

Framing Access and Exclusion for Arab Countries in WTO Affairs

Bashar H. Malkawi*

Abstract

The WTO is here to stay. Institutions are never perfect. The way the WTO, as an institution, runs its business may not be perfect either. Arab countries are attempting to broaden their engagement in the multilateral trading system in a manner that has many implications. This engagement includes accession to the WTO, participation in WTO dispute resolution mechanism, and representations at the WTO.

Key words: WTO, Arab countries, international trade, free trade, accession, dispute settlement

I. Introduction

Arab countries are attempting to broaden their engagement in the multilateral trading system in a manner that has many implications. Not only have some Arab countries either acceded or are in the pipeline of acceding to the World Trade Organization (WTO), but their new commitments coincide with reorientations in their economic strategies. The path to joining the WTO is a two-way street. Adhering to the rules of the WTO may enhance global confidence in the Arab countries and will likely result in increased flow of investments. Consumers in Arab countries would enjoy access to a wide variety of products that would otherwise be unavailable. Thus, trade can have an overall positive effect. However, the dilemma is how to minimize any losses and capture any benefits that the multilateral trading system has to offer.

The purpose of this paper is to examine the involvement in the multilateral trading system. The proposition in this paper is that the WTO is not a perfect institution. I argue that joining the WTO is a balancing act. In addition, the WTO is not to blame for everything. Arab countries must take the initiatives necessary to effectuate their participation in WTO affairs.

The paper proceeds to discuss in sections II and III early Arab countries' participation in the multilateral trading system, UNCTAD, and WTO. Section IV

analyses Arab countries accession to the WTO especially some of the obstacles they face economically or otherwise. Section V provides in-depth discussion of Arab countries participation in the WTO dispute settlement mechanism. Section VI discusses Arab countries representation in WTO bodies. Finally, the paper concludes with a set of recommendations and suggestions to go forward.

II. Lebanon and Syria in GATT 1947

There were 23 original contracting parties to the GATT when it came into existence in 1947. Among them were Lebanon and Syria, the only Arab contracting parties of the GATT.¹ However, they withdrew from the GATT four years later.

In 1950, Lebanon notified the CONTRACTING PARTIES of its intention to withdraw from the GATT. Then Lebanese Foreign Minister Philippe Takal communicated his government's intention of withdrawal without further elaboration for the reasons of such withdrawal.² The only hint for withdrawal was the need for "readapting".

No party is obligated to clarify its reasons for withdrawal from the GATT. The only requirement according to article XXXI is a written notification of withdrawal to the Secretary General of the U.N. Therefore, there is no official reason for Lebanon withdrawal except to "readapt". Moreover, since GATT applied through the Protocol of Provisional Application, any country can withdraw from the Protocol on sixty days' notice rather than the six months' notice required by article XXXI of GATT.

* Bashar H. Malkawi is former Dean and Professor of Law at the University of Sharjah, United Arab Emirates. He holds S.J.D in International Trade Law from American University, Washington College of Law and LL.M in International Trade Law from the University of Arizona.

¹ In addition to Lebanon and Syria, there were eight other developing countries: Burma, Ceylon, Republic of Chile, Republic of China, Republic of Cuba, India, Pakistan, and Southern Rhodesia.

² 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 Geneva 30 October 1947 and this in conformity with Paragraph 5 of the Protocol of Provisional Application signed on the same date. Lebanon wishes nevertheless remain a member of the General Conference of the ITO". See Notifications of Withdrawal: Lebanon, Dec. 27, 1950, 77 U.N.T.S. 367.

The reasons for Lebanon's withdrawal from the GATT remain unclear. One may suspect that the reason for Lebanese withdrawal was the intention of Israel to join the GATT.³ Lebanon had at its disposal an alternative option that it 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 of them does not agree to its application to the other party "at the time of accession". Therefore, Lebanon could have resorted to this article at the time Israel joined the GATT.⁴ This is more convincing especially that article XXXV was added at the first session of the Contracting Parties in 1948, well before Lebanon withdrawal.⁵

Reviewing the list of countries that invoked article XXXV shows that India set a precedent when it became the first country to invoke it, in 1948 in respect of South Africa.⁶ Six months after Lebanon's withdrawal from GATT Syria followed suit.⁷ After that, there was no attempt by Lebanon and Syria to join the GATT/WTO until 1999 and 2001 respectively.⁸

III. 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.⁹ Like many other developing countries, Arab

³ Israel was established as an independent state in May 14, 1948. It was a party to the GATT through the application of provisional accession in 1959. It assumed full status in 1962. See GATT, ANALYTICAL INDEX, *infra* note 172, at 1046, 1051.

⁴ Egypt, Morocco, and Tunisia invoked this option with respect to Israel upon their accession to 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).

⁵ See GATT, ANALYTICAL INDEX: GUIDE TO GATT LAW AND PRACTICE 961 (6th ed. 1994).
⁶ *Id.* 958.

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

⁸ The Working Party on accession of Lebanon was established in April 1999. A formal request for accession under Article XII of the WTO sent to the Director-General by the Government of the Syrian Arab Republic on Oct. 10, 2001 and was circulated to WTO members on Oct. 30, 2001.

⁹ These countries are Egypt, Kuwait, Morocco, Mauritania, and Tunisia. 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 those countries if the latter reciprocate. However, Egypt and Tunisia did not have a direct right regarding tariff concessions negotiated prior to

countries, after the end of colonialism, called for a new world economic order that would take their development needs into account.¹⁰ 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.¹¹

In UNCTAD, negotiations were conducted by the bloc approach, with “the Group of 77” representing the developing countries.¹² UNCTAD can be best described as developing countries’ GATT. Over the span of its life, UNCTAD’s most cited achievement is the GSP system whereby developed countries give preferential, non-reciprocal, and non-discriminatory treatment to developing countries trade.¹³ Although the GSP system 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’s tasks now fall within

their accession to the GATT. In other words, they were not entitled to compensation in case tariff concessions were withdrawn.

¹⁰ The main reason for driving away from the GATT system is the doctrine of reciprocity embedded in GATT. This doctrine 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) (asserting that the new international economic order should be founded on full respect for the following principles: ... Preferential and non-reciprocal treatment for developing countries, wherever feasible, in all fields of international economic cooperation whenever possible.).

¹¹ UNCTAD held its first meeting of 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 for 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).

¹² There were four lists. African and Asian countries and Yugoslavia fell under List A. List B contained the developed capitalist countries. The 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.* The number of countries in the Group of 77 in reality is more than 77.

¹³ Other UNCTAD achievements include 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 these 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 these codes or disagreement among developed and developing countries over their share in commodity quotas.

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 anachronism.¹⁴

After all these years of enmity to the GATT/WTO, the decision has been made to join.¹⁵ Some argue that even if Arab countries would join the WTO there is little enthusiasm in the region for the general free trade agenda that the WTO encourages.¹⁶ In practice, the majority of Middle East countries is “protectionist” and is likely to stay that way for the years to come.¹⁷ The WTO is deemed irrelevant. They claim number of reasons for not joining the WTO. These range from guarding their sovereignty, to denying the benefits the WTO offers, flood of foreign imports at the expense of domestic industry, and psychological barriers.¹⁸ In more recent times, however, many perceive trade liberalization as a threat to cultural traditions.¹⁹

¹⁴ See JAGDISH BHAGWATI, *A STREAM OF WINDOWS* 29-35 (1998) (recalling the glory of UNCTAD under the leadership of Raul Prebisch as an institution was ahead of the curve and telling that 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.

¹⁵ The following are the Arab countries that joined the WTO: Bahrain 1 January 1995, Djibouti 31 May 1995, Oman 9 November 2000, Qatar 13 January 1996, United Arab Emirates 10 April 1996, and Jordan 11 April 2000. In addition there are five other Arab countries in the process of joining: Algeria, Lebanon, Saudi Arabia, Sudan, Syria, and Yemen. A formal request for accession under Article XII was sent to the Director-General by the Government of the Great Socialist People’s Libyan Arab *Jamahiriyah* on 10 December 2001.

¹⁶ 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).

¹⁷ For example, they adopt fixed exchange rates, impose customs duties on manufactured goods, restrictions on service suppliers, and 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 the Middle East. *Id.*

¹⁸ *Id.*

¹⁹ See Charles McDaniel, *Islam and the Global Society: A Religious Approach to Modernity*, 2003 B.Y.U. L. REV. 507, 513 (2003) (the perception of threat was evidenced during a protest in Iran in response to a meeting of Iranian government ministers who came together to discuss the issue of trade). See also remarks of H.H. prince Dr Bandar Bin Salman Bin Mohammad Al-Saud in stating 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 answer to such claims is in posing the following inverse question; can the Arab world imagine getting whatever benefits it may derive without being part of the WTO? I cannot imagine. In an era of internationalizing the economy, any Arab country which does not join would be isolated. Additionally, with the world becoming more and more economically integrated, Arab countries will have the chance to be involved and their interests might be represented appropriately.²⁰ As to the unbalanced claim that Arab countries are protectionist, great volumes of literature have been written about Quad countries (U.S., EC, Japan, and Canada) protectionism and cheating techniques. As to preserving the nuanced culture of Arab countries, one can say that free trade should not be seen as the source of all freedoms.

Adhering to the rules of the WTO may enhance the global confidence in the Arab countries and thus likely to increase foreign direct investment.²¹ As for the individual Arabic citizen, one would imagine how the consumer would be when all those goods that are not made in his home country become available at his fingertip. It would create a consumer class. The loss of sovereignty is not specific for the Arab countries but for all the countries which join.²² Membership in the WTO would ensure the Arab

²⁰ Citing three success stories for developing countries in the WTO: 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 countries ("ACP"), the role the developing countries played on the debate over the selection of Director General for the WTO to replace Renato Ruggeiro in 1999, and the attitude of developing countries toward the green room negotiations module in Seattle Ministerial meeting. See The International Bureau of the Permanent Court of Arbitration, at 182-183.

²¹ The cornerstones of economic freedom are personal choice, voluntary exchange, freedom to compete, and security of privately owned property. In a study of economic freedom in the world, Jordan's overall rank in 2002 was 36, while Bahrain ranked 31, Morocco scored 83, and Egypt scored 74. See JAMES GWARTNEY & ROBERT LAWSON, *ECONOMICS FREEDOM OF THE WORLD: 2004 ANNUAL REPORT* 53, 81, 107, 120 (2004).

²² 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. According to some, it amounted to the surrender of U.S. sovereignty. On the other hand, for small countries, accession to the regional and global bodies gives them more sovereignty). Example of the U.S. concern over ceding its sovereignty by joining the WTO is the law

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.²³ Therefore, let it be "United We Fall" under the WTO. There are some safety valves that can be used provisionally to counter imports (anti-dumping is my favorite).

Finally, the effectiveness of any legal system might be judged by analyzing what would have happened in the absence of such a system. Therefore, as a counterfactual, let us assume that the WTO disappears overnight. Would that make the Arab countries better off? The way the WTO as institution runs its business may not be perfect. Certainly, the WTO needs tune-up and enhanced-image toward the public. However, this should not shy away Arab countries.

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

Another reason, which is often overlooked, for the absence of some Arab countries, and some Islamic countries for that matter, from participation in the WTO is the fact that the U.S. is blocking the establishment of working parties to examine their applications.²⁴ Since 2000, Jordan, Oman, and Saudi Arabia were the last Arab countries to accede to the WTO. If the U.S. is sincerely engaged in the Middle East and the Arab world in general, it should allow them entry into the WTO at accelerated rate.

Of the 148 members of the WTO only 12 Arab countries are members. Algeria, Comoros, Lebanon, Libya, the Palestinian Authority, Somalia, Sudan, Syria, and

is every five years any member of Congress can offer a resolution to have the U.S. withdraw from the trade body

²³ Report of the Appellate Body on United States-Import Prohibition of Certain Shrimp and Shrimp Products, *supra* note 134.

²⁴ 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).

Yemen are all lining up for accession to the WTO. However, applications of some of Arab countries for admission to the WTO are “clinically dead”.²⁵ Other Arab countries’ applications are “standstill”. The U.S. supports applications of accession for only handpicked Arab countries that are considered “peaceful”, whatever this term maybe interpreted.²⁶

There are some Islamic countries that are not yet members of the WTO. They include Afghanistan, Iran, and Turkmenistan. For instance, Afghanistan, a developing country with few tradable items such as silk, fruits, nuts, spices, tea, and textiles, took several bold steps to promote its integration in the global economy despite a conflict that, among other things, threatened its traditionally strong agriculture sector and its gene- banking system.²⁷ Although Afghanistan does not have an observer seat at the WTO it requested accession to the WTO twice: an April 2003 request which lacked the back up of the government and a second Dec. 2004 request. On Dec. 13, 2004, WTO members agreed to commence accession negotiations with Afghanistan. Of the

²⁵ 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).

²⁶ 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).

²⁷ See Ashraf Ghani, Afghanistan Craves for Investment, WALL ST. J., Dec. 1, 2004, at A10 (the new [Afghani] constitution enshrines protection of property and commits to a market economy. The new investment law of 2003 allows for 100% direct foreign ownership. Afghanistan has reformed its tariff, customs and tax systems. It is developing its oil and gas resources). The U.S. adopted several initiatives to boost the Afghani economy by granting Afghanistan normal trade relations status (“NTR”) in May 2002 after 16 years. NTR obliges the U.S. to apply tariff rates on Afghani imports at levels equivalent to those enjoyed by other U.S. trading partners. See Proclamation No. 7553, 67 Fed. Reg. 30,535 (May. 3, 2002). In 2002, legislation (S.3151) has been introduced in Congress to negotiate FTA with Afghanistan. Additionally, the U.S. in Jan. 2003 provided products made in Afghanistan duty-free access to its market under the GSP scheme. In Sep. of 2004, the U.S. and Afghanistan signed a Trade and Investment Framework Agreement. Despite all these steps and the signs that the economy is recovering, production of opium poppy accounts for a large share of the Afghani economy. Indeed, the U.S. determined that Afghanistan has failed demonstrably to make significant efforts to adhere to its obligations under international counternarcotics agreements and to take the counternarcotics measures set forth in the Foreign Assistance Act of 1961 thus would be subject to sanctions under the Act. However, it did not decertify Afghanistan and waived those sanctions under national security certifications which would make Afghanistan eligible for U.S. aid that helps the reconstruction efforts in that country. See Pres. Determ. No. 2002-07, 67 Fed. Reg. 9889 (Feb. 23, 2002). See also Pres. Determ. No. 2004-47, 69 Fed. Reg. 57,809 (Feb. 23, 2002).

15 ex-Soviet states, Turkmenistan has had observer status in the GATT/WTO since 1992.

Iran has submitted its application for membership since September 1996. In May 2001, Iran's request for establishing a working party on accession was for the first time placed on the agenda of the General Council. Earlier, such request had not made it to the General Council agenda. As of 2004, it requested accession 19 times. However, the U.S. still blocks and objects Iran's request on three grounds: Iran supports terrorism, supports Arab trade embargo on Israel, and develops nuclear weapons. It is unlikely to accede in the near future in light of continuing U.S. executive orders. Some of these orders are extensions of the national emergency with respect to Iran announced in 1979. They prohibit the importation of goods or services of Iranian origin as part of the International Emergency Economic Power Act of 1988 giving the U.S. president the authority to regulate or prohibit any foreign exchange transaction. Moreover, the U.S. maintains legislation, the Iran and Libya Sanctions Act ("ILSA") of 1996, which imposes penalties on companies including foreign companies doing business in the Iran.²⁸ It authorizes the U.S. president to impose economic sanctions against foreign companies that invest more than \$20 million in Iran to develop its petroleum resources.

Iraq became an observer at the WTO²⁹ Iraq has adopted several orders that liberalize trade policy.³⁰ A foreign investment law was passed in 2003 permitting

²⁸ See Iran and Libya Sanctions Act of 1996, Pub. L. No. 104-172, 110 Stat. 1541. The ILSA is renewed continuously. See also Iranian Transactions Regulations, 31 C.F.R 560 (1996). U.S. companies are barred from directly doing business in Iran, although their foreign subsidiaries can work there.

²⁹ 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 in 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

100% 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% 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.³¹ Perhaps, the reform in the Iraqi agricultural sector would benefit the agri-businesses 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.

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.

³⁰ 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. It 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 be no limitations on the entry of foreign banks).

³¹ 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.).

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.

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 31 years starting June 1987. Its accession negotiations are moving at snail pace.³² 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 would require energy prices to be set according to commercial considerations (production costs and profit), staged increase

³² 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 introduction new agricultural export subsidies, the application of tariff-rate quotas, special safeguard on farm imports, and whether WTO agreements would automatically take precedence over any conflicting internal regulation.

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.³³ 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 few times since 1999.³⁴ If one can draw on the experience of China and Taiwan 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 Nov. 2001.³⁵ Nonetheless, it 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.³⁶ It would help Libya modernize its economy and

³³ Other WTO members are likely to argue that the basis of the import ban is not religious but rather to protect the Algerian brewery industry, especially for wine.

³⁴ Lebanon tabled its offer for market access in goods and services. It would reduce tariffs on agricultural and industrial goods to 12.5%. Further, it promised to liberalize mobile phone services, fixed-line telecommunication, and port services. *Id.*

³⁵ A ministerial committee has been established to prepare for negotiation with the WTO immediately after the Deputy Director General of the WTO concluded his visit to Tripoli in October 2001.

³⁶ The U.S. Liaison Office in Tripoli stated that the pace of travel to Libya is still hampered by visa difficulties. Thus, it advises those that 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 April 2004, the U.S. also terminated the application of the ILSA to Libya. In September 2004, the U.S. lifted its 18 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. Also 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.

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 24-member delegation for a two-day visit to the WTO to address the issue of its WTO accession.³⁷ The Palestinian Authority adopted foreign trade regime similar to Israel.³⁸ However, the U.S. and Israel are likely to oppose the Palestinian Authority application due to the tension between the Palestinians and Israelis.³⁹ In 2004, the U.S. downgraded the status of the Palestinian Liberation office in the U.S.⁴⁰ 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, 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.⁴¹

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.

³⁷ 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).

³⁸ *Id.* As a result of the peace truce, a customs union is formed between Israel, the West Bank, and Gaza Strip.

³⁹ *Id.* Once again, this incident proves that WTO accession is not, as some claim, rule-based but rather power-based process.

⁴⁰ This action was based on the Foreign Relations Authorization Act. See Foreign Relations Authorization Act of 2003, Pub. L. No. 107-228, § 604 (2002).

⁴¹ Israel usually refers to Gaza Strip and the West Bank as the Territories or Areas. If the U.S. and Israel raise this technical point, the Palestinian Authority may argue that the U.N gave its predecessor (the Palestinian Liberation Organization) 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

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.⁴² It has adopted an open-oriented policy that includes trade liberalization.⁴³ However, it 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.

Comoros, a small island state, is another forgotten Arab country when speaking about WTO membership. It 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.⁴⁴ Furthermore, it took several steps to reform its trade regime.⁴⁵ 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 WTO. It has undergone market-oriented policies.⁴⁶ After years of conflict and chaos, Somalia

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.

⁴² The WTO had set up a working party on Sudan's accession since 1994.

⁴³ Sudan's policy focus 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% 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).

⁴⁴ 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.

⁴⁵ 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. It agreed to pursue sound economic policy. It 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).

⁴⁶ 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

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.⁴⁷

Syria, a country in which oil accounts for almost 70% of exports, 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, it first applied for WTO membership in Oct. 2001. However, many years have passed since it submitted its application with no accession on the horizon.⁴⁸ 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 2003.⁴⁹ 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, he has the flexibility to waive sanctions if he determines it is in the national security interest. U.S. trade sanctions on Syria may

auspices of international credit and aid agencies. There has been a privatization of wholesale trade and financial).

⁴⁷ Crop and livestock production, forestry, and fisheries are the main items of exports. *Id.*

⁴⁸ On the same day, Feb. 11, 2004, that Iraq was granted observership seat at the WTO, Syria circulated a note expressing its interest in joining the organization.

⁴⁹ See Syria Sanctions Bill Passes Senate with Lugar Amendment, *INSIDE U.S. TRADE*, Nov. 14, 2003, at 13.

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. and nor receives U.S. aid.

Yemen is another Arab country that is still out in the cold. Modern laws were enacted that are comparable with those of other countries in the Middle East.⁵⁰ Islamic law has been codified in Yemen covering, among other areas, trade. Among trade reforms, it removed import restrictions for many products, introduction of four-band tariff structure with rates ranging from 5 percent to 30 percent, and the harmonization of 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.⁵¹ 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.

Legally, all Arab countries should accede to the WTO. Any state having full autonomy in the conduct of external commercial relations may accede to the WTO. This is the starter. However, pragmatically, it seems that there are other prerequisites. It seems that WTO accession is power-based process, rather than as some would claim as a rule-based process. The U.S. backing of Middle Eastern countries to accede to the WTO is based on foreign policy rather than commercial considerations. Until

⁵⁰ See Jim Phipps & Christopher H. Johnson, *supra* note 216, at 953.

⁵¹ See Craig VanGrasstek, *The History and Future of the World Trade Organization* 164 (2013), available at < https://www.wto.org/english/res_e/booksp_e/historywto_e.pdf > (last visited Nov. 22, 2018).

other Arab countries join the trade body, the universality theme of the WTO could not be achieved.

V. Participation in WTO Dispute Resolution Mechanism

The WTO dispute settlement system has been in effect for nearly ten years. Over the span of that period of total 92 WTO members who participated in dispute proceedings, no Arab country has ever initiated a case before a panel as a complainant.⁵² However, through the end of 2018, Egypt and Morocco were the only Arab country that had been a respondent in two cases.⁵³ This state of affair may indicate that Arab countries are not rule breakers. Another interpretation is that they choose to settle their disputes with other WTO countries through consultations

⁵² However, four Islamic countries-Indonesia, Malaysia, Pakistan, and Turkey- initiated a dispute in the WTO or were respondents in a dispute. See The International Bureau of the Permanent Court of Arbitration, *supra* note 186, at 188, 205. See also Dispute Settlement Body, Overview of State of Play of WTO Disputes, Nov. 18, 2002, WTO Doc. No. WT/DSB/W/209/Add.1.

⁵³ See Egypt-Definitive Anti-Dumping Measures on Steel Rebar from Turkey, August 8, 2002, WTO Doc. No. WT/DS211/R. That case involved definitive anti-dumping measures imposed by Egypt on imports of concrete steel reinforcing bar (rebar) from Turkey. Egypt divided foreign exporters for purposes of antidumping investigation into cooperative and non-cooperative companies. The whole case evolved around the relationship between what an investigating authority is obligated by the antidumping agreement to do with regard to procedural issues in an anti-dumping investigation, and what interested parties must themselves contribute in the way of evidence and argument. The panel found Egypt acted consistently with its obligations under the agreement in some parts. However, it decided that it acted in violation of the agreement because the investigating authority had “examined” all the relevant economic factors in article 3.4 of the agreement without “evaluation” of these factors. *Id.* para. 7.42-45. The panel also found that in respect of two Turkish companies (Icdas and IDC) out of five companies in the investigation, the Egyptian authority did not provide the two with ample opportunity to defend themselves and inform them that their submissions were being rejected, though they submitted, under article 6.8, all the necessary requested information. *Id.* para. 7.252-266. In that 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 3 March. 2003). The other potential case in which Egypt would have been a respondent, under the Sanitary and Phytosanitary Agreement, was Egypt-Import Prohibition on Canned Tuna with Soybean Oil, Sep. 27, 2000, WTO Doc. No. WT/DS205/1. Although the WTO document does not elaborate, the case involved a decision by Egypt to prohibit imports of Thai canned tuna with soybean oil because it suspects that the oil is made from genetically modified beans. Thailand is known to technologically capable of developing genetically modified organisms. Perhaps, Egypt wanted to protect its people, environment, and organic produce. In that case both parties, Egypt and Thailand, started consultations on the matter. However, it is unclear the results of those consultations. Perhaps, the parties did not further in requesting establishment of WTO panel due to the sensitivity of the issue. It would have been the first genetically modified organism case to be brought before the WTO.

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.⁵⁴ However, this is by no means a completely valid bar. Argentina for example accounts for only 0.6% of world trade is one of the most challenged nations before the WTO after the U.S. and the EC. It has 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%.

As some allude, Arab countries can participate in WTO dispute settlement proceedings since there is no explicit provision in the DSU requiring a member to have a legal interest to use the system.⁵⁵ However, usually, countries that have their substantial interests at stake participate in these proceedings. Indeed, only Egypt, among all Arab WTO members, has participated as a third party in a WTO case.⁵⁶ It remains to be seen how the Appellate Body decision to amend its working procedures regarding right of third parties to participate in its proceedings would help Arab countries.⁵⁷ Even if some Arab countries can participate as third party to a dispute,

⁵⁴ 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).

⁵⁵ Peter Van Den Bossche, former counselor to the Appellate Body of the WTO, citing the EC-Bananas III case in which the Appellate Body decided that any member has a broad discretion to bring a case against another member if it considers that this is "fruitful". See The International Bureau of the Permanent Court of Arbitration, *supra* note 186, at 191. However, the Appellate Body qualified this by stating that not one or more of the factors would be dispositive in another case.

⁵⁶ Egypt participated as a third party in EC-Bed Linen case. See European Communities-Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India, Oct. 30, 2000, WTO Doc. No. WT/DS141/R.

⁵⁷ See Appellate Body Annual Report for 2003, May. 2004, WTO Doc. No. WT/AB/1, at 34-37. The new amendments gives a third party an automatic right to appear at the oral hearing even though no written submission has been forwarded if there is a notification to the Body's secretariat compared with the previous practice where a written submission must be filed first before appearing at the hearing. Although the new amendments are a positive step, they did not elaborate or clarify whether WTO

their oral representation would be limited to 3-5 minutes as has been the practice.

Also, some allude that Arab countries may have the chance to participate through *amicus curiae* briefs.⁵⁸

There are other venues that Arab countries participate in WTO disputes. Article 17.3 of the DSU requires that the Appellate Body membership shall be broadly representative of the WTO membership. In this context, two Arab panelists sat on the bench of the Appellate Body since 1995.⁵⁹ In addition, there are 8 cases at the panel

members with no substantial interest at stake can participate in the Appellate Body hearing(s). Moreover, the decision to allow a third party to participate in case in which it neither file a written submission nor notify the secretariat is left to the Appellate Body to decide on a case-by-case basis.⁵⁸ See The International Bureau of the Permanent Court of Arbitration, *supra* note 186, at 191. One must remember that the WTO is a government contract for governments and governments only. Morocco, as the first Arab country and indeed a WTO member, submitted *amicus curiae* in the EC-Sardine case with Peru. The Appellate Body in that case allowed Morocco to submit its *amicus curiae* even though it did not participate as a third party at the panel level. See European Communities-Trade Description of Sardines, Sep. 26, 2002, WTO Doc. No. WT/DS231/AB/R, at para. 166-167. It seemed that in the Sardine decision, the Appellate Body added more rights to and obligations on WTO members setting an example for NGOs, academia, industrial associations to file large number of these briefs swaying the attention and limited resources of the Body from resolving the dispute to answering these briefs.

⁵⁹ These Arab panelists are: late Said El-Naggar of Egypt (served 1995-2000 in 12 cases: Japan-Taxes on Alcoholic Beverages, Oct. 4, 1996, WTO Doc. No. WT/DS8/AB/R, WT/DS10/AB/R, WT/DS11/AB/R, Brazil-Measures Affecting Desiccated Coconut, Feb. 12, 1997, WTO Doc. No. WT/DS22/AB/R, European Communities-Regime for the Importation, Sale, and Distribution of Banana, Sep. 9, 1997, WTO Doc. No. WT/DS27/AB/R, Argentina-Measures Affecting Imports of Footwear, Textiles, Apparel and other Items, March. 27, 1998, WTO Doc. No. WT/DS56/AB/R, European Communities-Measures Affecting the Importation of Certain Poultry Products, July. 13, 1998, WTO Doc. No. WT/DS69/AB/R, Australia-Measures Affecting Importation of Salmon, Oct. 20, 1998, WTO Doc. No. WT/DS18/AB/R, Guatemala-Anti-Dumping Investigation Regarding Portland Cement from Mexico, Nov. 2, 1998, WTO Doc. No. WT/DS60/AB/R, Brazil-Export Financing Program for Aircraft, Aug. 2, 1999, WTO Doc. No. WT/DS46/AB/R, India-Quantitative Restrictions on Imports of Agricultural, Textile and Industrial Products, Aug. 23, 1999, WTO Doc. No. WT/DS90/AB/R, Turkey-Restrictions on Imports of Textile and Clothing Products, Oct. 22, 1999, WTO Doc. No. WT/DS34/AB/R, Korea-Definitive Safeguard Measure on Imports of Certain Dairy Products, Dec. 14, 1999, WTO Doc. No. WT/DS98/AB/R, and United States-Imposition of Countervailing Duties on Certain Hot-Rolled Lead and Bismuth Carbon Steel Products Originating in the United Kingdom, May. 10, 2000, WTO Doc. No. WT/DS138/AB/R) and George Abi-Saab of Egypt (served 2000-present in 14 cases: Korea-Measures Affecting Imports of Fresh, Chilled and Frozen Beef, Dec. 11, 2000, WTO Doc. No. WT/DS161/AB/R, WT/DS169/AB/R, United States-Definitive Safeguard Measures on Imports of Wheat Gluten from the European Countries, Dec. 22, 2000, WTO Doc. No. WT/DS166/AB/R, European Communities-Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India, March. 1, 2001, WTO Doc. No. WT/DS141/AB/R, United States-Transitional Safeguard Measure on Combed Cotton Yarn from Pakistan, Oct. 8, 2001, WTO Doc. No. WT/DS192/AB/R, Mexico-Anti-Dumping Investigation of High Fructose Corn Syrup (HFCS) from the United States, Oct. 22, 2001, WTO Doc. No. WT/DS132/AB/RW, Canada-Measures Affecting the Importation of Milk and the Exportation of Dairy Products, Dec. 3, 2001, WT/DS103/AB/RW, WT/DS113/AB/RW, United States-Definitive Safeguard Measures on Imports of Circular Welded Carbon Quality Line Pipe from Korea, Feb. 15, 2002, WTO Doc. No. WT/DS202/AB/R, Chile-Price Band System and Safeguard Measures Relating to Certain Agricultural Products, Sep. 23, 2002,

level in which two Arab panelists were selected.⁶⁰ However, Arab panelists are outnumbered by panelists from other developed countries such as Norway or Switzerland. This indicates a limited pool of Arab expertise.

Another reason that Islamic and Arab countries, specifically, 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 is an extensive process that requires preparing commercial data (which in some instances may not be provided by the other party meaning that it must be bought from other sources), 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

WT/DS207/AB/R, European Communities-Trade Description of Sardines, Sep. 26, 2002, WTO Doc. No. WT/DS231/AB/R, United States-Countervailing Measures Concerning Certain Products from the European Countries, Dec. 9, 2002, WTO Doc. No. WT/DS212/AB/R, European Communities-Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India, April. 3, 2003, WTO Doc. No. WT/DS141/AB/RW, United States-Definitive Safeguard Measures on Imports of Certain Steel Products, Nov. 10, 2003, WTO Doc. No. WT/DS248/AB/R, WT/DS249/AB/R, WT/DS251/AB/R, WT/DS252/AB/R, WT/DS253/AB/R, WT/DS254/AB/R, WT/DS258/AB/R, WT/DS259/AB/R, United States-Sunset Review of Anti-Dumping Duties on Corrosion-Resistant Carbon Steel Flat Products from Japan, Dec. 15, 2002, WTO Doc. No. WT/DS244/AB/R, and European Communities-Conditions for the Granting of Tariffs Preferences to Developing Countries, Apr. 7, 2004, WTO Doc. No. WT/DS246/AB/R). See WTO Announces Appointments to Appellate Body, Nov. 29, 1995, WTO Doc. No. PRESS/32. See also WTO Completes Appointment of Appellate Body Members, May 22, 2000, WTO Doc. No. PRESS/179. Although this is a positive indicative that Arab countries are represented in the highest judicial authority of the WTO, one has to question such assertion since they are advocate of economic liberalization. For more on their biographies see WTO Announces Appointments to Appellate Body, Nov. 29, 1995, WTO Doc. No. PRESS/32.

⁶⁰ These Arab panelists are: Maamoun Abdel-Fattah of Egypt and Magda Shahin of Egypt. As of this date (Oct. 2004), Maamoun Abdel-Fattah participated in 8 cases (Brazil-Measures Affecting Desiccated Coconut, Oct. 17, 1996, WTO Doc. No. WT/DS22/R, Canada- Measures Affecting the Export of Civilian Aircraft, April. 14, 1999, WTO Doc. WT/DS70/R, Canada- Measures Affecting the Export of Civilian Aircraft, May. 9, 2000, WTO Doc. WT/DS70/RW, United States-Definitive Safeguard Measures on Imports of Wheat Gluten from the European Communities, July, 31, 2000, WTO Doc. No. WT/DS166/R, United States-Continued Dumping and Subsidy Offset Act of 2000, Sep. 16, 2002, WTO Doc. WT/DS217/R, WT/DS234/R, European Communities-Anti-Dumping Duties on Malleable Cast Iron Tube or Pipe Fittings from Brazil, March. 7, 2003, WTO Doc. No. WT/DS219/R, and United States-Continued Dumping and Subsidy Offset Act of 200-Original Complaint by the European Communities-Recourse to Arbitration by the United States Under Article 22.6 of the DSU-Decision by the Arbitrator, Aug. 31, 2004, WTO Doc. No. WT/DS217/ARB/EEC) while Magda Shahin participated in 1 case (European Communities-Measures Affecting the Importation of Certain Poultry Products, March. 12, 1998, WT Doc. No. WT/DS69/R).

2004 case against U.S. upland cotton subsidies incurred estimated \$2 million in legal fees at the WTO panel level alone.⁶¹ 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.

There are some provisions in the WTO DSU that gives special treatment for developing and least-developed countries. 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 this legal assistance is qualified “in a manner ensuring the continued impartiality of the Secretariat”. In other words, the legal assistance is not full. It is limited to the extent that the Secretariat neutrality is not compromised.

An important step has been taken to assist developing countries in WTO disputes settlement by the establishment of the Advisory Center on WTO Law.⁶² The Advisory Center is independent from the WTO established as a foundation under Swiss law.⁶³ It organizes seminars on WTO jurisprudence, provides legal advice on WTO law, provides support in WTO proceedings, and provides internships for officials dealing with WTO legal issues.⁶⁴ At the time of this writing, four Arab countries are members

⁶¹ If the U.S. appeals the case, 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.

⁶² The Advisory Center on WTO Law has been established to alleviate article 27.2 of the DSU problem which provides legal advice and assistance through the WTO Secretariat. To fulfill its mandate, the Secretariat dedicated only two legal affairs officers and engaged two consultants who are available one day a week. See Kim Van der Borgh, *The Advisory Center on WTO Law: Advancing Fairness and Equality*, 2 J. INT'L ECON. L. 723, 724 (1999).

⁶³ It is open to all WTO members, but only developing countries and economies in transition can use its services. Its sources of income are: user charges, revenues from an endowment fund, and traditional donor contributions. *Id.* at 725.

⁶⁴ To function, the Advisory Center has an executive director and four experienced professionals who have interest in advancing the interests of developing countries *Id.* at 727.

of the center.⁶⁵ Thus, the center resembles a law office specializing in WTO law.

Despite the limitations on 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.⁶⁶

In addition, power relations may play role in containing Arab countries participation in trade disputes. For example, it seems that Egypt was in Scylla and Charybdis position when it decided to settle its dispute with the EC out of court.⁶⁷ If Egypt supported the U.S. in the sensitive GMO case, it would upset its relations with the EC. By the same token, if it does not support the U.S., it would upset it. Ultimately, Egypt chose to settle the dispute with the EC without litigation. Perhaps, without pressure, Egypt might press ahead with the complaint against the EC. Therefore, Egypt should learn that any action it takes has consequences as exemplified by the soured relation with the U.S. on bilateral trade deal.

Arab style and history may juxtapose all these reasons. International litigation is non-preferred choice for Arab countries. Negotiations and compromises are the traditional path. It is a question of style. One hopes that in the future, the process may become more confrontational.

VI. Representations in the WTO and Delegations of Arab Countries

⁶⁵ These are Egypt, Tunisia, Jordan, and Oman. 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 March 4, 2003).

⁶⁶ One of the critiques to the Advisory Center is that there may be real duplication between its work and the work of the WTO technical cooperation division. Another critique 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 Van der Borgh, *supra* note 349, at 728.

⁶⁷ See Grary G. Yerkey and Christopher S. Rugaber, *infra* note 1941 (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 ("GMO") case against the EC).

Concerning Arab representation in the WTO Secretariat, of the 550 employees mainly Britons and French, few are from Arab countries. There are 3 Egyptians, 1 Moroccan, and 4 Tunisians.⁶⁸ However, the latter point concerning lack of representation at the WTO secretariat should not be apprehended negatively. In other words, even one appreciates having large Arab employee representatives at the WTO, however one has to take into account the breakdown of posts that Arab employees fill in the WTO Secretariat. It may not be necessary to have Arab employees in the trade body if they fill in administrative or secretarial (lower) positions rather than managerial or technical (middle and top) positions.⁶⁹ There must be a striking balance.

Even if an Arab representative(s) is selected to chair a WTO committee, such representation might be just virtual. For example in the annual rotation of WTO chairs for the year 2004, Naéla Gabr of Egypt, a member of Egypt delegation in Geneva, was appointed as chair for the WTO Committee on Trade and Environment (“CTE”).⁷⁰ One should say “wow”, however not too soon. The WTO CTE is to large extent ineffective because of the political sensitivity and complexity of the matter under its jurisdiction. It is limited in negotiating mandate, membership, and since its creation in 1994 did not achieve concrete results.⁷¹ So far, the CTE results have been

⁶⁸ Bhala, *supra* note 192, at 511.

⁶⁹ Currently, Abdel-Hamid Mamdouh of Egypt holds a senior position as head of the WTO Secretariat’s Service Division. The only other time there was a chance for an Arab candidate to fill in the would-be vacant WTO Director General post was in 1999. Among the candidates that were waiting in the wings to succeed the outgoing Director General of the WTO Renato Ruggiero, a former Italian foreign trade minister, Hassan Abouyoub, former trade and investment minister who led his country’s accession to GATT, of Morocco was a candidate. Cutting a long story short, it was decided to end the show by splitting the Director General term into two terms between Mike Moore of New Zealand and then Supachai Panitchpakdi of Thailand.

⁷⁰ See WTO Doc. No. Feb. 11, 2004, PRESS/371.

⁷¹ For example the mandate of the committee covers, among others, facilitate the transfer of environmental technology to developing countries, input from non-governmental environmental organizations into the committee, and study the relationship between environmental policy and the multilateral trading system.

issuing reports.⁷² Thus, it is academic in nature. Much more important chairs include the General Council or the negotiating group on agriculture. An Arab representative ought to be selected to chair the DSB which would to chairing the General Council since the WTO evolved a practice in which during the annual rotation of WTO chairs, the chairman of the DSB in the next rotation heads the General Council.⁷³ Finally, albeit Arab representation at the WTO Secretariat is important, it is of greater importance to have potent and effective Arab delegations that are able to conduct negotiations. There where the real work is done.

A major hindrance facing Arab countries' full participation in the work of the WTO is insufficient human resources dedicated to its work. Arab country representation is limited to a single or a handful of officials. Moreover, not only missions of Arab countries in Geneva cover the work of the WTO exclusively, but also other-Geneva based organizations such as U.N and its specialized agencies such as UNCTAD, WIPO, ITU, and ISO. The largest mission among Arab countries is Egypt of 10 professional staff.⁷⁴ The following list represents the number of professional staff in Geneva-based missions for other Arab countries: Bahrain 2, Djibouti 1, Jordan 2, Kuwait 2, Morocco 5, Mauritania 4, Oman 2, Qatar 1, United Arab Emirates 2, and Tunisia 3.⁷⁵

⁷² For example see Committee on Trade and Environment-Compliance and Dispute Settlement Provisions in the WTO and in Multilateral Environmental Agreements, June. 6, 2001, WTO Doc. No. WT/CTE/W/191.

⁷³ For example, in 2004 Amina Mohamed of Kenya chairs the DSB while Shotaro Oshima of Japan chairs the General Council. In 2005, Amina Mohamed should chair the General Council.

⁷⁴ Egypt is one of a handful of developing countries within the WTO that has an ambassador in Geneva appointed by the ministry of foreign affairs and a trade mission, located in different premises in Geneva, whose staff are appointed by the ministry of trade and headed by a minister plenipotentiary. The two ministers and missions have divergent views on trade that lead to internal as well as external conflicts. See FATOUMATA JAWARA & AILEEN KWA, BEHIND THE SCENES AT THE WTO: THE REAL WORLD OF INTERNATIONAL TRADE NEGOTIATIONS 21, 171 (2003).

⁷⁵ A Geneva-based Middle Eastern trade diplomat provided information on Bahrain, Kuwait, Oman and Djibouti (March 18, 2004) (on file with author).

One might understand that financial resources might constraint the ability of some lower-middle income Arab countries to have full professional staff devoted to the WTO in Geneva, one of the world's most expensive cities. However, what is puzzling is the fact that the United Arab Emirates, a high-income country, has only 2 professional staff. Mauritania, a low-income country, has 4 professional staff more than United Arab Emirates! An issue would arise in the future if poor Arab countries such as Sudan and Somalia accede to the WTO, they would not have the capabilities to have full-fledged delegation in Geneva. In that scenario, "obligations with representation" would apply.⁷⁶

Being small is only one part of the equation. The other interlinked part is skilled and versatile delegation. Many of these trade negotiators are "flying negotiators" attending daily meeting after meeting without the ability to keep up or develop mastery knowledge.⁷⁷ These Arab countries must dedicate even a small portion of their annual budgets, despite their constraints, to train their lawyers if they want to take part in the WTO effectively and avoid being onlookers.

All in all, one can say that Egypt is the only Arab country active at the WTO. It is a user of trade remedy measures, WTO dispute settlement, and has a large Geneva-based mission. Egypt also is member of G20 countries that was established to counter US-EC agriculture proposal before Cancun Ministerial Conference.⁷⁸ Even more, it is

⁷⁶ One way to avoid this scenario would be for Somalia and Sudan to pool their resources with one or several Arab WTO delegations to represent them in certain meetings.

⁷⁷ Staffing is very critical because of the need to participate in numerous meetings, often taking place at the same time. The WTO has 67 bodies including 34 standing bodies open to all members, 28 accession working parties, and 5 plurilateral bodies. For example, in 2001, there were nearly 400 formal meetings of WTO bodies, 500 informal meetings (meetings with no records of discussions such as the green room meetings), 90 workshops and seminars sponsored by the WTO. South Korean delegation officials complain about the workload of the WTO despite the fact that they have 30 staff. See JAWARA & KWA, *supra* note 361, at 22. One might add also numerous negotiating groups if WTO members launch a new round of trade negotiations.

⁷⁸ Although membership in G20 has been changing, other gang members include Brazil, China, India, Argentina, Bolivia, Chile, Cuba, Indonesia, Mexico, Nigeria, Pakistan, Paraguay, Philippines, South Africa, Thailand, Venezuela, and Zimbabwe,

the only Arab country that is usually invited to WTO mini-ministerial meetings.⁷⁹

This means that other Arab countries are marginalized. Views of Arab countries may be communicated to Egypt which might find their way to other WTO members at these mini-ministerial meetings. However, one must remember that WTO members are rational. In other words, each country pursues its own interests, and Egypt is no exception.

Conclusion

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 so as to project a new image towards Arab countries. The WTO should permit accession of Arab countries into the organization at an accelerated rate. In addition, the WTO Secretariat should hire more staff from 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.

Legally, all Arab countries should be able to accede to the WTO. According to article XII of the WTO Charter, any state that has full autonomy in the conduct of its external commercial relations may accede to the WTO. This article begins the accession process. It seems that WTO accession is a power-based process, rather than a rule-based process. The U.S. backing-up of Arab countries to accede to the WTO is based on American foreign policy rather than commercial considerations.

The agreements covered by the WTO and its judicial decisions are voluminous. The results of the Uruguay Round, for example, cover some sixty agreements, which amount to over 30,000 pages. It is understood that every word, sentence, and decision

⁷⁹ WTO mini-ministerial meetings are new phenomenon at the WTO, usually hold in the run-up to ministerial conferences, in which “key” WTO members are invited to review progress and resolve key issues. It is unclear who organize such meetings whether the WTO or the host country. Other forum with limited membership is the Five Interested Parties in agricultural negotiation that include the U.S., EC, Australia, Brazil, and India.

in the context of WTO documents could, by itself, become the subject of an article or a book. It is important to develop a deep understanding of the WTO texts and their effects on Arab countries and Arab industries to determine what are the benefits and challenges of membership. There must be in-depth study and analysis of these over time by Arab experts. Moreover, Arab countries have to balance, as in the case of Egypt, between building their own expertise in WTO law, which is a long-term objective, and their current dependence, for an immediate need, on legal services provided by foreign law firms, which is a more immediate need.

An Arab institution, a kind of Inter-Arab Academy for International Trade Law, may be needed to fill in the gap left by the WTO technical assistance. The Academy would have a budget funded by contributions and donations from Arab countries proportionate to their economies. The purpose of the Academy would be to send Arab candidates to be trained in different areas of international trade and in different international institutions. These candidates could include officials, academia, or representatives from the private sector nominated by their countries based on qualifications.

Arab countries must ensure effective representations in the different meetings of WTO councils and committees. At these meetings, no light decisions would be taken on world trade. Since some Arab countries may not be able to afford the expenses of having “effective” missions in Geneva that are solely dedicated to the work of the WTO, Arab countries should form an Arab alliance so that each Arab country is represented by Arab trade experts. Nothing in the WTO agreements prevents forming an Arab alliance. This alliance should afford the help requested by its constituent members. The presidency of such an alliance would rotate, every year for example, to promote the voice of each Arab country.

Intra-trade depends on three factors: economic size (per capita GDP and population), economic distance (transportation costs), and production structure. Arab countries would likely qualify in terms of economic size and economic distance. However, the problem may be in production structure. Restructuring small and medium-sized Arab industries is necessary to increase the competitive conditions of these industries through specialization and division of labor. This could be achieved through consolidation in sectors such as banking and pharmaceutical, automation, downsizing, and the streamlining of production operations. If restructuring small and medium-sized Arab industries does not occur, then bankruptcy looms for inefficient producers.

To improve the competitive position of the region, Arab countries will have to be creative in generating alternative ideas and new solutions. The model should move beyond classic tariff reductions to cover unnecessary impediments that currently compromise trade flows between Arab countries. For example, Arab countries must engage in regulatory harmonization for different testing requirements, controls, and inspections. Arab countries should increase labor mobility by lifting visa requirements for certain nationals of these countries. Moreover, Arab countries should enter into mutual recognition pacts where regulatory agencies would agree to accept certification processes carried out in other Arab countries to eliminate the burden of seeking approval in each country.

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