As the acronym of the GATT indicates, GATT scope was limited only to tariffs and trade in goods. GATT 1947 did not contain rules aimed at the liberalization of trade in services and other sectors. An example of GATT 1947 pragmatism is article XXV (3) & (4) which calls for one vote per nation and decisions to be taken by majority vote. However, in practice, consensus was developed among parties.

³ In 1980s, U.S officials declared GATT a Western-type of document.

⁴ In addition to Lebanon and Syria, there were eight other developing countries as follows: Burma, Ceylon, Republic of Chile, Republic of China, Republic of Cuba, India, Pakistan, and Southern Rhodesia.

GATT four years later. Six months after Lebanon's withdrawal from GATT, Syria followed suit.⁵ Today, neither are members of the WTO because they withdrew from the GATT in 1951. Lebanon and Syria did not attempt to join the GATT/WTO until 1999 and 2001 respectively.⁶

In 1950, Lebanon notified the CONTRACTING PARTIES of its intention to withdraw from the GATT.⁷ The only hint for withdrawal was the need for "readapting". A contracting party under the provisions of GATT 1947 is not obligated to clarify its reasons for withdrawal from the GATT.⁸ Moreover, since GATT was applied through the Protocol of Provisional Application, any contracting party can withdraw from the Protocol on sixty days' notice rather than the six months' notice required by article XXXI of GATT.

One may suspect that the reason for Lebanese withdrawal was the consideration by Israel to join the GATT.⁹ In 1947, the government of the United Kingdom, acting as a mandatory power for Palestine, opened negotiations for the accession of Palestine to GATT. Negotiations for Palestine's accession resulted in Schedule XIX that contained

⁵ See Notifications of Withdrawal: Syria, June 7, 1951, 90 U.N.T.S. 324.

⁶ The Working Party on accession of Lebanon was established in Apr. 1999. A formal request for accession under Article XII of the WTO was sent to the Director-General of the WTO by Syria on Oct. 10, 2001 and was circulated to WTO members on Oct. 30, 2001.

⁷ Then Lebanese Foreign Minister Philippe Takal communicated his government intention to withdraw from GATT 1947 without further elaboration for the reasons of withdrawal. In his communication he said, "I have the honor to inform you that owing to the necessity of readapting decided to denounce the General Agreement on Tariffs and Trade signed in Geneva on 30 Oct. 1947 and this in conformity with Paragraph 5 of the Protocol of Provisional Application signed on the same date. Lebanon wishes nevertheless to remain a member of the General Conference of the ITO". See Notifications of Withdrawal: Lebanon, Dec. 27, 1950, 77 U.N.T.S. 367.

⁸ See General Agreement on Tariffs and Trade, opened for signature Oct. 30, 1947, 61 Stat. pts. 5, T.I.A.S. No. 1700, 55 U.N.T.S. 187, art. XXXI.

⁹ Israel was established as an independent state on May 14, 1948. See Israel's Present Position in Relation to G.A.T.T., 2:2 Economic News 75, 76-78 (Dec. 1949) (The advantages of Israel adherence to GATT would mean that, within the framework of MFN doctrine, it would find itself in possession of rights similar to those of other GATT states. The main disadvantage of acceding to GATT is the restriction of freedom to enter into bilateral agreements affecting trade policy. Since Israel being only at the first stage of developing its economy, it might be premature to give up already now Israel's liberty to find out which principles it has to choose as definite).

concessions granted by the government of the United Kingdom. However, after the United Kingdom, as from May 15, 1948, ceased to be a contracting party to the GATT with respect to the customs territory formerly included in the Palestine mandate, Israel made no declaration indicating its willingness to be bound by GATT.¹⁰ Therefore, Israel (the successor state) was not bound by the concessions negotiated by the United Kingdom (the predecessor state). It was not until 1962 when Israel assumed full status in GATT.¹¹

Lebanon had at its disposal an alternative option that could have invoked rather than an outright withdrawal. Article XXXV of GATT clearly stipulates that GATT will not apply between a contracting party (Lebanon in that case) and an acceding one (Israel) if either one of them does not agree to its application to the other party “at the time of accession”.¹² Resorting to article XXXV is more convincing especially that article XXXV was added at the first session of the Contracting Parties in 1948, well before Lebanon’s withdrawal.¹³ Therefore, Lebanon could have employed article XXXV if Israel was to accede to the GATT.

¹⁰ See The Position of Palestine in Relation to the Agreement: Item 8 of the Agenda to the Annecy GATT Conference, Apr. 29, 1949, GATT Doc. No. GATT/CP.3/17, p. 1 (The doctrine of state succession in international law is not well defined, but generally speaking, the authorities agree that there is no automatic succession to obligations arising from commercial treaties such as the GATT. The fact that the obligations under GATT are far-reaching and important reinforces the conclusion that there should be no succession).

¹¹ Israel was party to the GATT through the application of provisional accession in 1959. See GATT ANALYTICAL INDEX, *infra* note 13, at 1046, 1051.

¹² India set a precedent when it became the first country to invoke article XXXV in 1948 with respect to South Africa. See *Id.* at 958. Egypt, Morocco, and Tunisia invoked article XXXV of GATT with respect to Israel upon their accession to the GATT. See Ariel M. Ezrahi, *Opting Out of Opt-Out Clauses: Removing Obstacles to International Trade and International Peace*, 31 L & POLY IN INT’L BUS 123, 138 (1999).

¹³ See GATT ANALYTICAL INDEX: GUIDE TO GATT LAW AND PRACTICE 961 (6th ed. 1994).

II. Arab Countries, UNCTAD, and WTO

Since the birth of GATT in 1947 until 1993, few Arab countries have joined the GATT-type multilateral trading system.¹⁴ Like many other developing countries, Arab countries, after the end of colonialism, called for a new world economic order that would take their development needs into account.¹⁵ Thus, United Nations Conference on Trade and Development (“UNCTAD”) was born. The UNCTAD was set up as a permanent organ of the U.N General Assembly in 1964, and it meets every four years.¹⁶

In UNCTAD, negotiations were conducted by the bloc approach, with “the Group of 77” representing the developing countries.¹⁷ UNCTAD can be best described as developing countries’ GATT. Over the span of its life, UNCTAD most cited achievement is the Generalized System of Preferences (“GSP”) whereby developed countries give preferential, non-reciprocal, and non-discriminatory treatment to developing countries

¹⁴ Egypt, Kuwait, Morocco, Mauritania, and Tunisia were the only countries to join the GATT 1947. For example, Egypt and Tunisia first acceded to the GATT provisionally. Provisional accession means that GATT contracting parties extend GATT rights including tariff concession to acceding countries if the latter reciprocate. However, acceding countries did not have a direct right regarding tariff concessions negotiated prior to their accession to the GATT. In other words, acceding countries were not entitled to compensation in case tariff concessions were withdrawn.

¹⁵ The main reason for not joining the GATT system was the doctrine of reciprocity embedded in GATT. The doctrine of reciprocity obliges countries to reciprocate their concessions. See Adeoye Akinsanya & Arthur Davies, *Third World Quest for a New International Economic Order: An Overview*, 33 INT’L & COMP. L. Q. 208 (1984). See also Declaration on the Establishment of a New International Economic Order, G.A. Res. 3201, U.N. GAOR, 28th Sess., Supp. No. 1, at 3, U.N. Doc. A/9559 (1974) reprinted in 13 I.L.M. 715 (1974) (the new international economic order should be founded on full respect for preferential and non-reciprocal treatment for developing countries, wherever feasible, in all fields of international economic cooperation whenever possible).

¹⁶ UNCTAD held its first meeting in 1964 in Geneva, Switzerland. See Kele Onyejekwe, *International Law of Trade Preferences: Emanations from the European Union and the United States*, 26 ST. MARY’S L. J. 425, 447 (1995) (the foundation of the new international economic order movement was the theory of “structuralism” which called for a fundamental realignment of the international order to correct deep imbalances between developed and developing countries that would, if uncorrected, perpetuate underdevelopment).

¹⁷ There were four lists. African countries, Asian countries, and Yugoslavia fell under List A. List B contained the developed capitalist countries. Latin American and Caribbean countries were under List C. List D included the socialist countries of Eastern Europe. Countries on Lists A and C formed the Group of 77. *Id.* In reality, the number of countries in the Group of 77 is more than 77.

trade.¹⁸ Although the GSP has functioned with relative success, its limited coverage of beneficiary countries and products coupled with conditions that beneficiary countries must meet before being eligible for such a preferential treatment led to disgruntling feeling on the part of recipients. Moreover, many of UNCTAD tasks now fall within the contours of the WTO whose membership is essentially the same. However, UNCTAD still has a role to play even though the WTO made UNCTAD relatively anachronistic.¹⁹

Arab countries are believed to have little enthusiasm for the general free trade agenda that the WTO encourages.²⁰ In practice, the majority of Arab countries are protectionist and are likely to stay that way for the years to come.²¹ Arab countries are interested in guarding their sovereignty and protecting domestic industry from flood of foreign imports. Arab countries do not acknowledge the benefits the WTO offers.²² Trade liberalization is perceived as a threat to cultural traditions.²³

¹⁸ Other UNCTAD achievements included concluding codes of conduct such as code of conduct on transfer of technology, code of conduct on liner conferences, and code of conduct on restrictive business practices and commodity agreements for products such as sugar, copper, and coffee. Many of those codes and commodity agreements fell by the side way either due to objections from List B developed countries who were outvoted in the approval of those codes or disagreement among developed and developing countries over their share in commodity quotas.

¹⁹ See JAGDISH BHAGWATI, *A STREAM OF WINDOWS: UNSETTLING REFLECTIONS ON TRADE, IMMIGRATION, AND DEMOCRACY* 29-35 (1998) (recalling the glory of UNCTAD under the leadership of Raul Prebisch as an institution was ahead of the curve. The memory of the institution has faded in OECD countries where it has become commonplace in some influential quarters to think of UNCTAD as if it was instead UNWASHED and UNKEMPT. It has been said that the institution focuses on politics rather economics and it is too partisan). The reasons for the OECD displeasure with UNCTAD may be the fact that it encompasses majority of developing countries with strong voting power.

²⁰ See David R. Karasik, *Securing the Peace Dividend in the Middle East: Amending GATT Article XXIV to Allow Sectoral Preferences in Free Trade Areas*, 18 MICH. J. INT'L L. 527, 545 (1997).

²¹ For example, Arab countries adopt fixed exchange rates, impose customs duties on manufactured goods, restrict access to service suppliers, and institute preferential government purchasing programs. Even if the idea of free trade has been accepted, the practical application of its principles might be highly unpopular among politically sensitive groups across Arab countries. *Id.*

²² *Id.*

²³ Prince Bandar Bin Salman Bin Mohammad Al-Saud remarked that each country has its own experience and the way it deals with foreign investment, e-commerce, and WTO which corresponds with its system, culture, and belief. See *STRENGTHENING RELATIONS WITH ARAB AND ISLAMIC COUNTRIES THROUGH INTERNATIONAL LAW: E-COMMERCE, WTO DISPUTE SETTLEMENT MECHANISM, AND FOREIGN INVESTMENT* 4 (The International Bureau of the Permanent Court of Arbitration ed., 2002).

The WTO created new reality. Arab countries cannot afford not to join.²⁴ One can pose the following question: can Arab countries imagine getting engaged in the multilateral trading system without being part of the WTO? I cannot imagine. With the world becoming more and more economically integrated, Arab countries will have the chance to be involved and their interests represented appropriately.²⁵ In an era of internationalizing the economy, any Arab country which does not join would be isolated.

Arab countries are not the only countries that have restrictive trade policies. Great volumes of literature have been written about protectionism and cheating techniques of Quad countries (U.S, European Community (“EC”), Japan, and Canada). Once Arab countries understand the rules of the WTO game, they can take advantage of these rules by tailoring them for their own agenda at their own tune.

Adhering to the rules of the WTO may enhance global confidence in the Arab countries and thus likely to increase foreign direct investment.²⁶ As for the individual Arabic citizen, one would imagine how consumer would be when all those goods not made in his home country become available at his fingertip. The loss of sovereignty is not

²⁴ The following are the Arab countries that joined the WTO: Bahrain (Jan. 1, 1995), Djibouti (May 31, 1995), Oman (Nov. 9, 2000), Qatar (Jan. 13, 1996), United Arab Emirates (Apr. 10, 1996), and Jordan (Apr. 11, 2000). In addition there are seven other Arab countries in the process of joining: Algeria, Iraq, Lebanon, Libya, Saudi Arabia, Sudan, and Yemen.

²⁵ Developing countries had noticeable impact on developed countries in the WTO. For example, Guatemala and Ecuador, not satisfied with the settlement of the banana dispute, blocked the proposal of the EC to obtain a waiver for Fiji Convention that gives preferential treatment for African, Caribbean, and Pacific (“ACP”) countries. Developing countries played an important role in the debate over the selection of Director General for the WTO to replace Renato Ruggeiro in 1999. Additionally, developing countries aired their concerns toward the green room negotiations module in Seattle Ministerial meeting. See *id.* at 182-183.

²⁶ Personal choice, voluntary exchange, freedom to compete, and security of privately-owned property are the cornerstones of economic freedom. In a study conducted on economic freedom in the world, Jordan ranked 36 in 2002, Bahrain ranked 31, Morocco ranked 83, and Egypt ranked 74. See JAMES GWARTNEY & ROBERT LAWSON, *ECONOMICS FREEDOM OF THE WORLD: 2004 ANNUAL REPORT* 53, 81, 107, 120 (2004).

specific for Arab countries but for all countries joining the WTO.²⁷ Membership in the WTO would ensure Arab countries a fair forum for settling their potential trade disputes with other members who may wield more trading power. Reviewing some of the big fish cases would reveal this truth.²⁸ Therefore, let it be "United We Fall" under the WTO. WTO agreements have safety valves that can be used provisionally to counter imports (anti-dumping is my favorite).

III. Arab countries Accession to the WTO: Playground of Politics

The absence of some Arab countries, and some Islamic countries for that matter, from participation in the WTO is due to the fact that the U.S is blocking the establishment of working parties to examine their applications.²⁹ Since 2000, Jordan and Oman were the last Arab countries to accede to the WTO. Five years have passed so far and no other Arab country has acceded to the WTO. If the U.S is sincerely engaged with Arab countries, it should allow them entry into the WTO at accelerated rate.

Of the 148 members of the WTO only eleven Arab countries are members. Algeria, Comoros, Iraq, Lebanon, Libya, the Palestinian Authority, Saudi Arabia, Somalia, Sudan, Syria, and Yemen are all lining up for accession to the WTO. However, applications of

²⁷ The U.S and other developed countries have much more to worry about in terms of sovereignty since they have many great issues at stake. For more on sovereignty see Jenik Radon, *Sovereignty: A Political Emotion, Not a Concept*, 40 STAN. J. INT'L L. 195, 203, 208 (2004) (despite the long history of the sovereignty concept, it has always been a term in search of a definition. The notion of sovereignty has always been problematic and ephemeral. The U.S approach toward sovereignty is grounded on the legacy of American exceptionalism. For the U.S, joining the WTO met with opposition and suspicion. Joining the WTO amounted to the surrender of U.S sovereignty. On the other hand, for small countries, accession to regional and global bodies gives them more sovereignty). The U.S has a law which stipulates that every five years any member of Congress can offer a resolution to have the U.S withdraw from the WTO. This U.S law is an example of U.S concern over ceding its sovereignty by joining the WTO.

²⁸ See Report of the Appellate Body on United States-Import Prohibition of Certain Shrimp and Shrimp Products, Oct. 12, 1996, WTO Doc. No. WT/DS58/AB/R.

²⁹ To join the WTO, a working party needs to be established to negotiate terms of accession, and the General Council, which operates by consensus, must agree to form the working party. See Raj Bhala, *Challenges of Poverty and Islam Facing American Trade Law*, 17 ST. JOHN'S J. LEGAL COMMENT. 471, 508 (2003).

some of Arab countries for admission to the WTO are “clinically dead”.³⁰ Other Arab countries’ applications are “standstill”.³¹ The U.S supports applications of accession for only handpicked Arab countries that are considered “peaceful”, whatever this term maybe interpreted.³²

In a leapfrog move, Iraq, formerly an axis of evil and a country where 95 percent of foreign exchange earnings depend on oil, became an observer at the WTO overnight.³³ Perhaps, it will accede to the WTO in no time: Tune in. Iraq has adopted several orders that liberalize trade policy.³⁴ A new foreign investment law was passed in 2003

³⁰ See Daniel Pruzin, U.S. Blocks Iranian WTO Application; Syria Prevented from Placement on Agenda, 19 Int’l Trade Rep. (BNA) 36 (Jan. 3, 2002) (stating that Syria’s request for membership in the WTO was blocked because of Syria’s backing for the Arab League trade boycott of Israel).

³¹ See Daniel Pruzin, U.S., EU Push Saudis to Improve Market Access Offers for WTO Entry, 17 Int’l Trade Rep. (BNA) 1654 (Oct. 26, 2000). See also Daniel Pruzin, Progress Cited in Saudi Accession But Partners Still Waiting For Details, 20 Int’l Trade Rep. (BNA) 1324 (July 31, 2003) (Saudi accession has dragged for a decade since 1993. Saudi trading partners are concerned over Saudi legislation that restricts foreign investment in oil exploration, production, insurance, telecommunications, and retail and whole-sale trade. Furthermore, Saudi Arabia maintains import ban on alcohol and pork).

³² See Grary G. Yerkey, U.S. and Saudi Arabia Sign Agreement that Could Lead to Free Trade Negotiations, 20 Int’l Trade Rep. (BNA) 1353 (Aug. 7, 2003) (citing the term “peaceful countries” used by [former] USTR Robert Zoellick).

³³ See Brussels Resists Demand for Iraq WTO Seat, Financial Times, Jan. 26, 2004, at 4 (the EC resisted demand by the U.S and Britain backed by U.S Vice-President Dick Cheney that Iraq be given WTO seat. The U.S argues that WTO seat for Iraq would help its reconstruction and adapt to market economy. On the other hand, the EC argues that Iraq does not have a government that has control over its trade policy). Ultimately, however, Iraq was granted, on a silver plate, a seat at the WTO as observer which would allow it to attend WTO meetings but cannot participate in decision-making or table proposals for negotiations. See Iraq Takes First Step to Join WTO, Financial Times, Feb. 12, 2004, at 14. Although formally Iraq cannot participate in tabling proposals since it is an observer, it may do so in practicality. For example, China in 1980s was permitted to submit proposals during the Uruguay Round negotiations. Currently, Saudi Arabia is permitted to submit proposals in the Doha Round. Ahmad Al-Mukhtar, director general of foreign economic relations at Iraq’s Ministry of Trade declared his country’s intention to start accession negotiations as soon as possible. Indeed, in Oct. 2004, Iraq sent a letter to WTO Director General Supachai requesting that its membership request be circulated to WTO members and be placed on the agenda of the General Council in Dec. so as to commence accession negotiations. On Dec. 13, 2004, WTO members agreed on starting accession negotiations with Iraq. Iraq’s Trade Minister Mohammed Mustafa Al-Jibouri expressed his government’s hope to complete the accession negotiations as soon as possible.

³⁴ See Judith Richards Hope & Edward N. Griffin, *The New Iraq: Revising Iraq’s Commercial Law is a Necessity for Foreign Direct Investment and the Reconstruction of Iraq’s Decimated Economy*, 11 CARDOZO J. INT’L & COMP. L. 875, 877, 878 (2004) (citing the Coalition Provisional Authority order no. 12 which liberalized trade policy by suspending a number of tariffs and trade restrictions. The Coalition Provisional Authority also issued order no. 39 which instituted far ranging free-market reforms throughout Iraq in every sector, except for natural resources [the government of Iraq still subsidizes gasoline by fixing its price at very low rate], banking and insurance. For banks, after the end of a five-year period, there will

permitting 100 percent foreign ownership of firms in all sectors of the economy aside from oil and other mineral extraction. Iraq also modernized its existing intellectual property regime, by using the laws of Jordan and United Arab Emirates as examples, to bring it into compliance with international standards. The purpose is to assist Iraq's participation in the WTO.

Opening the fragile Iraqi banking system, where lending to the private sector made up one-half of 1 percent total commercial bank assets lending in 2004, would create a regime more favorable to mega foreign banks. Iraqi banks may not have enough capitalization to compete with foreign banks. The subsidized agriculture sector is set for reform.³⁵ Perhaps, the reform in the Iraqi agricultural sector would benefit the agribusinesses of the U.S and other major agricultural exporters. Likewise, Iraqi higher education is also slated for market-oriented reform. In other words, graduates would have to find their own jobs. It is no longer the responsibility of the government.

A country ravaged by war, a small percentage of U.S.-appropriated funds that have put into action, prime reconstruction contracts limited to companies from the U.S (led by Halliburton and Bechtel), Iraq, and force-contributing nations (Australia and Poland), and

be no limitations on the entry of foreign banks). In Oct. 2004, the U.S Ex-Im bank concluded a framework agreement with Iraq's ministry of finance and Trade Bank of Iraq to finance U.S exports to Iraq. Discussions are underway for Iraq to enter into aid and economic-reform programs with the IMF and to receive more aid from other countries to smooth Iraq's debt burden. The U.S. also planned for a major write-off of some of Iraqi debt currently totaling about \$120 billion. One has to question the imbalance in the form preferential write-off of Iraqi debt over other neighboring countries such as Jordan.

³⁵ See Ariana Eunjung Cha, *Iraqis Face Tough Transition to Market-based Agriculture*, Wash. Post, Jan. 22, 2004, at A01 (Iraq has 5 million agricultural workers mostly family farmers. In old Iraq, the state provided seeds, fertilizers, pesticides, sprinklers, and tractors at low cost. The Coalition Provisional Authority is determined to create a capitalist economy where the state provides little, if any, support. The U.S and Australia [major agriculture exporters] are taking the lead in rehabilitating the Iraqi agricultural sector. After first purchasing and then destroying Iraqi wheat in 2003 because it was of low quality, the gap in food supply was made up with \$190 million worth wheat from Kansas, Oklahoma, and Texas, courtesy of the U.S).

pillage of cultural heritage has little time for the WTO work.³⁶ Furthermore, with many decades of paternalistic cradle-to-grave government policy it is hardly perceivable that such reforms would be easy on people. Moreover, Iraq needs gradualism, not an instant trade liberalization, to make advances from a closed economy dominated by state-owned monopolies and subsidies toward a competitive and modern economy open to world trade.

Algeria has been seeking WTO membership for seventeen years starting June 1987. Its accession negotiations are moving at snail pace.³⁷ A sticking point is the dual price energy (gas and electricity) which the U.S and EC claim provides an indirect subsidy to industrial producers and give them unfair advantage over foreign competitors. For example, prices of some fertilizers are directly linked to the price of energy. However, Algeria may want to argue that WTO agreements do not address or prohibit dual price energy policies. If Algeria's argument proved fruitless, it has to agree to a language that

³⁶ See RESOLUTION OF CULTURAL PROPERTY DISPUTES 23-29 (The International Bureau of the Permanent Court of Arbitration ed., 2004) (discussing, in part, the tragic looting of many of Iraq's museums as a recent example of how vulnerable cultural property is to theft, damage, and destruction. As time went by, legal rules have developed for the protection of cultural property during hostilities represented in the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict. One of the obligations included in article 5 of the Convention is that occupying forces must as far as possible support the competent national authority of the occupied country to protect cultural property. It is an obligation of stewardship. This did not take place in Iraq. Neither the U.K nor the U.S is party to the Hague Convention. The experience of UNESCO in many conflict situations shows that only the tiniest fraction of looted materials will be returned). For more on the dispute between the U.S and EC over procurement bar from bidding on \$18.6 billion in reconstruction projects in Iraq see USTR Argues Iraq Contract Exclusion Fall within WTO Rules, INSIDE U.S TRADE, Dec. 12, 2003 (the U.S argues that Iraq's Coalition Provisional Authority, along with Defense Department which are responsible for awarding procurement contracts, is not a listed entity covered by the WTO GPA. As such there is no need to invoke [article XXIII of the GPA] "essential security" exception to justify the use of noncompetitive procedures in awarding these contracts. In the alternative, the U.S can argue that these contracts are foreign aid which is not subject to the U.S commitments under GPA).

³⁷ See Daniel Pruzin, WTO Members Discuss Accession of Algeria, Lebanon, Iraq Explores Membership Process, 20 Int'l Trade Rep. (BNA) 2079 (Dec. 18, 2003) (Algeria talks stumbled over its dual price for energy and ban on imports of alcohol. Dual energy policy allows domestic firms to buy gas at lower price than what Algeria charges on the international market. The Algerian parliament introduced a ban, which was proposed by religious factions, on imports of alcohol as part of the budget bill that would expire at the end of 2004). Other stumbling issues in Algeria's accession to the WTO include introducing new agricultural export subsidies, application of tariff-rate quotas, special safeguard on farm imports, and whether WTO agreements would automatically take precedence over any conflicting internal regulation.

would require energy prices to be set according to commercial considerations (production costs and profit), staged increase gas prices for industrial users, and/or exceptions to permit current energy policies for non-industrial users and households based on social considerations. Another sticking point is the import ban on alcohol.³⁸ It seems that Algeria would top China in terms of the length of time it has to endure to secure WTO membership.

Lebanon talks are still at early stage. The working party on Lebanon accession met in 2003 for the first time since 1999.³⁹ If one can draw on the experience of China and Taiwan (or Chinese Taipei as China's delegation to the WTO prefers to call or in WTOspeak definition) accession to the WTO, Lebanon may not accede except after Syria's accession to the WTO. In the alternative, Lebanon and Syria may accede to the WTO simultaneously to reduce tensions between the two neighbors. Either way, Lebanon efforts would be handicapped.

Libya submitted its accession application in November 2001.⁴⁰ Nonetheless, Libya's application was blocked by the U.S because it allegedly supports terrorism. On July 27, 2004, WTO members agreed to set up a working party to examine Libya's accession. Now, despite headways in the US-Libyan relationship, it has a long way to go. The U.S has adopted a step-by-step approach.⁴¹ The U.S would help Libya modernize its economy

³⁸ Other WTO members are likely to argue that the basis of the import ban on Alcohol is not religious but rather to protect the Algerian brewery industry, especially wine.

³⁹ Lebanon tabled its offer for market access in goods and services. Lebanon would reduce tariffs on agricultural and industrial goods to 12.5 percent. Further, Lebanon promised to liberalize mobile phone services, fixed-line telecommunication, and port services. *Id.*

⁴⁰ A ministerial committee has been established to prepare for negotiation with the WTO immediately after Deputy Director-General of the WTO concluded his visit to Tripoli in Oct. 2001.

⁴¹ The U.S Liaison Office in Tripoli stated that the pace of travel to Libya is still hampered by visa difficulties. Thus, the U.S Liaison Office advises those who plan to travel to Libya to apply for visa three to six weeks in advance. See Gray G. Yerkey, U.S May Soon Lift Ban on Travel to Libya, Bowing to Pressure from Business, Congress, 21 Int'l Trade Rep. (BNA) 289 (Feb. 12, 2004). In Apr. 2004, the U.S terminated

and infrastructure, which is largely dependent on gas and oil, and invigorating a working private sector. In this process, Libya would open up oil exploration, privatize some 360 states-owned enterprises, and ease price control. The U.S takes all these steps perhaps to maintain its competitiveness in the Libyan market.

In 2001, the Palestinian Authority sent a twenty-four member delegation for a two-day visit to the WTO to address the issue of its WTO accession.⁴² The Palestinian Authority adopted foreign trade regime similar to Israel.⁴³ However, the U.S and Israel are likely to oppose the Palestinian Authority application due to the tension between the Palestinians and Israelis.⁴⁴ In 2004, the U.S downgraded the status of the Palestinian Liberation office in the U.S.⁴⁵ Moreover, even if there is no tension between the Palestinians and Israelis, the U.S and Israel may raise a technical point. While a “government” possessing full autonomy in the conduct of its external commercial relations was the required condition under article XXXIII of GATT 1994 for accession,

the application of the ILSA to Libya. In Sept. 2004, the U.S lifted its eighteen year ban on trade between the two countries, terminating the need for license from the Treasury Department to trade with Libya, allowing direct air service and regular charter flights, and lifting the prohibition against financing through direct loans, credits, and guarantees by the U.S Ex-Im Bank and other government agencies. In addition, on the same date, the U.S terminated the national emergency declared in 1986 under the International Emergency Economic Powers Act with respect to Libya and released frozen assets belonging to Libya. New Regulations were issued that would allow U.S companies to interact with U.S made products that were illegally exported or re-exported to Libya before the U.S trade embargo was removed. However, the U.S still bans programs of the Overseas Private Investment Corporation in Libya. Moreover, the State Department still classifies Libya as state sponsor of terrorism thus prohibiting, with the exception of farm products and medicine, purchasing U.S military equipments such as radioactive materials and explosives and restricting, through export controls, U.S high-tech and encrypted exports such as computers and software. In order for Libya to be taken off the list of countries supporting terrorism, there must be efforts by the State Department, notification of Congress, and formal/informal congressional consent.

⁴² See Daniel Pruzin, Palestinian Authority Prepares to Pursue WTO membership; Observer Status First Step, 18 Int'l Trade Rep. (BNA) 869 (May 31, 2001) (the visit was financed by the U.S Agency for International Development).

⁴³ *Id.* As a result of the peace truce, a customs union is formed between Israel, the West Bank, and Gaza Strip.

⁴⁴ *Id.* The U.S and Israeli objections prove that WTO accession is not a rule-based process but rather power-based.

⁴⁵ The downgrading was based on the Foreign Relations Authorization Act. See Foreign Relations Authorization Act of 2003, Pub. L. No. 107-228, § 604 (2002).

now a “state” or “separate customs territory” is required under article XII of the WTO Charter. One may not debate that the Palestinian Authority is a government of some sort, but whether Gaza Strip and the West Bank form a state is an open question.⁴⁶

Saudi Arabia had been observer since 1986. It submitted its admission ticket application in 1993. One would question the dragged period of Saudi accession to GATT/WTO despite the fact that it is a prominent player in the World Bank and the IMF which mandate and advocate liberalization policies.⁴⁷ Whether Saudi Arabia’s accession to the WTO in 2004 is “imminent reality” or not, the fact remains that one does not have a crystal ball to predict when it could happen.⁴⁸ It could be in 2006 or 2007.

Saudi Arabia has opened its market for gas development projects, telegraph and fax services, Vsat and GMPCS services, Internet provision services, and online information

⁴⁶ Israel usually refers to Gaza Strip and the West Bank as the Territories or Areas. If the U.S and Israel raise the technical point, the Palestinian Authority may argue that the U.N gave its predecessor, the Palestinian Liberation Organization (“PLO”), an observer status, a position that allowed the PLO to participate in its discussions. See Press Release G.A. 9427, U.N. GAOR, 52nd Sess., 89th mtg. (1998). Moreover, the U.S extended its GSP scheme to cover Palestinian goods. As such, Palestinian goods would enter the U.S at preferential rate. Therefore, this implies a statehood status. See Proclamation No. 6778, 60 Fed. Reg. 15, 455 (1995). Finally, the Palestinian Authority can counter-argue that WTO agreements are trade agreements and discussions of broader international law issues should be left to other forums.

⁴⁷ One can speculate that due to the nature of the Saudi economy and its potential impact on world trade, WTO members are taking tougher stance in its accession to the WTO. See Tomer Broude, Accession to the WTO: Current Issues in the Arab World, 32 J.W.T 147, 153 (1998) (stating that Saudi economy ranks among the twenty largest economies in the world and among the fifteen largest importers).

⁴⁸ The accession negotiations grounded to a halt in early 2001 after Saudi Arabia published a negative list on investment prohibiting access to foreigners in key sectors such as oil exploration. However, Saudi Arabia’s accession to the WTO received a new momentum after the departure of Osama Faqih, former Saudi commerce minister who was considered an obstacle for moving the accession talks, and the appointment of Hashim Yamani as the new one. Moreover, the conclusion of some sixteen bilateral deals with trading partners including the one with the EC in Sep. 2003 provided another impetus for negotiations. Some trade diplomats suspect that Saudi Arabia may wrap up negotiations in 2004. See Daniel Pruzin, In Push to Finalize WTO Accession Deal in 2004, Saudis May Hold Talks Past Dec. 19, 20 Int’l Trade Rep. (BNA) 2077 (Dec. 18, 2003) (the most contentious negotiations is with the U.S over market access in financial services and insurance [branching rights for foreign insurers. Generally, branching is preferred over establishing subsidiaries since the latter require more capital and are less efficient]. Feeling sense of urgency the Saudis are ready to travel to capitals to resolve outstanding issues. The Saudis push for accession is due in part to the desire to improve the strained relations with Washington after Sep. 11). An interesting point in Saudi Arabia’s accession to the WTO is whether it should be classified as a developing, advanced developing country, or developed country. If it is classified as a developing country, it may qualify for benefits, if any, accruing to developing countries in their accession to the WTO.

and database retrieval services to non-Saudi operators. Saudi Arabia has also passed several trade-related laws in its process for entry into the WTO. For example, in 2003, Saudi Arabia passed regulations that liberalize capital markets. However, as a result of Saudi putting some 100 reservations in market access where liberalization would not apply, negotiations could take sharp turn.⁴⁹ Some of these reservations presented by Saudis can be qualified as to preserve Islamic values and traditions such as pork. Saudi Arabia's media interests (audiovisual), which are state-censored for content, occupied with patriotic programming, and use Saudi themes, are off-limits to non-Saudi interests. Thus, global media interests such as Viacom will not be allowed to own shares in TV production companies or invest in joint production projects with Saudi media companies. If other WTO members raise objections to these reservations, Saudi can argue that France was permitted a "cultural exemption" clause during the Uruguay Round negotiations. Other Saudi reservations such as prepaid mobile phone cards may be more suspicious for justifications.

Dual price for energy and gas is a stumbling issue. The application of customs valuation, import licensing, and precedence of international law over domestic law are major concerns for trading partners of Saudi Arabia. The huge subsidies paid to rich farmers for growing wheat in the Saudi desert is one further big obstacle. In addition, Dominican Republic and Honduras sudden requests for bilateral talks with Saudis mean further delays. Some U.S congressmen oppose Saudi accession because of its support of

⁴⁹ See Daniel Pruzin, Saudi Flexible on Easing Investment Curbs During WTO Accession Talks, Report States, 21 Int'l Trade Rep. (BNA) 288 (Feb. 12, 2004) (the latest draft report of WTO's working party on accession cites that foreign investment in audiovisual, satellite transmission, land/air transport, real estate are off-limits. The report's annex sets out some seventy-three products that are prohibited from importations. They include alcohol, pork, satellite internet receivers, mobile phones fitted with cameras, video boosters, animal fertilizers, asbestos, used tires, mobile phone chips, prepaid mobile phone cards, and electronic greeting cards).

Arab trade boycott of Israel, human rights record, and terrorism. Finally, State Department's designation of Saudi Arabia, under the International Religious Freedom Act of 1998, as a Country of Particular Concern with possible trade sanctions could prove as a sticking point in negotiations. Therefore, Saudi's accession to the WTO goes beyond booze and cigarette issue.

Be that as it may, realistically, after accession, Saudi Arabia needs one to two years at minimum to learn rules of the game, mechanics of the WTO, and need of a large legal staff to assist in pursuing effective membership in the WTO. The latter point seems illusive considering the fact that many Arab countries have small delegations dedicated to the WTO. In addition, Saudi Arabia needs more time to familiarize itself with some thousand pages of trade rules.

Sudan, usually a forgotten country when speaking about international trade though it is an important exporter of gum Arabic and the largest country in the African continent, is outside the club.⁵⁰ Sudan has adopted an open-oriented policy that includes trade liberalization.⁵¹ However, Sudan is unlikely to accede to the WTO anytime soon especially in light of the sanctions imposed on it on the suspicion of supporting terrorist organizations. Moreover, there is a proposed legislation in the 108th and 109th U.S Congress (H.R 5414) to cut off foreign tax credits and tax deferrals to U.S companies doing business in Sudan until the latter ends genocide in Darfur region. Sudan is considered a pariah state along with Syria.

⁵⁰ The WTO had set up a working party on Sudan's accession since 1994.

⁵¹ The policy of Sudan focuses on enhancing the agricultural sector, which employs about 70 percent of the population, attracting foreign investors, including Islamic and Arab funds by reducing taxes and tariffs, reducing the inflation rate from 166 percent to less than 7 percent, and keeping currency prices stable. Nonetheless, over 90 percent of Sudanese people live below the poverty line. See Jim Phipps & Christopher H. Johnson, *Foreign Law in Review: 2001*, 36 INT'L LAW. 901, 939 (2002).

Comoros, a small island state, is another forgotten Arab country when speaking about WTO membership. Comoros has been recipient of preferential treatment from developed countries such as Canada under Least Developed Country Tariff treatment and the U.S under the GSP program and the African Growth and Opportunity Act.⁵² Furthermore, Comoros took several steps to reform its trade regime.⁵³ Since Comoro has a vulnerable economy with weak supply capacity, WTO members must show mercy in their demands for its membership in the trade body if, a big if, it requests to join.

Somalia is one further forgotten Arab country in the context of the WTO. It has undergone market-oriented policies.⁵⁴ After years of conflict and chaos, Somalia experiencing more political stability that would help revives its shattered economy and the role of the manufacturing sector. Since many of its industries would not be competitive internationally, WTO members, when Somalia accedes to the global trade body, must show mercy in their demands for accession.⁵⁵

Syria has taken several steps on the path of economic reform. These include increased imports such as vehicles and permitting the private sector to venture into such fields as banking, telecoms, TV production, and higher education. In this context, Syria

⁵² See Trade and Development Act of 2000, 106 P.L. 200, 114 Stat. 251 (2000). Comoros is dependant on the exports of basic commodities such as spices and official development assistance.

⁵³ In 1996, Comoros accepted article VIII of the IMF's Articles of Agreement which requires countries to refrain from imposing restrictions on the making of payments and transfers for current international transactions, engaging in discriminatory currency arrangements, or multiple currency practices without the approval of the IMF. Comoros agreed to pursue sound economic policy. Comoros also took trade reforms as part of the IMF-supported programs such as Structural Adjustment Facility. For example, in 1994, Comoros received \$1.90 million credit under Structural Adjustment Facility to support its economic reforms. See ROBERT SHARER ET. AL., TRADE LIBERALIZATION IN IMF-SUPPORTED PROGRAMS 9, 30 (1998) (Comoros began Fund-supported programs with relatively restrictive trade regime. However, there was marked reduction in its trade restrictiveness).

⁵⁴ See U.S DEP'T. OF COM. & LIBRARY OF CONG., SOMALIA: A COUNTRY STUDY (1993) (stabilization and macroeconomic adjustment programs had been implemented during 1980s under auspices of international credit and aid agencies. There has been a privatization of wholesale trade and financial services).

⁵⁵ Crop and livestock production, forestry, and fisheries are Sudan's main items of exports. *Id.*

first applied for WTO membership in October 2001. However, four years have passed since it submitted its application with no accession on the horizon.⁵⁶ Syria is a rogue state, as the U.S State Department claims, supporting international terrorism and the Arab trade boycott on Israel, and harboring elements of the former regime of Iraq.

It is unlikely that Syria's application to the WTO will be honored anytime soon especially after passing by the U.S Congress of the Syria Accountability and Lebanese Sovereignty Restoration Act of 2003.⁵⁷ The Act orders the U.S President to impose sanctions against Syria by blocking U.S exports of any item on the U.S Munitions List. Moreover, the President must also choose two or more sanctions from a menu of six options including prohibiting all exports of U.S products to Syria with the exception of food and medicine, prohibiting U.S business from operating or investing in Syria, a call for U.S financial institutions to sever dealings with the Commercial Bank of Syria, freezing of assets belonging to certain Syrian individuals and government entities, and prohibiting aircraft of any air carrier owned or controlled by Syria to take off, land in, or fly over the U.S. However, the President has the flexibility to waive sanctions if he determines it is in the national security interest. U.S trade sanctions on Syria may have little impact on its economy since trade between the two countries amounted to \$472 million in 2003. Additionally, Syria neither operates flights to the U.S nor receives U.S aid.

⁵⁶ On Feb. 11, 2004, the day Iraq was granted observership seat at the WTO, Syria circulated a note expressing its interest in joining the organization.

⁵⁷ See Syria Sanctions Bill Passes Senate with Lugar Amendment, INSIDE U.S TRADE, Nov. 14, 2003, at 13.

Yemen is another Arab country that is still out in the cold. Modern laws were enacted that are comparable with those of other Arab countries.⁵⁸ Islamic law has been codified in Yemen covering, among other areas, trade. Among trade reforms, Yemen removed import restrictions for many products, introduced four-band tariff structure with rates ranging from 5-30 percent, and harmonized excise tax rates. Additionally, Yemen opened its wheat trade and distribution of petroleum products, and removed a price-fixing cartel in the trucking sector. Yet, Yemen's accession to the WTO has many bottlenecks to go through.

There have been calls by Arab countries to grant the Arab League an observer status at the WTO. These calls have received dead ears so far. Admitting the Arab League to the WTO would strengthen the position of Arab countries in the organization. The Vatican has been setting as an observer since 1997 without the intention for applying for membership. Therefore, it is preposterous to delay granting the Arab League a seat to observe the WTO at work. One hopes that the matter is not Christen vs. Muslim and the WTO is not a Christian club.

As to the boycott on Israel, a precedent exists permitting an Arab country to accede to the GATT while maintaining its boycott on Israel. This was the case of the United Arab Republic, a union between Egypt and Syria, accession to GATT.⁵⁹ Perhaps rich Arab countries need to hire some of K St., Washington D.C lobbyists, published weekly in many publications and bulletins, before Congress to help advance a policy that may

⁵⁸ See Phipps & Johnson, *supra* note 51, at 953.

⁵⁹ The Arab boycott was justified as a reasonable measure considering the state of war between the United Arab Republic and Israel. During the accession negotiations, some contracting parties raised concerns that the United Arab Republic was participating in the Arab League boycott of Israel. Members of the working party supported the concept that such a boycott did not preclude accession, as long as it was for political purposes and not a disguised trade protection measure. See GATT ANALYTICAL INDEX, *supra* note 13, at 602-03.

benefit them. This may help counter onslaught lobbyists in Congress and the relative power of interest groups such as political action committees. Other Arab countries have Allah with them.

IV. The Venue of the Fourth WTO Ministerial Conference: Qatar (2001)

The WTO must hold its Ministerial Conference at least once every two years. The General Council of the WTO decides on the date and venue of the Ministerial Conference.⁶⁰ The Gulf state of Qatar, home for Al-Jazeera T.V network, voluntarily offered to host the WTO Ministerial Conference during Seattle Ministerial Conference. In 2001, the fourth WTO Ministerial Conference was held in Doha, Qatar that brought the WTO ever closer to Arab countries and the largest international meeting in the region.⁶¹

Qatar is a small country. It is not an active member of the WTO as other members such as Canada, Chile, Singapore, or South Africa. Despite these limitations, Qatar was determined to have the required infrastructure to host the meeting.⁶² Perhaps, Qatar was chosen for reasons other than the bricks and mortars infrastructure and the claim of integrating Arab countries in the WTO system.

⁶⁰ There are many factors considered in selecting the venue of the WTO Ministerial Conference. Those include the capacity to host the conference, proximity of the conference venue to corporate hotels such as Marriott, Sheraton, and Hyatt and airport(s), transportations, local assistance, and security arrangements. Usually, WTO Secretariat officials visit the prospective city to determine its infrastructure ability to host such a large meeting.

⁶¹ The other WTO Ministerial Conferences were consecutively: Singapore (Dec. 9-13, 1996), Geneva (May 18-20, 1998), Seattle (Nov.-Dec., 30-3, 1999), and Cancun (Sep. 10-14, 2003). The sixth Ministerial Conference will be held in Hong Kong (Dec. 13-18, 2005). The usual date for WTO Ministerial Conferences is the Nov. to Dec. period. During this period in 2001, the Islamic month of Ramadan would come. Being sensitive to Islamic values, it was decided to hold the fourth Ministerial Conference earlier (Nov. 9-13). If WTO members did not decide so, trade negotiators would be hungry. Trade negotiators would not provide the anticipated outcomes.

⁶² See Daniel Pruzin, *Chile, Qatar Signal to WTO Interest in Hosting Ministerial Meeting Next Year*, 17 Int'l Trade Rep. (BNA) 1888 (Dec. 14, 2000) (Qatar was prepared to make available 4,440 rooms for attending officials some in terms of luxury villas and cruise ships. The proposed venue was the Sheraton Doha Conference and the International Exhibition Center).

The 1999 Seattle Ministerial Conference was a blow to the efforts of WTO members to launch the “Millennium Round”.⁶³ The WTO could not sustain another blow. As such, Qatar was the proper venue to remove the Seattle stain. In terms of geography, Qatar is far way from western-type of anti-globalization protestors and anarchists.⁶⁴ If they dare, they will be lost in Qatar’s desert and oasis. Even if protestors decided to travel to Qatar, they are unlikely to flock in large numbers considering travel expenses among others.⁶⁵ Protestors will have a low key profile in Doha. Therefore, to outflank Seattle reoccurrence, Doha was chosen far from demonstrations, riot police, tear gas, and downtown arrests. Since Qatar is not an active member of the WTO, Qatari trade minister, Yousef Hussain Kamal, may not have the experience of chairing the conference. In practice, the old experienced guards of WTO members would run effectively the procedures of the conference.

The sequence of events of September 11, 2001 tragedy in the U.S highlighted the difficulty of bringing Arab countries ever closer to the WTO by holding its fourth Ministerial Conference in the region. The U.S suggested changing the venue to Chile after refusal of South Africa. If WTO members are sincerely interested in bringing Arab countries within the framework of the WTO, they could have insisted on maintaining Qatar as the designated venue. Luckily enough, the momentum was sustained that Qatar remains the venue.

⁶³ There are many reasons for the failure of the Seattle meeting. At this point, external factors will be counted. Violent protests against the WTO resulted in 600 arrests, \$3 million in property damages, and between \$12 million and \$22 million in lost business for Seattle merchants. *Id.* Protestors delayed and disrupted several Seattle meetings.

⁶⁴ The largest jam ever in Qatar in which police interfered was the McDonald-Burger King price war. The two fast-food restaurants engaged in price war after Burger King opened in Qatar.

⁶⁵ While if the WTO Ministerial Conference was held in Vancouver, Canada, protestors would have flocked in vans by thousands just across the U.S borders.

Over several WTO Ministerial Conferences, delegations of some Arab countries to the Conferences are small in number. Generally, delegations of Arab countries consist of a trade minister along with two senior trade officials. This reflects the fact that they do not have enough financial resources to send full-fledged delegations.⁶⁶ The small numbers of Arab delegations could be easily compared with hundreds of trade negotiators representing other countries.⁶⁷ Delegations consisting of small numbers would put Arab countries at disadvantage especially where due to imbalanced calendar several meetings are held at the same time.

Non-governmental organizations (“NGOs”) are permitted to attend WTO Ministerial Conferences.⁶⁸ NGOs are subject to accreditation process by specifying how their activities are linked to the work of the WTO and source(s) of finance.⁶⁹ However, a drawback for a specification such as that NGOs’ activities must be linked to the work of the WTO is that it limits participation of NGOs from Arab countries.⁷⁰

Over the course of the five WTO Ministerial Conferences held so far, few Arab business associations and NGOs participated. Moreover, they are limited in representation to one or two personnel. For example, in the third Ministerial Conference held in Seattle in 1999 among approximately 739 associations and NGOs that took part

⁶⁶ The WTO provides three travel tickets, for more you buy your own ticket. Other international agencies may handle travel expenses such as WIPO or USAID.

⁶⁷ For GATT Brussels Ministerial Meeting in 1990, the U.S sent an army of 600 personnel and Japan 300. Perhaps out of security reasons, U.S trade delegation to the Doha Ministerial Conference had a low turnout of less than 100.

⁶⁸ NGOs’ attendance is limited to plenary sessions but not other meetings.

⁶⁹ See Non-Governmental Organizations, Facilities Provided During the WTO Ministerial Conference in Singapore, Aug. 26, 1996, PRESS/TE 012. An obvious reason for the accreditation process is to prevent NGOs with “hidden agenda” from participating. Coincidentally, the title of the document refers to trade and environment. One assumes that some environmental NGOs have hidden agenda.

⁷⁰ Perhaps, some Arab NGOs might be interested in the work of the WTO although their activities are not linked to the work of the WTO.

only three were from Arab countries.⁷¹ The number of Arab associations increased dramatically in the fourth Ministerial Conference held in Doha in 2001.⁷² The lack of expansive Arab associations and NGOs participation in WTO Ministerial Conferences could be attributed to lack of interest or understanding of the WTO mechanics or more importantly due to lack of financial resources.

Inter-governmental organizations also participate in WTO Ministerial Conferences. For example, in the Doha Ministerial Conference of 2001 some sixty-two inter-governmental organizations were permitted to participate. One noticeable exemption from participation in WTO Ministerial Conferences is the League of Arab States, one of the oldest regional organizations of states in the world. Despite various attempts by the League to obtain observership seat at WTO Ministerial Conferences as well as various meetings, they ended fruitless.⁷³ The bad guys of the WTO membership usually object to such requests on the pretext that the League of Arab States promotion for boycott of

⁷¹ Two were from Egypt (Group of Fifteen-Federation of Chambers of Commerce, Industry and Services and the Central Agricultural Co-op Union) and one from Sudan (Sudanese Business Men and Employers Federation).

⁷² Out of approximately 365 associations and NGOs participated in the Conference, 12 Arab association participated: six were from Jordan (Arab Knowledge Management Society, Arab Society for Certified Accountants, Arab Society for Intellectual Property, Licensing Executives Society-Arab Countries, National Society for Consumer Protection, PhRMA East/Africa Committee), one from Lebanon (Arab NGO Network for Development), three from Egypt (Centre for Trade Union and Workers Services, Group of Fifteen-Federation of Chambers of Commerce, Industry and Services, National Association for Human Rights and Development), one from Syria (International Confederation of Arab Trade Unions), and one from Saudi Arabia (Women and Children International). The number of Arab associations and NGOs in the fifth Ministerial Conference in Cancun in 2003 dropped back to 8 out of 1002: three from Egypt (Afro-Asian People's Solidarity Organization, Center for Trade Union and Workers Services, Federation of Egyptian Industries), two from Jordan (Arab Knowledge Management Society, Pharmaceutical Research and Manufacturers of America-Jordan), one from Lebanon (Arab NGO Network for Development), one from Iran (Confederation of Iranian Industry), and one from Tunisia (Union Tunisienne de l'Agriculture et de la Pêche).

⁷³ For instance, the League of Arab States was not permitted to participate as an observer in the WTO Ministerial Conference in Cancun in 2003. Hussein Hassouna, Ambassador of the League of Arab States to the U.S, Address and Remarks at American University Washington College of Law (Apr. 21, 2004). On the other hand, Qatar courteously hosted Israel delegation in the Fourth Ministerial Conference in Doha. Usually, the WTO issues invitations to members and other organizations to attend its Ministerial Conferences.

Israel is contrary to WTO rules. Clearly, the objections of the bad guys is politically motivated rather than legally. WTO rules provide the means for integrating the functions of international, regional, and country-specific inter-governmental organizations such as the IMF, World Bank, and the OECD (the holy triangle of industrialized countries).⁷⁴ In return for blocking League of Arab States application for observership, Arab and Muslim states such as Egypt and Malaysia have blocked applications of other inter-governmental organizations.⁷⁵ For example, U.N Commissioner for Human Rights was not granted observer status in the Council for Trade in Services.

At the end of the Ministerial Conference in Qatar, members marked the launch of new round of multilateral trade negotiations. Aside from falling under the generic term “developing countries”, the question that arises is what Arab countries had achieved during the meeting. One of the immediate benefits, at least from the perspective of Qatar, is that the new round was dubbed “the Doha Development Agenda”.⁷⁶ Additionally, Qatar boosted its domestic tourism industry though temporarily.⁷⁷ There are no long-range economic benefits from hosting the Conference. For other Arab countries, they are faced with the daunting task of complex and extensive trade negotiations over several years to come resulting in new thousands of pages of complex trade jargon while still digesting the raw deals of the Uruguay Round.

⁷⁴ Article V.1 of the WTO Charter states that the General Council shall make “appropriate arrangements” for effective cooperation with other inter-governmental organizations that have responsibilities related to those of the WTO. Thus, members of the WTO recognized, though without any specific reference for any inter-governmental organization, other legal entities as part of the wider economic order.

⁷⁵ See Robyn Eckersley, *The Big Chill: The WTO and Multilateral Environmental Agreements*, 4 GLOBAL ENVTL. POL. 24 (May 2004) (admission of observers has been dealt with on *ad hoc* basis. The continuing impasse on the observer problem can be resolved only at the General Council level).

⁷⁶ The “Doha Development Agenda” will enter the history of trade rounds along with the Tokyo Round and the Uruguay Round. It is of notice that the Doha Ministerial Declaration of 2001 uses the term “work program” instead of the politically sensitive term “trade round”. For example, the term “work program” was used seventeen times while round was referred to only one time in the context of the Uruguay Round. See Doha Ministerial Declaration, Nov. 14, 2001, WTO Doc. No. WT/MIN(01)/DEC/1.

⁷⁷ Qatar may have built facilities such as rooms that cost million of dollars to be used only for one time.

V. Data on the Application of Arab countries of Selected WTO Provisions

Arab countries are frequent users of safeguard provisions designed to protect domestic industry from increased imports. For example, authorities in Egypt, Jordan, and Morocco investigated several safeguard petitions.⁷⁸ Since their accession to the GATT/WTO, many Arab countries still impose safeguard measures as trade remedy measures. There has been no major structural change in their trade remedy policy. If the purpose is to protect Arab countries' industries, then it is more advantageous to use antidumping and countervailing duty laws. For example, if Jordan uses its antidumping law to protect its domestic industry, it can target a particular industry of a country rather than imposing a safeguard measure against all countries as required by article 2.2 of the WTO Agreement on Safeguard. By this way, Jordan will not upset its trade relationship with other countries. Moreover, Jordan does not need to provide compensation to the exporting country(s) in case of imposing antidumping duty, while under article 8.1 of the WTO Agreement on Safeguard it has to maintain the same level of concession in case it imposes a safeguard measure. Finally, by imposing an antidumping duty Jordan will tell the world that "our industries are just competitive and fine but because you dump in our market we cannot compete". On the other hand, if Jordan imposes a safeguard measure it says "we confess and declare that our industries are not competitive, so would you please give us more time". Bluntly, safeguard law is weak defense measure for weak countries.

The WTO dispute settlement system has been in effect for nearly ten years. Over the span of that period of total ninety-two WTO members who participated in dispute

⁷⁸ Jordan found serious injury and applied safeguard measures on imports of biscuits and chocolates. See WTO Docs. No.G/SG/N/8/JOR/1, G/SG/N/10/JOR/1, Aug. 24, 2001. Egypt found serious injury on imports of matches. See WTO Doc. No. G/SG/N/7/EGY/1, Aug. 11, 1998. Morocco terminated the safeguard investigation without applying any safeguard measure on rubber plate and sheet products. See WTO Doc. No. G/SG/N/9/MAR/1, Jan. 10, 2002.

proceedings, no Arab country has ever initiated a case before a panel as a complainant.⁷⁹ However, through the end of 2004, Egypt was the only Arab country that had been a respondent in one case.⁸⁰ This state of affair may indicate that Arab countries are not rule breakers. Another interpretation is that Arab countries choose to settle their disputes with other WTO countries through consultations perhaps for many reasons including high fees charged by international law firms if they choose litigate or fear of spillover effects on financial aid.

Lack of participation in WTO dispute settlement proceedings may be attributed to the minuscule level of Arab countries' contribution to world trade contrasted with \$1 billion a day of trade between the U.S and EC.⁸¹ However, this is by no means a completely valid bar. Argentina, for example, which accounts for only 0.6 percent of world trade, is one of the most challenged nations before the WTO after the U.S and the EC. Argentina has also filed 9 complaints in the WTO. Additionally, India is an active participant in the WTO dispute settlement cases despite the fact that its share of world trade is under 0.8 percent.

Another reason that Arab countries are not frequent users of the WTO dispute settlement system is lack of expertise and knowledge of complicated WTO law with some complaints crossing several WTO agreements. Bringing a case before a WTO panel

⁷⁹ See Dispute Settlement Body, Overview of State of Play of WTO Disputes, Nov. 18, 2002, WTO Doc. No. WT/DSB/W/209/Add.1.

⁸⁰ See Egypt-Definitive Anti-Dumping Measures on Steel Rebar from Turkey, Aug. 8, 2002, WTO Doc. No. WT/DS211/R.). In the Steel Rebar case, in which Egypt presented an excellent argument, its counsel was Van Beal and Bellis of Brussels, Belgium. See Internet Chat with E.U Commissioner Pascal Lamy and Egyptian Trade Minister Youssef Boutros-Ghali, New WTO Round: Talking Trade-What's Going on?, at <http://europa.eu.int/comm/chat/lamy9/index_en.htm> (Last visited May. 30, 2005).

⁸¹ See Grary G. Yerkey, U.S Trade Policy Overlooks Middle East Region, Could Hurt War on Terrorism, PPI Study Says, 20 Int'l Trade Rep. (BNA) 323 (Feb. 13, 2003) (the Muslim world has experienced a 75% drop in its share of world export since 1980. As of 2001, the entire Muslim world received only \$13.6 billion in FDI, barely more than Sweden all by itself).

is an extensive process that requires preparing commercial data, studies, and substantial documentation. However, with passing of time and growing knowledge of the WTO law one might expect more use of the WTO dispute settlement system. Moreover, litigating a WTO case, which may take years, is very costly. For example, Brazil in its 2004 case against U.S upland cotton subsidies incurred estimated \$2 million in legal fees at the WTO panel level alone.⁸² Unless some Arab countries share the legal and financial burdens of legal proceedings at the WTO it might be very difficult for a single Arab country to initiate a case alone. Therefore, spreading the cost among Arab countries would make the process more affordable for Arab country involved.

In addition, power relations may play role in limiting Arab countries participation in trade disputes. For example, Egypt might have been in Scylla and Charybdis position when it decided to settle its dispute with the EC out of court.⁸³ If Egypt supported the U.S in the sensitive GMO case, it would have upset its relations with the EC. By the same token, if Egypt does not support the U.S, it would lead to sour in trade relations between the U.S and Egypt. Ultimately, Egypt chose to settle the dispute with the EC without litigation. Perhaps, without pressure, Egypt might have pressed ahead with the dispute against the EC.

Arab style and history may juxtapose all other reasons for limited participation by Arab countries in WTO dispute settlement cases. International litigation is non-preferred choice for Arab countries. Negotiations and compromises are the traditional path. It is a

⁸² On appeal, Brazil is likely to incur more costs. For more on the case see United States - Subsidies on Upland Cotton, May 23, 2003, WTO Doc. No. WT/DS267/15.

⁸³ See Grary G. Yerkey and Christopher S. Rugaber, U.S. and Egypt Beginning to See “Eye-to-Eye” on Need for FTA but No Talks Scheduled Yet, 20 Int’l. Trade Rep. 1145 (July. 3, 2003) (quoting Boutros-Gali, Egypt’s [former] foreign trade minister, saying that Egypt wants to begin the [US FTA] negotiations “tomorrow”. However, the U.S has been cold toward negotiating FTA with Egypt. Some hint that this so because Egypt withdrew its support of the U.S in the Genetically Modified Organism case against the EC).

question of style. One hopes that in the future, the process may become more confrontational in order for Arab countries to press their interests in trade disputes without compromising which otherwise would occur in negotiations. Through litigation Arab countries would send a signal to other WTO members that negotiation is one option for resolving a trade dispute but not the only option. Arab countries should employ negotiation and litigation at the same time.

There are some provisions in the Dispute Settlement Understanding of the WTO that give special treatment for developing and least-developed countries.⁸⁴ An important step has been taken to assist developing countries in WTO disputes settlement by the establishment of the Advisory Center on WTO Law.⁸⁵ Four Arab countries are members of the Advisory Center.⁸⁶ The Advisory Center resembles a law office specializing in WTO law. Despite several limitations on the functions of the Advisory Center, Arab countries may consider involving in the Center until they have their own in-house counsels and expertise in international trade law.

⁸⁴ For example, according to article 27.2 of the DSU, the WTO Secretariat provides assistance to developing countries through legal advice of experts in dispute settlement. However, legal assistance of WTO Secretariat is qualified “in a manner ensuring the continued impartiality of the Secretariat”. In other words, legal assistance of WTO Secretariat is not full but limited to the extent that the Secretariat’s neutrality is not compromised.

⁸⁵ The Advisory Center is independent from the WTO established as a foundation under Swiss law. The Advisory Center is open to all WTO members, but only developing countries and economies in transition can use its services. The Advisory Center sources of income are: user charges, revenues from an endowment fund, and traditional donor contributions. The Advisory Center organizes seminars on WTO jurisprudence, offers legal advice on WTO law, provides support in WTO proceedings, and permits internships for officials dealing with WTO legal issues. One of the criticisms directed toward the Advisory Center is that there may be real duplication between its work and the work of the WTO Technical Cooperation Division. Another criticism is the limited number of professionals and estimated hours per case (700 hours for a simple case). Even more, the Advisory Center executive director will have the power to decide whether a case brought to the Center by a developing country has legal merit or not. See Kim Van der Borght, *The Advisory Center on WTO Law: Advancing Fairness and Equality*, 2 J. INT’L ECON. L. 723, 724-727 (1999).

⁸⁶ Egypt, Tunisia, Jordan, and Oman are members of the Advisory Center. Egypt and Tunisia are original members of the Advisory Center which signed the agreement establishing the Center while Jordan was the first country to accede to the agreement followed by Oman. Late Said El-Naggar of Egypt, former Appellate Body member, held a seat in the management board for two years term starting 2001. See < <http://www.acwl.ch/> > (Last visited May 4, 2005).

VI. The Impact of the International Trading System on Arab Countries

This section will briefly summarize the implications of WTO on Arab countries in certain sectors.⁸⁷ From the outset, it is important to indicate that the multilateral trading system would have profound effects on the Arab countries collectively. For those countries which joined the organization this means that they will have to abide by its rules. For those which are outside the WTO this means that they would have to undertake regulatory reforms. The effects of the WTO on different sectors can be summarized in the following. Benefits are likely to materialize once the Arab countries enact a broad package of laws and regulations. This does not mean that some Arab industries are not likely to be negatively affected. A price must be paid for joining (no pain, no gain). However, any negative impact on Arab import-competing industries may be compensated by exportable industries. All this has been said, one could not for sure say what the negative or positive effects are since they all probabilities.

A. Agriculture

Until the Uruguay Round, agriculture was under softer disciplines. The WTO Agreement on Agriculture contains new disciplines in this sector. The WTO Agreement on Agriculture covers market access, export subsidy, and domestic support.⁸⁸

⁸⁷ Measuring the impact of WTO accession on Arab countries in different sectors such as services, employment, and telecommunication just to mention few requires extensive studies and analysis that are beyond the limits of this section. For some sectoral studies on the WTO and Arab countries see *OPENING DOORS TO THE WORLD: A NEW TRADE AGENDA FOR THE MIDDLE EAST* (Raed Safadi ed., 1998).

⁸⁸ Without going into the details of the WTO Agreement on Agriculture, restrictions on market access of agriculture were in the form of tariffs and non-tariff barriers. WTO members agreed to tariffy non-tariff barriers in binding recorded schedules with tariffs resulting from this process are to be reduced by average 36 percent in case of developed countries and 24 percent for developing countries, with minimum reductions for each tariff line required. This process is known as the Uruguay Round formula. Regarding export subsidy, developed countries committed to reduction at a level of 36 percent below the 1986-1990 base level and the quantity of subsidized exports by 21 percent over the same period. In case of developing countries the reductions are two-thirds of those of developed countries. The implementation period is six years for developed countries starting Jan.1 1995, and ten years for developing countries regarding direct

Arab countries' agriculture sector is in a primitive stage. Arab countries are facing an ever increasing challenge to acquire adequate food to feed themselves. Although some parts of the region had been historically exporters of agricultural products now they are, to large extent, dependent on staple food imports.⁸⁹ Many Arab countries post a trade deficit in farm products.

There are many reasons for the decline of agriculture in Arab countries. Agriculture policy in Arab countries, which is different from developed countries, plays a role in this state of affair.⁹⁰ Arab agricultural technology, such as mechanization and large farm operations, is not on the same level as that of their foreign counterparts, which results in

export subsidy. Some WTO members calculated very high levels of equivalent tariffs in replacement of non-tariff barriers. To alleviate such a problem members provided three approaches: current market access, minimum access quotas where current access is less than 3 percent of domestic consumption, and special treatment for some products such as rice. For more on the WTO Agriculture Agreement see Melaku Geboye Desta, *Food Security and International Trade Law: An Appraisal of the World Trade Organization*, 35.3 J. World Trade 450-452 (2001).

⁸⁹ See Roni N. Halabi, *Stability in the Middle East through Economic Development: An Analysis of the Peace Process, Increased Agricultural Trade, Joint Ventures, and Free Trade Agreements*, 2 DRAKE J. AGRIC. L. 275, 284 (1997) (twenty Arab countries purchased \$27.3 billion worth of agricultural products in 1993).

⁹⁰ For example, Arab countries tax farmers so as urban population would purchase these farm products at lower prices. In order to compensate for taxing farmers, Arab countries subsidize inputs such as irrigation thus providing artificially low-cost water. However, with taking on economic reforms under the aegis of international agencies, subsidizing inputs is no longer a viable approach. Moreover, Arab countries lack foreign exchange to subsidize agriculture. On the other hand, developed countries, such as the U.S and EC, tax urban population to insure income support for farmers. Rather subsidizing inputs, developed countries subsidize agriculture output. Therefore, domestic Arab farm products priced higher than imported ones. Of course, developed countries agricultural exporters are more than happy to fill in the gap and "dump" their surplus productions in Arab countries markets. Thus, further eroding what is remaining of the agriculture sector in these Arab countries. Water scarcity in the region is another reason for the decline in agriculture. However, although it is valid, this is not all true. Further reason for insufficient grain harvest could be due to giving more emphasis on value-added crops such as fruits and vegetables. One could argue that this works for Arab countries comparative advantage since they have large pool of labor and little arable land. For more on the U.S agricultural policy see J.W. LOONEY ET AL., AGRICULTURAL LAW 5-10, 191-205 (1990) (many of the U.S support programs date back to the farm financial crises of 1930s and 1980s. Certain reasons may provide as an explanation for the divergent treatment of agriculture in the U.S. First, farming is viewed as a unique way of life dependant on natural forces which are beyond the farmer's control. Farmers also viewed as stabilizing element in society because of their vital role in food and fiber production. Farmland is a major source of aesthetically and psychologically pleasing open space and locale for many non-farm recreational activities. Farmers are distinct minority in the U.S. They constitute about 2% of the total population. Farmers receive specialized legal treatment as an attempt to protect them from the generally urban orientation of law and government. Lastly, their lack of participation beyond the production stage of agriculture is a contributing factor to their inability to attain adequate income).

high output costs and low international competitiveness. Additionally, exports of agriculture and fishery products from Arab countries face a myriad of safety and environmental regulations in foreign markets. For example, Oman was allowed to export wild shrimp to the U.S in 2005 when the State Department certified that its fishing operations do not threaten endangered sea turtles because it harvests shrimp using manual rather than mechanical means to retrieve nets.⁹¹ Other regulatory measures imposed by the U.S include mandatory country-of-origin labeling for meat and meat products. Safety and environmental regulations make it burdensome for agriculture and fishery products from Arab countries to penetrate foreign markets.

Trade in genetically modified or bioengineered foods involves complex factors. These factors include lack of scientific certainty on the possible impact of agriculture biotechnology on human or animal health and the environment, involvement of huge economic interests in biotech food trade, and links biotech food has to ethical, religious concerns and biodiversity preservation. Arab countries such as Sudan have imposed import bans or tight restrictions on genetically modified organisms (“GMOs”) products. These Arab countries fear the contamination of local crops by GMOs strains which could affect their ability to export agriculture products to the EC where strict controls on bioengineered foods apply. Arab countries may need to approve biotechnology in order to boost food security. Bioengineered crops provide protection against pests or tolerance to chemicals. For example, in 2004, Algeria and Tunisia experienced slow in economic

⁹¹ Under U.S law, wild shrimp imports are barred if harvested in ways harmful to endangered sea turtles. However, the import bar is inapplicable if the State Department certifies that the harvesting nation has taken steps to reduce the incidental taking of turtles in shrimp trawl operations such as the use of sea turtle excluder devices or has fishing environment that poses no threat to sea turtles such as fishing in cold water regions not frequented by sea turtles. The shipment of shrimp must be accompanied by the State Department form DS-2031 signed by the exporter, importer, and government official from the harvesting nation. See Appropriations Act of 1990, Pub. L. No. 101-162, § 609, 103 Stat. 988 (1989).

growth due in part to locust infestation that curbed agricultural output. Approval of bioengineered crops could be accompanied by adequate labeling laws put in place such as the case in Saudi Arabia. In addition, as a safety measure, the areas of GMOs crops under cultivation could be separated from other areas of conventional crops.

Accession into the WTO would force the opening up of the domestic agricultural commodity markets. Moreover, as a result of further liberalization in agriculture, it is expected that the price tag of imported food products would increase. Arab net food-importing countries would likely to face some difficulties.⁹² Therefore, in WTO trade negotiations, one could anticipate that some Arab countries would be in defensive position or low profile proponents of agricultural trade liberalization because any reduction in subsidies by developed countries for their agriculture exporters would translate into higher food import bill for Arab countries.

In WTO trade negotiations, Arab net food-importing countries could be proponent of special and differential treatment in agricultural export credits, offered through export credit agencies of developed countries to finance exports, by arguing for longer maximum repayment terms, minimum annual repayment of principal and interest, favorable interest rate, and premium terms for food imports. Some Arab countries such as Jordan and Sudan are recipients of food aid. As such, these Arab countries could argue for continuing food aid in the form of in-kind donations and cash payments in negotiating new WTO rules for the use of food aid. Any agriculture trade reform should not lead to

⁹² The WTO Agreement on Agriculture recognizes the negative effects of agricultural liberalization. For this reason, WTO members adopted the Ministerial Decision on Measures Concerning the Possible Negative Effects of the Reforming Program on Least-developed and Net Food-Importing Developing Countries. Statistics show that food prices rose sharply after entry into force of the WTO Agreement on Agriculture. Since then prices have been on the decline. For more on discussion the Ministerial Decision and the effects on food security see Desta, *supra* note 88, at 465-467. The list of net food-importing countries includes Djibouti, Mauritania, Somalia, Sudan, Egypt, Jordan, Morocco, and Tunisia. See WTO List of Net Food-Importing Developing Countries, Mar. 26, 2002, WTO Doc. No. G/AG/5/Rev.5.

reduction in food aid delivered to Arab countries. Arab countries should resist any proposals that would limit food aid given in grants rather than credits and that food aid takes the form of cash donations rather than in-kind food donations. Cash donation may take longer time to reach targeted groups compared with in-kind donations. Moreover, Arab countries may argue that food aid should not be restricted only to defined emergencies and humanitarian crises.

B. State-Owned Enterprises

Arab countries face the dilemma of public/private sector dichotomy. State-owned enterprises (“SOEs”) are perceived as a drag on the economy and the budget. Some believe in smaller government by reducing the number of civil servants. It is also perceived that Arab countries economic future depends on reforms of SOEs. Usually, public sector opposes trade liberalization and the private sector backs further trade liberalization. When SOEs were set up in 1960s, they were arm of the state. They generate 40 percent of GDP.⁹³ These SOEs account for a large share of urban employment.⁹⁴

The arguments then proceed into the following lines: These SOEs suffer from the inability to reduce overmanned offices. In these enterprises, political skills are far more important than educational or managerial skills. The dilemma of public/private sector is further complicated if the public sector in Arab countries has ethnic majority while the

⁹³ See DOING BUSINESS WITH EGYPT 11, 17-25 (Marat Terterov ed. 2001).

⁹⁴ See Yitzhak Reiter, *The Palestinian-Transjordanian Rift: Economic Might and Political Power in Jordan*, 58 *The Middle East Journal* 72, 77 (2004) (the top 500 private-owned enterprises has JD5,814 million worth of assets with total employment of 44,839). From this article, one can inversely draw the conclusion regarding the large number of employees in public enterprises in Jordan. See also DOING BUSINESS WITH SAUDI ARABIA 5, 21 (Anthony Shoult ed., 2d ed., 2002) (the Saudi economy is currently in a state of transition as a consequence of the need to move from a focus on public to private sector activity. Annual government spending represents one-third of Saudi GDP. For example, in 1994, income payments to public sector employees accounted for around 50 percent of total government spending).

private sector has different ethnic structure. SOEs maintain advantages in obtaining government subsidies, land rights, loans from state banks, and legalized monopolies in sectors such as aviation and power. To put it bluntly, the private sector may not enjoy a level playing field.

The balance between the public/private sectors means longer time for reform to maintain the socio-political balance. Taking into account the abilities of the private sector, of all these private/SOEs the reality is that few may spring out as conglomerates in the nasty international market that recognizes only one thing: being lean and mean. The goal is not to squeeze one sector over the other. Rather, there must be potentially a long-term partnership on broad range of activities between private enterprises and SOEs based on communication through workshops, cooperation, shared accountability, and mutual benefit.⁹⁵ In other words, a national economy must be a private/public sector-led economy. Moreover, creating few but large SOEs may lead to some Arab multinationals that would be globally competitive and thus reduce their inefficiencies.

The ability of Arab countries to compete in international trade depends on productivity, investment in human and physical capital, and research and development. Several indicators suggest decline in Arab countries competitiveness. Intra-industry trade between 1985 and 1997 had been relatively slow and show little change compared with Brazil, Taiwan, and Malaysia.⁹⁶ Many firms in Arab countries are dominated by individuals, compete based on price alone, and lack managerial and technological resources. Some domestic industries are mostly composed of family-owned small and

⁹⁵ Long-term partnership may include outsourcing of non-essential functions to private sector companies so as to allow SOEs to focus on their essential functions. For example, notary services may be outsourced to private companies.

⁹⁶ See GLOBALIZATION AND FIRM COMPETITIVENESS IN THE MIDDLE EAST AND NORTH AFRICAN REGION 191-195 (Samiha Fawzy ed. 2002).

medium-sized enterprises.⁹⁷ They are concentrated in traditional labor-intensive industries such as textiles and apparel, wood products, and non-metallic mineral products. There are no available data on overall expenditure in research and development or the number of patents awarded in Arab countries and those of Arabian origin.

Arab countries should focus their efforts to develop high-tech industries. Arab countries should also boost their support for research and development and improve their engineering and science education. Competition will lead to increase in efficiency and creativity thus forcing domestic industries to adapt with the new climate.⁹⁸

C. International Trade in Oil

Oil is the largest primary commodity traded internationally.⁹⁹ Some Arab countries are top suppliers of oil. They have a comparative cost advantage since oil in these countries is cheap to pump. Therefore, oil-Arab producing countries that are not yet members of the WTO such as Algeria, Iraq, Libya, and Saudi Arabia may have concern over subjecting oil to market forces. In acceding to the WTO, these countries may have to bind their tariffs on oil imports, meaning that tariffs cannot increase above certain ceiling. Also, this implicates that other oil-importing countries would reduce and bind their tariffs based on reciprocity thus giving an advantage to oil-Arab exporting countries.¹⁰⁰

It is often a misconception to claim that oil trade, whether crude oil or oil derivatives, is not covered or excluded by the WTO agreements. Over the years, developed and developing countries increased the number of goods governed by the disciplines of

⁹⁷ For example, in Jordan 93 percent of establishments are small and medium-sized enterprises. *Id.*

⁹⁸ Through mergers companies could be able to compete, invest in their production systems, and strengthen their financial position.

⁹⁹ Fuel exports in 2002 stood at \$615 billion accounting for 9.8 percent of world merchandise trade. See WTO Secretariat, *International Trade Statistics for 2003* 103, 114 (2003).

¹⁰⁰ For much of the twentieth century the U.S maintained a tariff on oil imports to protect its petroleum industry against lower-priced competition from abroad. See Michael A. Toman, *International Oil Security: Problems and Policies*, 20 BROOKINGS REV. 20, 21 (2002).

multilateral trading system. As a matter of fact, a GATT decision in 1987 was concerned with oil trade in which Kuwait associated itself with the case.¹⁰¹ If oil trade is not governed by GATT, then GATT panel would not exercise jurisdiction on the matter. However, that case was limited to the consumer/importer side. There is no case yet on the producer/exporter country side for reasons such as setting prices or production targets.¹⁰² Additionally, oil trade is subject to domestic trade remedy laws.¹⁰³ For example, in 1999, a consortium of independent U.S crude oil producers alleged that companies in Saudi Arabia and Iraq, among other countries, are dumping crude oil that was subsidized by the governments of Saudi Arabia and Iraq in the U.S market.¹⁰⁴

¹⁰¹ The Superfund case was brought by EC, Canada, and Mexico. A 1987 GATT panel found that tariffs mandated by the U.S Comprehensive Environmental Response, Compensation, and Liability Act, known as Superfund legislation, was in violation of article III.2 of GATT (the non-discriminatory article). The U.S charged imported oil at rate of 11.7 percent per barrel. On the other hand, it charged domestic oil at rate of 8.2 percent. The case is cited briefly in Kwan Kiat Sim, *Rethinking the Mandatory/discretionary Legislation Distinction in WTO Jurisprudence*, 2 World Trade Rev. 33, 49-50 (2003). The other oil-related case is U.S-Reformulated Gasoline case of 1996. However, the Reformulated Gasoline case was primarily concerned with an environmental measure. For more on this “environmental” case see RECONCILING ENVIRONMENT AND TRADE 163-292 (Edith Brown Weiss & John H. Jackson eds., 2001).

¹⁰² See Rossella Brevetti, DeFazio Asks for WTO Case Against OPEC Production Cuts, 21 Int'l Trade Rep. (BNA) 565 (Apr. 1, 2004) (Rep. Peter DeFazio, along with over 30 other House members filed a letter with President Bush asking to launch a WTO case against OPEC. The letter alleges that OPEC supply restrictions are disguised restrictions on international trade violating article XI of GATT 1994. Moreover, the letter states that article XX exception allowing restrictions for the conservation of exhaustible natural resources is inapplicable since OPEC is not restricting oil production due to conservation concerns or to preserve an exhaustible supply). If a WTO case is filed, although it is unlikely for its political and economically-destabilizing ramifications, it would be the first WTO case on the producer/supplier side.

¹⁰³ Oil trade includes here crude oil, oil derivatives, and oil country tubular goods that are used in the oil and gas industry such as tubes and drill pipes.

¹⁰⁴ The U.S Department of Commerce denied the petition on the ground that there was no sufficient support from the domestic industry to initiate an investigation since opposition from U.S producers exceeded support. On appeal, the CIT and Court of Appeals for the Federal Circuit affirmed the decision of the Commerce Department. See *Save Domestic Oil, Inc. v. United States*, 240 F. Supp. 2d 1342 (Ct. Int'l Trade 2002) (stating that this was the first case the Commerce Department had rejected a petition at the filing petition level). See also *Save Domestic Oil v. Commerce Department*, 357 F.3d 1278, 1284 (C. A Fed. 2004) (the Commerce Department does not have a standard practice applicable to all industries of disregarding the opposition of domestic importer-producers with import levels beyond a certain percentage. There is an industry-specific analysis). One may speculate that the Commerce Department rejected the dumping petition because imposing an anti-dumping order would lead to political backlash from oil-producing countries as well as to increase in the price U.S consumers would pay at the pump.

However, one certainly can claim that oil trade is an “ambivalent” trade.¹⁰⁵ On the one hand, oil trade is supposedly covered by WTO agreements. On the other hand, some oil production is managed by the Organization of Petroleum Exporting Countries (“OPEC”) through supply control measures such as price targets or production quotas.¹⁰⁶ One should not lose sight in placing all the blame on OPEC “cartel” since there are many factors that affect trade in oil.¹⁰⁷ Before, the U.S and other developed countries mandate regulatory reforms for trade practices in oil-Arab exporting countries, they ought to reduce their own trade barriers such as high tariffs, discriminatory taxes on fusel fuel, carbon taxes, subsidies for coal, and threat of antidumping orders.¹⁰⁸

VII. Arab Public Opinion and the WTO

Although globalization has no specific shape, the most used meaning is economic globalization. Trends of Arab public opinion regarding globalization and the WTO specifically are mixed. Official public statements swear their allegiance to the words “free trade”. On the other hand, there are some reported incidents of an Arab anti-

¹⁰⁵ See Francis N. Botchway, *International Trade Regime and Energy Trade*, 28 SYRACUSE J. INT’L. L. & COM. 1, 11, 12 (2001) (some of the theoretical reasons for the apparent ambivalent attitude of contemporary international trade regime to energy trade include the definition of energy as good or service which in itself is not without controversy, location of energy at the heart of government economic thinking, and energy as a vital national asset to be left to free international trade trajectories. Movements in international regulation of energy are more likely to come from regional or industry-determined economic blocs. The legal basis for OPEC is article XX(h) of GATT which permits import or export restrictions legislated by commodity agreements. However, OPEC was not submitted for approved of the Contracting Parties as required by article XX(h) of GATT).

¹⁰⁶ See Oil: A Burning Question, *The Economist*, Mar. 27, 2004 at 71 (citing the OPEC “cartel” and its kingpin Saudi Arabia decision to cut production by 1 million barrel per day). The word “cartel” deserves a pause since developed countries themselves established cartels through the Multi-Fiber Arrangement for textiles with the approval of the GATT itself or through the on-going negotiations of multilateral agreement on steel over-production with the aim of setting production quotas.

¹⁰⁷ For overview of trade in oil see James M. Day, *Petroleum Prices*, 1 AM. U. BUS. L. BRIEF 52, 53 (2004) (discussing the petroleum industry and factors that affect the industry such as traders, weather reports, expectations of war, OPEC, currency value, taxes, lack of refining capacity, and refiners’ profits).

¹⁰⁸ High tariffs are often maintained on processed products to keep value-added production and employment in a certain market, while low tariffs are kept on raw products. This is known as tariff escalation. Some oil-importing countries impose higher tariffs on processed oil in order to keep value-added production and employment in their markets. Exporting raw products may constitute a threat to oil-Arab exporting countries’ economic stability because they are natural resources with little value added.

globalization movement and its visible presence, the WTO. For example, Arab activists from Tunisia, Morocco, Lebanon, and the Palestinian territories met in Beirut in 2002 and established a permanent Arab network, called the Arab Forum, to resist globalization and implicitly the WTO.¹⁰⁹ The Arab Forum spelled out its objectives as to exchange and coordinate information among the organizations of Arab civil society, represent a unified Arab position from unofficial Arab perspective, and lead protests.

Even though there might be no effective way to determine the pattern of Arab public opinion regarding globalization and the WTO, there is evidence that would lead one to conclude that anti-WTO/anti-globalization sentiment represents a large portion of Arab public opinion. For example, the majority of the population in Jordan has less confidence in globalization than even the populations of India, Mali, Argentina, and Bolivia.¹¹⁰

Besides the examples of the Arab Forum and Jordan, there are no other strategies outlining complains about the WTO such as palm cards, distributing anti-free trade messages on radio, and running ads in newspapers.

Arab activists fight against corporate greed that is destroying jobs and wages. Arab activists consider trade as a threat to jobs. The WTO as an institution needs an overhaul to address the interests of Arab countries. Otherwise, the WTO will poison Arab public opinion on globalization and free trade and is likely to provoke backlash against more open economies. The WTO, as imperfect as it is now, is better than bilateral trade

¹⁰⁹ See Mustafa Abdalla Abulgasem, *The Arab-Mediterranean Countries between the Conditions of the Barcelona Process and the WTO: A Comparative Study*, Conference on the Arab Countries and the World Trade Organization: Economic and Social Impact and the Prospects for Inter-Arab Cooperation, Institute of Arab and Islamic Studies, University of Exeter, U.K (Sep. 23-25, 2002) (on file with author).

¹¹⁰ See Alan M. Field, Can Trade Bridge the Gap?, *The Journal of Commerce* 18 (July 21, 2003) (a study found that Jordanians ranked last among the forty-four countries surveyed when it came to assessing the effects of globalization on their country. Sixty-four percent of Jordanians said it was bad compared with only twenty-seven percent who said globalization was good).

agreements signed between the U.S and Arab countries such as Jordan. Logic requires that one must begin from where he is now to achieve what he wants.

Conclusion

The effectiveness of the multilateral trading system may be examined by considering what might have happened in the absence of such a system. Let us assume that the WTO disappears overnight. Would that make Arab countries better off? Probably not. The Arab public who criticizes or doubts the WTO, even if right to a certain extent, may identify what is wrong. However, the Arab public may be unable to claim a workable alternative. The only other alternative is likely to perpetuate a mass of hegemony-centered bilateral trade agreements between the U.S or EC and Arab countries where Arab countries would be at disadvantage.

Institutions are never perfect. The way the WTO as an institution runs its business may not be perfect either. Certainly, the WTO needs a tune-up to project new image toward the Arab countries. The WTO should permit accession of Arab countries into the organization at an accelerated rate. In addition, the WTO Secretariat should have more staff from Arab countries, aside from French and Britons who hold most positions. If the WTO were to hold a future Ministerial Conference in one of the Arab countries, it should do so in a genuine and appropriate manner. To illustrate, the fourth Ministerial Conference was held in Qatar because of fear that anti-globalization protestors may disrupt the proceedings of the Conference, as it happened in the Seattle Ministerial Conference, not because the WTO wanted to integrate Arab countries further into the multilateral trading system, a claim advanced by WTO members. Although for practical reasons the WTO uses “mini-ministerial” meetings, where dozens of members are

invited, the WTO should use them to a minimum since they exclude Arab countries. The WTO should include Arabic, a language spoken by 280 million people, as a working language along with the other three working languages (English, Spanish, and French) in the trade body.

Joining the WTO is a two-way street. Adhering to the rules of the WTO may enhance global confidence in the Arab countries with the likely result of increasing foreign direct investment. Consumers in Arab countries would enjoy access to a wide variety of products that may otherwise be unavailable. Thus, trade can have an overall positive effect. However, the dilemma is how to minimize any possible losses and capture any benefits the multilateral trading system offers. Economic reform and trade liberalization must take into account social upheaval if hundreds of thousands of SOE employees are tossed out of work quickly without adequate guaranteed pensions. There will be losers among Arab import-competing industries, but hopefully winners among exportable industries will compensate for the loss.

Legally, all Arab countries should be able to accede to the WTO. According to article XII of the WTO Charter, any state having full autonomy in the conduct of external commercial relations may accede to the WTO. This article kick-starts the accession process. However, pragmatically, there are other prerequisites such as human rights, religious freedom, democracy, and no-trade boycotts. Since Arab countries have their own cultures and do not share all western values, they are banned from joining the WTO. It seems that WTO accession is a power-based process, rather than a rule-based process, as some legal scholars and WTO members would claim. The U.S backing of Arab countries to accede to the WTO is based on American foreign policy rather than

commercial considerations. The current colloquial interpretation of U.S foreign policy is that you are either with us or against us. If you are against us we will liberalize you or occupy you and then we will trade with you such as the case of Iraq. Syria, for example, is an important trade player in the region but still outside the WTO club. Until other Arab countries join the trade body, the universality theme of the WTO is simply a utopian dream.

An important issue is how to play with the WTO rules as other developed countries do. That is not to say that Arab countries should adopt protectionist policies. It is rather how to find their way through the current rules of the WTO agreements. Arab countries could use antidumping measures to protect their domestic industries from imports and the WTO dispute settlement mechanism to guard their rights. Arab countries could form a peer group for an extension of special and differential treatment. Arab countries could use the political mechanism of the WTO, decisions taken by consensus, as a way to block trade matters that may run counter to the development interests of Arab countries.

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